RIPPER BILL SUSTAINED

JUDGE ARCHBALD SAYS IT IS CONSTITUTIONAL.

In an Opinion Handed Down Saturday He Reviewed the Bill in a Thorough Manner and Gives It as His Opinion That It Does Not Offend Against the Constitution and That the Legislature Did Not Exceed Its Powers in Passing It—An Appeal to Supreme Court.

The "ripper" is constitutional and Recorder Moir's right to exercise the functions of chief executive of Scranton is established.

In an extensive opinion handed down Saturday afternoon, Judge Archbald, for the Lackawanna court, declared the Muehlbronner act unassailable from a constitutional standpoint, and entered judgment for the respondent on the demurrer in the quo warranto proceedings instituted by ex-Senator McDonald.

The case will be at once carried to the Supreme court, and an early hearing will likely be had. Appended is the opinion in full:

[illegible]

NOT A SPECIAL LAW.

[illegible]

NOT OPEN TO QUESTION.

[illegible]

ARE MUNICIPAL AFFAIRS.

[illegible]

MR. LYONS' POINT.

[illegible]

NO UNUSUAL PROVISION.

[illegible]

CITY A MERE AGENCY.

[illegible]

to test such a system is certainly none too long; we shall be better able to judge of it in ten; and until it has been somewhat tried and tested how can the people properly determine just the man to whom they are prepared to commit the conduct of the office. These are considerations which may or may not have been in the minds of the legislature in introducing this provision; they certainly exist and it cannot be said in the face of them that there was any abuse or excess of power in extending the term of the governor's appointee accordingly.

FOR PRESENT CONDITIONS.

Nor is there anything in the point that the act is special, because the schedule only provides for present conditions, and does not apply to cities which may subsequently come under the bill. Of necessity this is the case for the whole purpose of a schedule as we have already pointed out, is to cover the period of transition and make the changes inaugurated by the new law less abrupt than they otherwise would be. But in the case of a city advancing in population by slow degrees to the point where it passes from one class to the other there is no need for anything of that kind and its omission therefor introduces nothing special or unusual to affect the general character of the measure.

Of even less moment is the circumstance that the powers entrusted to the appointee of the governor are somewhat different from those given to the recorders who shall come after him. Not only in the nature of the case has the first incumbent in organizing the new government somewhat different duties to perform, but even if there were no such reason justifying the difference, no argument against the constitutionality of the act can be consistently made on account of the distinction, because the provision applies to all the cities of the class affecting all alike, and when that is the case and the matter falls legitimately then the subjects which may be legislated upon—as it certainly does here, because it relates to a municipal function—the provisions, however, peculiar are general and not special within the meaning of the constitution and cannot be questioned.

2. The second suggestion is that the act is unconstitutional because it has more than one subject. The sequence is not very logical, but we will follow it. The repealing clause at the end of the schedule seems to afford the ground for this argument. That clause reads as follows: "Section 4. The act entitled 'An act in relation to the government of cities of the second class,' approved the 14th day of June, A. D. 1887, is hereby repealed, except the first and second sections thereof. And all other laws for the government of cities of the second class, unless preserved by the terms of this act as well as all laws inconsistent with or applied by this act are hereby repealed."

The special repeal of independent acts it is contended cannot be joined together in one bill because each constitutes a different subject and it joined as they are here the bill is made to cover more than one subject and is therefore devide and invalid. If we do not do justice to the argument in this statement it is because we fail to fully comprehend it, and in order to make no mistake we will quote from the brief of counsel with regard to it. "The usual repealing clause at the end of an act," it is there said, "that all acts or parts of acts inconsistent herewith are hereby repealed, does little more than state the legal effect of the act itself.

But it is quite different when the repealing clause attempts to repeal other and independent acts which in no way conflict with the act being passed. Acts so repealed are separate and independent legislation and the passage of one act and the repeal of another are two different subjects and cannot be joined in one bill. This question was passed upon in Commonwealth vs. Mercer, 9 County Court Reps. 461, where it was held that an act purporting to repeal a section of one act and a supplement to another contained two subjects and was void." We cannot assent to the doctrine so announced, and we shall not take very much time to dispose of it.

The usual general clause at the end of a bill that all acts or parts of acts inconsistent therewith are thereby repealed may be legally sufficient, but no draftsman is tied down to it. On the contrary in a general statute of comprehensive scope, supplying and doing away with numerous previous statutes, it is of the very best legislative form to recite the acts intended to be superseded and repealed, so that no one may be in any uncertainty as to the intention of the legislature with regard to them, and we have yet to hear from any authoritative source that to do so offends against the fundamental law of the land. The repealing clause under discussion does not go as far as this, and any criticism we might have to pass upon it would be because it did not. It cites one act by its name and date of approval and as to the rest its phraseology is in the usual general terms. By no conceit of construction can this, in our judgment, be wrested into a violation of the constitution prohibiting two subjects from being embraced in the same act.

GOVERNOR'S POWER.

3. The third suggestion is that the bill had no right to provide that the governor should appoint for the term of two years as he has. It is not exactly couched in these terms, but that is its purport. Stated in another form it is that the office being made elective must be filled by the choice of the people at the next municipal election, and cannot be deferred until a later one. An argument is sought to be made in behalf of this contention by reference to the provisions found in article 4, section 8 of the constitution, that where the vacancy occurs in any elective office to which the governor is entitled by law to appoint, it shall be filled at the next succeeding general election occurring more than three calendar months thereafter. But this is effectively met by the decision of the Supreme court in Commonwealth vs. Callen, 101 Pa. 375, where it was held that this does not apply to municipal officers, but only to such officers as are to be chosen at a general election, that is to say at the election held in November of each year.

As to those who are appointed by law to be chosen at the municipal elections held in February, that is to say, as to all officers of cities, boroughs and townships, it has no controlling force or effect. There is nothing, therefore, in the constitution to require an election for the office of recorder in cities of the second class at the municipal election in February, 1902, and the deferring of it until the year following is valid. Even if this were not so we fail to see why the present appointment would not hold good until the people had had an opportunity to elect which would sustain the respondent in office for at least a year; it might be void for the excess beyond that and yet be good for the lesser and lawful period. By the act of May 15, 1874, P. L. 205, the governor has the general power of appointment as to all vacancies in office not otherwise provided for and a vacancy may occur by the new creation of an office as well as after its preceding occupancy. Walsh vs. Commonwealth, 89 Pa. 419.

But we place our decision on no such narrow ground. We hold that there is nothing in the constitution to prohibit the legislature from providing as they have that the first encumbent should continue in office until after the municipal election of 1903, and that the appointment of the respondent for that term as valid.

4. The fourth objection is practically disposed of by what has just been said. It asserts that the governor had no power to appoint without a confirmation by the senate. Counsel frankly admit, however, that the decision of the Supreme court is otherwise as found in the case of Commonwealth vs. Callen, 101 Pa. 375, already referred to, and they do not expect us, of course, to overrule it. The point is simply made to protect them to urge a reconsideration of that decision in the higher court. So far as we are concerned we have nothing to do but to follow the law as so laid down for us, which we may add by the way, we have no idea will be disturbed.

POWER TO ABOLISH.

5. In the fifth objection it is suggested that the legislature had no power to abolish the office of mayor when the only object was to create another office to perform the same duties. But that is not the law announced by the cases. In Commonwealth vs. McCombs, 56 Pa. 436, it was declared that, "As to officers which are legislative only and not constitutional, the power which created them may abolish or change them at pleasure without infringing upon any constitutional right of the possessor of the office and without violating any duty of the legislative body."

This was repeated in Commonwealth vs. Weir, 165 Pa. 284, whereby the general act of May 23, 1893, P. L. 113, providing for the election of a chief burgess in the several boroughs of the commonwealth, the burgess of Indiana, chosen under a special act relating to that borough, was legislated out of a whole year of his term and yet the act was sustained. That case is especially pertinent and goes further than we need to in the present instance because the two offices there were identical in name as well as in duties, while in both respects there is an essential difference here.

Lloyd vs. Smith, 176 Pa. 213, is equally decisive. It was there held that the act of June 27, 1895, P. L. 403, creating the office of county controller in counties containing 150,000 inhabitants and abolishing the office of county auditor, was not unconstitutional. This ruling is the more remarkable in that the office disposed of was one recognized by the constitution and not one merely created by the legislature, but the court held that even so it was not mandatory to continue it.

The doctrine found in these cases might be enlarged upon and exemplified by many others. It is of universal application, an obscure decision of the courts of North Carolina to the contrary notwithstanding. Crenshaw vs. United States, 134 U. S. 99; Kenny vs. Hudspeth, 59 N. J. Law 320; People vs. Hurlbut, 24 Mich. 44. The very constitution to which counsel appeals disposed of numerous offices throughout the commonwealth of which we had an example in our midst in the abolishment of the late mayor's court of Scranton, and the turning out of office of the learned and respected recorder who was at the head of it; and what the people in their sovereign capacity by the adoption of the constitution could do their representatives in general assembly met can also in matters as to which they have not been specially prohibited.

6. It is finally urged that, "The act is unrepublic in form and substance, a fraud on the people, and not within the proper scope and power of legislation, being passed for the benefit and advantage of a partisan faction and not for the good of the people." These comments sound more like the echoes of party strife than they do of legal argument. They may have a place in popular discussion but they can be of little account here. As we have taken pains to point out, the question of expediency is not before us. This bill may be good or bad; time alone will demonstrate and none of us can anticipate its judgment. The observations which we have been called to make have been addressed to its legal validity only; does it offend against the constitution in the manner claimed by its assailants? That is all we have to pass upon. It will not do to charge in vague and general terms that it violates the spirit of that instrument or that it infringes on the prevailing principles of popular government.

The constitution as it is written is the only gauge by which it can be tested, and the exact particulars in which it infringes upon it must be pointed out. If it stands this test it is valid, and if it does not, it is not.

Guided by a full and extended oral argument by the most able counsel and assisted by exhaustive briefs we have examined the bill before us by this standard. That we may give evidence of having carefully considered the questions which have been raised we have set forth at length above in this opinion the conclusions which we have reached and the reasons for them. They may not be accepted by all but they will at least serve to show that we have given more than a perfunctory examination of the matter. We have but to add that it is our unanimous judgment as the result that the law is constitutional and that the respondent is entitled to continue undisturbed in the office which he holds.

Now, March 16, 1901, judgment is entered on the demurrer in favor of the respondent, that he go without day, with costs.

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Santi Noti Didn't Know It Was Loaded.

While toying with an old revolver Saturday, Santi Noti, an Italian, snapped the trigger and received a 38-calibre bullet in his leg.

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12½c a Pair—Boys' and Girls' Serviceable School Stockings in two ribs—narrow and medium, fast black and seamless, sizes 6 to 9½.

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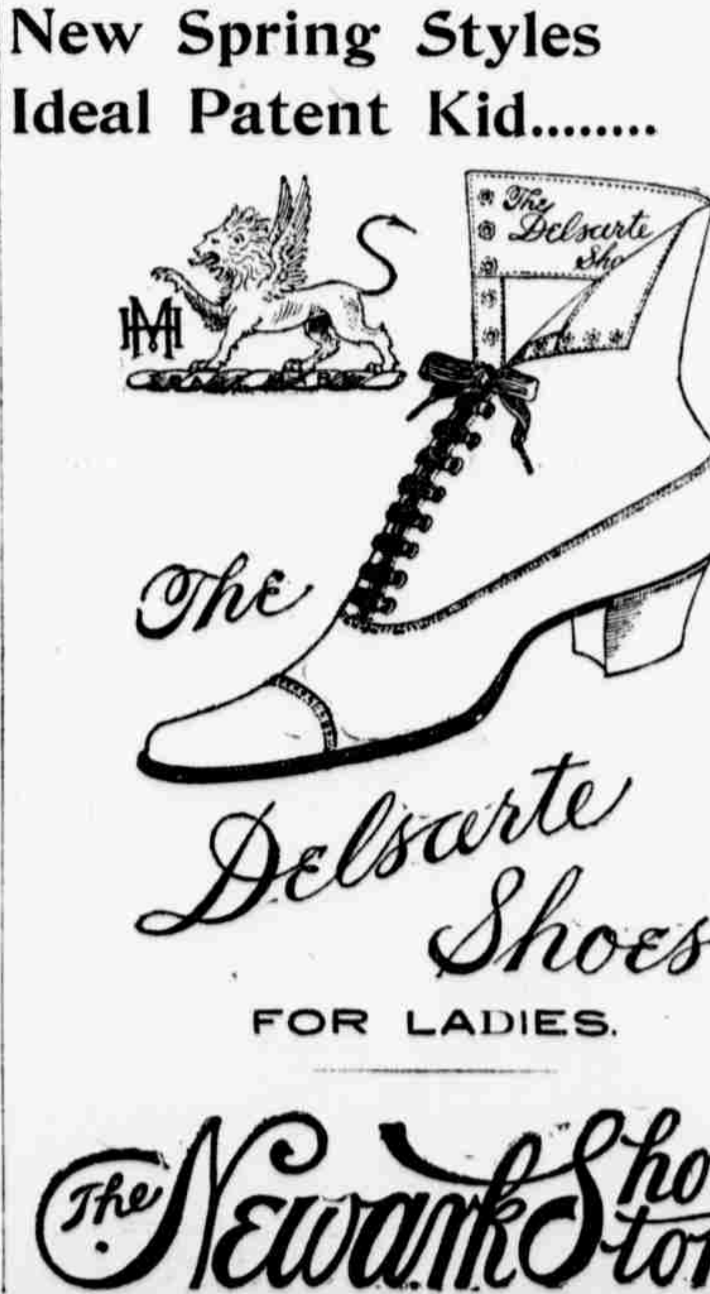

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