the defendant's demurrer, which is as follows:

"That in view of the foregoing and the allegations of the bill incorporating by reference the several private Acts of Tennessee in question, defendant has no right to maintain this suit and no right to restrain the defendant from performing his duties as County Chairman of Clay County, Tennessee."

(4) The Chancellor erred in holding that chapter 53 of the Private Acts of 1943 is unconstitutional and void.

(5) The Chancellor erred in holding that the office of County Judge of Clay County, Tennessee was abolished by Chapter 283 of Private Acts of 1943, and that the defendant has no authority or right to act as Chairman of the County Court of Clay County under the terms and provisions of said act.

(6) The Chancellor erred in overruling the defendant's demurrer and in overruling and disallowing the defendant's motion to dissolve the writ of injunction.

It appears from the record that Chapter 53 of the Private Acts of 1943 was passed on January 20, 1943, and approved by the Governor on January 27, 1943; that the Re-Districting Act. Chapter 283 of the Private Acts of 1943, was passed on February 8, 1943. The latter act abolished all the civil districts of Clay County — four in number — and set up and established eight civil districts in the country. The act named the justices of the peace and also the constables for each civil district. Now the only portion of this act which directly affects the relator in the discharge of his duties as county judge is Section 5 of the act, which named C. J. Mabry to serve as Chairman of the County Court until the next regular meeting of the Quarterly County Court, his salary being fixed at $100.00 per month. The complainant does not attack the constitutionality of the aforesaid Re-Districting Act. It is insisted, however, that the defendant Mabry has no legal authority to act as a Chairman of the County Court, "or in any way to interfere with him in the performance of his official duties as County Judge." It is the contention of counsel for dependant Mabry that the Re-Districting Act repeals all laws and parts of laws in conflict therewith and abolishes the existing County Court of Clay County and establishes an entirely new County Court of said county. Able counsel for the defendant have sought to make a distinction between the instant case and other cases decided by this Court, particularly State v. Leonard, 86 Tenn. 485, 7 S.W. 453, State ex rel. v. Link, 172 Tenn. 258, 111 S.W. 2d 1024, and State ex rel. v. Lindsay, 103 Tenn. 625-636, 53 S.W. 950.

Passing to the consideration of the question now before us, we hold that the County Court is a constitutional court and cannot be abolished by legislative enactment. Prescott v. Duncan, 126 Tenn. 106, 126, 127, 148 S.W. 229. This Court has clearly made a distinction between Chancellors, Circuit Judges, and County Judges, holding that in the interest of economy the two former may be abolished, but that the office of County Judge cannot be abolished during the term of the office. See the Judges' Cases, 102 Tenn. 509, 543, 545, 53 S.W. 134.

In the Redistricting Cases, 111 Tenn. 234, 235, 80 S.W. 750, the court used the following language:

"The constitutional term of office, where there can be only one incumbent in a county, as in the case of the county register, the circuit court clerk, the sheriff and the county judge, cannot be shortened, nor can the incumbent of such constitutional offices be deprived of his office, during his term, by the legislature. The sheriff can not be deprived of a substantial part of his powers and functions."

We cannot close our eyes to the palpable effort to legislate the relator Bailey out of office and substitute in his place and stead another person who is designated in another private act to perform the same official duties. Chapter 53 of the Private Acts of 1943 purports to abolish the office of County Judge by repealing the act that created it. Eight days after the repealing act was approved by the Governor the Re-Districting Act was passed in which defendant Mabry was named as "Chairman of the County Court." The duties of this office were identical with that of county judge under the act which sought to be repealed. The jurisdiction was the same in all respects. We think the case of State v. Link, 172 Tenn. 258, 262, 111 S.W. 2d 1024, 1025, is directly in point and controlling in the instant case. In that case the office of County Judge of Stewart County was abolished by the Private Acts of 1937, c. 643. In a bill brought to test the constitutionality of the act it was alleged that it was a valid act and "it became the duty of the Quarterly Court under the general statute to elect a chairman of the County Court to succeed the defendant." This act was held to be invalid. The Court, speaking through Mr. Justice Cook, says:

"Public office cannot thus be transferred by statute from one official to another. Acklen v. Thompson, 122 Tenn. 43, 55, 126 S.W. 730, 135 Am. St. Rep. 851; State ex rel. v. Morris, 136 Tenn. 157, 161, 189 S.W. 67.

"The Legislature cannot remove a county judge by abolishing the office and devolving the duties upon a chairman of the county court. State v. Leonard, 86 Tenn. 485, 7 S.W. 453. The distinction between statutes ineffective to remove a judge from office, and transferring its business to another, was made clear by Mr. Justice Wilkes in Judges' Cases, 102 Tenn. 509, 560, 53 S.W. 134, 146, 46 L.R.A. 567."

Now it is clearly to be seen that the only difference between the Link case and the instant case is that the Legislature abolished Link's office and left it to the Quarterly County Court to elect his successor under the general law, whereas, in the instant case, the Legislature abolished relator Bailey's office and in a separate act created eight civil districts in Clay County instead of the four old districts, named the justices of the peace and constables for said districts, and C. J. Mabry, who was to take over the duties of County Judge. We fail to see any distinction whatever that merits serious consideration.

Adhering as we do to our former decisions, we hold that Chapter 53 of the Private Acts of 1943 is unconstitutional and void. The assignments of error are overruled and the decree of the Chancellor is affirmed.

IV

STATE EX REL. V. LINK

Supreme Court of Tenn. Jan. 15, 1938
111 S.W. 2d 1024

1. CONSTITIONAL LAW; ABOLITION OF COURT OPERATES TO VACATE OFFICE OF JUDGE. — The power to create the office of county judges or judge of other inferior courts was conferred on General Assembly by constitutional provision which authorized establishment of "inferior courts." Terms of all judges, including judges of inferior courts, are fixed by the Constitution at 8 years, and their tenure cannot be impaired except where Legislature finds it necessary to redistribute business of courts for purposes of economy and efficiency, and, when such rearrangement results in abolition of the tribunal, it operates to vacate office of judge who presided over such tribunal.

2. AN ACT WHICH ABOLISHED THE OFFICE OF JUDGE BUT DID NOT ABOLISH COURT OVER WHICH THE JUDGE PRESIDED IS UNCONSTITUTIONAL. — Where county judge for Stewart county was elected and commissioned according to law, an act which abolished the office and repealed act which created it, but which did not abolish court over which judge presided, was an unconstitutional exercise of legislative power.

DECISION

COOK, Justice.

This appeal involves the validity of a private act of 1937, designed to abolish the office of county judge in Stewart county. By chapter 3, Private Acts of 1921, the office of county judge was created for Stewart county. In addition to the ordinary duties of chairman of the county court, the act, section 6, subd. 3 as amended by chapter 454, Private Acts of 1933, clothed the county judge with the authority and jurisdiction of a justice of the peace and with authority to grant writs of habeas corpus, injunctions, and attachments.

At the August election, 1934, the defendant, N. A. Link, was elected and subsequently commissioned county judge for the term of eight years and was exercising the powers and performing the duties of the office when the Legislature passed chapter 643, Private Acts of 1937, under a caption which reads:

"An Act to abolish the Office of County Judge of Stewart County, Tennessee, and to repeal Chapter Number Three of the Private Acts of the General Assembly of Tennessee for 1921, passed January 12, 1921, and approved January 12, 1921, entitled 'An Act to create the Office of County Judge of Stewart County, to fix his Salary and to define his Duties and Jurisdiction'."

Section 1 under this caption declared the office abolished, and section 2, that the Act of 1921 was repealed.

After passage of the act, the defendant refused to vacate the office, and the bill, in the nature of quo warranto, was filed to remove him. It was alleged in the bill that the act is constitutional and effective to remove the defendant from office, and that it became the duty of the quarterly court, under general statutes, to elect a chairman of the county court to succeed the defendant. But, it is said in the bill that the justices of the peace of the county refused to elect a chairman by a vote of nineteen to two and that defendant continued to hold the office and exercise the powers conferred by the Act of 1921. The prayer of the bill was for injunction to restrain defendant from acting as judge, and for a declaration that the Act of 1937 is valid.

The chancellor was of the opinion that the act is unconstitutional and dismissed the bill upon defendant's demurrer. Relators appealed and assigned errors, through which it is insisted that the act was a valid exercise of legislative power and that the defendant should be enjoined from acting as county judge. The relators rely upon cases which sustain local legislation affecting counties in their governmental capacity, as in Haggard v. Gallien, 157 Tenn. 269, 8 S.W. 2d. 364, and Holland v. Parker, 159 Tenn. 306, 17 S.W. 2d 926; and upon cases which sustain acts which abolish state and county offices, as in State ex rel. v. Morris, 136 Tenn., 1 57, 189 S.W. 67, and House v. Creveling, 147 Tenn. 589, 250 S.W. 357.

The principles underlying those cases are not applicable. The power to create the office of county judge or judge of other inferior courts was conferred upon the general assembly by article 6, section 1, of the Constitution, authorizing the establishment of inferior courts. County courts presided over by a county judge are inferior courts within the meaning of the Constitution. State v. Maloney, 92 Tenn. 62, 20 S.W. 419; Scott v. Nashville Bridge Co., 143 Tenn. 86 122, 223 S.W. 844; Whitehead v. Clark, 146 Tenn. 660, 670, 244 S.W. 479.

Terms of all judges, including judges of inferior courts, are fixed by the Constitution, article 6, sec. 4, at eight years, and their tenure cannot be impaired except where the Legislature may find it necessary to redistribute the business of the courts for purposes of economy and efficiency. When in such instances the rearrangement results in the abolition of the tribunal, it operates to vacate the office of the judge who presided over the abolished tribunal.

The county court of Stewart county, over which the defendant presided as county judge, was not abolished, but the act if given effect would remove the judge from office, deprive him of its emoluments, leave the court in existence, and transfer its jurisdiction to a chairman of the county court to be elected from year to year under Code, sec. 10202. That is to say, the office would be transferred from the county judge to a chairman of the county court, another county judge under a different name. Code, secs. 763, 10202 et seq.; Johnson v. Brice, 112 Tenn. 59, 68, 83 S.W. 791; Malone v. Williams, 118 Tenn. 390, 479 103 S.W. 798, 121 Am. St. Rep. 1002; Murray v. State, 115 Tenn. 303, 89 S.W. 101, 5 Am. Cas. 687; State ex rel. v. Howard, 139 Tenn. 73, 77, 201 S.W. 139.

Public office cannot thus be transferred by statute from one office to another. Acklen v. Thompson, 122 Tenn. 43, 55, 126 S. W. 130, 135 Am. St. Rep. 851; State ex rel. v. Morris, 136 Tenn. 157, 161, 189 S.W. 67.

The Legislature cannot remove a county judge by abolishing the office and devolving the duties upon a chairman of the county courts. State v. Leonard, 86 Tenn. 485, 7 S.W. 453. The distinction between statutes ineffective to remove a judge from office, and statutes that accomplish removal by abolishing the tribunal and transferring its business to another, was made clear by Mr. Justice Wilkes in Judges' Cases, 102 Tenn. 509, 560, 53 S.W. 134, 146, 46 L.R.A. 567. After referring to the opinion in State v. Leonard, supra, and quoting from it, the opinion proceeds:

"The Leonard Case applies only to a county judge, where only one can exist in a county, and where his functions and duties cannot be devolved upon another, and is different from cases involving circuit, chancery, or other judicial officers, who preside over a system of courts common to the whole state. In the former class of cases the jurisdiction and business of the abolished court must necessarily go to a judge created especially by the legislature to receive them. In the latter class judges are judges for the state at large, and the transfer is not of jurisdiction but of business, not to a judge specially created, but to a judge already elected by the people, and clothed with authority and jurisdiction to act."

The decree of the chancellor is without error.

AFFIRMED.

V

IN RE OPINION OF THE JUSTICES

Supreme Judicial Court of Massachusetts, April 15, 1930
(271 Mass. 575, 171 N.E. 237)

CONSTITUTIONAL LAW; TENURE OF OFFICE DURING GOOD BEHAVIOR. — The tenure of office during good behavior imports not only the length of term but also the extent of service. When a constitution has made definite provision covering a particular subject, that provision is exclusive and final. It must be accepted unequivocally. It can neither be abridged nor increased by any or all of the departments of the government.

OPINION

As a part of this comprehensive grant of power the General Court may, according to its conceptions of the requirements of the general welfare, regulate and limit and change and transfer from one to another the civil and criminal jurisdiction of those courts. It may abolish existing courts, except the Supreme Judicial Court, and erect others in their place and in its wisdom distribute among them jurisdiction of all justiciable matters subordinate to the one court established by the Constitution. It may settle and increase or diminish the salaries of the judges of courts so erected. The amplitude of this legislative control over such courts, however, is bounded by other provisions of the Constitution. Commonwealth v. Leach, 246 Mass 464, 470-471, 141 N.E. 301, 317, 128 N.E. 429; Opinion of the Justices, 3 Cush. 584. Commonwealth v. Hawkes, 123 Mass. 525, 528-529. This grant of power to the General Court to erect and constitute courts, broad as it is, does not include the tenure of the judges of such courts. That is fixed by the Constitution itself. It is provided by part 2, c. 3, art. 1 of the Constitution that "all judicial officers, duly appointed, commissioned and