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**Notice of Appeal.**

(Filed October 16, 1917.)

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**New Jersey Supreme Court.**

JOHN W. COURTER, Prosecutor,	}	Notice of Appeal from Judg- ment of Su- preme Court on Certiorari.	20
v.  FREDERICK BUTLER <i>et al.</i> , Respondents.			

To Ernest L. Quackenbush, Esq., Attorney of  
Frederick Butler, Adam C. Demler, John  
Valluzzi, Daniel Small, Andrew H. Haring,  
Irving Waltermire and Paul M. T. Purps.

Please take notice that the prosecutor, John  
W. Courter, appeals to the Court of Errors and  
Appeals from the judgment entered in the above  
stated cause.

Dated August 9th, 1917.

JOHN B. ZABRISKIE,  
Attorney for and of Counsel with Appellant.

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**Reasons on Appeal.**NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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JOHN W. COURTER,  
Prosecutor-Appellant,*v.*FREDERICK BUTLER *et al.*,  
Defendants-Respondents.

On Certiorari.

The following are the reasons on which the appeal in the above matter is based:

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First.—Because the said Justice was without jurisdiction to make said order because the procedure necessary to legally submit to the voters of Bergen County the question of the adoption of the act entitled “An Act regulating the employment, tenure and discharge of certain officers and employees of this State, and of the various counties and municipalities thereof, and providing for a Civil Service Commission and defining its powers and duties, approved April 10, 1908,” and the supplements and amendments thereto, generally known as the Civil Service Act, at the general election held November 7th, 1916, was not carried out, in that the filing of the petition (Exhibit “C”) the Clerk of the Board of Freeholders did not within five days or at any time call a special meeting of said Board of Freeholders to act upon the said petition and the said Board of Freeholders did not within fourteen days after receipt of said petition or at any other time hold a special meeting or any

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*Reasons on Appeal.*

meeting of any kind to act upon the said petition.

Second.—Because said Civil Service Act was not legally adopted by the voters of Bergen County.

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Third.—Because the form of sample ballot used in the attempted submission of said Civil Service Act to the voters of Bergen County did not comply with Section 58 of Chapter 183 of the Laws of 1911.

Fourth.—Because the form of ballot used in the attempted submission of the adoption of said Civil Service Act to the voters of Bergen County (Exhibit "D") did not comply with Section 58 of Chapter 183 of the Laws of 1911.

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Fifth.—Because it was the duty of the prosecutor, as Sheriff of Bergen County, to appoint from the body of electors of said County as many persons as were necessary to attend upon the courts of said County to perform the duties heretofore performed by the constables of said County summoned to attend such courts and that in appointing said Charles Hagerman, Aaron Hopper, Gustave Pentner, Joseph Winters, George Weber, Peter Siccardi and Abe Zabriskie he was carrying out the duty that devolved upon him by law.

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Sixth.—Because regardless of whether or not the said Civil Service Act was adopted by the voters of the County of Bergen, still the said prosecutor, as Sheriff, had a legal right up to and including the expiration of forty-five days from the date of the general election in Bergen County, to wit, until December 22nd, 1916, to

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*Reasons on Appeal.*

make appointments that should remain effective until eligible lists were created by the Civil Service Commission of the State of New Jersey.

10 Seventh.—Because assuming that said Civil Service Act was adopted November 7th, 1916, by the voters of the County of Bergen, still it did not become operative until forty-five days thereafter.

20 Eighth.—Because assuming that said act was adopted by the said voters on November 7th, 1916, still the only advantage that thereby accrued to the said Frederick Butler, Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire and Paul M. T. Purps was that they should be placed by the Civil Service Commission of New Jersey in the competitive class without examination.

Ninth.—Because the said Frederick Butler, Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire and Paul M. T. Purps were not placed on any eligible list for said position of court attendants or for any other positions by said Civil Service Commission.

30 Tenth.—Because no “eligible list of court officers had been prepared by said Civil Service Commission at the time of the dismissal of said Frederick Butler, Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire and Paul M. T. Purps, and it, therefore became the duty of the Sheriff of Bergen County to make appointments from the body of electors as prescribed by law in order that the December 1916, term of court should be properly attended.

40 Eleventh.—Because the said Justice was with-

*Notice of Appeal.*

out jurisdiction to make the rule to show cause, or to make said order for the reason that the so-called Civil Service Act, Chapter 156, of 1908, with the supplements and amendments, had not been adopted by the voters of Bergen County, and was not in force or effective in said county.

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JOHN B. ZABRISKIE,

Of counsel with John W. Courter, Sheriff, &amp;c.

**Notice of Appeal.**

NEW JERSEY SUPREME COURT.

JOHN W. COURTER *et al.*,  
Complainants,

*against*

FREDERICK BUTLER *et al.*,  
Defendants.

On Certiorari.

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To Ernest L. Quackenbush, Esq., attorney for  
Defendants.

Take notice that the prosecutors Peter Siccardi *et al.*, appeal from the whole of the judgment entered in this cause, upon the following grounds:

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(1) Because Charles W. Parker, Esq., Justice of the Supreme Court, has no jurisdiction over the subject matter of the petition presented to him or over the order as the basis of the summary proceeding had before him, or any jurisdiction of the subject matter of the said proceedings or of the matters referred to in the order made by him and affirmed by the Supreme Court.

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*Notice of Appeal.*

10 (2) Because the so-called Civil Service Act of the State of New Jersey is not, and was not at the time set forth in the order made by the said Charles W. Parker, Esq., Justice of the Supreme Court, at the time of making said order in force or effect in the County of Bergen, and by reason thereof the said Justice was without jurisdiction of the subject matter of the proceedings had before him.

20 (3) Because the said Charles W. Parker, Esq., Justice of the Supreme Court, had no jurisdiction to make an order removing the prosecutors from the position of court officers of the County of Bergen or reinstating the defendants to such positions.

(4) Because said John W. Courter, Sheriff of the County of Bergen, had the right to appoint the said Peter Siccardi and others as court officers of the County of Bergen.

30 (5) That the said John W. Courter, Sheriff as aforesaid, had the right to remove the defendants or any or either of them from the position of court officers of the County of Bergen and to appoint other persons in their places.

WENDELL J. WRIGHT,

Attorney for Appellants,

Peter Siccardi *et al.*

**Opinion of Supreme Court.**

(Filed June 6, 1917.)

**NEW JERSEY SUPREME COURT.**

February Term, 1917.

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JOHN W. COURTER,  
Prosecutor,

v.

FREDERICK BUTLER,  
Defendant.

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Argued February Term, 1917. Decided June Term, 1917.

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On writ of certiorari bringing up order of Mr. Justice Parker.

JOHN B. ZABRISKIE, for Courter.

WENDELL J. WRIGHT, for Siccardi, et al.

ERNST L. QUACKENBUSH, for Respondent.

Argued before Justices Swayze, Minturn and Kalish.

Per Curiam:

The prosecutor was elected Sheriff of Bergen County, on November 7, 1916, and duly qualified as such. At that time, Frederick Butler, Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Wouters (nine in all; the positions of Thomas Gash and Clarence Wouters were subsequently abolished), were holding the position of court attendants.

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On the tenth day of December following, the

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*Opinion of Supreme Court.*

10 Sheriff attempted to remove them by appointing seven others in their places. Those who were marked for removal, were democrats in politics, while the sheriff and his seven alleged appointees are republicans. No direct notification of their removal, either verbal or written was given to the defendants. The respondents under Chapter 120 of the Laws of 1915 presented a petition to Justice Parker to review the action of the Sheriff. The act referred to is entitled "A supplement to an act entitled, An act regulating the employment, tenure and discharge of certain officers and employees of this State, and of the various coun-  
20 ties and municipalities thereof, and providing a Civil Service Commission, and defining its powers and duties, approved April 10th, 1908."

The first point made is that Justice Parker had no jurisdiction to entertain the petition, because Chapter 120, of the Laws of 1915, is a supplement to the Civil Service Act, and since the Civil Service Act was not adopted by Bergen County, the Act of 1915 is not applicable to the case presented here.

30 The prosecutor also attacks collaterally the adoption of the Civil Service Act in Bergen County. But it is manifest and requires no citation of authorities to support the proposition that this cannot be done collaterally, but only in a direct proceeding for the purpose.

40 The next point made is that Chapter 82 of the Laws of 1912 entitled "A supplement to an act entitled, An act regulating the employment, tenure and discharge of certain officers and employees of this State, and of the various counties and municipalities thereof, and providing for Civil Service Commission, and defining its powers and

*Opinion of Supreme Court*

duties, approved April 10th, 1908, under which defendants claim, is unconstitutional. It is enough to say that it is manifest to us that that contention is without substance.

*Shalvoy v. Johnson*, 84 L., 134 and 549.

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Under this act appointees like the defendants hold their employments, and are irremovable therefrom, except in accordance with the provisions of the Civil Service Act.

It is next argued that Chapter 24 of the Laws of 1916 sanctions the removal of defendants. That act simply authorizes the Sheriff to appoint from the body of electors such and so many persons as may be necessary to attend upon the several courts of his county, and to perform the duties now performed by the constables of the County, summoned to attend such courts. This, it is obvious, does not authorize the Sheriff to remove attendants upon the Courts. It empowers him only to appoint when such appointment is necessary as in case of a vacancy or other contingency.

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The last point made is that the Sheriff had a right to make appointments within forty-five days after the adoption of the act. But for the reasons already advanced it is manifest that that right was intended to be exercised under another situation than that presented by this record, and is not applicable to the case of these defendants.

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We think the disposition made of the question by Mr. Justice Parker was correct, and that the writ in this case should be dismissed, and the order appealed from affirmed.

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**Judgment of Supreme Court.**

(Entered July 13, 1917.)

## NEW JERSEY SUPREME COURT.

10	JOHN W. COURTER, Prosecutor,	}	In Certiorari.
	v.		Order for Judgment.
	FREDERICK BUTLER, <i>et al.</i> , Defendants.		

20 This matter coming on to be heard at the February Term, 1917, of this Court in the presence of John B. Zabriskie and Wendell J. Wright, of counsel with the prosecutor and of Ernest L. Quackenbush, of counsel with the defendants, and the Court having inspected the record and heard the arguments of counsel and being of the opinion that the order brought by the writ of certiorari should be affirmed; it is

Ordered that the order brought up by the writ of certiorari in the above entitled matter be and the same is affirmed and that the writ of certiorari be dismissed.

30 Entered July 13th, 1917,

On motion of

ERNEST L. QUACKENBUSH,  
Attorney of Defendants.

A true copy.

WM. C. GEBHARDT,  
Clerk.

**Writ of Certiorari.**

New Jersey, ss.:

The State of New Jersey to Hon. Charles W. Parker one of the Justices of the Supreme Court and Frederick Butler, Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters, Greeting:

(Seal.) 10

We being willing for certain reasons, to be certified of a certain order made on February 10, A. D. 1917, by Hon. Charles W. Parker one of the Justices of the Supreme Court in a summary proceeding entitled "In the Matter of the petition of Frederick Butler for review of alleged removals from office by John W. Courter, Sheriff of Bergen County, in alleged violation of law." 20

We do command you that the aforesaid order and the evidence taken in said proceeding, together with all things touching and concerning the making of said order as fully and entirely as they before you remain, to our Justices of the Supreme Court at Trenton, on the third Tuesday of February inst. you certify and send together with this writ, that therein may be done what of right and according to the laws of this State should be done. 30

Witness William S. Gummere, Esq., Chief Justice of our Supreme Court at Trenton, the tenth day of February, in the year of our Lord one thousand nine hundred and seventeen.

WILLIAM C. GEBHARDT,  
Clerk. 40

John B. Zabriskie,  
Attorney.

**Allocatur.**

Returnable February 20, 1917.

This writ is allowed upon terms that it be brought on for argument at the Feby., A. D. 1917, Term upon the same stipulation and exhibits produced before me at the hearing.

Let it be sealed, Feb. 10, 1917.

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C. W. PARKER,  
J. S. C.

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**Return to Writ of Certiorari.**

To the Honorable, the Justices of the Supreme Court of Judicature of New Jersey :

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In obedience of the command of this writ, to me directed, I, Charles W. Parker, Esquire, a Justice of the Supreme Court of Judicature of New Jersey, within named, do send, under my seal, to you, the Honorable Justices of the Supreme Court of Judicature of New Jersey, the order lately made and rendered by me in a certain summary proceeding wherein Frederick Butler and others were petitioners, and John W. Courter, Sheriff of the County of Bergen and others, were defendants, together with all things touching and concerning the same, as fully and entirely as they remain before me, as appears in the schedule hereto annexed, as I am commanded.

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In witness whereof I have hereto set my hand and seal in open Court this thirteenth day of February, A. D. nineteen hundred and seventeen.

CHARLES W. PARKER (L. S.)

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**Petition.**

## NEW JERSEY SUPREME COURT,

In the Matter

of

The Petition of FREDERICK BUTLER for review of alleged removals from office by JOHN W. COURTER, Sheriff of Bergen County in alleged violation of law.

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To the Honorable Charles W. Parker, Justice of the New Jersey Supreme Court:

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The petition of Frederick Butler of the Borough of Carlstadt, County of Bergen in the State of New Jersey, respectfully shows that:

1. He is a citizen of the State of New Jersey residing at 538 Jefferson Street, Carlstadt, New Jersey.

2. He was on or about December 13th, 1910, duly appointed by Robert Conklin, the then Sheriff of Bergen County, as Court attendant or Court officer in and for the County of Bergen, and duly qualified as such; that he thereafter entered upon the performance of his duties in that capacity and has since that time continued to perform the same so far as he has been permitted so to do as hereinafter stated. He was on the said date also a constable duly elected in the said Borough of Carlstadt, and at all times since has and still does hold the said office of constable.

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3. At the general election held in Bergen County on November 7th, 1916, one John W. Courter was elected Sheriff of said County and later qualified as such Sheriff.

10 4. On said last mentioned date this petitioner and Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters, who likewise had therefore been appointed as court officers or court attendants and had likewise duly qualified as such were holding and in possession of their said positions.

20 5. On or about March 14th, 1912, there came into operation an act of the Legislature of the State of New Jersey, duly approved on that date by the then Governor, entitled "A supplement to an act entitled 'An Act regulating the employment, tenure and discharge of certain officers and employees of this State, and of the various counties and municipalities thereof, and providing for a civil service commission and defining its powers and duties,' approved April 10th, 1908," which provided as follows:

30 "Every officer or employe of the Circuit Court, Court of Oyer and Terminer, Court of Common Pleas, or Court of General Sessions in each of the counties of this State, holding office or employment at the time of the introduction of this act, or who may hereafter be appointed, shall continue to hold their offices or employments, as the case may be, and shall not be removed therefrom, except in accordance with the provisions of the act to which this act is a supplement." (P. L., 1912, page 113.)

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6. The Act to which the above mentioned act is a supplement and generally known as the Civil

Service Act (Compiled Statutes, Vol. 3, page 3795), in Section 24 thereof, prohibits removal of employees because of religious or political opinions or affiliations and further prohibits removals until the employees shall have been furnished with a written statement of the reasons for such action, and been allowed a reasonable time in which to make written answer thereto.

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7. The positions held by petitioner and the said Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters fall within the positions mentioned in the said 1912 statute, and by reason thereof they are not subject to removal therefrom except in accordance with the provisions of the said Civil Service Act.

8. On or about December 8th, 1916, this petitioner is informed the said Sheriff, John W. Courter, attempted to appoint to the positions held by this petitioner and the said Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters the following named persons: Charles Hagerman, Aaron Hopper, Gustave Pentner, Joseph Winters, George Weber, Peter Siccardi and Abe Zabriskie, and that when petitioner and the said Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters reported for duty on Monday morning, December 11th, 1916, the uniforms and badges which they had theretofore worn, and which are the property of the said County of Bergen, had been removed from their usual place of safe keeping and the said Charles Hagerman, Aaron Hopper, Gustave Pentner, Joseph Winters, George Weber, Peter Siccardi and Abe Zabriskie, appeared

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for duty in the various courts attired in seven of the said uniforms and with official badges, or others similar to them.

9. The said John W. Courter, Sheriff, was elected on the Republican party ticket and the said appointees, whom he is alleged to have appointed, are of the same political faith. This petitioner and the said Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters are Democrats in politics.

10. If the said action of the said Sheriff was intended to operate as a removal of petitioner and the said Adam C. Demler, John Valluzzi, Daniel Small, Andrew Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters, they received no direct notification of the same from him either verbally or in writing, but obtained the same from the above mentioned act of the said Sheriff, conversations with others and the public press.

11. This petitioner is informed that said John W. Courter, Sheriff, has refused to certify the names of petitioner and the said Adam C. Demler, John Valluzzi, Daniel Small, Andrew Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters for payment of their services for the semi-monthly periods ending December 15th, 1916, and January 1st, 1917, and that he will not certify said names beyond December 10th, 1916.

12. Such attempted removal and appointments in substitution therefor, if such was the purpose of the said Sheriff, was contrary to the above mentioned statute and, therefore, wholly null and void.

13. At the general election held on November 7, 1916, the question of the adoption of the so-called Civil Service Act was submitted to the voters of the County of Bergen and by them adopted by a vote of 13,298 to 6,113.

14. Thereafter and on or about December 19, 1916, the New Jersey Civil Service Commission, the body charged with the administration of the said Civil Service Law, held a meeting at the Court House in Hackensack, in said Bergen County and at such meeting verbally directed the said Sheriff of Bergen County to submit to it, the said Commission, a list of the employees under his supervision, and to include in said list the names of petitioner and said Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters, as said court officers or court attendants. 10 20

15. Your petitioner is informed that the said Sheriff refused and still does refuse to furnish said list.

16. On December 23, 1916, the said Thomas Gash and Clarence Winters received from the said Sheriff through the mail a notice dated December 22, 1916, but postmarked at Hackensack, December 23, 1916, advising them that their positions had been abolished. 30

17. This petitioner is informed that on or about January 4, 1916, Aaron Hopper, one of the alleged appointees, instituted action in the Second Judicial District Court of Bergen County against the Board of Chosen Freeholders of the County of Bergen for the recovery of salary claimed to be due him for the period from December 11, 1916, to January 1st, 1917, and that said suit is returnable on Wednes- 40

day, February 7th. That your petitioner and the said Adam C. Demler, John Valuzzi, Daniel Small, Andrew Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters are not parties to the said suit and have no means of appearing therein to contest the validity of the said claim.

10       18. Petitioner and the said Adam C. Demler,  
John Valluzzi, Daniel Small, Andrew Haring,  
Irving Waltermire, Paul M. T. Purps, Thomas  
Gash and Clarence Winters have not admitted any  
alleged removal of them, which the said Sheriff  
has attempted or may claim to have attempted, but  
have continued to report for duty in accordance  
with their regular practice and have remained  
and still do remain ready and willing to perform  
20       any duties which devolve upon them in the capacity  
of court attendants or court officers.

This petitioner, therefore, in behalf of himself  
and the said Adam C. Demler, John Valluzzi, Dan-  
iel Small, Andrew Haring, Irving Waltermire,  
Paul M. T. Purps, Thomas Gash and Clarence Win-  
ters respectfully prays that your Honor issue an  
order directed to the said John W. Courter, Sheriff  
of Bergen County, and Charles Hagerman, Aaron  
30       Hopper, Gustave Pentner, Joseph Winters, George  
Weber, Peter Siccardi, and Abe Zabriskie to ap-  
pear before your Honor at such time as your Honor  
shall fix, to show cause why the action thus com-  
plained of shall not be set aside, and to have de-  
termined what of right ought to be done by said  
John W. Courter, Sheriff, and Charles Hagerman,  
Aaron Hopper, Gustave Pentner, Joseph Winters,  
George Weber, Peter Siccardi and Abe Zabriskie  
40       under the circumstances presented.

FREDERICK BUTLER,

Petitioner.

ERNEST L. QUACKENBUSH,

Attorney for Petitioner.

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

Frederick Butler, of full age, being duly sworn on his oath according to law deposes and says: That he is the petitioner named in the foregoing petition; that he has read the said petition and the matters therein stated are true to the best of his knowledge and belief.

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FREDERICK BUTLER.

Subscribed and sworn to before me }  
this 13th day of January, 1917. }

Leonard Kalisch,  
Master of Chancery  
Of New Jersey.

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**Rule to Show Cause in Summary Proceeding.**

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Upon reading the verified petition of Frederick Butler wherein is set forth the alleged illegal removal, by John W. Courter, Sheriff of the County of Bergen, of petitioner and others as court officers or court attendants of the County of Bergen and the alleged illegal appointment to said positions of Charles Hagerman, Aaron Hopper, Gustave Pentner, Joseph Winters, George Weber, Peter Siccardi and Abe Zabriskie, and it appearing that the same presents a meritorious case for consideration:

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It is on this 13th day of January, 1917,

Ordered, that the said John W. Courter, Sheriff of Bergen County and Charles Hagerman, Aaron Hopper, Gustave Pentner, Joseph Winters, George Weber, Peter Siccardi and Abe Zabriskie do appear before me at the Court House in Jersey City on Saturday the 27th day of January, 1917, at ten o'clock A. M., to show cause why the alleged action of the said Sheriff in removing the above

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10 *Rule to Show Cause in Summary Proceedings.*

named petitioner and Adam C. Demler, John Val-  
luzzi, Daniel Small, Andrew H. Haring, Irving  
Waltermire, Paul M. T. Purps, Thomas Gash and  
Clarence Winters from the positions of court at-  
tendants or court officers of the County of Bergen  
and appointing the said Charles Hagerman, Aaron  
Hopper, Gustave Pentner, Joseph Winters, George  
Weber, Peter Siccardi, and Abe Zabriskie, should  
10 not be set aside, and for the purpose of having de-  
termined what of right ought to be done by said  
Sheriff under the circumstances of the case. And  
it is further

Ordered, that true copies of the said petition and  
this order be served on the said John W. Courter,  
Sheriff and Charles Hagerman, Aaron Hopper, Gus-  
tave Pentner, Joseph Winters, George Weber, Peter  
Siccardi and Abe Zabriskie within five days from  
20 the date hereof and that any of the parties be at  
liberty to take depositions and other evidence on  
the notice provided by law and the rules of this  
court, in support of or opposition to this rule.

CHARLES W. PARKER,  
Justice Supreme Court.

Entered January 13, 1917.

On motion of

ERNEST L. QUACKENBUSH,  
30 Attorney.

**Stipulation of Facts.**

NEW JERSEY SUPREME COURT.

In the Matter

of

The Petition of FREDERICK BUTLER for review of alleged removals from office by JOHN W. COURTER, Sheriff of Bergen County, in alleged violation of law.

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It is hereby stipulated and agreed between the petitioner and respondents in the above entitled matter that:

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1. Petitioner is a citizen of the State of New Jersey, residing at 538 Jefferson Street, Carlstadt, New Jersey.

2. He was on or about December 13th, 1910, duly appointed by Robert Conklin, the then Sheriff of Bergen County, as court attendant or court officer in and for the County of Bergen, and duly qualified as such; that he thereafter entered upon the performance of his duties in that capacity; that he was re-appointed by Robert N. Heath, when said Heath became Sheriff of Bergen County and has since that time continued to perform the duties of court officer so far as he has been permitted so to do as hereinafter stated. He was on December 13th, 1910, also a constable duly elected in the said Borough of Carlstadt, and at all times since has held and still does hold the said office of constable.

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3. At the general election held in Bergen County

on November 7th, 1916, one John W. Courter was elected Sheriff of said County and later qualified as such Sheriff.

10 4. On the last mentioned date petitioner and Adam C. Démler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters, who likewise had theretofore been appointed by a former Sheriff as court officers or court attendants and had likewise duly qualified as such, were holding and in possession of their said positions.

20 5. On March 14th, 1912, an act of the Legislature of the State of New Jersey, entitled "A supplement to an act entitled 'An Act regulating the employment, tenure and discharge of certain officers and employees of this State, and of the various counties and municipalities thereof, and providing for a civil service commission and defining its powers and duties,' approved April 10th, 1908," which provided as follows:

30 "Every officer or employe of the Circuit Court, Court of Oyer and Terminer, Court of Common Pleas, or Court of General Sessions in each of the Counties of this State, holding office or employment at the time of the introduction of this act, or who may hereafter be appointed, shall continue to hold their offices or employments, as the case may be, and shall not be removed therefrom, except in accordance with the provisions of the act to which this act is a supplement." (P. L. 1912, page 113.)

was approved by the then Governor.

40 6. On or about December 8th, 1916, said Sheriff, John W. Courter, attempted to appoint to the positions held by this petition and the said Adam C.

Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters the following named persons: Charles Hagerman, Aaron Hopper, Gustave Pentner, Joseph Winters, George Weber, Peter Siccardi and Abe Zabriskie, such appointment to become effective on December 11, 1916, and that when petitioner and the said Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters reported for duty on Monday morning, December 11th, 1916, the uniforms and badges which they had theretofore worn, and which are the property of the said County of Bergen, had been removed from their usual place of safe keeping and the said Charles Hagerman, Aaron Hopper, Gustave Pentner, Joseph Winters, George Weber, Peter Siccardi and Abe Zabriskie appeared for duty in the various courts attired in seven of the said uniforms and with official badges, or others similar to them.

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7. The said John W. Courter, Sheriff, was elected on the Republican party ticket and the said appointees, whom he is alleged to have appointed are of the same political faith. Petitioner and the said Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters are Democrats in politics.

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8. Petitioner and the said Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters received no direct notification of their removal from the Sheriff, either verbally or in writing, but obtained the same from the above mentioned act of the said Sheriff, conversations with others and the public press.

40

9. Said John W. Courter, Sheriff, has refused to certify the names of petitioner and the said Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters for payment of their services for the semi-monthly periods ending December 15, 1916, and January 1st, 1917, and he will not certify said names beyond December 10th, 1916.

10. On or about December 19, 1916, the New Jersey Civil Service Commission, the body charged with the administration of the said Civil Service Law, held a meeting at the Court House in Hackensack, in said Bergen County and at such meeting verbally directed the said Sheriff of Bergen County to submit to it, the said Commission, a list of the employees under his supervision, and to include in said list the names of petitioner and said Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters, as said court officers or court attendants.

11. The Sheriff refused to furnish said list, on the ground that he claimed that the Civil Service Act had not been legally adopted in Bergen County.

12. On December 23rd, 1916, the said Thomas Gash and Clarence Winters received from the said Sheriff through the mail a notice dated December 22, 1916, but postmarked at Hackensack, December 23rd, 1916, advising them that their positions had been abolished, copies of which are hereto attached and marked Exhibits "A" and "B."

13. That on or about January 4, 1917, Aaron Hopper, one of the alleged appointees, instituted action in the Second Judicial District Court of Bergen County against the Board of Chosen Free-

holders of the County of Bergen for the recovery of salary claimed to be due him for the period from December 11, 1916, to January 1st, 1917, and that said suit is returnable on Wednesday, February 7th, 1917. That the petitioner and the said Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters are not parties to the said suit.

10

14. Petitioner and the said Adam C. Demler, John Valuzzi, Daniel Small, Andrew H. Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters have not admitted any alleged removal of them, which the said Sheriff has attempted or may claim to have attempted, and have not performed or offered to perform any services for said Sheriff since December 10th, 1916.

20

15. There was presented to James M. Harkness, Clerk of the Board of Chosen Freeholders of Bergen County, on September 18th, 1916, a paper marked Exhibit "C" (being petition to Board of Chosen Freeholders). On October 5th, 1916, said paper was filed with George Van Buskirk, Clerk of Bergen County by said James M. Harkness. The said County Clerk caused to be printed sample ballots with a form of submission which more fully appears by Exhibit "C2" (sample ballot). Said County Clerk caused to be printed on ballots used at the General Election of 1916 a form of submission which more fully appears by Exhibit "D" (election ballot). Said James M. Harkness, Clerk of the Board of Chosen Freeholders, caused to be printed a notice marked Exhibit "E" in the Evening Record, a newspaper published and circulated in the County of Bergen, in the issues of <sup>September 30,</sup> October 7, 1916, October 14, 1916, October 21, 1916 and October 28, 1916.

30

40

16. Said Clerk also posted on September 30, 1916, copies of said Exhibit "E," as follows: One at the Bergen County Clerk's office; one at the Mansion House, Hackensack; one at Palisade House, Englewood; one at Erie Railroad Station, Rutherford; and one at Zellweger's Hotel, Ridgewood, all of said places being in Bergen County.

10 17. Prior to December 11, 1916, the County Board of Elections had canvassed the vote, and 13,298 votes were cast for and 6,113 votes were cast against said proposition as shown by Exhibit "F," which said result was returned to the Clerk of Bergen County.

20 18. The said James M. Harkness did not within five days after September 18, 1916, or at any other time call a special meeting of the Board of Chosen Freeholders of Bergen County to act upon the said petition, and said Board of Chosen Freeholders did not consider the said petition and no meeting of the Board of Chosen Freeholders was ever held to act upon the said petition, and the said Board of Freeholders never considered the said petition and never certified the same to the Clerk of Bergen County or directed him to follow the procedure necessary to have the question contained in the  
30 said petition submitted to the legal votes of Bergen County at the then next regular election, and in fact no action of any kind was ever taken by the said Board of Chosen Freeholders upon said petition.

ERNEST L. QUACKENBUSH,  
Attorney of Petitioner.

JOHN B. ZABRISKIE,  
Attorney of John W. Courter, Sheriff, etc.

40 WENDELL J. WRIGHT,  
Attorney of Peter Siccardi.

**Exhibit "A."—Letter, John W. Courter,  
Sheriff to Thomas Gash.**

December 22, 1916.

Mr. Thomas Gash,  
Hackensack, N. J.

Dear Sir:

For your information I am writing you to state 10  
that the position of Court attendant, which I un-  
derstand was formerly held by you, has been abol-  
ished by me and I have notified the Board of Free-  
holders accordingly.

Yours very truly,  
**JOHN W. COURTER,**  
Sheriff.

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**Exhibit "B."—Letter, John W. Courter, 20  
Sheriff to Clarence Winters.**

December 22, 1916.

Mr. Clarence Winters,  
Oradell, N. J.

Dear Sir:

For your information I am writing you to state 30  
that the position of Court Attendant, which I un-  
derstand was formerly held by you, has been abol-  
ished by me and I have notified the Board of Free-  
holders accordingly.

Yours very truly,  
**JOHN W. COURTER,**  
Sheriff.

**Exhibit "C."—Petition for Submission of  
Civil Service Act.**

To the Honorable

The Board of Chosen Freeholders of  
Bergen County, N. J.

Gentlemen:

10 Your petitioners, the undersigned, respectfully  
represent that they are legal voters in the County  
of Bergen, being a County of the second class; that  
they do hereby request that the question of adopt-  
ing the provisions of an act of the Legislature of  
New Jersey entitled "An Act regulating the em-  
ployment, tenure and discharge of certain officers  
and employees of this State and of the various  
counties and municipalities thereof, and providing  
20 for a civil service commission, and defining its  
powers and duties," approved April 10, 1908 (be-  
ing Chapter 156 of the Laws of 1908), be sub-  
mitted to the legal voters of the said County of  
Bergen, at the next regular election in said Coun-  
ty, pursuant to the provisions of the said Act.  
(At least five hundred signatures attached).

30

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**Exhibit "C2."--Part Sample Ballot.**

Part of Sample Ballot used in Bergen County for Election of November 7, 1916.

If you favor the proposition printed below mark a Cross X or Plus + in the square opposite the word "Yes"; if you are opposed thereto mark a Cross X or Plus + in the square opposite the word "No."

10

*.....*
:YES :
:-----:
:NO :
*.....*

"An act regulating the employment, tenure and discharge of certain officers and employees of this State, and of the various counties and municipalities thereof, and providing for a civil service commission and defining its powers and duties."

20

**Exhibit "D."--Part Official Ballot.**

Part of Official Ballot used in Bergen County, General Election, November 7, 1916.

If you favor the proposition printed below mark a Cross X or Plus + in the square opposite the word "Yes"; if you are opposed thereto mark a Cross X or Plus + in the square opposite the word "No."

30

*.....*
:YES :
:-----:
:NO :
*.....*

Shall an act entitled "An act-regulating the employment, tenure and discharge of certain officers and employees of this State, and of the various counties and municipalities thereof, and providing for a civil service commission and defining its powers and duties," be aopted?

40

**Exhibit "E."—Notice of Submission of Civil Service Act to Voters.**

NOTICE.

10 PUBLIC NOTICE is hereby given that the question of the adoption of "An act regulating the employment, tenure, and discharge of certain officers and employees of this State, and of the various counties and municipalities thereof, and providing for a Civil Service Commission, and defining its powers and duties"; and the supplements and amendments thereto, will be submitted to the legal voters of the County of Bergen at the Regular Election, to be held Tuesday, November 7th, 1916, by the proper printing of the same upon the ballots to be used at said election.

20 JAS. M. HARKNESS,  
Clerk of the Board of Chosen Freeholders of the County of Bergen.

**Order on Summary Proceeding.**

NEW JERSEY SUPREME COURT.

30 In the Matter  
of  
The Petition of FREDERICK BUTLER, for review of alleged removals from office by JOHN W. COURTER, Sheriff of Bergen County, in alleged violation of law. } On Petition, &c.  
Order.

40 The above named petitioner having filed a petition in this cause, alleging the illegal removal of

himself and Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters as Court attendants, or court officers of the County of Bergen, by John W. Courter, Sheriff of Bergen County, and the illegal appointment by said Sheriff of Charles Hagerman, Aaron Hopper, Gustave Pentner, Joseph Winters, George Weber, Peter Siccardi and Abe Zabriskie as court attendants or court officers, the positions of said Thomas Gash and Clarence Winters having been subsequently abolished, and the matter coming on to be heard on the adjourned day of a rule to show cause granted on the said petition, on a written stipulation of facts in the presence of Ernest L. Quackenbush, attorney of petitioner and Wendell J. Wright and John B. Zabriskie, attorneys of respondents, it is, therefore, on this tenth day of February, 1917,

Ordered that the action of said John W. Courter, Sheriff, in the removal of said petitioner and the said Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters and the appointment of Charles Hagerman, Aaron Hopper, Gustave Pentner, Joseph Winters, George Weber, Peter Siccardi and Abe Zabriskie, as court attendants is illegal and wholly null and void, and that the said petitioner and Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire, and Paul M. T. Purps lawfully hold the said positions of court attendants or court officers as held by them prior to the said attempted removal.

CHARLES W. PARKER,  
Justice Sup. Court. 40

**Reasons for Reversal.**

The said prosecutors by John B. Zabriskie and Wendell J. Wright, their attorneys, comes and prays that the order made by Honorable Charles W. Parker, one of the Justices of the Supreme Court of Judicature of New Jersey on February 10th, 1917, in a summary proceeding wherein Frederick Butler was petitioner and this prosecu-  
10 tor and others were respondents, may be set aside and for nothing holden for the following reasons:

First. Because the said Justice was without jurisdiction to make said order because the procedure necessary to legally submit to the voters of Bergen County the question of the adoption of the act entitled "An act regulating the employ-  
20 ment, tenure and discharge of certain officers and employees of this state, and of the various Counties and Municipalities thereof, and providing for a civil service commission and defining its powers and duties, approved April 10, 1908," and the supplements and amendments thereto, generally known as the "Civil Service" Act, at the general election held November 7th, 1916, was not carried out, in that the filing of the petition (Exhibit  
30 "C") the Clerk of the Board of Freeholders did not within five days or at any time call a special meeting of said Board of Freeholders to act upon the said petition and the said Board of Freeholders did not within fourteen days after receipt of said petition or at any other time hold a special meeting or any meeting of any kind to act upon the said petition.

Second. Because said "Civil Service Act" was not legally adopted by the voters of Bergen County.

40 Third. Because the form of sample ballot used in the attempted submission of said Civil Service

Act to the voters of Bergen County did not comply with Section 58 of Chapter 183 of the Laws of 1911.

Fourth. Because the form of ballot used in the attempted submission of the adoption of said Civil Service Act to the voters of Bergen County (Exhibit "D") did not comply with Section 58 of Chapter 183 of the Laws of 1911.

10

Fifth. Because it was the duty of the prosecutor, as Sheriff of Bergen County to appoint from the body of electors of said County as many persons as were necessary to attend upon the courts of said County to perform the duties heretofore performed by the constables of said County summoned to attend such courts and that in appointing said Charles Hagerman, Aaron Hopper, Gustave Pentner, Joseph Winters, George Weber, Peter Siccardi and Abe Zabriskie he was carrying out the duty that devolved upon him by law.

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Sixth. Because regardless of whether or not the said Civil Service Act was adopted by the voters of the County of Bergen, still the said prosecutor, as Sheriff, had a legal right up to and including the expiration of forty-five days from the date of the general election in Bergen County, to wit, until December 22nd, 1916, to make appointments that should remain effective until eligible lists were created by the Civil Service Commission of the State of New Jersey.

30

Seventh. Because assuming that said Civil Service Act was adopted November 7th, 1916, by the voters of the County of Bergen, still it did not become operative until forty-five days thereafter.

Eighth. Because assuming that said act was adopted by the said voters on November 7th, 1916,

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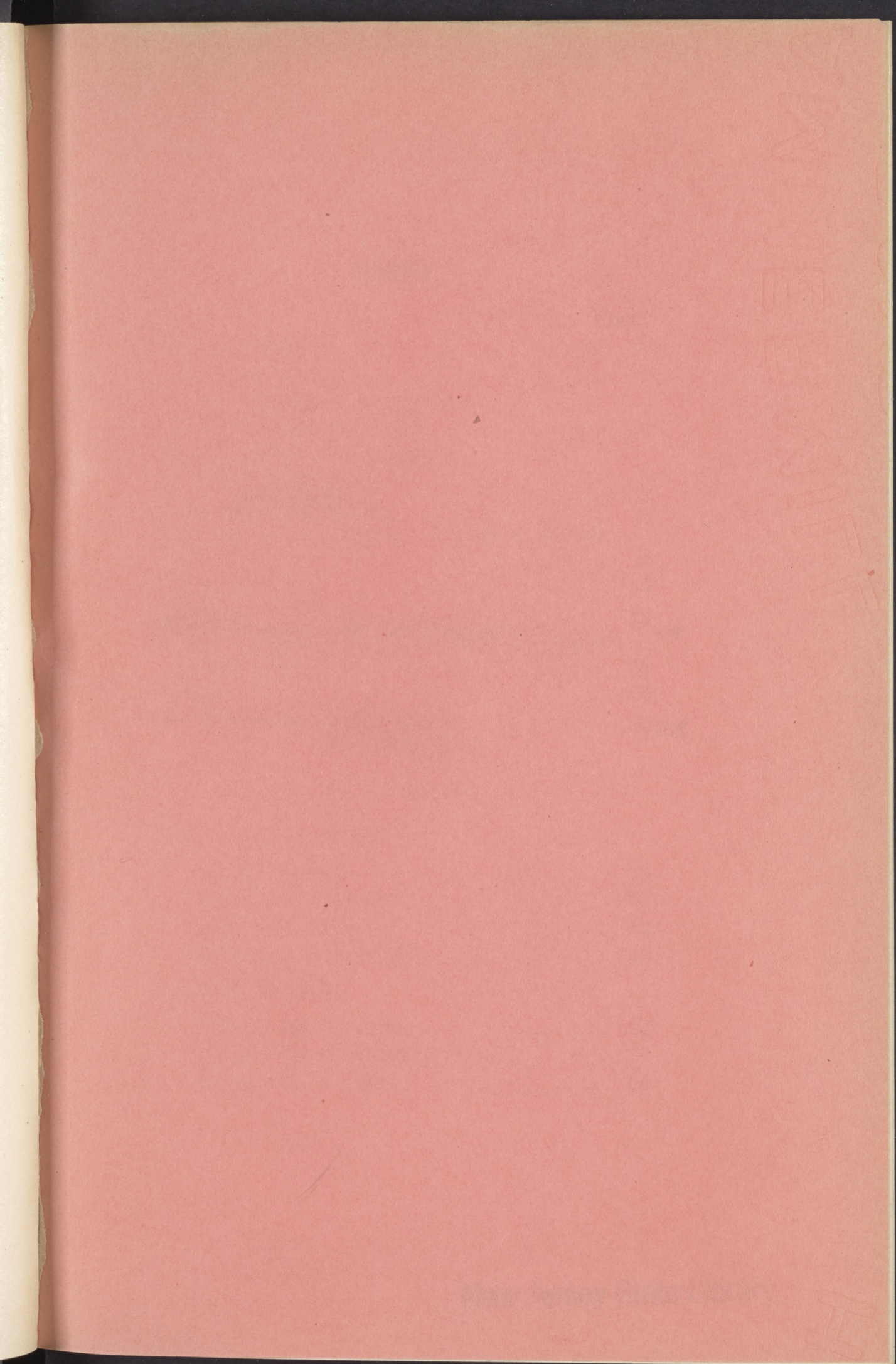
still the only advantage that thereby accrued to the said Frederick Butler, Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire and Paul M. T. Purps was that they should be placed by the Civil Service Commission of New Jersey in the competitive class without examination.

10 Ninth. Because the said Frederick Butler, Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire and Paul M. T. Purps were not placed on any eligible list for said position of court attendants or for any other positions by said Civil Service Commission.

20 Tenth. Because no "eligible list of court officers had been prepared by said Civil Service Commission at the time of the dismissal of said Frederick Butler, Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire and Paul M. T. Purps, and it therefore became the duty of the Sheriff of Bergen County to make appointments from the body of electors as prescribed by law in order that the December, 1916, term of court should be properly attended.

30 Eleventh. Because the said Justice was without jurisdiction to make the rule to show cause, or to make said order for the reason that the so-called Civil Service Act, Chapter 156, of 1908, with the supplements and amendments, had not been adopted by the voters of Bergen County, and was not in force or effective in said County.

40 JOHN B. ZABRISKIE,  
Attorney for John W. Courter.  
WENDELL J. WRIGHT,  
Attorney for Peter Siccardi *et al.*



AMMERMILL

H