

INDEX.

	PAGE
Notice of Appeal	1
Memorandum	2
Writ of Certiorari	4
Affidavit of Albert Haake	6
Return to Writ of Certiorari	10
Depositions	39
Reasons	70

TESTIMONY FOR PROSECUTOR.

Conrad Eiseman:	
Direct	40, 46
Cross	40, 51
John V. Demarest:	
Direct	43
Mary E. J. King:	
Direct	53
Michael Beahm:	
Direct	54
Mary A. Lovette:	
Direct	55
Cross	56
William P. Lovett:	
Direct	56
Cross	57

TESTIMONY FOR RESPONDENT.

John V. Demarest:	
Direct	58
Cross	59
Redirect	61
Recross	61

	PAGE
Thomas Joseph Edwards:	
Direct	62
Albert Haake:	
Direct	63
Minnie Y. Reed:	
Direct	66
Cross	67
Redirect	67
Herbert Fortenstern:	
Direct	67
Cross	68
Charles E. Schroeder:	
Direct	68
Cross	69

EXHIBIT.

	Admitted Page	Printed Page
P 1.—Sample Ballot	41	41

Notice of Appeal.

Filed October 20th, 1923.

New Jersey Supreme Court.

ALBERT HAAKE,
Prosecutor,

v.

BOROUGH OF NORWOOD, IN THE
COUNTY OF BERGEN,
Defendant.

10

To Fred W. Mattocks, Esq.,
Attorney for Prosecutor.

20

TAKE NOTICE that the defendant appeals from
the whole of the judgment entered in this cause
to the new Jersey Court of Errors and Appeals
on the ground that the Court erred in setting aside
the ordinance and should have dismissed the writ
of certiorari.

Respectfully,

LE ROY VANDER BURGH,
Attorney for Appellant.

30

October 19th
Dated ~~July 16th~~, 1923.

~~Service acknowledged by F. W. Mattocks, At-
ty. of Prosecutor Appellee, July 20th, 1923.~~

40

Memorandum.

(Filed June 13, 1923.)

NEW JERSEY SUPREME COURT.

Before—Justice PARKER, sitting alone pursuant to
the statute.

10

ALBERT HAAKE,
Prosecutor,
v.
BOROUGH OF NORWOOD.

} On Certiorari.

For the Prosecutor, FRED W. MATTOCKS.
For the Defendant, LE ROY VANDER BURGH.

20

MEMORANDUM OF DECISION FOR THE
INFORMATION OF COUNSEL.

30

The writ brings up an ordinance passed December 5, 1922, relative to the grading, macadamizing and draining of Summit Street, etc., with all things touching the said ordinance and the ratification of the same. The attack is on the procedure of passage of the ordinance by the council and also on the validity of a special referendum election held thereon in view of a protest by more than ten per cent. in valuation of the tax payers.

I conclude that the procedure was defective because the notice of intention was not properly given; or, to put it in another way, because council considered the ordinance without giving such notice.

The procedure followed was this:

40

On November 14, 1922, the ordinance was introduced without previous notice, read by the clerk,

Memorandum.

and on motion, passed its first reading, and council directed notice of intention to "consider" the proposed improvement and the final passage of the ordinance as December 5; on which date there was a hearing and the ordinance was finally passed.

In *Boynton Co. v. Woodbridge*, 109 Atl., 514, Justice Bergen, sitting as the Supreme Court, held that the giving of the first reading amounted to some "consideration" of the ordinance and was irregular without previous notice thereof. This decision is controlling on this case. It is said that the cases differ because in the *Boynton* case amendments were added at first reading, but I see no logical distinction between the decision of council to amend and its decision that the ordinance is good enough to go to second reading without amendment.

This result makes it unnecessary to deal with the other grounds of attack. It is urged that prosecutor is in laches or estopped because he appeared and argued against the improvement and also joined in the demand for a special election and permitted council to incur the expense thereof, without challenge to the prior procedure. I am unwilling to say that he should be barred on this account. No contract has been awarded, nor so far as appears have bids been advertised for. In *Scheible v. Highstown*, 93 N. J. L., 69, 73, prosecutor refrained from attacking a special election until after the soldier vote had come in and been counted, and was held not in laches. No rights of a contractor have intervened in this case, and the expense of the election seems insignificant, especially as the "Norwood Improvement Committee," apparently a private organization, seems

10

20

30

40

Writ of Certiorari.

to have ordered the ballots and sent out the samples. The moral impropriety of sending out the samples marked in the affirmative is manifest, but the legal aspect of it, for reasons already given, requires no discussion at this time.

10 The ordinance will be set aside with costs.

Writ of Certiorari.

(Filed April 9, 1923.)

State of New Jersey, To-wit:

(Seal) The State of New Jersey to Thomas J.
 Edwards, Clerk of THE BOROUGH OF
 NORWOOD and THE BOROUGH OF
20 NORWOOD, Bergen County, New Jersey.

Greeting:

We, being willing, for certain reasons appearing by the affidavit of Albert Haake, filed in this cause, to be certified of a certain ordinance passed by the Mayor and Council of the Borough of Norwood, Bergen County, New Jersey, on the 5th day of December, 1922, entitled,

30 "An ordinance to provide for the grading, macadamizing and draining of Summit Street from Blanche Avenue to the Northvale Borough line; the grading, macadamizing and draining of Blanche Avenue from the westerly Borough line to the southeasterly Borough line and the construction of a concrete curb and gutter upon a portion thereof; the grading, macadamizing and draining of Livingston Street from Blanche Avenue northerly to the north Borough line."

40

Writ of Certiorari.

We do command you that the aforesaid ordinance passed by the Council of the Borough of Norwood and approved by the Mayor thereof on the 5th day of December, 1922, with the records of the meetings of the Mayor and Council at which said ordinance was introduced and passed, together with all things attaching and concerning the passing, considering, approving, enacting and ratifying the said ordinance as fully and entirely as before you they remain, to our Justices of the Supreme Court of Judicature, at Trenton, on the 30th day of April instant, you certify and send together with this writ, that therein may be done what of right and according to laws and constitution of this State ought to be done.

10

WITNESS, William S. Gummere, Esquire, Chief Justice of our Supreme Court at Trenton, this 10th day of April, 1923.

20

EDWARD J. KELLEHER,
Clerk.

30

40

Affidavit of Albert Haake.

(Filed April 9, 1923.)

NEW JERSEY SUPREME COURT.

10

ALBERT HAAKE,
Prosecutor,

v.

THE BOROUGH OF NORWOOD, IN THE
COUNTY OF BERGEN,
Defendant.

On Certiorari.

State of New Jersey, }
County of Bergen, } ss.:

20

Albert Haake, being duly sworn according to law, on his oath, says that he is a resident and taxpayer of The Borough of Norwood, County of Bergen and State of New Jersey, residing on Blanche Avenue.

That on the 14th day of November, 1922, at a regular meeting of the Mayor and Council of said Borough of Norwood, an ordinance entitled.

30

“An ordinance to prove for the grading, macadamizing and draining of Summit Street from Blanche Avenue to the Northvale Borough line; the grading, macadamizing and draining of Blanche Avenue from the westerly Borough line to the southeasterly Borough line and the construction of a concrete curb and gutter upon a portion thereof; the grading, macadamizing and draining of Livingston Street from Blanche Avenue northerly to the north Borough line.”

40

Affidavit of Albert Haake.

was introduced and passed its first reading by the Mayor and Council of said Borough.

Deponent further says that at a regular meeting of said Mayor and Council of said Borough, held December 5th, 1922, a hearing was held and the same evening the said ordinance was finally passed; that said ordinance was approved by the Mayor of said Borough on said 5th day of December, 1922, and said ordinance was published on December 8th, 1922, as having been duly passed and approved by the Mayor of said Borough.

10

Deponent further says that the Mayor and Council caused the following notice together with a copy of said ordinance to be published in the Bergen Record in its issues of November 23 and 30, 1922:

Borough of Norwood.

20

Notice.

Notice is hereby given, that an ordinance entitled, "An ordinance to provide for the grading, macadamizing and draining of Summit Street from Blanche Avenue to the Northvale Borough line; the grading, macadamizing and draining of Blanche Avenue from the westerly Borough line to the southeasterly Borough line and the construction of a concrete curb and gutter upon a portion thereof; the grading, macadamizing and draining of Livingston Street from Blanche Ave., northerly to the North Borough Line," was introduced at a meeting of the Borough Council of the Borough of Norwood, held on Tuesday the 14th day of November, 1922, and that it is the intention of the Borough Council to consider the undertaking of such improvement

30

40

Affidavit of Albert Haake.

10

as a local improvement and the final passage of said ordinance at a meeting to be held at the Borough Hall, on Tuesday, the 5th day of December, 1922, at 8:30 o'clock P. M., at which meeting or any adjournment thereof all persons whose lands may be affected by the aforesaid improvement or who may be interested therein, will be given an opportunity to be heard concerning said improvement.

By order of the Mayor and Council of the Borough of Norwood.

Dated Nov. 15, 1922.

20

Thomas J. Edwards,
Borough Clerk.

Deponent further says that prior to the introduction of said ordinance no notice of the intention of the governing body of said Borough of Norwood, to fix the time and place, when and where they would consider the same was published as required by law, nor given to this deponent in any manner, other than above.

30

Deponent further says that said ordinance provided that the damages sustained and the benefits conferred upon any lands affected by said improvements shall be assessed in accordance with the provisions of the statute in such case made and provided, excepting, however, that 30 per cent. of the cost of said improvement, exclusive of the construction of curb and gutter, shall be paid by the Borough of Norwood out of moneys to be raised by general taxation.

40

Deponent further says that pursuant to par. 24 of Article 37, Chapter 152 of Laws of 1917, there

Affidavit of Albert Haake.

was filed with the Clerk of the Borough of Norwood, the following protest:

To the Mayor and Council of the
Borough of Norwood, N. J.:

Gentlemen: We, the undersigned taxpayers of the Borough of Norwood, Bergen County, New Jersey, do hereby protest against your making the improvement or incurring the indebtedness pursuant to an ordinance of the Borough of Norwood, entitled, "An ordinance to provide for the grading, macadamizing and draining of Summit Street from Blanche Avenue to the Northvale Borough line; the grading, macadamizing and draining of Blanche Avenue from the westerly Borough line to the southeasterly Borough line and the construction of a concrete curb and gutter upon a portion thereof; the macadamizing, grading and draining of Livingston Street from Blanche Avenue to the North Borough line." 10
20

That said protest was signed by taxpayers representing over 30 per cent. in amount of the assessed valuation of said Borough of Norwood, whose names appear on the last proceeding assessment roll of the Borough of Norwood. 30

Deponent further says that thereafter and on March 10th, 1923, the governing body of the Borough of Norwood called a special election to vote upon the proposition whether said ordinance shall be ratified and thereafter and on March 20th, 1923, a resolution was passed by the said governing body declaring 184 votes in favor and 142 votes against the ratification of said ordinance, which resolution was published March 23, 1923, in the Bergen Record. 40

Return to Writ of Certiorari.

Deponent further says that said election was not conducted and canvassed as required by the laws regulating general elections, as required by the provisions of said Chapter 152 of the Laws of 1917.

10 Deponent, therefore, prays that he may have a writ of certiorari allowed him to have the said ordinance, together with the records of the meetings of the said Council and all other matters and things attaching and concerning the passing, considering, approving, enacting and ratifying the said ordinance set aside and reversed.

ALBERT HAAKE.

Subscribed and sworn to before }
me this 9th day of April, 1923. }

20

E. H. Cosgrove,
Commissioner of Deeds.

Return to Writ of Certiorari.

NEW JERSEY SUPREME COURT.

30

<p style="text-align: center;">ALBERT HAAKE, Prosecutor,</p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">THE BOROUGH OF NORWOOD, IN THE COUNTY OF BERGEN, Defendant.</p>	}	On Certiorari.
--	---	----------------

40

The Borough of Norwood doth herewith send to the Supreme Court of the State of New Jersey a certain ordinance passed by the Mayor and Council of the Borough of Norwood, on the 5th day of December, 1922, entitled "An ordinance to provide

Return to Writ of Certiorari.

for the grading, macadamizing and draining of Summit Street from Blanche Avenue to the Northvale Borough Line; the grading, macadamizing and draining of Blanche Avenue from the westerly Borough Line to the southeasterly Borough Line and the construction of a concrete curb and gutter upon a portion thereof; the grading, macadamizing and draining of Livingston Street from Blanche Avenue northerly to the North Borough Line," with the records of the meetings of the Mayor and Council, at which said ordinance was introduced and passed, together with a copy of the notice of intention as published, that the Council would consider the making of the improvement; copy of ordinance as published after passage; copy of notices as published concerning the special election; copy of affidavit of mailing notices, together with all things touching and concerning the passing, considering, approving, enacting and ratifying the said ordinance, as within it is commanded as by the transcript under the seal of the Mayor and Council of the Borough hereto annexed and more fully appears.

BOROUGH OF NORWOOD,

(Borough Seal) By THOS. J. EDWARDS,
Borough Clerk.

TRANSCRIPT of minutes of the regular monthly meeting of the Borough Council of the Borough of Norwood, held Tuesday, November 14th, 1922.

Mayor Gray presiding, with Councilmen Diefenbach, Frese, Heckert, Vossler and Skinner present. Mr. Harra absent.

A recess was taken for fifteen minutes, to permit the Council to discuss the petition presented by the residents of Livingston Street, Blanche Avenue and Summit Street.

Return to Writ of Certiorari.

10 The meeting having reconvened, Mr. Dieffenbach, for the Finance Committee, stated the bonded indebtedness of the Borough would permit of placing 30% of the proposed improvement on the Borough at large. It was, therefore, the consensus of opinion of the Council that the cost of this improvement be assessed 30% on the Borough at large and 70% on the property benefited. This was exclusive of the curb and gutter to be constructed on Blanche Avenue from Tappan Road to the West Shore Railroad tracks.

20 The ordinance to provide for the grading, macadamizing and draining of Summit Street, Blanche Avenue and Livingston Street was read in full by the Clerk. This reading being completed, Mr. Vosler offered the following resolution, which was moved for adoption by Mr. Dieffenbach and seconded by Mr. Skinner:

30 "RESOLVED, that an ordinance entitled, 'An ordinance to provide for the grading, macadamizing, and draining of Summit Street from Blanche Avenue to the Northvale Borough Line; the grading, macadamizing and draining of Blanche Avenue from the westerly Borough Line to the southeasterly Borough Line and the construction of a concrete curb and gutter upon a portion thereof; the grading macadamizing and draining of Livingston Street from Blanche Avenue northerly to the north Borough Line,' pass its first reading and that the Borough Clerk be directed to advertise and give notice as required by law, that it is the intention of the Borough Council to consider the undertaking of such improvements as local improvements and the final passage

40

Return to Writ of Certiorari.

of said ordinance at a meeting to be held at the Borough Hall, on Tuesday, the 5th day of December, 1922."

Roll call vote: Messrs. Vossler, Dieffenbach, Skinner, Frese, Heckert—Yes. Harra—Absent.

On motion by Mr. Dieffenbach, seconded by Mr. Frese, the Clerk was directed to advertise these two ordinances and the necessary notices of hearing in the Bergen Record, as required by law. Motion carried.

"RESOLVED, that it is anticipated that the amount of assessments to be received from the improvement of Summit Street, Blanche Avenue and Livingston Street will be the sum of \$72,100.00."

Roll call vote: Messrs. Dieffenbach, Frese, Skinner, Heckert, Vossler—Yes. Harra—Absent.

TRANSCRIPT of minutes of the regular meeting of the Mayor and Council of the Borough of Norwood, held December 5th, 1922.

Mayor Gray presiding, with Councilmen Dieffenbach, Frese, Harra, Skinner and Vossler present. Mr. Heckert absent.

The Mayor then announced the hearing, which had been duly advertised, would be held on the ordinance entitled, "An ordinance to provide for the grading, macadamizing and draining of Summit Street from Blanche Avenue to the Northvale Borough Line; the grading, macadamizing and draining of Blanche Avenue from the westerly Borough Line to the southeasterly Borough Line and the construction of a concrete curb and gutter upon a portion thereof; the grading, macadamizing and draining of Livingston Street from Blanche

Return to Writ of Certiorari.

10 Avenue northerly to the north Borough Line," was now open. The Clerk having submitted an affidavit that a copy of the notice had been mailed to each of the property owners, it was duly moved by Mr. Skinner, seconded by Mr. Harra, this affidavit, together with a copy of the notice, be placed on file.

The Mayor inquired whether any of the citizens present wished to say anything in favor or against the proposed ordinance.

After several persons had spoken in regard to the passage of the ordinance and no one else desiring to be heard, the Mayor declared the hearing closed.

20 The following resolution was introduced by Mr. Frese, seconded by Mr. Skinner (moved for adoption by Mr. Harra):

30 "RESOLVED that an ordinance entitled 'An ordinance to provide for the grading, macadamizing and draining of Summit Street from Blanche Avenue to the Northvale Borough Line, the grading, macadamizing and draining of Blanche Avenue from the westerly Borough Line to the southeasterly Borough Line and the construction of a concrete curb and gutter upon a portion thereof; the grading, macadamizing and draining of Livingston Street from Blanche Avenue northerly to the North Borough Line,' be adopted."

Roll call vote: Messrs. Frese, Harra, Skinner, Dieffenbach, Vossler—Yes. Heckert—Absent.

40 Mr. Frese moved, seconded by Mr. Vossler, the Clerk be directed to advertise the adoption of the foregoing ordinances in the Bergen Record as re-

Return to Writ of Certiorari.

quired by law. Motion carried with all Councilmen present voting in the affirmative.

TRANSCRIPT of minutes of the regular meeting of the Mayor and Council of the Borough of Norwood, held January 2nd, 1923.

The Clerk presented two petitions received by him on December 14th protesting against the making of the improvements and the establishing of the grades of Livingston Street, Blanche Avenue and Summit Street. On motion by Mr. Schroeder, seconded by Mr. Harra, these petitions were received and referred to the Borough Attorney for advice.

10

TRANSCRIPT of minutes of the recess meeting of the Mayor and Council of the Borough of Norwood, held January 23rd, 1923.

20

Mayor Gray presiding with Councilmen Frese, Hara, McDermott, Schroeder, Skinner and Vossler present.

Taking up the matter of proposed improvement of Summit Street, Livingston Street and Blanche Avenue, the following resolution was read by the Clerk:

“WHEREAS the Clerk has certified that a protest has been filed with him, signed by the owners of more than ten percent (10%) of the assessed valuation of property in the Borough of Norwood for the year 1922, protesting against establishing the grade of Summit Street from Blanche Avenue to the Northvale Borough Line; to establish the grade of Blanche Avenue from the westerly Borough Line to the southeasterly Borough Line; to establish the grade of Livingston Street from Blanche Avenue northerly to the

30

40

Return to Writ of Certiorari.

10 north Borough Line; and to ascertain and establish the boundaries of Blanche Avenue and Livingston Street and protesting against the grading, macadamizing and draining of Summit Street from Blanche Avenue to the Northvale Borough Line; the grading, macadamizing and draining of Blanche Avenue from the westerly Borough Line to the southeasterly Borough Line and the construction of a concrete curb and gutter upon a portion thereof; the grading and macadamizing and draining of Livingston Street from Blanche Avenue northerly to the north Borough Line, thereby making the ordinances inoperative until a proposition for the ratification of said ordinances shall be adopted at an election to be held for that purpose by a majority of the qualified voters of the Borough voting on such propositions.

20

“BE IT RESOLVED that it is hereby determined that said protests are signed by the owners of more than 10 percent (10%) of the assessed valuation of property in the Borough.

30 “BE IT FURTHER RESOLVED that an election be held in the Borough of Norwood on Saturday the tenth day of March, 1923, between the hours of 6 A. M. and 7 P. M., at which election there shall be submitted to the qualified voters of the Borough the following propositions, to wit:

40 “Shall an ordinance of the Borough Council of the Borough of Norwood entitled ‘An Ordinance to establish the grade of Summit

Return to Writ of Certiorari.

Street from Blanche Avenue to the Northvale Borough Line; to establish the grade of Blanche Avenue from the westerly Borough Line to the southeasterly Borough Line; to establish the grade of Livingston Street from Blanche Avenue northerly to the North Borough line; and to ascertain and establish the boundaries of Blanche Avenue and Livingston Street, in the Borough of Norwood,' adopted and approved December 5th, 1922, be ratified?

10

"Shall an ordinance of the Borough Council of the Borough of Norwood entitled 'An ordinance to provide for the grading, macadamizing and draining of Summit Street from Blanche Avenue to the Northvale Borough Line; the grading, macadamizing and draining of Blanche Avenue from the westerly Borough Line to the southeasterly Borough Line and the construction of a concrete curb and gutter upon a portion thereof; and grading, macadamizing and draining of Livingston Street from Blanche Avenue northerly to the North Borough Line' adopted and approved December 5, 1922, be ratified?

20

"That such election shall be held, conducted and canvassed in the same manner as near as may be as the general election in the Borough of Norwood.

30

"AND BE IT FURTHER RESOLVED that the Borough Clerk be and he hereby is directed to publish a notice of such election at least ten days before the said tenth day of March, 1923, in the Bergen Record, a newspaper published in the County and circulat-

40

Return to Writ of Certiorari.

ing in the Borough of Norwood, no newspaper being published in said Borough.

10 “AND BE IT FURTHER RESOLVED that the said election shall be held in the Fire House on Central Avenue upon the date and between the hours aforesaid.”

The foregoing resolution was introduced by Mr. Frese, moved for adoption by Mr. Skinner, seconded by Mr. Vossler and carried, with the following roll-call vote:

Messrs. Frese, Skinner, Vossler, McDermott, Harra, Schroeder—yes.

20 TRANSCRIPT of minutes of the recess meeting of the Mayor and Council of the Borough of Norwood, held March 20th, 1923.

Mayor Gray presiding with Councilmen Frese, Harra, McDermott, Schroeder, Skinner and Vossler present.

The Mayor announced the object of the meeting was to take up the matter of the report of the Board of Elections of the recent special election.

30 The Clerk presented the statement of the Board of Elections, showing the result of the special election for ratification of the ordinances of the Borough Council, Borough of Norwood, N. J., as approved and adopted by the said Borough Council December 5th, 1922.

On motion of Mr. Skinner, seconded by Mr. Harra, this report was accepted and ordered filed.

The following resolution was presented by Mr. Frese, moved for adoption by Mr. Harra, seconded by Mr. Skinner:

40 “BE IT RESOLVED by the Borough Council of the Borough of Norwood that it is

Return to Writ of Certiorari.

hereby declared that the result of the Special Election, held in the Borough of Norwood, March 10, 1923, upon the proposition set forth below, was as follows:

* * * * *

“Shall an ordinance of the Borough Council of the Borough of Norwood entitled ‘An ordinance to provide for the grading, macadamizing and draining of Summit Street from Blanche Avenue to the Northvale Borough Line; the grading, macadamizing and draining of Blanche Avenue from the westerly Borough Line to the southeasterly Borough Line and the construction of a concrete curb and gutter upon a portion thereof; and the grading, macadamizing and draining of Livingston Street from Blanche Avenue northerly to the North Borough Line’ adopted and approved December 5th, 1922, be ratified? 10

In favor of ratification	181	votes
Against ratification	135	“
Void Ballots	12	“

“AND BE IT FURTHER RESOLVED that the Borough Clerk is hereby directed to publish a copy of this resolution in the Bergen Record, a newspaper published in Bergen County and circulating in the Borough of Norwood, no newspaper being published in the Borough of Norwood.” 30

Roll-call vote on the above-mentioned resolution was as follows:

Messrs. Frese, Harra, Skinner, Schroeder, McDermott, Vossler—yes. 40

Return to Writ of Certiorari.

BOROUGH OF NORWOOD.

10 Notice is hereby given that an ordinance entitled, "An Ordinance to provide for the grading, macadamizing and draining of Summit Street from Blanche Avenue to the Northvale Borough line; the grading, macadamizing and draining of
20 Blanche Avenue from the westerly Borough line to the southeasterly Borough line and the construction of a concrete curb and gutter upon a portion thereof; the grading, macadamizing and draining of Livingston Street from Blanche Avenue northerly to the North Borough line," was introduced at a meeting of the Borough Council of the Borough of Norwood, held on Tuesday, the fourteenth day of November, 1922, and that it is the
30 intention of the Borough Council to consider the undertaking of such improvements as a local improvement and the final passage of said ordinance at a meeting to be held at the Borough Hall, on Tuesday, the fifth day of December, 1922, at 8:30 o'clock P. M., at which meeting or any adjournment thereof all persons whose land may be affected by the aforesaid improvements or who may be interested therein, will be given an opportunity to be heard concerning said improvements.

The ordinance is as follows:

40 An Ordinance to provide for the grading, macadamizing and draining of Summit Street from Blanche Avenue to the Northvale Borough line; the grading, macadamizing and draining of Blanche Avenue from the westerly Borough line to the southeasterly Borough line and the construction of a concrete curb and gutter upon a portion thereof; the grading, macadamizing and draining of Livingston Street from Blanche Avenue northerly to the North Borough line.

Return to Writ of Certiorari.

Be It Ordained by the Borough Council of the
Borough of Norwood:

(1) That Summit Street from Blanche Avenue to the Northvale Borough line shall be graded for its entire width in accordance with the grade map and profiles made by the Borough Engineer and now on file with the Borough Clerk. 10

(2) That Summit Street from Blanche Avenue to the Northvale Borough line shall be paved with bituminous macadam (sometimes called penetration process) to a width of twelve (12) feet, being six (6) feet on either side of the center line thereof in accordance with the plans and specifications therefor made by the Borough Engineer and now on file with the Borough Clerk. 20

(3) That the necessary storm water drains and catch basins shall be installed in Summit Street from Blanche Avenue to the Northvale Borough line, in accordance with the plans and specifications therefor made by the Borough Engineer and now on file with the Borough Clerk.

(4) That Blanche Avenue shall be graded as follows, to-wit: The roadway thereof and the portion of said street reserved for sidewalks on the southerly side from the westerly Borough line to the West Shore Railroad tracks; said street shall be graded for its entire width from the West Shore Railroad tracks to Tappan Road; and the roadway of said street to be graded from Tappan Road to Livingston Street and the portion reserved for sidewalks on the easterly side; and from Livingston Street to the Closter Borough line at the southerly bridge, the roadway to be graded 26 feet in width, all in accordance with the grade map and profiles 30 40

Return to Writ of Certiorari.

and plans therefor made by the Borough Engineer and now on file with the Borough Clerk.

10 (5) That Blanche Avenue from the westerly Borough line to the southeasterly Borough line shall be paved to a width of fourteen (14) feet, being seven (7) feet on either side of the center line, with bituminous macadam (sometimes called penetration process), in accordance with the plans and specifications therefor made by the Borough Engineer and now on file with the Borough Clerk.

20 (6) That a concrete curb and gutter shall be constructed on both sides of Blanche Avenue from the West Shore Railroad tracks to Tappan Road, said gutter to be of a width of two and one-half (2½) feet, and said curb to be five (5) inches in thickness at the top, and to be constructed in accordance with the plans and specifications therefor made by the Borough Engineer and now on file with the Borough Clerk.

30 (7) That the necessary storm water drains and catch basins shall be installed in Blanche Avenue; in accordance with the plans and specifications therefor made by the Borough Engineer and now on file with the Borough Clerk.

40 (8) That Livingston Street shall be graded as follows: From Blanche Avenue northerly 1,300 feet, the 30 feet of roadway and the portion thereof reserved for sidewalks on the westerly side, and from thence to Central Avenue for the full width thereof, and the roadway and portion of said street reserved for sidewalks on the westerly side from Central Avenue to the north Borough line. Said grading to be performed in accordance with the grade map and profiles therefor made by the Bor-

Return to Writ of Certiorari.

ough Engineer and now on file with the Borough Clerk.

(9) That the necessary storm water drain, culverts, catch basins and manholes shall be installed and constructed in Livingston Street from Blanche Avenue north to the north Borough line in accordance with the plans and specifications therefor made by the Borough Engineer and now on file with the Borough Clerk.

10

(10) That Livingston Street from Blanche Avenue north to the north Borough line shall be paved to a width of fourteen (14) feet, being seven (7) feet on either side of the center line, with bituminous macadam (sometimes called penetration process), in accordance with the plans and specifications therefor made by the Borough Engineer and now on file with the Borough Clerk.

20

(11) The foregoing improvements are hereby declared to be local improvements, and the damages sustained by and the benefits conferred upon any lands affected by said improvements shall be assessed in accordance with the provisions of the statute in such case made and provided, excepting, however, that 30 per cent. (30%) of the cost of said improvements, exclusive of the construction of curb and gutters, shall be paid by the Borough of Norwood out of the moneys to be raised by general taxation.

30

(12) That there is hereby appropriated the sum of \$102,000.00, or so much thereof as may be necessary to pay the cost of the above-described improvements, which said sum or sums shall be raised by the issuance of temporary notes or bonds to run with all renewal thereof, for a period not exceeding six years from the date of the comple-

40

Return to Writ of Certiorari.

10 tion of the improvements herein provided for, and to bear interest at a rate not exceeding six per centum per annum. All other matters with respect to the form, issuance and sale of such temporary notes or bonds shall be provided for by resolution of the Borough Council. In case temporary bonds are issued hereunder, the same may be either registered or coupon bonds and if coupon bonds the coupons attached thereto shall bear the facsimile signature of the Borough Collector.

(13) This ordinance shall take effect immediately upon publication and as required by law.

By order of the Mayor and Council of the Borough of Norwood.

20

THOMAS J. EDWARDS,

29-30

Borough Clerk.

Dated November 15, 1922.

State of New Jersey, }
 County of Bergen, } ss.:

30

John Z. Demarest, of full age, being duly sworn, deposes and says: that he is the Editor of the Bergen Record, a newspaper published in the Borough of Tenafly, County of Bergen, State of New Jersey, and that a notice of which a copy is hereto annexed, was published in the said Bergen Record for two (2) successive weeks. Said issues in which it appeared being dated as follows: November 23rd and 30th, 1923.

JOHN Z. DEMAREST

40

Sworn to and subscribed be-)
 fore me November 30, 1923. }

(Seal.) Isabella H. Demarest,
 Notary Public.

Return to Writ of Certiorari.

BOROUGH OF NORWOOD.

ORDINANCE No. 28.

An Ordinance to provide for the grading, macadamizing and draining of Summit Street from Blanche Avenue to the Northvale Borough line; the grading, macadamizing and draining of Blanche Avenue from the Westerly Borough line to the southeasterly Borough line and the construction of a concrete curb and gutter upon a portion thereof; the grading, macadamizing and draining of Livingston Street from Blanche Avenue northerly to the north Borough line. 10

Be It Ordained by the Borough Council of the Borough of Norwood: 20

(1) That Summit Street from Blanche Avenue to the Northvale Borough line shall be graded for its entire width in accordance with the grade map and profiles made by the Borough Engineer and now on file with the Borough Clerk.

(2) That Summit Street from Blanche Avenue to the Northvale Borough line shall be paved with bituminous macadam (sometimes called penetration process) to a width of twelve (12) feet, being six (6) feet on either side of the center line thereof in accordance with the plans and specifications therefor made by the Borough Engineer and now on file with the Borough Clerk. 30

(3) That the necessary storm water drains and catch basins shall be installed in Summit Street from Blanche Avenue to the Northvale Borough line, in accordance with the plans and specifications therefor made by the Borough Engineer and now on file with the Borough Clerk. 40

Return to Writ of Certiorari.

10 (4) That Blanche Avenue shall be graded as follows, to wit: The roadway thereof and the portion of said street reserved for sidewalks on the southerly side from the westerly Borough line to the West Shore Railroad tracks; said street shall be graded for its entire width from the West Shore Railroad tracks to Tappan Road; and the roadway of said street to be graded from Tappan Road to Livingston Street and the portion reserved for sidewalks on the easterly side; and from Livingston Street to the Closter Borough line at the southerly bridge, the roadway to be graded 26 feet in width, all in accordance with the grade map and profiles and plans therefor made by the Borough Engineer and now on file with the Borough Clerk.

20

(5) That Blanche Avenue from the westerly Borough line to the southeasterly Borough line shall be paved to a width of fourteen (14) feet, being seven (7) feet on either side of the center line, with bituminous macadam (sometimes called penetration process), in accordance with the plans and specifications therefor made by the Borough Engineer and now on file with the Borough Clerk.

30 (6) That a concrete curb and gutter shall be constructed on both sides of Blanche Avenue from the West Shore Railroad tracks to Tappan Road, said gutter to be of a width of two and one-half (2½) feet, and said curb to be five (5) inches in thickness at the top, and to be constructed in accordance with the plans and specifications therefor made by the Borough Engineer and now on file with the Borough Clerk.

40

(7) That the necessary storm water drains and catch basins shall be installed in Blanche Avenue,

Return to Writ of Certiorari.

in accordance with the plans and specifications therefor made by the Borough Engineer and now on file with the Borough Clerk.

(8) That Livingston Street shall be graded as follows: From Blanche Avenue northerly 1,300 feet, the 30 feet of roadway and the portion thereof reserved for sidewalks on the westerly side, and from thence to Central Avenue for the full width thereof, and the roadway and portion of said street reserved for sidewalks on the westerly side from Central Avenue to the north Borough line. Said grading to be performed in accordance with the grade map and profiles therefor made by the Borough Engineer and now on file with the Borough Clerk.

10

(9) That the necessary storm water drain, culverts, catch basins and manholes shall be installed and constructed in Livingston Street from Blanche Avenue north to the north Borough line in accordance with the plans and specifications therefor made by the Borough Engineer and now on file with the Borough Clerk.

20

(10) That Livingston Street from Blanche Avenue north to the north Borough line shall be paved to a width of fourteen (14) feet, being seven (7) feet on either side of the center line, with bituminous macadam (sometimes called penetration process) in accordance with the plans and specifications therefor made by the Borough Engineer and now on file with the Borough Clerk.

30

(11) The foregoing improvements are hereby declared to be local improvements and the damages sustained by and the benefits conferred upon any lands affected by said improvements shall be assessed in accordance with the provisions

40

Return to Writ of Certiorari.

of the statute in such case made and provided, excepting, however, that 30 per cent. (30%) of the cost of said improvements, exclusive of the construction of curb and gutters shall be paid by the Borough of Norwood out of the moneys to be raised by general taxation.

10

(12) That there is hereby appropriated the sum of \$102,000.00 or so much thereof as may be necessary to pay the cost of the above described improvements, which said sum or sums shall be raised by the issuance of temporary notes or bonds to run with all renewals thereof, for a period not exceeding six years from the date of the completion of the improvements herein provided for, and to bear interest at a rate not exceeding six per centum per annum. All other matters with respect to the form, issuance and sale of such temporary notes or bonds, shall be provided for by resolution of the Borough Council. In case temporary bonds are issued hereunder the same may be either registered or coupon bonds and if coupon bonds the coupons attached thereto shall bear the facsimile signature of the Borough Collector.

20

30

(13) This ordinance shall take effect immediately upon publication and as required by law.

By order of the Mayor and Council of the Borough of Norwood.

Introduced, November 14, 1922.

Passed, December 5, 1922.

Adopted December 5, 1922.

40

CHARLES S. GRAY,
Mayor.

Attest:

THOMAS J. EDWARDS,
Borough Clerk.

Return to Writ of Certiorari.

This is to certify that the foregoing ordinance was adopted at a regular meeting of the Mayor and Council of the Borough of Norwood, held on Tuesday, December 5, 1922, and the said ordinance was approved by the Mayor on Tuesday, December 5, 1922.

10

THOMAS J. EDWARDS,
Borough Clerk.

32-33

State of New Jersey, }
County of Bergen, } ss. :

John Z. Demarest, of full age, being duly sworn, deposes and says: that he is the Editor of the Bergen Record, a newspaper published in the Borough of Tenafly, County of Bergen, State of New Jersey, and that a notice of which a copy is hereto annexed, was published in the said Bergen Record for two (2) successive weeks. Said issues in which it appeared being dated as follows: December 8, December 15, 1922.

20

JOHN Z. DEMAREST.

Sworn to and subscribed before }
me December 18, 1922. }

30

(Seal) Isabella H. Demarest,
Notary Public.

BOROUGH OF NORWOOD.

NOTICE.

The District Board of Registry and Election will meet at the Fire House, in the Borough of Norwood, on Tuesday, the th day of March, 1923, between the hours of 1 o'clock P. M. and 9 o'clock P. M. (Standard Time), for the registration of

40

Return to Writ of Certiorari.

voters and for the purpose of revising and correcting the register to be used at the special election to be held on March 10th, 1923.

10 The Bergen County Board of Elections, will sit on Thursday and Friday, March 8th and 9th, 1923, respectively, between the hours of 1 o'clock P. M. and 9 o'clock P. M., for the purpose of registering voters for the aforesaid special election.

By order of the District Board of Registry and Election and the Bergen County Board of Elections.

40-41 THOMAS J. EDWARDS,
Borough Clerk.

BOROUGH OF NORWOOD.

20

NOTICE OF SPECIAL ELECTION.

30 Take Notice, that pursuant to a resolution duly adopted by the Borough Council of the Borough of Norwood, at a meeting held on January 23rd, 1923, a special election is hereby called to be held in the Borough of Norwood, on Saturday, the 10th day of March, 1923, between the hours of 6 o'clock A. M. and 7 o'clock P. M. (Standard Time), at which election there shall be submitted to the qualified voters of the Borough, the following propositions, to-wit:

40 Shall an ordinance of the Borough Council of the Borough of Norwood, entitled, "An ordinance to establish the grade of Summit Street from Blanche Avenue to the Northvale Borough Line; to establish the grade of Blanche Avenue from the westerly Borough Line to the southeasterly Borough Line; to establish the grade of Livingston Street from

Return to Writ of Certiorari.

Blanche Avenue northerly to the north Borough Line; and to ascertain and establish the boundaries of Blanche Avenue and Livingston Street in the Borough of Norwood," adopted and approved December 5th, 1922, be ratified?

10

Shall an ordinance of the Borough Council of the Borough of Norwood, entitled, "An ordinance to provide for the grading, macadamizing and draining of Summit Street from Blanche Avenue to the Northvale Borough Line; the grading, macadamizing and draining of Blanche Avenue from the westerly Borough Line to the southeasterly Borough Line; and the construction of a concrete curb and gutter upon a portion thereof; and the grading, macadamizing and draining of Livingston Street from Blanche Avenue northerly to the north Borough Line," adopted and approved December 5th, 1922, be ratified?

20

Said election will be held, conducted and canvassed in the same manner as near as may be as other elections in said Borough.

The polling place for the said election will be in the Fire House, on Central Avenue, in the Borough of Norwood.

30

By order of the Borough Council of the Borough of Norwood.

THOMAS J. EDWARDS,
Borough Clerk.

40-41

State of New Jersey, }
County of Bergen, } ss. :

40

John Z. Demarest, of full age, being duly sworn, deposes and says: that he is the Editor of the

Return to Writ of Certiorari.

10 Bergen Record, a newspaper published in the Borough of Tenafly, County of Bergen, State of New Jersey, and that a notice, of which a copy is hereto annexed, was published in the said Bergen Record for two (2) successive weeks. Said issues in which it appeared being dated as follows: February 2nd and 9th, 1923.

JOHN Z. DEMAREST.

Sworn to and subscribed before }
me February 10, 1923. }

(Seal) Isabella H. Demarest,
Notary Public.

THE BOROUGH OF NORWOOD

20 A STATEMENT OF THE SPECIAL ELECTION
HELD MARCH 10, 1923,

FOR

RATIFICATION OF THE ORDINANCES OF
THE BOROUGH COUNCIL OF NORWOOD,
N. J. AS APPROVED AND ADOPTED BY
THE SAID BOROUGH COUNCIL DECEMBER
5TH, 1922.

30 Shall an ordinance of the Borough Council of the
Borough of Norwood entitled "An ordinance to
establish the grade of Summit Street, from Blanche
Avenue to the Northvale Borough Line; to estab-
lish grade of Blanche Avenue from the westerly
Borough Line to the southeasterly Borough Line;
to establish the grade of Livingston Street from
Blanche Avenue northerly to the north Borough
Line; and to ascertain and establish the boundaries
40 of Blanche Avenue and Livingston Street in the
Borough of Norwood," adopted and approved De-
cember 5th, 1922, be ratified?

Return to Writ of Certiorari.

YES One hundred eighty-four 184
 NO One hundred forty-two 142

Shall an ordinance of the Borough Council of the Borough of Norwood entitled "An ordinance to provide for the grading, macadamizing and draining of Summit Street from Blanche Avenue to the Northvale Borough Line; the grading macadamizing and draining of Blanche Avenue from the westerly Borough Line to the southeasterly Borough Line; and the construction of a concrete curb and gutter upon a portion thereof; and the grading, macadamizing and draining of Livingston Street from Blanche Avenue northerly to the North Borough Line," adopted and approved December 5th, 1922, be ratified? 10

YES One hundred eighty-one 181
 NO One hundred thirty-five 135 20

The whole number of names on the poll book is 340.

The whole number of ballots rejected (not including spoiled ballots) is 12.

Board of Registry
 and Election

Conrad Eiseman	Minnie Y. Reed	30
Judge	Clerk	
Charles E. Schroeder	Herbert Falkenstein	
Inspector	Clerk	

BOROUGH OF NORWOOD.

Resolution Declaring Result of Special Election.

BE IT RESOLVED by the Borough Council of the Borough of Norwood, that is is hereby declared that the result of the special election held in the 40

Return to Writ of Certiorari.

Borough of Norwood, March 10th, 1923, upon the proposition set forth below, was as follows:

10

“Shall an ordinance of the Borough Council of the Borough of Norwood entitled, ‘An ordinance to establish the grade of Summit Street from Blanche Avenue to the Northvale Borough Line; to establish the grade of Blanche Avenue from the westerly Borough Line to the southeasterly Borough Line; to establish the grade of Livingston Street from Blanche Avenue northerly to the North Borough Line; and to ascertain and establish the boundaries of Blanche Avenue and Livingston Street in the Borough of Norwood,’ adopted and approved December 5th, 1922, be ratified?”

20

In favor of ratification.....	184 votes
Against ratification	142 votes
Void ballots	12

30

“Shall an ordinance of the Borough Council of the Borough of Norwood, entitled ‘An ordinance to provide for the grading, macadamizing and draining of Summit Street from Blanche Avenue to the Northvale Borough Line; the grading, macadamizing and draining of Blanche Avenue from the westerly Borough Line to the southeasterly Borough Line; and the construction of a concrete curb and gutter upon a portion thereof; and the grading, macadamizing and draining of Livingston Street from Blanche Avenue northerly to the north Borough Line,’ adopted and approved December 5th, 1922, be ratified?”

40

Return to Writ of Certiorari.

In favor of ratification	181 votes
Against ratification	135 votes
Void ballots	12

AND BE IT FURTHER RESOLVED that the Borough Clerk is hereby directed to publish a copy of this resolution in the Bergen Record, a newspaper published in Bergen County and circulating in the Borough of Norwood, no newspaper being published in the Borough of Norwood. 10

By order of the Mayor and Borough Council of the Borough of Norwood.

I hereby certify the above to be a true copy of a resolution duly adopted by the Mayor and Council of the Borough of Norwood and approved by the Mayor March 20, 1923. 20

47-48 THOMAS J. EDWARDS,
Borough Clerk.

State of New Jersey, }
County of Bergen, } ss.:

John Z. Demarest, of full age, being duly sworn, deposes and says: That he is the editor of the Bergen Record, a newspaper published in the Borough of Tenafly, County of Bergen, State of New Jersey, and that a notice of which a copy is hereto annexed was published in the said Bergen Record for two (2) successive weeks. Said issues in which it appeared being dated as follows: March 23rd and 30th, 1923. 30

JOHN Z. DEMAREST.

Sworn to and subscribed before) me April 2nd, 1923. { 40

(Seal) Isabella H. Demarest,
Notary Public.

Return to Writ of Certiorari.

SUPPLEMENTAL DEBT STATEMENT

NOTE.—By Chapter 240, P. L. 1917, which amends the New Jersey General Bond Act of 1916 (Chapter 252, P. L. 1916), a Supplemental Debt Statement under oath, in substantially the form annexed, must be made by the chief financial officer and must be filed with the clerk of the municipality (in the case of a county, with the clerk of the board of chosen freeholders) prior to the passage of every ordinance or resolution authorizing notes or bonds under that act, including temporary notes and bonds, except an ordinance or resolution authorizing notes or bonds, (a) for funding, (b) for refunding, (c) for the supply of water, (d) for dikes, bulkheads or jetties, etc., along the ocean front.

The amendment of 1917 does not require that any debt statement be filed prior to the letting of contracts, as did the Act of 1916, but it does provide (Section 14, Subdivision j) that an appropriation must be made sufficient to meet the cost of carrying out the provisions of contracts which are to be financed by notes or bonds under the act, and this in effect is declaratory of the common law of the State that a contract cannot be let unless provision is made for financing it.

N. B.—Copy of Supplemental Debt Statement must also be filed with the Department of Municipal Accounts.

State of New Jersey, }
County of Bergen, } ss. :

Arthur G. Ingram, being duly sworn, deposes and says:

Return to Writ of Certiorari.

Deponent is the Collector of Taxes of the Borough of Norwood, hereinafter called "the municipality," and the chief financial officer thereof. The Supplemental Debt Statement, annexed hereto and hereby made a part hereof, is a true statement of the debt condition of the municipality on the date hereof, and is computed as provided for the annual debt statement by Chapter 252, P. L. 1916, as amended.

10

ARTHUR G. INGRAM,
Collector of Taxes,
Norwood, N. J.

Subscribed and sworn to before me }
this 14th day of November, 1922. }

LeRoy Vanderburgh,
Master in Chancery
of New Jersey.

20

A. (1) The net debt of the
municipality, as
stated in subdivi-
sion C of the an-
nual debt statement
last filed is \$ 14,002.52

30

(2) The amount by
which such net debt
has been (increased)
(decreased)
is 12,900.00

(3) The net debt at the
time of this State-
ment is \$ 1,102.52

40

Return to Writ of Certiorari.

- 10 B. The amounts and purposes separately itemized of the bonds or notes about to be authorized, together with the deduction which may be made on account of each item.
- Notes on bonds for improvement of Summit St., Blanche Ave. and Livingston St. 103,000.00
- 20 Less amount of anticipated assessments as fixed by resolution of the Borough Council 72,100.00
- \$ 30,900.00
- Notes for purchase of fire hose 500.00
- Total under this Item B \$ 31,400.00
- 30 C. The net debt of the municipality, after the indebtedness to be authorized has been incurred, is (NOTE.—Add A and B) \$ 32,502.52
- 40 D. The three next preceding assessed valuations of the taxable real property (including improvements) of the municipality and the

Depositions.

average thereof is as follows:

1920 assessed valuation	\$762,716.00
1921 " "	781,441.00
1922 " "	816,166.00

Average of such assessed valuations	\$786,774.00	10
-------------------------------------	--------------	----

- E. The percentage that the net debt, as computed under subdivision C hereof, bears to the average assessed valuation computed under subdivision D hereof is as follows:

4.13 per cent. (4 13/100%)

Depositions.

NEW JERSEY SUPREME COURT.

20

<p style="text-align: center;">ALBERT HAAKE, Prosecutor,</p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">THE BOROUGH OF NORWOOD, IN THE COUNTY OF BERGEN, Respondent.</p>	}	On Certiorari.
---	---	----------------

30

Depositions taken in the above-entitled cause before me, a Supreme Court Commissioner, at the Court House, in the Village of Hackensack, Bergen County, New Jersey, pursuant to notice dated April 30th, 1923, on the 5th day of May, 1923. In the presence of Hon. Frederick W. Mattocks, Esq., counsel for prosecutor, and LeRoy Vanderburgh, counsel for respondent.

40

PETER W. STAGG,
Supreme Court Commissioner.

Conrad Eiseman, direct.

Counsel for Prosecutor submits rule to take testimony and the admission of service of the notice.

Counsel for Prosecutor: I would like to have a copy of the official ballot that is in the ballot box and for which I have served a subpoena.

10 Counsel for Respondent: My understanding is that all unused ballots were placed in the box. I have no objection to the ballot box being opened and the contents seen, but the Election Laws state that the ballot box shall only be opened upon an order of a Justice of the Supreme Court.

20 Counsel for Prosecutor: I have served a subpoena to produce. And this is a certiorari to the Supreme Court. However, I understand that Judge Mattocks has copies of the yellow sample ballots. I am willing to have the Clerk sworn to show that is a copy of the official ballot.

CONRAD EISEMAN, a witness produced on behalf of the Prosecutor, being first duly sworn, testifies as follows:

Examination by Judge Mattocks:

30 Q. What is your official position in the Borough of Norwood, Mr. Eiseman? A. Judge of the Board of Registry and Election.

Q. I show you a paper; what is that? A. It says sample ballot of the Borough of Norwood, Special Election, March 10th, 1923.

Q. Is that a copy of the official ballot that was used on the 10th day of March, 1923? A. Yes, the same thing.

Q. The same thing? A. Yes.

By Counsel for Respondent:

40 Q. Was the words "Sample Ballot" on the offi-

Conrad Eiseman, cross.

cial ballot which was used at the general election?

A. No.

Q. What was the color of the official ballot that was used on the day of the general election? A. White.

Q. This ballot is what color? A. I would call it yellow.

10

Q. Were the official ballots used on the general election numbered? A. They were not; I am quite sure they were not numbered.

Q. Were they numbered or not? A. I am not sure.

Counsel for Respondent: I object to the admission of the ballot, except to show that the X mark was not before "Yes" and the other changes testified to that with the exception noted it is a copy of the official ballot used at the election.

20

The Commissioner: You admit that that paper is a copy of the actual ballot used except the words "Sample Ballot" and the color, and that this is not numbered and that the official ballots were numbered. I will admit the paper; let it be marked Exhibit P-1.

30

(Copy)

SAMPLE BALLOT

BOROUGH OF NORWOOD

SPECIAL ELECTION

March 10th, 1923

No.

Shall an ordinance of the Borough Council of the Borough of Norwood, entitled "An ordinance

40

Conrad Eiseman, cross.

10 to establish the grade of Summit Street from Blanche Avenue to the Northvale Borough Line; to establish the grade of Blanche Avenue from the westerly Borough Line to the southeasterly Borough Line; to establish the grade of Livingston Street from Blanche Avenue northerly to the north Borough Line; and to ascertain and establish the boundaries of Blanche Avenue and Livingston Street in the Borough of Norwood," adopted and approved December 5th, 1922, be ratified?

To vote in favor of ratification, place a cross (X)

20

X	YES
	NO

or a plus mark (+) in the space opposite the word "YES."

To vote against ratification, place a cross (X) or a plus mark (+) in the space opposite the word "NO."

30

Shall an ordinance of the Borough Council of the Borough of Norwood, entitled "An ordinance to provide for the grading, macadamizing and draining of Summit Street from Blanche Avenue to the Northvale Borough Line; the grading, macadamizing and draining of Blanche Avenue from the westerly Borough Line to the southeasterly Borough Line; and the construction of a concrete curb and gutter upon a portion thereof; and the grading, macadamizing and draining of Livingston Street from Blanche Avenue northerly to the

40

John V. Demarest, direct.

north Borough Line," adopted and approved December 5th, 1922, be ratified?

×	YES
	NO

10

To vote in favor of ratification, place a cross (×) or a plus mark (+) in the space opposite the word "YES."

To vote against ratification, place a cross (×) or a plus mark (+) in the space opposite the word "NO."

Marked P-1, 5/5/23.

20

JOHN V. DEMAREST, a witness produced on behalf of the prosecutor, being first duly sworn, testifies as follows:

Q. What is your business, Mr. Demarest? A. Publisher and printer.

Q. Whereabouts? A. Tenafly.

By the Commissioner:

Q. Printer of what? A. I do job work and print a newspaper; in fact, two or three newspapers.

30

By Counsel:

Q. Did you print the official ballot of the Special Election held in the Borough of Norwood on March 10th? A. I did.

Q. Did you print these sample ballots offered in evidence and marked P-1? A. That looks like the ballot I printed, sir.

40

John V. Demarest, direct.

By the Commissioner:

10 Q. Did you have that printed in your place, he wants to know? A. As near as I can tell and state it correctly, it is the same kind of stock I have in my place and the type and everything is the same as I would print it, I should say that is the same as the ballot I had printed in my place.

Q. By whose authority did you have that ballot printed? A. By the authority of the Committee.

Q. What Committee? A. Norwood Improvement Committee.

Q. Did you have any authority to print that ballot from the Borough Clerk? A. No, sir.

Q. Or from the members of the Election Board? A. No, sir.

20 Q. Who paid for the printing of this ballot? A. Not paid for yet, sir.

Q. To whom have they been charged? A. Charged to Norwood Improvement Committee.

Q. Who, as a matter of fact, did you see as an individual and who ordered the printing of these ballots? A. I don't remember exactly, there were two or three people spoke about it. One man was Mr. Henry Essex and another was Mr. George Diefenbach.

30 Q. To whom did you deliver these ballots? A. I did not deliver them, I don't remember to whom my man delivered them, I told him to deliver them to Mr. Diefenbach or some one who knew about it, whether it was Mr. Essex's place or Mr. Diefenbach's place, I don't remember that, I sent my man up with them.

40 Q. Did you receive any instructions from anybody with reference to the delivery of these ballots? A. I may have, but I don't remember it.

Q. You say you sent your man up to Norwood with them? A. One of the clerks from the office.

John V. Demarest, direct.

Q. Did you send them up to Norwood? A. I did.

Q. Did you tell him where to take the ballots?

A. That I don't remember whether I told him exactly where to take them at the present time, not knowing that this thing was going to come up, I supposed everything would be all right.

10

Q. So you told him to go to Norwood without telling him where to go with these ballots? A. I did probably tell him where to go.

Q. But you don't remember where you sent him, since March 10th? A. I don't remember which place it was now.

Q. To whom did you charge these ballots? A. The Norwood Improvement Committee.

Q. Do you know who they are? A. I know some of them.

20

Q. Are you accustomed to charging ballots to an organization without knowing who to look to for payment? A. Oh, yes.

Q. Any kind of an organization comes in and orders ballots you would do it without knowing who they were for? A. I know who I do work for.

Q. Who were the people that came in? A. Mr. Henry Essex, Mr. George Diefenbach, and Mr. Paulman.

30

Q. Albert D. Paulman? A. He lives at Norwood, I don't know him by the first name.

Q. What is the name of the clerk in your office that you asked to deliver these ballots in Norwood, these sample ballots? A. Stubs.

Q. What is his first name? A. Alfred.

Q. Is he in your employ now? A. Yes, sir.

Q. Does he live in Tenafly? A. He does.

40

Q. Whereabouts? A. I don't know what street he lives on.

Conrad Eiseman, direct.

Q. Can he be found at your place of business any time? A. No, he is in and out all of the while, he is on the road most of the time soliciting business.

No Cross Examination.

10

CONRAD EISEMAN, recalled.

Q. Looking at Exhibit P. 1, kindly state whether you or any other members of the Election Board in your presence mailed that ballot to the, or a copy of that ballot to the voters of the Borough of Norwood?

20

Counsel for Respondent: I would like to object to any question in regard to this sample ballot, as to who printed it, to whom it was delivered, or who mailed it. It is immaterial under the law who did any of these things, any citizens had a perfect right to send these ballots out.

A. We did not.

Q. You were present at all meetings of the Election Board of the Borough of Norwood? A. Yes, sir.

30

Q. So that if a copy of that ballot was sent out by you you would know it? A. Yes, if it was sent out by us I would know about it.

Q. Did you prepare any envelopes addressed to the voters of the Borough of Norwood for the purpose of sending out sample ballots? A. No, sir.

Q. You held this Special Election did you, upon March 10th? A. March 10th, on Saturday.

40

By the Commissioner:

Q. What year? A. 1923.

Conrad Eiseman, direct.

By Counsel:

Q. How did you hold this Special Election, what did you do the first thing? A. On March 10th?

Q. Yes? A. Opened the polls at six o'clock, declared the polls open ready to receive votes.

Q. What was the next thing you did? A. We received the ballots, the votes. 10

Q. What was the next thing you did? A. You open the polls and declare the election open and proceed bollots—

Q. That is all you did? A. What do you mean?

Q. I mean is that all you did?

By the Commissioner:

Q. You stated you opened the polls and received the ballots, what else did you do, do you understand his question? A. No, I don't understand it. 20

Q. The question is this: What else did you do? Supposing I was there and I voted and handed the ballot to somebody, did you put it in your pocket? A. No.

Q. Well, what next did you do? A. Well, I took the ballots that were voted and deposited them in the ballot box.

By Counsel:

Q. Now remember that I have asked you what was the next thing you did after declaring the election open, do you understand the question? A. Not unless we proceeded with the election. 30

By the Commissioner:

Q. That is a conclusion. He asked you what you did—do you understand the question? A. I do not understand that. 40

Q. Here is the ballot box; you opened the ballot box? A. No, we did not open the ballot box.

Conrad Eiseman, direct.

Q. You opened the election and you received the votes, he wants to know what was the next thing you did; you told us you got them from the people and put them in the box? A. The next thing we did was to check them properly on the registry book.

10

By Counsel:

Q. You understand the question, you have stated everything you did with reference to the conduct of that election, declaring the election open, that is all you did before receiving the ballots? A. That is all.

Q. And these official ballots you say were not numbered? A. I don't think they were.

20

Q. When a person came in to vote, what did you do? A. What did I do?

Q. Yes? A. The inspector handed the ballot and he went to the booth and deposited it and voted and I received the ballot and deposited it in the ballot box.

Q. That is all you did? A. I called his name.

Q. That is all you did? A. And the clerk he wrote it down and checked it off as a vote.

30

Q. And that is all you did? A. At one time, certainly.

Q. You are positive of that? A. Yes, at each vote, that is.

Q. So you say that the voter came out of the booth, handed you the ballot, and you deposited it in the box? A. Called his name and deposited it in the box.

Q. That is all there was to it? A. That is all there was to do with that one vote.

40

Q. And that is the way all the rest of them voted? A. Yes.

Conrad Eiseman, direct.

Q. Have you with you a statement of the result of the election? A. It is in the ballot box.

By the Commissioner:

Q. Have you with you a statement of the result of the election? A. No, except it is in the ballot box.

10

By Counsel:

Q. I have asked you to produce a statement of the result of the election. A. The results of the election are in the ballot box.

Q. Did you sign any statement of the result of the election? A. I signed the election statements that are legal.

By the Commissioner:

20

Q. Did you sign any statement of the result of the election?

Counsel for Prosecutor: I move to strike out the answer and repeat the question.

Counsel for Respondent: I object; it has already been answered.

Q. Did you sign any statement of the result of the election? A. Yes, sir.

Q. Where was that statement at the time you signed it? A. In the election room.

30

Q. On what kind of paper did you sign your name? A. Papers that the Election Board had made out in legal form, as we had no other papers sent to us by the County Clerk.

Q. So it was on a separate piece of paper that you signed this statement? A. It is on the return of the election; that is where we signed.

Q. And that is the only thing that was signed? A. And the books.

40

Conrad Eiseman, direct.

Q. Why don't you go on and tell me? A. We signed all the necessary papers that pertained to the election.

Counsel for Prosecutor: I move to strike that out.

10 The Commissioner: He wants to know where you signed it and how you signed, and what you signed.

The Witness: Explain it, please.

By the Commissioner:

Q. Sometime during that day you signed papers. He wants to know where you signed, how you signed and when you signed, what they were and how many you signed? A. Why, I signed the re-
20 turn, and I signed the registry book and the tally sheets, and I think that is all.

By Counsel:

Q. How many tally sheets did you sign? A. Two, I believe, yes, sir.

Q. How many books did you sign? A. One.

Q. Any other papers that you signed? A. And the returns to the election, the result of the election.

30 Q. So you signed five papers—five places? A. Three.

Q. Three places? A. Five places is right.

Q. You signed your name five times? A. Yes, sir.

Q. What did you do with these statements and books that you signed, after you signed them? A. After we signed them, put one return in the ballot box, one tally sheet in the ballot box, and the re-
40 turn sheet delivered to the Borough Clerk, and the tally sheet was delivered to the Borough Clerk and

Conrad Eiseman, cross.

the registry book was delivered to the Borough Clerk.

Q. That is all you did? A. And the others put in the box.

Q. What? A. One tally sheet and one return was put in the ballot box.

Q. That is all you did? A. And delivered what was to go to the Borough Clerk.

10

By the Commissioner:

Q. He asked you if that is all you did? A. And locked the ballot box and after the votes were counted, we returned the box to the Borough Clerk.

Q. Is that all you did? A. We counted the ballots before we signed up; that is—

20

By Counsel:

Q. And you were present at all times during the conduct of this election? A. Yes, sir.

Q. And you were present at all times that these papers were signed that you speak of? A. Yes, sir.

Q. And they were signed by yourself and the other members of the Election Board? A. By the members of the Election Board.

30

Cross examination:

Q. Were you a member of the Election Board in November, 1922, when the general election was held? A. Yes, sir.

Q. Were you Judge of the Election Board at that time? A. Yes, sir.

Q. Did you conduct the special election and canvass the vote in the same manner that you did at the general election last November?

40

Conrad Eiseman, cross.

Counsel for Prosecutor: I object to that as calling for a conclusion.

The Commissioner: The question calls for a yes and no answer.

A. No, we did not.

10 Q. In what respect? A. We did not make a house to house canvass.

Q. But my question referred to the day of the election from the time the polls were opened in the morning until the polls were closed at night, did you conduct it that day and canvass the vote and count the vote in the same manner as you did on the general election?

20 Counsel for Prosecutor: I object to that, calling for a conclusion, and he is already bound by the answer.

A. Yes, sir.

30 Q. You have been charged in another proceeding, and the other members of the election board with misconduct, fraud and corruption in conducting this special election of March 10th, 1923, did you, to your knowledge, or any other member of the Election Board misconduct themselves in the conducting and canvassing this special election?

Counsel for Prosecutor: I object to that on several grounds: First, it is leading. Second, it calls for a conclusion. Third, it is not proper cross examination.

A. We did not.

40

Miss Mary E. J. King, direct.

MISS MARY E. J. KING, a witness produced on behalf of the prosecutor, being first duly sworn, testifies as follows:

Direct examination:

Q. Where do you reside Miss King? A. West Norwood. 10

Q. Are you a qualified voter of the Borough of Norwood? A. I am.

Q. Did you receive a sample ballot through the mail in the Borough of Norwood?

Counsel for Respondent: I object. It is immaterial and incompetent and no foundation has been laid for the question.

A. Yes. 20

Q. Have you the sample ballot which you received through the mail? A. Yes, I have.

Q. Kindly produce it? (Witness produces a paper.)

Marked P. 2 and P. 3 for Identification.

Q. Where did you get these two papers? A. I received them through the mail.

I offer these in evidence.

Counsel for Respondent: I object on the ground it is immaterial, and no testimony to show that it has any connection with the present proceeding. 30

The Commissioner: They will be admitted subject to the objection.

Q. When did you receive these two papers—about when? A. I could not say whether I received that the day before. 40

Q. Prior to March 10? A. Yes, either one or two days.

Michael Beahm, direct.

By the Commissioner:

Q. It was in March, this year? A. Yes.

Q. Prior to the election? A. Yes.

By Counsel:

10 Q. Were the pencil marks upon this ballot at the time you received it, the cross mark in front of the word "YES"? A. Yes.

By the Commissioner:

Q. On this paper—P. 3? A. Yes.

Q. Did you receive any other communication signed by the Norwood Improvement Committee about the same time that you received these Exhibits P. 2 and P. 3?

20 Counsel for Respondent: Objected to as immaterial.

A. Yes.

Q. Have you the communications with you? A. No, I have not.

Q. I show you a communication consisting of two sheets and headed Special Good Roads, Election Saturday, March 10th—

30 Counsel for Respondent: I object to that.

Q. (Continued.) Signed by the Norwood Improvement Committee and ask you if you received a copy of that communication in the mail? A. I received several, but I could not say for sure.

MICHAEL BEAHM, a witness produced on behalf of the prosecutor, being first duly sworn, testifies as follows:

40 *Direct examination:*

Q. I show you a paper and envelope and con-

Mrs. Mary A. Lovette, direct.

tents and ask you where you received these from?

A. Yes, sir, this is mine.

By the Commissioner:

Q. The question is: Where did you receive these from? A. My boy fetched up the mail from West Norwood, on March the 9th, at four thirty P. M.

10

Q. You got it by mail? A. Yes, and this is the envelope.

Marked P. 4 and P. 5 for Identification.

Q. Was the ballot marked? A. Yes.

Q. With a cross mark opposite the word "Yes"?

A. Yes, on each section.

Counsel for Prosecutor: I offer these in evidence.

20

Counsel for Respondent: I object to that as immaterial and incompetent and the source from which they come has not been shown.

Admitted in evidence at pages 4 and 5.

(No Cross Examination.)

MRS. MARY A. LOVETTE, a witness produced on behalf of the prosecutor, being first duly sworn, testified as follows:

30

Q. Where do you reside, Mrs. Lovette? A. Norwood.

Q. Are you a qualified voter of the Borough of Norwood? A. I am.

Q. Were you on March 10th, 1923, a qualified voter of the Borough of Norwood? A. I was.

Q. Have you a paper there--let me see what it is? A. I have.

40

Q. Will you kindly state where you received

William P. Lovette, direct.

these papers from? A. Received them from the Post Office.

Q. When? A. On the 8th day of March, 1923.

I offer these for identification.

(Marked P-6.)

10

Q. Was the mark upon this ballot—the cross mark after the word “Yes,” when you received it?

A. It was.

Counsel for Prosecutor: I offer that in evidence.

Counsel for Respondent: I object. Immaterial, incompetent, and the source from which the paper comes has not been shown.

(Received and marked P-6.)

20

Cross examination:

Q. In the same envelope with the paper which was just marked in evidence you received this communication addressed “Friend Neighbor” and signed by the Norwood Improvement Committee?

Counsel for Prosecutor: I object as not proper cross examination.

A. I did.

30

Counsel for Respondent: I ask that this be marked for identification D-1.

WILLIAM P. LOVETTE, a witness produced on behalf of the prosecutor, being first duly sworn, testifies as follows:

Q. Where do you reside, Mr. Lovette? A. Norwood.

40

Q. Did you give your first name? A. I did.

Q. Were you a qualified voter in the Borough of

William P. Lovette, cross.

Norwood since January 1st, 1923? A. I was and am.

Q. At all times? A. All the time.

Q. Did you receive a ballot, a sample ballot, through the mail?

Counsel for Prosecutor: I object to that— 10
same grounds as heretofore.

A. I did.

Q. Kindly produce the paper or letter you received?

(Witness produces a paper.)

Q. The paper you produce, where did you get it?

A. Through the mail.

Q. When? A. The morning of the 8th of March, 1923. 20

Counsel for Prosecutor: I offer it for identification.

(Marked P-7.)

Q. Was the cross marks upon that ballot, opposite the words "Yes" when you received it? A. They were.

Counsel for Prosecutor: I offer it in evidence. 30

Counsel for Respondent: Same objection.

(Admitted and marked P-7.)

Cross examination:

Q. Mr. Lovette, did you vote in favor or against this improvement?

Counsel for Prosecutor: Objected to as immaterial and not proper cross examination. 40

John V. Demarest, direct.

Q. Do you wish to refuse to answer? A. I will follow the Judge's instructions.

Q. Did the receipt of this so-called sample ballot cause you to change your vote on the proposition?

10 Counsel for Prosecutor: Objected to as not proper cross examination.

The Commissioner: You have a right to refuse to answer it if you want.

The Witness: I decline to answer on the same ground.

20 Counsel for the Prosecutor: We have these four people who will testify to the same facts as those just sworn: Mr. Axel J. Murberg, Mr. Albert Haake, prosecutor in the case, Mrs. Estelle Kenyer and Mrs. Marie Kort, all qualified voters of the Borough of Norwood.

All four duly sworn.

30 It is stipulated by counsel that these four people will swear and testify that they had each received a similar paper, marked "Sample Ballot," through the mail, previous to March 10th, 1923, and that each of these similar papers marked "Sample Ballot" were marked with a cross after the word "Yes."

Counsel for Prosecutor: That concludes our examination.

Prosecutor rests for the present.

MR. JOHN V. DEMAREST, recalled for the respondent.

40 Q. Mr. Demarest, you have testified that you printed the official ballots for the Special Election at Norwood held March 10th, 1923; do you know whether these ballots were numbered or not?

John V. Demarest, cross.

Counsel for Prosecutor: I object to that on the ground it is not the best evidence. The ballots speak for themselves.

The Commissioner: The question, Mr. Demarest, is not whether they were numbered or not, but your answer is whether you know whether they were numbered or not? 10

A. Yes.

Q. Were they numbered?

Counsel for Prosecutor: I object, it is not the best evidence, the ballots themselves should be produced.

A. Yes. 20

Cross examination:

Q. Did you actually print these ballots yourself?

A. No, sir.

Q. Did you deliver the ballots yourself? A. No, sir.

Q. Who did deliver them, the official ballots I am talking about? A. To the best of my knowledge and belief the young man in my employ.

Q. You will not swear that you know who delivered them? A. I know the clerk in my office— from my office—delivered them. 30

The Commissioner: Suppose I started to deliver them. If I left here to deliver something to the Susquehanna Railroad, and if you did not follow me and see me go there, how could you say I delivered them?

The Witness: On the Judge's question I would say I do not know. 40

Q. Did you number these sample ballots? A. No, sir.

John V. Demarest, cross.

Q. Why not?

Objected to as immaterial.

A. Because I don't do the printing myself.

10 Q. That is the reason why you did not number them, because you did not do the printing yourself?

The Commissioner: Is that so?

A. That is referring to me personally?

Q. Yes? A. I did not do that.

Q. You don't know whether the sample ballots were numbered or not? A. I do.

Q. Did you wrap up the official ballots after they had been printed? A. No, sir.

20 Q. How many official ballots were there? A. Five hundred or more.

Q. How many more? A. I don't remember.

Q. Did you count them? A. The numbering machine counted them for me.

Q. Did you count them? A. No, I did not count them.

Q. You are an intelligent man, you know how to answer questions; I asked you whether you counted them? A. No.

30 Q. And you did not wrap them up? A. No.

Q. Did you take them off the machine? A. No.

Q. How many of these ballots did you see after they were printed? A. Probably twenty-five or thirty.

Q. Twenty-five or thirty you say—what numbers were on the ballots you saw? A. I don't remember.

40 Q. Who ordered you to print these official ballots? A. The Norwood Improvement Committee.

*John V. Demarest, redirect—recross.**Redirect examination:*

Q. Did you understand the previous question?

A. In reference to whether—

By the Commissioner:

Q. Did you understand the previous question, yes or no? A. The Norwood Improvement. 10

Q. The official ballots? A. That is ordered by the Clerk of the Board of Borough Council.

Q. You mean? A. Thomas J. Edwards, I think.

Recross examination:

Q. Are you as positive about that as you are about the rest of your testimony? A. Yes.

Q. You say you think he ordered them? A. I know he ordered them. 20

Q. Why did you say you think? A. I know his name is Edwards, I think it is Thomas J.

Q. Where did you receive the order? A. From Mr. Edwards at the Council meeting. That is the best of my recollection.

Q. That is the best of your recollection? A. Yes, sir.

Q. And that is the basis of your knowledge, your recollection? A. Of that particular thing.

Q. In what form did you receive the order from Mr. Edwards? A. Order to print them. 30

Q. In what form? A. Verbally.

Q. What did he say to you? A. Told me to print the ballots.

Q. That is all he said? A. Yes.

Q. Print the ballots? A. Yes.

Q. Are you sure that is all he said? A. To the best of my recollection. 40

Thomas Joseph Edwards, direct.

THOMAS JOSEPH EDWARDS, a witness produced on behalf of the respondent, being first duly sworn, testifies as follows:

Q. You are the Borough Clerk of the Borough of Norwood? A. I am.

10 Q. And were the Borough Clerk on March 10th, 1923, and since January 1st, 1923? A. I was.

Q. I show you some papers headed specifications for grading, macadamizing and draining and otherwise improving Summit Street, Blanche Avenue and Livingston Street, and ask you whether or not they are on file in your office? A. They are.

20 Q. And when were they filed in your office? A. Just a few days prior—I don't know exactly how many—prior to the introduction of the ordinance.

Q. Are these the only specifications filed with you in connection with that ordinance? A. The only ones.

Q. I show you eleven sheets of plans and ask you if these plans are on file in your office? A. They are.

Q. When were they filed in your office? A. A few days prior to the ordinance.

30 Q. Are there any other plans on file in your office in connection with the ordinance certiorated? A. There are not.

Counsel for Respondent: I offer the specifications in evidence.

Counsel for Prosecutor: I object to their being introduced in evidence on the ground they are not properly proven.

40 The Commissioner: You will have to use a certified copy. I don't think you will be allowed to use the originals.

Admitted R-2.

Albert Haake, direct.

Q. By who was Exhibit R-2 filed in your office?

A. By Watson G. Clark, Borough Engineer.

Counsel for Respondent: I offer these eleven sheets in evidence.

Counsel for Prosecutor: Objected to as not properly proven. 10

Marked R-3.

No cross examination.

(It is consented by both parties that these plans and specifications need not be printed as a part of these papers, but may be referred to in the argument if desired.)

MR. ALBERT HAAKE, a witness produced on behalf of the respondent, being first duly sworn, testifies as follows: 20

Q. You are the prosecutor in this action of certiorari? A. Yes.

Q. On December 5th, 1922, there was a meeting of the Mayor and Council of the Borough of Norwood, at which the ordinance under contest was considered for final passage; were you present at that meeting?

Counsel for Prosecutor: I object to that. It is injecting into the record the testimony of the attorney, characterizing what occurred at that meeting, a proper question would be, Was he at a meeting on December 5th, 1922? 30

A: I don't remember, if I was there.

Q. Are you a subscriber to the Bergen Record?

Counsel for Prosecutor: I object to that as immaterial. 40

Albert Haake, direct.

A. I am.

Q. Prior to December 5th, 1922, did you see a notice in the Bergen Record that a hearing was to be held on this particular ordinance by the Mayor and Council, December 5th, 1922?

10 Counsel for Prosecutor: I object to that as immaterial.

A. I don't remember if I was there.

By the Commissioner:

Q. That isn't the question. The word prior means before. Before that did you receive this notice?

20 Counsel for Prosecutor: You are to testify to what you know.

A. I did read that in the paper.

Q. That there was to be a hearing before the Mayor and Council on December 5th, on the particular ordinance in contest here?

Counsel for Prosecutor: I object to that—it is calling for a conclusion—what he read.

A. I don't remember.

30 Q. What did you mean when you say you saw a notice in the paper? A. When I read the paper, I read it, and I surely read what is in the paper.

Q. You knew there was to be a hearing on December 5th, 1922, on this ordinance, did you not?

A. Yes.

Q. Did you attend that hearing?

40 Counsel for Prosecutor: I object to that. It has already been answered, that he did not remember.

A. Yes, I was there.

Albert Haake, direct.

Q. Now, after the passage of the ordinance on December 5th, 1922, did you sign a protest of property owners against the making of the expenditure and the making of the improvement?

Counsel for Prosecutor: I object to that—
not the best evidence of a protest; the paper
that he signed, if such a paper was signed
by him, is the best evidence. 10

A. Yes, sir, I did.

Q. And was the purpose of that protest to force a special election upon the question as to the ratification of the ordinance?

Counsel for Prosecutor: The protest
speaks for itself— It is not the best evi-
dence. 20

A. I don't understand that.

The Commissioner: I will explain it.
Was the reason—the purpose—the reason
why you signed was to force the Mayor and
Council to hold a special election, to see
whether they would go on or whether they
wouldn't?

Counsel for Prosecutor: I withdraw my
objection. 30

A. That is just the reason.

Q. Did you vote at the special election March
10th, 1922? A. I did.

No Cross Examination.

Minnie Y. Reed, direct.

MINNIE Y. REED, a witness produced on behalf of the respondent, being first duly sworn, testifies as follows:

Q. Mrs. Reed, are you a member of the Election Board of the Borough of Norwood? A. I am.

10 Q. And were you such on March 10th, 1923? A. I was.

Q. Were you present all day at the time on that date when the special election was held? A. I was.

Q. You have heard Mr. Eiseman, the Judge of the Election Board, testify as to how this election was conducted, have you not? A. I have.

20 Q. Was the election conducted in all respects as Mr. Eiseman stated?

Counsel for Prosecutor: I object to that as calling for a conclusion, and testimony cannot be compared.

Question withdrawn.

Q. Will you explain to the Court exactly how the election was conducted by the Election Board?

30 A. Mr. Eiseman opened the election box. The election officers looked into the election box and saw it was empty. He then locked the box and gave each one of the other members a key. He then declared the polls open. The voters came in. The inspector would hand them a ballot, call out the number of the ballot, booth vote it. When they came out they handed Mr. Eiseman the ballot. He tore off the slip, handed it to the inspector, called out their number and deposited it in the ballot box.

40 Q. How was the vote canvassed?

The Commissioner: After the election was over, what did you do?

Herbert Fortenstern, direct.

A. After seven o'clock, Mr. Eiseman asked if there was some in the polls who wished to vote and if they had all voted. He declared the polls closed. Mr. Fortenstern and I were tally clerks. We each had a tally sheet. After it was over the record was called out. We all signed the two tally sheets, one book and two return slips. One tally sheet and one return slip was put in the election box and locked with the ballots. The other three were given to Mr. Edwards with the keys.

10

Q. What became of the box? A. The box stayed in the ballot booth.

Q. I show you Exhibit P-1 and ask if you sent that to any of the voters through the mails? A. No, sir.

Q. Did you ever see that previous to March 10th, 1923? A. Yes, I received one in the mail.

20

Cross examination:

Q. You say you received one of these in the mail? A. Yes.

Q. Was it marked the same as that? A. Yes.

Q. You say Mr. Eiseman locked the box before you received any ballots? A. Yes.

Q. What did he do with the keys? A. He gave Mr. Fortenstern, Mr. Schroeder and I one.

30

Redirect examination:

Q. Were you present all day? A. Yes, sir, all day.

MR. HERBERT FORTENSTERN, a witness produced on behalf of the respondent, being first duly sworn, testifies as follows:

Q. Mr. Fortenstern, you are a member of the Election Board of the Borough of Norwood? A. Yes, sir.

40

Charles E. Schroeder, direct.

Q. And was on March 10th, 1923? A. Yes, sir.

Q. Were you present at the special election held that day? A. Yes, sir.

Q. As a member of the Election Board? A. Yes.

Q. And were you there all day long?

10 Counsel for Prosecutor: I object to the witness being led.

Q. I show you Exhibit P-1 and ask you if you ever saw that or a copy of that before? A. I seen one like that, yes, sir.

Q. Where did you see it? A. It came to me through the mail.

Q. You received it through the mail? A. Yes, sir.

20 Q. Did you personally see this ballot or a similar one before you received same through the mail? A. No, sir.

Q. Do you know who mailed it? A. No, sir.

Cross examination:

Q. Was it marked the same as that ballot? A. Yes, sir.

Q. Cross mark in front of "Yes"? A. Yes, sir.

30 CHARLES E. SCHROEDER, a witness produced on behalf of the respondent, being first duly sworn, testifies as follows:

Q. You are a member of the local Election Board of the Borough of Norwood? A. Yes, sir.

Q. And was a member on March 10th, 1923? A. Yes, sir.

40 Q. Did you serve as a member of the Board at the special election held that day? A. Yes, sir.

Q. Were you there all day long? A. Yes, sir.

Charles E. Schroeder, cross.

Q. I show you Exhibit P-1 and ask you if you have ever seen that or a copy of that? A. Yes, sir.

Q. Where did you see that before? A. I got it through the mail.

Q. When did you get it through the mail? A. I could not say what day it was.

Q. Before the election? A. Yes, sir.

10

Q. You don't remember how long before? A. No, sir, I don't.

Q. Did you mail a copy of this ballot to anyone? A. No, sir.

Q. Do you know who did mail it? A. No, sir.

Q. Was it marked with a cross mark at the word "Yes," similar to this? A. Yes, sir.

Cross examination:

20

Q. Was the cross mark opposite the word "Yes" on the ballot you received? A. Yes, sir.

Q. I believe you testified you are a member of the Election Board? A. Yes, sir.

Respondent Rests.

It is stipulated by counsel for both sides that the signatures of the witnesses are waived.

It is stipulated by counsel that the maps and specifications, if material, may be used on the argument.

30

It is stipulated that P-1 may be put into the record and that the other exhibits are copies.

Both Sides Rest.

40

Reasons.

(Filed May 7, 1923.)

NEW JERSEY SUPREME COURT.

10

ALBERT HAAKE,
Prosecutor,*v.*THE BOROUGH OF NORWOOD, IN THE
COUNTY OF BERGEN,
Defendant.

} On Certiorari.

20

30

The prosecutor herein comes and prays that a certain ordinance alleged to have been adopted by the Common Council of the Borough of Norwood, in the County of Bergen, entitled "An ordinance to provide for the grading, macadamizing and draining of Summit Street from Blanche Avenue to Northvale Borough Line; the grading, macadamizing and draining of Blanche Avenue from the westerly Borough Line to the southeasterly Borough Line and the construction of a concrete curb and gutter upon a certain portion thereof; the grading, macadamizing and draining of Livingston Street from Blanche Avenue northerly to the north Borough Line," and the proceedings thereunder be set aside and for nothing holden, because the adoption and ratification of said ordinance and all the proceedings in connection therewith are irregular, illegal void and of no effect, for the following reasons:

40

First.—That no public notice was given either by advertisement or service upon the owners affected of the intention of the Common Council to under-

Reasons.

take such improvements, before the said ordinance was introduced.

Second.—That no notice was given as required by law of any hearing upon said ordinance before said ordinance was adopted.

Third.—That no notice was given of any hearing or meeting of the Common Council at which said ordinance was to be considered for final passage. 10

Fourth.—That it does not appear that said ordinance was legally adopted as required by law.

Fifth.—Because within ten days after publication of said ordinance after its final passage a written protest against the making of said improvement was filed in the office of the Clerk of the Borough signed by taxpayers representing ten per centum in amount of the assessed valuation of the Borough whose names appear on the last preceding assessment roll thereof. And that after the filing of said protest the Borough Council failed to legally submit a proposition for the ratification of said ordinance to the qualified voters of the Borough and failed to conduct such an election in the manner as required by law. 20

Sixth.—Because said Borough Council illegally proceeded with the carrying out of said ordinance after it had been illegally adopted and illegally ratified. 30

Seventh.—Because at the time of the introduction of said ordinance Summit Street, Blanche Avenue or Livingston Street had not been accepted as a public street. 40

Eighth.—Because at the time of the introduction

Reasons.

of said ordinance the Common Council had no jurisdiction or authority in law to provide for the grading, macadamizing and draining of said Summit Street, Blanche Avenue or Livingston Street for the reason that they had not been accepted as public streets.

10

Ninth.—Because at the time of the introduction of said ordinance the grade of Summit Street, said Blanche Avenue and Livingston Street had not been legally established and the Common Council had no jurisdiction or authority to provide for the grading, macadamizing and draining of Summit Street, Blanche Avenue and Livingston Street.

20

Tenth.—Because the notice of the time and place, when and where the governing body would meet to consider the final passage of the ordinance as advertised did not briefly describe the proposed improvement.

Eleventh.—Because the adoption and ratification of said ordinance and the proceedings thereunder are irregular and illegal, null and void.

30

FRED W. MATTOCKS,
Attorney for the Prosecutor,
Closter, N. J.

40

59

New Jersey Court of Errors and Appeals

ALBERT HAAKE,
Prosecutor-Appellee,

v.

THE BOROUGH OF NORWOOD,
Defendant-Appellant.

On Certiorari.

BRIEF FOR PROSECUTOR-APPELLEE.

Statement.

This appeal brings up for review a judgment of the Supreme Court, setting aside an ordinance and proceedings and a referendum election thereunder of the defendant-appellant for the improvement of Summit Street, Blanche Avenue and Livingston Street, in the Borough of Norwood, at an expense of \$102,000.

The memorandum of Mr. Justice Parker setting aside said ordinance is found (Case, p. 2).

The Law.

The applicable statutes are a part of Chapter 152 of the Laws of 1917, as amended; Article 20, Paragraph 1, Subdivision D, reads as follows:

“A local improvement is one, the cost of which, or a portion thereof, may be assessed upon the lands in the vicinity thereof benefited thereby.

“Every municipality may undertake any of the following works as a local improvement:

“(D) the paving, repaving or otherwise improving or reimproving a street, road, avenue, alley or other public highway or portion thereof.”

The last paragraph of Section 1 and Section 2 of Article 20, reads as follows:

“The governing body of every municipality shall have the power to make, publish, enforce, amend or repeal ordinances for the carrying into effect all the powers granted to municipalities by this section.

“Whenever any ordinance shall be passed by the governing body of any municipality for making any improvement or performing any work, all further acts and proceedings which it may be necessary for said governing body to take to carry out said improvement or work may be by resolution.”

Section 1 of Article 10 of the Laws of 1917, reads as follows:

“The term ordinance when used in this act means any act or regulation of the governing body of any municipality reduced to writing, and required to be read at more than one meeting thereof, and published.”

Section 9 of Article 20 as amended (P. L. 1918, p. 484) reads as follows:

“After the introduction of any ordinance authorizing any local improvement, public notice shall be given to all persons whose lands may be affected thereby or who may be interested therein, of the intention of the governing body to consider the undertaking of such improvement. *Such notice shall state the time when and the place where such governing body shall consider the said ordinance, and shall briefly describe the proposed improvement.* Such notice shall be published at least once in a newspaper circulating in the municipality, at least ten days prior to the

date so fixed. At the time and place so specified in such notice, or at any time and place to which the meeting shall have adjourned, all persons whose lands may be affected by such improvements, or who may be interested therein, shall be given an opportunity to be heard concerning such improvements."

Section 24 of Article 37 of the Laws of 1917 provides that any ordinance authorizing any improvement shall become operative ten days after the publication thereof after final passage, unless within said 10 days protests shall be filed signed by taxpayers representing 10% of the assessed valuation of the municipality, in which case such ordinance shall remain inoperative until a proposition for the ratification thereof shall be adopted by a referendum to the voters.

It further provides that such referendum shall be held at the next general election, unless the governing body shall call a special election therefor. *Any such special election shall be conducted and canvassed in the same manner as near as may be as prescribed by the laws regulating general elections.*

Argument.

The proposed improvement provides for the grading, macadamizing and draining of the streets in question, and construction of a curb and gutter on a portion of one of the streets.

The statute above quoted requires that *notice of intention shall briefly describe the proposed improvement.*

POINT I.

The notice, as advertised, did not briefly describe the improvement.

The ordinance was introduced at a meeting of the Borough Council, held on November 14, 1922 (Case, p. 12). The ordinance was published November 23, 1922, with a notice (Notice, Case, p. 20). This notice does not briefly describe the proposed improvement within the meaning of Section 9, of Article 20, Laws of 1917, as amended by P. L. 1918, page 484. The publication of the ordinance with the notice cannot make the ordinance part of the notice, because the law plainly requires that the *notice itself* must briefly describe the improvement.

Boynton Real Estate Co. v. Woodbridge Tp., 109 Atl., 514.

In fact the ordinance itself does not briefly describe the improvement. In every particular reference is made to a map and specifications on file with the Clerk.

In discussing the notice of intention, in the case of *Coar v. Jersey City*, 35 N. J. L., page 404, the following language is used:

“The reference in it to the plan does not supply the defect, for the notice, in itself, should contain sufficient to apprise the parties interested of the general nature of the improvement. Those interested are not obliged to spend their time, and, perhaps, annoy officials or be themselves worse annoyed, in order to find out from the files of offices what the substantial nature of the improvement may be, unless the legislature has authorized some kind of a notice which may result in that. Where a notice is required, and its contents are not prescribed, it should in itself, be suffi-

ciently descriptive to fairly inform those interested of the real improvement intended. The Court has heretofore been very careful for the sufficiency of notices where private interests are to be affected."

Following is an opinion of the Court, upon exactly the same form of *Notice and Ordinance*:

NEW JERSEY SUPREME COURT,

NOVEMBER TERM, 1920.

<p style="text-align: center;">GUSTAV FRANK, Prosecutor,</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">THE BOROUGH OF HARRINGTON-PARK in the County of Bergen, Defendant.</p>	}	<p>On Certiorari Giles Road.</p>
--	---	--------------------------------------

Submitted November Term 1920—Decided February 15th, 1921.

Before Justices Swayze, Parker & Black.
For Prosecutor Messrs. Mackay & Mackay.
For Defendant Mr. Charles S. Gray.

Per Curiam:

The writ of certiorari was issued in this case to review an ordinance and proceedings thereunder, for the improvement of Giles Road.

The Prosecutor files ten reasons for setting aside these proceedings, which are argued under five heads in the brief.

The view which we take of the case renders it unnecessary to consider the third point argued, *viz.*, the notice, as advertised, does not "briefly describe" the proposed improvement as required by P. L. 1918, p. 484, the words of the act are *shall* briefly describe, etc. The notice in this case which is found on page 44 of the record does not mention the improvement at all. It simply refers to an ordi-

nance, stating the time and place, when the Borough will consider the final passage. This is insufficient under the case of *Boynton Real Estate Co. v. Woodbridge Twp.*, 109 Atl., 514, in the Court of Errors and Appeals. In that case, it was said, the substance of what the improvement is, is essential to be stated. Some facts relative to the grading should be stated, so, that, the property owner may know how he is to be affected by the improvement. This was not stated in the notice in this case. This is fatal. The ordinance and the proceedings thereunder for the grading of Giles Road is set aside, with costs.

This point was brought to the attention of Mr. Justice Parker and admitted in Defendant-Appellant's brief on page 3.

Mr. Justice Parker said it was unnecessary to deal with this ground of attack, having set aside the ordinance upon the point in said memorandum.

The Defendant-Appellant does not touch upon this very important point, except at page 2 in its brief.

The Defendant-Appellant states that the form of notice is set forth at pages 20, 21, 22, 23 and 24 of the printed case. It is quite apparent that the Defendant-Appellant insists upon pressing into the notice (printed on page 20 of the case) the contents of the ordinance, which, Mr. Justice Bergen says, in the *Boynton* case, cannot be done. This point is covered by Point II in Prosecutor-Appellee's brief.

The Defendant-Appellant contended below that the ordinance in the case of *Frank v. Borough of Harrington Park*, referred to in prosecutor's brief, was not made a part of the notice in the printed case.

Prosecutor begs to refer to the printed case of *Frank v. Harrington Park*. At page 44 the ordi-

nance is printed just following the notice, identical with the case at bar. Furthermore, at Case, page 50, of the *Frank* case, a protest was signed and filed by a great number of property owners of the Borough, the prosecutor, Gustav Frank, being one of them.

POINT II.

An ordinance, to be legally passed, must be read at more than one meeting.

The term "ordinance," when used, means any act or regulation of the governing body of any municipality reduced to writing, and required to be read at more than one meeting thereof, and published.

Section 1 of Article 10, Laws of 1917.

The ordinance in question was introduced and *passed first reading* at the same meeting November 14, 1922 (Case, p. 12), and finally passed at a meeting held December 5th, 1922 (Case, p. 14), so that the ordinance was not read at more than one meeting, exclusive of the one at which it was introduced. It was illegal for the Borough Council to pass the said ordinance first reading at the meeting at which it was introduced.

In *Boynton Real Estate Co. v. Woodbrige Tp.*, 109 Atl., 514, Mr. Justice Bergen says:

The principal ground urged by the prosecutor is that the notice of intention to pass the ordinance was not sufficient to confer jurisdiction to take that action. The statute as amended in 1918 (P. L. 484) provides:

"After the introduction of any ordinance authorizing any local improvement, public notice shall be given to all parties whose lands may be affected thereby, or who may be inter-

ested therein, of the intention of the Governing Body to *consider* the undertaking of such improvement. Such notice shall state the time when and the place where such Governing Body shall consider the said ordinance, and *shall briefly describe* the proposed improvement. Such notice shall be published at least once in a newspaper circulating in the Municipality at least ten days prior to the date so fixed. At the time and place so specified in such notice, or at any time and place to which the meeting shall have adjourned, all persons whose lands may be affected by such improvement or who may be interested therein, shall be given an opportunity to be heard concerning such improvement.

"The record shows that this ordinance was introduced and given its first reading before any notice was given, and, therefore, some consideration was given to it before any interested party could possibly be heard.

"I think these proceedings are fatally defective, for the following reasons:

"First, because the governing body began the consideration of the ordinance by giving it a first reading before any notice was given of such intended action.

"Second, the notice given did not briefly describe the proposed improvement within the meaning of the statute.

"Third, if the ordinance be read as part of the notice, *which I think cannot be done*, still it is insufficient."

The statute is very clear.

The first step is the introduction of the ordinance. Notice shall then be given to all persons whose lands may be affected thereby of the intention of the governing body *to consider* the undertaking of such improvement. The considering of the undertaking of such improvement must, under this statute, follow the giving of the notice of the

intention. But that is not what happened in the case at bar, for the ordinance in question was passed first reading before any notice was given, therefore some consideration was given to it before any interested party could possibly be heard.

POINT III.

The referendum election on the ordinance in question was not conducted and canvassed in the same manner as the general election.

Protests against said improvement having been filed, signed by taxpayers, representing 10% in assessed valuation of the municipality, a special election was called by the Borough officials, which was held March 10th, 1923 (Case, pp. 18-19).

Ballots were mailed to the voters, marked with an "X" mark in front of the word "Yes" on said ballots (Case, pp. 39 to 62). This was not only contrary to the election law, but was a positive fraud upon the voters. Chapter 349, Laws of 1920, page 826.

Other irregularities in the conduct and canvass of the election appear in the testimony (Case, pp. 39 to 62), such as:

Ballots not numbered.

Copy of official ballot not posted.

Proper sample ballots not mailed to voters.

In the case of *The State v. Voorhis*, 84 N. J. L., 584, the Court says:

"Under the provisions of the statute of 1911, the authorization by the county clerk, who is the designated authority to decide, to print a certain number of sample ballots is clear, and any excess is beyond the authority of the proper official, and constitutes a crime."

No proof of official ballot, although subpoena

to produce same before Commissioner Stagg was served on Borough Clerk.

Mr. Justice Parker commented upon this point in his opinion (Case, p. 4). The moral impropriety of sending out the sample ballots marked in the affirmative is manifest, but the legal aspect of it, for reasons already given, requires no discussion at this time.

POINT IV.

Laches.

The prosecutor is not in laches.

The writ of certiorari herein was issued on April 9th, 1923, before the Borough of Norwood awarded the contract for the improvement of the streets in question.

It has been repeatedly held that a prosecutor's right to a certiorari is allowable up to the time of the awarding of the contract for the improvement.

Rosell v. Neptune City, 68 N. J. L., 509.

In this case the Court said:

"The allowance of a certiorari after the contract has been awarded cannot be allowed. Such a limitation upon the prosecutor's right to a certiorari is a reasonable one."

Paragraph 56, Article 20 (Chapter 195 of Laws of 1921), provides:

"No certiorari shall be allowed or granted to review or set aside any ordinance for any improvement after the contract therefor shall have been awarded."

There is no proof in the case at bar that any money has been expended by the respondent for this improvement. Incidental expenses after the

passage of an ordinance, such as advertising the passage of the ordinance, advertising for bids to do the work and furnish the materials, lawyers, engineers and other expenses, always accumulate before the contract is awarded, yet such expenses, if incurred, cannot preclude a prosecutor from sustaining a certiorari, up to the time of the awarding of the contract.

The respondent contends that the prosecutor should have applied for the certiorari, to test the validity of the passage of said ordinance, before he signed the protest, but by signing the protest first he is precluded from instituting certiorari.

The protest, under the statute, was filed within 10 days after the publication of the ordinance, after final passage, as required by Paragraph 24, Article 37, of Chapter 152, of Laws of 1917, and was signed by a large number of property owners (10% of the assessed valuation of the municipality). It was a right these property owners had collectively, to determine whether a majority of the voters of the municipality were in favor of the improvement. No question could be passed upon by the voters as to whether the governing body had taken the necessary steps, required by the Home Rule Act, in the introduction and passage of said ordinance, to give that body jurisdiction. These matters have to be determined by the Court, which is the purpose of this certiorari proceeding instituted herein.

In the case of *Carlisle v. Cooper*, 18 N. J. Eq., 241, the Court said:

“Courts of equity cannot compel a complainant to elect between a suit in equity, to prevent injury and a suit at law to recover damages for injuries sustained. The Complainant may be entitled to the relief he asks in both courts.”

The resolution declaring the result of the special election, held March 10th, 1923, in the case at bar, was published March 23rd and 30th, 1923 (Case, p. 35). The writ of certiorari was issued April 9th, 1923 (Case, p. 4), which was within 20 days after the result of said election was published, and within the time specified in Paragraph 24 of Article 37 of Chapter 152 of the Laws of 1917. And also before the contract was awarded, as hereinbefore referred to.

Mr. Justice Parker disposed of the question of laches in this case (Case, p. 3):

"It is urged that the prosecutor is in laches or estopped because he appeared and argued against the improvement and also joined in the demand for a special election and permitted the Council to incur the expense thereof, without challenge to the prior procedure. I am unwilling to say that he should be barred on this account. In *Scheible v. Highstown*, 93 N. J. L., 69, 73, prosecutor refrained from attacking a special election until after the soldiers' vote had come in and been counted, and was held not in laches."

The prosecutor-appellee respectfully submits that the judgment of the Supreme Court should be affirmed, with costs to appellee.

FRED W. MATTOCKS,
Of Counsel with Prosecutor-Appellee.

[454]

Appeal Printing Co., 22 Thames St., N. Y. City

Service of copies of written Brief
admitted Nov. 7, 1923

Le Roy Vanarsdall
att. for Def't - Appellant

New Jersey Court of Errors and Appeals

ALBERT HAAKE,
Prosecutor-Appellee,

v.

BOROUGH OF NORWOOD,
Defendant-Appellant.

On Certiorari.

BRIEF FOR DEFENDANT-APPELLANT.

Statement.

This appeal brings up a judgment of the Supreme Court setting aside an ordinance adopted by the defendant-appellant providing for the local improvement, under the "Home Rule Act," of public streets.

The ground stated in the memorandum filed by Mr. Justice Parker was that the ordinance was given a first reading before public notice of its introduction had been given (Case, p. 2).

Facts.

On November 14th, 1922, at a regular meeting of the Borough Council of the defendant-appellant, the ordinance in question, entitled "An ordinance to provide for the grading, macadamizing and draining of Summit Street, &c." (see Ordinance, Case, p. 25), was introduced and read in full. Thereupon a resolution was adopted that the ordinance "pass its first reading and that the Borough Clerk be directed to advertise and give notice as required by law that it is the intention of the

Borough Council to consider the undertaking of such improvements as local improvements and the final passage of such ordinance at a meeting to be held at the Borough Hall on Tuesday, the 5th day of December, 1922" (Case, p. 12).

In pursuance of the resolution of the Council, the Clerk caused the advertisement to be published more than ten days prior to the date fixed for the hearing, in the Bergen Record, a newspaper circulating in the borough. (This notice will be found on pages 20, 21, 22, 23 and 24 of the case.) The notice states that the ordinance in question was introduced on November 14th, 1922, and that it was the intention of the Borough Council to consider the undertaking of such improvements as local improvements and the final passage of the ordinance at a meeting to be held on December 5th, 1922, at which meeting or any adjournment thereof all persons whose lands might be affected or who might be interested therein would be given opportunity to be heard concerning the improvements, and then it states as follows: "The ordinance is as follows" (after which is printed in the body of and as part of the notice a true copy of the proposed ordinance as the same was finally passed). After the copy of the ordinance, the notice then states: "By order of the Mayor and Council of the Borough of Norwood," and is signed "Thomas J. Edwards, Borough Clerk" (Case, p. 24).

At the meeting held December 5th (see Case, p. 13, etc.), a hearing was had upon the ordinance and all persons interested were given opportunity to be heard, and thereafter a resolution was adopted by unanimous vote of all the Council present that the ordinance be adopted. The Clerk was directed to advertise the ordinance as required by law, and it was so advertised on December 8th and December 15th, 1922 (Case, p. 29).

Thereafter, and within ten days after the passage of the ordinance, protests were presented to the Borough Clerk signed by the owners of more than 10% of the assessed valuation of property (see Case, p. 15). Thereupon the Council ordered that an election be held on March 10th, 1923, to determine whether the ordinance in question should be ratified (Case, pp. 15, 16 and 17).

Notice of special election was duly given (Case, p. 30, &c.), and a statement of the result signed by the local Board of Registry and Election was filed, showing that the ordinance in question was ratified by a vote of 181 in favor, against 135 in the negative (Case, pp. 32 and 33).

Thereafter, at a meeting held March 20th, 1923, a resolution was adopted declaring the result of the election and directing the Clerk to publish a copy of the resolution in the Bergen Record (Case, p. 19). (Also see Proof of Publication, pp. 33 to 35).

Thereafter, the Writ of Certiorari was allowed, return made, testimony taken, and brought on for argument before Mr. Justice Parker, sitting under the statute.

Grounds of Appeal.

A number of reasons were filed by the prosecutor for the setting aside of the ordinance, but on the argument the only reasons advanced were:

(a) That the notice as advertised did not briefly describe the improvements;

(b) That the ordinance must be read at more than one meeting, exclusive of the one at which it was introduced;

(c) That the resolution adopted at the meeting at which the ordinance was introduced providing that it "pass first reading" and that the Borough Clerk advertise the same as required by law, etc. (Case, p. 12), was illegal.

(d) That the election was not conducted and canvassed in the same manner as a general election, and that a fraud was committed on the voters by the mailing of marked ballots to the voters.

The defendant-appellant's position is:

(1) That there were no irregularities in the passage of the ordinance in question or in the calling or conduct of the election; and

(2) That the Prosecutor was estopped from asserting any irregularities (if any) in the passage of the ordinance because of the fact that he was present at the hearing, was heard against the improvements at the time of the hearing, and did not assert at that time or thereafter, prior to the election, any claim of irregularities, but joined in the protest resulting in the calling of the election, and thereby elected his remedy.

(3) Laches.

POINT I.

The judgment of the Supreme Court should be reversed because the Prosecutor was in laches and was estopped from asserting any irregularities (if any) in the passage of the ordinance.

A.

The defendant-appellant does not intend to assert that the Prosecutor would in any way be estopped from a review of the proceedings of the defendant-appellant in calling the special election or in the conduct of such election; but does assert that he should not be permitted to take part in

the hearing upon the ordinance, permit it to be passed and then join in protests calling for an election, and after being defeated at the election, raise questions as to irregularities which could and should have been raised before or immediately after the passage of the ordinance, and before the municipality had been put to the expense of a special election. The Prosecutor's attitude in this matter after the hearing and passage of the ordinance and in joining in the protests resulting in the special election, is equivalent to an election of remedy.

Assuming that there was an irregularity with respect to the passage of the ordinance, the action of the Prosecutor was a waiver of such irregularity and a reliance upon the popular verdict to be given at the special election called in accordance with the provisions of Section 24 of Article XXXVII of the "Home Rule Act." (P. L. 1917, p. 461.)

The Prosecutor testified that he was a subscriber to the Bergen Record in which the notice of the ordinance was published, and that he probably read the notice in the paper; and that he knew there was to be a hearing on the ordinance on December 5th, 1922, and that he did attend the hearing (Case, p. 64). That after the passage of the ordinance on December 5th, 1922, he signed a protest for the purpose of forcing a special election upon the question as to the ratification of the ordinance; and that he voted at such election (Case, p. 65).

The attention of the Court is called to the affidavit of the Prosecutor, filed April 9th, 1923, and upon which the Writ of Certiorari was issued, and to that part of the affidavit which purports to give a copy of the notice published in the Bergen Record of the introduction of the ordinance and the intention of the Council to give it consideration.

The Prosecutor in that affidavit (Case, pp. 7 and 8) endeavors to make it appear that the notice *did not* contain, as part thereof, a copy of the ordinance, and that the notice was separate and distinct from the copy of the ordinance. Compare the affidavit (Case, pp. 7 and 8) with the notice as printed (Case, pp. 20 to 24).

The Home Rule Act shows that it was the policy of the Legislature that one aggrieved by an act of the municipality should promptly assert such grievance.

B.

Laches.

It has been uniformly held that when a Prosecutor fails to act promptly and permits a municipality to expend public moneys before action is taken, that the writ will not be allowed, or will be dismissed when the facts are brought to the attention of the Court.

In the case of *State, Grant v. Clark*,^{38 N. J. L. 102} the Court said:

“It has been well settled that if the delay of the Prosecutor in applying for the writ has permitted the expenditure of public moneys, the writ will be refused, or if allowed will be dismissed when these facts are brought to the attention of the Court.”

In the present case the Prosecutor not only stood by and permitted the expenditure of public moneys in the calling and conduct of the special election, but actually took part in the proceedings necessary to call the election.

Graham v. Ocean City, 119 Atl., 772.

POINT II.

The proceedings for the passage of the ordinance were regular and in accordance with the provisions of the statute.

The irregularity, with respect to the passage of the ordinance in question, relied upon by the Prosecutor, is that the ordinance was given a first reading when it was introduced and the Council thereupon adopted a resolution to the effect that the ordinance pass its first reading and be advertised in accordance with the law (Case, p. 12).

The Supreme Court sustains this contention, relying upon the decision of Justice Bergen in *Boynton Company v. Woodbridge*, 94 N. J. L., 226; 109 Atl., 514.

This case can be distinguished from the *Boynton* case. This Court in that case did not affirm Justice Bergen's conclusion except as to the insufficiency of the notice.

The "Home Rule Act," Chapter 152, P. L. 1917, as amended, controls the adoption of ordinances for improvements of this character. The portions thereof which are applicable are as follows:

Article XX, P. L. 1917, pages 370 &c., provides for the making of improvements of this character. Section 9 of the Article as originally passed in 1917, provided that *before* the introduction of any ordinance of this character, public notice should be given of the intention of the governing body to undertake the improvement; and that *after* giving persons interested an opportunity to be heard, the Borough Council might proceed to consider and to pass or reject such ordinance. This section was amended by Chapter 163, P. L. 1918, page 484, and it is the 1918 statute which is applicable to this case. The 1918 amendment is as follows:

“After the introduction of any ordinance authorizing any local improvement, public notice shall be given to all persons whose lands may be affected thereby or who may be interested therein, of the intention of the governing body to consider the undertaking of such improvement. Such notice shall state the time when and the place where such governing body shall consider the said ordinance, and shall briefly describe the proposed improvement. Such notice shall be published at least once in a newspaper circulating in the municipality, at least ten days prior to the date so fixed. At the time and place so specified in such notice, or any time and place to which the meeting shall have adjourned, all persons whose lands may be affected by such improvements, or who may be interested therein, shall be given an opportunity to be heard concerning such improvement.

“After according persons in interest an opportunity to be heard, said board or body may proceed to consider and to pass or reject such ordinance. If the same is rejected, it shall not be reconsidered until notice of the intention to reconsider the same is given, in the same manner as the original notice of hearing. Where the notice is published as required by this section, the publication of the ordinance before its final passage shall be unnecessary.”

Special attention is called to the fact that this amendment was intended to change the entire scheme relating to the passage of improvement ordinances. It will be noted that under the 1917 Act notice was required to be given *before* the introduction of the ordinance, whereas under the 1918 amendment notice is given *after* the introduction of the ordinance. The last sentence of the 1918 amendment is significant:

“Where the notice is published as required

by this section, the publication of the ordinance before its final passage shall be unnecessary."

To understand the significance of this last sentence, above quoted, we must refer to Article X of the original Act of 1917, page 345, and the amendment thereof in 1918. Article X of the Act of 1917 defines an ordinance as "Any act or regulation of the governing body of any municipality reduced to writing and required to be read at more than one meeting thereof and published," and also provides that,

"No ordinance shall be finally passed unless it has been read in substantially its final form at a meeting held at least one week prior to its final passage and has been published in a newspaper circulating in the municipality at least two days prior to its final passage. Such publication shall contain a notice stating the time and place when and where the governing body will consider the final passage thereof."

This section of Article X was amended by Chapter 163, P. L., 1918, page 478. The amendment did not change the definition of an ordinance, but does change the section in the following respect:

"No ordinance shall be finally passed unless it has been read in substantially its final form at a meeting held at least one week prior to its final passage, and shall have been published in a newspaper circulating in the municipality at least two days prior to its final passage; provided such publication shall not be necessary in case notice of intention has been published under the provisions of Section 9 of Article XX of this Act. Such publication shall contain a notice stating the time and place when and where the governing body will consider the final passage thereof."

To summarize, under the Act of 1917, all ordinances had to be read in substantially their final

form at a meeting held at least one week prior to their final passage, and the ordinance had to be published together with a notice stating the time and place when and where the governing body would consider the final passage thereof, at least two days prior to its final passage (Article X, Laws of 1917, p. 345). An improvement ordinance, however, required something additional, to wit: that *before* its *introduction* public notice should be given of the intention of the governing body to undertake the improvement; which notice should state the time when and the place where the governing body would consider the ordinance, and should briefly describe the proposed improvement. This notice had to be published once at least ten days prior to the date of *introduction*. *After* the hearing the governing body could proceed to consider and pass or reject the ordinance.

It will be noted that under the 1917 Act, in the case of improvement ordinances, it required at least *three* meetings to introduce and pass an improvement ordinance, to wit: (1) a meeting authorizing the publication of notice of intention; (2) the hearing, at which meeting the ordinance could be introduced and read as provided in Article X, and (3) a meeting at least one week later, at which it could be finally passed. Also, the 1917 Act required *three* publications, to wit: (1) notice of intention, in which the improvement is briefly described; (2) the publication with notice at least two days before the final passage as provided in Section 1 of Article X; and (3) publication after passage, as provided in the last sentence of Section 1 of Article X.

The Amendment of 1918 was designed to simplify the passage of improvement ordinances and shorten the time within which such an ordinance could be passed. Under the Act of 1918 an im-

provement ordinance could be passed at *two* meetings, to wit: (1) a meeting at which the ordinance is introduced; (2) a hearing at least ten days later, at which the ordinance could be finally passed; and with *two* advertisements, to wit: (1) notice of intention of the governing body to consider the undertaking of the improvement and stating when the governing body would consider the ordinance and briefly describing the proposed improvement; and (2) publication after passage as provided in Section 1 of Article X as amended by Chapter 163, page 478 and page 479. The 1918 amendment to Section 1 of Article X expressly provides that in the case of *improvement ordinances*, the publication two days before final passage with notice shall not be necessary, and the same provision is contained in the 1918 amendment to Section 9 of Article XX, Chapter 163 of 1918, page 484.

Under the 1917 Act, before the amendment of 1918, the inference was clear that the ordinance, as such, could not be considered in any manner until *after* the hearing given in pursuance to the notice of intention; because there legally could be no ordinance introduced until *after* such hearing. Of course, the substance of the proposed improvement of necessity had been previously considered, otherwise there would have been no notice of intention possible.

There is no inference possible from the Act, *after* the incorporation therein of the 1918 amendment, that an ordinance cannot be given some consideration prior to the hearing. On the contrary, it is unreasonable to assume that it was ever intended, or is humanly possible, that an ordinance for an improvement, which may involve a large expense, could be introduced by some member of the governing body without consultation with his associates and then seriously

advertised for final consideration, without some consideration as to whether the project was feasible or desirable in the form presented or in some modified form. Any such technical construction is negated by the intent and purpose of the Act, and particularly by Section 26 of Article XXXVII, which provides,

“and in construing the provisions of this Act all Courts shall construe the same most favorably to the municipality, it being the intention hereof to give all municipalities to which this Act applies, the fullest and most complete powers possible over the internal affairs of such municipalities for local self-government” (P. L. 1917, p. 463).

If there is a doubt with respect to the construction of the Act or any part thereof, such doubt must be resolved in favor of the municipality. The Act, as amended, does not, either by terms or by any reasonable implication provide that the governing body cannot give *any* consideration to a proposed improvement until after notice and hearing as provided in Section 9 of Article XX as amended by Chapter 163, P. L. 1918, 484.

Furthermore, the fact that the resolution in question states that the ordinance “pass its first reading” does not necessarily imply any consideration. The law does not require that any ordinance be voted on more than once. The Act only requires that the ordinance shall be *read* in substantially its final form at a meeting held at least one week prior to its final passage (Section 1, Article X, as amended by Chapter 163, P. L. 1918, p. 478). The resolution in question is mere evidence that the ordinance was read and then ordered advertised for hearing and final consideration at a later date.

In the Boynton case, *supra*, Mr. Justice Bergen, writing the opinion for the Supreme Court, stated that the ordinance under review was introduced and given its first reading before any notice was given, and, therefore, some consideration was given it before any interested party could possibly be heard. The learned Justice apparently was confused, and had in mind the provisions of the original Act of 1917 rather than the amendment of 1918, notwithstanding that he refers to the amendment of 1918; as under the Act of 1918 a notice cannot be given until *after* an ordinance is introduced, and a reading of the ordinance is certainly a part of its introduction, otherwise no one would know that it was an improvement ordinance as distinguished from other forms of ordinance; neither would they know what the proposed improvement was, except as it might be erroneously stated by the introducer. In that case it also appears that after the ordinance was introduced and read, amendments were added before the notice was given.

Upon appeal, Justice Black, in writing the opinion for the Court of Errors, 94 N. J. L., 226, determines that the judgment of the Supreme Court should be affirmed because the *notice* was insufficient to satisfy the terms of the statute, in that it did not briefly describe the proposed improvement, and expressly states that the Court "deems it unnecessary to express any opinion upon any other point." The other point argued was the question as to whether or not the introduction of the ordinance and the first reading with the addition of amendments before a notice was given, amounted to a consideration, and whether or not such consideration was a violation of the provisions of the statute.

In this case there can be no question but what the notice is sufficient to comply with the terms of the statute, which are, that the notice should "briefly describe the proposed improvement." The notice not only states fully the title of the ordinance, which in this case described briefly the proposed improvement, but also, as a part of the body of the notice, recites in full the proposed ordinance. The proposed ordinance describes in detail the proposed improvement excepting as to minute specifications, and as to those refers expressly to the specifications and plans theretofore made by the Borough Engineer and then on file with the Borough Clerk (see Notice, Case, pp. 20 to 24).

POINT III.

There was no irregularity or fraud in the conduct of the special election.

The alleged irregularities with respect to special election urged by the Prosecutor in the Supreme Court were as follows:

1. Sample ballots were mailed to the voters marked with an X in front of the word "Yes."
2. The ballots were not numbered.
3. Copy of official ballot not posted.
4. Proper sample ballots not mailed to voters.
5. Failure of Borough Clerk to produce official ballot at hearing before the Supreme Court Commissioner.

The authority for the special election is Section 24 of Article XXXVII of the Home Rule Act, P. L. 1917, page 461. This Act provides that when a pro-

test against an improvement is properly filed with the Municipal Clerk the ordinance shall remain inoperative until a proposition for the ratification thereof shall be adopted at an election to be held for that purpose by a majority of the qualified voters of the municipality voting on such proposition. The Act then provides that in case the question is submitted at a special election, such special election shall be conducted and canvassed by the same officers in the same manner, as near as may be, as prescribed by the laws regulating general elections. The Act then proceeds to state the form in which the proposition shall be stated on the ballot.

In the present case the necessary protest was filed and necessary resolution passed calling a special election (Case, p. 15, &c.). Notice of the meeting of the local Board of Registry and Election was duly given (Case, p. 29), also notice of the special election (Case, p. 30). After the election the vote was canvassed and a statement of the result made by the local Board of Registry and Election (Case, pp. 32 and 33), and thereafter the further provision of the Home Rule Act with respect to the resolution setting forth the result and the advertisement thereof was duly had. (Case, pp. 18 and 19; also p. 33, &c.)

1.

There is no law requiring the preparation and mailing of sample ballots at a special election. These are only required at general elections (P. L. 1922, p. 455) and primary elections (P. L. 1922, p. 473).

There is nothing in the election law to prevent citizens from securing sample ballots to be used at a special election and distributing them.

Section 7 of the Election Law, P. L. 1920, page

826, prohibits any person not authorized to *print* or *make any official or sample ballot provided for by the Act*. Inasmuch as the Act only provides for sample ballots in the case of primary elections and general elections, this section would not make the printer or any other person liable for printing or making a sample of a ballot to be used at a special election. Even though this section did apply to a special election of the kind in question, the only effect it would have would be to make the person who printed or made the sample ballot liable to indictment and punishment. It would not affect the validity of the election itself.

In the present case it is undisputed that certain of the citizens of the municipality who constituted what is known as the "Norwood Improvement Committee" did secure from the printer what purported to be a sample of the ballot to be used at the special election and did mark these sample ballots with a cross before the word "Yes", and did send them out to the voters of the borough. These sample ballots were yellow and were headed "Sample Ballot" (see Case, p. 41, &c.). The official ballots used at the election were white, and these sample ballots yellow (Case, p. 41, line 1, &c.). The printer testified that the sample ballots were ordered by the Norwood Improvement Committee (Case, p. 44, line 20, &c.). That the official ballots were ordered by the Borough Clerk (Case, p. 61).

Mr. Justice Parker in his memoranda (Case, p. 3, line 40) and (p. 4, line -, &c.) makes the statement that the Norwood Improvement Committee ordered the ballots and sent out the samples. It is evident that what he meant to say was that the Committee had ordered the *sample ballots* and sent them out, because there is no evidence in the case to justify a statement that the Committee had

ordered the official ballots. The only testimony on this subject is the testimony of the printer found at page 61.

The defendant-appellant is obliged to take issue with Mr. Justice Parker upon his statement in the last sentence of his memoranda that there may be some moral impropriety in sending out sample ballots marked in the affirmative. It is a matter of common knowledge that prior to the adoption of our present form of ballot, the Election Law permitted candidates and persons interested to obtain copies of the official ballots for use in connection with their campaign, which official ballots so obtained by the candidates and others could be and were used at the polls (Secs. 56 & 57, Election Law of 1898, p. 267). No one considered it either a legal or moral impropriety to secure copies of such ballots and to mark them and persuade other voters to take a ballot so prepared and vote it in lieu of the ballot furnished by the Election Board. Even under our present form of ballot, candidates, almost without exception, prior to the general election cause advertisements to be published and circulars to be issued showing a section of the ballot with their names on it and with a mark opposite their names.

In the present case the sample ballots which were sent out could not be used at the special election, and undoubtedly were sent out simply for the purpose of illustrating how the ballots should be marked in case the voter was desirous of voting in favor of the ratification of the ordinance.

Mr. Justice Swayze in the case of *State v. Force*, 84 N. J. L., 65 (86 Atlantic Reporter, 48), in dealing with a similar question says:

“We see no objections to a voter securing if he can do so honestly from other voters, their sample ballots and distributing them so as to

further assist the work of instruction in the use of the official ballots required to be used at the polls * * *. Official sample ballots may be distributed outside the polling place. The object of the act of 1911 was not to throw obstacles in the way of proper instruction of less intelligent voters, but to secure purity of elections as far as possible by limiting the actual voting to official ballots procurable only inside the polling place."

Mr. Justice Dixon, in the case of *Lehlbach v. Haynes*, 54 N. J. L., 77, says:

"Irregularities on the part of election officers or others which do not appear to have affected the filing, the counting or the returns will not form a ground for contest."

To the same effect is the statement of Mr. Justice Minturn in the case of *Hartley v. Board of Elections*, 93 N. J. L., 313 (107 Atlantic Reporter, 817):

"The rule has been laid down that in matters of public importance, in which the general body politic of a locality is directly concerned, a clerical oversight, omission or dereliction of a Board or Body charged with the performance of a clerical administrative duty, will not vitiate the result, so as to compromise the public right," and he cites *Brown v. Street Lighting District*, 70 N. J. L., 763, referred to below.

2.

The Prosecutor makes the statement that the official ballots were not numbered.

This statement is not borne out by the evidence. Mr. Eiseman, the Judge of the local Board of Registry and Elections, testifies that he is not quite sure whether or not they were numbered (Case, p. 41, line 12, &c.). Mr. John Z. Demarest, the

printer, testifies positively that the ballots were numbered (Case, p. 59). That the numbering machine counted the official ballots for him (Case, p. 50, line 20, &c.).

The question as to whether or not the ballots used at a special election of this character must be numbered is debatable, but in view of the evidence that they were numbered that question need not be discussed.

3.

Copy of the official ballot was not posted.

There is no law which either requires or authorizes the posting of a copy of the official ballot. Section 20 of Article XIII, P. L. 1920, page 694, directs, in connection with the general elections, that a copy of the *sample* ballot shall be posted. As heretofore pointed out, no sample ballots are required at a special election of this character.

4.

Proper sample ballots not mailed to voters.

It has been heretofore pointed out that sample ballots are not required to be prepared or mailed prior to special elections of this character, but only prior to primary and general elections.

5.

No proof of official ballot.

The case, page 40, shows that the counsel for the Prosecutor stated that he had served a subpoena to produce copies of the official ballots. That counsel for the defendant in reply stated that his understanding was that all unused ballots were placed in the ballot box, and that the ballot box

under the law could only be opened upon an order of a Justice of the Supreme Court. Thereupon the counsel for the defendant made this statement:

“However, I understand that Judge Mattocks has copies of the yellow sample ballots. I am willing to have the Clerk sworn to show that is a copy of the official ballot.”

The Judge of the local Board of Registry and Elections testified that the official ballot was the same as the sample ballot put in evidence and printed, on pages 41, 42 and 43 of the case, excepting that the official ballot was white and that the official ballot did not contain the words “Sample Ballot.”

Counsel for the defendant was correct in his statement that under the law the Clerk had no right to open the ballot box for the purpose of procuring a copy of the unused official ballots which were deposited in the box at the close of the election. There is no question in the case but what the official ballot was as stated by the Judge of the local Board of Registry and Elections and the printer, and that it was similar to the so-called sample ballot printed at page 41, etc., of the case, excepting as to the words “Sample Ballot,” and as to the color, and that it was numbered.

There are many cases where the rule has been laid down that elections should never be held void unless clearly illegal. That it is the duty of the Court to give effect to them if possible.

Love v. Freeholders of Hudson, 35 N. J. L., 269.

Also that elections will not be set aside on technicalities where there has been a full and fair expression of the will of the voters.

Lindabury v. Clinton Township, 93 N. J. L., 37 (106 Atlantic Reporter, 463);
Attorney General v. Belleville, 81 N. J. L., 200 (89 Atlantic Reporter, 116);
Winters v. Warwolitz, 70 N. J. L., 615;
Brown v. Street Lighting District, 70 N. J. L., 762;
Love v. Otis, 68 N. J. L., 656;
Hartley v. County Board of Elections, 93 N. J. L., 313 (107 Atlantic Reporter, 817).

The record shows that there were 340 names on the Poll Book and that of these 328 voted. 181 voted in favor of ratification, 135 against, and 12 ballots were rejected (Case, p. 33).

POINT IV.

The judgment of the Supreme Court should be reversed, with costs to the defendant.

Respectfully submitted,

LE ROY VANDER BURGH,
 Attorney for Defendant-Appellant.

WENDELL J. WRIGHT,
 Of Counsel.





