burg for more than four years. It is

irrelevant to the case at bar and as

history of the case it might not be

nmiss to say that the change is made

necessary by the fact that the law

as it formerly stood centralized power

in somebody who wasn't responsible to anybody. It had that vice of mix-

ing legislative and executive functions.

Its vice was shown by the fact that

one man, who had no direct connec-

tion with the government of the city,

The Supreme court has declared, in

the McAskie appeal, that the legisla-

of classification and that all legisla-

tion applicable to a whole class is gen-

eral and not special legislation. It is

it embraces a whole class. In com-

Mitchell says: "Necessity is public con-

venience, and the legislature is the judge of the necessity." The law ap-

pointing a recorder for Scranton does

not relate to less than a class of sub-

icets. The law presumes an official

vill do his duty," and we are to pre-

ume the governor will appoint re-

orders for Pittsburg and Allegheny

Some time in the future the courts

of what particular laws are repealed

by the repealing clause of the Muchi-

Has Been Done.

ad a "ripper" attachment.

ew form of government.

questioned the proceeding?

ment just suggested.

determine."

Said he

onstitutional.

As to legislating a man out of office

clause reading: "The terms of may-

ors, controllers, etc., shall cease and tetermine." The present "ripper" is,

therefore, not a new idea in legisla-

lated men out of office to inaugurate a

If this act should have provided, simply, that the office of recorder

should be filled by appointment, and if

Ex-Judge Knapp made specific reply

o Mr. Eurns' contention that there

as more than one subject in the act

It is claimed that the repealing

lause in this act is a second subject.

All power is in the people and the

This is unfounded. The repeal is ex-

promner not, but it is not now before

before the thirty days' limit has ex-

conwealth against Gilligan, Justice

ture is the sole judge of the necessity

controlled its government,

### **ATTEMPTS** TO RIP THE

Hearing in the Quo Warranto Proceedings to Test Gonstitutionality of Muchlbronner Act.

#### TEN LAWYERS TAKE PART

Three on Each Side Talk for Three Hours in Assailing or Defending the Act-Mayor John G. Wyman, of Allegheny, Is Represented by Two Eminent Pittsburg Lawyers, Pittsburg and Allegheny? and the City Solicitor of Allegheny Is on Hand to Lend His Counsel to the Relator's Attorneys-It Is Admitted That the Governor Has yond a Municipal Election.

Arguments were made yesterday be fore Judges R. W. Archbald, H. M. Edand John P. Kelly in the quo warranto proceedings brought by ex-Senator M. E. McDonald to test the constitutionality of the "ripper" featuse of the Muchibronner act.

The attendance of enlookers was very small, not more than half a hundred persons being in the court room at any one time during the progress of the hearing and not more than a degenof these being lawyers, Scranton be deeply interested in the fate "ripper," but her citidid not evidence attendance at its trial. Ex-Sena-McDonald, the relator, dropped in when the hearing was half over; E. B. Sturges looked on for a while toward the close of the arguments, and s few other prominent citizens helped ave the scene from an aspect of abject foneliness. If it had not been for the hangers-on who were interested in the reports of the grand jury and the fact that a large number of lawyers were retained in the case, the hearing would have been almost perfunctory.

At the plaintiff's table, where the relator took his position, were Attorney loseph O'Brien, ex-City Soilcitor Ira H. Burns, Attorney M. J. Martin and R. Lewis, representing ex-Senator McDonaid: ex-United States District Attorney Walter Lyon, of Lyon, Me-Kee & Mitchell, and Lewis McMullen, of Pittsburg, representing Mayor James G. Wyman, of Allegheny, and Charles P. Lang, city solicitor of Allegheny. At the defendant's table sat Recor-der Moir's representatives, City Solicitor A. A. Vosburg, ex-City Solicitor James H. Torrey and ex-Judge H. A.

Messrs, Barns, Martin and Lyon argued for the relator, Mr. O'Brien giving way to Mr. Lyon. All three of the reconder's attorneys were heard.

#### Argued for Three Hours.

three hours, lasting from shortly after by mayors. Here is a local result, a 9 o'clock till within ten minutes of 12. most palpable one. For that matter general attack of the act, despite repeated intimations of the court that it only wanted to hear discussions of the onestier of the recorder's right to hold flice, and as a sort of precaution the respondent's attorneys made general

Just prior to the hearing the relator filed an amended suggestion and the respondent an amended answer. The amended suggestion is in substance a conveniently summarized review of the riginal suggestion, and reads as fol-

P. Elkin, attorney general, vs. James More, varender et Seranton. No. 110, March Terro,

Now, March Edd, Dat, council for relater amend the suggestion of the attorney general by adding the following: The relator summarizes the foregoing reasons to adeging that the said set is invalid for the

diowing reasons: First—It is local and special legislation

second. The act has more than one subject.
Third-The governor had no power to accept the respondent for the term coding April 1.

Fourth. The governor had no power to appoint without confirmation by the senate.

Fifth The legislature has no power to abolish
the office when the object is only to create mother offce to serious the same duties.
State-The act is unrepublican to torus and substituce, a transfer one, the people and not within the proper score and power of legisla-

#### Amended Answer.

The amended answer bears practically the same relation to the original auswer as the amended suggestion does to the original suggestions. It is an

Effect, attorney general, vs. James More, the Court of Courgeon Pinas of Lackawanna County. No. 710, March Term, 1901.
New, March 13, 1901, the respondent, James
Moir, for answer to the amended suggestion this
the question before us? day filed on the part of the Commonwealth by have of Court, saving and excepting all object one to errors and encertainties in the said

mendment, answers therete as follows; First-The act referred to, to wite: the aapproved March 7, 1991, entitled "An Act for the Government of Cities of the Second Class." is not local or special legislation. subject, but one single subject, to wit, the gov-

enment of cities of the second class. Third-By the expose provisions of the aid the governor is given power to appoint a re-corder for each of the cities of the second class, who shall serve until the first Monday in April, 1900, and the governor has so appointed the re-spendent recorder for the city of Scranton, and

the respondent has qualified as such recorder in the manner prescribed by the said act. Fourth—By the terms of the said act the power of the governor to appoint recorders for ties of the second class was not coupled with any necessity that such appointment ahould be by him reported to the senate or confirmed by the senate. In the absence of such restriction upon his appointing power with reference to a numerical office not recognized by the con-stitution and created wiely by Act of Assembly, no such restriction and configuration are re-

Firth-The legislature had full power to, and did by and Art of Assembly, abotton the of-fice of mayor in cities of the second class, and the inference contained to the paragraph of the amended suggestion that the object of such sholition of the office was to create macher of-

Mr. Burns for the relator was the first to be heard. Has contention in substance was as follows:

#### Mr. Burns' Argument.

to cover three cities. This violates the a request to confine himself to the quo on the proposition that there was no constitution unless the classification warranto question. Mr. Burns replied necessity for this change in the form act is made to intervene in its salva- that it all had a bearing on the neces-

cities of a class it avoids the constitutional prohibition against special or local legislation. This is not correct, In Ayres' appeal, the Wyman case many others, the court distinconstitutional unless that which it attempts to classify is clearly a matter proper and necessary to be classified, There must be a "necessity springing from manifest peculiarities."

The office of mayor is not peculiar to any class of cities. It existed before America was discovered, Every city in the United States has one, exwhich make the abolition of mayor necessary. What is the peculiar necessity of abolishing the office of mayor new second class law. of Scranton and not those of Wilker-Barre, Reading or Harrisburg? No exby main strength.

Where is the preamble to this bill? from manifest peculiarities," that warrant the abolition of the office mayor in this city or in the cities of

The fact is that the act merely at tempts to transfer the functions to another and similar officer with a different name. The duties are identically the same. It is purely a change of name. What is the necessity of calling Power to Appoint for a Term Be- him a recorder? If the necessity doesn't exist the law isn't good,

#### Question of Necessity.

Necessity, the opposition will say is a legislative and not a judicial ques tion. In Ayres' appeal, the supremcourt says differently. It says, specifically, court shall be the judge of the necessity. Except on a political parisan recessity, no one will contend that any necessity exists in this case. In the case of the commonwealth against Galland, 101 Pa. 375, it seems to be settled that numicipal officers are not such as require confirmation by the senate when appointed by the governor or that it is necessary they should have their appointive terms united by the next general election, but he supreme court very likely made this decision harshly and can be relied upon to reverse itself when next it is alled to pass upon this question. We do contend, though, that they can not by the same act provide for a recorder being appointed for an extended term and, then elected for an-

other extended term Judge Kelly-Would the appointmen. told good until the spring election of

s an entirety. It is for two years or until 1902. It is good for what is precribed or good for nothing. No one can change it. Neither the court nor the people can re-legislate. If it isn't good till 1903, it isn't good until 1902. This act is special because it makes no provision for "ripping" cities which are yet to come into the second class, Suppose Reading should be admitted to the second class at the next census. Would she have to go through this preliminary purgatory of having her government run by some one from the outside" No. She will be free from

#### About Local Results.

If local results are or may be proluced legislation is void. If James Moir isn't recorder this suit falls, Scranton is governed by a recorder. The arguments consumed nearly Pittsburg and Allegheny are governed attorneys went into a who can say the governor will ever Allegheny?

> As soon as we get down to govern. ing ourselves again, the appointments by heads of department must be confirmed. During the reign of the anpointed recorder, this confirmation is not required. This exemption applies only to certain persons, chosen in a ertain way, it does not apply to the office. The act is special, in that it confers powers and duties on the appointed recorder which are not conferred on the elected recorder. It is special in this respect and designedly so. Why should the choice of the governor be preferred in power and exemptions to the choice of the people who pay the raxes?

> Article 13 of the Muchibronner bill, lating to impeachments, attempts to confer on courts with a second class eity in their jurisdiction, certain powrs not given to courts in districts not embracing a second class city. This offends against the constitutional provision regarding uniformity of the powers of courts. It gives the Luckawanna court a power not held by the neighboring Luzerne court. The article in question "says if in the judgment of the court" such and such is the case, this or that shall occur. Is this not a judicial function which It attempts to confer on the Lackawanna and Allegheny courts to the exclusion of all others? You can not classify courts by an act for the government of second

#### Violates Constitution.

The act also violates the constitution in that it prohibits the removal of an appointed by the power that appointed him. "unless by consent of the ap-The constitution says an appointer shall hold office at the pleasure of the power than appointed him, Judge Kelly-How does this affect

Mr. Burne-If the act is derective in its essentials or any considerable num-

her of them, the whole act fails. In the ordinary bill the repealing clause simply declares the effect of the till, and does not become a rabject. In this ac, there is a special repealing clause, repealing all of the Act of 1897 except the first and second sections, and at its end, is a general repealing cause, repealing all acts or parts of acts inconsistent therewith. means that there are three subjects in the bill. There have been sixty-nine acts for second class etties passed since 1874. Half of them, we will say, are

repealed by this clause. Suppose some person had a valuable vested right conferred upon him by one of these repealed acts, would be have notice of the effect it has on him by the title of the nex?

The net in un-American. It takes from Scratton the right of government by its people. We are to be govrecorder is the creature of the gover-nor and will do his bidding. If some on the street cleaning gang, and that some one has a friend who can reach the governor, the recorder must bounce O'Flaherty. The appointed recorder is not subject to the will of the people.

#### Factional Politics.

Mr. Burns was faunching forth into a tirade against the factional politics which he saw behind the measure, but The Muchibronner act only purports Judge Edwards interrupted him with

make an set say it applies to all look his seat without resuming the has been a household word in Pitts-Mr. Lyon with his colleague, Mr. Mc-

Mullen, came in after the argument may be judged, distasteful to the had opened and was not introduced court, to go into this matter as Mr. court until he took his position | Burns ersayed, but as a matter of the guished what were proper matters for in front of the benen to commence his classification. An act is essentially uncommarks. After announcing that he represented Mayor Wyman, of Allegheny, Mr. Lyon proceeded to say: Before entering the second class, Alacting raninly under special legislation. The present code of third class vity laws was adopted while Allegheny was in the second class. The Muchibronner bill, in its twentieth section, procepting Scranton. It is incumbent on vide: that cities of the second class the other side to show the peculiarties | which have passed from the third class can retain such of their third class city laws as are not inconsistent with the If Allegheny retains some of her old third class laws Barre, Reading or Harrisburg? No ex-cuse is offered. It is simply legislation or third class code, we will have three ities of the same class working under different laws. The constitution says Where are the "necessities springing all laws relating to a class shall be uni-

In Pittsburg and Allegheny the cour cils appoint subordinate officers. enstitution says the right of removal half lie in the power that appoints The Muchfbronner act attempts to transfer this power to the recorder. Councils alone can remove the officers they appointed and to attempt to ransfer their pover is unconstitu-

Mr. Lyon was prepared to attack the lause of the bill empowering the govn Intervening election, when Judge Archbald informed him that his colcague. Mr. Burns, had admitted that his contention was not borne out by he Supreme court decisions, whereat Mr. Lyon withdraw.

#### Arguments for the Bill.

City Selicitor Vosburg then begat he principal argument for the He prefaced it by making an incidental answer to Mr. Lyon's contention regarding the transfer of power of removal, pointing on: that councils do not appoint, but elect After which he went on to say:

The federal constitution confers upon ongress certain prescribed rights. The state constitution confers on the legion tion; the state has previously legislature all powers not specifically proin passing the Muchibronner hibited. bill the legislature did not transcend any of the constitutional restrictions,

and consequently the act is valid. It has been held over and over again the legislature at the next session that one point of an act may be demade it elective, who would have fective without destroying the whole There may be some minor flaws in sult of this act is the same as would the body of this bill, but they are not be the result of the act and amendsuch as would invalidate the act or destroy its efficiency. It is a good act and its main machinery is wholly in conformity with the constitution.

In January of this year, Scramon became a city of the second class, 'pon the receipt of the governor's certificate, ex instanti, we became a city of the second class. It is conceded in actly germane to the act. It deals the attorney general's suggestion that with the government of cities of the Scranton, on March 7, was a city of the second class.

Have the rights of this municipality thirg, you cannot say the thing is unbeen infringed? A municipality is an agent of the state. The state can govern a city direct if it so derires. The state is the fountain-head of the city's ower. A city is powerless without its power of attorney from the state. Having the right to confer, modify or hange this power, it has the right to take it, or any part of it, away.

#### Creature of the State.

The United States Supreme court said of Baltimore city: "It is a createral election. The whole argument of kind?" ture of the state, and the state may the other side seems to be based on govern in local territory as it does in the false premise that a vested right E. Rebinson Sons' Celebrated Bock the state at large." We have Pennsy! In Thompson against the Commonwealth, the Supreme court said that municipal officers are only the crea ures of the state and the breath that gave them life can blow it out. In the case of Donahoe against Roberts, where quent tax collector's functions, the Supreme court expressly held that the legislature had a right to cut the collector's term and deprive him of the emoluments.

The incumbent of a municipal office has no vested right. He is the creature of the legislature. The governor can appoint a chief executive of a city per-

petually. It has been contended that there has been no change made in the office of chief executive, except in name. This is unwarranted, as a comparison of the acts will show. The recorder has no veto power. His power of appointment is immensely enlarged. He is given extended control over heads of departments. He is clothed with the full powers of a justice of the peace. He must furnish a heavy bond, legislature has abolished the office of mayor and created a new one known as recorder, and that is just what the Supreme court says it can do.

There is no inherent right in a municipality to elect officers. The only reference made by the constitution to municipal elections is to say that if such are held they shall be held on the third Tuesday of February. There is nothing in the constitution, expressed or implied, to prevent the legislature from giving the governor power to govern cities permanently.

#### Temporary Expedient.

As to the schedule, it is merely a temporary expedient devised for the purpose of putting the new government in operation. Judge Cooley says in the case of The People against Hurlburt: "The legislature can make temporary appointments and other provisional arrangements for inaugurating a new form of government; the inanguration can only be effected with the assistance of a guiding hand."

The contention that the governor can not appoint a recorder for two years is not seriously insisted upon by the opposition. Article IV., Section 8, of the constitution says the governor shall have power to appoint to the next general election. This limitation is put only on such offices as are elected at a general election. Judge White in 101 Po., held and the Supreme court atfirmed that this limitation does not affect offices filled at a municipal elec-

Judge Edwards-The mayor is not a constitutional officer

Mr. Vosburg-Your honor is right. The suggestion is timely. And I might add that the mayor can not be brought in by implication as a constitutional officer. As to the firemen and policemen, it was decided here in the case of Saul against the City of Scranton that they are not officers of the city in a

constitutional sense After scoring this telling point, Mr. Vosburg retired to make way for his associates, Mr. Torrey and ex-Judge Knapp. Mr. Torrey said:

#### New Term Here.

It was predicted by the opposition that we would be as dumb as oysters of government of second class cities

The legislature can do as it sees with its creature.

#### About the Constitution

Referring to the charge that the act is unconstitutional, it need only be said that this court has no cencern in that. Justice Black says: "Arguments based on general principles, which are outside of the direct language of the constitution, must be addressed to the that an act cannot be successfully attacked "because it may be opposed to the spirit which is supposed to pervade the constitution."

Mr. Martin made a general reply in behalf of the relator. He contended strenuously that the court was the judge of the "necessity springing from be peculiarity," which Mr. Burns had held was essential to a change in the style of chief executive, but President Judge Archbald would not hear irresistible that it is not special when to this, and indicated that it was useless for Mr. Martin to argue along that line, "How do I know the necessities of Pittsburg or Philadelphia?" Judge Archbald asked. Mr. Martin cited the celebrated

Titusville case as a parallel to the one at bar in the way of being special. There the act so described the class of cities to be affected that the city of Titusville was the only one that would be legislated for. Chief Justice Paxson said: "Why not say in all counties named Crawford containing cities called ray have to deal with the question Titusville this act shall apply," "Why," asked Mr. Martin, "did not the legislature in the present instance say, 'In all cities named Scranton, Pittsburg and Allegheny, there shall be a re-corder?" It would be quite as fitting is the suggestion made by Justice

#### A Genral Attack.

might be appropriately called to and that the late Judge Ward was Mr. Martin was launching forth into egislated out of the office of city regisgeneral attack on the bill when he r, or judge of the mayor's court, by was interrupted by Judge Archbald clause in the schedule of the state with a reminder that the right of the onstitution. The constitution itself recorder to be the chief executive of Scranton was the only question before The act of 1889 relating to second lass cities, in article vi, section 2, has

Mr. Martin replied that their purpose was to attack the whole bill, so hat by killing its body its head would have to die. If enough of the essential features of the bill are destroyed, the system will not be capable of being perated, he said, and then we would have to fall back on the old system, which would mean a mayor instead of

Court indicated that it was not impressed with the efficacy of this plan of attack, but permitted Mr. Martin to conclude. A general invitation was extended by

Judge Archbald to all interested atforneys to come forward with any suggestions they might have to make, and none appearing the court retired. It is expected a decision will be eached in the course of a week, the attorneys on both sides being desirous of getting the case up for a final de-

#### Gladstone Found Time to Be Kind.

second class. Unless you point out the The business man forgets, as do many of a lause of the constitution forbidding a e truth expressed by thought and a little kindness are often word The great demand is on their hearts, not o sceple have vested that power in the all be great, and if the prime minister of one egislature. The city of Scranton is the greatest nations in the world, a man whose pen and tongue and brain, were constantly exeimply a creature of the state. Its power as a municipality is merely a rired in behalf of the poor and oppressed, wherever he found them; if the grand old man of delegated power. It has no rights as against the sovereign power of the England, William E. Gladione, could find time state, except those vested in it by the o leave his pressing parliamentary duties, to arry a bunch of flowers to a little sick crossonstitution. The mayor and other ng-sweeper, shall we not be ashamed to make or ouncelves the excuse, "I haven't time to be city officials are not constitutional ofticers. They are not elected at a gen-

### Who Can Write the Best Short Story?

\*\*\*\*\*

The Tribune Offers Cash Prizes to Local Writers of Local Fiction & & & &

\$25.00 FOR THE BEST STORY.

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NECESSARY IN ORDER TO WIN. \*\*\*\* In view of the fact that considerable time has clapsed since there has been any public competition through the local press

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for the purpose of stimulating the literary ability latent among the people of Northeastern Pennsylvania, The Tribune has decided to offer a series of prizes as a stimulus in this direction. It is desirous of securing for use in its columns a number of short stories treating of local themes. In order to furnish an incentive it proposes to pay

\$25 for the best story of not to exceed 3,000 words in length; \$10 for the second best story, and

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Manuscripts not successful in securing one of these prizes 🚓 be published and duly credited if the authors so desire.

Stories tending to bring out the romance and legendary lore of the anthracite mining industry will have preference. In connection with every mine in the valley there is a mass of tradition, including hair-breadth escapes, narratives of spooky happenings and other details bordering on the weird or supernatural which has never been gathered together in literary form. This opens a field which is practically inexhaustible and which should

supply the material for some exceedingly interesting fiction. The task of passing upon the merits of the manuscripts submitted will be assigned to a disinterested judge, whose name will soon be announced, and who will read the manuscripts but have no knowledge of the identity of the authors. The envelopes containing the real names of the authors will be preserved unopened until aiter the awards have been made.

Should this initial competition prove encouraging, it may be followed by other prize offers of similar tenor.

#### CONDITIONS OF THE CONTEST.

All manuscripts must be submitted not later than March 30. All manuscripts must be signed by a fictitious name and accompanied by a sealed envelope containing the fictitious name and also the writer's real name and post office address.

The scene of each story must be laid in Northeastern Pennylvania, but the names of real persons must not be used.

One further condition must be understood. Common intended for this contest will be accepted only from present subtest, become subscribers by payment of at least one month's subscription in advance.

STORY CONTEST.

Scranton Tribune. Scranton, Pa.

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