

N. J. Court of Errors and Appeals.

FREDERIC W. PAYNE,

vs.

WILLIAM MAHON.

} *Points for the
Plaintiff in
Error.*

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By an act entitled "An act constituting District Courts in certain cities in this State," approved March 9th, 1877, it was provided that one District Court should be established in every city of this State of fifteen thousand inhabitants, but that cities of one hundred thousand 20 inhabitants or over should be entitled to two District Courts. (*Rev. St.*, page 1301, § 2.) By the sixth section of this act it was provided "that every suit of a civil nature at law, where the debt, balance or other matter in dispute does not exceed, exclusive of costs, the sum or value of one hundred dollars, shall be and hereby is made cognizable in any District Court of this State, in the cities where they may be established,

* * * said District Courts shall have jurisdiction *exclusive of all other Courts whatever* in all cases arising 30 under this act, where the party defendant resides within the corporate limits of the city wherein said Court or Courts shall be established."

This act was modified by a supplement limiting its operation to cities having a population of over twenty thousand inhabitants. (P. L. 1878, page 94.) And by a further supplement increasing the jurisdiction to two hundred dollars, (P. L., 1878, page 148); and restoring to the Circuit Courts the concurrent jurisdiction which it possessed under the Justice Court act.

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On September twelfth, eighteen hundred and seventy-eight, Mahon, the defendant in error, brought suit against Payne, the plaintiff in error, to recover the sum of five dollars, money lent, before Thomas Aldrich, a justice of the peace, who had an office at No. 599 Newark avenue, Jersey City, the summons being returnable at such office. On the trial it was proved that the defendant resided within the corporate limits of Jersey City at the time the suit was commenced and the summons served, and a
 10 motion was made to dismiss for want of jurisdiction. The justice refused, and gave judgment for five dollars debt and costs. On *certiorari* to the Supreme Court the judgment was affirmed on the ground that the District Court act, in so far as it sought to confer exclusive jurisdiction upon the District Courts, was obnoxious to that clause of the constitution which provides (Art. IV., Sec. 7, § 4,) that "to avoid improper influences which may result from intermixing in one and the same act such
 20 things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title." The question then to be considered is, whether the act is fairly open to this objection.

The Supreme Court argued the matter thus:

The title of the act in question is an act constituting District Courts in certain cities of this State. This title indicates a purpose to vest jurisdiction of some sort in District Courts, but does not indicate a purpose to take it away from other Courts. Now to confer jurisdiction
 30 is one thing and to take it away is another; in so far then as this act seeks to take away the justice's jurisdiction it is double and expresses an object not expressed in its title. However as the unconstitutional provision is separable from the constitutional, the act is not void in toto. The District Courts may exercise concurrent but not exclusive jurisdiction.

POINT I.

This argument is, as it seems to me, open to the following criticism :

If it be true that to vest jurisdiction is one thing, *i. e.* one object, and to take it away another, (and unless the Supreme Court by 'thing' mean 'object,' the whole argument fails,) then it is impossible to establish a District Court with exclusive jurisdiction by a single act. If the act in question were entitled "An act constituting District Courts, and taking away the jurisdiction of Justice Courts," this, according to the view of the Supreme Court, would be an act whose title embraced *two* objects. 10

If it were entitled "An act to transfer the jurisdiction of Justice Courts to District Courts in certain cities," the body of the act providing, also, for the establishment of the latter class of Courts, it would, in the view of the Supreme Court, be bad, inasmuch as its title would not express one of its objects, and that, too, its primary one, to wit, the creation of these Courts. If it should be said, however, that the title supposed might be construed to amount in substance to the following—"An act to transfer the jurisdiction of Justice Courts to the District Courts, *created by this act*," it would, thus interpreted, differ only in form from the title first suggested, "An act constituting District Courts, and taking away the jurisdiction of the Justices' Courts," which, in the view of the Supreme Court, would, also, be bad for duplicity. 20 30

Why this would be so, supposing, always, that to vest jurisdiction is one thing, *i. e.* object, and to take it away, another, is well explained in the case of the *People vs. Briggs*, 50 N. Y., 553.

"A city charter," says Church, *C. J.*, "embraces many minor subjects and yet are all embraced in the general subject of the charter or corporation. In an act in relation to Lake avenue it would not be competent to insert provisions respecting Mount Hope 40

avenue, as to such a bill Lake avenue would be the subject. So in a bill in relation to education in the city, it would be improper to insert provisions in relation to streets or police, unless they were in some way legitimately connected with the subject of education. But where the subject is general, comprehending all the functions of the corporation, provisions in relation to any of them or necessary or pertinent to accomplish and carry out any of them, may be, so far as this constitutional clause is concerned, incorporated in the bill."

We must then generalize, and as the title "An act constituting District Courts in certain cities, is as general as it is possible to make it, if we therein give notice of the establishment of the species 'District Courts,' we would be obliged to omit the name of the species altogether. But this would not suffice for the title would still indicate that some Courts not named were to be *vested* with jurisdiction, not that any other Courts were to be *divested* of it. Would it then be seriously argued that

the design of the constitution would be promoted by requiring the establishment of District Courts under the only title sufficiently comprehensive to include both the vesting of jurisdiction in one set of Courts and the taking it away from another, viz: "An act respecting Courts." Such a title would embrace the subject but would not express it. (*Rader vs. Union*, 10 Vroom, p. 516.) *It would be equivalent to an act respecting the*

in an act respecting the Judiciary & would be as objectionable as the following "an act respecting the Executive Branch of Government"

From this it would follow that the legislature could not by a single bill confer upon any Court exclusive jurisdiction where that jurisdiction had been before exercised by any other Court, and this in the teeth of another constitutional provision which declares that "the judicial power shall be vested in" * * * * *

"such inferior Courts as now exist and as may be hereafter ordained and established by law—which inferior Courts the legislature may alter or abolish as the public good may require." (Article VI., Sec. 1.)

Besides, the 6th section of the act under review gives the District Court exclusive jurisdiction only in cases where the defendant resides within the corporate limits

of Jersey City; in all other cases the Justice Courts have concurrent jurisdiction even though they are held within the corporate limits of the cities designated. The Supreme Court concedes the right of the legislature by this act to vest in those Courts concurrent jurisdiction. Now what is thus admitted to have been lawfully given is a part of the jurisdiction exercised by the Justice Courts, but what is given to the former is necessarily taken from the latter. The distinction made, therefore, that the legislature has the right to give a part of the whole, but not the whole of a part, seems somewhat refined. 10

POINT II.

The subject may be viewed in another light—

All that the constitution requires is that the act shall embrace but one object, and that shall be expressed in the title. Now the different parts of an act creative of a system and entitled accordingly, may together form but one connected whole. The very consistency of purpose which it exhibits may require the repeal of other acts, which, if allowed to stand, would mar the harmony of the general design, and the acts so repealed may contain a grant of powers or jurisdiction. If they do, then according to the Supreme Court, the repealer not being within the scope of the title, will be ineffectual, and this notwithstanding the fact that the repealer may be necessary to give symmetry and completeness to the system as an entirety. In such cases it is submitted that the true test is to look only at the act itself, and then to determine whether the title fairly states the object. If it do, that is enough; to go further and to consider what may be its effect upon other acts, and whether powers conferred by such other acts have been expressly or by implication taken away, is to go beyond the constitution. 20 30

As if to guard against this very error of construction, the constitutional provision in question declares its own *raison d'être*, which is "to avoid improper influences that may result from intermixing in one and the same 40

act such things as have no proper relation to each other." So that putting into one and the same act things which have no proper relation, is what is interdicted, and surely this cannot be said of an act whose object is the establishment of a single species of Court, and whose sole design is to vest that Court with jurisdiction, whether exclusive or concurrent. For jurisdiction is of the essence of a Court, and exclusive jurisdiction over some class of cases is the rule in this State rather than
 10 the exception, nearly every tribunal being either by law or practically in the full exercise of it.

The legislature, by express constitutional grant, may create, alter, or abolish inferior Courts. (Art. VI., Sec. 1.) It may assign to each such jurisdiction as it thinks expedient. It may give to each a jurisdiction which shall be exclusive of the jurisdiction of all other inferior Courts. It has created "Police Courts," "City Courts," "Borough Courts," and conferred upon them each exclu-
 20 sive jurisdiction in certain classes of cases. Can it be said, then, that when it saw fit to establish District Courts, the grant of exclusive jurisdiction was such a peculiar feature, so novel in its character that no one under the title of an act to constitute them would be at liberty to infer such exclusive powers as are warranted by the constitution?

Suppose the Justice Court act had not operated in cities at all, and the legislature had been engaged in framing for them an original scheme for the trial of small
 30 causes, and suppose they had framed the District Court act in its present shape, would any one suppose that the title was not expressive of its design? It is as expressive as that of any of the acts on our statute book relating to Courts; as that, relative to the Court of Errors, the Court of Chancery, the Supreme and Circuit Courts and the Justice Courts. What does this prove? It proves that the test applied by the Supreme Court looks to something beyond both the act and its title, and for such a test we find no warrant.

Now why would the District Court act in the case above supposed be valid? For no other reason than because its object was fairly embraced in its title; and if this be so, how can the fact that there stands upon the statute book another act with which it may conflict, alter the relationship between it and its title. But as this is the only relationship which the constitution regards, it follows that the Supreme Court must have superadded to the constitutional requirement this additional one, "That if the act repeal or conflict with another act, that also must be stated in the title, or if that be impossible because of its making the title double and further generalization be out of the question, then two or more acts must be passed to accomplish a single purpose."

POINT III.

The authorities support the view here contended for.

The first case is that of *Gifford vs. N. J. R. R.*, 20
2 Stockton, 171. A supplement to the charter of the Newark and Bloomfield Railroad provided that the *New Jersey R. R. Co.*, a distinct corporation, might construct a bridge over the Passaic and a branch road connecting with the Bloomfield R. R. (P. L., 1853, page 176, § 1.) Here was a grant of power conferred upon one corporation in the supplement to the charter of a different and independent corporation, but still it was held that as the object to be attained was single, and the statute related to but one enterprise, viz., the better
30 securing of a direct line of communication from Bloomfield to New York, the constitutional requirement was not violated. This case, it is submitted, goes much farther than the case under review, for it is impossible to discover in the title any purpose to confer corporate powers and franchises upon the New Jersey R. R. Co., so that the grant of these powers and franchises was only expressed in the title, *constructively*, that is to say through the medium of the body of the act. The connection between this grant and the title was mediate only
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and indirect, while in the case of the District Court act it is direct and immediate.

The next case is *Deegan vs. Morrow*, 2d Vroom, 136.

The title of the act under consideration in that case was "An act to prevent the fraudulent transfer of property and to facilitate the collection of just claims." Now who would have anticipated from this title a purpose to hold married women liable for the payment of debts contracted by them; more particularly in view of the absolute immunity from suits at law which they had always enjoyed. The title was indeed sufficiently comprehensive to include the case, but it might almost be said in the language of the Court in the Rader case, "that it embraced the legislative purpose without expressing it;" yet the Court held the title sufficient. If it were sufficient surely the title under review must be so.

The next case is *State, Curry, vs. Elwins*, 3d Vroom, 362. The act was entitled "An act to incorporate the town of Hammonton, in the township of Mullica, in the county of Atlantic." By the act itself the town was formed out of the townships of Mullica and Hamilton, and the objection to its validity came from residents of that part of Hammonton formerly embraced within the limits of Hamilton. It is manifest that if the Court had given a strict construction to the constitutional provision they must have sustained the objection. The title was not in accord with the body of the act. According to the title the town was to be formed out of a part of the township of Mullica; by the body of the act it was to come out of Hamilton township as well. There is much more reason for declaring this act invalid than for invalidating the District Court act, for the title was positively misleading.

The next case is the *State, Waller, vs. Town of Union*, 4 Vr., 350, a leading case on the subject. The act was entitled "An act to amend an act to incorporate the town of Union in the county of Hudson," and its sole design was to validate a sewer ordinance not passed with the formalities required by the charter.

It is evident that the title of this act was so general that it did not convey even an intimation of its real purpose, but the Court decided that as under the general title, "An act to incorporate the town," the formalitiés to be observed in passing the ordinance might be prescribed, so under an act entitled "A supplement to such act," they might be dispensed with.

This decision is an authority against the decision in the District Court case. It is stated in the opinion, page 356, that a *certiorari* to bring up the assessment, was pending at the time the supplemental act was passed. The prosecutors, prior to its passage, were, as matters stood, entitled to succeed in their application. The law gave them the right to set aside this ordinance, and with it the lien upon their property for the cost of the improvement; this right was as real as the right of the justices to try civil causes, though neither was a vested one, which the legislature could not impair. It is to be observed, too, that the right of the prosecutors was not conferred upon them by the charter of the town of Union, it was theirs by statute and by common law, and it was taken away, not by an act which by its title gave notice of doing so, but by an act styled "A supplement to an act to incorporate a town." The case is not unlike that under review, for its title indicated only a purpose to create, and in this it exactly resembled the title of the District Court act. Its sole and real object, however, was to take away the prosecutors' right to sue. In this it differed from the object of the District Court act, which was to establish a system, and it was only as an incident of this object, and because it was necessary to the complete development of that system that the jurisdiction of the Justice Courts was taken away. The whole reasoning of the Supreme Court would apply with much more force to a case like this of the *State vs. Union*, than to the case of the District Courts. Again, in the Walters case the object of the constitutional provision is said to be "to prevent surprise upon legislators by the passage of bills, the object of which is not indicated by

- their titles, and to prevent the combination of two or more distinct and unconnected matters in the same bill." Chief Justice Church, in *People vs. Briggs*, 50 N. Y., 553, in like manner declares the object of the provision to have been, 1st, to prevent a combination of measures and the securing of their passage by log rolling, and 2d, to require an announcement of the subject of every such bill, to prevent the fraudulent insertion of provisions upon subjects foreign to that indicated in the title.
- 10 These are probably the only reasons that can be suggested for the presence of this article in our constitution. But which one of these reasons will apply to avoid the District Court act? Do we find in the grant of exclusive jurisdiction that combination of rival interests in one bill, which the provision was designed to prevent? Is the clause conferring it, so foreign to the other matters contained in the bill, that we have reason to fear that its presence may have been a surprise upon the legislature? As a matter of public history we know that not only
- 20 the legislature but the reader of every newspaper published in the State, knew at the time of its introduction, that its design was to do away with Justice Courts in cities, the reason assigned being that in the larger municipalities these Courts had become so numerous, and those who presided in them were in many cases so illiterate and corrupt that justice could no longer be obtained at their hands. The Walter case has been the longer dwelt upon because of its intrinsic importance, and because the
- 30 the opinion was written by the same judge who delivered the opinion in the District Court case.

The next case, *Doyle vs. Newark*, 5 Vr., 236, calls for no special comment; the decision on the point under consideration is obviously right. The act was entitled "A further supplement to the act entitled 'An act to revise and amend the charter of the city of Newark,'" and was limited to such objects as properly came within the scope of legislation concerning municipality.

- The next case is, the *State vs. Haight*, 7 Vr., 54. The
- 40 act was entitled, "An act relating to taxes to be paid by

the Erie R. R. Co. for certain property owned, leased, used or occupied by it in this State." The act exempted from taxation, except in a specified mode, all property of the Erie R. R. Co. east of the westerly side of Bergen Hill, owned, used or leased by it of the Long Dock Co. As only the property of the Long Dock Co. used by the Erie R. R. Co., was exempted, the act was held to embrace but one object. This case is so obvious that it hardly requires mention.

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The next case is *Rader vs. Township of Union*, 10 Vr., 509. This is the case relied upon to support the decision in the District Court case. But it seems to me, that so far from being an authority in support of it, it is just the reverse. The act was entitled "An act in relation to streets in Union township, in Union county." The decision was, in the first place, that the title was sufficient to warrant a provision concerning sewers, but was not sufficient to warrant one concerning public parks. This is obvious and agrees exactly with what is said in *People vs. Briggs*, (*ante.*) But the second point, and that on which it chiefly turned, was this: About a year after the passage of the first act, another act was passed entitled "An act to repeal an act in relation to streets in Union township in Union county," which latter act empowered the township committee to pay all just debts contracted by the corporation created by the first-named act. The Court decided that, although this so-called corporation never had any legal existence, the latter act validated their contracts. This is the direct converse of the case of *Walters vs. Union*, and of the District Court's case. For here the title indicated a purpose to destroy, and in the body of the repealing act was contained the provision which created a legal obligation. Had the act repealed been constitutional and had the legal obligation been incurred thereunder, it might well have been supposed that in the repealing act the legislature would provide for the enforcement of that obligation. But the act was unconstitutional and no legal obligation had ever been incurred. Still the Court held that a

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title which professed only to destroy, gave sufficient notice of a purpose to create that obligation. Was the title in this case more expressive of its object than it is in the case of the District Courts?

The last case is that of the *State vs. Hammer*, 13 Vr., 435. The title of the act was, "An act relating to the assessment and revision of taxes in cities of this State." Its purpose was to modify the mode of appointing to office members of the board of assessment. The act was held to be constitutional, ^{in this respect} and the Court say that it was only in *perfectly plain cases* that it is proper for Courts to vacate statutes on the ground of the constitutional provision. After this review of the subject it would be difficult to assert that the District Court act is one of those perfectly plain cases which calls for its application.

POINT IV.

20 If the District Court act be unconstitutional, not a little of the most important legislation of this State is open to doubt.

On the same ground, for example, much of the legislation creating new offices, State, county and municipal. Thus the Comptroller's act stands in the predicament of the District Court act in some of its provisions. The title of that act is "An act creating the office of Comptroller of the Treasury and defining the duties thereof." 30 *Rev. St.*, page 1216. By § 12, it is provided that so much of the act of March 26, 1852, which is a supplement to the Banking act, as appoints the Governor, Secretary of State and Attorney General, a Board of Commissioners to be styled the Bank Commissioners, be repealed, and that their powers be devolved upon the Comptroller.

The acts establishing the office of Register of Deeds in the counties of Essex, (P. L., 1859, page 174,) and Camden, (P. L., 1875, page 285,) might also be open to 40 question. Thus the Essex county act entitled "An act

to establish the office of Register of Deeds and Mortgages of the county of Essex," might under this course of decision be held to vest in the Register only a right to record deeds and mortgages concurrently with the clerk of the county, and not exclusively. Again, any act which, prior to the adoption of the constitutional amendments, created a municipality where none had before existed, would likewise seem open to the objection that it took away their powers from the township officers without giving them any notice by the title of the act of 10 a purpose to do so. The case of *Sutterly vs. Camden Common Pleas*, 12 Vr., 495, is a case in point. Under the title "An act to revise and amend the charter of the City of Camden," the right to grant licences is taken from the Court of Common Pleas and vested exclusively in the city council. A subsequent act restoring the jurisdiction to the Common Pleas was held unconstitutional on another ground, and the act with the above title was held operative, but this latter act ought itself to have been declared void, if the decision of the Supreme Court 20 in the case under review be correct.

POINT V.

The course of decision in New York has been the same as that here contended for, a leading case being that of the matter of the petition of Ferdinand Meyer, 50 New York, 504.

In *Wenzler vs. People*, 58 New York, 516, an act entitled "An act to secure better administration in the Police Courts of the city New York," came under review. It was decided that the legislature might, under an act so entitled, lawfully remove from office Police Justices elected by the people; that it might provide for the appointment by the Mayor and Common Council of other Justices to take their place, and might virtually create a new Court of Special Sessions. The case seems much stronger than the present, for the clause "to secure better administration in the Police Courts," hardly gave an 30 40

intimation of what the real object was, viz., the abolition of certain elective officers and the substitution of others in their place, holding by appointment of the Mayor and Common Council. These *two* objects were, moreover, joined in the same bill.

POINT VI.

- 10 One other question remains to be discussed. Is the act open to objection because of that other constitutional provision, "The legislature shall not pass private, local or special laws, * * * * regulating the internal affairs of towns and counties, appointing local offices, or commissions to regulate municipal affairs?"

It is understood that this point is not much relied upon, and, therefore, no extended discussion of it will be necessary. It is only discussed at all, because the question seems to have been mooted in *Rutgers vs. New Brunswick*, 13 Vr., 51; and *Anderson vs. Trenton*, Ib., 486.

It is submitted: 1st. That the act is not private, local or special.

2d. That it is not an act which regulates the affairs of towns and counties. Unless both these propositions be established affirmatively, the act will stand good.

1st The law is not private, local or special.

It is true, that it embraces only a certain class of cities, viz., cities having a population of over 20,000, but this alone does not make it local or special, within the meaning of the constitution. It will be held to embrace all of a group of objects having characteristics sufficiently marked to make them a class by themselves for the attainment of its object, provided there be a "causal relation" between its subject matter, viz., District Courts, and the thing classified, viz., cities having the requisite population.

(*State vs. Hammer*, 13 Vr., 436;) (*Anderson vs. Trenton*, Ib., 486.)

Does the relationship exist? To ascertain whether it does or not, we must inquire whether there be any satisfactory reasons for making a distinction, (1) between municipalities and other political districts, (2) between the larger and smaller municipalities. Keeping in view their cost and the machinery necessary to their successful operation, the following reasons suggest themselves: In the smaller cities and *a fortiori* in the country districts, the benefit to be derived from them would be in no wise commensurate with the burden of maintaining them. 10 They would be expensive, and they would have little or no business, and this springs naturally out of the fact that where the community is small, the contribution of each member for their support would be proportionately large. There could be, too, but few controversies. Add to this the well known fact, that in the smaller towns and in the country districts the long established justice system works well, while in the larger cities it has ceased to answer its original purpose for reasons already stated, and we have ample grounds for the distinction made by 20 the legislature in the case in hand. The case of *Skinner vs. Collector*, 13 Vr., 407, is in point. The subject matter of the law passed upon, was the salaries of law judges of the Courts of Common Pleas, and the thing classified was counties having a population of less than 100,000. This classification was held proper, because of the smaller amount of work judges in such counties are obliged to perform. *Rutgers vs. New Brunswick*, is also a decision on the question here involved. If the Supreme Court had deemed the classification of the District 30 Court act illusive, they would have decided the case on that ground, but the reasoning of the Court shows that in their opinion the act and its supplement were both good. The very case under review is expressive of the opinion of the Supreme Court on the subject of the provision under discussion, for they concede to the Courts concurrent jurisdiction, and thus affirm their constitutionality, so far as this provision is concerned.

2d. Is the act one which regulates the internal affairs of towns and counties? Clearly not. It does not come 40

within the mischief of the constitutional provision. The evils which led to its adoption are stated in *Van Riper vs. Parsons*, 11 Vr., 1, and none of them had any reference to the administration of justice in the Courts of common law.

It does not come within the words of it, for they refer to *corporate* or *quasi corporate* political bodies, and *inter alia* to "districts which bear the corporate title of city." *Van Riper vs. Parsons*, page 6. This language gives the clue to the proper interpretation of the clause. Inas-
 10 much as the reference is to the *corporate* body, whatever properly comes within the scope of the charter creating it is included in the operation of the constitutional provision and nothing beyond. Now what a city charter may properly contain is open to no doubt. The form of our government and legislative usage have long since determined it.

Regulations with respect to the police and its con-
 20 comitant, police courts, streets, sewers, parks and the mode of meeting their cost, are among the principal objects with which a city charter concerns itself. It is safe to assert that among all the incorporated towns of this State, there is not one whose charter touches the admin-
 30 istration of justice in cases arising at common law, between citizen and citizen. The police courts have only a criminal jurisdiction and are intended to prevent and punish violations of city ordinances. The common law tribunals on the other hand, have always constituted a
 30 system perfectly distinct from that of the municipalities, notwithstanding the fact that their jurisdiction has extended over municipal territory. Who would contend, for example, that a court for the trial of small causes held by a justice of the peace, elected in one of the city wards, was a part of the municipal scheme of government? He is commissioned by the Governor, his jurisdiction is co-extensive with the limits of the county, and his duties are prescribed not by the charter, but by the general law which is as applicable to him as to any country justice.
 40 Now this is precisely the case of the District Courts.

Their judges are commissioned in like manner, (§ 4); their jurisdiction is the same, (§§ 6, 14 and 18,) and their duties are in no wise dependent upon the charters of the towns in which they are erected. It is true that they are limited to cities having a certain population, but this is not because of anything peculiar to these places as corporate bodies, but because the Courts are necessary only in the densely populated districts. It is also true that the salaries of the judges and clerks are paid out of the city treasury, but this does not make them city officers 10 any more than the former payment to judges of the Supreme Court of a per diem by the county made them county officers. The city is used as a convenient instrumentality for this purpose.

Besides the very words used indicate that the framers of this constitutional provision had in mind something different from Courts of Justice. The expression "regulating internal affairs," is inapt to designate legislation having reference to Courts of Justice; it points to the administrative or executive departments of the government, rather than to the judicial; and this is more clearly apparent when we read it in connection with that other clause of the constitution respecting inferior Courts, which gives to the legislature the right to establish, alter or abolish them, as the public good may require. 20

The Supreme Court has in several instances recognized these Courts as a part of the judicial system of the State.

Steffens vs. Earl, 11 Vr., 129.

Lewis vs. Hoboken, 13 Vr., 377.

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Sloat vs. McComb, 13 Vr., 484.

No reference being here made to cases involving the jurisdiction of the Newark District Courts, which were constituted under a statute undoubtedly local, but which was passed prior to the adoption of the constitutional amendments.

It may, however, be noted that in one case, *Bitz vs. Meyer*, 11 Vr., 253, Mr. Justice Van Syckel admits incidentally the exclusive jurisdiction of the Newark Courts, 40

the title of the special act being open to the same objection as that urged against the title of the act under review. The point was not, however, raised in that case.

It is respectfully submitted that for the reasons above given, the judgment of the Supreme Court ought to be reversed.

10 The case is one of much practical importance, affecting, as it does, the every day interests of large communities; so much doubt and uncertainty has prevailed with regard to the matter, that an early decision would be conducive to the interest of justice.

FREDERIC W. STEVENS.

N. J. Court of Errors & Appeals

IN THE LAST RESORT, &c.

FREDERICK PAYNE,
Plaintiff,

vs.

WILLIAM MAHON,
Defendant.

In Error.

*Brief for the
Defendant.*

The history of this case fully appears from the printed record, and from the introductory part of the Brief of the Plaintiff in Error; and the only matter presented for review by this Court is whether the Court below had jurisdiction to hear, try and determine the cause in question.

ARGUMENT.

I.

It is beyond dispute that under the act entitled "An Act constituting Courts for the trial of small causes," approved March 27th, 1874, Revision p. 538, the Justice of the Peace before whom said cause was heard and deter-

mined had full jurisdiction thereof, unless some competent legislation deprived him of such jurisdiction.

And it is accordingly claimed by the plaintiff in error that such result was effected by the Act of the Legislature, entitled "An Act constituting District Courts in certain Cities in this State," approved March 9th, 1877, Revision p. 1301.

It is contended that under Sec. 6 of that Act the jurisdiction of the Justice of the Peace over said cause was taken away, and that the District Courts of Jersey City had exclusive jurisdiction thereof.

Sec. 6 of that Act Rev. p. 1302 is as follows, to wit :

"That every suit of a civil nature at law where the debt, balance or other matter in dispute does not exceed, exclusive of costs, the sum or value of one hundred dollars, shall be and hereby is made cognizable in any District Court of this State in the cities where they may be established to hear, try and determine the same according to law, although the cause of the action did not arise in said city; said District Courts shall have jurisdiction, exclusive of all other Courts whatsoever, in all cases arising under this Act where the party defendant resides within the corporate limits of the city wherein said Court or Courts shall be established; provided always that this Act shall not extend to any action of replevin, slander, trespass for assault, battery, or imprisonment, nor to any action wherein the title to any lands, tenements, hereditaments, or other real estate shall or may in any wise come in question."

This Sec. 6 was amended by supplement, approved March 20th, 1878, P.L. 148, so far as to increase the jurisdiction of the said Courts to the sum of *two hundred dollars*; and also so as to limit the words "*all other*"

Courts whatsoever," to "all other Courts whatsoever, except the Circuit Court of the County or Counties wherein said District Courts may be established."

Now, it is claimed that this was "a case arising" under the District Court Act "where the party defendant resides within the corporate limits of the city"—to wit, Jersey City—wherein District Courts were established, and, therefore, that the said District Courts had "jurisdiction, exclusive of all other Courts whatsoever, except the Circuit Court," &c.

This is denied by defendant in error, and it is claimed that the said Justice of the Peace had full jurisdiction of the said cause, notwithstanding the said District Court act.

II.

The District Court Act so far as it gives that Court jurisdiction exclusive of other Courts is unconstitutional and void.

Constitution of New Jersey, Sec. VII, Art. IV, Par. 4, reads: "To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other every law shall embrace but one object and that shall be expressed in the Title."

The Supreme Court, Beasley, C. J. in *Rader vs. The Town of Union*, Vroc 10, p. 512, says: "The purpose of this provision is plainly two-fold: first, to ensure a separate consideration for every subject presented for legislative action: second, to ensure a conspicuous declaration of such purpose. By the former of these requirements, every subject is made to stand on its own merits, unaffected by improper influences, which might result

from connecting it with other measures having no proper relations to it; and by the latter, a notice is provided, so that the public, or such part of it as may be interested, may receive a reasonable intimation of the matters under legislative consideration. These are the interests which the Court, in its application of this clause of the constitution is called upon to further, and as far as may be practicable to carry into effect."

And Judge Van Syckle in *Walter et. al. vs. Town of Union, Hudson Co.*, Vroom 4, p. 352, says: "the object of this provision is to prevent surprise upon legislators by the passage of bills, the object of which is not indicated by their titles, and also to prevent the combination of two or more distinct and unconnected matters in the same bill."

It was held in case *Sun Mutual Insurance Company vs. The Mayor, &c. of New York*, 8 N. Y. Ct. of App., 253, that the object of this constitutional provision is, "that neither the members of the Legislature, nor the people should be misled by the title."

And again, in *State vs. County Judge of Davis Co.*, 2 Iowa, 282, that the object is "to prevent surprise in Legislation by having matter of one nature embraced in a bill whose title expressed another."

And Judge Cooley in his work on Constitutional Limitation, Sec. 143-144, says: "It may therefore be assumed as settled that the purpose of this clause in a constitution is:—

First.—To prevent 'Hodge Podge' or 'Log-rolling' legislation.

Second.—To prevent surprise or fraud upon the Legislature by means of provisions in bills of which the titles give no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted.

Third.—To fairly apprise the people through such publication of legislative proceedings as is usually made of the subjects of legislation that are being considered in order that they may have opportunity of being heard thereon by petition or otherwise, if they should so desire.

“It is not intended to prohibit the uniting in one bill of any number of provisions having one general object fairly indicated by its title. The unity of the object must be sought in the end, which the legislative act purposes to accomplish, and not in the details provided to reach that end. . . . There are many cases where the object might with great propriety be more specifically stated, yet the generality of the title will not be fatal to the act if by fair intendment it can be connected with it.”

Judge Van Sycle, in *Walter et al vs. Town of Union*, Vroom 4, P. 354, and cases there cited.

In the adjudicated cases in all those States where this constitutional provision is substantially the same as our own, the restriction is declared to be *mandatory* and *imperative*, except in the State of California, in which it is held to be merely *directory*.

III.

Now let us see how these adjudicated principles apply to the case in review.

The title of the District Court Act is “An Act constituting District Courts in certain cities in this State.”

The object of the Act is to create District Courts, and this is the only object. This object is clearly and fully expressed in the title, and no other object is expressed or

even intimated. It is true that courts must have jurisdiction; without jurisdiction over certain subjects it is not possible to establish a Court. The giving of jurisdiction, therefore, is a necessary incident to the constitution of these District Courts; but it is not a necessary incident to the establishment of any Court that it should have "jurisdiction exclusive of all other Courts whatsoever," or exclusive of any other Court. It cannot by any fair intendment be said that the establishment of any one Court necessarily or incidentally impairs, a bridges or destroys the jurisdiction of another Court already established. The giving of jurisdiction to one Court and the taking away of jurisdiction from another Court are two separate, inconsistent and opposite objects, having no proper relation to each other. Therefore, there is no unity of object in the end to be accomplished when the Legislature under a title to create one Court, undertakes to alter or abolish another Court already existing; for to deprive a Court of its jurisdiction is to abolish it, and to abridge its jurisdiction is to alter it, and to give to one Court exclusive jurisdiction over subjects of which other Courts have had jurisdiction, is to alter or abolish those other Courts according to the extent in which that exclusion applies.

The language of the District Court Act is: "said District Courts shall have jurisdiction, exclusive of all other Courts whatsoever in all cases arising under this act where the party defendant resides within the corporate limits of the city wherein said Court or Courts shall be established."

If this exclusive jurisdiction be sustained it applies to "all cases arising under" the act, or in other words to all cases made cognizable in said District Courts or before any Judge of said District Courts, to wit:

- 1 Every suit of a civil nature at law where the debt, balance or other matter in dispute does not exceed exclusive of costs the sum

or value of Two Hundred Dollars, except certain actions mentioned in the proviso.

Sec. 6 Rev. p. 1302, as amended by Act of March 20, 1878, P. L. 148.

- 2 Also, every sum of money or penalty not exceeding Two Hundred Dollars to be sued for, and recovered by virtue of any law of this State in any Court of record, or in any Court having cognizance thereof, is made cognizable before any Judge of any District Court in *manner aforesaid*.

Sec. 6 Rev. p. 1302.

- 3 Also proceedings between Landlord and Tenant are made cognizable before any Judge of any District Court of any City within the corporate limits of which the demised premises are situated.

Sec. 122—123 Rev. 1324, &c.

- 4 Also all cases of Forcible Entry and Detainer are made cognizable before any Judge of said District Courts.

Sec. 138 Rev. p. 1324, &c.

- 5 Also all cases in attachment for any sum not exceeding One Hundred Dollars are made cognizable in said District Courts.

All the above various actions and proceedings are *made cognizable* in the District Courts, or before any Judge thereof, and it is plain that if the words "*all cases arising under the Act*" are synonymous with the words "*made cognizable*" in said Courts, then the District Courts have jurisdiction exclusive of all other Courts whatsoever, in all such actions and proceedings.

This would deprive the Justices' Courts of all civil

jurisdiction, under the Small Cause Act, and under the various penal statutes of the State, and under the Landlord and Tenant Act, Forcible Entry and Detainer Act, and under the Attachment Act, as to all parties defendant residing in cities where District Courts shall have been established.

Also, the Court of Common Pleas is deprived of all jurisdiction in all of the said matters, in which it has all ways had original jurisdiction.

And were it not for another constitutional provision—Art. VI., Sec. I., Par. 1—the Supreme Court and the Circuit Courts would also be shorn of a portion of their jurisdiction.

If this exclusive jurisdiction as claimed for the District Courts under Sec. 6 of the Act be sustained by this Court, then this District Court Act is the most sweeping legislation ever attempted in the State, no less than an entire abolition in certain cases of the jurisdiction of all the inferior courts in the State under the simple title to create a new inferior court.

It is true that all these inferior courts may be altered or abolished by the Legislature as the public good shall require; but this alteration or abolishment must be effected by some direct and positive enactment, the title of which must clearly express such object. It cannot be effected under cover of a title whose only expressed object is to establish another inferior tribunal.

How forcible right here is the language of Mr. Justice Van Syckle in the opinion of the Supreme Court now under review.—Vroom 12, 295.

“Power to take away the jurisdiction of a court is practically to abolish it. If the power existed under the title in question to exclude the Justice’s Court, there was nothing except other constitutional restraints to prevent the Legislature in this Act from depriving all other Courts in the State of their entire jurisdiction by vesting

jurisdiction over every subject matter in the District Court, and thus overthrowing our existing judicial system. Such an attempt would have been a more conspicuous violation of fundamental law, but it would differ from the action taken in this case in degree only, not in principle.

“To vest jurisdiction in a District Court is one thing; to take away the jurisdiction of the Justice’s Court, or the Court of Common Pleas is an entirely different thing, having no necessary or presumable connection with it.

“From the title of this Act, who could tell which of our Courts was to have its power diminished?

“If under this title the jurisdiction of a Justice’s Court can be excluded, under an Act entitled, ‘A Supplement to the District Court Act,’ some other Court could be shorn of its jurisdiction, and in turn, under an Act entitled, ‘A Supplement to the Act Constituting Courts for the Trial of Small Cases,’ the District Court and the Court of Common Pleas could be deprived of their power. Such a purpose could not be more effectually concealed than under such a title.”

IV.

But it is argued by Counsel for the Plaintiff that, “if it be true that to confer jurisdiction is one object, and to take away jurisdiction is another, then it is impossible to establish a District Court with exclusive jurisdiction by a single Act, because any title that proposed to do so must necessarily embrace two objects.

This reason is most fallacious, for if it be the purpose of an Act to establish a District Court with exclusive jurisdiction, that is, a *single object*, and that purpose may be clearly expressed in the title—for instance, “An Act to establish a District Court with exclusive jurisdiction for the trial of certain causes in certain cities of this

State." The trouble about the title under consideration is, that it does not express that portion of the object of the Act, which provides for the exclusive jurisdiction. The Act is broader than the title—it purposes to do a thing not incident or necessary to the object expressed in the title, but something beyond and foreign to the title.

But, however, this may be the fact that it would be necessary for the Legislature to pass two separate Acts in order to create a Court with exclusive jurisdiction where that jurisdiction had been before vested in other Courts—one conferring jurisdiction on the new Court, and another taking it away from the existing Courts—seems to be no argument, for the reason of the constitutional restriction is, "to avoid . . . the intermixing in one and the same Act such things as have no proper relation to each other."

Inasmuch then as the establishment of one Court with jurisdiction exclusive of all other Courts, where such other Courts have had jurisdiction, is not only to establish such new Court, but practically to abolish all those other Courts, it seems to me to be begging the question to argue that the Legislature must have the power to accomplish both these results so opposite to each other under one title, because otherwise two separate Acts would be necessary. "Of two evils always choose the least." It were much better that the Legislature be placed under that necessity, than that it should have the power by one sweep of the Legislative besom to wipe out the entire judicial system of the State under the simple title to establish a new Court. The former would be only conservative, while the other would be destructive of all judicial power."

Counsel further reasons, that because the District Court Act limits this exclusive jurisdiction to cases where the party defendant resides within the corporate limits of the Cities in which the District Courts are established; therefore, the said Act would take away only a portion of the

jurisdiction of all other Courts, and that inasmuch as the Supreme Court concedes the power of the Legislature, by this Act to vest in the District Courts jurisdiction, concurrent with those other Courts; therefore, a portion of the jurisdiction of those other Courts, is lawfully vested in the District Courts, and then as it seems with a slight tinge of sarcasm, counsel asks whether if the Legislature has the power to give "a part of the whole," why it has not also the power to give, "the whole of a part?"

The sophistry of this reasoning appears, when we ask whether the creation of a new Court with a jurisdiction concurrent with an existing Court does take away any portion of the jurisdiction of the existing Court? Whether that jurisdiction is not still entire, unimpaired, unabridged? Has not that Court still the same jurisdiction over the same territory; over the same subject matters, and over the same parties? That its business and the number of actions brought may be somewhat lessened, does not in any way, nor in any degree impair its jurisdiction. Therefore, what of jurisdiction is given to the District Courts is not necessarily taken away from the other Courts—What folly then to talk about the power of the Legislature to give "a part of the whole," or "the whole of a part!"

V.

But it is further agreed by Counsel for the Plaintiff in error—Point II., his brief.

"The subject may be viewed in another light—

All that the constitution requires is that the act shall embrace but one object, and that shall be expressed in the title. Now the different parts of an act creative of a system and entitled accordingly, may together form but one connected whole. The very consistency of purpose

which it exhibits may require the repeal of other acts, which, if allowed to stand, would mar the harmony of the general design, and the acts so repealed may contain a grant of powers or jurisdiction. If they do, then according to the Supreme Court the repealer, not being within the scope of the title, will be ineffectual, and this notwithstanding the fact that the repealer may be necessary to give symmetry and completeness to the system as an entirety. In such cases it is submitted that the true test is to look at the act itself, and then to determine whether the title fairly states the object. If it do, that is enough; to go further and to consider what may be its effect upon other acts, and whether powers conferred by such other acts have been expressly or by implication taken away, is to go beyond the constitution."

Suppose this proposition of Counsel be admitted, let us see how it applies to the Act and the title in review.

What is "the one connected whole," or the "system," which is intended to be created by the District Court Act? Why, nothing more than certain courts in certain cities in this State. How in the simple creation of these Courts is it necessary or incident to repeal any other Court? How does it "mar the harmony of the general design" that all other existing Courts are allowed to stand? The structure of these District Courts is as perfect and symmetrical and as harmonious and complete without exclusive jurisdiction as with it. This exclusive jurisdiction is not a part of the "system as an entirety." It is an adjunct, an addition appended, a function, a power super-added to the general design.

The whole of Counsel's reasoning upon this point seems to me to proceed upon the idea that the Supreme Court in the case now in review has decided that the exclusive jurisdiction clause in the District Court Act is obnoxious to the Constitution, because it deprives the Courts for the trial of small causes of jurisdiction. Now, the Supreme Court nowhere denies that the Legislature

has full power to ordain and to alter or abolish inferior Courts, but the principle laid down and adjudicated by that Court is, that the Legislature has no power under the simple title to an Act "to establish" a new inferior Court, to grant a jurisdiction, which in effect abolishes all other or any other existing Courts; that this is to do more than to establish a court; it is to do something not expressed in the title. That the District Court Act does attempt to do more than is expressed in the title cannot be denied. It not only strikes at the Justice's Courts, but at "all other Courts whatsoever," and so far was this at one time supposed to extend, that it was thought necessary to pass an Act "to restore," as counsel says in his brief, "the jurisdiction of the Circuit Courts." That this has been done in no way changes or corrects the evil in the title to the Act. It is this attempt by the Legislature "to overthrow our judicial system," under cover of this title, which the Supreme Court says is a "violation of the fundamental law."

It is idle to speculate what would have been the constitutional effect of this title if the Justices' Courts were not operative in cities at all, or were not operative anywhere, or what would have been the effect if there were no existing inferior Courts whose jurisdiction was impaired or destroyed by this Act; this is again begging the question, because if there were no jurisdiction to be taken away, then the Act would not practically repeal, alter or abolish any court, and the exclusive clause would be superfluous, or would have no operative significance.

VI.

It is unnecessary to examine in detail the New Jersey cases cited by Counsel for Plaintiff in error. Each one of these cases has been adjudicated by the Supreme Court upon the particular circumstances of each under the general principles already cited.

In considering these cases we find that all of them, except the cases of *Degan vs. Morrow*, Vroom 2, 136, and *State vs. Hammer*, Vroom 13, 435, are special or local laws relating to private corporations, towns or municipalities, and the titles are entitled *acts to incorporate*, *acts to amend charters*, or *acts supplementary to charters*, and of course each of these titles embraced and sufficiently expressed the objects of the enactments, all relating to some one of the general powers of such corporations.

The case of *Rader vs. Township of Union*, is distinguished, as the title did not have for its object any amendment or supplement to the organic act, but was entitled, "An act in relation to *streets* in Union Township, in Union County." Under this title the act provided not only for the construction of sewers which, properly and generally, are as much a part of the street as paving and flagging, but also for the laying out and making of *public parks*. This was held by the Supreme Court to be not embraced and expressed in the title of the act, and so far as the act related to public parks, it was declared to be abnoxious to Art. IV., Sec. VII., Par. 4, of the Constitution.

The act was declared to be wholly unconstitutional and void, because under the said title the act proceeded to create a corporation to build and construct streets, etc., an object totally at variance with the title.

It was further decided in this case that under the title, "An act to repeal an act in relation to streets in Union Township, in Union County," a provision enabling and empowering the township committee of Union Township to pay all just debts incurred by the corporation, intended to have been created under the original act, was not in violation of this provision of the constitution; the court very properly holding that under a title to repeal an act under which debts might have been incurred, it was proper and necessary to the object of such repeal to provide for the payment of such debts.

And counsel argues from this that inasmuch as in that case under a title, as he says, whose object was *to destroy*, it was held not to be unconstitutional for the legislature *to create* a legal obligation, therefore under the title of the

District Court Act, whose object is *to create* one court, it is not unconstitutional *to destroy* other courts.

A simple statement of this argument stripped of the cover of counsel's ingenious diction is sufficient to expose its fallacy.

The case *Deegan vs. Morrow*, Vroom 2, 136, was "An Act to prevent the fraudulent transfer of property, and to facilitate the collection of just claims." The court in this case sustained the law, holding that "although the object embraced by the law is not very clearly expressed in the title, yet it is single and for one purpose only." And counsel says "The title was indeed sufficiently comprehensive to include the case, but it might almost be said in the language of the court in the Rader case, that it embraced the legislative purpose without expressing it." In which respect it is very much different from the title of the District Court Act, which is not sufficiently comprehensive to alter, abolish or destroy other existing courts, and neither embraces nor expresses such an object.

The only point in the case *State vs. Hammer* worthy of attention is the dictum of the court that "it is only in *perfectly plain cases* that it is proper for courts to vacate statutes on the ground of this constitutional provision." Here it is sufficient to say that the same court in the opinion now in review hold "There is nothing in the title of this Act to indicate an intention to deprive any other court of its jurisdiction Such a purpose could not be more effectually concealed than under such a title."

In the cases cited by the plaintiff's counsel from the New York reports, I observe:

- 1 That the restriction in the New York constitution applies only to *local and private bills*.
- 2 That the New York constitution uses the word "*subject*" instead of "*object*."
- 3 In local and private acts which necessarily affect only local and private interests, courts may very properly apply this constitutional re-

striction with much less severity than would be salutary in general public laws which affect the interests and established institutions of the whole State.

- 4 Although perhaps the word *subject* used in the New York constitution does not very much differ in signification from the word *object* used in our constitution, yet in the case *The People vs. Lawrence*, 36, Barbour 177, Emmott, J. says

“It must not be overlooked that the constitution demands that the title of the Act shall express the *subject*, not the *object* of the act. It is the *matter* to which the statute relates and with which it deals, and *not what it proposes to do*, which is to be found in the title It is no constitutional objection to a statute that its title is vague or unmeaning as to its purpose, if it be sufficiently distinct as to the *matter* to which it refers.”

- 5 Observing this distinction between the *subject matter* and the *proposed object* of an act, and keeping in view also that in the New York constitution the provision applies only to local and private acts, it may readily be understood how the New York Court of Appeals reached the decision in *Wenzler vs. People*, 58 N. Y., 516. The subject matter of the act *sub-judice* in that case was the better administration of the police courts in the city of New York; the title fully expressed this subject matter, and it being a local matter and embracing the whole subject of police courts in New York city, there could be no valid objection that

the act should provide for the removal of police justices elected by the people and for the appointment of others by the Mayor, etc., and that a new Court of Special Sessions should be provided for.

It will be observed in this case that dissenting opinions were read by Church C. J. and Allen J., and it seems to me upon reading Judge Allen's dissenting opinion, that it is a much stronger and abler exposition of the fundamental law applicable to the case than the opinion of the court by Johnson J.

VII.

Counsel further argues that if the District Court Act be unconstitutional as claimed by defendant in error, that not a little of the most important legislation of the State is open to doubt, and he instances the legislation creating new offices, state, county and municipal—the Comptroller's act, the acts establishing the office of Register of Deeds in several of the counties of the State, and any act which prior to the late amendments to the constitution created a municipality, where none existed before—citing the case *Sutterlyj vs. Camden, Common Pleas*, 12 Vroom, 495.

As far as the Comptroller's act is concerned, the title embraces and expresses the whole object of the law, it is "An Act creating the office of Comptroller of the Treasury and defining the duties thereof." Now, there cannot possibly exist in a State more than one officer with duties such as are defined by this act, and inasmuch as the act by its terms devolved the duties theretofore performed by the Governor, the Secretary of State and the Attorney General upon the new officer, the further continuance of

those duties by the Governor, Secretary of State and the Attorney General, as a Board of Bank Commissioners, was antagonistic to the existence of the new office. The Board of Bank Commissioners therefore ceased to exist *ex necessitate rerum*, and there really was no need of a repealer.

So too with the act entitled "An Act to establish the office of Register of Deeds and Mortgages of the County of Essex." There could not in the nature of things exist in the same county two distinct officers for the recording of deeds and mortgages for that county, and therefore the very fact of establishing a special officer for the performance of that public duty necessarily relieved the Clerk of the Common Pleas from that particular part of his previous duties.

So to the creation of a municipality where none before existed must necessarily include certain territory, and whenever any certain territory is by proper legislation set apart and incorporated in a municipality by itself, it necessarily follows that certain municipal officers must be appointed to administer the affairs of the corporation, and this of itself ousts the old township authority and officers, so far as the new municipality is concerned.

In the case cited, *Sutterly vs. Camden*, under the title, "An Act to revise and amend the charter of the city of Camden," the right to grant licenses to inns and taverns was taken from the Court of Common Pleas and vested exclusively in the City Council. Well, this was not a judicial power existing in the Court of Common Pleas as a court of common law, but it was a special statutory police power, which for the sake of convenience was devolved upon the Common Pleas under the Inn and Tavern Act, and being strictly a subject of internal police, it was beyond question a legitimate subject of legislation under an act to amend the charter of the city of Camden.

VIII.

It is further insisted, that the District Court Act is in violation of Par. 11, Sec. VII., Art. IV., of the Constitution, which provides that "the Legislature shall not pass private, local or special laws * * * regulating the internal affairs of towns and counties, appointing local officers or commissions to regulate municipal affairs."

1. The act is local and special.

A local or special law may be either public or private, and it is a statute whose operation is intended to be restricted within certain limits. (Bouvier Law Dic., p. 79.)

It is one intended to affect in its operation a certain locality or certain localities; it is opposed to a general law which applies to and affects the whole State.

To pass a law that affects and applies to Jersey City would be to pass a local or special law. So to pass a law that applies to and affect Jersey City and Newark would be a local or special law—none the less local and special because it affects and applies to two cities instead of only one.

The District Court Act applies to and affects "certain cities" in this State.

But it is argued that since it applies to all cities of a certain class, to wit—to all cities in the State which have 15,000 inhabitants, it is therefore not a special law but a general law that applies to all of a class.

Everybody will admit that if all the cities in the State having 15,000 inhabitants should in this act be specified by name, that then the act would be local and special. I am unable to see how the grouping of the same cities,

under a class founded upon the number of population, can change the character of the law.

Suppose you form a class of cities, based upon the number of square acres of territory, you at once say this is a vicious classification.

Again, if you can constitutionally classify on the whole number of population, you can also constitutionally classify on the number of male population or female population, or upon the number of inhabitants of a certain age, or between certain ages, or upon the number of voters, or upon the number of people engaged in a certain trade or business.

It will be readily admitted that such arbitrary class legislation is interdicted by the constitution ; but counsel says that an act which embraces all of a group of objects, having characteristics sufficiently marked to make them a class by themselves for the attainment of an object, will be held to be not a local or special law, provided that there be a "causal relation" between the subject matter of the law—district courts, and the thing classified—cities having 15,000 population.

Beasley, C. J., in *State vs. Hammer*, Vroom 13, 440, says, speaking of class legislation : " But the true principle requires something more than a mere designation by such characteristics as will serve to classify, for the characteristics which thus serve as the basis of classification must be of such a nature as to make the objects so designated as peculiarly requiring exclusive legislation. There must be a substantial distinction having a reference to the subject matter of the proposed legislation between the objects or places excluded. The marks of distinction on which the classification is founded must be such as in the nature of things will in some reasonable degree at least account for or justify the restriction of legislation."

The learned Chief Justice then illustrates, thus: "A law, enacting that every city in the State, in which there are ten churches, there should be three commissioners of the water department, * * * would sufficiently designate a class of cities, and would embrace the whole of such a class, and yet it does not seem to me that it could be sustained by the courts." Again, a sample of legitimate classification "would be signified in a law that should give to all cities in the State, situated on tide water, the privilege of using such waters in connection with their sewers. In such an enactment but part of the cities of the State would be embraced, but the classification would be lawful and proper, inasmuch as the places embraced would be possessed of a characteristic distinct from those possessed by the excluded places, such characteristic being of such a nature as to afford a reasonable ground for such special legislation."

Again, Dixon J., in *Anderson vs. City of Trenton*, Vroom 13, 487, in considering the same subject, says: "Under this clause of the constitution it has already been decided in this State, that a law, to be neither special nor local, need not apply to all towns; that it will be general if it apply to a class of towns. * * * But it has further been considered that these classes, also, may be subdivided by the Legislature, so that a law will be general which yet touches only a subdivision. As, however, this power of subdividing by legislation would, if unrestricted, include the power to legislate for every individual singly, since no two individuals are exactly alike, the constitutional prohibition required that some limit, excluding special and local legislation, should be placed upon its exercise. Hitherto this limit has been declared to exist in the principle that this class, to be affect-

ed, must consist of individuals distinguished by some important characteristic to which the purpose of the law relates, and must embrace all those so characterized. Thus, a statute giving to all cities bordering upon tide water the power to construct docks or establish quarantine regulations, or providing that in all towns having volunteer fire departments, the members of the department should chose a commission to govern them, would, I presume, be valid. These groups would, according to the principle laid down, be naturally classified for legislation touching their peculiar qualities, and such legislation, though affecting them alone, would be general. But any attempt to legislate for a group of cities not classified in harmony with this principle, is, as I understand, declared to be evasive and in violation of fundamental law."

The question *subjudice* in that case was whether, under a statute granting powers to issue bonds for the purpose of funding floating debts, a classification based upon a minimum of population was within the principle laid down as above. Upon this the learned Justice says:

"Now, I am unable to see any natural connection between the number of people in a city and its right to fund its floating debt. It is true that there may be some propriety in denying this authority to very small municipalities and granting it to larger ones, but the same may be said of almost every power possessed by cities. And it is manifest that if the classification made by a statute is to be justified or not by considering whether it is proper to apply the peculiar provisions of the law to the particular individual or individuals designed to be affected by them, laws will be upheld or overthrown, not as courts shall decide them to be general or special, but as they shall deem wise or unwise. No rule

heretofore laid down in this State sanctions such a test of constitutionality, nor do I think that such a criterion should be adopted." The learned Justice further says, that if this law be sustained "the classes into which towns may be divided, on the simple basis of population will be as numerous and diversified as the purposes of the Legislature, and all the evils sought to be averted by the abolition of the power to legislate for individuals will return under the form of class legislation."

Now, under this line of adjudication, how can it be said that this District Court Act is not local or special? It relates to a class of cities generalized under a minimum of population. There is no more natural connection between the number of people in a city and the right to have district courts, than there is between the number of people in a city, and their right to issue bonds for the purpose of funding their floating debts. Indeed, it seems more reasonable and more natural to connect the right to issue bonds by a city to fund its floating debt with the number of population, than it is to connect the establishment of district courts upon such a basis of classification.

In *Rutgers vs. New Brunswick*, Vroom 13, 57, the decision does not show that the court deemed the District Court Act, as well as the supplement, both good.

The relator claimed that he was entitled to his salary as Judge of the District Court of New Brunswick, under the District Court Act, because the supplement abolishing his court, by raising the number of population, constituting the class from 15,000 to 20,000, was unconstitutional.

The court held, that if the supplement was bad, the original act was also bad; if the supplement was good, the original act was likewise good. In either case the relator was not entitled to salary.

In the case *Skinner vs. Bogart*, Vroom 13, 407; it was simply held by the Court, that an Act, which should

regulate the amount of salary of the Judges of the Courts of Common Pleas in all the Counties of this State, by the number of the population in each County would be constitutional; because there was a natural and reasonably necessary relation between the amount of services rendered by a County Officer, and the number of inhabitants of the County.

2 This Act also regulates the internal affairs of Towns and Counties.

Towns are held in this State to include Cities.

Van Riper vs Parsons, Vroom 11, 1.

Pell vs. Newark, Vroom 11, 550.

Anderson vs. Trenton, Vroom 13, 487.

Internal—Pertaining to its own affairs or interests.

Affairs—Business of any kind, especially public business.

Regulate—To direct by rule or restriction—to subject to laws or governing principals—to control.

Does not this act, to some extent at least, regulate, control, subject to direction and rule, the internal affairs of the different cities in which they are established under this act?

The act applies to cities only. These courts cannot be established anywhere but in the corporate limits of said cities. (Sec. 1, 2 and 3, p. 1301.)

The territorial jurisdiction of every judge of every district court is by the act limited by the corporate bounds of the city for which he is appointed and commissioned (Sec. 14, p. 1302.)

He is then a city judge of a city court, with a jurisdiction co-extensive with the limits of a city, and in that city he has exclusive jurisdiction as against any other district court in any other city, where the party defendant resides in his city.

The fees and costs accruing and collected in his court go into the treasury of the city, and form a part of the revenues of the city. (Sec. 179, p. 1331.)

All fines imposed by the court on jurors and witnesses for defaults and contempts go into the treasury of the city. (Sec. 40, p. 1308; sec. 158, p. 1328.)

The salaries of the judges, clerks and officers are paid out of the city treasury. (Sec. 178, p. 1331.)

The city shall provide rooms and places for holding the courts, and also furnish all supplies of furniture, books, stationery, etc., for the use of the courts. (Sec. 183, p. 1332.)

Is not this legislation which to some extent regulates the internal affairs of cities?

The municipal government of each of the cities in which these district courts are established must, under this act, provide the ways and means for carrying on these courts.

The expenses of these courts become a material part of the regular annual appropriations made by the fiscal authorities of each city

Taxes must be levied in each city for the purpose of meeting these appropriations.

The city government cannot refuse to perform any of the duties, or to provide any of the ways and means commanded by the act; if such refusal be made a writ of *mandamus* will compel performance, if the act be held to be constitutional.

There does not seem to me to be a more effectual way of regulating or controlling internal affairs of a city than by passing a law depleting its treasury for the payment of expenses for the carrying on of these courts, and compelling taxation to keep up the supply.

It is therefore most respectfully submitted, that the Justice of the Peace who heard and determined this cause below had jurisdiction. That the judgment of the Supreme Court, on certiorari, is not erroneous, but that the same should by this court be affirmed.

THEO. RYERSON,

Att'y, and of Counsel with Defendant in Error.

N. J. Court of Errors and Appeals.

FREDERICK W. PAYNE,

vs.

WILLIAM MAHON.

} *On Certiorari* 10
to Thos. Ald-
rich, Justice
of the Peace.

STATE OF THE CASE.

William Mahon brought suit before Thomas Aldrich, a justice of the peace in and for the county of Hudson, against Frederick W. Payne. The summons issued September 12, 1878, and was returnable at the office of said justice, 599 Newark avenue, Jersey City, on September 18, 1878. The action was an action of debt, to recover the sum of five dollars, money loaned by plaintiff to defendant. 20

The docket of the justice, after stating the return of the writ, the filing of the state of demand, the appearance of the parties, plaintiff and defendant, and the adjournment of the case by consent until September 25, states as follows— 30

“Sept. 25. Plaintiff and defendant both appeared, and ready for trial; counsel Mr. MacSherry, for the defendant, moved to dismiss the action on the ground that there is in Jersey City, where the defendant resides, a District Court, created by the legislature of 1877, which District Court has exclusive jurisdiction in all cases of this nature, and that this Court must take cognizance of said District Court. There being no evidence before me as to where the defendant lived, or as to the exact location of the defendant's residence, I refused to dismiss the 40

action. The case proceeded, William Mahon for plaintiff being sworn; and Frederick W. Payne sworn for defendant; and it now appearing from the evidence that defendant at the time of the issuing of the summons in this case, and at the time of the service thereof, was and is still a resident in the corporate limits of Jersey City, defendant's counsel renewed his motion to dismiss on the ground of the want of jurisdiction of this Court, which motion I overruled; and it having been shown by the
 10 evidence of the plaintiff that the defendant is now indebted to plaintiff in the sum of five dollars, I gave judgment in favor of the plaintiff and against the defendant for the sum of five dollars and the costs of this suit, two dollars and forty-eight cents."

A writ of certiorari was allowed by Mr. Justice Knapp, Nov. 2, 1878, to remove this judgment to the Supreme Court, returnable to the November Term, 1878, of this Court.

20 It was argued at the November Term, 1878, before Justices Van Syckel, Knapp and Dixon, and decided at the June Term, 1878; (12 Vroom, 292,) judgment was entered Oct. 31, 1881, and thereupon a writ of error was brought returnable to the November Term, 1881; a certiorari likewise issuing to bring up the outbranches of the record.

To the plaintiff's assignment of error (post) the
 30 defendant pleaded *in nullo est erratum*.

OPINION OF THE COURT IN THE CASE OF

Payne vs. Mahon.

The opinion of the Court was delivered by

VAN SYCKEL, J. :

An action of debt was brought by Mahon against 10
Payne, before a justice of the peace in Jersey City, the
said Payne at that time residing within the corporate
limits of said city. Judgment was rendered by the jus-
tice in favor of the plaintiff below, and the case has
been certified into this Court for review.

The question is whether the District Court of Jersey
City has jurisdiction exclusive of the Justices' Courts in
cases specified in the sixth section of the District Court
act. 20

The language of the act is very clear and can admit
of no other interpretation. The act provides that "Dis-
trict Courts shall have jurisdiction exclusive of all other
Courts whatsoever in all cases arising under this act,
where the party defendant resides within the corporate
limits of the city wherein said Court or Courts shall
be established." The contention that a cause of action
does not arise under the act until suit is brought in the
District Court, and that therefore a suit may be instituted
in a Justice's Court, if process is first issued out of that 30
Court, would, if successful, deprive the words "exclu-
sive jurisdiction" of all force, because if the word "ex-
clusive" was omitted, and the District Court had only
concurrent jurisdiction, it could exclude the Justice's
Court in any particular case by first issuing its process.
The Justice Court is without jurisdiction, if the pro-
vision in the District Court act excluding it is a valid
law, under that clause of the constitution of this State
which provides "that every law shall embrace but one
object, and that shall be expressed in the title." 40

The title of the District Court act is "An act constituting District Courts in certain cities in this State." Section six of the act of 1877, by its terms gave the District Courts jurisdiction exclusive of all other Courts of the State, but was amended in 1878, so as to except the Circuit Court. It is not necessary to discuss the numerous cases in which this constitutional provision has been considered and applied. The latest case in this State, (*Rader vs. Township of Union*, 10 Vroom, 509,) applies this constitutional limitation on the legislative power with sufficient severity to render nugatory an attempt under the title of the act in question to take away the jurisdiction of other Courts.

In that case it was held that a statute entitled "An act in relation to streets in Union Township in Union county," cannot embrace a power to lay out parks. The Court in that case, considered the making and control of streets a thing so different from the making of parks, that a description of one did not embrace both. While Courts are frequently invested with exclusive jurisdiction over specified subjects, and parks are sometimes erected where streets are laid out, opened and built upon, I think it may be said that taking away the jurisdiction of existing Courts is as foreign to the title of the District Court act as the creation of parks is to the title of the road act.

There is nothing in the title of the act to indicate an intention to deprive any other Court of its jurisdiction, and therefore unless the exclusion of other Courts can be comprehended among the mere incidents of the legislative purpose in establishing a District Court, this act infringes the constitutional requirement. A Court must be invested with jurisdiction over certain subjects as necessarily incident to its creation. Jurisdiction is its life; deprived of jurisdiction it becomes extinct and incapable of exercising any function. The fact declared by the title that a District Court is established, clearly indicates that it is to be clothed with a jurisdiction, which may be concurrent with that of pre-existing

Courts, but it is quite as manifest that no one would under such a title suspect a purpose on the part of the law maker to abolish other Courts.

Under an act entitled "An act to give B a pension," one might as well expect to find a clause depriving C of a pension before granted. Power to take away the jurisdiction of a Court is practically the power to abolish it. If the power existed under the act in question to exclude the Justice's Courts there was nothing except other constitutional restraints to prevent the legislature in this act from depriving all other Courts in the State of their entire jurisdiction, by vesting jurisdiction over every subject matter in the District Court, and thus overthrowing our existing judicial system. Such an attempt would have been a more conspicuous violation of fundamental law, but it would differ from the action taken in this case in degree only, and not in principle. To vest jurisdiction in the District Court is one thing, to take away the jurisdiction of the Justice's Court or the Court of Common Pleas is an entirely different thing, having no necessary or presumable connection with it. From the title of this act who could tell which of our Courts was to have its power diminished? If under this title the jurisdiction of a Justice's Court can be excluded, under an act entitled "A supplement to the District Court act," some other Court could be shorn of its jurisdiction, and in turn under an act entitled "A supplement to the act constituting Courts for the trial of small causes," the District Court and the Court of Common Pleas would be deprived of their power.

Such a purpose could not be more effectually concealed than under such a title.

But it must be held here as it was in the case cited that the entire act is not a nullity. The illegal provision is separable from the body of the act. The creation of the Court with the provisions defining subject matters of its jurisdiction, was a legal exer-

cise of the legislative will, and has the force of law ; it is only the attempt to overthrow or circumscribe the power of Courts not referred to in the title, which must fail. The Justice's Court had jurisdiction of the case certified here and the judgment should therefore be affirmed with costs.

N. J. Court of Errors and Appeals.

FREDERICK W. PAYNE,

vs.

WILLIAM MAHON.

} *Assignment of*
Errors. 10

Afterwards, that is to say, on the fifth Tuesday of November, in the year of our Lord one thousand eight hundred and eighty-one, in the Court of Errors and Appeals in the last resort in all causes, comes the said Frederick W. Payne, by Frederic W. Stevens, his attorney, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this: that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid given, was given for the said William Mahon against the said Frederick W. Payne, whereas by the law of the land the said judgment ought to have been for the said Frederick W. Payne, against the said William Mahon. 20

There is also error in this, for that by the transcript of the proceedings before Thomas Aldrich, Esquire, one of the justices of the peace in and for the county of Hudson, it appears that William Mahon, the plaintiff, in the Court for the trial of small causes, held by said justice in the city of Jersey City, brought his action of debt to recover the sum of five dollars against the said Frederick W. Payne, such action being based upon contract. And the said defendant, Frederick W. Payne, at the time of the bringing of said suit and the pendency of said proceedings, being resident within the corporate limits of the said city of Jersey City, wherein District 40

Courts were then established and in operation, pursuant to an act entitled "An act constituting District Courts in certain cities in this State," and the supplements thereto; and said justice gave judgment for the plaintiff in said action for the sum of five dollars debt, and two dollars and forty-eight cents costs; whereas in truth and in fact, the said justice had no jurisdiction to hear and determine the same, such jurisdiction by virtue of the act aforesaid having theretofore vested exclusively
 10 in said District Courts, and said judgment rendered by said justice, was for that reason null and void, and ought by said Supreme Court to have been reversed.

There is also error in this, for that the said Supreme Court affirmed the judgment of said justice, whereas by the law of the land for the reason that it appears by said transcript, that said justice had no jurisdiction over said cause, they ought to have reversed the same, and adjudged the same to be null and void; which said
 20 transcript and proceedings before said justice are not certified and returned with the writ of error depending in this Court.

And the said Frederick W. Payne prays a writ of the State of New Jersey, to be directed to said Justices of said Supreme Court, to certify to said Court of Errors and Appeals the truth of the same, and it is granted to him.

And the said Frederick W. Payne also prays that the
 30 judgment aforesaid may be reversed, annulled and for nothing holden, and that he may be restored to all things that he hath lost by occasion of said judgment, &c.

FREDERIC W. STEVENS,
Attorney and of Counsel for Plaintiff.