

ATTEMPTS TO RIP THE "RIPPER"

Hearing in the Quo Warranto Proceedings to Test Constitutionality of Muehlbronner Act.

TEN LAWYERS TAKE PART

Three on Each Side Talk for Three Hours in Assaulting or Defending the Act—Mayor John G. Wyman, of Allegheny, Is Represented by Two Eminent Pittsburg Lawyers, and the City Solicitor of Allegheny Is on Hand to Lead His Counsel to the Relator's Attorneys—It Is Admitted That the Governor Has Power to Appoint for a Term Beyond a Municipal Election.

Arguments were made yesterday before Judge E. W. Archbald, H. M. Edwards and John R. Knapp, in the quo warranto proceedings brought by ex-Senator M. E. McDonald to test the constitutionality of the "ripper" feature of the Muehlbronner act.

The attendance of embroilers 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 dozen of these being lawyers.

At the plaintiff's table, where the relator took his position, were Attorney Joseph O'Brien, ex-City Solicitor Ira H. Burns, Attorney M. J. Martin and V. R. Lewis, representing ex-Senator McDonald, ex-United States District Attorney Walter Lyon, of Lyon, McKee & Mitchell, and Lewis McMullen, of Pittsburg, representing Mayor James G. Wyman, of Allegheny, and Charles P. Lamb, city solicitor of Allegheny.

At the defendant's table sat Recorder John A. Vosburg, ex-City Solicitor James H. Torrey and ex-Judge H. A. Knapp.

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

Argued for Three Hours.

The arguments consumed nearly three hours, lasting from shortly after 9 o'clock till within ten minutes of 12. The relator's attorneys went into a general attack of the act, despite repeated intimations of the court that it only wanted to hear discourses of the monitor of the recorder's right to hold office, and as a sort of prevention the respondent's attorneys made general answer.

make an act say it applies to all cities of a class it avoids the constitutional prohibition against special or local legislation. This is not correct, and many others, the court distinguishes what were proper matters for classification. An act is essentially unconstitutional 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, existing since the time of the first settlement. It is incumbent on the other side to show the peculiarities which make the abolition of mayor necessary. What is the peculiar necessity of abolishing the office of mayor in Scranton and not those of Wilkes-Barre, Reading or Harrisburg? No excuse is offered. It is simply legislation by main strength.

Where is the preamble to this bill? Where are the "necessities" springing from manifest peculiarities, that warrant the abolition of the office of mayor in this city or in the cities of Pittsburg and Allegheny?

The fact is that the act merely attempts to transfer the functions to another and similar officer with a different name. The duties are identical. It is purely a change of name. What is the necessity of calling 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 question. In Ayres' appeal, the supreme court says differently. It says, specifically, court shall be the judge of the necessity. Except on a political party necessity, no one will contend that any necessity exists in this case.

Mr. Burns—No. The appointment is an entirety. It is for two years or until 1902. It is good for what is prescribed or good for nothing. No one can change it. Neither the court nor the people can re-legislate. If the bill passed, 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. 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 this burden.

About Local Results.

If local results are or may be produced legislation is void. If James Moir isn't recorder this suit fails. Scranton is governed by a recorder. Pittsburg and Allegheny are governed by mayors. This is a local result, a most palpable one. For that matter, who can say the governor will ever appoint recorders for Pittsburg and Allegheny?

As soon as we get down to governing ourselves again, the appointments by heads of departments must be confirmed. During the reign of the appointed recorder, this confirmation is not required. This exemption applies only to certain persons, chosen in a certain way. It does not apply to the recorder. 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 execution to the choice of the people who pay the taxes?

took his seat without resuming the trade. Mr. Lyon with his colleague, Mr. McMullen, came in after the argument had opened and was not introduced to the court until he took his position in front of the bench to commence his remarks. After announcing that he represented Mayor Wyman, of Allegheny, Mr. Lyon proceeded to say: Before entering the second class, Allegheny was a city of the first class, acting mainly under special legislation. The present code of third class city laws was adopted while Allegheny was in the second class. The Muehlbronner bill, in its twentieth section, provides that cities of the second class, which have passed from the third class, can retain such of their third class city laws as are not inconsistent with the new second class law.

In Pittsburg and Allegheny the courts appoint subordinate officers. The constitution says the right of removal shall lie in the power that appoints. The Muehlbronner act attempts to transfer the power of the recorder. Councils alone can remove the officers they appointed and to attempt to transfer their power is unconstitutional.

Mr. Lyon was prepared to attack the clause of an act giving the governor to appoint for a term beyond an intervening election, when Judge Archbald informed him that his colleague, Mr. Burns, had admitted that his contention was not borne out by the Supreme court decisions, where Mr. Lyon withdrew.

Arguments for the Bill.

City solicitor Knapp then began the principal argument for the respondent. He proposed it by making an incidental answer to Mr. Lyon's contention regarding the transfer of the power of removal, pointing out that councils do not appoint, but elect. After which he went on to say: The federal constitution confers upon congress certain prescribed rights. The state constitution confers on the legislature all powers not specifically prohibited. In passing the Muehlbronner 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 that one point of an act may be ineffective without destroying the whole. There may be some minor flaws in the body of this bill, but they are not such 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, Scranton became a city of the second class. Upon the receipt of the governor's certificate, ex instant, we became a city of the second class. It is conceded in the attorney general's suggestion that Scranton, on March 7, was a city of the second class.

Have the rights of this municipality been infringed? A municipality is an agent of the state. The state can govern a city direct if it so desires. The state is the fountain-head of the city's power. A city is a creature of the state. Having the right to confer, modify or change 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 creature of the state, and the state may govern in local territory as it does in the state at large." Pennsylvania's own decisions along this same line. In Thomson against the Commonwealth, the Supreme court said that municipal officers are only the creatures of the state and the breath that gave them life can blow it out.

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 full powers of a justice of the peace. He must furnish a heavy bond. The 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 is.

been a household word in Pittsburg for more than four years. It is irrelevant to the case at bar and as may be judged, distasteful to the court, to go into this matter as Mr. Burns essayed, but as a matter of the history of the case it might not be amiss 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 mixture legislative and executive functions. Its vice was shown by the fact that one man, who had no direct connection with the government of the city, controlled its government.

The Supreme court has declared, in the McKaskle case, that the legislature is the sole judge of the necessity of classification and that all legislation applicable to a whole class is general and not special legislation. It is irretrievable that it is not special when it embraces a whole class. In Commonwealth against Gilligan, Justice Mitchell says: "Necessity is public convenience, and the legislature is the judge of the necessity." The law appointing a recorder for Scranton does not relate to less than a class of subjects. The law presumes an official will do his duty, and we are to presume the governor will appoint recorders for Pittsburg and Allegheny before the thirty days' limit has expired.

Some time in the future the courts may have to deal with the question of what particular laws are repealed by the repealing clause of the Muehlbronner act, but it is not now before this court.

Has Been Done.

As to legislating a man out of office, it might be appropriately called to mind that the late Judge Ward was legislated out of the office of city recorder, or judge of the mayor's court, by a clause in the schedule of the state constitution. The constitution itself had a "ripper" attached.

The act of 1898 relating to second class cities, in article VI, section 2, has a clause reading: "The terms of mayors, controllers, etc., shall cease and determine." The present "ripper" is, therefore, not a new idea in legislation; the state has previously legislated men out of office to inaugurate a new form of government.

If this act should have provided, simply, that the office of recorder should be filled by appointment, and if the legislature at the next session made it elective, who would have questioned the proceeding? The result of this act is the same as would be the result of the act and amendment just suggested.

Is Judge Knapp made specific reply to Mr. Burns' contention that there was more than one subject in the act. Said he: It is claimed that the repealing clause in this act is a second subject. This is unfounded. The repeal is exactly germane to the act. It deals with the government of cities of the second class. Unless you point out the clause of the constitution forbidding a thing, you cannot say the thing is unconstitutional.

All power is in the people and the people have vested that power in the legislature. The city of Scranton is simply a creature of the state. Its power as a municipality is merely a delegated power. It has no rights against the sovereign power of the state, except those vested in it by the constitution. The mayor and other city officials are not constitutional officers. They are not elected at a general election. The whole argument of the other side seems to be based on the false premise that a vested right to office lies in an officer of a city.

The legislature can do as it sees fit 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 concern 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 people," and Judge Cooley declares 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 some peculiarity," which Mr. Burns had held was essential to a change in the style of chief executive, but President Judge Archbald would not hear 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?"

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 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 recorder?'" It would be quite as fitting as the suggestion made by Justice Paxson.

A General Attack.

Mr. Martin was launching forth into a general attack on the bill when he was interrupted by Judge Archbald with a reminder that the right of the recorder to be the chief executive of Scranton was the only question before the court.

Mr. Martin replied that their purpose was to attack the whole bill, so that 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 operated, he said, and then we would have to fall back on the old system, which would mean a mayor instead of a recorder.

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 attorneys to come forward with any suggestions they might have to make, and none appearing the court retired.

Address.

STORY CONTEST, Scranton Tribune, Scranton, Pa.

Who Can Write the Best Short Story?

The Tribune Offers Cash Prizes to Local Writers of Local Fiction. \$25.00 FOR THE BEST STORY. \$10.00 FOR THE SECOND BEST. \$5.00 FOR THE THIRD BEST. A LITERARY COMPETITION WHERE EXPERIENCE IS NOT NECESSARY IN ORDER TO WIN.

In view of the fact that considerable time has elapsed since there has been any public competition through the local press 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 \$5 for the third best story.

Manuscripts not successful in securing one of these prizes will 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 after 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 Pennsylvania, but the names of real persons must not be used. One further condition must be understood. Contributions intended for this contest will be accepted only from present subscribers to The Tribune or from those who may, during the contest, become subscribers by payment of at least one month's subscription in advance.

Address: STORY CONTEST, Scranton Tribune, Scranton, Pa.

Thousands of People

Have visited our store during the past week, and thousands of pairs of shoes were taken out. We have got together the remaining lots of Men's and Women's Winter Weight Shoes with a view to

Pushing Them Out Bodily

(if the price will do it.) We want to clean out the stock and will not carry on this sale one day longer than necessary. We like to sell our new Spring Stock, of which a great many pairs are among this lot and will have to go at

FIRE SALE

PRICES WHILE THEY LAST.

For Thursday, Friday and Saturday we make a Special Drive in Men's and Women's House Slippers, worth from 50c to \$5.00, at your own price.

Lewis, Ruddy, Davies & Murphy

330 Lackawanna Avenue.