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Section 1 under this caption declared the office abolished, and section 2, that the Act of 1921 was repealed.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

O P I N I O N

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

SUPREME COURT DECICIONS

I

Rizal Surety & Insurance Co., Plaintiff-Appellee, vs. Marciano de la Paz, et al., Defendants-Appellants and Appellees. Marciano de la Paz and Domingo Leonor, Defendants-Appellants, G. R. No. L-6463, May 26, 1954, Paras, C.J.

1. OBLIGATIONS AND CONTRACTS; PREFERENCE OF CREDITS; INSOLVENCY. — Where the debtor is insolvent, article 1924 of the old Civil Code is not applicable, since it is considered repealed insofar as it referred to cases of bankruptcy and estates of deceased persons.

2. ID.; ID.; LAW ON ATTACHMENT AND LAW ON PREFERENCE OF CREDITS APPLIED TOGETHER. — The law on attachment and the law on preference of credits under article 1924 of the Civil Code had heretofore been applied hand in hand.

3. ID.; ID.; ID.; AMUSEMENT TAXES, SUPERIOR LIEN.— The claim of the Collector of Internal Revenue for amusement taxes on the theater insured, constitutes a lien superior to all other charges or liens, not only on the theater itself but also upon all property rights therein, including the insurance proceeds.

4. ID.; ID.; ORDER OF PREFERENCE UNDER ARTICLE 1924 OF CIVIL CODE. — The order of preference under article 1924, paragraph 3, of the Civil Code, is, first, in favor of credits evidenced by a public instrument and, secondly, in favor of credits evidenced by a final judgment, should they have been the subject of litigation, the preference among the two kinds of credits being determined by priority of dates.

5. ID.; ID.; ID.; PUBLIC INSTRUMENT; DATE IN BODY IS DATE OF ACKNOWLEDGMENT BY REFERENCE. — Where an instrument is dated in the body, and said date is referred to in the notarial acknowledgment, the date of the latter is deemed to be the date appearing in the body of the instrument.

6. ID.; ID.; ID.; CREDIT EVIDENCED BY PUBLIC INSTRUMENT NEED NOT BE REDUCED TO JUDGMENT. — A credit evidenced by a public instrument, though not reduced to a judgment, is entitled to priority, because article 1924 of the Civil Code distinguishes credits evidenced by a final judgment.

7. ID.; ID.; ID.; ID.: PREFERENCE UNDER PUBLIC INSTRUMENT NOT LOST BY REDUCTION THEREOF INTO JUDGMENT. — The preference under a public instrument is not lost by the mere fact that the credit is made the subject of a subsequent judicial action and judgment.

8. ID.; ID.; ID.; FINAL JUDGMENT; ABSENCE OF STAY OF EXECUTION. — A judgment upon which execution has not been stayed under the provisions of section 14 of Act 190, is entitled to the preference provided for in article 1924 of the Civil Code.

9. ID.; ID.; ID.; PREFERENCE DUE TO NOTICE OF ATTACHMENT OR GARNISHMENT. — A credit made the subject of notice of attachment or garnishment is entitled to preference as of the date of said notice, subject only to the priority of credits provided for by article 1924 of the old Civil Code.

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sworn, shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this constitution: provided nevertheless, the governor, with consent of the council, may remove them upon the address of both houses of the legislature; "and [according to Amendment 58 ratified and adopted November 5, 1918] provided also that the governor, with the consent of the council, may after due notice and hearing retire them because of advanced age or mental or physical disability. Such retirement shall be subject to any provisions made by law as to pensions or allowances payable to such officers upon their voluntary retirement." The exception mentioned relates to justices of the peace and has no bearing upon the present question. The tenure of office of judges as thus settled by the Constitution is imperative and final. It cannot be enlarged, limited, modified, altered or in any way affected by the General Court.

In conformity to this provision of the Constitution the commissions of judges of the courts named in the proposed bill state in substance that the appointee is to hold said trust during his good behavior therein unless sooner removed therefrom in the manner provided in the Constitution.

The provision as to the tenure of all judges of the United States, both of the Supreme and of the inferior courts, in art. 3, sec. 1 of the Constitution of the United States, is in the same words as those in c. 3, art. 1 of the Constitution of this Commonwealth, viz., that they "shall hold their offices during good behavior." Respecting such inferior courts of the United States, it was said in Ex parte Bakelite Corp., 276 U.S. 438 at page 449 S. Ct. 411, 412, 73 L. Ed. 789: "They * * * have judges who hold office during good behavior, with no power in Congress to provide otherwise."

The inevitable effect of the part of sec. 4 of the proposed bill touching compulsory retirement of certain judges is to make something else than good behavior an element in judicial service. It is no evidence whatever of evil behavior or of want of good behavior to pass the age of three scores and ten. Age and good behavior are unrelated subjects. There is no connection between the two. And yet, under the proposed bill the compulsion of half-time service and half-time pay for judges of the designated courts arises when the age of seventy comes, regardless of every other circumstance or consideration.

Tenure of office during good behavior imports not only the length of the term but also the extent of service. The Constitution in this particular means that judges "shall hold their offices during good behavior," not that they shall hold half of their offices after a certain age and such other fractional part as some other person may determine. The Constitution itself, in the words already quoted, makes two provisions to relieve the judicial service of judges no longer competent to render efficient service. It contains a specific clause in art. 58 of the Amendments affording the means of retiring a judge "because of advanced age or mental or physical disability." The proposed bill adds another and diverse method to the same end. It would deprive such judge against his will of the right to render full-time service for full-time pay. That is beyond the power of the legislative department of government. When the 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 be increased by any or all of the departments of government.

It is our opinion that the provisions of the bill concerning permissive retirement of the judges of the serveral courts are not in conflict with the Constitution, but that all its provisions for compulsory retirement and for compulsory or voluntary retirement of the chief or presiding judges are in conflict with part 2, c. 3, art. 1, as amended by art. 58 of the Amendments of the Constitution.