

The Superior Court of Pennsylvania,

COUNTY OF ALLEGHENY,

ss:

The Commonwealth of Pennsylvania,

TO THE JUDGES of the Court of Quarter Sessions for the County of *Lancaster*

GREETING: We being willing for certain causes, to be certified of the matter of the Appeal of

George W. Wagner Mayor of the City of Johnstown as well as a voter and taxpayer of said City of Johnstown in each capacity as well as a citizen and taxpayer of the Borough of Morrellville of the County of Lancaster

from the judgment of your said Court, at No. *11 1/2* of *December* Sessions, A. D. *1898*

I am a taxpayer of the Borough of Morrellville of the County of Lancaster of Johnstown

before you, or some of you, depending, Do COMMAND You, that the record and proceedings aforesaid, with all things touching the same, before the Judges of our Superior Court of Pennsylvania, at a Superior Court to be holden at Pittsburgh, the *first (Sat.)* Monday of *May* next, to wit, *A. D. 1898* so full and entire as in your Court before you they remain, you certify and send, together with this Writ, that we may further cause to be done thereupon that which of right and according to the laws of the said State ought.

Witness the Honorable CHARLES E. RICE, Doctor of Laws, President Judge of our said Superior Court at Pittsburgh, the *25th* day of *January* in the year of our Lord one thousand eight hundred and ninety-*eight*.

George Pearson,

Prothonotary.

To the Honorable the Judges of the Superior Court of the Commonwealth of Pennsylvania,
sitting at Pittsburgh.

The record and process, and all things touching the same, so full and entire as before us
they remain, we certify and send, as within we are commanded.

W. T. Barber [L. S.]

Pres. Judge = [L. S.]

July Dec 1897

No. 167 of April Term, 1898

Superior Court.

Appeal of

Wm. M. Higgins, Appellee,

vs. Insurance Co. of
Northwestern, Appellant.

CERTIORARI to the Court of Quarter Sessions

for the County of Lehigh

returnable the first Monday

of May A. D. 1898.

Rule on the Appellee, to appear and plead
on the Return-day of the Writ.

George S. Davis
Prothonotary

Filed at Lehigh, Pa. January 1898

Wm. M. Higgins

J. C. Davis
Attorney for Appellant

FILED,

MAY 2 1898

SUPERIOR COURT



In the Superior Court of Pennsylvania.

In re annexation of the Borough: No. 167 April Term 1898.
of Morrellville to the City of : Appeal from Q.S. Cambria Co.
Johnstown. : Filed February 15, 1898.

Petition praying that an order shall be made by above
Court making appeal in above stated case shall operate as a
supersedeas until a final decision of same shall be reached
filed February 15, A.D. 1898

Now, February 15, 1898 upon presentation and filing of
the within petition of the Mayor of the City of Johnstown,
a ~~xxx~~ rule is granted to show cause why an order of superse-
deas should not be made as above prayed; returnable on the
first day of the Superior Court at Harrisburg in March next;
notice of this rule to be given to the City Solicitor of the
City of Johnstown, the counsel for the petitioners for annex-
ation and to the Clerk of the court of quarter sessions of
Cambria County. By the Court

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Pittsburgh, Feb 18, 1898.

To

Clerk of Quarter Sessions,
Harrisburg, Pa.

You will please take notice of the above order of
the Superior Court of Pennsylvania in the matter of the An-
nexation of the Borough of Morrellville to the City of Johns-
town No. 167 April Term 1898, filed February 15, 1898.

Yours very truly,

1) George Pearson,
Prothonotary.

IN THE SUPERIOR COURT OF PENNSYLVANIA:-

in and for the fifth district:

No. _____ May Term, 1898.

In Re annexation of the:
Borough of Mifflinville:

TO

The City of Johnstown.

*Appeal from the decree of the
Court of Quarter Sessions for the
County of Cambria
No. 12 Dec. Session, 1897.*

Petition of George W. Wagoner, Mayor of the City of Johnstown,
praying for order that the Appeal taken and entered in the above
entitled matter act as a supersedeas; filed February, 15, 1898.

Now, February 15, 1898, upon presentation and filing the within
petition of the Mayor of the City of Johnstown, a rule is granted to
show cause why an order of supersedeas should not be made as above
prayed, returnable on the first day of the meeting of the Superior
Court at Harrisburg in March next: Notice of this rule to be given
to the City Solicitor of the City of Johnstown, the counsel for the
petitioners for annexation, and to the Clerk of the Court of
Quarter Sessions of Cambria County.

By the Court.

Certified from the records of said Court.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the
seal of said Court, at Williamsport this fifteenth day of February,
1898.

B. S. Bentley
Prothonotary.

In the Court of Quarter Sessions of Cambridge
County:

The petition of the Johnstown Indiana and West
moreland Turn Pike Company by its President A. J.
Hawes Respectfully Represents:

That the said Turn Pike Company has completed
its road from Mornesville in Cambridge County to
Nineveh in Westmoreland County.

That the distance from Mornesville to the West
moreland County line is less than five miles

That the said Company is desirous of erecting gates
across said road in Cambridge County; and provide
for the collection of toll according to the Act of As-
sembly in such cases made and provided and
pray that three disinterested persons be appointed
to view and examine the same, and report under
oath or affirmation, whether the said road is or
is not erected in a competent and unknown like
manner according to the true intent and meaning of the
act of assembly and he well ever pray &c

Attest.

A. J. Hawes
President
James P. Greene
Secretary

Cumbria County N.H.

Personally appeared before me a Notary Public
in and for said County N.H.
Harris President of the said above named Company
who being duly sworn according to law says
the facts set out in the above petition are true
and correct

Sworn and subscribed by A. J. Harris
this the 4th day of Dec.
1897

Sam L Parsons
Notary Public

101 Dec 20 1897

John L. Parsons

Johnston & Lawrence
and

Westmoreland New Hampshire
Co.

Petition for venue

And now Dec 8/1897

the within petition

read and considered

and A. S. Hickman

Jos. H. Sargent and

W. V. Johnson

appointed as within

prayed for

Per the Court.

Filed 8 Dec 1897

margin

The procedure whereby a city may be divided into wards is purely statutory and the provisions of the statute must be complied with. *Piedmont on Municipal Corporations*, Sec. 63, page 98.

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(The Borough and City had no right to contract for the erection of wards.)

THE COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF ALLEGHENY. } ss:

TO THE JUDGES of the Court of Quarter Sessions for the County of *Lebanon*

GREETING: Whereas, By virtue of our Writ of Certiorari to No. 167 of April Term 1898 of our Court, a record in the matter of the appeal of *Geo. W. Wagner et al.* from the *Judgment* of your said Court, at No. 1/2 of *Dec.* Sessions, A. D. 1897

was brought into our Superior Court, and the said cause was there so proceeded in that on the 29 day of July A. D. 1898 the following decision was rendered, viz: *Judgment affirmed*

Rice, P. J.

Wherefore, We hereby remit you the record aforesaid with the proceedings thereon, and all things touching the same so far as in this Court they remain, for the purpose of execution as to justice shall appertain, in accordance with the decision of our said Superior Court as aforesaid.

Witness the Honorable CHARLES E. RICE, Doctor of Laws, President Judge of our said Superior Court at Pittsburgh, the 9 day of August in the year of our Lord one thousand eight hundred and ninety-eight.

George Leaven, Prothonotary.

No. 1/2 llee. Term, 1897

No. 167 of April Term, 1898

Superior Court.

Appeal of
George W. Hughes
et al.

Recommendation
of Honorable
Justices

REMITTITUR.

Quintus

Filed 19 Aug 1898

In the Court of Quarter Sessions of Cambria County,

In Re Amication
of the Borough of
Merrillville

vs.

The City of Johnstown.

no. 12 of Dec. Term, 1898,

Appeal to no. 167 of April Term, 1898
Superior Court.

Subscribed and sworn to before me this 25th day of July, 1898, I acknowledge to have received the Certified Record in the above stated case from A. H. Davis Esq., Clerk of the Court of Quarter Sessions of Cambria County.

J. J. O'Connor with
Rose and Jenda,
Attorneys for City.

W 1/2 Dec sera 1897 268

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Receipt of J. O. Connor Esq
for all papers

Filed 25 Feb 1898

In the Court of Quarter Sessions for the
County of Cambria State of Pennsylvania.

In Re Amputation of
the Borough of Merrillville
Pa.

The City of Johnstown

Appeal of George H. Wagner, Mayor of the
City of Johnstown, Pa. as such Mayor
and as a Citizen and tax-payer of said
City of Johnstown, Pa.
from the

Decree

of said Court

To No. 1/2 Dec. ~~1897~~ Sessions 1897

Know all Men by these Presents, That we, George H. Wagner
James P. Greene and Samuel Lenhardt Jr.
are held and firmly bound unto Commonwealth of Pennsylvania
Appellee aforesaid, in the sum of Five Hundred Dollars,
lawful money of the United States, to be paid to the said Commonwealth for the
use of the Appellee or their certain executors, administrators or assigns,
to which payment well and truly to be made and done we do bind ourselves, our heirs, executors and
administrators, and every of them firmly by these presents.

Sealed with our seals and dated this Twenty fourth day of January A. D. 1898

Whereas, George H. Wagner has appealed to the Superior
Court of Pennsylvania from the Decree of
the Court of Quarter Sessions of the County of
Cambria in the above stated suit or proceeding.

Now, the condition of this obligation is such that if the said Appellant shall pay the costs of the
appeal, including the costs in the Supreme Court of Pennsylvania, if the case shall reach that tribunal,
and also shall pay or comply with whatever judgment or decree may be entered against the Appellant,
either by the Superior Court or the Supreme Court, then this obligation shall be void, otherwise shall
remain in full force and virtue.

Signed, sealed and delivered in the presence of

W. J. Lumbard
J. J. Hannon

G. H. Wagner L.S.
James P. Greene L.S.
Samuel Lenhardt Jr. L.S.

No. *1000* *Session* Term, 189*4*.

In the _____ Court

of *Quincy* *Massachusetts* County

of *Cambria* _____

25 Jan'y 1898 amount of bond
fixed at five hundred dol-
lars and the within sum is
approved. S. W. Davis Cor

Filed 25 Jan'y 1898

BOND ON APPEAL

— TO THE —

Superior Court of Penn'a.

In re annexation of the Borough of : No. 167 Apr. Term 1898.
Morrellville to the City of Johnstown:
: Q.S. Cambria County.

Appeal of Geo. W. Wagoner, Mayor et al: Filed July 29, 1898.

Rice, PJ.

This was a proceeding growing out of the annexation of the borough of Morrellville to the city of Johnstown.

The case came into the court of Quarter Sessions upon the joint petition of the Presidents of Select and the Common Councils, acting by direction of a concurrent resolution of the bodies, over which they presided and on their own behalf as citizens of the city, praying the court to make such order or decree as would give to the people of the annexed territory proper representation in the different branches of the city government, and to appoint election officers and designate places for holding a special election for the election of councilmen and school ~~xxxxxxx~~ controllers. The Mayor, against the protest of the petitioners, filed a paper specifying certain objections to the annexation proceedings, and denying the power of the court to decree representation in the mode prayed for. After hearing, the court overruled all the objections, and made the decree from which this appeal was taken by the Mayor.

The material provisions of the Act of May 23, 1889 P.L. 277; 280 governing the annexation of an adjacent borough to a city of the third class are as follows:

"Section 1. Any borough x x x adjoining any city of the third class x x x may be annexed to such adjoining city in the following manner, namely: x x x The Town Council may pass an ordinance for such annexation whenever three fifths of the taxable inhabitants of such borough shall present a petition asking therefor.

"Section 2. Upon the presentation to the councils of such city a certified copy of the ordinance x x x said Councils may by ordinance annex such borough to said city.

"Section 3. The action of said city councils shall be final

and conclusive, unless an appeal be taken therefrom within ten days to the court of Quarter Sessions of the county. Upon such appeal the clerks of said city councils and of said borough council shall certify to said court all the papers and proceedings in the case, whereupon the court shall examine and inquire and if the proceedings appear to have been in conformity with law, shall approve the same.

"Section 5. Whenever any borough x x x shall be annexed to an adjoining or adjacent city, as hereinbefore provided, it shall be the duty of the court, upon petition and proof, to make such order or decree as will give to the people of the annexed territory representation in the different branches of government of said city, by including said territory within the limits of an adjacent ward or wards or by creating a new ward thereof and said court shall in case of the creation of a new ward, appoint the election officers and place for holding election of ward officers, and for that purpose may order a special election and if said court shall deem the same necessary, to be conducted in the manner provided by law for conducting municipal elections".

Passing for the present the question whether the Mayor as Mayor or as a private citizen, had such interest as give him a right to appeal from the decree we shall proceed to a consideration of the several objections urged upon our attention, stating them as nearly as possible in the language of counsel, and referring to the pertinent facts as it becomes necessary.

First, objection is made to the exercise of jurisdiction by the quarter sessions upon the ground that the petition was not presented by the proper parties. Doubtless the Mayor might have presented the petition but there is nothing in the act which made it his exclusive duty to do so. When annexation becomes complete by appropriate proceedings of the two municipalities, the law contemplates that the people of the annexed territory shall be represented in the different branches of the city government, and surely it was not intended that the mayor might

nullify the law by his refusal to act. Further, this is not a matter which concerns the people of the annexed territory only. All the citizens of the city as whereby constituted, are interested in having the city councils, for example, made up of such members duly elected as the law prescribes, and we find nothing in the letter or spirit of the law which forbids them to invoke the exercise of the jurisdiction of the court to accomplish that result. When it is remembered further, that these petitioners acted by direction of the legislative bodies which for the time being represented and presumably expressed the will of the people of the city as a whole, it is impossible to question the propriety of the action of the court in recognizing them as qualified to make the petition.

Second. It is argued that the court had no jurisdiction to make the decree because it had no sufficient proof (1) of the presentation to the borough council of a petition of three fifths of the taxable inhabitants of the borough of Morrellville asking for the annexation or (2) of the legal enactment by the city of Johnstown of the annexation ordinance. But both of these facts were distinctly averred in the petition, which was verified by affidavit and copies of the ordinances of the borough and the city, and duly certified copies of the minutes of the city councils showing the passage of the ordinance were annexed thereto. No adverse presumption can arise here from the fact that the copy of the ordinance annexed to the petition was not certified by the city clerk. True, the act regulating the government of cities of the third class provides that "all ordinances may be proved by the certificate of the city clerk under the corporate seal" but this is not exclusive of other methods, as for example the production of the record of the original. Where all the jurisdictional facts are averred in the manner above described, the court has power to act, and, as the law provides no mode of bringing on the record the evidence given on the hearing, we are bound by the most familiar principles to presume on appeal that

it was sufficient to satisfy the conscience of the court that the city ordinance was duly passed by councils. The effect of the attempted veto of the ordinance will be considered under another head. As to the other branch of the objection we remark, that there is nothing in the statute which makes it absolutely essential that the inhabitants' petition to the borough council, or a copy thereof shall be annexed to and made part of the petition for representation. The legislature has provided in the third section a mode whereby the court may acquire jurisdiction to examine and determine whether the proceedings have been in conformity to law. If an appeal had been taken as provided in that section it would have been the duty of the clerk of the borough council to certify to the court all the papers in the proceedings including the inhabitants' petition, and upon the hearing of such appeal the sufficiency of the petition both in respect to the number and also the qualifications of the signers might have been inquired into. It may be questioned whether it could be inquired into in a supplementary proceeding like the present. But be that as it may, the fact that there was such a petition not having ~~been~~ been controverted in any way in the court below it was fully justified in accepting the sworn averment of the fact, and the recital thereof in the borough ordinance, as sufficient proof.

m Third. The minutes of common council a copy of which was attached to the petition- show that on third reading of the proposed ordinance the clerk stated that the words "Hereafter" in line one, section four was a typographical error and should be "heretofore". This was ordered to be corrected, and the ordinance was then passed finally by a unanimous vote. As corrected the section reads as follows: "Sec. 4 - That all ordinances or parts of ordinances heretofore passed by said borough and now existing in said borough relating to the government of the same are hereby repealed." That the use of the word "hereafter" instead of the word "heretofore" was a typographical or a clerical blunder is so obvious as to preclude every manner of doubt. The

actual physical correction of it was unnecessary; for without it the section would be construed precisely as it now reads. The context would correct the printer's blunder: Endlech on Int. of Stat; Par. 319; Kellar v Com. 71 Pa 413; Lancaster v Lancaster 160 Pa 411; 170 Pa. 108; Same v Frey 128 Pa. 593; Com. v Marshall 69 Pa. 328. It was not more an amendment - i. e. an alteration or change - of the bill within the meaning of Art. IV sect. 3 of the Act of 1889 (P.L.282) than would have been the dotting of an I or the crossing of a T. or the correction of the spelling of a word and the omission to have the section reprinted as that corrected did not invalidate the ordinance as a whole.

Fourth. Section 2 of Article 14 of the Act of 1889 p. 282 declares: "No bill shall be passed containing more than one subject, which shall be clearly expressed in its title". The title of the city ordinance is: "An ordinance annexing the borough of Morrellville to the city of Johnstown, and designating the several wards thereof." The first section declares that the territory comprising the borough of Morrellville, "as is shown by the charter of said borough which is duly recorded and the several decrees of the court relative to the boundary lines and subdivisions of said borough into wards as is fully shown on the borough map be and the same is hereby annexed to and made part of the city of Johnstown" &c.

The second section declares that the three wards of the borough taking them in the order in which they were numbered shall be known and designated respectively as the twentieth, nineteenth and eighteenth wards of the city. No exception can be taken to the sufficiency of the title, but it is earnestly contended that the whole ordinance is void because it contains two subjects. As this clause of the act of 1889 is identical in language with the clause in the constitution relating to acts of the legislature the decisions construing the latter are in point. It has been held "that if the title of an act actually indicates and the act itself actually embraces, two distinct objects when the constitution says it shall embrace but one, the

whole act must be treated as void from the manifest impossibility in the court choosing between the two, and holding the act valid as to the one and void as to the other". Cooley's Const. Lim. 177. We may concede the correctness of this statement of the doctrine which Judge Cooley says is recognized in all the cases, without conceding its unvarying application in ~~allxxxxxxx~~, where the legislation upon one of the subjects embraced in the act is void for constitutional reasons and that upon the other subject is free from objection. These may be so interwoven and dependent one upon the other that it is impossible for the court to do otherwise than to declare the whole act void. Ayar's Appeal 122 Pa 266 is a notable instance. But frequently, it is possible in such cases to separate the good provisions from the bad and to declare the act valid in part and void in part although if all were allowed to stand it might seem to embrace more than one subject. It is generally conceded that this may be done where the legislation upon one subject is void because not sufficiently indicated in the title. I see no good reason why the same may not be done when the legislation upon one subject is void for any other constitutional reason, provided - and this is a qualification of general application - that that which is left is complete in itself, capable of being executed, and not so interwoven with and dependent upon the unconstitutional provisions as irresistably to lead to the conclusion that if all could not be carried into effect none would have received legislative action. But we have discussed the general question as to the authority of the courts to recognize the validity of part of an act containing more than one subject as far as perhaps farther than, is necessary. For, as the learned judge of the court below has clearly pointed out, there is nothing in the ordinance which is not embraced in the title, or which does not relate and is not cognate to the annexation of the borough to the city. It does not come within the mischief to be

prevented by the constitutional or statutory provisions under consideration. This, we think, would be conceded if the councils had power in any form to enact the provision designating the numbers by which the wards into which the annexed territory had been subdivided should thereafter be known. But notwithstanding the very ingenious and plausible argument of the appellant's counsel we are unable to conclude that the question whether the ordinance conflicts with sect. 2 art. 14 of the act of 1889 can be made to turn upon the decision as to the power of the councils to enact the particular provision referred to. The councils may have exceeded their powers in this particular but in determining whether the ordinance contains two distinct and unrelated subjects and is therefore void the ordinary tests must be applied. Following the decisions construing the constitutional provision we concur with the court below in holding that the objection that the ordinance contains two subjects and is therefore void cannot be sustained.

Fifth. It is claimed that the mayor had power to veto the ordinance and exercised it. The preliminary question is one of fact. Did the mayor return the ordinance with his objections to the branch of councils wherein it originated within fifteen days from the date of its presentation to him" (Sect. 7 Art. 6 of the Act of 1869 p. 296) The limits of our jurisdiction to inquire into this matter of fact are much narrower than those of the quarter sessions. The case came into this court by what is called an appeal, but as been pointed out in numerous decisions of the Supreme Court, which have been followed by this court, the act of May 9, 1889 (P.L.156) providing that all appellate proceedings in the Supreme Court theretofore taken by writ of error, appeal or certiorari should thereafter be taken in a proceeding called an appeal does not extend the right of review or change its extent in cases already provided for or modify in any manner its exercise. Nor was any change in these particulars wrought by the Act of June 24, 1895 P.L. 212 creating the Superior Court. This court has the same appellate jurisdiction that

the Supreme Court had in the classes of cases enumerated in the act of 1895, and no greater, and it is to be exercised in precisely the same way. Prior to these acts the general rule was that whenever a new jurisdiction was created by statute and the court or judge exercising it proceeded in a summary method, or in a new course different from the common law a certiorari would lie: Commissioners' Appeal 57 Pa 452. This was a proceeding of that nature hence our jurisdiction on appeal from the decree in question is that which the Supreme Court had on certiorari. It is limited to a review of the proceedings of the quarter sessions, for the purpose of determining the extent and limits of its power and the regularity of its exercise. These questions are to be determined by an inspection of the record for that is all that the writ of certiorari brings up. The evidence given on the hearing, whether consisting of ex parte affidavits or the sworn testimony of witnesses duly examined, was for the information of the court that had exclusive and final jurisdiction to decide disputed questions of fact but is not before us for the purpose of enabling us to determine whether the quarter sessions decided them correctly; for that is beyond our jurisdiction. This is too well settled to require the citation of authority, but it needs to be emphasized in order to prevent misconstruction of the scope of our ruling.

From the petition and accompanying extracts from the minutes of the common council duly certified it appears that the ordinance originated in that body and was passed finally on October 19th.; that the mayor issued a call for a special meeting on November 3, "to consider mayor's message and other general business"; that the clerk and four members of the common council met at the time appointed, but less than a quorum being present, the meeting adjourned without the transaction of any business, and so far as the minutes show, the presentation of any message from the mayor. The next meeting was on November 9th. when, according to the minutes the following occurred:

The mayor having returned, without his approval, sepcial ordinance No.....entitled, An Ordinance Annexing the Borough of Morrellville to the City of Johnstown, and designating the several wards of the same. President Peden stated and ruled as follows: 'The Ordinance Annexing the Borough of Morrellville to the City of Johnstown and Designating the Several Wards of the Same' having been passed finally on Oct. 19, 1897, and presented to the mayor on Oct. 20, 1897, and being by him returned to common council with his objections on Nov. 9, 1897, I declare that not having been returned to the council in which it originated within the fifteen (15) days allowed by law no further action is necessary thereon. No appeal was taken from the ruling of the chair".

Was the return of the ordinance on November 9th. with the mayor's objections such compliance with sect. 7 art 6 of the Act of 1889 as made further action of the councils necessary? We think not. The fact that there will be no regular meeting of the councils within fifteen days after the presentation of an ordinance to the mayor does not affect the decision of the question. He may call a special meeting of council for the purpose of reconsidering an ordinance which he refuses to approve. Thus as was said in a case construing a similar provision of the Act of 1874, there is no necessity for an extension beyond the period of fifteen days by judicial implication or construction of the statute: Penna. Globe Gas Light Co. v Scranton 97 Pa. 538. We agree with the appellant's counsel that a majority of the members of council cannot effectually prevent the mayor from exercising his veto power by neglect or refusal to attend the special meeting thus called. If, therefore, as he asserted in the court below the ordinance with his message vetoing the same directed to the common council was delivered unto the possession of its clerk at the special meeting on November 3, and the attention of the members present was called thereto he did all that was

possible for him to do; and when the mayor has done his full duty the statute is not to receive a construction that will make it possible for a recalcitrant majority of the council to nullify his veto by a bare refusal to do theirs. But was the ordinance returned on November 3, in the manner above described to the body in which it originated? Presumptively not, if the minutes of that meeting are to be taken as evidence of what occurred. We agree, however, that they are not conclusive. Proof that the veto message was presented would not necessarily contradict the minutes of that meeting; it would only supply an omission: See *School Directors v McBride*, 22 Pa. 215, *Furniture Co. v School Dist.* 158 Pa. 42; *Roland v School Dist.* 161 Pa. 102; *Traction Co. v. Canal Co.* 1 Pa Superior Ct. 409; but being the subject of extraneous proof, it was the exclusive province of the court below to decide whether the evidence adduced on the hearing established the fact or not and as we have already suggested its decision is not reviewable here. Taking this view of the case it is unnecessary to discuss the question as to the power of the mayor to veto such an ordinance.

Sixth. If we are correct in the foregoing conclusions the annexation of the borough to the city was an accomplished fact, and the court had jurisdiction to make a decree giving the people proper representation in the different branches of the city government. The act provides that this may be done "by including said territory within the limits of an adjacent ward or wards or by creating a new ward thereof". It is argued that these methods are exclusive, and for the present it may be conceded that they are so where the territory is not already subdivided. It is to be borne in mind however that this territory had been subdivided into wards ~~xx fax xx xx kxxx~~ by appropriate proceedings, and presumably for good reasons, which so far as we know may still exist notwithstanding the inclusion of the territory within the city limits. Therefore the question is not whether the court could create more than one ward out of the annexed

territory but whether the annexation ipso facto obliterated the wards already created, and for purposes of representation left the annexed territory as if they had never existed. If that was the effect of annexation, it would require too great straining of the language of the act to hold that the court had power to reestablish the wards. But in the absence of a clear legislative intent to destroy the existing subdivisions of the territory, the general power to make such decree as would give the people proper representation would include the power to recognize the existing wards in making such decree. In this view the particular provision above quoted might properly be construed to apply to cases where without such action there would be no mode of giving the people proper representation, but not to control the discretion of the court in cases like the present where it would be unnecessary. It must be confessed however that the question is not free from difficulty but our opinion is that this is the true construction of the act, and therefore that the court did not exceed its powers in decreeing representation by wards.

The maxim *expressio unius est exclusio alterius* is always to be applied with caution in the construction of statutes, and in general it may be said that if there is some special reason for mentioning one thing in a statute and none for mentioning another, the expression of the former will not be an exclusion of the other.

Seventh. It is argued that the act of 1889 governing cities of the third class does not recognize the school district as a branch of the city government; nor are school directors ward officers within the meaning of the section authorizing a special election, and in support of this argument the case of *Chalfant v. Edwards* 173 Pa 146 is cited. But assuming this to be true, what standing has the mayor to bring up for review a decree ordering an election of school directors? Clearly none. As well might the ~~unauthorized~~ president of the school board appeal

from the decree ordering an election of councilmen. Nor as a private citizen can the mayor attack the election of school controllers in the collateral way. He certainly could not by mandamus or quo warranto because he alleges no injury peculiar to himself. The election having been held, the matter affects all the people of the school district and the proceedings to investigate it must be instituted by some person having a special interest different from that of every member of the general public or by the officer authorized to intervene in the name of the commonwealth.

Finding no error in the record of which the appellant has a right to complain the assignments of error are overruled and the proceedings are affirmed.

Commonwealth of Pennsylvania, }
COUNTY OF ALLEGHENY. } Set.

I, GEORGE PEARSON, Prothonotary of the Superior Court of Pennsylvania, in and for the Fifth District thereof, the said Court being a Court of Record, do hereby certify that the foregoing is a true and correct copy of the whole and entire Opinion in the case of Sup. Aueya of Morrellville at No. 167 of April Term, 1898 as full, entire and complete as the same remains on file in the said Superior Court, in the case there stated; and I do hereby further certify that the foregoing has been compared by me with the original record in said cause in my keeping and custody as the Prothonotary of said Court, and that the foregoing is a correct transcript from said record, and of the whole of the original thereof.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court, at Pittsburgh, in the County of Allegheny, in the said Fifth District of Pennsylvania, this 9 day of Aug. in the year of our Lord One Thousand Eight Hundred and Ninety eight.
Geo Pearson
Prothonotary.

No.

167

April Term, 1898.

*See the Certificate
of Marshall Lewis*

EXEMPLIFICATION.

Filed 19 Aug 1898

Commonwealth of Pennsylvania,))
County of Cambria,) SS.

At a Court of Quarter Sessions of the Peace of the County of Cambria held at Ebensburg in the said County, on the Eighth day of December, A. D. 1897, before the Honorable Judge of the said Court: Upon the petition of The Johnstown, Indiana and Westmoreland Turn Pike Company, by its President A. J. Haws, setting forth that the said Turn Pike Company has completed its road from Morrellville in Cambria County to Ninevah in Westmoreland County. That the distance from Morrellville to the Westmoreland County line is less than five miles. That the said Company is desirous of erecting gates across said road in Cambria County and provide for the collection of toll according to the Act of Assembly in such cases made and provided and pray that three disinterested persons be appointed to view and examine the same and report under oath or affirmation whether the said road is so far executed in a competent and workmanlike manner according to the true intent and meaning of the Act of Assembly and he will ever pray &c.

And now, Dec. 8, 1897 the within petition read and considered and A. S. Fichtner, Jno. F. Seish and W. H. Hahn appointed as within prayed for.

By the Court.

From the Record.

Cert 20th Jany. 1898.

A. W. Davis

Clerk Q. S.

to 1 Dec Dec 1897
Rud

Order to View The John-
~~stone~~ Indiana and
Westmoreland Turn
Pike

Viewers

A S Fichtner
Jno J Seigh
W H Hahn

Per Davis, clerk atty 90-4

Martin

By the court.

State of Pennsylvania
Cambria County } S.S.

Personally appeared before me a
Justice of the Peace for said County A. S. Fichtner
Jno. F. Seigh and William H. Hahn viewers ap-
pointed by the Court of Quarter Sessions of said County
to view and examine the road bed of the Johnstown
Indiana and Westmoreland Turn Pike and ascertain
if said road is so far completed as is contemplated
by the laws of Pennsylvania in such cases made and
provided, and who first being duly sworn say that
they will with fidelity and without prejudice
perform their duties to the best of their ability.

Subscribed and sworn to
this 5 day of July
1898

A. S. Fichtner
J. F. Seigh
W. H. Hahn

In the view of the Johnstown Indiana
and Westmoreland Turn Pike

To the Honorable A. V. Barker Judge of the
Court of Quarter Sessions of Cambria County
We the undersigned viewers appointed by
the Honorable Court above named as is shown
by the Order of the said Court and to us directed
which said order is hereto attached to view
and examine the said road and report our
findings thereunder. That having first being

1 duly sworn according to law, we did on the
2 5th day of February 1898 at 2 O'clock P.M. went
3 upon the said trunkline road, and viewed the same
4 and found the road to be completed from Mar-
5 ryllville to the Northmoreland County line, in a com-
6 petent and workman like manner, consisting of
7 macadam and gravel, and in this opinion
8 according to the true intent and meaning of the
9 Act of Assembly in such cases made and pro-
10 vided, and we recommend that gates be erected
11 across the road in Cambria County for the collection
12 of Toll. &c.

13 In witness whereof we have hereunto set our
14 hands and seals this 5th day of Feb'y 1898

15
16 A. S. Fichter Dep
17 J. F. Seigh Dep
18 W. H. Hahn Dep
19 Viewers

20
21 Coring Viewers

22 A. S. Fichter one day A. S. Fichter 1.00
23 J. F. Seigh one day J. F. Seigh 1.00
24 W. H. Hahn one day W. H. Hahn 1.00

25
26 Recd. payments
27
28
29
30
31
32
33
34
35

Dec 25 1894

No 1.
In re Johnstown Indiana
and Westmoreland Penn
Rd Company

And now March 7 1898 the
written report of viewers presented
in open court, it appearing therefrom
that the said viewers report that the said
Johnstown Indiana & Westmoreland Penn Rd Co
is as far as respects and constructed well known
public and workman like manner, accord-
ing to the last intent and meaning of the act
of Assembly approved 29th April A.D. 1874 &
its amendments.

Now therefore said report being in
the affirmative, it is ordered, under the
seal of the Court, that the said Corporation
to wit: The Johnstown Indiana and
Westmoreland Penn Rd Company
be permitted, and suspend & erect
and lay such and as many gates
up and across its said turnpike
as will be necessary and sufficient
to exclude from all persons, other than
those in coach, and such tolls as are
authorized by the act of Assembly reg-
ulating the collection of tolls.

By the Court.

Report of Viewers,
Filed March 10 98.

F. P. Martin

Among the Records and Proceedings enrolled in the Court of
~~Quarter Sessions~~
~~Common Pleas~~ in and for the County of Cambria in the
Commonwealth of Pennsylvania, to No. 112, Dec Sess Term, 1897
is contained the following:

COPY OF Quarter Sessions DOCKET ENTRY.

In re Annexation of
Borough of Morrellville
to
City of Johnstown
6 Dec 1897 Res of Geo K Shryock
and S A Beder Presidents of
Select & Common Councils of
City of Johnstown for the design-
nation of time and place for
holding special election to
fill vacancies in Office of
Select and Common Council and School Controller
in new wards filed
6 Dec 1897 Answer of E W Wagoner Mayor filed
6 Dec 1897 Petitioners Objections to the filing of answer
filed
17 Dec 1897 Argued 5 Jan 1898 Opinion filed
5 Jan 1898 Decree filed. And now January 5, 1898
this cause came on to a hearing and after full
argument and with due consideration, it is ordered
adjudged and decreed that the Borough of Morrellville
having been annexed to the City of Johnstown, in due
form the territory heretofore included in the Third
Ward of said borough shall be designated as the Eighth-
teenth ward of said City and the same in the second
ward shall be designated as the nineteenth ward
and the same in the First ward shall be designated
as the twentieth ward thereof. That a special election
shall be held in the said wards on Tuesday, February
15th 1898 in the manner provided by law for conduct-
ing municipal elections for the election of one person
for School Controller, one person for Select Council, and
one person for Common Council for each ward, to
serve until their successors are duly elected and qual-
ified. Further, that the following named persons
are hereby appointed officers to conduct the said

elections, and that the places for holding the same shall be the regular polling places for said districts, which shall continue as such until changed in due form of law, to wit: For the Eighteenth ward in the store house of the Monellville Fire Co, on D street, William A Barion shall be the Judge and John C Lardin and James Coost, the Inspectors, For the Nineteenth ward in the house of William Insecho on the corner of Garfield street and Grape avenue David W Brendlinger shall be the Judge and Lewis Patch and Levi Cusic the Inspectors, For the Twentieth ward, in the Council Chamber on Chandler street, William Mess shall be the Judge and A J Clites and Henry Myers the Inspectors, The Mayor of said City is directed to issue the usual proclamation for said election.

By the Court

To the above order and decree J J O'Connor Esq Counsel for Levi W Wagner Mayor of City of Johnston excepts and asks that a bill of exceptions be signed and sealed which is accordingly done this 5th day of January 1898

A V Baizer

Seal

Pres Judge

20th Jan'y 1898 Bond on appeal to the Superior Court filed
20th Jan'y 1898 Amount of bail fixed at five hundred dollars and the within sum is approved

S W Davis Pro

26 Jan'y 1898 Certiorari from Superior Court received and filed.

26 Jan'y 1898 Petition of Levi W Wagner Mayor and Decree of Court filed

19 Feb'y 1898 Notice of Rule to show cause &c from Superior Court filed

22 Feb'y 1898 Notice of Rule to show cause &c from Superior Court filed

COMMONWEALTH OF PENNSYLVANIA,

County of

Cambria

SS.

I,

S. W. Davis

Clerk
Prothonotary

of the Court of ~~Common Pleas~~ ^{Quarter Sessions} in and for said County,
do hereby certify that the foregoing is a full, true and
correct copy of the whole record of the case therein stated,
wherein In re Annulation of Borough
to City of Johnstown
Plaintiff, and

Defendant, so full and entire as the same remains of record before the said
Court, at No. 112 of Dec Sess Term, A. D. 1898

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of
said Court, this Twenty fifth day of February A. D. 1898

S. W. Davis
Clerk

Prothonotary.

I,

President Judge of the

Judicial District, composed of the Court of

do certify that
by whom the annexed record, certificate and
attestation were made and given, and who, in his own proper handwriting,
thereunto subscribed his name and affixed the seal of the Court of Common
Pleas of said County, was at the time of so doing and now is Prothonotary
in and for said County of in the Commonwealth of
Pennsylvania, duly commissioned and qualified; to all of whose acts, as such,
full faith and credit are and ought to be given, as well in Courts of Judicature
as elsewhere, and that the said record, certificate and attestation are in due
form of law and made by the proper officer.

President Judge.

COMMONWEALTH OF PENNSYLVANIA,

County of

SS.

I,

Prothonotary of the

Court of Common Pleas in and for said County, do certify that the Honorable
by whom the foregoing attestation was
made, and who has thereunto subscribed his name, was at the time of making
thereof and still is President Judge of the Court of Common Pleas, Orphans'
Court and Court of Quarter Sessions of the Peace in and for said County, duly
commissioned and qualified; to all whose acts, as such, full faith and credit
are and ought to be given, as well in Courts of Judicature as elsewhere.

IN TESTIMONY WHEREOF, I have hereunto set my hand
and affixed the seal of said Court, this
day of A. D. 189

Prothonotary.

No. _____ Term, 18

versus

EXEMPLIFIED RECORD

From _____ *County.*

Debt,

Int. from

Costs

Entered and filed _____ *189*

Prothonotary.

To the Honorable Augustine Vinton Barker, President Judge
of the Court of Quarter Sessions of the Peace for Cambria
County.)

Your petitioners, George K. Shryock and Samuel A. Pedan,
of the City of Johnstown, in said County, respectfully repre-
sents; That they are the Presidents of the Select and Common
Councils of the said City, respectively; that in pursuance to
the direction of said Councils, by a concurrent resolution,
passed in due form, on the sixteenth day of November, 1897, as
well as on their own behalf as citizens of said City, further
represent; That the borough of Morrellville, is in said County
and adjoining said City; that three fifths of the taxable
inhabitants therein presented a petition to the council of
said borough, praying that an ordinance be passed therein, for
the annexation of said borough to said City; that such an ord-
inance was passed in due form by said council, and a certified
copy of the same was presented to the said Councils of said
City; whereupon an ordinance entitled "An ordinance annexing
the Borough of Morrellville to the City of Johnstown and des-
ignating the several wards of the same", was introduced and
passed in due form, on October 19, 1897: All of which appears
by the certified copies of said ordinances and other record
evidence of said borough and city, which is hereto attached,
as proof of said annexation as is required by the
Act of Assembly.

That the territory heretofore comprising the borough of
Morrellville consists of three wards, as appears by the
record of the court. That the said borough was annexed to
said city on the nineteenth day of October, last, and that the
people residing therein are without representation in the
different branches of the government of said city: Therefore,

Your petitioners pray the honorable court to make such
order or decree as will give them the proper representation
therein, as is provided by the Act of Assembly of May 23,
1889, p. 1.281, and suggest for the approval of the court that

said representation be in accordance with the expressed desire of the people of both districts. Also, to appoint election officers and designate places for holding a special election to elect persons for the following named ward offices: one person for Select Council; one person for Common Council, and one person for School Controller for each ward, to hold office until their successors are duly elected as provided by law.

And we will ever pray, etc.

Geo K Shryock
A. Pedan

Cambria County, ss.

Personally appeared before me, a Notary Public, in and for said City and County, George K. Shryock and Samuel A. Pedan, who being duly sworn according to law, doth depose and say that the facts set forth in the foregoing petition are true and correct to the best of their knowledge and belief.

Sworn to and subscribed
before me, this 4 day of
December, 1897. A. D. .

Geo K Shryock
A. Pedan

J. C. Roberts
Notary Public.

An Ordinance

Annexing the Borough of Morrellville to the City of Johnstown.

WHEREAS, The three-fifths of the taxable inhabitants of the Borough of Morrellville have presented their petition to the Council of said Borough, praying that said Council pass the ordinance for the annexation of the Borough of Morrellville to the City of Johnstown, a city of the third class, to which said Borough adjoins, and being part of the County in which the same is situate, etc.

Be it Enacted and Ordained by the Burgees and Town Council of the Borough of Morrellville, and it is hereby enacted and ordained by the authority of the same.

SECTION 1. That the Borough of Morrellville, consisting of three wards, in the County of Cambria, having been duly incorporated under the laws of Pennsylvania, and adjoining the City of Johnstown, a City of the third class, in said County of Cambria, be and the same is hereby annexed to and made three wards of the City of Johnstown, and the territory heretofore comprising the Borough of Morrellville shall hereafter be subject to the laws and ordinances pertaining to said City of Johnstown, with the same force and effect as if said territory now comprising said borough had been within the city limits at the time of the original incorporation of said city.

SEC. 2. This ordinance to become binding and absolute upon all persons and property within the present borough limits when the City of Johnstown, by its proper officers, annex the Borough of Morrellville to and make the same three wards of the City of Johnstown, at which time all future municipal authority of said borough shall cease and determine, as provided for by law in the annexation of boroughs to cities of the third class in this Commonwealth.

Passed finally by Council this 20th day of August, A. D. 1897.

M. V. FRY, President

Attest: R. H. OVERDORFF, Clerk.

Approved Sept. 2, 1897.

W. D. GALBRAITH

I hereby certify that the above is a true and correct providing for the annexing the Borough of Morrellville to the city is now recorded upon the Ordinance Book of said Borough and was by law

Morristown Pa Dec 4th 1897

I hereby certify that Ordinance No 101
entitled an "Ordinance annexing the Borough
of Morristown to the city of Johnston ^{in Dumbria County} was
duly passed by the Council of the Borough
of Morristown in Dumbria County on Aug
20th 1897, and approved by the Burgess of said
Borough on Sept 3rd 1897, and published as
provided by law on Sept 3rd 1897, agreeably to
the petition of three fifths of the taxable inhabitants
of said Borough, as provided by act of
assembly.

R. H. Overhoff

Borough Clerk.

Morristown Pa Dec 4th 1897

Record of the Proceedings of the Councils ~~and the Mayor~~ of the City of Johnstown, Pa., in the matter of an ordinance, entitled, "An Ordinance Annexing the Borough of Morrellville to the City of Johnstown and designating the several wards of the same".

Extract from Minutes of Common Council, Meeting Sept. 21, 1897.

"Mr. Repp then introduced Common Bill No. 385, entitled, "An Ordinance Annexing the Borough of Morrellville to the City of Johnstown and Designating the Several wards of the Same".

The bill was read at length and referred to the Committee on Highways. The Committee subsequently reported the bill favorably and it was ordered for first reading. On motion of Mr. Morley it passed first reading. It was then ordered read a second time and on motion of Mr. Repp passed two readings by a unanimous vote. -----

Extract from Minutes of Common Council, Meeting Oct. 12, 1897.

"Common Bill #385 was then ordered for Third Reading. The Clerk stated that the word "hereafter" in line one section four was a typographical error and should be heretofore. The correction was ordered made and the bill was then read at length, it is entitled,

"AN Ordinance Annexing the Borough of Morrellville to the City of Johnstown and Designating the several wards of the same".

(The ordinance follows.)

Passed finally by the following ~~10/10~~ unanimous vote.

Yeas. Caples, Davis, Hildebrand, Ott, Morley, Potts, Repp, Sunshine, Varner, and Peden. -10. Nays, none.

Extract from Common Council Minutes, meeting Nov. 3, 1897.

"Council having been called by the Mayor to meet in Special Session to consider the Mayor's Message and other general business. The Clerk called the roll at 7:35 o'clock, Messrs Greene, Hildebrand, Kist, and Mattes (4) only four members were present. There being less than a quorum present Mr. Greene moved to adjourn. Mr. Hildebrand seconded the motion, which was unanimously agreed to.

Copy

Councils of City of Johnstown.

FILE OF COUNCIL

Special Ordinance No.

Presented by W. H. Repp.

IN COMMON COUNCIL,

Sept. 21, 1897.

IN SELECT COUNCIL,

AN ORDINANCE

Annexing the Borough of Morrellville to the City of Johnstown and
Designating the Several Wards of the Same.

1 WHEREAS, the Borough of Morrellville duly incorporated as such under the
2 laws of Pennsylvania with its several subdivisions is adjoining the City of Johnstown,
3 a City of the Third Class, and both of which municipalities are in Cambria County,
4 and

1 WHEREAS, it appears by a duly certified ordinance of said Borough, passed
2 by the Council of said Borough, on the 20th day of August, 1897, and approved by
3 the Burgess on the 2nd day of September, 1897, that three-fifths of the taxable in-
4 habitants of said Borough have petitioned the Council thereof to pass said ordinance
5 annexing the said Borough of Morrellville to and making the same part of the City
6 of Johnstown, a City of the Third Class, in the County of Cambria and State of
7 Pennsylvania, therefore

*Be it enacted and ordained by the Select and Common Councils of the City of
Johnstown, and it is hereby enacted and ordained by the authority of the
same:*

1 SECTION 1.—That the territory now comprising the Borough of Morrellville as is
2 shown by the Charter of said Borough, which is duly recorded, and the several de-
3 crees of the court relative to the boundary lines and subdivision of said Borough
4 into wards, as is fully shown on the Borough map, be and the same is hereby
5 annexed to and made part of the City of Johnstown, a City of the Third Class and
6 adjoining the Borough of Morrellville, in Cambria County, with the same force and
7 effect as if the territory now comprising the Borough of Morrellville had been made

8 part of the City of Johnstown at the time of its original incorporation, as provided
9 for by sections 1, 2, 3, and 5, of Article III, of the Act of Assembly entitled an
10 "Act Providing for the Incorporation and Government of Cities of the Third Class,"
11 approved May 23rd, 1889.

1 SECTION 2.—That the present Third Ward of the Borough of Morrellville shall
2 be known and designated as the Eighteenth Ward of the City of Johnstown, and the
3 present Second Ward of the Borough of Morrellville shall hereafter be known and
4 designated as the Nineteenth Ward of the City of Johnstown, and the present First
5 Ward of the Borough of Morrellville shall hereafter be known and designed as the
6 Twentieth Ward of the City of Johnstown.

1 SECTION 3.—That all general ordinances of the City of Johnstown now in force
2 are hereby extended to and over said annexed territory with like force and effect as
3 if said annexed territory had been part of the City of Johnstown at the time of the
4 passage of said ordinances.

1 SECTION 4.—That all ordinances or parts of ordinances ~~hereafter~~ ^{heretofore} passed by said
2 Borough and now existing in said Borough, relating to the government of the same,
3 are hereby repealed.

Passed finally in Select Council

Oct. 19 1897

Attest:

W. D. Irons Clerk.

Geo. J. Phryock
President of Select Council.

Passed finally in Common Council

Oct. 12 1897

Attest:

J. H. Craven Clerk.

J. A. Taden
President of Common Council.

APPROVED

MAYOR.

Attest:

City Clerk.

Extract from Common Council minutes, Meeting Nov. 9, 1897.

"The Mayor having returned without his approval Special Ordinance No. ---, entitled, An Ordinance Annexing the Borough of Morrellville to the City of Johnstown, and Designating the several wards of the same. President Peden stated and ruled as follows: the Ordinance annexing the Borough of Morrellville to the City of Johnstown and designating the several wards of the same", having been passed finally on Oct. 19, 1897, and presented to the Mayor on October 20, 1897, and being by him returned to Common Council with his objections on Nov. 9, 1897, I declare that not having been returned to the Council in which it originated within the fifteen (15) days allowed by law no further action is necessary thereon. No appeal was taken from the ruling of the chair."

Extract from Minutes of Common Council, Meeting Nov. 16, 1897.

"Mr Caples offered the following resolution:

Resolved should Select Council concur, that the residents of Councils be and are hereby authorized and directed to present their petition and required proof of the annexation of the Borough of Morrellville to the City of Johnstown, in order that the residents of the annexed district may have representation in the different branches of government of said city; and the Clerks are hereby authorized and directed to prepare and deliver to the city Solicitor the necessary certificates of the evidence of said annexation.

On motion of Mr. Caples seconded by Mr. Potts the resolution was adopted.

Extract from Minutes of Common Council ,Meeting Nov. 23, 1897.

Council convened in special session at the call of the Mayor to consider a veto message from the Mayor and transact general business.

" President Peden announced that he had received a message from the Mayor vetoing the concurrent resolution of Councils, passed Nov. 16, 1897, in relation to the annexation of the Borough of Morrellville to the city of Johnstown and directed that it be read for information of the councils .

The message was read whereupon President Peden stated " Inasmuch as the resolution referred to in the Message directed the officers of the councils to present their petition and proof to the court so that a decree might be made to give the residents of Morrellville borough proper representation in the city government in accordance with the ordinance annexing said borough to the said city passed finally Oct 19, 1897, is not a legislative resolution requiring consideration by the Mayor but is directing the officers of Select and Common Councils to perform a statutory duty, therefore I rule it is not necessary to take any action on the Message.

The message was filed without further action."

I do hereby certify that the foregoing are true and correct ^{and copy of} extracts from the records as shown in the Minute Book of the Common Council of the City of Johnstown.

W. O. Iron

City Clerk

Office of ...

City Clerk,

W. S. O'Brien,

Johnstown, Pa.

Geo. H. Shryock,
President of Select Council.
S. A. Peden,
President of Common Council.

I do certify that Mr. John W. Cramer of the Fifth ward, City of Johnstown, is the Clerk of the Common Council of the City of Johnstown.

I do certify also that the records of the Common ~~Sup~~ Council show that the Minutes of the meetings of the Common Council, viz:

Oct. 12, 1897, Oct. 19, 1897, Nov. 3, 1897, Nov. 9, 1897, and Nov. 16, 1897 were duly approved.

W. S. O'Brien

City Clerk

Extract from Minutes of Select Council ,Meeting Sept. 21, 1897.

Mr. Hamilton presented a bill No. 466, entitled "An Ordinance Annexing the Borough of Morrellville to the City of Johnstown, and Designating the Several wards of the same."

Accompanying this Ordinance was an ordinance of the Borough of Morrellville ,duly certified as having been passed by the council of the said borough, numbered 101, and entitled, "AN Ordinance Annexing the Borough of Morrellville to the city of Johnstown"- approved Sept 2, 1897. which was read at length.

Mr. Hamilton's bill was read for information and was referred to the Finance Committee. The bill was subsequently reported back favorably without amendment and it was passed two readings "

Extract from the Minutes of Select Council ,Meeting Oct. 19, 1897.

Also Select Bill No. 466, entitled, "An Ordinance Annexing the Borough of Morrellville to the City of Johnstown and designating the several wards of the same" -which is identical with the bill messaged as having passed Common Council, the Common bill was substituted and read at length a third time and was passed finally by the following vote.

Yeas.- Messrs. Axmaker, Dibert, Dye, Foster, Goggin, Hamilton, Jones, Masters, M'Conaughy, Miltenberger, Waters, Watt, Shryock. 13, Nays.-Mr. Roberts, -1.

Regular Meeting.

Extract from Minutes of Select council Meeting. Nov. 16 ,1897.

The ~~Minutes~~ Minutes of the Meetings of Nct. 19, and Nov. 9, were read and approved.

" There was messaged from Common Council the following for concurrence.

Resolved, should the Select Council concur, that the Presidents of Councils are hereby authorized and directed to present their petition and the required proof of the Borough of Morrellville to the city fo Johnstown in order that the residents of the annexed district may hade representatives in the different branches of government in the said city and the Clerks are hereby authorized and directed to prepare and deliver to the city Solicitor the necessary certificates of the evidence of said a nnexation.

On motion of Mr. ,second Masters, the select council concurred."

I do hereby certify that the foregoing are true and correct extracts from our copy of the records shown in the Minutes Book of the Select Council of the City of Johnstown.

W. O. Price
City Clerk

27 Dec 1897
Superior Court of Appeals
Dist of Columbia County
In re Application of the Board of
Superior Court of the City of Johnston

Petition of Geo K. Thayer
and A. B. Eden Presidents
of select & Common Council
of the City of Johnston against
as an illegality and as
Citizens for the designation
of the City of Johnston
and election of officers to
elect representatives to the
City Councils

Filed 6 Dec 1897

M. B. STEPHENS,
ATTORNEY AT LAW,
JOHNSTOWN, PA.

HENRY HALL, PRINTER, INDIANA, PA.

To the Hon. A. V. Barker, President Judge of the Court of Quarter Sessions of Cambria County.

I, the undersigned, G. W. Wagoner, Mayor of the City of Johnstown, respectfully petition your Honor to be permitted herein to answer the petition of the Presidents of the Councils of the City of Johnstown praying for an order or decree annexing the Borough of Morrellville to the City of Johnstown, and to protest against the illegal proceedings of said Councils, as well as of the Council of the said Borough of Morrellville, in the matter of said proposed annexation; and also to protest against the making of an order or decree of annexation, thus ratifying said illegal proceedings.

Your petitioner answers said petition, and represents as follows:

First. The said City of Johnstown is a city of the third class, incorporated under the Act of May 23rd. 1889, entitled, "An Act providing for the incorporation and government of cities of the third class", and your petitioner is its present Mayor.

Second. The Ordinance of the Borough of Morrellville providing for the annexation of said Borough of Morrellville to the City of Johnstown, No. 101, and entitled "An Ordinance annexing the Borough of Morrellville to the City of Johnstown", a copy of which is hereto attached, and marked "Exhibit A", provides that the annexation of said Borough to said city be conditional; that it must be admitted as three wards, which is contrary to said Act of Assembly, and is not within the power of the Court to order and decree.

Third. The Ordinance of the City of Johnstown, entitled "An Ordinance annexing the Borough of Morrellville to the City of Johnstown", and designating the several wards of the same, a copy of which is hereto attached and marked "Exhibit B." is defective in the following particulars:

I. In its title. The title contains two distinct subjects

viz:

a. annexing the Borough of Morrellville to the City of Johnstown.

b. Creating the several wards of the same.

II. It creates out of the former wards of the Borough of Morrellville, three wards of the City of Johnstown, and designates them by number. This is contrary to law, and not in the power of the Court to order or decree.

In the City of Johnstown we already have seventeen wards, and only twenty-one wards are allowed in cities of the third class. The Borough of Morrellville, annexed as three wards, would leave only one additional ward to be admitted, and would shut out a vast amount of adjoining territory which should be annexed in a short time. To so admit it, would be unfair, as the Seventh, Eighth, and Seventeenth wards have much more territory than the whole of the Borough of Morrellville, and a number of the present wards have a greater population than any two wards of the Borough of Morrellville.

Fourth. The said Ordinance of the City of Johnstown has not been legally passed, as is shown by the records of the minutes of said Councils, a copy of which is hereto attached, and marked "Exhibit C." and by the certificate and affidavit of the City Clerk, which is hereto attached, and marked "Exhibit D."

In the first line of Section 4 of said City of Johnstown Ordinance, the word "hereafter" was stricken out, and the word "heretofore" interlined, in writing, with pen. These amendments were made after the second reading by both branches of Councils. These amendments were contrary to law, requiring that all amendments to every bill shall be printed for the use of the members before the final vote is taken on the bill.

The City of Johnstown Ordinance was presented to your petitioner, as Mayor, for approval or disapproval, October 20th. 1897,

and on November 2nd., 1897, your petitioner, as said Mayor, issued a call for a special meeting of Common and Select Councils to convene November 3rd., A.D. 1897, to consider the message of the Mayor vetoing said Ordinance. The notices of this special meeting of Councils were delivered to each and every member of both Councils full twenty-four hours before the said time fixed for the said special meeting, and the said Ordinance, with the message of the Mayor, vetoing the same, was returned to said Common Council, the body in which the same originated, on the night of said special meeting, and at the hour fixed for the said meeting; and at said special meeting the City Clerk, in the chamber of Common Councils of said City, and at the hour fixed by the Mayor for said special meeting, delivered to the Clerk of Common Council the said veto message, and informed the said Council and called the attention of the members present to the fact that it was a message from the Mayor; and no quorum being present, the said special meeting of Councils adjourned without considering said veto message.

The said meeting of Councils was called specially to convene November 3rd., 1897, to consider said veto message, which was within the fifteen days from the presentation of the said Ordinance to the Mayor, as required by law and Ordinance of said City. It was called specially for the reason that the next stated meeting of Councils did not occur within the fifteen days after the presentation of said Ordinance to the Mayor.

The said veto message having been presented to Common Council, the body in which said Ordinance originated, for action, and not having been read or considered, and no action having been taken with reference to the same, no further steps can be taken under said Ordinance until said veto message has been fairly and legally disposed of, as Section 7, Article 6, of said Act, provides that "Every legislative Act of Councils shall be by resolution or ordinance, and every ordinance or resolution which shall

have passed both branches, shall be presented, duly certified, to the Mayor, for approval. If he approves, he shall sign the same; but if he shall not approve, he shall return the same, with his objections, to the branch of Councils where it originated; which shall thereupon proceed to reconsider x x x ".

Fifth. On November 16th., 1897, there was passed by both branches of said City Councils, a resolution that the Presidents of Council be authorized and directed to present their petition for and the required proof of the annexation of the Borough of Morrellville to the City of Johnstown, to Court, in order that the residents of the annexed district might have representation in the different branches of the government of said City.

The Mayor's message, vetoing this Resolution, a copy of which is hereto attached and marked "Exhibit E.", was duly and legally presented to Council on November 23rd., 1897, within fifteen days from the presentation of said Resolution to the Mayor; and after reading the said veto message, the President of Common Council, the body in which said Resolution originated, ruled that inasmuch that the Resolution vetoed by the Mayor was of a directory and not not of a legislative nature, it was not necessary to take any action on the Mayor's veto, and the veto was not considered by Council.

THEREFORE, on account of the illegality of the title and provisions of the said Ordinances, and the illegal proceedings of the Councils of the City of Johnstown, contrary to statute and the Ordinances of said City, (your petitioner respectfully prays Your Honor to refuse to make an order or decree annexing the Borough of Morrellville to the City of Johnstown as prayed for in said petition.

And he will ever pray, etc.,

L. H. Wagner
Mayor, City of
Johnstown.

State of Pennsylvania:

County of Cambria : SS:

On this *Fourth* day of December,
A.D. 1897, before me, the subscriber, a Notary Public in and for
said County, personally appeared G. W. Wagoner, Mayor of the
City of Johnstown, County of Cambria, and State of Pennsylvania,
who being by me duly ~~sworn~~ *affirmed* according to law, did depose and say,
that the facts set forth in the above and foregoing petition and
answer, which he states of his own knowledge, are true and correct,
and those which he states and sets forth from information received,
he verily believes to be true.

affirmed
~~sworn~~ and subscribed before :
me the day and year aforesaid, :
as witness my hand and Notarial seal.

George P. Rose
Notary Public

G. W. Wagoner
Mayor of the City
of Johnstown.

Geo. W. Wagoner,
Mayor,
No. 435 Franklin Street,
Johnstown, Pa.

Exhibit C

Copy of Veto Message

Johnstown, Pa., Nov. 3, 1897.

To the Members of Common Council,

City of Johnstown.

Gentlemen:

I herewith return Special Ordinance No. ___ entitled
"An Ordinance Annexing the Borough of Morrellville to the City of
Johnstown and designating the several Wards of the Same" without
my approval.

I have examined the Ordinance in its relations to the "Act of
May 23rd. 1889, Providing for the Incorporation and Government of
Cities of the Third class" and find that it is defective. It is
necessary to the stability of municipal legislation that ordinances
should conform to the law which directs how they shall be enacted.

The ordinance is defective in the following particulars:

In its title: The title contains two distinct subjects,
namely: 1 - Annexing the Borough of Morrellville to the City of
Johnstown. 2 - Creating the several wards of the same. This
violates Section 2, Art. IV of the Act of 1889 which is in part
as follows. "No bill shall be passed containing more than one sub-
ject, which shall be clearly expressed in its title." That the
above are two distinct subjects is proven conclusively by the fact
that the Act incorporating Cities of the Third class authorizes
such cities to legislate upon the annexation of territory, but
confers the power of creating wards in said cities upon the Court

Geo. W. Wagoner,
Mayor,
No. 435 Franklin Street,
Johnstown, Pa.

-2-

of Quarter Sessions. The Ordinance passed by the Borough Council
upon which the Johnstown ordinance is based
of Morrellville provides in its two sections as follows:

"Section 1. That the Borough of Morrellville, consisting of three wards, in the County of Cambria, having been duly incorporated under the laws of Pennsylvania, and adjoining the City of Johnstown, a City of the Third class, in said County of Cambria, be and the same is hereby annexed to and made three wards of the City of Johnstown, and the territory heretofore comprising the Borough of Morrellville shall hereafter be subject to the laws and ordinances pertaining to said City of Johnstown, with the same force and effect as if said territory now comprising said borough had been within the city limits at the time of the original incorporation of said city.

Sec. 2. This ordinance to become binding and absolute upon all persons and property within the present borough limits when the City of Johnstown, by its proper ordinances, annex the Borough of Morrellville to and make the same three wards of the City of Johnstown, at which time all future municipal authority of said borough shall cease and determine, as provided for by law in the annexation of boroughs to cities of the third class in this commonwealth."

There is no law which authorizes Morrellville Borough to make three wards out of territory which may be annexed to the city of Johnstown as is done in Section 1. of the ordinance.

There is no law which authorizes Morrellville Borough to impose conditions upon the City of Johnstown under which it will agree to become part of the city. Section 2 of its ordinance distinctly states that Morrellville will not accept annexation until the City of Johnstown creates three wards out of its territory. The Borough of Morrellville has no authority to enact an ordinance creating wards and making conditions for the City of Johnstown.

P

Section 1 of Special Ordinance No. ___ provides for the annexation of the Borough of Morrellville to the City of Johnstown with its subdivision into wards and continues "with the same force and effect as if the territory now comprising the Borough of Morrellville had been part of the City of Johnstown at the time of its original incorporation, as provided for by Sections 1, 2, 3, & 5 of Article 3 of the Act of Assembly entitled "An Act Providing for the incorporation and Government of cities of the Third Class".

This section is misleading, for in the original consolidation of boroughs and towns into a city of the third class, each one comes into the new city under different conditions than when a borough or any territory is annexed to an existing city of the third class.

An examination of Article 1 and Article 3 of the Act will clearly show the different conditions. Morrellville must be annexed under the provisions of Article 3 and the ordinance makes the reference to the proper sections, but the ~~results~~ ^{effects} sought to be accomplished are those authorized in Article 1. which ^{is} only ~~applicable to the~~ ^{applicable to the}

original consolidation of a city of the third class. The ordinance violates the provisions of the Article under which it is alleged to be enacted. This is a very important distinction for Article 1. in providing for the original incorporation of cities of the third class sets forth "that where two or more towns or boroughs are consolidated into a city the debt or debts of each of said towns or boroughs contracted prior to such consolidation shall be paid by such towns or boroughs respectfully." After a city is formed and a borough or territory is annexed to it there is no such provision made for the payment of the respective debts. Upon this point Tiedman on Municipal Corporations, Page 89, Section 58 says:

"Where the corporation has been extinguished, and the community and the territory have been annexed to an adjoining corporation the general rule of law is plain that, by such annexation, the rights of property, as well as the liabilities of the corporation which has thus been annexed, are acquired by the corporation to which it is annexed. And the consolidated corporation thus formed will enjoy the benefits of the property of both, and at the same time assume the liabilities and debts of both."

Section 2 of the Special ordinance creates the former wards of Morrellville into wards of the City of Johnstown and designates them by new numbers. Councils have no authority to divide annexed territory into wards. Section 5, Article 3, Act of 1889 provides

specifically how annexed territory shall gain representation in the City government:

// Section 5. Whenever any borough, township, or part thereof, out-lots or section of land shall be annexed to an adjoining or adjacent city, as hereinbefore provided, it shall be the duty of the court, upon petition and proof, to make such order or decree as will give to the people of the annexed territory representation in the different branches of government of said city, by including said territory within the limits of an adjacent ward or wards, or by creating a new ward thereof, and said court shall, in case of the creation of a new ward, appoint the election officers and place for holding the first election of ward officers, and for that purpose may order a special election, if said court shall deem the same necessary, to be conducted in the manner provided by law for conducting municipal elections. The officers elected at such special election shall hold their respective offices until their successors, who are hereby required to be elected at the municipal election held on the third Tuesday of February next succeeding the same, shall be duly qualified."

The ordinance in question takes this power from the court where the Act fixes it, and undertakes to declare that there shall be three wards; that they shall have certain numbers, and by so attempting to create the three wards the condition upon which annexation will be agreed to by Morrellville is accepted by the City.

Begin

The intention of each ordinance is to create new wards of the City of Johnstown in territory which does not yet contain wards of the City, and which cannot be divided into wards except by the Court of Quarter Sessions. Under Section 1 of Article 2 of the Act, new wards are ~~readily~~ ^{with ease} formed when the citizens interested desire them. When that portion of ~~the~~ Stonycreek Township now forming the Seventeenth ward came into the city it was attached to the Seventh ward and subsequently constituted a ward by the Court, the same procedure could ~~readily~~ be followed in the case of Morrellville.

This matter has been passed upon by the courts and does not seem to be open to question. ^{From the decisions of the Pa courts} the general proposition is formulated by an authority on municipal law as follows:

"The procedure whereby a city may be divided into wards is purely statutory, and the provisions of the statute must be complied with." Tiedman on Municipal Corporations, Page 98, Sec. 63. If this position is correct, and I am advised that it is, then the ordinance is in violation of Article 2, Section 1 of the Act of 1839.

It must be remembered that by the creation of a ward an election district is also created. It is clear that Councils do not possess the authority to create election districts ^{either directly or indirectly} in territory where the districts have been legislated out of existence, for the Constitution of Pennsylvania settles this matter in Section 11, Article 8, which is in part as follows. "Townships and wards of

cities or boroughs shall form or be divided into election districts of compact and contiguous territory in such manner as the Court of Quarter Sessions of the city or county in which the same are located may direct. The ordinances should have been absolutely silent on the subject of wards and left the Court to settle them as the Constitution and Act of Assembly provides.

It may be urged that the election districts have already been formed in the ~~manners~~^{manner} prescribed by the Constitution during the life of the Municipality of Morrellville, but the ordinances of annexation causes the extinguishment of Morrellville municipality, and the wards are wards Morrellville and not of the City of Johnstown. As wards and election districts of the City of Johnstown they must be created again, and this creation must be in the manner prescribed by the Constitution and Act of Assembly. The same machinery that called them into existence originally can do so again under the changed condition and no permanent injustice be done to any citizen.

The law in relation to the question of wards in annexed territory; to the creation of new wards in cities of the third class and to the creation of election districts depending on wards is so clear and positive that the conclusion is irresistible to me that Councils of cities of the third class have no authority to enact ordinances accepting or creating wards in any territory which may be annexed to the corporation.

I notice in Section 4 of the Ordinance as presented to me, a word has been stricken out and a new word substituted in writing. There is no minute in the records of Councils to show that the above mentioned amendment was regularly and legally made. It is certainly not printed in the ordinance. While this is a technical objection yet it is one which would be fatal to any ordinance as Section 3. Article IV, Act of 1889, provides. "Every bill shall be read at length in each branch; all amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill etc."

To sum up: The title and provisions of the ordinance, and ~~the~~ ^{its} form, are, in my opinion, inconsistent with the Constitution and Laws of the Commonwealth and therefore cannot be enacted. See paragraph XLVI. Section 3, Article 5, Corporate Powers, Act of 1889.

Respectfully,

Handwritten note:
The certified copy of the Ordinance is a true and correct copy of the Ordinance as presented to me in the presence of the members of the Council of the City of Johnstown, Pa. and the Mayor, Geo. W. Wagoner, on the 18th day of June, 1891.
G. W. Wagoner, Mayor.

TO THE HONORABLE MEMBERS OF THE HOUSE OF REPRESENTATIVES
OF THE STATE OF NEW YORK:
IN SENATE,
January 10, 1901.
REPORT
OF THE
COMMISSIONERS OF THE LAND OFFICE,
IN ANSWER TO A RESOLUTION PASSED BY THE SENATE
MAY 1, 1899, AND BY THE HOUSE OF REPRESENTATIVES
MAY 1, 1900, RELATIVE TO THE LANDS BELONGING TO THE STATE.
ALBANY: J. B. LEECH, STATE PRINTER.
1901.

I do certify that the within is a true and correct copy of the Mayor's veto Message in the matter of the annexation of the Borough of Morrellville to the City of Johnstown returning Common Council Bill No. 285 entitled "an ordinance annexing the Borough of Morrellville to the City of Johnstown and designating the several wards of the same" The same as presented to Common Council at their meeting Nov. 3^d 1897.
W. D. O'Brien, City Clerk.

W. O. Price, City Clerk

Common Council
Exhibit D

Record of the Proceedings of the Councils ~~and Mayors~~ of the City of Johnstown, Pa., in the matter of an ordinance, entitled, "An Ordinance Annexing the Borough of Morrellville to the City of Johnstown and designating the several wards of the same".

Extract from Minutes of Common Council, Meeting Sept. 21, 1897.

"Mr. Repp then introduced Common Bill No. 385, entitled, "An Ordinance Annexing the Borough of Morrellville to the City of Johnstown and designating the several wards of the same".

The bill was read at length and referred to the Committee on Highways. The Committee subsequently reported the bill favorably and it was ordered for first reading. On motion of Mr. Morley it passed first reading. It was then ordered read a second time and on motion of Mr. Repp passed two readings by a unanimous vote."

Extract from Minutes of Common Council, Meeting Oct. 12, 1897.

"Common Bill #385 was then ordered for Third Reading. The Clerk stated that the word "hereafter" in line one section four was a typographical error and should be heretofore. The correction was ordered made and the bill was then read at length, it is entitled, "AN Ordinance Annexing the Borough of Morrellville to the City of Johnstown and designating the several wards of the same".

(The ordinance follows.)

Passed finally by the following ~~vote~~ unanimous vote.

Yeas. Caples, Davis, Hildebrand, Ott, Morley, Potts, Repp, Sunshine, Varner, and Peden. -10. Nays, none.

Extract from Common Council Minutes, meeting Nov. 3, 1897.

"Council having been called by the Mayor to meet in Special Session to consider the Mayor's Message and other general business. The Clerk called the roll at 7:35 o'clock, Messrs Greene, Hildebrand, Kist, and Lattes (4) only four members were present. There being less than a quorum present Mr. Greene moved to adjourn. Mr. Hildebrand seconded the motion, which was unanimously agreed to.

Extract from Common Council minutes, Meeting Nov. 9, 1897.

The Mayor having returned without his approval Special Ordinance No--- entitled, "An Ordinance annexing the Borough of Morrellville to the City of Johnstown and designating the several wards of the same". President Peden stated and ruled as follows: "The Ordinance annexing the Borough of Morrellville to the City of Johnstown and designating the several wards of the same, having been passed finally on Oct. 19, 1897, and presented to the Mayor on Oct. 20, 1897, and being by him returned to Common Council with his objections on Nov. 9, 1897, I declare that not having been returned to the Council in which it originated within the fifteen (15) days allowed by law no further action is necessary thereon.

No appeal was taken from the ruling of the chair.

Extract from Minutes of Common Council, Meeting Nov. 16, 1897.

Mr. Caples offered the following resolution:

Resolved should Select council concur, that the Presidents of Councils be and are hereby authorized and directed to present their petition and the required proof of the annexation of the Borough of Morrellville to the city of Johnstown in order the residents of the annexed district may have representation in the different branches of government of said city.

And the clerks are hereby authorized and directed to prepare and deliver to the city Solicitor the necessary certificates of the evidence of said annexation .

On motion of Mr. Caples Seconded by Mr. Potts the resolution was adopted .

Extract from Minutes of Common Council ,Meeting Nov. 23, 1897.

Council convened in special session at the call of the Mayor to consider a veto message from the Mayor and transact general business.

President Peden announced that he had received a message from the Mayor vetoing the concurrent resolution of Councils, passed Nov. 16, 1897, in relation to the annexation of the Borough of Morrellville to the city of Johnstown and directed that it be read for information of the councils .

The message was read whereupon President Peden stated " Inasmuch as the resolution referred to in the Message directed the officers of the councils to present their petition and proof to the court so that a decree might be made to give the residents of Morrellville borough proper representation in the city government in accordance with the ordinance annexing said borough to the said city passed finally Oct 19, 1897, is not a legislative resolution requiring consideration by the Mayor but is directing the officers of elect and Common Councils to perform a statutory duty, therefore I rule it is not necessary to take any action on the message.

The message was filed without further action."

I do hereby certify that the above and foregoing is a true and correct extract from and copy of the Minutes of the Meetings of the Common Council as recorded in the Minute Book of said Council of the City of Johnstown

W. S. O'Brien

City Clerk

Exhibit *D*
Select Council

Extract from Minutes of Select Council, Meeting Sept. 21, 1897.

Mr. Hamilton presented a bill No. 466, entitled "An Ordinance Annexing the Borough of Morrellville to the City of Johnstown, and Designating the Several wards of the same."

Accompanying this Ordinance was an ordinance of the Borough of Morrellville, duly certified as having been passed by the council of the said borough, numbered 101, and entitled, "AN Ordinance Annexing the Borough of Morrellville to the city of Johnstown"- approved Sept. 2, 1897. which was read at length.

Mr. Hamilton's bill was read for information and was referred to the Finance Committee. The bill was subsequently reported back favorably without amendment and it was passed two readings "

Extract from the Minutes of Select Council, Meeting Oct. 19, 1897.

Also Select Bill No. 466, entitled, "An Ordinance Annexing the Borough of Morrellville to the City of Johnstown and designating the several wards of the same" -which is identical with the bill messaged as having passed Common Council, the Common bill was substituted and read at length a third time and was passed finally by the following vote.

Yeas.- Messrs. Axmaker, Dibert, Dye, Foster, Goggin, Hamilton, Jones, Waters, M'Conaughy, Miltenberger, , Waters, Watt, Shryock. 13, Nays.-Mr. Roberts, -1.

Regular Meeting.

Extract from Minutes of Select council Meeting. Nov. 16, 1837.

The Minutes of the Meetings of Oct. 19, and Nov. 9, were read and approved.

"There was messaged from Common Council the following for concurrence.

Resolved, should the Select Council concur, that the Presidents of Councils are hereby authorized and directed to present their petition and the required proof of the Borough of Morrellville to the city of Johnstown in order that the residents of the annexed district may have representatives in the different branches of government in the said city and the Clerks are hereby authorized and directed to prepare and deliver to the city Solicitor the necessary certificates of the evidence of said annexation.

On motion of Mr. second Masters, the select council concurred."

I do hereby certify that the above and foregoing are true and correct extracts from and copy of the Minutes of the Meetings of the Select Council of the City of Johnstown as recorded in the Minute Book of said Council

W. O. Frier
City Clerk

Office of ...

City Clerk,
W. S. O'Brien,
Johnstown, Pa.

Exhibit F

Geo. H. Shryock,
President of Select Council.
S. A. Peden,
President of Common Council.

I do certify that the bill entitled, "An ordinance annexing the Borough of Morrellville to the City of Johnstown and Designating the several wards of the same", No. 385, File of Common Council was passed finally by Councils October 19, A.D. 1897, was presented to the Mayor for approval October 20, A.D. 1897, returned vetoed with his objections to the Common Council the body in which it originated, addressed to the President of the Common Council on the 3d. day of November, 1897, which branch of Councils had been called to meet in special session by the Mayor, on Nov. 2nd. 1897, to consider a "Message from the Mayor and other general business". At the special meeting of the Common Council the message from the Mayor being in the Common Council Chamber and placed on the table of the Clerk and the Clerk's attention called as well as the attention of the members present, to the fact that it was a message from the Mayor, and no quorum being present the special meeting of the Common Council adjourned.

All of which was within fifteen days from the date of the presentation of said ordinance to the Mayor.

State of Pennsylvania,

County of Cambria.

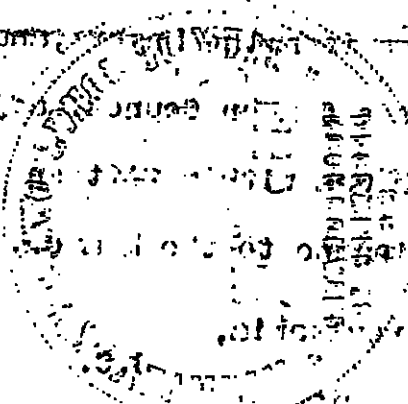
W. S. O'Brien
City Clerk

On this 29th. day of November 1897, before me, the subscriber a notary public in and for said County personally appeared, W.S.O'Brien, City Clerk of the City of Johnstown, who, being by me duly sworn, according to law, did depose and say that the facts set forth in the above and foregoing certificate are true and correct.

Sworn and subscribed before me the
day and year aforesaid, as witness my
hand and Notarial seal.

W. S. O'Brien
City Clerk

Notary Public



Geo. W. Wagoner,
Mayor,
No. 435 Franklin Street,
Johnstown, Pa.

Exhibit F

Johnstown, Pa., Nov. 23, 1897.

To the President and Members of Common Council.

City of Johnstown,

Gentlemen:-

The following resolution was introduced and adopted in Common Council on Nov. 16, 1897 and concurred in by Select Council on the same date:

"Resolved, should Select Council concur, that the Presidents of Councils be and are hereby authorized and directed to present their petition and the required proof of the annexation of the borough of Morrellville to the City of Johnstown, in order that residents of the annexed district may have representatives in the different branches of government of said city.

And the Clerks are hereby authorized and directed to prepare and deliver to the City Solicitor the necessary certificates of the evidence of said annexation."

I return it to the branch in which it originated without my approval for the following reasons:

It undertakes to authorize the presidents of councils " to present their petition and the required proof of the annexation of the borough of Morrellville to the city of Johnstown" when the records of Councils show that the borough of Morrellville has not been annexed to the City of Johnstown, and that no proofs of such annexation can be presented to Court because there are none in existence.

For the information of Councils I beg leave to set forth the record as made up in the Morrellville matter.

The bill entitled "An Ordinance Annexing the Borough of Morrellville to the City of Johnstown and designating the several wards of the same" No. ___ File of Council was passed finally by Councils Oct. 19, A. D. 1897. It was presented to the Mayor Oct. 20, 1897. On/Nov. 2, 1897 the Mayor issued a call for a meeting of Common and Select Councils to convene on Nov. 3, 1897 at 7:30 p.m. to consider a "Message from the Mayor and the transaction of general business." The notices of the meeting were delivered to each member of Councils twenty-four hours before the time for meeting as required by law. The Morrellville annexation ordinance with a veto message was returned to Common Council; the body in which it originated, addressed to the President of Common Council. On the night of the Special Meeting the City Clerk, in the Chamber of the Common Council, delivered to the Clerk of Common Council, from the Mayor, the ordinance and veto message. From the approved minutes of Common Council it appears that there being no quorum, Common Council adjourned without transacting any business. These events transpired within the fifteen days allowed the Mayor by law, in which to approve or veto the actions of Councils.

In computing the fifteen days the day upon which the Mayor receives an ordinance or resolution is not counted as provided in Section 2, General Ordinance No. 8, entitled "An Ordinance Provid-

ing for the selection and defining the duties of the City Clerk" Approved April 26, 1897. Upon this basis the fifteen days expired Nov. 4, 1897 and Councils were called together Nov. 3, 1897. Upon the failure of Councils to meet on Nov. 3rd. the ordinance and veto message were taken charge of by the City Clerk and filed by him in his office for the use of the Councils.

In these proceedings the Mayor fulfilled all the requirements of the law in getting his veto message before the proper branch of Council and when it passed into the possession of Common Council at a meeting convened within the fifteen days it became an item of business which the said Council could not ignore or refuse to consider and dispose of. The veto message is still legally before Common Council. No further steps in the annexation of Morrellville can be taken under the present ordinance until the veto message has been fairly and legally disposed of.

I am aware that at a Special Meeting of Common Council Nov. 9, 1897 the President refused to allow the veto message to be considered and ruled as follows.

"Chamber of Common Council Nov. 9, 1897, the Mayor having returned Special Ordinance No. ----, entitled, "An Ordinance Annexing the borough of Morrellville to the City of Johnstown and designating the several wards of the same", without his approval; President Peden stated and ruled as follows: "The Ordinance annexing the Borough of Morrellville to the City of Johnstown and designat-

ing the several wards of the same having been passed finally on October 19, 1897, and having been presented to the Mayor on October 20, 1897, and by him returned to Common Council on November 9, 1897 with his objections, I declare that not having been returned to the Council in which it originated within the fifteen days allowed by law, no further action is necessary thereon."

With due respect to the President of Common Council I must say that he is in error as to the facts in the case, as the records of Councils will show. The veto message was not returned to Common Council on Nov. 9, 1897, but it was returned on Nov. 3, 1897. It was then in the Chamber of Common Council in the possession of the Clerk of Common Council and became one of the documents over which the officials of Common Council had and still retain absolute control. The Common Council was called to order in due form on Nov. 3, 1897, and subsequently adjourned for want of a quorum. It was the sworn duty of the members of Common Council to meet on Nov. 3rd, to attend to the business that they were legally called upon to consider. The matters to be considered were in the possession of their sworn officers at the proper time and place, and it is not within the power of Council to nullify the provisions of the law or obstruct the Mayor in the performance of his duty by refusing or neglecting to hold legal sessions. So long as the law provides that "Every legislative act of the Councils shall be by resolution or ordinance and every ordinance or

Exhibit B
Copy

Councils of City of Johnstown.

FILE OF

COUNCIL

Special Ordinance No.

Presented by W. H. Repp.

IN COMMON COUNCIL,

Sept. 21, 1897.

Com. Lic #300

IN SELECT COUNCIL,

AN ORDINANCE

Annexing the Borough of Morrellville to the City of Johnstown and
Designating the Several Wards of the Same.

1 WHEREAS, the Borough of Morrellville duly incorporated as such under the
2 laws of Pennsylvania with its several subdivisions is adjoining the City of Johnstown,
3 a City of the Third Class, and both of which municipalities are in Cambria County,
4 and

1 WHEREAS, it appears by a duly certified ordinance of said Borough, passed
2 by the Council of said Borough, on the 20th day of August, 1897, and approved by
3 the Burgess on the 2nd day of September, 1897, that three-fifths of the taxable in-
4 habitants of said Borough have petitioned the Council thereof to pass said ordinance
5 annexing the said Borough of Morrellville to and making the same part of the City
6 of Johnstown, a City of the Third Class, in the County of Cambria and State of
7 Pennsylvania, therefore

*Be it enacted and ordained by the Select and Common Councils of the City of
Johnstown, and it is hereby enacted and ordained by the authority of the
same:*

1 SECTION 1.—That the territory now comprising the Borough of Morrellville as is
2 shown by the Charter of said Borough, which is duly recorded, and the several de-
3 crees of the court relative to the boundary lines and subdivision of said Borough
4 into wards, as is fully shown on the Borough map, be and the same is hereby
5 annexed to and made part of the City of Johnstown, a City of the Third Class and
6 adjoining the Borough of Morrellville, in Cambria County, with the same force and
7 effect as if the territory now comprising the Borough of Morrellville had been made

8 part of the City of Johnstown at the time of its original incorporation, as provided
9 for by sections 1, 2, 3, and 5, of Article III, of the Act of Assembly entitled an
10 "Act Providing for the Incorporation and Government of Cities of the Third Class,"
11 approved May 23rd, 1889.

1 SECTION 2.—That the present Third Ward of the Borough of Morrellville shall
2 be known and designated as the Eighteenth Ward of the City of Johnstown, and the
3 present Second Ward of the Borough of Morrellville shall hereafter be known and
4 designated as the Nineteenth Ward of the City of Johnstown, and the present First
5 Ward of the Borough of Morrellville shall hereafter be known and designed as the
6 Twentieth Ward of the City of Johnstown.

1 SECTION 3.—That all general ordinances of the City of Johnstown now in force
2 are hereby extended to and over said annexed territory with like force and effect as
3 if said annexed territory had been part of the City of Johnstown at the time of the
4 passage of said ordinances.

1 SECTION 4.—That all ordinances or parts of ordinances ^{heretofore} ~~hereafter~~ passed by said
2 Borough and now existing in said Borough, relating to the government of the same,
3 are hereby repealed.

Passed finally in Select Council

Oct 19 1897

Attest:

W. O. Brown

Clerk.

Geo. J. Phogoch

President of Select Council.

Passed finally in Common Council

Oct 12 1897

Attest:

J. T. Cramer

Clerk.

J. A. Pedder

President of Common Council.

APPROVED

MAYOR.

Attest:

City Clerk.

I certify that the within is a true and correct
copy of ordinance passed by the Councils of
the City of Johnstown and vetoed by the Mayor
W. O. Brown City Clerk

I do certify that the within is a true
and correct copy of an Ordinance
of the Borough of Monroeville in the mat-
ter of the annexation of said Borough
to said City of Johnstown as it was
submitted to the Councils of said City
at meeting April 21st 1897

W. O. Frein, City Clerk

Exhibit A
No. 101

An Ordinance

Annexing the Borough of Morrellville to the City of Johnstown.

WHEREAS, The three-fifths of the taxable inhabitants of the Borough of Morrellville have presented their petition to the Council of said Borough, praying that said Council pass the ordinance for the annexation of the Borough of Morrellville to the City of Johnstown, a city of the third class, to which said Borough adjoins, and being part of the County in which the same is situate, etc.

Be it Enacted and Ordained by the Burgess and Town Council of the Borough of Morrellville, and it is hereby enacted and ordained by the authority of the same.

SECTION 1. That the Borough of Morrellville, consisting of three wards, in the County of Cambria, having been duly incorporated under the laws of Pennsylvania, and adjoining the City of Johnstown, a City of the third class, in said County of Cambria, be and the same is hereby annexed to and made three wards of the City of Johnstown and the territory heretofore comprising the Borough of Morrellville shall hereafter be subject to the laws and ordinances pertaining to said City of Johnstown, with the same force and effect as if said territory now comprising said borough had been within the city limits at the time of the original incorporation of said city.

SEC. 2. This ordinance to become binding and absolute upon all persons and property within the present borough limits when the City of Johnstown, by its proper ordinances, annex the Borough of Morrellville to and make the same three wards of the City of Johnstown, at which time all future municipal authority of said borough shall cease and determine, as provided for by law in the annexation of boroughs to cities of the third class in this Commonwealth.

Passed finally by Council this 20th day of August, A. D. 1897.

M. V. FRY, President.

Attest: R. H. OVERDORFF, Clerk.

Approved Sept. 2, 1897.

W. D. GALBRAITH, Burgess.

I do hereby certify that the above is a true and correct copy of Ordinance #101 providing for the annexing of the Borough of Morrellville to the City of Johnstown, as the same is now provided for by law and was duly published as provided for by law on the 18th day of September 1897.

27
Geo. W. Wagoner,
Mayor,
No. 435 Franklin Street,
Johnstown, Pa.

-5-

resolution which shall have passed both branches shall be presented duly certified to the Mayor for approval" the executive can not permit any legislation to be enacted without passing through the prescribed form. The executive is part of the lawmaking power of the municipality. He can not escape his part of that duty, nor can Councils ignore or annul his prerogative.

"I trust you will consider this matter from the standpoint of unprejudiced public officials. If the reasons advanced against the ordinance in the veto message are not good you have the power to reconsider and pass it over the veto. If the reasons are good you have the power to sustain the veto and correct any mistakes by starting the matter again. I am concerned now in having the provisions of the law complied with and in preserving the form and regularity with which our municipal legislation is enacted, and in maintaining these vital points I ask the assistance of all citizens.

Respectfully

G. W. Wagoner
Mayor

10-25-1902

F
I do certify that the within is a copy of the Mayor's
message vetoing Common Council resolution, relating
to petition and proof of annexation of Borough of
Morrellville, passed Nov. 16, 1897. Returned to
Special Meeting of Common Council Nov. 23, 1897

W. O. Frein
City Clerk

No 112 Dec 1899

ANSWER OF G.W. WAGONER, MAYOR
OF THE CITY OF JOHNSTOWN, TO
THE PETITION OF THE PRESIDENTS
OF THE COUNCIL OF THE SAID
CITY, PRAYING FOR AN ORDER OR
DECREE ANNEXING THE BOROUGH OF
MORELLEVILLE TO SAID CITY.

Filed & Dec 1899

Attest
Horace R. Rose
HORACE R. ROSE,
ATTORNEY AT LAW,
JOHNSTOWN, PA.

In the Court of Quarter Sessions of the Peace for
Cambria County.

In re Annexation of the Borough of Morrellville to the
City of Johnstown.

The petitioners, George K. Shryock and Samuel A. Peden,
the respective presidents of the Select and Common Councils,
of the City of Johnstown, object to the filing of an alleged
answer to said petition of "George W. Wagoner, Mayor of the
City of Johnstown," for the following reasons:

1st. That said George W. Wagoner, Mayor of said City, is not
a respondent in the proceeding and therefore cannot file an
answer.

2nd. The Mayor does not represent the said City in their
proceeding, inasmuch as the said Councils of said City have
authorized the said petitioners to represent the City of
Johnstown.

3d. The alleged answer is not germane, inasmuch as the
petitioners have only asked the Court to decree the proper
representation for the annexed territory, which territory
has been annexed to said City since October 19, 1897.

4th. The answer cannot be filed by George W. Wagoner, Mayor
of said City, for the reason that that proceeding could only
be done on an appeal taken within ten days after the final
action of Councils, and that he did not enter an appeal
thereto.

5th. That the questions raised in the alleged answer are not
material to the provisions of section 5 of article 111, of the
Act of May 23, 1889, as the records disclose the proof of the

annexation, which the Court is authorized to decree the proper representation therein.

6th. That the ex parte statements of alleged facts contained in the certificates of William S. O'Brien, City Clerk, are contradicted by the records of said councils, which he certifies to be true and correct.

7th. That under sec. 5 of article 111, (ibid), if the proofs are satisfactory to the Court, the conclusion is that a decree should be drawn in accordance with the prayer, as this proceeding is not an appeal.

8. That the Mayor has no authority to veto an ordinance annexing a borough to a city of the third class, as the action of councils is "final and conclusive."

M B Stephens
City Solicitor

HCB Strong
attorney for George
K. Shuybek and Samuel
H. Madan.

Dec. 6, 1897,

10th Dec Dec 1897

IN THE COURT OF QUARTER SESSION

OF

CAMBRIA COUNTY.

IN RE ANNEXATION OF THE BOROUGH
OF MORRELLVILLE TO THE CITY OF

JOHNSTOWN.

*Belsham's Official
Solicitor & Counsel*

Filed 6 Dec 1897

*Attest
Dec 1897*

*J. W. Schuchman,
Attorney at Law,
Johnstown, Pa.
CAMBRIA COUNTY.*

-:IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY:-

In re Annexation of the Borough of Morrellville to the City of Johnstown.

The petition of George K. Shryock and S. A. Peden, Presidents of Select and Common Councils of the City of Johnstown, as well as on their own behalf as citizens, has been presented to us setting forth that the territory heretofore comprising the Borough of Morrellville has been annexed to the City of Johnstown by proper proceedings, which are recited therein, and praying us "to make such order or decree as will give to the people of the annexed territory representation in the different branches of government of said city" as provided for in section 5 of article 3 of the Act of May 23, 1889. On the same day that the above petition was presented, George W. Wagoner, Mayor of the City of Johnstown, by his petition asked leave "to answer the petition of the Presidents of the Councils of the City of Johnstown praying for an order or decree annexing the Borough of Morrellville to the City of Johnstown, and to protest against the illegal proceedings of said Councils in the matter of said proposed annexation, and also to protest against the making of an order or decree of annexation, thus ratifying said illegal proceedings." ~~This~~ petition concludes as follows: "Therefore, on account of the illegality of the title and provisions of said ordinances and the illegal proceedings of the Councils of the said City of Johnstown contrary to statute and ordinances of said City, your petitioner respectfully prays your Honor to refuse to make an order or decree annexing the Borough of Morrellville to the City of Johnstown as prayed for in said petition." The right of Mayor Wagoner to file an answer, or be

heard by counsel in objection to the decree prayed for, was disputed by counsel representing the application, but, without deciding that question, we fixed a day for argument and patiently heard all parties presenting themselves.

Whether Mayor Wagoner has any status to appear in this proceeding or not, it is apparent from that portion of his petition quoted above ~~that we have~~ ^{and} ^{by us} underscored, that the power of the Court in the premises, as well as the purport of the petition presented to us, has been misconceived. We have no jurisdiction over proceedings for the annexation of a borough to a city (excepting they come before us on an appeal.) Such proceedings are ^{committed} ~~relegated~~ entirely to the councils of the respective municipalities, and no decree of the Court is necessary to make the annexation complete. We have neither power to decree annexation nor to interfere with annexation already consummated. Our jurisdiction only attaches after the annexation proceedings are ended, as is apparent from the language of the 5th section of article 3 of the Act of 1889, under which these proceedings were instituted. Moreover, it is entirely clear to us that the "illegality of the title and provisions of the ordinances and the illegal proceedings of the Councils of the City of Johnstown" assigned, as quoted above, as the reason for withholding a decree in this proceeding, are matters not before us, and that cannot now come before us, as they could only be raised and determined on appeal.

The sections of article 3d of the Act of 1889 applicable to this case--with matters not essential to the annexation of boroughs left out--read as follows:

Sec. 1. Any borough x x x adjoining any city of the third class x x x may be annexed to such adjoining city

in the following manner, namely: x x x the town council may pass an ordinance for such annexation whenever three-fifths of the taxable inhabitants of such borough shall present a petition asking therefor.

Section 2. Upon the presentation to the councils of such city of a certified copy of the ordinance x x x said councils may by ordinance annex such borough to said city.

Section 3. The action of said city councils shall be final and conclusive, unless an appeal be taken therefrom within ten days to the court of quarter sessions of the county; upon such appeal the clerks of said city councils and of said borough councils shall certify to said court all the papers and proceedings in the case, whereupon the court shall examine and inquire and, if the proceedings appear to have been in conformity with law, shall approve the same.

Section 5. Whenever any borough x x x shall be annexed to ^{an} ~~the~~ adjoining or adjacent city, as hereinbefore provided, it shall be the duty of the court, upon petition and proof, to make such order or decree as will give to the people of the annexed territory representation in the different branches of government of said city, by including said territory within the limits of an adjacent ward or wards, or by creating a new ward thereof, etc.

It will be observed that in section 3 a method very unusual in its character in legislation of this kind has been provided, whereby the court of quarter sessions may be called upon to determine whether annexation proceedings have been in conformity with law, and a time has been limited within which the method thus provided must be resorted to. It follows then that, by the failure of every one interested to resort to this method, the annexation

proceedings must stand, and the Court cannot inquire into their legality or regularity in a proceeding such as this is, which can only be instituted after annexation. It needs no citation of authorities to sustain this proposition, and we could well dismiss the objections of Mayor Wagoner on the ground that the proceedings are final and conclusive and binding on us, no appeal having been taken, but his counsel contended that there was not sufficient "proof" of an annexation ordinance to warrant us in acting. We place a somewhat different meaning on the word "proof" as used in the 5th section of the Act of Assembly, quoted above, from that given it by the counsel on both sides ^{of} this case, who limit it to the "proof" that the borough had been properly and legally annexed; whereas a careful reading of the third and ^{5th} ~~sixth~~ sections together indicates, as already stated by us, that we have nothing to do with this matter, it not being necessary to produce proof that the proceedings were regular and legal, that being presumed from the fact that no appeal was taken. The word "proof" in the fifth section of the Act of 1889 evidently refers to the matters necessary ~~for~~ the Court to know in order to intelligently make the order or decree contemplated by that section. Of course the Court must have some evidence that annexation has taken place before jurisdiction can attach, but section 8 of article 6 of the Act of Assembly provides for this. It says: "All ordinances may be proved by the certificate of the city clerk, under the corporate seal, etc." We have before us, attached to the petition of Messrs. Shryock and Peden, a copy of the ordinance of Morrellville Borough, duly certified, also a copy of the ordinance passed by the two branches of council annexing Morrellville Borough to the City of Johnstown, and a record of the proceedings in both branches in

relation thereto, properly certified by the city clerk. This record furnishes sufficient evidence of the annexation of Morrellville Borough to the City of Johnstown to warrant us "upon petition and proof" in making the order prayed for: but in the petition of Mayor Wagoner it is alleged that he called a special meeting of council within fifteen days after he received the annexation ordinance and returned it to the Common Council with a message vetoing it; that no quorum being present, the special session of council adjourned without considering said veto message, and it was urged that by reason of this veto the annexation ordinance had not become effective. The petition of Mayor Wagoner is accompanied by the affidavit of W. S. O'Brien, City Clerk, substantially to the same effect. Nothing of this appears, however, in the certified copy of the proceedings of council attached to the first petition, a duplicate of which is also attached to the Mayor's petition, and also certified by W. S. O'Brien, the City Clerk. The record of the meeting of November 3d, which was the special meeting referred to above, shows none of the facts alleged in the petition of Mayor Wagoner and in the affidavit of W. S. O'Brien; on the contrary, the records of Council, as certified by the City Clerk, taken as a whole (See record of minutes of meeting of Nov. 9th) indicate that the veto message relating to the annexation ordinance was not returned to Council until after the expiration of fifteen days. Therefore, it was argued by the counsel representing these proceedings that the record of council is conclusive on us, and cannot be supplemented or contradicted by the ex parte affidavits of Mayor Wagoner and City Clerk O'Brien, that we must take the record as we find it and that proof of a veto cannot be made in the manner attempted here, and further that the action of said

Councils cannot be defeated by the veto of the Mayor.

We will assume, for the present, that there is sufficient proof of a veto message, regularly presented to the Council in the manner required by law, and will proceed to consider whether it can be effective to defeat the action of Council annexing Morrellville Borough. The Act of 1889 is based principally upon that of May 23, 1874, ^{although} the provisions of ^{some} ~~several~~ other acts ^{are} ~~being~~ incorporated therein. The whole act forms a comprehensive code adapted to the governmental requirements of the several municipalities to which it was intended to apply. In framing it the plan was adopted of dividing the statute into articles appropriate to the logical and orderly treatment of the respective topics. (See introduction to pamphlet published by Louis Ricahrds, Esq. on the Act of 1889.) The first article in the Act of 1889 refers to the incorporation of cities of the third class; the second article. to the creation and division of wards; and the third article to the annexation of territory. These articles contain what we might term the organic or formative part of the code & the subsequent articles pertain to the government or regulation of the affairs of the city generally. So far as any of the matters provided for in these ^(first articles) ~~three~~ are concerned, there is no occasion for any executive department, any mayor, or the exercise of any of the ordinary functions of the executive.

While the first and second articles in the Act of 1889, referred to above, are reenactments of similar sections in the Act of 23d May, 1874, the first three sections of article 3, quoted in full above, under which all annexation proceedings must be commenced, are reenactments of the first three sections of the Act of 8th June 1874, P. L. 279 (also re-enacted in Act of May 24, 1887, P. L. 206) which, at that time, was the only

authority for annexing boroughs to cities, and unless there is something in the Act of 1837, or the Act of 1839, that furnishes a sufficient reason for placing a different construction on the of these words sections, now that they form a part of the code represented by the Act of 1889, they must still be construed as they stood in the separate act, and in that act there is no intimation that the Mayor of a city of the third class had any part in the proceedings to annex boroughs to cities. On the other hand, it is expressly provided that "the actions of said councils shall be final and conclusive, unless an appeal therefrom be taken."

It is a singular fact that we find nowhere in the Act of 1839, or in any other act relating to the conduct of municipal corporations, the expression that "the action of councils shall be final and conclusive," nor do we find anywhere ^{else} a provision for an appeal directly to the court from the action of councils. The provision for an appeal seems to stand alone in relation to proceedings for annexation and, as to every other ordinance or resolution, the general provision contained in section 7 of article 6, that every ordinance shall be certified to the mayor for approval, applies. ~~and~~ This apparently general provision can be readily disposed of in this case by the well established principle that "where there are, in one act, specific provisions relating to a particular subject they must govern in respect to that subject as against general provisions in other parts of the statute, although the latter, standing alone, would be broad enough to include the subject to which the more particular provisions relate." (Endlich on Interpretation of Statutes, sec. 216, page 288) Or, as differently expressed by other writers, "when a general intention is expressed,

and also a particular intention incompatible with the general intention, the particular intention is to be considered in the nature of an exception." (See cases cited in People vs. Board of Aldermen, New York Supplement to American Digest Vol. 20 p. 54.)

There is no intimation in the Act of 1889 that the remedy by appeal is cumulative, nor can we find anything in the context or in the necessities of any case that may arise under the act to require the reading into the third section of sufficient words to make it read "the action of said city councils shall be final and conclusive, unless an appeal therefrom be taken within ten days, ["]and unless the ordinance shall be returned by the mayor to the branch of councils wherein it originated, with his objections, within fifteen days from the date of its presentation to him," and, as we construe the act, such words would have to be read into the section before the contention of the counsel for Mayor Wagoner can be sustained in this case. Another convincing reason to us is, that certainly the anomalous situation was never contemplated by the framers of the act of 1889 that if an appeal be taken from the action of council within ten days, and the mayor veto the ordinance of annexation within fifteen days of its presentation to him, and the appeal be decided favorably to annexation by the court, that the proceedings are nullified by the action of the mayor who, possibly, bases his veto on reasons that the court has decided to be untenable: In other words, ^{that} the decision of ~~the a~~ tribunal established by the Constitution, in a proceeding properly remitted to it, can be negatived by the act of an officer created by statute alone.

There is no inherent power in the office of mayor to veto actions of councils. It is in derogation of their power and can

only exist when expressly granted. We fail to find any express grant in the Act of 1889 authorizing the Mayor of ^athe City ~~of~~ ^a~~Johnston~~ ^{of the 3^d Class} to nullify the action of Councils in annexing ~~the~~ Borough ~~of Morrellville~~ thereto. On the other hand, in addition to the reasons already given, which are sufficient for us, a careful review of the previous acts of Assembly, both general and special, regulating the annexation of territory to cities and boroughs, disclosing the power of the court in certain cases and the part that councils are to take in others, will demonstrate that in none of these acts was a similar power placed in the hands of the mayor of a city or the burgess of a borough.

We have treated the question of the power of the Mayor in the premises as though the ordinance annexing Morrellville Borough had been properly returned to the Councils, with a veto message, and that sufficient evidence had been produced of this fact; but the authorities are conflicting as to the extent that courts can go in receiving proofs of matters not appearing on the minutes of councils in the absence of allegations of fraud and collusion, and we have grave doubts, even if convinced that the action of councils could be ^{nullified} ~~voted~~ by a veto, whether we are warranted, under the authorities, in considering the proofs of the veto submitted to us, and we have still graver doubts whether these proofs furnish sufficient evidence that the statutory requirements in order to make a veto effective exist in this case. In other words, whether the facts alleged in the petition of Mayor Wagoner and affidavit of City Clerk O'Brien show that the Mayor returned the ordinance, with his objections, to the branch of Councils wherein it originated, within fifteen days from the date of its presentation to him, in the sense contemplated by the words of the act of Assembly.

Our doubts on these questions would be sufficient alone to warrant us in resolving them in favor of making the decree prayed for, especially since we have a substantial expression of the desire of the taxable residents of Morrellville in favor of annexation as shown in the petition of three-^{fifths}~~fourths~~ of their number. It also appears that the annexation ordinance received the vote of every member of both bodies of ^{City}~~and~~ Council present when it was passed (with one exception), and there is not a single resident of either municipality objecting to annexation so far as made known to us. Moreover, the annexation of Morrellville Borough to Johnstown is so manifestly to the advantage of both municipalities that we can almost take judicial ^{notice}~~knowledge~~ of it, especially since no intimation to the contrary has been made in the course of this proceeding. Under such circumstances as these, it is not a time for us to allow anything except substantial reasons necessarily fatal to the proceedings to prevent us from performing the duty imposed upon us by law.

Our conclusions as to the features of the case already discussed render it unnecessary for us to consider the specific reasons advanced by Mayor Wagoner in his petition, and urged on us by his counsel, as sufficient to warrant us in staying our hand. However, if we saw anything in the objections and the proceedings likely to involve the municipal control of the annexed territory in doubt, or to cause successful litigation, we should hesitate before making any decree providing for representation; but nothing of this character has been developed in the objections interposed by the Mayor. His principal objections are that the ordinance of the Borough of Morrellville provides for annexation on condition that it must be admitted as three wards, and that the ordinance of

the City of Johnstown violates section 2 of article 14 of the Act of 1889 because, as alleged, the title contains two subjects, and because it creates three wards for the City of Johnstown. The section of the act referred to is as follows: "No bill shall be passed containing more than one subject which shall be clearly expressed in its title." The subject of the ordinance is the annexation of Morrellville to the City of Johnstown, and the entire ordinance pertains to that subject and is certainly clearly expressed in the title. There is nothing, either in the title or in the ordinance, not pertaining to the subject. That part of the title and of the ordinance designating the wards thereof is entirely germane to the subject, but if otherwise, or if beyond the power of Councils and ultra vires, as contended for by the Mayor, it may be treated as surplusage. The object of the ordinance was the annexation of Morrellville Borough and that is accomplished by the ordinance in proper terms and in a manner not offending against the section in the act of Assembly referred to, and the object cannot be defeated by the inclusion of matters that are irrelevant although ^{whether} relating to the subject of the act. ^{or not,} It is true, as urged by the Mayor, that the right to create or divide wards is lodged entirely in the court of quarter sessions, but it does not follow that the attempt of a city or borough to do so in an annexation ordinance vitiates the annexation features of the ordinance. The condition complained of in the Morrellville ordinance simply amounts to a stipulation that the ordinance does not become binding until the City of Johnstown annex the Borough of Morrellville and make the same three wards of the City of Johnstown. No harm has been done to the city by the incorporation of this condition in the ordinance, and the ^{city} ~~said~~ Councils have acquiesced in it, and if

the desire of both municipalities expressed in the manner aforesaid meets with the approval of the Court, and wards are created as thus desired, surely the feature complained of is immaterial.

Boroughs and cities are not prohibited by any law against occupying ^{split} contractual relation with each other. Indeed, among the inherent faculties of the two municipalities is the right to contract in matters pertaining to their mutual welfare, and if we understand the language of Justice Williams in Harris' Appeal, 160 Pa., 497, in construing the Act of 1889, the annexation of territory, where the people residing therein request it, is an act requiring no special legislative authority to sustain it. He says that, "It is in the line of municipal legislation, needful for the proper government of the city, as its extending proportions and municipal needs outgrow their original limits. The Legislature has taken this view of the subject."

In conclusion on this branch of the case we would simply say that the inclusion in the ordinances of the respective municipalities of provisions as to the circumstances under which the joining together of their interests, by annexation, should be consummated to their mutual advantage, cannot be said to be fatal to the proceedings, or even improper, whether we regard it in the light of a contract between the parties, or an indication to the Court of ^{the desire of the parties} ~~their wishes~~ when the Court comes to make an order or decree providing for representation.

The Borough of Morrellville then, having been annexed to the City of Johnstown, has been a part of the city since the passage of the annexation ordinance, and the people of the annexed territory being without representation in the different branches of government of said city, it is now our duty to make such order or

decree as will give them such representation. Our attention, however, has been called by the Mayor in his petition to the fact that he vetoed the resolution of Councils instructing the Presidents thereof to present a petition to the Court asking for such a decree, but whether it was necessary or not to pass such a resolution, or whether it must receive the approval of the Mayor before being effective, are questions we need not consider, as the act of Assembly does not require any action on the part of councils, and the Court can act upon the petition of any citizen of either municipality. The petition in this case is presented by Mr. Shryock and Mr. Peden, in their own behalf as citizens, as well as Presidents of Councils.

The act of Assembly authorizes the Court to act upon "petition and proof," and we have already intimated what our understanding is of the meaning of the word "proof" in this connection. We have to aid us, in determining the proper method to be adopted by which the people of the annexed territory may have representation, their wishes as expressed in the ordinance of borough council. This expression is concurred in by both branches of City Councils, as evidenced by a practicably unanimous vote. The desire of both municipalities, as well as the agreement between them, is, that the annexed territory shall come into the city with the same municipal subdivisions as exist ^{before} ~~now~~, and in exercising whatever judicial discretion is lodged in us in the premises, such an expression must prevail and the order or decree be made in accordance therewith, unless there be some insuperable obstacle in the way, we being convinced from the proof before us, and from matters of which we can take judicial notice,--such as the division of the borough into wards by us in 1891, and the fact that the borough is adjacent

to only one ward of the City, and that one containing a large area already overcrowded, and other matters,—that the territory cannot well be annexed to another ward, and that it would be unwieldy by reason of its size, shape and population as a single ward. The only thing to prevent us from carrying out the desire of the parties, and dividing the annexed territory ^{also} in accordance with our ^{also} ~~own~~ ^{under the proofs} views would be a strict construction of the fifth section of article 3 of the Act of 1839, but we find nothing therein, nor in the ordinary rules laid down for the construction of statutes, to require us to ~~do so~~ ^{strictly construe it:}. The object of that section was to give to the people of territory annexed to cities representation in the different branches of government of said cities, and it is made the duty of the Court, whenever annexation takes place, to make an order or decree for that purpose, and the method by which this shall be done, as expressed in the act, is, by including said territory within the limits of an adjacent ward or wards, or by creating a new ward thereof. Section 5 in which this provision occurs, first occurs in the Act of 1839. In the general act of May 23, 1874, being the first since the new Constitution divided ~~ing~~ the cities of the State into classes, etc., the only provision for the annexation of territory is in section 16, which only provides for the annexation of out-lots and is silent as to how the residents, if any, shall obtain representation. The Act of 8th June, 1874, the first three sections of which are identical with the first three of article 3 of the Act of 1839, in section 4, provides that any borough, township or part of a township, annexed to any city under this act, shall immediately be arranged by the councils of said city for the purpose of representation in the said councils, and the Act of 24th May, 1887, which has been

replaced by the Act of 1889, was the first to make it the duty of the Court to make an order giving representation to people of the annexed territory, and the method there was by including such territory within the limits of the adjacent ward or wards. It must be remembered, in construing these acts, that when they were passed the representation in councils was determined by the population of the respective wards, but this was changed by the Act of 1889, giving the same representation to each ward irrespective of population. We have examined with considerable care the different acts, both local and general, containing a similar provision, and have been unable to discover any reason for limiting the Court in the Act of 1887 to the including of annexed territory within the limits of an adjacent ward or wards, in the Act of 1889 to including said territory within the limits of an adjacent ward or wards, or creating^a new ward^s thereof, while in the Act of 8th May, 1895, providing for the annexation of territory to cities of the second class, it is made the duty of the Court to provide for the division of such annexed territory into a ward or wards. The Act of 10th May, 1871, providing for the annexation of any borough, township, or portion of a township to the ^{City of Pittsburgh} ~~County of Allegheny~~, provides that, "each ward, borough, township or portion of a township, which may be admitted into said city, shall constitute a ward of said city," thus indicating that where a borough consisted of more than one ward it came into that city with its municipal subdivisions unchanged.

We might cite other acts of Assembly tending to show that the legislation regulating the annexation of territory to cities, and legislation creating new wards in cities, form separate and distinct parts of the general code of laws regulating cities,

and that wherever new wards are brought into a city by reason of annexation proceedings, the proceeding in no way conflicts with the proceeding creating new wards out of territory already included within a city; therefore, the argument that new wards can be added to a city only in the manner provided by article 2 of the Act of 1889 is untenable. There are no negative words in the fifth section of article 3 of the Act of 1889, nor anything else to indicate that the provision now under discussion is mandatory in its terms, and we find nothing therein, or elsewhere, to limit us to such a strict construction of the language of the said section as would prevent us from making such a decree or order as we have already intimated ought to be made under all the circumstances of the case.

Jan. 5th 1898 The counsel representing these proceedings are directed to prepare ^{and} submit ~~and~~ a decree in conformity with our views, as expressed in this opinion, suggesting the names of officers to hold the first election in the three wards, the places for holding election the same, and other matters necessary to carry the decree into effect
By the Court.

In the Court of the Quarter Sessions of the Peace for
Cambria County.

Decree.

In re Annexation of the Borough of Morrellville to the
City of Johnstown, said County.

And now, January 5, 1898, this cause came on to a hearing and after full argument and with due consideration, it is ordered, adjudged and decreed that the Borough of Morrellville having been annexed to the City of Johnstown, in due form, the territory heretofore included in the Third ward of said borough shall be designated as the Eighteenth ward of said City; and the same in the second ward shall be designated as the Nineteenth ward, and the same in the First ward shall be designated as the Twentieth ward thereof.

That a special election shall be held in the said wards on Tuesday, February 5th, 1898, in the manner provided by law for conducting municipal elections, for the election of one person for School Controller; one person for Select Council, and one person for Common Council for each ward, to serve until their successors are duly elected and qualified.

Further, that the following named persons are hereby appointed officers to conduct the said elections, and that the places for holding the same shall be the regular polling places for said districts, which shall continue as such until changed in due form of law, to wit:

For the Eighteenth ward, in the Hose House of the Morrellville Fire Co., on D street, William A. Barron shall be the Judge, and John C. Lardin and James Cook, the Inspectors.

For the Nineteenth ward, in the house of William Insecho, on the corner of Garfield street, and Grape avenue, David W. Brendlinger shall be the Judge, and Lewis Patch and Geo. Cusic, the Inspectors.

For the Twentieth ward, in the Council Chamber on Chandler street, William M. Hess shall be the Judge, and A. J. Clites and Henry Myers, the Inspectors.

The Mayor of said City is directed to issue the usual proclamation for said election.

By the Court,
(over)

No 112 Dec 200 1897

In the Court of
Quarter Sessions of

the Peace

for

Cumbria County.

In re

Annexation of the

Borough of Morrellville

to the

City of Johnstown.

Decree.

5 Jan 1898 filed

Stephens.
Storey.

do the above with and where A. J. O'Connor
Esq. Counsel for the Rev. Mr. Wagner Mayor
of the City of Johnstown except to the
order of the Court of Quarter Sessions be signed
and sealed must be accordingly done this
5th day of Jan'y. 1898
A. J. Banks Secy
Clerk of the Court

10th Dec Dec 1897

IN THE COURT OF QUARTER SESSIONS
OF CAMBRIA COUNTY.

---oo---

In re Annexation of Morrellville
Borough to the City of Johnstown.

---oo---

---:OPINION OF THE COURT:---

Dec 15 Jan 1898

- :IN THE COURT OF QUARTER SESSIONS OF CAMBRIA COUNTY:-

In Re annexation of the
Borough of Morrellville to
the City of Johnstown, Pa.

Appeal of George W. Wagner Mayor
of the City of Johnstown, as such may-
or and as a citizen and tax payer of
said City of Johnstown, Pa., from the
DECREE of the said Court of Quarter
Sessions.

To No. 1-2 of December Sessions 1897.

To Hon. A. V. Barker, Judge of the above named Court.

The petition of G. W. Wagner, respectfully represents, that he has
filed an appeal, as stated above to the Superior Court, from the decree
of the Court of Quarter Sessions of Cambria County, in the above entitled
cause. That he is advised that the said Court or the Judge thereof in
vacation could determine, and should determine the amount and form of the
bond to be filed, in such appeal.

Your petitioner therefore prays this Honorable Court to fix the a-
mount in which said bond shall be given and to direct to whom it shall be
made payable. *And further order that such appeal shall, when perfected, act as a supersedeas.*
And as in duty bound your petitioner will ever pray etc

G. W. Wagner

State of Pennsylvania :
County of Cambria. : SS.

Personally appeared before me F. J. O'Connor
Atty. for G. W. Wagner, who being by me duly sworn says, the facts set
forth in the foregoing petition are correct and true.

F. J. O'Connor

Sworn to and subscribed before me :
this 24 day of January A. D. 1898.:

Wm. Williams
Notary Public.

No. 12 December Census 1897,
for the Court of Quarter Sessions of
Essex County,
In Re Application of the
Borough of Northwold
Essex.

The City of Johnston,
Essex.

And now January 24, 1898, the within
petition read and considered. It
is ordered and decreed that the
said upon appeal to the Superior
Court in the within entitled cause
shall begin in the sum of
dollars conditioned for the payment
of

And payable to

J. H. Rose Esq. Clerk of Court
also for the Essex County

County of Essex
Essex County
Essex County

No 12 Dec 1897

Seize annexation of the
Borough of Montgomery
to the City of Johnston
N.H.

Petition of George H. Hayner
Mayor

Filed 26 Jan'y 1898

Now January 25th 1898 the
within petition read and
considered by the Court and
it is resolved and decreed
that the Appellant and petition
George H. Hayner shall
file a bond with sureties
to be approved by the Court in
the sum of Five Hundred
dollars payable to the Treasurer
of Johnston for the use of
the Appellee conditional for
the payment of cost in this
cause and the same shall
be as to Appellant and when
perfected will be said appeal
is dismissed.

Attest: J. J. McManis
Clerk for George H. Hayner

There seems to exist some uncertainty as to the proper
practice in the approval of bonds on appeals to
the Supreme and Superior Courts since the adoption
passage of the act of 19th May 1897 P. S. 67. and on the pre-
sentation of this petition we gave the said act a careful
examination. ~~in consequence~~ It is perfectly clear ~~that~~ from
the 5th section thereof that the Prothonotary is to "fix the
amount of bail and approve or reject the security
offered." the same section provides for the form of
the bond and to whom it shall be made payable ~~there~~
~~fore there is~~ The 17th section of the act authorizes the Court
to "make such orders as to right and justice shall belong
relative to the security offered or entered, whenever a
proper case shall be made to appear requiring the action
of the Court." there is nothing in this case requiring the
action of the Court as to the security and therefore all
we need act on is the request that we order the appeal
to act as a supersedeas. No reason has been assigned
for this, and after a careful examination of the facts as
developed in the proceedings and due consideration we
decline to order that the appeal shall operate as a supersedeas.
A. B. Barker