POOR BOARD ACT IS CONSTITUTIONAL

OPINION OF JUDGE ARCHBALD IN CARBONDALE CASE.

First Time This Act Was Reviewed by the Court—After a Careful Consideration of All of Its Provisions the Judge Is Convinced That It Does Not Offend Against the Provisions of the Constitution—Way the Case Came Before the Court and Its Disposition.

In an opinion handed down yesterday Judge R. W. Archbald holds that the act passed by the last legislature affecting the Carbondale poor district is constitutional. It is the first time this act has been reviewed by any court.

The matter came before the court in the form of a demurrer to the return of an alternative mandamus in the case of the commonwealth ex. rel. Henry Carter and others, against Edward Moon and others, poor directors of Carbondale. The opinion of Judge Archbald in part is as follows:

The right to an office which is already filled by another with color of right cannot be determined by mandamus. Com. ex rel. vs. Commissioners of Phila., 6 Whar, 476; Same vs. Same, 5 Rawle 55; Com. ex rel. vs. Perkins, 7 Pa. 42. The only way is for the person who claims the office to compel by quo warranto the one who occupies it to show his title upon quo warranto. This prevents us from granting any relief in the present instance so far as the relator Daley is concerned. He claims the right by virtue of an appointment under the recent Act of May 5, 1899, P. L. 234, to represent the First ward of the city of Carbondale on the poor board of that city. But so does Robbins, who, it appears, was elected to the office before the act was passed and has been admitted to a place on the board by the other members. Robbins has at least a show of right under these circumstances, and is entitled to be fully heard thereon.

CANNOT ACT SUMMARILY.

We cannot summarily oust him from office and put another person in until he has been duly called upon to show his title in appropriate proceedings calculated to decide who has the better right to it. Nor can the respondents who have with color of right already admitted one representative from the First ward be compelled to admit another. This disposes of the case so far as Daley is concerned who must be remitted to a quo warranto.

Not so, however, with the other relators. They claim places on the board for the Fifth and Sixth wards not now represented there. The respondents deny that there are any such places to be filled, but if the vacancies exist and the relators have a right to them, the only method by which they can get in is by a mandamus to the rest of the board to admit and recognize them.

The right of the two relators, Carter and Gardner, depends on the validity of the Act of May 5, 1899, P. L. 234, already referred to under which they were duly appointed by the judges of the quarter sessions of this county. This statute the respondents contend is unconstitutional on numerous grounds. * * * What is outlined in the title is strictly followed in the body of the act. * * * This reference to the contents of the statute is necessary in view of the objections raised to it. These objections, as already said, are numerous, and if it were not for the eminent counsel who raise them we should be inclined to pronounce them hypercritical. For instance, it is claimed that there is more than one subject covered by the title; but how, or why? It is declared to be an act to regulate the affairs of the poor district mentioned, and then the particulars in which that is to be done are given. No one can well say that the title does not disclose the complete purpose of the act and it is certainly not to be condemned for its detail. The only question is whether the different things essayed to be done are germane to the general purpose. But in what respect are they not?

ABOUT CHANGE OF NAME.

It is said that the name is changed and the boundaries enlarged; that the manner of electing the directors, their number and terms of office, are regulated; and the new office of auditor of the district created. But why are not each and every one of these a legitimate part of the general subject? With what shall such an act concern itself if not with these? Were this original legislation, the corporate body created would have to be given a name and its boundaries defined, and why does not the change of its name and the enlarging of its boundaries, if they are enlarged, fall within appropriate supplemental legislation concerning the affairs of the district? Or how, again, can it be urged that the officers of the corporate body affected, their number and terms of office and the auditing of their accounts, do not fall within the general subject covered by the act?

The mistake seems to be made of taking these as distinct subjects which they are not. They are mere specifications of the different things to be accomplished by the act, with suggestions of how it is to be done. It surely would not be expected that we should have as many as there are affairs to be regulated, each act concerning itself with a single one of these; and yet there is just what the argument of counsel would lead to if sustained.

To escape this dilemma, it is said instead of bringing so many things in by way of a supplement there should have been an entirely new act covering the whole general subject. But how does this bear on the validity of the act as made up? If all that is founded in it could be brought into a new act with regard to this poor district, why may it not lawfully appear in the general supplement to the original act which created it; or what canon of legislation is offended by providing for it? Clearly it is admissible to effect the changes desired by appropriate supplemental legislation such as we have before us, leaving that to stand in previous acts which it is deemed unnecessary to modify. We are not compelled to resort to anything so radical as a new act in order to keep within the strict bounds of the fundamental law.

THE ALLEGATION MADE.

But it is said that the act offends against that provision of the constitution which declares that "No law shall be revived, amended or the provisions thereof extended or conferred by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be re-enacted and published at length. The argument on this branch of the case, as we understand it, is that the act, while denominated a supplement, is in fact an amendment of the previously existing statutes which should have been recited therein at length. There have been three previous acts with reference to this poor district; the Act of March 9, 1869, P. L. 138, which created it, and provided for the general regulation of its affairs; that of March 27, 1862, P. L. 211, which made some slight changes with reference to the collector of taxes and steward; and the Act of March 21, 1865, P. L. 529, which undertook to reduce the number of directors from five, to be appointed by the late mayor's court of Carbondale, from the city at large, to four, to be elected by the qualified voters, one from each of the then four wards of the city.

The Act of 1899 under discussion refers to but the first of these acts, and that by its title only. This it is said not only offends against the Constitution in the manner indicated, but by the omission of all notice of the two intermediate acts is actually misleading. The Act of 1865 is entitled "A further supplement to an act to incorporate the city of Carbondale," and it is mainly concerned with the affairs of that municipality.

But, unfortunately, it undertakes in its first section to deal with the Carbondale poor district also by providing that, at the first charter election for the city after the passage of the act, the qualified voters shall elect directors of the poor, one for each ward of the city, one to serve for one year, one for two years, one for three years, and one for four years, and annually thereafter one director to serve for four years; these it clothes with the same power and authority as is given to the directors under the original act and repeals so much of that act as is in conflict or inconsistent therewith.

CLEARLY UNCONSTITUTIONAL.

This part of it is so clearly unconstitutional that that of itself is a sufficient reason for not having noticed or referred to it in the Act of 1899, if any is needed. The constitutional amendment of 1864 had the same provision that appears in the present constitution, to wit, that "no bill shall be passed by the legislature containing more than one subject which shall be clearly expressed in its title." The Act of 1865 deals with two subjects, the affairs of the city as well as the affairs of the poor district, and as to the latter there is not a suggestion in the title that any such legislation was contemplated. The Act of 1860, which established the district, was not a supplement to the act incorporating the city, as the draughtsman of it evidently supposed, a mistake which is fatal to its validity. It is pertinent to note that it is under and by virtue of this act that the respondents now hold office.

But no such objection can be made to the Act of 1862, nor of course to the creative Act of 1860, and the argument against the act under discussion, that it does not recite these acts in full in undertaking to modify them, therefore still remains. A mere statement, however, of that argument as it seems to us sufficiently refutes it. It is nothing less than this: That every act of assembly which, by the introduction of new provisions, undertakes to change or modify the provisions of previously existing acts, must recite every part of each of them that is in any way modified or changed. Clearly this is not the law, not only as a matter of reason but by authority of the decided cases.

Such a position would virtually exclude all so-called supplemental legislation, because there is none which does not in some respect amend or modify that which has gone before. The mistake is in confusing amendatory and supplementary legislation. * * * The act in controversy is abundantly vindicated by the authorities and there is no occasion for pursuing the discussion further. Supplemental in form and so declared to be in its title, it enacts new provisions, modifying the existing law of the poor district in several particulars, but allowing all of it not so modified to stand. In this there is nothing which offends against the Constitution, and it is only by the most strained construction that it could be made to do so. Entirely within the form of ordinary legislation as it is, it is difficult to see how the ends to be accomplished could be effected in any other way than that which was pursued.

SOME MINOR OBJECTIONS.

Certain minor objections, however, are still further urged against it; for instance, that it changes the name of the district, a thing forbidden as it is said by the seventh section of Article 3 of the Constitution which prohibits special legislation, "Changing the names of persons or places." We do not think a poor district is a place within the meaning of this section. But suppose for the sake of argument it were? The changing of the name is a very inconsiderable part of the act and might be struck out without any particular detriment to it. An act may be valid in part and in part not, and if the courts can save any of it they are bound to do so. Were this part of the act therefore in contravention of the Constitution, of which we have not the slightest idea, it still would not affect the rights to which the relators are entitled under the rest of it.

Nor are we persuaded that by the power of appointing to vacancies on the board, given to the judges of the quarter sessions of this county in the third and fourth sections of the act, the prohibition of the Constitution is violated which forbids special legislation "regulating the practice or jurisdiction of, or enlarging the rules of evidence in, any judicial proceeding or inquiry before courts, aldermen, justices of the peace," etc.

We should be glad to escape the extra judicial duties imposed upon us by this and other similar statutes, but the power of appointment so given is an administrative function not unlike many others of the court of quarter sessions, a probable relic of the petty sessions held by the justices of the quorum in the mother country; but unfortunately for the argument of counsel, as well as for our own relief, it has nothing to do with the practice of the court or its general jurisdiction, and we cannot therefore condemn it as unconstitutional because of its special or local character.

As to the relator, Alva Daley, judgment is given on the demurrer in favor of the respondents; but as to the relators, Henry Carter and Milo Gardner, judgment is given against the respondents with costs and a peremptory mandamus awarded.

VERY LIVELY RUNAWAY.

It Caused a Lot of Excitement on Mulberry Street.

Daniel Johnson, of 413 Alder street, was yesterday employed by Elias Hendrickson, who lives in the rear of Clay avenue, to convey his household goods to a house at 312 Washington avenue. Johnson went to Clay avenue with his team and the wagon had been loaded high with furniture and Johnson was in it together with two men, Robert Busch and Jorn Sohe or, who were helping him and two small boys, the one he's son Willie and the other Joe Killian.

As the wagon was on Mulberry street one horse slipped and in doing so kicked the other one. Both became frightened and dashed wildly down Mulberry street.

Near city hall Busch jumped off and in doing so struck the pavement and injured his left foot and arm. He walked down to the Lackawanna hospital and was there attended. The cut in his foot was stitched and his swollen hand bandaged. He then left and went to his home in Park Place.

Near Washington avenue Johnson was thrown from the wagon and his foot slightly injured. A little farther down the street, one of the small boys was hurled out but was luckily not hurt. At the corner of Mifflin avenue and Mulberry street the horses wild flight was partially stopped by their running into the curb. Mailman William Moser, who was passing by, then stopped the team and held the animals until Johnson came up.

The horses themselves were uninjured and neither the wagon nor the furniture in it was at all damaged. Johnson drove to Washington avenue after picking up his help and there continued his work.

A Card.

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