# NEW JERSEY COURT OF ERRORS AND APPEALS.

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| JOHN W. COURTER ET ALS., *Prosecutors-Appellants,* *vs.* FREDERICK BUTLER ET ALS., *Defendants-Respondents.* | *On Certiorari.* *On Appeal from Supreme Court.* |

## BRIEF FOR RESPONDENTS.

The appeal in this case is prosecuted by John W. Courter, Sheriff of Bergen County, and seven court attendants, appointees of his, from an order of Mr. Justice Parker, affirmed by the Supreme Court, declaring as illegal the action of the said sheriff in removing the seven respondents from their positions as such court attendants and appointing the seven co-appellants in their places.

The facts briefly stated are that Courter was elected Sheriff at the general election in 1916 (Case, p. 11, l. 41, to p. 12, l. 2); on that date the seven respondents (with two others whose positions were subsequently abolished) (Case, p. 14, ll. 31-38; p. 17, ll. 1-34) were duly qualified court attendants in that County (Case, p. 12, ll. 4-13) and claimed a tenure of office under the provisions of the 1912 Supplement to the so-called Civil Service Act. In December following, Courter placed his appointees in possession of the said positions, but without direct notification, either verbal or written, to respondents (Case, p. 12, l. 40, to p. 13, l. 23; p. 13, ll. 33, to p. 14, l. 10).

At the same general election the question of the adoption of the Civil Service Act was submitted to the voters of Bergen County, and according to the canvass made by the County Board of Elections,

was carried by a vote of 13,298 to 6,113 (Case, p. 16, ll. 10-16).

Thereafter the Civil Service Commission directed the Sheriff to certify a list of the employees under his supervision, the list to include the names of respondents as court attendants. This direction the Sheriff refused to follow because he claimed that the Civil Service Act had not been legally adopted (Case, p. 14, ll. 12-30).

Thereafter respondents brought the matter before Mr. Justice Parker in accordance with the provisions of the summary review act of 1915 (P. L. 1915, Chap. 120), as a result of which the Justice made the order which is here under review. (Case, p. 20, l. 22, to p. 21, l. 40).

The eleven special reasons on appeal filed in behalf of appellant Courter are based on two general grounds:

First (covering the first four and last): That the Civil Service Act was not legally adopted by the voters of Bergen County, and Second (covering reasons five to ten inclusive): That regardless of the adoption of Civil Service the Sheriff performed a lawful duty in taking the action that he did.

Of the five grounds urged in behalf of the other appellants, Siccardi and others, three—the second, fourth and fifth—are to the same effect. The others—first and third—urge a third reason, namely, that Mr. Justice Parker lacked jurisdiction in the premises.

None of these grounds, we submit, has legal merit.

## I. THE STATUTE INVOKED HERE GAVE A SINGLE JUSTICE OF THE SUPREME COURT AMPLE AUTHORITY TO ACT UPON THE SITUATION PRESENTED BEFORE HIM.

This proceeding was instituted, pursuant to the provisions of Chapter 120 of the Laws of 1915 (page 209) by a petition addressed to the Hon. Charles W. Parker, one of the Justices of the

Supreme Court, alleging the illegal removal of one Frederick Butler and others as court attendants or court officers of Bergen County, by the Sheriff of that County, and the appointment by him of others in their places, and asserting particularly the violation of Chapter 82 of the Laws of 1912 (Case, pp. 3-8).

The 1915 statute (herein called the Summary Review Act) 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 counties and municipalities thereof, and providing for a Civil Service Commission, and defining its powers and duties,' approved April tenth, one thousand nine hundred and eight."

The 1912 act bears the same title.

Both are Supplements to the so-called Civil Service Act (3 C. S., p. 3795).

The validity of this Summary Review Act has already been passed upon by this Court. *Edwards, Comptroller,* v. *Petry,* 101 Atl. 195.

This act provides for a summary review by a Supreme Court Justice "in the event . . . any *public officer,* official or employee violating any of the provisions of the act to which this act is a supplement, in the matter of selecting persons for employment, . . . or in the *removal of employees* from office." It was passed three years after the 1912 act, which as a supplement of the civil service act, by the ordinary rules of construction, after its passage became a part of the original act and is to be so considered with reference to subsequent actions thereunder.

*Van Riper* v. *Road Board,* 38 N. J. L. 23.

*North Hudson County Ry. Co.* v. *Flanagan,* 57 N. J. L. 236. 30 Atl. 476.

The violation urged, therefore, is a violation, in the words of the summary review act, "of the act

to which this act is a supplement." The respondents here were employees and the Sheriff of Bergen County, a public officer; hence we find here all the facts which are necessary to give the Justice jurisdiction.

## II. CIVIL SERVICE WAS LEGALLY ADOPTED BY THE VOTERS OF BERGEN COUNTY AT THE GENERAL ELECTION ON NOVEMBER 7, 1916.

As preliminary to a discussion of the alleged defects in procedure, which, it is urged, nullify the expression of the popular vote on this subject, two questions present themselves: First, can the result of an election be attacked collaterally, and second, can a direct attack be made through certiorari.

(1) The result of an election cannot be attacked collaterally.

The most nearly parallel New Jersey cases to the situation here presented have arisen in connection with suits instituted by public officers for the recovery of salary, when the position has been abolished or its incumbency contested. In *Hoboken* vs. *Gear*, 27 N. J. L. 265, the position had been abolished. In denying the right to salary, the court said:

> "The action ought not to be sustained upon principles of public policy. It is a new mode of trying, in a collateral way, by an action for the salary, the title to a public office. . . . If the principle is valid, it will apply as well to officers elected by the people . . . and whenever there *is a contest touching the result of a popular election* . . . the question is to be settled by an action for salary."

and in *Van Sant* vs. *Atlantic City*, 68 N. J. L. 449, 53 Atl. 701, an action for salary when plaintiff claimed his tenure protected by the Veterans' Act, the court said:

> "His (the removing officer's) action is subject to review and may be reversed. Until reversed, it stands. Whether or not there was a proper proceeding cannot be inquired into collaterally. It must be reviewed by a direct proceeding to set aside the illegal removal."

This reasoning, we submit, applies with equal force to the attack here attempted.

(2) The Court does not favor a direct attack through certiorari.

> "Whether, in any case, a certiorari is a proper mode of testing the validity, or determining the result of a popular election, may well be doubted. It has never been resorted to successfully."
>
> *State* v. *Passaic*, 25 N. J. L. 354

An inappropriate remedy—

> *Attorney General* v. *Town of Belleville*, 80 Atl. 116.

(3) But even were a collateral attack permissible, it is not justified here.

Three specific defects in the procedure covered respectively by the First, Third and Fourth Reasons are urged to defeat: (1) That the procedure outlined in Chapter 276 of the Laws of 1912, respecting the submission of the petition to the Board of Freeholders, was not carried out. (2) That the sample ballot was defective. (3) That the official ballot was defective.

The record shows a petition signed by at least five hundred voters filed with the Clerk of the Board of Freeholders on September 18, 1916, and within fifteen days thereafter, on September 30, publication by the clerk of a notice in the Evening News, a Bergen County newspaper, to the effect that the adoption of the act would be submitted to the voters at the next regular election, the publication four times thereafter a week apart, and posting of a notice to the same effect in five public places

in Bergen County, two in Hackensack and one each in Rutherford, Englewood and Ridgewood.

This is in precise conformity with the statute as found in Chapter 17 of the Laws of 1915.

It is contended, however, that this act did not operate to repeal Chapter 276 of the Laws of 1912, an amendment to Section 31 of the Civil Service Act, which required the Clerk to call, within five days thereafter, a special meeting, to be held within fourteen days, of the governing body (here the Board of Freeholders) to pass upon the form of such petition.

A comparison of the two statutes, however, shows numerous inconsistencies. In the earlier one, the board itself made the publication; in the latter one, the clerk is directed to perform the duty; in the 1912 amendment the clerk is directed by the board; under the 1915 supplement the clerk receives his instructions direct from the Legislature, and failure or neglect on his part is made the subject matter of proceedings before the county court. It is apparent that the legislative intent was to detail direct to the municipal clerk all the ministerial duties required to inform the public of the purpose to submit the question for the consideration of the voters, duties which theretofore had in the first instance been placed upon the board itself.

The second objection against the validity of the procedure has to do with the wording as it appeared on the sample ballot. This ballot (Case, p. 19, Exhibit "C 2") shows only the title of the act, whereas the form of ballot contained in Section 58 of the Election Act (P. L. 1911, p. 317) precedes the title by the words "Shall an Act entitled" and follows with the words "be adopted." An examination of the official ballot (Case, p. 19, Exhibit "D") shows that this mistake was harmless, as it was corrected well in time. Such an error in a sample ballot cannot operate to defeat.

Mistakes in printing are contemplated by the election act, for under Section 53 of the General Election Act (2 C. S., p. 2094) a Supreme Court Justice has power to require, and the County Clerk himself has authority to make, a correction where a mistake has been found. In the absence of anything in the record to the contrary, it can fairly be assumed that the correction was made through one of these two agencies.

The third objection is raised to the official ballot in the printing of the instructions to voters and the position of the words "Yes" and "No." Chapter 27 of the Laws of 1915 provides that the method of submitting this referendum shall conform to Section 58 of the Election Act of 1911. A comparison of the form used with that outlined in Section 58 shows that the words "Yes" and "No" are on the opposite side of the question, and that the words "or plus (+)" are added in the instructions; but it should be noted that Section 61 of this act, which prescribes the method of voting, was amended in 1916 (P. L. 1916, p. 595) to permit the use of the words "or plus (+)" in substitution for the "cross," theretofore designated in both sections of the act as the proper mark, and the mark is to be made in the square at the *left* of the name.

Objections of these kinds, even if sound, as is not the case here, have received the attention of our courts and have been overruled.

In *Mitchell* v. *Tolan*, 33 N. J. L. 195, the election was held on the wrong day. In *Winters* v. *Warmoltz*, 70 N. J. L. 615, 56 Atl. 245, the Clerk had failed to give notice. In *Lane* v. *Otis*, 68 N. J. L. 656, 54 Atl. 442, the polling place was outside the district. In *Brown* v. *Street Lighting District*, 70 N. J. L. 762, 58 Atl. 339, the Clerk had failed to give the required ten days' notice; but as in each instance there had been a fair election, the Court would not hold it invalid.

"The object of the act is not to thwart the will of the voter or to throw obstacles in the way of the expression of that will, or to increase the power of the officers charged with the preparation of the ballot. It is for this reason that provisions of this character are generally held to be directory and not mandatory, and that mere irregularities are not allowed to vitiate the election." *Attorney General* v. *Belleville*, supra, at p. 118 Atl.

"The right of the voter is too sacred to be defeated by an act for which the voter is no way responsible, unless by the direct mandate of a valid statute, no other construction can be given. There is nothing in our election law which requires the rejection of votes honestly cast and counted in a case like the one before us," language used by Mr. Justice Fort for the Court of Errors and Appeals, in *Lane* v. *Otis*, 68 supra, at page 660, is particularly apt to the situation here presented.

III. FROM EVERY VIEWPOINT THE ACTION OF THE SHERIFF WAS ILLEGAL.

(1) Respondents were protected by the 1912 Supplement to the Civil Service Act.

The Stipulation of Facts shows the election of appellant Courter as Sheriff of Bergen County on November 7, 1916, and his subsequent qualification as such; that on that date Frederick Butler, Adam C. Demler, John Valluzzi, Daniel Small, Andrew H. Haring, Irving Waltermire, Paul M. T. Purps, Thomas Gash and Clarence Winters (nine in all, the positions of the last two named of whom were subsequently abolished) were holding and in possession of the positions of court attendants; and that on December 10th following their removal was attempted by the Sheriff, and seven others appointed in their places; that those removed were Democrats in politics while the Sheriff and his seven alleged appointees were Republicans; that no direct

notification of their removal either verbal or written was given these respondents (Case, pp. 12-13).

The 1912 act provides:

> "Every officer or employee 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."

The Civil Service Act (3 C. S., p. 3795) in Section 24 prohibits removals for political reasons or affiliations, and also in positions in the competitive or non-competitive classes unless the employee is furnished with a written statement of the reasons for such actions, and is allowed a reasonable time in which to make written answer thereto.

Court attendants have been defined as officers or employees within the meaning of this act. *Shalvoy* v. *Johnson,* 84 N. J. L. 547, 87 Atl. 471.

Similar positions in other counties have been designated within the competitive class of the classified service by the Civil Service Commission. Report 1914, Essex County, p. 43; Mercer County, p. 48; Hudson County, p. 58; Passaic County, p. 61; Union County, p. 65.

By the very act which appellants here invoke (P. L. 1916, p. 514), the court attendant act, the Legislature has itself designated the character of the position with reference to civil service.

These officers are protected in their positions in counties where civil service has not been adopted. *Shalvoy* v. *Johnson,* supra.

(2) The court attendant act of 1916 (P. L. 1916, p. 514) does not operate to repeal the 1912 Act.

Section 1 of this Act provides:

> "It shall be the duty of the Sheriff of counties of this State to appoint from the body of electors of his county such and so many persons as may be necessary to attend upon the several courts of this county and to perform the duties now performed by the constables of the said county summoned to attend such courts."

It is urged in behalf of appellants that this section repeals the 1912 statute and vests in the sheriff the power, either upon his qualification in office, or preceding each term of court, to appoint such court attendants as he may deem advisable. This contention, we submit, is untenable. It attempts to read into the act the provision covering the appointment of constables as attendants upon the courts under the 1900 act. (2 C. S., p. 1717, Section 54.)

It attempts to combine with the appointing power the right to remove. Neither the title of the act, nor the act itself, makes any mention of or reference to such a right. It applies to appointment only. It does contain a repealer of "all acts and parts of acts inconsistent herewith." But the acts of 1912 and 1916 are not inconsistent; the former covers removals alone; the latter provides for appointments. Its purpose seems to have been to settle the question whether or not court attendants must be constables, as provided by the 1900 Act. (2 C. S., p. 1717, Section 54.) Constables are elective officers and as such in the unclassified service under civil service, holding office during the term elected. Court attendants were placed in the competitive class of the classified service under the civil service act, and as such were not subject to removal except in accordance with the provisions of that act. Any apparent conflict was settled by the 1916 legislation.

In the presence of such a repealer as this, if the provisions of the two acts are not inconsistent, the

courts hesitate to resort to a so-called repeal by substitution unless the later act evinces a clear purpose to establish a single rule on the entire subject. *Gottuso* v. *Baker,* 80 N. J. L. 520, 77 Atl. 1038.

Such is not the situation here.

(3) The Court Attendant Act of 1916 gives no warrant for the attempted removals.

This act was passed on March 16, 1916, to take effect immediately. The record shows that respondents had qualified and were actually holding these positions on November 7. The power of appointment, if any existed, resided in the former sheriff, who is presumed to have exercised it by the appointment of these very respondents. Regardless, therefore, of the adoption of civil service, Sheriff Courter could make no such appointments, while the positions were actually filled.

With the adoption of civil service the status of these officers is at once fixed. Section 3 provides

> " . . and all persons holding said positions in counties which may hereafter adopt the provisions of the Civil Service Law *in office at the time of the adoption of the Civil Service Law, shall be placed by the Civil Service Commission in the competitive class without examination.*"

The voters of Bergen County voted in favor of civil service on November 7th, and even under the reasoning of the case of *Steel* v. *Board of Freeholders,* 99 Atl. 318, as the County Board of Elections had canvassed the vote prior to December 10th, it was adopted before the alleged removals were attempted. The Civil Service Commission thereupon in compliance with its duty (Case, p. 14, ll. 10-25) directed prosecutor to furnish a list of employees, which he refused to do (Case, p. 14, ll. 26-30). What was the Commission's duty with respect to court attendants? To place them in the competitive class without examination. And what does this mean?

Not, as prosecutors contend, a mere *right* to be placed in that class, but the *actual* listing of the positions and the *actual* placing of their names in the competitive class so that thereafter they became entitled to all the rights and enjoyed all the protection that this act affords to any employees listed in that class.

(4) The Sheriff's right to appointment within the forty-five day period did not extend to these positions.

In support of the right of appointment within this period, appellants may rely upon the recent decision of the Court of Errors and Appeals in *Steel* v. *Freeholders,* supra. They disregard the fact, however, that the Legislature in its wisdom has seen fit to separate court officers from the larger class of municipal employees, and itself has directed not only that they shall not be removed except for cause but also that with the acceptance by the municipality of the civil service act, they automatically come under the jurisdiction of the Civil Service Commission, subject to whose rules and the laws which created it, their tenure is protected.

For all of which reasons it is respectfully submitted that the judgment of the Supreme Court should be affirmed.

ERNEST L. QUACKENBUSH,
*Attorney for and of Counsel with*
*Defendants-Respondents.*

# New Jersey Court of Errors and Appeals.

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

*v.*

FREDERICK BUTLER *et al.*,
Respondents.

## BRIEF ON BEHALF OF PETER SICCARDI ET AL., APPELLANTS.

This appeal brings up for review, a judgment of the Supreme Court affirming an order made by Mr. Justice Parker, sitting as a Justice of the Supreme Court, under the alleged authority of Chapter 120 P. L. 1915.

### Statement.

Prior to December 8th, 1916, the respondents had been acting as court officers of the various courts in Bergen County, pursuant to an appointment made by the Sheriff of the County, whose term expired on November 14th, 1916.

On December 8th, 1916, John W. Courter, who had been elected at the general election in November of 1916 and duly qualified as Sheriff, appointed these appellants court officers.

The December term of the Bergen County Court opened on December 12th, 1916.

On January 13th, 1917, a petition was presented to Mr. Justice Parker, under the provisions of

Chapter 120 P. L. 1915, praying for summary determination of the right of the respondents to said offices.

Thereupon Mr. Justice Parker made a rule to show cause directing the appellants to show cause, why the action of the Sheriff in appointing the appellants should not be set aside. Upon the return of the rule the appellants appeared and certain facts were agreed to and thereon the Justice made the order complained of.

Immediately upon the making of the order, the same Justice allowed a writ of certiorari upon terms, to wit, that it was to be brought on for argument at the February, 1917 term, upon the same stipulation and exhibits produced before him at the hearing (Printed Case, p. 2).

The matter was brought on for hearing, and an opinion filed on June 6th, 1917, which will be found at pages 7a, etc., printed case, and an order affirming the order of Mr. Justice Parker, was entered on July 13th, 1917.

### The Reasons for Reversal.

The only reason for reversal which will be argued in this brief, is that Mr. Justice Parker did not have jurisdiction of the subject matter, and was without authority to make the order which was the subject of the writ of certiorari herein.

## POINT I.

**The Justice had no jurisdiction, and was without power to make the order of February 10th, 1917.**

This was a summary proceeding instituted by the respondents who were not in possession of the respective offices to which they claim to be en-

titled, to secure a judgment of ouster against these appellants who were in possession of such offices.

It will be conceded that the only authority giving the Justice jurisdiction of the matter, is that given by Chapter 120 P. L. 1915, the first section of which reads as follows:

> "In the event of any municipal board or body, or any public officer, official or employee violating any of the provisions of this act, or the act to which this act is a supplement, in the matter of selecting persons for employment, or in the designation of any employee for appointment, or in the removal of employees from office, any citizen of the State may cause a summary review to be had of such illegal or unlawful action, by presenting a petition to one of the Justices of the Supreme Court of this State, which said petition shall be verified. Upon the presentation of such a petition to a Justice of the Supreme Court, such Justice upon reading the same, and being of opinion that the same presents a meritorious case for consideration may issue an order directed to the members of the municipal board or body so offending, or to the public official, officer or employee so offending, directing them or him, as the case may be, to appear before said Justice at such time as the said Justice shall fix, to show cause why any action thus complained of shall not be set aside, and for the purpose of having determined by said Justice what of right ought to be done by said municipal board, body, public official, officer or employee under the circumstances presented. At such hearing, witnesses may be sworn and any of the parties to the proceeding may be represented by counsel as in other proceedings in the Supreme Court. Process of subpœna shall issue the same as in any civil action in the Supreme Court; and the said Justice

shall make such determination and order as the circumstances may require. The order made by the Justice of the Supreme Court shall be filed with the Clerk of the Supreme Court and a certified copy thereof shall be served upon either the presiding officer or the clerk of any municipal board or body to be affected thereby; or upon the public official, officer or employee to be affected thereby when no municipal board or collective body having a presiding officer or clerk is affected thereby. The person or persons to whom said order is directed shall forthwith proceed to comply with the terms and provisions thereof, and any failure or neglect to properly satisfy or meet the requirements of said order shall be punishable as and for contempt of court."

The above act 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 Counties and Municipalities thereof, and providing for Civil Service Commission, and defining its powers and duties.' Approved April 10th, 1908."

It will be conceded that unless the Act of April 10th, 1908, known as the Civil Service Act, was in force in Bergen County the Justice had no jurisdiction or power. By that act, the Justice is constituted a special tribunal to act in cases where the so-called Civil Service Act is in force. If the Act were not in force, he would be without jurisdiction of the subject matter of the controversy.

Consent cannot give jurisdiction when it is not authorized by law.

Baylis *v.* Newton, 51 N. J. Law, 553.

Jurisdiction of subject matter cannot be con-

ferred by consent, nor can the right to object to it, be lost by acquiescence or neglect.

School Trustees *v.* Stocker, 42 N. J. Law, 115.

The appellants herein did not acquiesce or consent to the jurisdiction of the Justice, but on the contrary, objected to it and presented facts to show that he was without jurisdiction. (See stipulation of facts, Paragraphs 15, 16 and 18, at pages 15 and 16 of printed Case.)

The Supreme Court in its opinion, says:

> "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.
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> "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."

In cases of special statutory authority, the tribunal must show that an act done comes within its limited jurisdiction, for if it is not so shown, it will be presumed to be without jurisdiction.

Perrin *v.* Farr, 22 N. J. Law, 356.
State *v.* Shreeve, 15 N. J. Law, 57.
Buck *v.* Lippincott, 25 N. J. Law, 434.
Snediker *v.* Quirk, 13 N. J. Law, 306.
O'Keefe *v.* Moore, 60 N. J. Law, 138.
State *v.* Lewis, 22 N. J. Law, 564, at 566.

The order made by the Justice does not show that the Justice had jurisdiction, or any finding of fact which would give him jurisdiction.

There is no presumption of the jurisdiction of a special tribunal.

Perrin *v.* Farr, 22 N. J. L., 356.
State *v.* Lewis, 22 N. J. L., 564, at 566.
Stout *v.* Freeholders, 25 N. J. L., 202, at 205.

On the contrary, the presumption is against jurisdiction.

Perrin *v.* Farr, *ibid.*
State *v.* Lewis, *ibid.*
State *v.* Shreeve, *ibid.*

The Court, in the case of School Trustees *v.* Stocker, 42 N. J. Law, page 115, at page 117, says:

> "The question here is, not whether a competent court had obtained jurisdiction of a party suable before it, but whether the court itself is competent, under any circumstances, to adjudicate a claim against the defendant below.
>
> "The question, therefore, is as to the jurisdiction of the court below over the very subject matter of the suit. This kind of jurisdiction cannot be conferred by consent, nor can the right to object to the want of it be lost by acquiescence or neglect.
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> "A judgment pronounced by a tribunal having no authority to determine the matter in issue, is necessarily and incurably void, and may be shown to be so in any collateral or other proceeding in which it is drawn in question."

Vice-Chancellor Van Fleet, in the case of The Atlantic Trust Company *v.* The Consolidated Electric Storage Company, 49 N. J. Equity, 402, at page 406, says:

> "The proof in support of a jurisdictional

> fact must always be clear and convincing, for the court derives its power from the fact, and hence, until the fact is shown to exist it has no power. To doubt in such a case is to deny."

The question of jurisdiction is always a fact to be pleaded and to be determined from the evidence.

> The Atlantic Trust Company *v.* Consolidated Electric Storage Company, 49 N. J. Equity, 402.

In this case, the question of jurisdiction was put in issue before the Justice in the summary proceeding, and there was no finding by him of the fact that he did have jurisdiction. The evidence showed conclusively that he did not have it (Printed Case, pp. 15 and 16, Paragraphs 15, 16, 18).

It must be borne in mind that this is not an endeavor to try title to office upon a writ of certiorari. It is a summary proceeding thrust upon these appellants, who were the prosecutors of the writ of certiorari, by the respondents, who, at the time of the presentation of their petition to the Justice, were not in possession of the offices to which they desired to establish title.

These appellants had no opportunity to bring the question of the legal adoption of the Civil Service Act before the Court in a *quo warranto* proceeding, or any other manner; but they are entitled to question the jurisdiction of the Justice in the summary proceeding, and compel the petitioners in that proceeding to show by clear and convincing proof that the Justice did have jurisdiction.

This brings us to the question as to whether

or not in fact the justice did have jurisdiction, and consequently whether or not the Civil Service Act was in force in Bergen County, at the time of the summary proceeding.

## POINT II.

**The Civil Service Act was not adopted in Bergen County.**

(1) Section 31 of the Civil Service Act, as amended by Chapter 276 of Laws of 1912, provides as follows:

> "Whenever there shall be presented to the clerk * * * a petition signed * * * requesting that the question of the adoption of the provisions of this act be submitted to the legal voters of said municipality, it shall be the duty of said clerk, within five days after the receipt of said petition, to call a special meeting of said governing body to act upon the said petition, such meeting to be held within fourteen days after the date of the receipt of the said petition by the said clerk. At such special meeting the said governing body shall consider the said petition, and if found in due form, shall immediately certify the same to the clerk of such municipality, directing him to follow the procedure necessary to have the question contained in the said petition submitted to the legal voters of the said municipality at the next regular election. Public notice thereof shall be given by said governing body by publication in one or more newspapers published and circulated in the said municipality * * * to be designated by said governing body * * *."

Chapter 17 of the Laws of 1915, being a supplement to the Civil Service Act, provides:

> "Whenever there shall be presented to the clerk of the governing body * * * a peti-

> tion as provided in Section 31 of the Act to which this act is a supplement, it shall be the duty of said clerk fifteen days thereafter to give public notice that the question of the adoption of the Civil Service Act will be duly submitted to the legal voters * * * at the next regular election, and to make public notice thereof by publication * * * to be designated by said clerk * * *. It shall also be his duty to follow the procedure necessary to have said question submitted by the proper printing of the same upon the ballots to be used at the regular election."

Section 2 provides for procedure in case the clerk does not take proper action.

Section 3 makes failure to comply with an order of the Court a misdemeanor.

Section 4 makes interference with the clerk unlawful.

Section 5 is as follows:

> "This act shall not be construed to repeal any other act on the subject matter hereof not inconsistent herewith."

It will be noted that the only effect of the supplement, Chapter 17 of Laws of 1915, is to make it the duty of the *clerk* to give the public notice in papers to be designated by the *clerk* instead of making it the duty of the governing body to give the notice in papers to be designated by the governing body. It also makes it the duty of the clerk to give notice within fifteen days after the filing of the petition with him, whereas the provisions of Section 31 do not require the notice to be given at any special time after the petition was submitted. It only required it be given for four weeks after the election.

It may be argued by the respondents that this Act of 1915 is intended to take the place of Sec-

tion 31, and to do away with the necessity of submitting the petition to the governing body. Such construction, however, can not be given in view of the provisions of Section 5 of the Act of 1915 above quoted. From this section it is clear that the Legislature did not intend that the provisions of Section 31, as amended by Chapter 276 of Laws of 1912, should be repealed excepting as to matters above pointed out which were inconsistent with Section 31. The provision for the submission by the clerk of the petition to the governing body and the determination of the governing body that the petition was in due form, and the certification of the petition to the clerk are in no wise inconsistent with the enactments of the supplement of 1915.

It is admitted by the facts stipulated in this case that the Clerk did not, within five days, or at any other time after receipt of petition call a special meeting of the governing body. Neither did the governing body within fourteen days or within any other time consider the petition or take any action thereon or certify the same to the clerk.

(2) *The proposition as submitted upon the official ballot was uncertain and indefinite and not in accordance with the requirements of the statute.*

The proposition as submitted, is as follows:

> "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 adopted?"

Under the original Act of 1908 a form of submission was provided (see Section 31 of the Act).

Thereafter in 1911, the so-called "Geran" Act was adopted which provided a different method of submission of any question or proposition. See Section 58, Chapter 183 of Laws of 1911, page 317. In 1915, by Chapter 27 of Laws of 1915, it was provided that thereafter the question of the adoption of the provisions of the Civil Service Act should be submitted in a manner to conform with the provisions of Section 58 of the "Geran" Act—P. L. 1911, page 317.

Section 58 of the "Geran" Act requires that a question be submitted in an intelligent and definite manner, which is evidenced by the form contained in the body of the act, which is as follows:

> Shall an act providing for a Commission form of government for Newark be adopted? Yes. No.

Compare this with the form of submission in question. Can the Court or anyone else tell from the official ballot (Exhibit "D") what the proposition submitted really is? Bearing in mind that this same ballot was voted in some 65 or 70 municipalities in Bergen County, can anyone say what the proposition means? Did it mean in a municipality in which a voter was voting or in the whole County? or, might not the voter have well believed that the proposition applied to its adoption by the State as a whole? In other words the proposition was not submitted intelligently. What should have been submitted was whether or not the Civil Service Act should be adopted in Bergen County.

Attention is called to Exhibit "C2," being the sample ballot, which was sent out to the voters prior to the election. On this ballot, the proposition was printed in still a different manner.

It is also contended that the election law—Section 58 of Laws of 1911, provides that the words "Yes" and "No" which are to be printed on the ballot in conjunction with the proposition together with the blank squares in which the voter was to mark his desire, should have been upon the right of the proposition, whereas upon the sample ballot and upon the official ballot (Exhibits "C2" and "D"), the words "Yes" and "No" and the squares for marking were to the left and partly above the proposition.

In this respect the ballot in form of submission did not conform to the statute. It was therefore void.

## POINT III.

**The Justice was without jurisdiction to make the order brought to the Supreme Court on the writ of certiorari, and, therefore, the order of the Supreme Court and the order below should be reversed and set aside.**

Respectfully submitted,
WENDELL J. WRIGHT,
Attorney for and Counsel with
the Appellants, Peter Siccardi, *et al.*,
except John W. Courter.

APPEAL PRINTING CO., 22 THAMES ST.

# New Jersey Court of Errors and Appeals

JOHN W. COURTER, et al.,
Appellants,

vs.

FREDERICK BUTLER, et al.,
Respondents.

## BRIEF FOR APPELLANTS.

This is an appeal from a judgment of the Supreme Court. The action there was on certiorari. The writ of certiorari brought up for review an order made by Mr. Justice Parker, under such jurisdiction as was vested in him by Chapter 120 of the Laws of 1915, which is an act 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 tenth, one thousand nine hundred and eight."

The facts stipulated in the Supreme Court show that John W. Courter was elected Sheriff of Bergen County at the general election held November 7th, 1916; that Frederick Butler, one of the respondents, and a number of others had previously held the position of Court officers of Bergen County under an appointment of a former Sheriff; that on December 11, 1916, said Sheriff appointed Peter Siccardi, Charles Hagerman, Aaron Hopper, Gustav Pentner,

Joseph Winters, George Weber and Abram Zabriskie to act as court officers or court attendants in the courts of Bergen County.

It also appears in the stipulation that on September 18, 1916, a petition (Exhibit C) signed by more than 500 names was presented to the Clerk of the Board of Chosen Freeholders, of the County of Bergen; that the said Clerk did not within five days thereafter, or at any other time, call a special meeting of the Board of Chosen Freeholders to act upon the petition, and that the said Board of Chosen Freeholders did not consider the petition and that no meeting of said Board was ever held to act upon the petition; that the Board of Freeholders never considered the petition and never certified the same to the Clerk of the Board of Freeholders nor directed him to follow the procedure necessary to have the question submitted to the legal voters at the then next regular election; that said Clerk on October 5, 1916, filed the said petition with the County Clerk of Bergen County and caused to be printed a notice (Exhibit E) in a newspaper circulating in the County in five issues, to wit, September 30, October 7, 14, 21 and 28, and also posted copies of said notice in five public places in the County of Bergen on September 30, 1916; that the County Clerk caused to be printed sample ballots, with a form of submission as shown by (Exhibit C2) and also caused to be printed on the official ballots used at the general election a form of submission which more fully appears by reference to Exhibit "D"; that after the General Election in November, 1916, and prior to December 11, 1916, the County Board of Elections canvassed the vote cast at the General Election upon the question submitted as shown by Exhibit "D" and certified to the County Clerk that 13,298 votes were cast "for" and that 6,113 votes were cast "against" said proposition.

The Supreme Court affirmed the order made by Justice Parker. From the order affirming that judgment and dismissing the writ of certiorari, the said John W. Courter, Sheriff, and the said court officers appointed by him, appeal.

**Reasons for Reversal.**

The reasons alleged for the reversal of the judgment affirming the order made by Justice Parker are:

1. A Justice of the Supreme Court had no right to make the order reinstating Frederick Butler, et al., because Chapter 82 of the Laws of 1912 upon which the respondents rely is unconstitutional.

2. The Sheriff had a right to make appointments within forty-five days after the adoption of the Civil Service Act, (if it was legally adopted) pending the classification of positions and the preparation by the Civil Service Commission of an eligible list. P. L. 1915—Chapter 20, page 49.

3. The Civil Service Act was not adopted in Bergen County.

**POINT I.**

**The Justice of the Supreme Court had no jurisdiction to make the order reinstating Frederick Butler, et al., because Chapter 82 of the Laws of 1912 is unconstitutional.**

This act is entitled as follows:

> "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 tenth, one thousand nine hundred and eight."

It then provides as follows:

"1. Every officer or employee 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."

The legislation here embraced is a typical illustration of the faulty class of legislation that the constitution condemns.

Article 4, Section 7, Paragraph 4 of the New Jersey Constitution provides as follows:

"To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, **and that shall be expressed in the title.** * * *"

Chapter 82 of the Laws of 1912 was intended to accomplish two things, one of which was that

"Court officers de jure be brought within the provisions of the act (meaning the Civil Service Act) as to tenure, irrespective of the adoption of the Act by the County" **Shalvoy vs. Johnson, 84 N. J. L., 547 at page 549.**

As to that purpose and as to so much of the Act as is connected with that object of the act, it is contended that this statute is unconstitutional. An examination of the act discloses that the only way that the Civil Service Act bears any relation to it, is that

in the Civil Service Act there is indicated in detail the manner of making removals.

It is contended that the mere fact that the Civil Service Act was referred to in the body of the act for the purpose of indicating the method of removal, did not furnish to the legislature a legal reason for entitling this act as a supplement to the Civil Service Act. It is apparent that such a policy of legislation tends to hide rather than disclose the legislation embraced in the subject matter of the statute. According to the constitution, this act should have disclosed the fact that it was an act concerning the tenure of office of employees 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.

This character of legislation has been repeatedly held to be bad in this State. The case of **Mack vs. State, 60 N. J. L. 29** was a supplement to the act concerning inns and taverns, purporting to make it a misdemeanor to sell intoxicating liquors from an "ambulatory conveyance."

Justice Garrison said:

> "The creation of this offense is a general police law, and while its enforcement may be incidentally beneficial to licensed venders, that is not the object of the act within the meaning of the constitutional requirement. Beyond this it has nothing to connect it with the act to which it is made supplemental.
>
> If there were no "Act concerning inns and taverns," it would surely never occur to anyone to select such a title as aptly expressive of a legislative purpose to punish whomsoever sold intoxicating drink from a vehicle. As a statutory enactment the supplement falls under the constitutional ban and is void."

Many similar cases are to be found in the statute books; for example see **Lane vs. State, 49 N. J. L. 673,** holding that

> "A further supplement to an act entitled 'An act constituting courts for the trial of small causes,' "

is unconstitutional, the title being misleading and not in compliance with Article 4, Section 7, Paragraph 4 of the Constitution.

Also see **Falkner vs. Dorland, 54 N. J. L. 409,** holding invalid a so-called supplement to an act respecting writs of error.

The Supreme Court in its opinion in the present case passed upon this question of the constitutionality of the act in question with the simple remark "that it is manifest to us that that contention is without substance," and quoted **Shalvoy vs. Johnson, 84 L., 134 and 549,** which case at neither of the places indicated deals with the question of the constitutionality of the statute.

Counsel for the defendant in his brief filed in the Supreme Court attempted to justify the act as constitutional by citing three cases, namely

Rader vs. Township of Union, 39 N. J. L., 509.

State vs. Twining, 73 N. J. L., 683.

Sawter vs. Shoenthal, 83 N. J. L., 499.

An examination of these cases and the reasoning contained in them reveals the fact that they do not sustain the respondents' contentions.

## POINT II.

**The Sheriff had a right to make appointments within forty-five days after the adoption of the Civil Service Act, (if it was legally adopted) pending the classification of positions and the preparation by the Civil Service Commission of an Eligible List.. P. L. 1915—Chapter 20, page 49.**

Assuming that Chapter 82 of the Laws of 1912 is invalid for the reasons set forth under the foregoing point, then the status of the Sheriff's appointees would be governed by the Civil Service Act, provided that act had been adopted legally in Bergen County.

Even then the removal of the old officers and appointment of the new officers would be good under Chapter 20 of the laws of 1915, and Chapter 248 of laws of 1916. The status of prior appointees has been passed upon in the recent case of **Steel vs. Freeholders—99 Atl. 318.**

That case is analagous to the case before the Court and under its decision the Sheriff had the right to dismiss within the forty-five days after the adoption of the Civil Service Act.

True, the Supplement of 1915, **P. L. 1915, page 49** provides that appointments made within the forty-five day period shall be considered as temporary appointments only. This supplement, however, does not in any way alter the Sheriff's power to dismiss during the forty-five day period, which power of removal is especially confirmed by the Steel case above cited.

Such an eligible list not having been prepared at the time of the removal of the former Sheriff's appointees, the incoming Sheriff had a free hand to appoint as provided by law, from the body of the electors of his County. Such a list not having been thereafter made up, it was his right and duty to continue his appointees in office and they were legally holding office at the time of the institution of these proceedings.

The Supplement of 1915 above referred to is in the following language:

> "A Supplement to an act entitled 'An act regulating the employment, tenure and dis-

charge 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 tenth, one thousand nine hundred and eight."

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. When the act referred to in the title of this act shall be adopted, in the manner therein provided, by any municipality of this State, appointments to, and promotions in, the civil service of such municipality within the period of forty-five days subsequent to such adoption shall be made only as temporary appointments, pending classification of positions by the Civil Service Commission, and shall not give the holders thereof any preference to permanent appointment or promotion as against eligibles, as determined thereafter by examination for such positions as may fall within the classified service, and for which examinations are required under the Civil Service law. After classification has been made, and the necessary eligible lists created, permanent appointments shall be made therefrom. Such appointments as have been made during the forty-five-day period to positions which come within the unclassified service shall continue under all conditions applicable thereto, as positions in the unclassified service.

2. All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect immediately.

Approved March 2, 1915."

## POINT III.

**The Civil Service Act was not adopted in Bergen County.**

A comparison of Section 31 of the Civil Service Act as amended by Chapter 276 of the Laws of 1912, provides the procedure to be followed in order that a Civil Service Act may be legally passed. From the facts stipulated, it is evident that this procedure was not followed. The Supreme Court was of the opinion that the validity of this Act could not be attacked in a proceeding of this kind. The discussion of this point is to be embraced in a brief to be filed on behalf of Counsel for Peter Siccardi, et al.

Of course, it goes without saying, that if the act was not adopted legally in Bergen County, and that that fact can be decided in the present proceeding, that then the Justice had no jurisdiction to make the order on summary proceeding (State of Case, page 20).

Respectfully submitted,

JOHN B. ZABBRISKIE,

Attorney for John W. Courter, Sheriff.

# NEW JERSEY COURT OF ERRORS AND APPEALS.

JOHN W. COURTER et als,
*Prosecutors-Appellants,*
vs.
FREDERICK BUTLER et als,
*Respondents.*

*On Certiorari.*

## SUPPLEMENTAL BRIEF IN BEHALF OF RESPONDENTS.

Upon application in open court by counsel for appellants, whose briefs were not then prepared, appellants were directed by the Court to serve such briefs upon counsel within ten days from the opening day of Court, respondents to have five days thereafter within which to serve a supplemental brief in case his main brief did not meet all of the questions raised.

In accordance with this direction counsel for appellant Courter did serve a copy of his proposed brief on the tenth day, but counsel for appellants, Sicardi et al, having failed so to do, has apparently abandoned the case.

Two of the grounds urged in this brief have been sufficiently met in respondents' main brief. A third ground, to wit, that "The Justice of the Supreme Court had no right to make the order reinstating Frederick Butler et al because Chapter 82 of the laws of 1912, upon which the respondents rely, is unconstitutional," has not been discussed there, and before entering upon any discussion thereof, the right of this appellant to raise such a contention at this late date should be fairly questioned. An examination of the eleven reasons filed in behalf of such appellant (Case pp. 2a to 5a) discloses not one which can fairly be deemed to include this point.

## P. L. 1912, CHAPTER 82, IS NOT REPUGNANT TO ARTICLE 4, SECTION 7, PARAGRAPH 4, OF THE NEW JERSEY CONSTITUTION.

Appellant attacks the constitutionality of the 1912 supplement to the Civil Service Act because the object of the act would be aptly expressed if entitled "An Act concerning the tenure of court employees" and that its designation as a supplement to the so-called Civil Service Act is misleading and tends to confuse. *Mack* v. *State,* 60 N. J. L. 29, 36 Atl. 1088, *Lane* v. *State,* 49 N. J. L. 673, 10 Atl. 360, and *Folkner* v. *Dorland,* 54 N. J. L. 409, 24 Atl. 403, are the cases relied upon to sustain this point, all cases wherein supplements to then existing laws were declared to be unconstitutional because the respective objects were not expressed in the titles. That an "ambulatory conveyance" is not an inn or tavern, that a criminal procedure act is not a proper subject of legislation in connection with the "act constituting courts for the trial of small causes" and that an appeal is not a writ of error simply because it is so designated are the holdings of these three cases, all of which attempted to legislate by supplementary legislation beyond the scope of the original acts. These cases, it is respectfully submitted, do not in any respect parallel the situation here presented.

The object of this supplement was to secure to court employees therein designated security from removal *except in accordance with the provisions of the Civil Service Act.*

The courts in a long line of decisions have expressed in various ways the controlling rule, the citation of some of which would be of value in determining the exact question raised here.

'It is true that it may be difficult to indicate by a formula how specialized the title of a statute must be; but it is not difficult to conclude that it must mean something in the way of being a notice of what is doing. Unless it does this, it can answer no useful end. It is not enough that it embraces

the legislative purpose. It must express it." *Rader* v. *Township of Union*, 39 N. J. L. 509.

"The constitutional provision only requires that the title of the statute shall express its object in a general way, so as to be intelligible to the ordinary reader, not that it shall be an index or abstract of the contents thereof." *Quigley* v. *Lehigh Valley Railroad Co.*, 80 N. J. L. 486, 79 Atl. 458.

"The true rule is that the object expressed in the title must give notice of the effect of the legislation to one conversant with the existing state of the law. The validity of the title is not to be determined by nice distinctions of etymology or definition of words, but by the facts of the case and the history of the legislation. Language which at one time may be quite inadequate to warn the public of the object of legislation, may, at another, owing to custom or usage, be entirely sufficient." *Sawter* v. *Shoenthal*, 83 N. J. L. 499, 83 Atl. 1004. (Errors and Appeals 1912.)

Two comparatively recent cases where the application of these principles has resulted in sustaining the constitutionality of the act under attack are *Stagway* v. *Riker*, 84 N. J. L. 201, 86 Atl. 440 (Sup. 1913), and *State* v. *Twining*, 73 N. J. L. 683, 64 Atl. 1073. In the first mentioned case the legality of the transfer of inmates of Rahway Reformatory to the State Prison, under the provisions of the 12th section of an act entitled "An act relating to the management of the New Jersey reformatory" was questioned on this ground, a provision which at first sight would seem to be broader in scope than the title indicated, but the court said (p. 203):

"The general and usual signification of the word 'management' as defined by Webster is 'conduct,' 'administration,' 'guidance,' 'control,' 'judicious means to accomplish an end.' Measured by these definitions, we think the title of the act sub judice sufficiently comprehensive to inform the legislative members that the discipline of the inmates of the reformatory was or might be the subject matter of the act, and that result under our decisions is made the test of compliance with the requirement of the organic law."

In *State* v. *Twining* a conviction under Section 17 of the act of 1889 concerning trust companies two objections were raised. First, that plaintiffs in error were officers of a safe deposit and trust company organized under another act, and, second, that the title did not express the object of the above section, namely, the punishment of criminal acts of officers of such last named companies. Both contentions were dismissed, the second in these words:

"The title indicates the legislative purpose to be directed to such trust companies. Such legislative purpose necessarily includes regulation of such companies, including the regulation of those who direct or act for them, and the enforcement of such regulations."

And this declaration was accompanied by a restatement of the rule as declared in the cases above cited.

The attack in the case under consideration here is directed against a "supplement." This class of cases has likewise received judicial attention in recent cases.

The term "supplement" has been defined as signifying "something additional, something added to supply what is wanting. It is that which supplies a deficiency, *adds to,* or completes or *extends,* that which is already in existence without changing or modifying the original." IV. Words and Phrases, p. 797. And by Webster as "that which completes or makes an *addition to* something already organized, arranged or set apart."

In *Donnelly* v. *Borough of Longport*, 88 N. J. L. 68, 95 Atl. 740, Chapter 12 of the Laws of 1915, "a further supplement" to the General Borough Act was attacked on the ground, amongst others, that it failed to express its object in its title. The Supreme Court dismissed this contention in these words:

"We conceive that such a title is sufficient to support any legislation fairly comprehended in the main act."

"We think it has never been held that a mere supplement should express in its title the specific change or addition contemplated by the legislature,"

and the further reference by the court to the connections to the parent act shows a situation parallel to that under consideration here.

In *Seaside Realty Co.* v. *Atlantic City*, 74 N. J. L. 178, 64 Atl. 1081, affirmed 76 N. J. L. 819, 71 Atl. 912, a 1903 supplement (P. L. 1903, p. 387) to the riparian rights act was attacked on the ground that its object was not expressed in the title, in that he supplementary legislation authorized the commissioners to *grant* lands to municipalities under certain conditions, whereas the original act gave authority only to *ascertain* the rights of the State and riparian owners in riparian lands. The Supreme Court dismissed the writ and was affirmed by the Court of Errors and Appeals, notwithstanding a rather vigorous dissenting opinion filed by Mr. Justice Garrison.

This case elicited the following comment by the same court in the Sawter case, supra, which must be regarded as controlling:

"The reason is that regardless of the precise meaning of the original title, it became by custom and usage generally known that under that title the legislature would deal with the whole subject of riparian lands. We have, therefore, sustained the validity of the legislation, although our attention was called to the difficulty in the title."

The Sawter case further set aside the distinction between "object" and "purpose," on the basis of which the Supreme Court (81 N. J. L. 197) had declared invalid the 1909 amendment to the inheritance tax law.

Viewed in the light of these decisions, it is submitted that the attack here must fail. Our State in 1908 had adopted the principle of Civil Service

by the enactment of the Civil Service Law (3 C. S. p. 3795), and by the year 1912 the same was in force in the state and in various counties and cities. "One conversant with the existing state of the law," to re-quote from *Sawter* v. *Shoenthal,* knew just what the situation was. Therefore the passage in that year of a supplement gave notice of a purpose to extend this law. This, I submit, was sufficient. And this is exactly what the supplement does. It specifically extends the protection of the main act to the tenure of court officers. As distinguished from the cases cited in appellant's brief, the supplement contemplates *less* rather than *more,* as in those cases, than the parent act would have warranted.

This title is a notice "of what is doing," it "expresses its purpose," it gives notice of its effect "to one conversant with the existing state of the law," "it supports legislation fairly comprehended in the main act," it complies in all respects with the rules which our courts have laid down to insure compliance with the constitutional mandate.

Subsequent to the preparation of the foregoing brief, the attorney for appellants, Sicardi et al, four days after the same was due, served copies of his brief by mail.

An examination of this brief reveals very little that has not been covered by the main brief prepared in behalf of respondents. Some few points, however, will here be considered.

1. The adoption of the Civil Service Act in Bergen County was not necessary in order to confer jurisdiction upon the Supreme Court justice.

Appellant's brief states (p. 4, 11, 27 et seq.): "It will be conceded that unless the Act of April 10, 1908, known as the Civil Service Act, was in force in Bergen County the Justice had no jurisdiction

or power." It is not so *conceded.* As pointed out in the main brief, the violation urged was that of the 1912 supplement to the Civil Service Act; that respondents were removed from their positions by a method contrary to the "provisions of the act to which this act is a supplement."

The question of whether or not civil service was adopted at the general election is not a factor to be considered in determining jurisdiction under the summary review act, in the situation presented here.

2. With respect to the claim that the voters could not ascertain from the ballot for what unit of government this adoption of civil service was being submitted, attention is called to the notice or submission of Civil Service Act to Voters (Exhibit "E," Case p. 20), which states that this question *will be submitted to the legal voters of the County of Bergen at the Regular Election to be held Tuesday, November 7th, 1916.*" This notice was a public notice, printed in the Evening Record, a newspaper published and circulated in the County of Bergen, in five issues (case p. 15, ll. 37-41) and posted in five public places, two in Hackensack and one each in Rutherford, Ridgewood and Englewood (Case p. 16, ll. 1-9.) All the steps required by the law were taken in advance to inform the voters on this particular point.

3. Counsel also complains that appellants had no opportunity to question the legal adoption of Civil Service. (P. 7, ll. 27 et seq.) The record in this case, however, shows and could show no warrant for such a statement. The petition on which this proceeding was instituted was not executed until January 13, 1917 (Case p. 9, l. 12); the County Board of Elections had certified the result of the election before December 11th (Case p. 16, ll. 10 to 16) and the Civil Service Commission had indi-

cated its intention by December 19th to administer the act in that County. (Case p. 14, ll. 12-25.) In the absence of any proof to the contrary, it is presumed that all voters received their sample ballots as provided by the election law, and any interested citizen could have easily ascertained whether or not the details in connection with the submission of the question had been properly carried out.

It is worthy of comment, too, that in support of his main contention counsel fails to cite a single authority.

Respectfully submitted,

ERNEST L. QUACKENBUSH,
Attorney for and of Counsel with Respondents.