CHESTER TIMES – March 14, 1912 –

EAST LANSDOWNE NOW BECOMES A BOROUGH – Superior Court Affirms Decision of Judge Broomall, Permitting Incorporation of Village

The superior court in a decision which was received by Prothonotary A.J. Dalton at Media yesterday affirms the decision of Judge William B. Broomall, permitting the incorporation of East Lansdowne as a borough. The opinion first set aside a motion to have the appeal quashed on a technicality, and then decides that the petition for the incorporation was properly advertised. In regard to the merits of the controversy in regard to the incorporation the superior court declares the conditions similar to those of Milbourne, which incorporation was upheld. The appeal from the decision of the Delaware county court was taken by W.C. Alexander, solicitor, in behalf of the township of Upper Darby.

The petition for the incorporation was presented to the lower court on January 31, 1910, through W. Roger Fronefield, Esq. The incorporation was opposed by W.C. Alexander, Esq., representing Upper Darby Township of which East Lansdowne was a part, and individuals and A. Lewis Smith and V. Gilpin Robinson, Esq., representing Upper Darby school district.

OPINION OF THE COURT – The opinion of the superior court reads: We are met at the threshold of this case by a motion to quash this appeal, which while entitled "An Appeal on behalf of the township of Upper Darby, Delaware County, Pa.," it is in fact taken by "William C. Alexander, Solicitor for the township of Upper Darby," etc., and he alone makes the affidavit required by the statute. The Act of May 6, 1889, P.L.174, provides that in all proceedings for the erection of boroughs wherein a decree has been entered incorporating any town or village, an appeal shall lie from any decree within twenty days from the recording of such decree, by no less than three persons begrieved thereby."

The minutes of the township commissioners which are brought before us by the answers filed to the motion to quash the appeal, show the following record: At a regular meeting off the commissioners of the township of Upper Darby, held on June 6, 1911, the following motion was made and carried. Moved by Mr. Shee and seconded by Mr. John Wolfenden, that our solicitor be instructed to take an appeal from the decision of the court at Media, in the granting of a borough to East Lansdowne. It was carried. Members present: Jones, Wolfenden, Shee and Wadas. Members voting, Jones, Wolfenden, Shee, Wadas." This township is of the first class and has a population of about 4,000 persons. It contains property valued for tax assessment at $4,725,216. There are already four incorporated boroughs in it, and this application represents 100 freeholders of a total of 133 freeholders within the proposed borough.

We held in Denison's appeal, 9 Pa., Superior Court, 212, that "The right of a single person interested to file exceptions and to contest the proceedings in the quarter sessions, cannot be said to carry with it, by necessary implication, the right of such person to appeal from the decision of that court when the statute regulating the subject declares that in order to bring up the case for review the appeal must be taken by not less than three persons, and in Rouseville borough, 12 Pa, Superior Court, 126, that the two acts of May 9, 1889, F.L. 158 and 174, taken together, substituted for the writ of certiorari, a preceding to have the proceedings to incorporate boroughs revised, unless three persons joined in the appeal and left the jurisdiction of the appellate court the same as upon certiorari. In this case the

solicitor was directed to take the appeal by four commissioners of the township. They represented one township and at least acted in behalf of themselves and the thirty-three exceptants. Had their names been used instead of the solicitor the appeal would have been without challenge in this respect. The act does not prescribe that each of the appellants shall make the oath. It was a clerical omission which is now sought to remedy by a motion to amend the record by adding therein Aames as appellants. The whole record is before us. The objection is purely a technical one. The motion to amend is allowed and the motion to quash is overruled.

The appellant urges that the application for the charter was not advertised in conformity with the Act of June 25, 1898, P.L. 389, which requires that notice, "Shall be given in one newspaper of the proper county for a period of not less than thirty days immediately before the next regular term following the presentation of such application and the filing thereof." The application in this case was advertised in a daily newspaper in the county on February 1, 8, 15, 22, and March 3, preceding the next regular term of the court, which commenced on March 7, 1910.

On Jeanette borough, 129 Pa., 567, notice of the application was given in a daily newspaper on January 4, 5, 7, and in a weekly paper on January 9, 16 and 34 of 1889, and this was held to be a sufficient compliance with the Act of June 2, 1871, P.L. 283, providing that such notice should be published for a period of not less than thirty days immediately preceding the application. The Act of 1895 prescribes the same terms ad\s to the advertisement. The notice in this case being given for the unit of times named in the act and this having expired before the commencement of the next term off court, we deem that, "The public notice required by law appears to have been given," as in Jeanette borough, supra. The remaining items of the question involved present questions of fact, and matters of discretion in the conclusion reached by the court below.

Milbourne borough (No. 1), No. 46 Pa., Superior Court, 19, has been so recently decided by this court and the questions therein disposed of are so, similar to the ones raised by this appeal, that it is not necessary to repeat the reasons given.

The decree is affirmed.