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B. E. Hickerson; Chaplain, E. C. Robertson, and Sergeant at Arms, J. M. Robinson. Hon. George R. Smith, of the Lexington Bar, ex-member of the club, addressed the society on the future of the Democratic Party in the State and Nation. Ex-President D. L. McNeill delivered a farewell address which was much appreciated by the society.

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**COMMENT ON RECENT DECISIONS OF COURT OF APPEALS.**

H. M. BOSWORTH, Auditor

VS.

STATE UNIVERSITY, &c.

There was involved in this case the constitutionality of an Act of the Legislature commonly called the Pure Food Act, which had been on the Statute book for some seventeen years, and which had been enforced without question during all that time by all the officers of the Commonwealth having a duty connected therewith. It seems to us that the opinion of the court is entirely erroneous, and we believe it is in direct conflict with all the authorities whether in this State or out of it, involving the particular question upon which the judgment in this case is made to turn.

We shall not occupy, in this review, the position of carping critic either upon the learning or the high sense of justice of the Court of Appeal of Kentucky, for we recognize that it is very much more important that the people of Kentucky should give due reverence and respect to the adjudications of the highest court of the Commonwealth, than that any particular case should be decided right. We shall undertake to review the opinion in this case in this spirit; the spirit of being helpful to the Court and with the hope that at some other time, it will see its way clear to come back to the old, well established and beaten path of constitutional law, bearing upon the point herein involved.

The Act was held unconstitutional as being in violation of Section 51 of the Constitution, which is as follows:
No law enacted by the General Assembly shall relate to more than one subject and that shall be expressed in the title.

Section II of the Pure Food Act is the one held unconstitutional, it being said there is nothing in the title of the Act which authorizes the payment of money to the Experiment Station for doing the work which the Act requires its officers to perform. In other words, it is said that Section II is not germane to the title. The Pure Food Bill is an elaborate piece of sanitary legislation having a good many sections. The title of the Act and Section II are as follows:

AN ACT for preventing the manufacture and sale of adulterated or misbranded foods, drugs, medicines and liquors, and providing penalties for violation thereof.

Section Eleven. "Said Experiment Station shall receive seven dollars and fifty cents ($7.50) for the analysis or examination of any sample of food or drug taken or submitted in accordance with this Act, and expenses for procuring samples of food and drugs and in making inspections into the conditions of and wholesomeness and purity of the food produced, manufactured or sold in food factories, grocery stores, bakeries, slaughtering houses, dairies, milk depots or creameries, and all other places where foods are produced, prepared, stored, kept or offered for sale; for studying the problems connected with the production, preparation and sale of foods; for expert witnesses attending grand juries and courts; clerk hire and all other expenses necessary for carrying out the provisions of this Act. Provided, The total expenses from all sources shall not exceed in any one year thirty thousand dollars ($30,000.00)."

If Section II is in violation of Section 51 of the Constitution, it is because it is foreign to the title. If it is foreign, then it could not have been expressed in the title without coming within the inhibition of the Constitution against duplicity in the title. There must not be duplicity of subjects in the title any more than in the body of the Act. Indeed, this Court has often held that if two subjects are placed in the title, the whole act is void, whereas when two subjects are placed in the body of the Act, that one only is void which does not conform to the title. So then by the logic of the opinion, there was no way by which the General Assembly could have provided the means for enforcing the Act (i.e., money) without passing two acts, one prescribing the work to be done and the other providing the money to pay for the work when done.
Cooley, in his work on Constitutional Limitations, 6th ed., p. 172, thus states the rule:

"The general purpose of these provisions is accomplished when a law has but one general object, which is fairly indicated by its title. To require every end and means necessary or convenient for the accomplishment of this general object, to be provided for by a separate act relating to that alone, would not only be unreasonable, but would actually render legislation impossible."

In the case of Klein vs. Kinkead (Pacific States Reports, vol. 36, p. 194), involved the construction of an Act of the State of Nevada, entitled "And Act to provide for the taking care of the insane of Nevada," the body of the Act authorized the taking of money for this purpose out of the school fund. The Supreme Court of Nevada thus propounded the rule now under consideration:

"We are unable to find anything in the Act under consideration that does not relate to the care of the insane. The general subject of the Act includes, not only the construction of an asylum, but necessarily the means by which the work is to be accomplished, and the proceedings necessary to be adopted for the purpose of defraying the expense to be incurred. Certainly no one interested in the Act would fail to comprehend from its letter that it contemplated the expenditure of money, for the care of the insane necessarily involves such expenditure.

"The Legislature is the sole judge of the mode by which this money shall be provided, and was equally authorized to raise it by loan or appropriate it from the general revenues. The Act has but one subject and that is the care of the insane. All of its provisions have this common object in view. The different steps by which the result is to be accomplished are not different subjects, but minor parts of the same general subject, and legislation would be impossible if all of these details were required to be provided for by distinct enactments."

The case of Collins vs. Henderson, 11 Bush, 74, is in principle very similar to the case at bar. Collins procured the passage of an Act, entitled

"An Act directing the purchase of Collins' Historical Sketches of Kentucky."

The body of the Act provided for the purchase out of the school fund; the objection was made in the litigation arising between the Historian and the Superintendent of Public Instruction that the
provision for the purchase with school funds was not germane to the title of the act.\\n\\nOn this subject the Court of Appeals said:

"The Act relates to a single subject and that is clearly expressed in the title. The particular manner in which the object of an act is to be accomplished need not, and indeed cannot be expressed in the title. * * * * The Act directs the purchase of a book and that subject is sufficiently expressed in the title, and to designate the fund out of which it was to be paid for, was directly connected with that subject.

The Act was, however, held unconstitutional for a different reason. We come now to the great leading case of Phillips vs. The Covington Bridge Co., 2 Metcalf, 219:

The Act in that case was entitled:

"An Act to amend the charter of the Covington and Cincinnati Bridge Company." The body of the Act not only gave the Bridge Co. the right to sell stock, but it gave the City of Covington the right to purchase one hundred thousand dollars of the stock so authorized to be sold.

In the litigation which arose out of this Act, it was urged that so much of the Act as authorized the subscription by the city was not germane to the title, and therefore void. Now the city was not mentioned in the title, and it was admitted in the opinion that it obtained all of its authority to make the purchase by the Act amending the charter of the Bridge Company, the Court said:

"The power to sell stock to the city necessarily requires that a power should be conferred on the latter to subscribe and pay for it; for without such power, the power to sell would be nugatory. The subject is the same, although it relates to a transaction to which two corporations are parties, one of whom only is named in the title of the Act. * * * * It was certainly not necessary for the Legislature to pass two separate acts to effect the object it had in view; one to enable the company to sell the stock to the city, and another to enable the city to subscribe and pay for it.

"The constitutional provision relied upon must receive a rational construction, and not one that would lead to such an unnecessary and absurd result."

Now this case has been cited with approval more times than any other on the same subject with which I am acquainted. See how much closer it comes to the very verge of the inhibition of section 51
than our case. The Act was simply "An Act to amend the charter of the Bridge Co." Way down in the body of it was a provision authorizing the theretofore unnamed city to subscribe for and purchase one hundred thousand dollars of the stock of the Bridge Co. Under the principle laid down by the Court every city and town in the State could have been authorized to subscribe for the stock. Who looking at the title of the Bridge Co. alone would have been warranted in supposing such a power was contained in the body of the Act? Yet this case is the leading case on the subject of which it treats.

In Johnson & Co. vs. The City of Fulton, 21st Ky., 594. The title of the Act was:

"An Act to regulate the holding of Circuit Courts in counties in which there are towns over seventeen miles from the county seat and having a larger population than the County Seat."

There are several sections of the Act, one of which provides that the larger city should pay the expenses of establishing the new Court. For the city of Fulton it was urged that section 3, which contained the provision as to payment of charges, etc., was not embraced in the title and therefore void. This Court however said:

"The subject expressed in the title of the Act is the holding of Circuit Courts in counties in which there are towns more than seventeen miles from the county seat having a larger population than county seat. Everything in the Act relates to this subject. The expense of holding the Court is germane to the subject expressed in the title of the Act."

We submit that the case at bar cannot be distinguished from the last cited case; our title is

"An Act for preventing the manufacture and sale of misbranded foods, drugs, medicines and liquors, &c."

The expense of doing this is germane to the title of the Act. Our title is more comprehensive than that in the citation. "Preventing" is a very positive word; to prevent the manufacture and sale of misbranded foods, &c., involves detective work and inspection, analysis and prosecutions; all of this necessarily means the expenditure of money, and he who read our title was bound to know that the act called for money to make it effective. If the expense of establishing the Court was germane to a title "regulating" the holding of courts, &c., the expense of preventing fraud in the sale of foods is germane to the title of the pure food act.
We conclude the citation of authorities by quoting from the opinion of the Supreme Court of Illinois, cited in a note in Lewis' Sutherland Statutory Construction, Vol. i, p. 222:

"Courts always give a liberal and not a hypercritical determination to this restriction. All matters are properly included in the act which are germane to the title. The Constitution is obeyed, if all the provisions be related to the one subject indicated in the title, and are parts of it, or incident to it, or reasonably connected with it, or in some reasonable sense auxiliary to the object in view. It is not required that the subject of the bill shall be specifically and exactly expressed in the title, or that the title should be an index of the details of the act. When there is doubt as to whether the subject is clearly expressed in the title, the doubt should be resolved in favor of the validity of the act." Ritchie v. People, 155 Ill., 98, 120, 40 N. E., 454, 463, 46 Am. St. Rep., 315, 29 L. R. A., 79.

In re Kol., 88 N. D. N. W., 273, the rule is stated to the same effect, and is as follows:

"The Constitution only requires that the act shall contain a single or object of legislation, and that such subject or object shall be expressed in the title. It is not intended, neither is it required, that the separate means or instrumentalities necessary to accomplish the object of legislation shall be embodied in separate acts. Such a requirement would be absurd, rendering legislative acts fragmentary, and they would often fail of their intended effect, from the inherent difficulty of expressing the legislative will when restricted to such narrow bounds." The section of the Constitution under consideration is found in the Constitution of a majority of the States, and it is universally held, and we think necessarily, that an act which has but a single purpose, and that purpose is expressed in its title, may embrace all matters which are naturally and reasonably in it, and all measures which will or may facilitate the accomplishment of the purpose of the legislation. Such has been the uniform interpretation given by this Court. State v. Woodmansee, 1 N. D., 246, 46 N. W., 970; 11 R. A., 420; State v. Hass, 2 N. D., 202, 50 N. W., 254; State v. Nomland, 3 N. D., 427, 57 N. W., 85, Am. St. Rep., 572; Richard v. Stark Co., 8 N. D., 392, 79 N. W., 863; Power v. Kitching, 10 N. D., 86 N. W., 737; Divet v. Richland Co., 8 N. D., 65, 76 N. W., 993; Paine v. Dickey Co., 8 N. D., 581, 80 N. W., 770."

We have been able to find no case which support the Court's opinion under discussion. The opinion seems to us revolutionary and unsound, and in violation of all the law on the subject, whether in or out of our own state.