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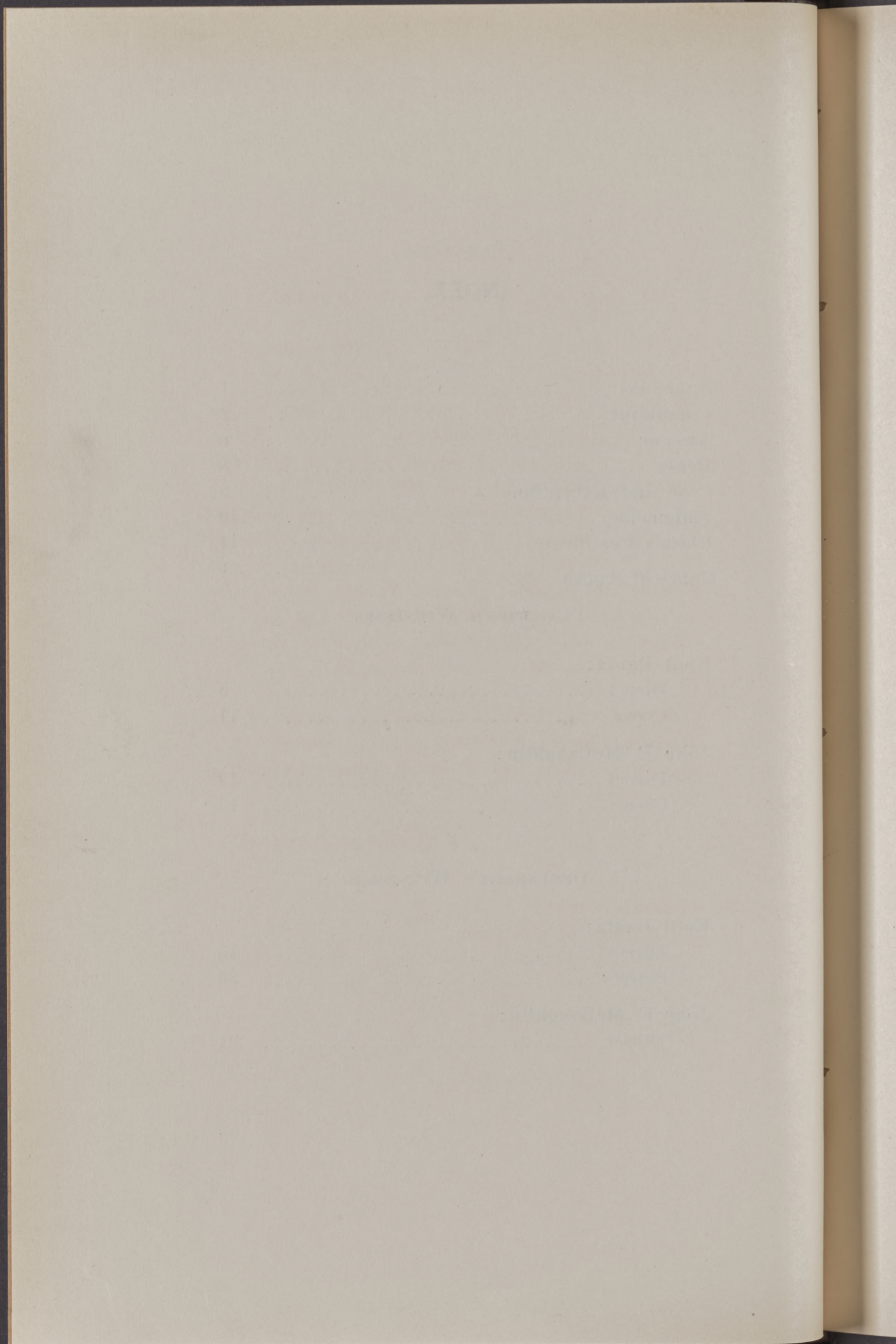
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Summons.

THE STATE OF NEW JERSEY

To the Town of Union—(A Municipal Corporation) :

10

(SEAL) YOU ARE SUMMONED to answer the annexed Complaint of Fred Menge, et al, in an action at law in the Hudson County Circuit Court. And

TAKE NOTICE that unless you file your answer to said Complaint with the Clerk of the Circuit Court of the County of Hudson, within twenty days after service upon you of this Writ and the annexed Complaint, the plaintiff may proceed in the suit, and judgment may be entered against you.

20

WITNESS, LUTHER A. CAMPBELL, Judge of the Hudson County Circuit Court, at Jersey City, this twenty-sixth day of April, Nineteen Hundred and twenty-two.

JOHN J. McGOVERN,
Clerk.

30

WARREN DIXON,
Attorney of Plaintiffs.

40

Complaint.

HUDSON COUNTY CIRCUIT COURT.

FRED MENGE, et al,

Plaintiffs,

—against—

10

TOWN OF UNION, a municipal corporation of
New Jersey,

Defendant.

PLAINTIFFS, residing in the Town of Union, in the County of Hudson, State of New Jersey, say that:

1. Said defendant, the Town of Union, is a
20 municipal corporation in the County of Hudson, in the State of New Jersey.

2. The plaintiffs in this action are members of the Police Department of the Town of Union, Hudson County, New Jersey, and are the following, to wit:

30 Fred Menge, Charles Berenbroick, James Kissell, Gustav Bertschy, Henry Wenning, Walter Murphy, Lewis Stanford, John Cook, Frank Stanford, Max Boxberger, James Knight, John Aberle, Joseph Goldschmidt, Gustav Messner, John Cline, Augustus Forman, Paul Scholtz, Charles Friedel, William Hal-
loran, Charles Dillmann, Charles Gerber, Henry Kaiser, Albert Fraser, George Hennessy, Henry Kaiser, Robert Zoppel, Philip Denning, John Stein, Joseph Truncellito, Fred Koerner, Joseph Law-
40 less, John Gerhardt, Andrew Duthie.

Complaint.

3. At all times herein mentioned, said Fred Menge, was and is Chief of Police of said Department; Charles Friedel was and is a Captain of Police; Charles Berenbroick, William Halloran, Charles Dillmann, and James Kissell were and are Lieutenants of Police; Gustav Bertschy, Charles Gerber, and Henry Wenning were and are Sergeants of Police; and the remainder of the plaintiffs were and are Patrolmen. 10

4. Prior to January 1st, 1921, the salary of the Chief of Police was \$2,500;; and of Captain of Police, \$2,250; and of Lieutenants of Police, \$2,000 each; and of Sergeants of Police, \$1,800 each; and of all the Patrolmen, the following received \$1,600 each, to wit: 20

Kaiser, Murphy, Fraser, L. Standford, Hennessy, Cook, Kaiser (#2), F. Standford, Zoppell, Boxberger, Denning, Knight;

and the following received \$1,400 each, to wit:

Stein, Aberle, Truncellito, Goldschmitt;

and the following received \$1,300 each, to wit:

Koerner, Messner, Lawless;

and the following received \$1,200 each, to wit: 30

Cline, Gerbhardt, Forman, Duthie, Scholtz.

5. At a general election held in said defendant municipality, in November, 1920, there were presented to the legal voters of said municipality, pursuant to Chapter 152, of the Laws of 1917, of the State of New Jersey, and the Amendments 40

Complaint.

thereof and Supplements thereto, for a referendum vote thereon, the question of fixing the salaries of the police department of the Town of Union, Hudson County, New Jersey, at the following amounts, namely:

- 10 For the office of Chief of Police, \$3,500 per annum;
 For the office of Captain and Captains of Police, \$3,250 per annum;
 For the Office of Lieutenant, Lieutenants of Police, and Detective Lieutenants, \$3,000 per annum;
 For the office of Sergeant, Sergeants of Police, \$2,800 per annum;
 For the office of Patrolmen:
- 20 For the first year of service, \$2,300 per annum;
 For the second year of service, \$2,400 per annum;
 For the third year of service, and for every year thereafter, \$2,500 per annum.

All of the foregoing salaries to go into effect January 1st, 1921.

- 30 Said question was placed on the ballot voted at said general election in the said municipality, as provided by the Statute and the majority of the legal voters voted "Yes."

6. For the year of 1921, from January 1st, 1921, to December 31st, inclusive, said defendant has paid, as salaries, to plaintiffs, as follows:

- 40 Fred Menge, Chief, \$2,500;
 Charles Friedel, Captain, \$2,250;

Complaint.

Charles Berenbroick, William Halloran,
James Kissel, Charles Dillmann, Lieu-
tenants, \$2,000 each;

Gustav Bertschy, Charles Gerber, and
Henry Wenning, Sergeants, \$1,800 each;

and to each of the other plaintiffs, as Patrolmen, 10
salaries as mentioned in Paragraph 4, aforesaid.

7. There is due, on account of said salary,
for the year 1921, the sum of One Thousand Dol-
lars, each, to the following plaintiffs, to wit:

Fred Menge, Charles Berenbroick, James
Kissel, Gustav Bertschy, Henry Wenning,
Charles Friedel, William Halloran, Charles
Dillmann, Charles Gerber. 20

There is due, on account of salary, for the year
1921, the sum of Nine Hundred Dollars, each, to
the following persons, to wit:

Kaiser, Murphy, Fraser, L. Standford,
Hennessy, Cook, Kaiser (#2), F. Stand-
ford, Zoppel, Boxberger, Denning, Knight.

And to each of the following, there is due the
sum of Eleven Hundred Dollars, on account of 30
salary:

Stein, Aberle, Truncellito, Goldschmitt;
and Koerner, Messner, Lawless; and Cline;
Gerbhardt, Forman, Duthie, Scholtz.

8. There is due to the several plaintiffs, from
the said defendant, the several sums above men-
tioned, aggregating the sum of Thirty-three Thou-
sand Dollars (\$33,000), with interest. 40

Answer.

10. Defendant has wholly neglected and refused to pay the same.

PLAINTIFFS DEMAND Fifty Thousand Dollars (\$50,000) damages.

10

WARREN DIXON,
Attorney for Plaintiffs.

Answer.

HUDSON COUNTY CIRCUIT COURT.

FRED MENGE, et al,

Plaintiffs,

—against—

20 TOWN OF UNION, a municipal corporation of
New Jersey,

Defendant.

The Defendant, the Town of Union, in the County of Hudson, a municipal corporation of the State of New Jersey, says:

30 1. Defendant admits the first, second, third, fourth and sixth paragraphs of the complaint filed in the above-stated action.

2. Defendant denies the fifth, seventh and eighth paragraphs of the complaint filed in the above-stated action.

FIRST SEPARATE DEFENSE.

40 At a general election held in the defendant municipality in November, 1918, there was pre-

Answer.

sented to the legal voters of said municipality, pursuant to Chapter 152 of the Laws of 1917 of the State of New Jersey, and the amendments thereof and supplements thereto, for a referendum vote thereon the question of fixing the salaries of the police department of the Town of Union, at the following amounts, namely: 10

For the office of Chief of Police, \$2,500;
 For the office of Captain and Captains of Police, \$2,250;
 For the office of Lieutenant, Lieutenants of Police, and Detectives of Police, \$2,000 each;
 For the office of Sergeant, Sergeants of Police, \$1,800 each;

For the office of Patrolmen: 20

For the first year of service, \$1,200;
 For the second year of service, \$1,300;
 For the third year of service, \$1,400;
 For the fourth year of service, \$1,500;
 For the fifth year of service and for every year of service thereafter the sum of \$1,600.

All of the foregoing salaries to go into effect January 1st, 1919. 30

Said question was placed on the ballot voted at said general election in said municipality as provided by the statute and the majority of the legal voters of the said municipality voted "Yes," whereby said salary schedule was adopted in and by the Town of Union in the County of Hudson for a term of three years from the first day of January, 1919, and whereby it became and was illegal again to submit to the voters of the Town of Union, in the County of Hudson, for referen- 40

Reply.

dum, the question of increasing or decreasing the salary of the Police Department, or members thereof, of the Town of Union, in the County of Hudson, prior to the general election held in November of the year of 1921.

10

ADOLPH J. H. PETERS,
Attorney for Defendant.

Reply.

HUDSON COUNTY CIRCUIT COURT.

20

FRED MENGE, et al,

Plaintiffs,

—against—

TOWN OF UNION, a municipal corporation of
New Jersey,

Defendant.

30

PLAINTIFFS deny every allegation in the Answer. At the trial the plaintiffs will object to the allegations contained in the first separate defense on the grounds that they are immaterial and present no legal defense to the allegations of the complaint.

WARREN DIXON,
Attorney of Plaintiffs.

40

Case and Exceptions.

HUDSON COUNTY CIRCUIT COURT.

| | |
|--|------------------|
| FRED MENGE, et al, | Plaintiffs, |
| —against— | |
| TOWN OF UNION, a municipal corporation of New Jersey, | 10 Defendant. |

Tried November 27, 1922, before CUTLER, *J.*, and
a jury.

WARREN DIXON, for the plaintiff.

ADOLPH J. H. PETERS, for the defendant; Mr. 20
Walscheid of Counsel.

EMIL BAUTZ, sworn.

Direct examination by Mr. Dixon:

Q. You are the Town Clerk of the Town of
Union? A. Yes.

Q. You have produced some records of the
Town here, including a petition filed September 8, 1920? A. That is right. 30

Q. That is a petition signed by twenty per cent.
of the voters? A. Yes.

Mr. Dixon: I offer it.

Mr. Walscheid: No objection.

(Marked P-1, and read to the jury as
follows:)

“To the Honorable Board of Council of 40
the Town of Union, County of Hudson:

Emil Bautz—for Plaintiffs—Direct.

10 Gentlemen: We, the undersigned legal voters of the Town of Union in the County of Hudson, together constituting twenty percentum of said legal voters, do hereby respectfully request your honorable body to submit to the legal voters of the Town of Union in the County of Hudson at the next general election therein occurring, the question of fixing the salaries of the officers and the patrolmen of the Police Department of the Town of Union, County of Hudson, at the following amounts, viz:

For the office of Chief of Police, the sum of \$3,500 per annum;

20 For the office of Captain and Captains of Police, the sum of \$3,250 per annum;

For the office of Lieutenant, Lieutenants of Police and Lieutenant Detectives, the sum of \$3,000 per annum;

For the office of Sergeant and Sergeants of Police, the sum of \$2,800 per annum;

For the office of Patrolman: for the first year of service, \$2,300 per annum; for the second year of service, \$2,400 per annum; for the third year of service and

30 for every year of service thereafter, \$2,500 per annum.

All of the foregoing salaries to go into effect and to be effective on January 1, 1921.

Filed September 8, 1920, by Emil Bautz, Town Clerk."

40 Q. Was that submitted to the voters at the 1920 election? A. It was.

Emil Bautz—for Plaintiffs—Cross.

The Court: How was it submitted?

The Witness: By certifying to the County Clerk.

Mr. Walscheid: You would better get your resolution in the minutes.

The Court: Now, that was presented on September 8th. What was done with it? 10

The Witness: On September the 7th, at a regular meeting of the Board of Council, the petition was presented.

The Court: You said it was filed September 8?

The Witness: It is always the day after.

The Court: All right.

The Witness: This is the resolution. That is what you want? 20

Q. I have not asked for it yet.

The Court: Go ahead.

The Witness: Was that the resolution you wanted, your Honor?

The Court: Yes.

The Witness: On the meeting of September the 7th—

Mr. Dixon: That is all. I have not asked for it. 30

Mr. Walscheid: Is that all you are going to ask the witness?

Mr. Dixon: Yes.

Cross examination by Mr. Walscheid:

Q. The petition which has just been admitted in evidence is marked "Filed September 8, 1920"?

A. Yes, sir.

John E. McLaughlin—for Plaintiffs—Direct.

Q. Why is it marked "Filed" on that day?

A. Because I file all the papers the day after the meeting.

Q. And it was received at a Board meeting on the 7th of September, 1920? A. Yes.

10 Q. Now, at that Board meeting, held September 7, 1920, was any action taken in regard to this petition, marked Exhibit P-1?

Mr. Dixon: I object to that; that is not cross examination.

The Court: No, I suppose it is not cross examination; as it stands now, the only thing that appears now is that the petition was presented.

20 Mr. Walscheid: If your Honor please, the act says that the board, if I remember it, shall submit—

The Court: But Mr. Dixon has not gone into anything further. He simply presented the petition.

Mr. Walscheid: All right.

The Court: You may call him as your own witness later on.

Mr. Walscheid: I certainly shall.

30

JOHN E. McLAUGHLIN, sworn:

Direct examination by Mr. Dixon:

Q. You are one of the Deputy County Clerks?

A. Clerk in the County Clerk's office.

Q. Have you the record of the County Clerk's office here? A. Yes, sir.

40 Q. Showing the election of 1920? A. Yes, sir.

John E. McLaughlin—for Plaintiffs—Direct.

Q. Held in the town of Union November 2, 1920? A. Yes, sir, I have.

Q. Is this the record showing the result of the election held in November, 1920? A. Yes.

Q. In the Town of Union? A. Town of Union.

Q. Was there submitted to the voters on the ballot the question of police salaries of that town? A. Yes, sir. 10

Q. It appears on this certificate? A. Yes.

Mr. Dixon: I offer that in evidence.

(Designated P-2.)

Q. Will you read upon the record the ballot as it was voted on at that election? A. "Shall the salaries of the members of the police department of the Town of Union in the County of Hudson on and after January 1, 1921, be fixed at the following amounts, viz.: 20

The office of Chief of Police, \$3,500 per annum.

The office of Captain and Captains of Police, \$3,250 per annum.

The office of Lieutenant, Lieutenants of Police and Lieutenant Detectives, \$3,000 per annum.

The office of Sergeant and Sergeants of Police, \$2,800 per annum. 30

The office of patrolman, for the first year of service, \$2,300 per annum; for the second year of service, \$2,400 per annum; for the third year of service and for every year of service thereafter, \$2,500 per annum."

Q. To the left of that reading matter on the ballot there are two boxes, with "Yes" and "No"? A. Yes.

Q. What was the vote cast in favor of the salary? A. Yes; 2,827 votes; No, 2,382 votes. 40

John E. McLaughlin—for Plaintiffs—Cross.

Q. That certificate was returned to your office and filed? A. Yes.

Cross examination by Mr. Walscheid:

10 Q. Is the certificate signed? A. Oh, yes.

Q. What you are testifying from is the return of the County Board of Canvassers? A. Yes.

Q. As certified to by them? A. Yes, by our office.

Q. As certified to by them to your office? A. Yes, sir.

Q. And this certificate shows the number of votes cast upon this proposition? A. Yes, sir.

20 Mr. Dixon: Do you admit the salaries that are paid the Chief of Police and the various plaintiffs are as stated in the complaint?

Mr. Peters: Yes, we do not deny that. That is admitted.

Mr. Dixon: That is that they have not received that amount of salary (indicating)?

30 Mr. Peters: They have received the former amounts. They have not received this increase in salary, if that is what you mean.

Mr. Dixon: Yes, I think I have correctly set out in the complaint the amount of salaries they have received.

Mr. Peters: I think that is correct. I think that is so. I have just asked the clerk—to be absolutely sure about it, suppose I just show the clerk the complaint.

40 The Court: I do not understand the amount is in dispute.

Emil Bautz—for Defendant—Direct.

Mr. Walscheid: There is no dispute as to amounts.

The Court: It is a mere question as to whether or not the act applies. That is, as I understand, the whole question.

Mr. Walscheid: Yes, assuming, of course, these amounts are the amounts set out in the other petition. 10

Mr. Dixon: Yes.

Mr. Peters: There is no dispute about the amount.

(Plaintiff rests.)

DEFENDANT'S CASE.

20

EMIL BAUTZ, recalled:

Direct examination by Mr. Walscheid:

Q. Mr. Bautz, again referring to Exhibit P-1, as a result of the receipt of that petition was there any action taken by the Board in relation to the petition?

Mr. Dixon: I object as immaterial and irrelevant. 30

The Court: I will allow it.

Mr. Dixon: Exception.

A. On September 7, 1920, the following resolution was introduced and adopted, which resolution was certified to—

Q. No, read the resolution. A. "Whereas, there has been presented to the Board of Council of the Town of Union in the County of Hudson a peti- 40

Emil Bautz—for Defendant—Direct.

tion signed by legal voters of the Town of Union in the County of Hudson together constituting twenty per centum of said legal voters, requesting this Board to submit to the legal voters of the Town of Union in the County of Hudson at the next general election, occurring in said town, on the 2nd day of November, 1920, the question of fixing the salaries of the officers of the police department of the Town of Union in the County of Hudson at the following amounts, viz.:

For the office of Chief of Police the sum of \$3,500 per annum.

For the office of Captain and Captains of Police the sum of \$3,250 per annum.

For the office of Lieutenant, Lieutenants of Police and Lieutenant Detectives the sum of \$3,000 per annum.

For the office of Sergeant, Sergeants of Police, the sum of \$2,800 per annum.

For the office of Patrolman, for the first year's service, \$2,300 per annum; for the second year's service, \$2,400 per annum; for the third year's service and for every year of service thereafter, \$3,500 per annum, all of the foregoing salaries to go into effect and to be effective on January 1, 1921;

Now, therefore, be it resolved, that the question of fixing the salaries of officers of the Police Department of the Town of Union in the County of Hudson for the officers and at the amounts hereinbefore stated be submitted to the legal voters of the Town of Union in the County of Hudson at the next general election held in said town of November 2, 1920:

And be it further resolved: that the Clerk of

Emil Bautz—for Defendant—Direct.

the County of Hudson be and he hereby is requested to print upon the official ballots to be used in the Town of Union in the County of Hudson at said election the following proposition, viz.:

‘If you favor the proposition printed below, mark an X in the square opposite the word “Yes.” 10

‘If you are opposed thereto, make an X mark in the square opposite the word “No”’—and then the two boxes appear here—“Yes” and “No.”

Q. The two boxes with the words “Yes” and “No”? A. Yes. And: “Shall the salary of police officers of the Town of Union in the County of Hudson on and after January 1, 1921, be fixed at the following amounts, viz.:

For the office of Chief of Police the sum of \$3,500 per annum. 20

For the office of Captain and Captains of Police the sum of \$3,500 per annum.

For the office of Lieutenant, Lieutenants of Police and Lieutenant Detectives the sum of \$3,000 per annum.

For the office of Sergeant and Sergeants of Police the sum of \$2,800 per annum.

For the office of Patrolmen, for the first year of service, \$2,300 per annum; for the second year of service, \$2,400 per annum; for the third year of service and for every year of service thereafter, \$2,500 per annum. 30

And be it further resolved: that the Clerk of the Town of Union be and he hereby is directed forthwith to certify a copy of this resolution to the Clerk of the County of Hudson.

On motion of Councilman Meyer the resolution was adopted.” 40

Emil Bautz—for Defendant—Direct.

Q. After that what next is there in the minutes of this Board of Council in relation to this attempt to fix salaries? A. There is nothing after this.

10 Q. Is there a return from the County Clerk? A. That would not be in my minutes. That is on file in the office.

Q. In accordance with the testimony of the other witness? A. Yes.

Q. Is there, subsequent to that date, any opinion of any official in regard to the legality of the proceeding?

Mr. Dixon: Yes or no.

20 A. Yes.

Q. And is it the opinion of the then Town Attorney? A. Yes.

Mr. Walscheid: I offer that in evidence.

Mr. Dixon: I object as immaterial, irrelevant and incompetent.

The Court: When was it presented?

The Witness: December 13, 1920—at the adjourned meeting of the Board of Council December 13, 1920.

30

The Court: December 13, 1920?

The Witness: Yes, sir.

Mr. Peters: The very next month after the election.

The Court: Was any action taken by the Board?

40 Q. Was there any action taken by the Board in relation to that opinion? A. Nothing else but that the Committee on Police moved that the opinion of Town Attorney J. Emil Walscheid be

Emil Bautz—for Defendant—Direct.

received and spread upon the minutes. And here is the entire opinion.

The Court: Was there any ordinance ever adopted in reference to these salaries after that date?

10

The Witness: No, sir.

The Court: And it stands just that way?

The Witness: Yes.

Mr. Walscheid: I offer the record in relation to the opinion, on page 628 of the minutes of the Town of Union—reading it into evidence.

Mr. Dixon: I object as immaterial and irrelevant and incompetent.

20

The Court: I do not think the opinion of counsel is hardly relevant.

Mr. Walscheid: All right, sir.

The Court: The fact that there was an opinion filed and that the governing body took no further action after that may be a different affair.

Mr. Walscheid: All right, sir.

The Court: I do not think you ought to go any further than that.

30

Q. Was there any other petition filed with the Board prior to September 8, 1920, by citizens of the Town of Union requesting the town to submit the question of fixing police salaries to the voters of the town? A. Yes, there was.

Mr. Dixon: One minute. I object as immaterial, irrelevant and incompetent.

The Court: I will admit it.

40

Emil Bautz—for Defendant—Direct.

Mr. Dixon: And not constituting a defense in this case.

The Court: I will admit it.

Mr. Dixon: Exception.

10 Q. And when was that petition presented to the Board? A. On September the 16th, 1918.

The Court: What is the date?

A. September 16, 1918.

Q. And is that the petition? A. That is the petition.

Q. And that was filed with you on August 6, 1918? A. If I may stand corrected—the petition was filed with the Board on August the 5th, 20 1918, and on September the 16th, 1918, the resolution was adopted?

Q. They took action? A. Yes, sir.

Q. This is the petition that was presented to the Board August 5th, 1918? A. Yes.

Mr. Walscheid: I offer it in evidence.

Mr. Dixon: I object as immaterial, irrelevant and incompetent and not constituting a defense in this case.

30 The Court: It will be admitted.

Mr. Dixon: Exception noted.

Q. And is that the petition signed by voters of the Town of Union together constituting twenty percentum of the said legal voters of the Town of Union? A. It is.

Mr. Walscheid: The petition reads:

40 "To the Honorable the Board of Council of the Town of Union in the County of

Emil Bautz—for Defendant—Direct.

Hudson: Gentlemen: We, the undersigned legal voters of the Town of Union in the County of Hudson, together constituting twenty per centum of said legal voters, do hereby respectfully request your honorable body to submit to the legal voters of the Town of Union in the County of Hudson at the next general election therein occurring the questions of fixing the salaries of officers of the police department of the Town of Union in the County of Hudson at the following amounts, viz.:

For the office of Chief of Police, the sum of \$2,500 per annum.

For the office of Captain and Captains of Police the sum of \$2,250 per annum.

For the office of Lieutenant, Lieutenants of Police and Lieutenant Detectives, the sum of \$2,000 per annum.

For the office of Sergeant, Sergeants of Police, Rounds Sergeants and Detective Sergeants the sum of \$1,800 per annum.

For the office of Patrolman, for the first year of service \$1,200 per annum; for the second year of service \$1,300 per annum; for the third year of service \$1,400 per annum; for the fourth year of service \$1,500 per annum; for the fifth year of service and for every year of service thereafter \$1,600 per annum; all of the foregoing salaries to go into effect on January 1, 1919."

Q. When that petition was received what action did the Board of Council take in relation thereto?

Emil Bautz—for Defendant—Direct.

Mr. Dixon: I object as immaterial, irrelevant and incompetent.

The Court: Admitted.

Mr. Dixon: Exception.

10 A. On September the 16th, 1918, the following resolution was introduced and adopted by the Board—

Q. Will you kindly read it? A. "The Committee on Police introduced the following resolution: 'Whereas there has been presented to the Board of Council of Town of Union in the County of Hudson a petition signed by legal voters of the Town of Union in the County of Hudson together constituting twenty percentum
20 of said legal voters, requesting this Board to submit to the legal voters of the Town of Union in the County of Hudson at the next general election occurring in said Town on the fifth day of November, 1918, the question of fixing the salaries of the officers of the police department of the Town of Union in the County of Hudson at the following amounts: viz.:

For the office of Chief of Police the sum of \$2,500 per annum.

30 For the office of Captain and Captains of Police the sum of \$2,250 per annum.

For the office of Lieutenant, Lieutenants of Police and Lieutenant Detectives the sum of \$2,000 per annum.

For the office of Sergeant, Sergeants of Police, Rounds Sergeants and Detective Sergeants the sum of \$1,800 per annum.

40 For the office of Patrolman, for the first year of service \$1,200 per annum; for the second year of service \$1,300 per annum; for the third year of service \$1,400 per annum; for the fourth year

Emil Bautz—for Defendant—Direct.

of service \$1,500 per annum; for the fifth year of service and for every year of service thereafter \$1,600 per annum—all of the foregoing salaries to go into effect on January 1, 1919;

Now, therefore, be it resolved, that the question of fixing the salaries of officers of the police department of the Town of Union in the County of Hudson for the officers and at the amounts hereinbefore stated be submitted to the legal voters of the Town of Union in the County of Hudson at the next general election to be held in said town on November 5, 1918; 10

And be it further resolved, that the Clerk of the County of Hudson be and he hereby is requested to print upon the official ballots to be used in the Town of Union in the County of Hudson at said election the following proposition, viz.: 20

If you favor the proposition printed below, mark an X in the square opposite the word "Yes." If you are opposed thereto make an X mark in the square opposite the word "No."

And then the two boxes appear with the words "Yes" and "No," and:

"Shall the salaries of the police officers of the Town of Union"—— 30

Q. Opposite the boxes and the words "Yes" and "No" the following? A. "Shall the salaries of the officers of the police department of the Town of Union in the County of Hudson on and after January 1, 1919, be fixed at the following amounts, viz.:

For the office of Chief of Police the sum of \$2,500 per annum. 40

Emil Bautz—for Defendant—Direct.

For the office of Captain and Captains of Police the sum of \$2,250 per annum.

For the office of Lieutenant, Lieutenants of Police and Lieutenant Detective the sum of \$2,000 per annum.

10 For the office of Sergeant, Sergeant of Police, Rounds Sergeant and Detective Sergeants the sum of \$1,800 per annum.

For the office of Patrolmen, for the first year of service \$1,200 per annum; for the second year of service \$1,300 per annum; for the third year of service \$1,400 per annum; for the fourth year of service \$1,500 per annum; for the fifth year of service and for every year of service thereafter \$1,600 per annum;

20 And be it further resolved that the Clerk of the Town be and he hereby is directed forthwith to certify a copy of this resolution to the Clerk of the County of Hudson."

Q. And did you certify a copy of that resolution to the Clerk of the County of Hudson? A. I did.

Q. And was there an election held on this question? A. There was.

Q. In November, 1918?

30

Mr. Dixon: I object to that.

Q. According to your records?

Mr. Dixon: I object as immaterial, irrelevant and incompetent.

A. Yes, there was an election.

The Court: I will allow it.

Mr. Dixon: Exception.

40

Emil Bautz—for Defendant—Direct.

Q. And what record have you of such an election? A. No other record but the certificate from the County Clerk, which is also the County Board of Canvassers, which is a copy of the record.

Q. Have you that here? A. I haven't that here. 10

Mr. Dixon: Do you want the County Clerk's Record?

Mr. Walscheid: Yes, I will put the County Clerk's representative on in a little while.

Q. Pursuant to the certification of that result by the County Clerk was there any action taken by the Board of Council on that result? 20

Mr. Dixon: I object.

A. There was.

The Court: I will allow it.

Mr. Dixon: Exception.

Mr. Walscheid: You are not objecting on the ground I have not proven it properly? 30

Mr. Dixon: No, I object as immaterial, irrelevant and incompetent.

The Court: I will admit it.

Mr. Dixon: Exception.

Q. And what action was taken? A. An ordinance was adopted.

Q. And what are you producing now? A. The ordinance book.

Q. Of the Town of Union? A. Yes, number 3-C. 40

Emil Bautz—for Defendant—Direct.

Q. Of the Town of Union? A. Yes, sir.

Q. Containing the official ordinances of the town? A. Yes.

Q. Kindly produce the ordinance. A. Here is the ordinance.

10

Mr. Walscheid: I offer in evidence from the ordinance book referred to, as found upon page 156 of said ordinance book, the ordinance there contained.

Mr. Dixon: I object as immaterial, irrelevant and incompetent, but of course the ordinance simply adopted those salaries.

Mr. Walscheid: Yes.

20

Mr. Dixon: We will state on the record what it is after my objection is ruled on.

The Court: I think it is competent. I shall admit it.

Mr. Dixon: Objection noted.

Mr. Walscheid: There is no question about it; there is the publication.

Mr. Dixon: No.

Mr. Walscheid: I will read it.

30

Mr. Dixon: We do not need it on the record. It confirms the salaries.

The Court: You would better read it on the record and get it all in.

40

Q. Read the ordinance, please? A. "An ordinance regulating the salaries of the officers of the police department of the Town of Union in the County of Hudson, the Board of Council of the Town of Union, in the County of Hudson ordains as follows: Section 1: On and after January the first, 1919, the officers of the police de-

Emil Bautz—for Defendant—Direct.

partment of the Town of Union in the County of Hudson shall annually receive the salary hereinafter next set out:

For the office of Chief of Police the sum of \$2,500.

For the office of Captain and Captains of Police the sum of \$2,250. 10

For the office of Lieutenant, Lieutenants of Police and Lieutenant Detectives the sum of \$2,000.

For the office of Sergeant, Sergeants of Police, Rounds Sergeants and Detective Sergeants the sum of \$1,800.

For the office of Patrolman for the first year of service the sum of \$1,200; for the second year of service the sum of \$1,300; for the third year of service the sum of \$1,400; for the fourth year of service the sum of \$1,500; for the fifth year of service and for every year of service thereafter the sum of \$1,600—the salary to be paid to the patrolmen to be based upon the length of time which each patrolman has served the town as patrolman on the first day of January, 1918. 20

Section 2. The salaries provided by the preceding section of this ordinance shall be paid in installments as now provided by law. 30

Section 3. This ordinance shall go into effect when published as required by law. Wilfred G. Turner, Acting Mayor. Attest: Emil Bautz, Town Clerk.

The foregoing ordinance was adopted on the 16th day of December, 1918.

Any suit, action or proceeding to set aside this ordinance must be begun within twenty days 40

Emil Bautz—for Defendant—Direct.

after the publication of this statement. Signed, Emil Bautz, Town Clerk."

Q. And was that ordinance published as required by law? A. It was.

10 Mr. Walscheid: There is no question about that?

Mr. Dixon: No question.

Q. And was any suit, action or proceeding to set aside the ordinance begun within twenty days after the publication of the statement? A. No, sir.

Q. That statement was attached to the ordinances as published? A. Yes.

20 Q. Has any ordinance been adopted subsequent to the adoption of this ordinance in any way regulating or affecting the salaries of the police officers named in said ordinance? A. Prior to this?

Mr. Dixon: I object to that.

The Court: Take your objection.

Mr. Dixon: I object as immaterial, irrelevant and incompetent.

The Court: I will overrule the objection.

30 Mr. Dixon: Exception.

Q. And since the adoption of this ordinance, since January first, 1919, have the plaintiff's in this suit been paid their salaries pursuant to the terms of this ordinance? A. They have.

Q. Did you receive the summons and complaint in this action as Clerk? A. No, sir.

Q. Was it served upon you? A. You mean for this suit?

40 Q. Yes. A. Yes, sir.

Emil Bautz—for Defendant—Direct.

Q. That was served upon you? A. Yes.

Mr. Walscheid: What is the test date of that suit?

The Court: Here are the original papers.

Mr. Peters: 26th of April.

10

Q. The summons in this suit appears to be tested April 26th, 1922. Between the first day of January, 1919 and the 26th of April, 1922, did any of the plaintiffs in this case ever in any way present any objection to the Board of Council in reference to the salaries being paid to them pursuant to the ordinance found upon page 156 of the ordinance book?

20

Mr. Dixon: I object as immaterial, irrelevant and incompetent.

A. No, sir.

The Court: I do not see how that can make any difference, Mr. Walscheid.

Mr. Walscheid: I am presenting it under the case of Love v. Jersey City, which holds that where an officer for a long space of time accepts existing salaries he waives his right to object thereto and is estopped from questioning them for the period.

30

Mr. Dixon: I withdraw the objection, and I will go into that case on the fact then.

Q. There is nothing in your minutes of any objection by any of these plaintiffs to the Board of Council? A. No; there is not.

40

Emil Bautz—for Defendant—Cross.

Mr. Dixon: That leaves a fact for the jury.

10 Mr. Walscheid: I now offer formally the minutes of the Board of Council of the Town of Union covering the situations dealt with and the ordinance book itself.

Mr. Dixon: I object to it formally on the ground it is entirely immaterial, irrelevant and incompetent so far as they have indicated up to the present, and that it constitutes no defense.

The Court: I will permit it to go in.

Mr. Dixon: I ask that an exception be noted.

20 The Court: Yes, you may take your exception.

Cross examination by Mr. Dixon:

Q. Don't you know that the reason why the police officers did not take action more speedily was that the councilmen, or members of the council, from time to time were promising the policemen that they were going to get this salary?

30 Mr. Walscheid: I object as immaterial, irrelevant and incompetent.

A. I do not know anything about that?

The Court: I do not think it makes any difference in this case.

Mr. Walscheid: I do not think it does.

The Court: I think it is entirely a question of the construction of this act.

40 Mr. Dixon: He opened the door for it himself.

John E. McLaughlin—for Defendant—Direct.

The Court: I should have ruled it out if you had not withdrawn your objection.

Mr. Dixon: Will your Honor rule it out now?

The Court: Yes, I will rule it out. Cut it out. 10

Mr. Walscheid: I will withdraw all reference to that question.

The Court: That leaves the whole question fairly and squarely on the construction of this act, and if the act is held to be as you contend these gentlemen are entitled to their salaries. If the courts hold that the Legislature meant as Mr. Walscheid contends, then they cannot get their salaries, and I think it only fair to withdraw that question of estoppel. 20

Mr. Dixon: If he withdraws it—

Mr. Walscheid: I withdraw the question asked Mr. Bautz as to the complaints or objections to the salaries being paid.

The Court: I think that is better. That is fairer treatment all the way around.

Mr. Dixon: It is not in his answer; and it is not the fact. 30

JOHN E. McLAUGHLIN, recalled.

Direct examination by Mr. Walscheid:

Q. You are the representative of the County Clerk's office who testified on the plaintiff's case?

A. Yes, I am.

Q. And you have been asked to produce the results of the election at a general election held in November, 1918? A. Yes. 40

John E. McLaughlin—for Defendant—Direct.

Q. Have you those results in so far as they effect the Town of Union? A. Yes.

Q. In that election was there submitted to the voters of the Town of Union, according to the returns, a proposition to fix salaries of the members of the police department?
10

Mr. Dixon: I object as immaterial, irrelevant and incompetent and not constituting a defense in this case.

The Court: I will admit it.

Mr. Dixon: Exception.

A. Yes.

Q. Have you the proposition as submitted and the result in your records? A. Yes, sir.
20

Q. What have you before you? A. The returns of the 1918 election.

Q. Of the County Board of Canvassers to the County Clerk? A. Yes, of the County Board of Canvassers to the County Clerk.

Q. Signed by the County Board of Canvassers? A. Yes.

Q. And in that you find that referendum, do you? A. Yes.

Q. Will you indicate it? First, you find two boxes? A. Yes, sir.
30

Q. With the word "Yes" opposite the upper and the word "No" opposite the lower box? A. Yes.

Q. Will you read it? A. "Shall the salaries of the officers of the police department of the Town of Union, County of Hudson, on and after January 1, 1919, be fixed at the following amounts, viz.:

40 For the office of Chief of Police \$2,500 per annum.

John E. McLaughlin—for Defendant—Direct.

For the office of Captain and Captains of Police, \$2,250 per annum.

For the office of Lieutenant, Lieutenants of Police and Lieutenant Detectives \$2,000 per annum.

For the office of Sergeant, Sergeants of Police, Rounds Sergeant and Detective Sergeants, \$1,800 per annum. 10

For the office of Patrolman, for the first year of service \$1,200 per annum; for the second year of service \$1,300 per annum; for the third year of service \$1,400 per annum; for the fourth year of service \$1,500 per annum; for the fifth year of service and for every year of service thereafter \$1,600 per annum."

Q. And what was the vote in the Town of Union upon that referendum? A. Yes, 2012; No. 310. 20

Mr. Walscheid: I offer in evidence this return of the County Board of Canvasers.

Mr. Dixon: I object as immaterial, irrelevant and incompetent, and not constituting a defense.

The Court: I will admit it.

Mr. Dixon: Exception. 30

DEFENDANT RESTS.

Mr. Dixon: I do not know how much Mr. Walscheid has withdrawn with respect to this estoppel proposition.

The Court: It is all withdrawn.

Mr. Dixon: It is all withdrawn? You will not stand upon that proposition either here or hereafter? 40

Colloquy of Counsel.

Mr. Walscheid: No.

The Court: That is withdrawn. It is purely a question of the construction of that act.

10 Mr. Dixon: I now desire to move to strike out all of the testimony submitted by the defendant as taken from the ordinances, resolutions and the records—the record and testimony—upon the ground that it constitutes no defense to the action set forth in the complaint—that this court cannot inquire into the validity of the 1920 election in this suit.

The Court: Motion refused.

20 Mr. Dixon: I ask that an objection be noted.

The Court: Yes, you may note your objection.

Mr. Dixon: Now, on behalf of the plaintiffs, we close; and I move that the court direct a verdict in favor of the plaintiffs and against the defendant for the amount set forth in the complaint. I do not mean to argue it, for we have already argued these questions before your Honor.

30 The Court: It is all a question of law.

Mr. Walscheid: And on behalf of the defendant I ask your Honor to direct a verdict in favor of the defendant in this case, on the ground that there was no authority to submit the question which was submitted in 1920 to the electorate at that time; and on the ground that no cause of action has been shown at the close of the case.

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Colloquy of Counsel.

Mr. Dixon: Well, that is very indefinite. I would like to know what you mean.

Mr. Walscheid: The additional reasons being these: that no ordinance has been adopted putting into effect the referendum result of 1920, and so long as the ordinance of 1918 continues upon the books it remains the law of the Town of Union. That is what I mean to cover. 10

The Court: The whole question before this jury depends upon whether or not an election can be held within three years after the question of the salaries has been submitted to the voters. That is the whole question in this case.

Now, Article 13 of the Home Rule Act of 1917, Chapter 152 was amended by Chapter 163 of the laws of 1918, and by this amendment Section 3 of the original act was amended, and a new section, known as Section 8, was added to Article 13. This Article 13 as amended should be construed so as to give full force and effect to every one of its sections, if such a construction is consistent with the various provisions of the act. 20 30

Section 3 of the original act, before its amendment, did not contain "Shall be required by petition, or." Now, why were those words added by the Legislature? There was some additional language, but why were those words added? And I think you can find the answer to that by the wording of the 8th added section: "In case there shall be submitted to the governing body of any municipality a petition, 40

Colloquy of Counsel.

10 signed by twenty percentum of the legal voters of such municipality the question of fixing the salary, or salaries, of any officer, or officers, or of the members of any department of the municipality, at the amount stated in such petition, such governing body shall cause such question to be submitted to the legal voters of such municipality at the next general election therein occurring more than thirty days after the receipt of such petition by the said governing body."

20 Now, section 3 is the only section in Article 13 which provides for the submission of any question to the voters in reference to salaries, and that section—the original section and the section as amended—provides how and in what manner, in what form the question shall be submitted to the voters, but it also contains this provision: "Provided, that the salary, or salaries, to be paid any officer or in any department shall not be voted upon more than once in three years."

30 Section 1 of that Article 13 contains a provision that "the governing body of every municipality shall have power and authority by ordinance, notwithstanding the maximum and minimum limitation now fixed by statute, to fix and determine the amount of salary, wages and compensation to be paid to each officer, employee, servant and agent of such municipality who by law is entitled to be paid a salary, wages or compensation, excepting the members of any governing body therein whose salary shall

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Colloquy of Counsel.

be fixed by vote of the legal voters as herein provided, and also excepting all officers whose salaries shall have been adopted or determined by a referendum vote of the voters in such municipality, which salaries shall not be changed, except by another and further referendum vote." 10

Now, construing these sections together, it seems to me that the governing body of this municipality had the power to submit an ordinance to the people of that municipality, suggesting such salaries to be paid its officers as they might designate, and they were obliged, when twenty per centum of the voters filed a petition, to present that question to the voters, presenting the amount of salary that the voters in that petition had named, whether the officers of the municipality favored it or whether they were opposed to it; they were bound to submit it, and when it was submitted and was acted upon by the voters of the municipality that prevented any change by the municipal officers, except by vote of the people, and the vote of the people could not be before a term of three years. 20 30

Now, that is, to my mind, just exactly what the Legislature did by this Act as amended in 1918.

Now, apply that to the case in point. The voters—twenty per cent. of the voters of the municipality—in 1918, in August, presented a petition designating the amount that they requested the municipal authorities to pay their police force. Now, with whether that was right or wrong in amount 40

Colloquy of Counsel.

the Court has nothing to do. It was submitted.

10 The governing body passed a resolution authorizing, as directed by the statute, that that question be submitted to the people; and it was submitted at the November election of 1918; and the resolution was adopted, and thereupon the governing body passed an ordinance fixing the salaries of the police officers of that municipality at the sums named in that resolution; and that stands as the law of that municipality until changed by another resolution voted upon by the people; and that resolution cannot be voted upon, by the provisions of that act, more than once in three years. So that 20 the people of the Town of Union had no right in 1920 to vote upon that proposition, and the ordinance passed in December, 1918, fixing the salaries of the officers of the police force was in force in 1920 and could not be changed, except by a vote of the people, and that vote could not be taken for three years after November, 1918.

30 Now, that is the construction which seems to me the only construction that can be placed upon that Home Rule act as amended, and I therefore direct a verdict in favor of the defendant and against the plaintiffs, and allow an exception, so that the question may be passed upon by the court of errors.

40 It is a very important question, because all the municipalities in the State are in the same position, or can be placed in the same position, and I am very glad that the

Colloquy of Counsel.

counsel has withdrawn that question of estoppel, so that if the Court holds that the resolution of 1920 was properly adopted these men may obtain their salary, which of course they could not do if the question of estoppel was presented.

10

Mr. Dixon: They could do it, because if the other side had attempted to prove estoppel I should have shown that there was none.

The Court: You may take a verdict in favor of the defendant.

(Objection noted by Mr. Dixon.)

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Judgment.

HUDSON COUNTY CIRCUIT COURT.

FREDERICK MENGE, *et al.*,

Plaintiffs,

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—against—

THE TOWN OF UNION, in the County of Hudson,
Defendant.

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The above entitled action having been tried before Judge Willard W. Cutler, with a jury, in the presence of Warren Dixon, Esq., of counsel with plaintiffs, and in the presence of Adolph J. H. Peters, attorney for defendant, and of J. Emil Walscheid, of counsel with defendant, on the twenty-seventh day of November, A. D. 1922, and the Court having directed the jury to return a verdict in favor of the defendant and the jury, pursuant to said direction, having returned a verdict in favor of the defendant.

IT IS NOW, on this first day of December, A. D. 1922,

30

ORDERED, that judgment final be entered in said cause, in favor of defendant, the Town of Union, in the County of Hudson, and against the plaintiffs, Frederick Menge, and others, together with defendant's costs to be taxed.

Rule actually entered this first day of December, 1922, on motion of Adolph H. Peters, attorney of Defendant.

WILLARD W. CUTLER,

Judge.

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Clerk's Certificate.

State of New Jersey,
County of Hudson—ss.:

I, JOHN J. MCGOVERN, Clerk of the County of Hudson, aforesaid, and also Clerk of the Circuit Court and Court of Common Pleas, holden therein, 10

DO HEREBY CERTIFY, that the foregoing is a true and correct copy of summons, complaint, answer, reply and notice of appeal in the case of Fred Menge, et al. vs. Town of Union, N. J., as the same is taken from and compared with the original filed and recorded in my office.

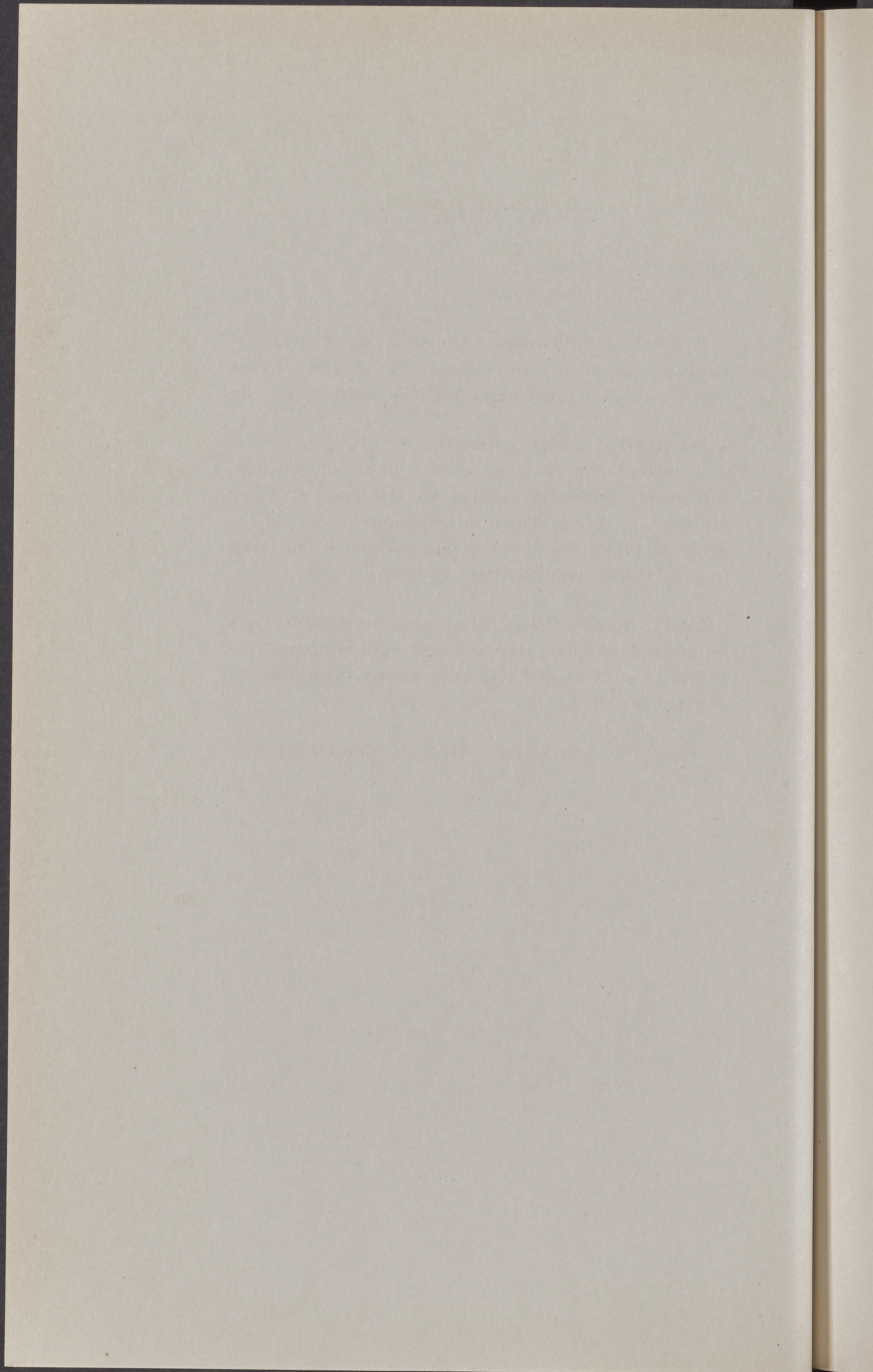
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Courts and County, at Jersey City, this twenty-first day of December, 1922. 20

JOHN J. MCGOVERN,
Clerk.

(Seal)

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Notice of Appeal.

HUDSON COUNTY CIRCUIT COURT.

Action at Law.

FREDERICK MENGE, *et al.*,

Plaintiffs, 10

—against—

TOWN OF UNION,

Defendant.

To ADOLPH J. H. PETERS,
Attorney of Defendant.

TAKE NOTICE, that the plaintiffs appeal from
the whole of the judgment entered in this cause 20
to the Court of Errors and Appeals on the fol-
lowing grounds:

The following questions were admitted.

To Mr. Emil Bautz—Witness for defendant.

1. Q. Mr. Bautz, again referring to Exhibit
P-1, as a result of the receipt of that Petition, was
there any action taken by the Board in relation 30
to the Petition.

2. Was there any other Petition filed with
the Board prior to September 8th, 1920 by citi-
zens of the Town of Union, requesting the Town
to submit the questions of fixing Police salaries
to the voters of the Town.

3. When that Petition was received what
action did the Board of Council take in relation 40
thereto.

Notice of Appeal.

4. Pursuant to the certification of that result by the County Clerk, was there any action taken by the Board of Council on that result.

10 5. Q. Has any ordinance been adopted subsequent to the adoption of this Ordinance in any way regulating or affecting the salaries of the Police Officers named in said ordinance.

6. Q. Was there an election held on this question in November, 1918, according to your records.

The following documents were admitted in evidence:

20 7. Petition presented to the Board of Councilmen August 5th, 1918.

8. Ordinance Book and Ordinance on Page 156 of the Book of Ordinances.

9. Return of the County Board of Canvassers, of the result of the election held November, 1918.

30 10. The Trial Court refused to strike out testimony submitted by the defendant as taken from the ordinances, resolutions and records, when duly moved thereto by the plaintiffs.

11. The Court directed the jury to find a verdict in favor of the defendant and against the plaintiffs.

New Jersey Court of Errors and Appeals.

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| FREDERICK MENGE, <i>et al.</i> , <i>Plaintiffs-Appellants,</i> —against— TOWN OF UNION, County of Hudson, <i>Defendant-Respondent.</i> | } | Action at Law. |
|---|---|-------------------|

BRIEF FOR PLAINTIFFS-APPELLANTS.

Statement of the Case.

The plaintiffs, being the Chief of Police, Captains, Lieutenants, Sergeants and Patrolmen of the Town of Union, brought this suit to recover a balance of salary due them for the year of 1921.

The case was tried before Judge Cutler with a jury on November 27th, 1922, and at the close of the submission of evidence the Judge directed a verdict in favor of the defendant.

At the close of the testimony the plaintiffs moved for a direction of a verdict in their favor (Case, p. 34, l. 22, etc.), which motion was denied.

Prior to moving for said direction, the plaintiffs likewise moved to strike out all of the testimony submitted by the defendant taken from the Ordinances, Resolutions and Records upon the ground that it constituted no defense to the action; the same testimony having been objected to, when offered, on the ground of immateriality

(p. 34, l. 5, etc.). This motion was likewise denied.

On behalf of the defendant a motion was made for a direction of a verdict in its favor and this motion was granted (p. 34, l. 30, etc.).

The propriety of a direction of a verdict in favor of one or the other party is not challenged.

Both parties agreed that the questions presented were entirely questions of law.

The pertinent facts, on which these questions of law are based, are as follows:

"In September 1920, a petition was duly signed by twenty per cent. of the legal voters of the Town of Union requesting the Town Council to present to the legal voters of the Town, at the next general election, the question of fixing the salaries of the Police Officials at certain specified amounts, said salaries to go into effect on January 1st, 1921 (Case, pp. 9-10). This petition was duly filed with the Town Clerk and the ballot used in the November election was prepared in compliance with the same, and the question submitted to the legal voters (Case, p. 10, l. 39 and p. 11), and the votes cast in favor of the adoption of these salaries was 2827 and against 2383" (Case, p. 13).

The result of this election was never challenged and notwithstanding the result thereof, the Police Officials were paid only the salaries which were in existence prior to the election, and it is to recover the difference between the salaries so paid and the salaries so fixed at this election that this suit is brought.

The petition was filed and the election held under the Provisions of

"Chapter 152, Laws of 1917, page 319, Article 13, Section 3, page 351, as amended

by Chapter 163, Laws of 1918, page 478, Section 3, page 479 and by Section 4, page 480."

On behalf of defendant the evidence offered, and received over objection of plaintiffs, was that on September 16th, 1918, a petition signed by twenty per centum of the voters of the Town of Union had been filed requesting the fixing of Police salaries at certain specified amounts, and the question was thereafter presented to the voters at the November election of 1918, and the salaries therein fixed were voted for by an affirmative vote (Case, p. 20, etc.).

Subsequently and in conformity with the result of such election an Ordinance was adopted fixing the salaries at the amounts therein specified (Case, p. 25).

The defendant claims, and the Court held, that by reason of such election held in 1918, the election held in 1920, was invalid because of the proviso contained in Section 3, Article 13, Laws of 1917, page 351.

The questions thus raised by the pleadings and evidence, upon the decision of which will rest the question of liability in this case, are:

1. Does the proviso contained in Section 3 of Article 13 of Chapter 152, of the Laws of 1917, as amended by Chapter 163 of the Laws of 1918, limit the operation of Section 4 of Chapter 163 of the Laws of 1918, adding Section 8 to Article 13 as a new section?

2. If so, can this Court, in this action, set aside the operation of the election of 1920, held under Section 8, and declare the same a nullity and of no effect upon the referendum submitted to the voters?

3. Were the salaries to be paid the plaintiffs, which were voted upon in 1920, voted upon in 1918?

THE APPELLANTS CONTEND THAT EACH OF THESE QUESTIONS MUST BE ANSWERED IN THE NEGATIVE.

POINT I.

The limitation contained in the proviso in Section 3 does not, and was not intended to, operate as a limitation of the procedure authorized by Section 8.

In discussing this proposition, it seems proper first to investigate and consider the legislative scheme as enacted in Article 13, Chapter 152, of the Laws of 1917, page 350.

This Article consists of seven (7) sections, dealing with the salaries of municipal officers and employees.

The first section empowers the governing body, by ordinance, to fix and determine salary, wages and compensation to be paid each officer, employee, servant, and agent of such municipality, who, by law, is entitled to be paid a salary, wage, or compensation, except

1. The salary of members of any governing body therein, whose salaries shall be fixed by vote of the legal voters, as provided in said Act; and except

2. All officers, whose salaries shall have been adopted or determined by a referendum vote of the legal voters in such municipality.

The proviso in this Section, limits the scope of this power, so that it shall not be used to increase or decrease the salary of any officer during the term for which he was elected or appointed, or within the period intervening between the election of such officer and assumption of the duties of his office, EXCEPT AS HEREIN OTHERWISE PROVIDED.

The plaintiffs in this case are the Chief of Police, Captains, Sergeants, Lieutenants, Patrolmen, who are members of the Police Department, and their respective officers are held for an indefinite term and during good behavior. (P. L. 1917, p. 359, Ch. 152, Art. 16, Sec. 3).

It is clear, therefore, that under this section, the governing body has authority to fix their compensation unless this authority is taken away by some later curtailment of power.

Section 2 makes mandatory the fixing of wages or compensation to be paid members of the governing body by the legal voters of such municipality, except in cities, etc., governed by Boards of Commissioners or Improvement Commissions under an Act of April 25th, 1911.

Section 3 provides for a referendum and form of ballot to be submitted to the voters *whenever the governing body shall deem it advisable* to fix the salary of its members or the salary of any officer in cases where, under the provisions of the Act, it is necessary to have a referendum vote.

In such event, the governing body is required to pass an ordinance to fix the salary of its members or of such officer, a certified copy of which is sent to the proper officer who prepares the ballots, and it is placed upon the ballot.

By analysis of this section, in connection with Section 1 and 2, it will be seen that the refer-

endum provision is compulsory only in case of fixing the salary of members of the governing body, as the statute does not make it compulsory to submit the salary of any officer to referendum vote, except, however, in any case where the salary of such officer has theretofore been fixed by referendum vote.

This section contains a proviso in these words:

“PROVIDED, that the salary to be paid any officer should not be voted upon more than once in three years.”

QUAERE. Does the word “officer” as used in the proviso apply only to the same official as is designated by the word “officer” in the first part of the section and as used in Section 1, as distinguished from a member of the governing body?

It is clear that the Legislature distinguishes between the members of the governing body and other officials, both in Section 1 and in the first part of Section 3.

Section 4 makes the Act inoperative to affect any existing salaries until they shall have been changed in accordance with the provisions thereof.

Section 5 empowers the governing body, by ordinance, to modify, from time to time, the salary of such municipal officers, **AS SHALL HOLD THEIR OFFICES DURING GOOD BEHAVIOR OR FOR AN INDEFINITE TERM**; but not more than one change shall be made in any such salary during any fiscal year.

Under this section, the Board, by ordinance, has power to change the salary of policemen, firemen, and any other officers who hold office during good behavior, provided that such change was not made more than once in any fiscal year.

Section 6 does not bear on the question before the Court.

Section 7 empowers the governing body, by ordinance, to provide for the manner in which, and times at which, salaries shall be paid, etc.

From this analysis of the Act of 1917, before amendment, we insist that the necessary conclusion is that:

1. The salaries of the members of the governing body, if altered at all, after the adoption of the Act, must be altered upon the initiative of the governing body, by ordinance, **RATIFIED BY THE PEOPLE AT THE REFERENDUM.**

2. The salaries of all other officers, elected or appointed for a definite period, may be fixed by ordinance without referendum, but that the governing body may deem it advisable to refer such ordinance to the people for a referendum; and when once so fixed, may not be altered except by referendum; ~~and when such salaries are so fixed by referendum, they shall not be voted upon more than once in three years.~~

3. The salaries of all officers holding indefinite term offices or during good behavior, may be altered by ordinance from time to time, but not more than once in any fiscal year, and that such alteration is not subject to referendum.

This power would apply to salaries of firemen and policemen, who hold their offices for indefinite terms—unless by some later legislation, it is curtailed.

In 1918, the Legislature amended Section 3 by extending this referendum operation to "the salaries paid in any municipal department, in cases

where, under the provisions hereof, it is necessary to have a referendum vote thereon.”

Such referendum may be had not only when the governing body DEEMS IT ADVISABLE to fix such salaries, but also when it should be required by PETITION TO FIX THE SAME.

This section, as amended, retains the proviso contained in the original section, except enlarging it to cover salary or salaries to be paid any officer or in any department.

The defendant contends that this proviso prevents the submission to referendum of the question of salaries to be paid in any department, more than once in three years, and, therefore, as the plaintiffs are seeking to recover salaries voted upon in 1920, and as the salaries of policemen had been voted upon in 1918, the second election was void and the plaintiffs cannot recover.

If the Legislature had stopped at this point, there might have been some basis for this conclusion, although it would not necessarily follow that the plaintiffs could not recover in this case, for reasons hereafter stated.

It will be observed, however, that under this section, the Legislature has not indicated by whom the petition must be filed, and undoubtedly the officers or persons whose salaries were to be affected, would have the right to file said petition with the governing body, and, upon such filing, the governing body would be required to pass an ordinance to prepare the question for referendum.

However, the Legislature did not stop at this point, but enacted a new section to Article 13, as Section 8.

This new section provides:

“In case there shall be submitted to the governing body of any municipality, a peti-

tion signed by twenty (20) per centum of the legal voters of the municipality, requesting that there shall be submitted to the legal voters of such municipality, the question of fixing the salary or salaries of any officer or officers, or of the members of any department of the municipality, at the amount or amounts stated in such petition, such governing body shall cause such question to be submitted to the legal voters at the NEXT GENERAL ELECTION therein, occurring more than thirty days after the receipt of such petition by said governing body."

It will be observed that this section makes no provision for the passage of an ordinance fixing the salaries, prior to referendum, and that it does not embrace within its language "the members of the governing body."

If the defendants' contention, above mentioned, be correct, then the enactment of this section was entirely superfluous—because all that could be done under this section, could equally as well have been done under Section 3, if this section did not exist.

It will also be observed that no limitation is placed upon the time when such a petition may be presented to the governing body. It may be presented in any one of the twelve (12) months of the year; but *when* presented there is an imperative mandate that the question be submitted to the voters "AT THE NEXT GENERAL ELECTION THEREIN, OCCURRING MORE THEN THIRTY (30) DAYS AFTER ITS RECEIPT" by the governing body.

If the contention of the defendant is correct, then this mandatory language of the section becomes nugatory.

Under well known rules of construction, the Court should seek such an interpretation as will give effect to the entire Act and to every section thereof.

Smith v. Tucker, 17 N. J. L. 82;
Morris Canal, etc., v. Commissioners,
38 N. J. L. 472;
James v. Dubois, 16 N. J. L. 285;
Danforth v. Paterson, 34 N. J. L. 163.

The construction which the plaintiffs contend should be placed upon this Act would produce that result.

We contend that Section 3—even after amendment—refers to those officers whose salaries, the governing body in its judgment deemed advisable to have referred to referendum under an Ordinance first establishing such salaries, and merely extended to embrace such as might be required, and in both of which cases it was essential for the governing body to first fix the salaries by ordinance.

In other words, an officer might file a petition with the governing body to have his salary fixed by referendum. It would then be the duty of the governing body to pass an ordinance fixing the salary at such amount as it should deem proper; and this ordinance is then submitted to referendum vote in the form provided in Section 3.

In order that a disappointed officer, whose salary was not approved at the polls, might not, at the next election, require the same salary to be again submitted, the legislature wisely inserted the proviso; and this proviso we submit applies merely to the class of cases contemplated in this section.

A very different situation is created by Section 8.

Here the initiative is taken by the voters themselves—who must be at least twenty (20) per centum of all the legal voters of the municipality.

In their petition, the amount of the proposed salaries must be stated, and upon its being filed with the governing body, such body is required to submit it to the legal voters AT THE NEXT GENERAL ELECTION, provided thirty days intervene.

No ordinance is necessary and no other action of the governing body is required than to see that it is submitted to the voters.

If the people who pay the salaries—and, under this section, *HAVE THE RIGHT TO FIX THE SALARIES*—choose to exercise that right each year, there seems to be no reason why they should not do so; and we submit that there is no legislative declaration in this Act, that they may not do so.

If, however, *THE PROVISIONS IN SECTION 3, AND SECTION 8, CANNOT BE SO CONSTRUED AS TO GIVE THE FULL EFFECT TO THE CLEAR MEANING OF SECTION 8, THEN THE PROVISIO MUST FALL, AS SECTION 8 IS THE LAST DECLARATION OF THE LEGISLATIVE WILL.*

Townsend v. Brown, 24 N. J. L. 80;
37 N. J. L. 328; 38 N. J. L. 472.

POINT II.

Defendant's answer discloses no defense— even under Section 3 of the Act, as amended.

Complaint alleges that at a general election held in November, 1920, by a vote of the people it was declared that the salary to be paid the Chief of Police was Thirty-five Hundred Dollars (\$3,500) per annum; the Captains of Police, Three Thousand Two Hundred and Fifty Dollars (\$3,250) per annum; the Lieutenants of Police, Three Thousand Dollars (\$3,000) per annum; the Sergeants of Police, Twenty-eight Hundred Dollars (\$2,800) per annum; and the patrolmen Twenty-three Hundred Dollars (\$2,300) per annum, etc.

The Answer alleges that at a general election held in November, 1918, by a vote of the people it was declared that the salary to be paid the Chief of Police was Twenty-five Hundred Dollars (\$2,500) per annum; the Captains of Police, Two Thousand Two Hundred and Fifty Dollars (\$2,250) per annum; the Lieutenants of Police, Two Thousand Dollars (\$2,000) per annum; the Sergeants of Police, Eighteen Hundred Dollars (\$1,800) per annum; and patrolmen Twelve Hundred Dollars (\$1,200) per annum, etc.

The proviso in Section 3, as amended, is in the following words:

“Provided, that the salary or salaries *TO BE PAID* any officer or in any department, shall not be voted upon more than once in three years.”

What was the salary *to be paid* to the Chief of Police under the election of 1920?

It was Thirty-five Hundred Dollars (\$3,500) per annum.

What was the salary *TO BE PAID* to the Chief of Police under the election of 1918?

It was Twenty-five Hundred Dollars (\$2,500) per annum.

It therefore is certain that the salary *TO BE PAID* the Chief of Police in 1920, to wit: Thirty-five Hundred Dollars (\$3,500) per annum, was not voted upon by the electorate at the election of 1918.

The language of the proviso does not mean that the *QUESTION* of salary shall not be voted upon more than once in three years; but *EXPLICITLY* states that the *SALARY TO BE PAID* shall not be so voted upon.

That *SALARY*, under Section 3, was fixed by the Ordinance; and under Section 8 was fixed by the *Petition of the Voters*.

There is nothing in the Act to intimate—let alone declare—that the salary should not be *changed* by popular vote more than once in three years. No possible reason could be imagined for such a situation; and the evident purpose of the Legislature was to curtail the necessity of submitting to the voters at succeeding elections the question of adopting a certain salary which may have been rejected at the last preceding general election.

But whatever may have been the Legislative reason for this proviso, the language that was used is unambiguous and means clearly what it says. And that language does not support the contention of the defendant.

To meet the defendant's contention, the proviso should read:

“That the *QUESTION* of salary or salaries of any officer, etc., should not be voted upon more than once in three years.”

POINT III.

The election of 1920 cannot be attacked collaterally in this action.

Referendum propositions are submitted to the people at general elections under the Election Laws.

2 Comp. Stat., page 2093, Sec. 52.

Election Laws provide for the determination of the results of elections by certificates made and filed in the appropriate office.

2 Comp. Stat., page 2108, Sec. 94, and following.

This certificate is *prima facie* evidence of the validity of the results of the election.

Lippincott v. Felton, 61 N. J. L. 121.

The method of contesting the results of such election are either by appeal to the Circuit Court (*2 Comp. Stat.*, p. 2127, Section 162, etc.) or by *certiorari* or *quo warranto*.

The State v. Clerk of Passaic, 25 N. J. L. 354;

Darling v. Murphy, 70 N. J. L. 435.

An election, duly held by the people, should have great probative force, on a parity with a judgment of a Court, or the validity of a Legislature Act.

An Act which is not unconstitutional is valid, and cannot be challenged collaterally.

In *Bloomfield v. Freeholders*, 65 Atl. Rep. 890, the Secretary of State, under his official seal, cer-

tified that a bill on file in his office had been passed by the Legislature and approved by the Governor; and the Court held that such certificate, in all suits *inter partes*, was conclusive evidence that such bill had become a law, so that no proof could collaterally establish the contrary.

It was alleged and substantiated, by evidence, that the mandate of Article 5, Section 7 of the Constitution, affecting the Executive approval of bills, had not been observed respecting its approval.

The Court held that evidence of that fact was incompetent.

See also

Pangborne v. Young, 32 N. J. L., page 29.

POINT IV.

A rational and logical construction of the proviso of Section 3 might properly make the proviso applicable only to such part of the section as deals with the situation in which the majority of the legal voters voting, have voted "no".

Respecting the result of the referendum, Section 3 deals with two contingencies.

The first is that if the voters voted "yes," then the salary so adopted, on and after the date specified in the ordinance and upon the ballot, shall be paid until again changed by a referendum vote, as provided for in the preceding part of the section.

The second contingency deals with a situation where the voters have voted "no," and in such a situation the salary "shall continue as theretofore," viz.: as prior to the election; and it is to

this situation that the proviso is applied, viz.: that the salary to be paid such an officer may be again voted upon at the expiration of three years, but not before.

For example, if the salary of Chief of Police were \$2,500, and, in 1920, the salary of the Chief of Police, voted upon, was for Thirty-five Hundred Dollars per annum, and the voters voted "no," it would not be permissible for them to again vote upon the salary of Thirty-five Hundred Dollars per annum in 1921 for the Chief of Police; but it *would* be permissible for them to vote upon the sum of Three Thousand Dollars per annum in 1921.

It probably was intended to prevent the re-submission to the voters more than once in three years of a salary rejected by the voters.

If the salary submitted was adopted, of course it would be absurd to think it would be again submitted at a succeeding election.

The punctuation used by the Legislature in framing this section would seem to indicate that the legislative intent was to apply this proviso solely to the situation where the voters had voted "no."

While punctuation of a Legislature Act will not control its evident meaning, yet punctuation is one of the means for discovering the legislative intent.

Howard Savings Inst. v. Newark, 3 N. J. L. 547, at page 551.

It is respectfully submitted that the judgment should be reversed, and judgment entered for the plaintiffs.

WARREN DIXON,
Of Counsel with Plaintiffs-Appellants.

EXCERPTS FROM ACTS OF 1917-1918.

P. L. 1917—page 351, Art. 13, Sec. 3.

“3. In case the governing body of any municipality shall deem it advisable to fix the salary of its members or of any officer in cases where under the provisions hereof it is necessary to have a referendum vote thereon, such governing body shall pass an ordinance definitely fixing such salary with the date when the same shall commence. The clerk of the municipality shall forthwith forward a certified copy of such ordinance to the proper officer, notifying such officer that a vote is desired upon the question. Such officer shall, in the manner provided by law, place the same upon the ballots used at the next general election in such municipality in substantially the following form: ‘Shall the salary of the * * * (Title of Officer) of * * * (Name of Municipality) be fixed at * * * (amount) per annum? “Yes” “No”. If a majority of the legal voters voting at such election shall vote “yes”, the salary so adopted shall be paid to the members of said governing body or officer legally occupying such office on and after the date specified and until the said salary shall be again changed by a referendum vote as aforesaid. In case a majority of the legal voters voting at such election shall vote “no”, the salary paid such officer shall continue as theretofore; provided, that the salary to be paid any officer shall not be voted upon more than once in three years.

Amended P. L. 1918, p. 479.

“3. Section three of Article XIII of the act to which this act is an amendment be and the same is hereby amended to read as follows:

In case the governing body of any municipality shall be required by petition, or shall deem it advisable to fix the salaries of its members or of any officer, or the salaries paid in any municipal department, in cases where under the provisions hereof it is necessary to have a referendum vote thereon, such governing body shall pass an ordi-

nance definitely fixing such salary or salaries, with the date when the same shall commence. The clerk of the municipality shall forthwith forward a certified copy of such ordinance to the proper officer, notifying such officer that a vote is desired upon the question. Such officer shall, in the manner and form provided by law, place the same upon the ballots used at the next general election in such municipality in substantially the following form: 'Shall the salary (or salaries) of the * * * (Title of office, department or group) of * * * (Name of municipality) be fixed as follows: * * * (Amount or amounts) per annum? If a majority of the legal voters voting at such election shall vote "yes", the salary or salaries so adopted shall be paid to the members of the said governing body, department or officer on and after the date specified and until the said salary or salaries shall be again changed by a referendum vote as aforesaid. In case a majority of the legal voters voting at such election shall vote "No", such salary or salaries shall continue as theretofore; provided, that the salary or salaries to be paid any officer or in any department shall not be voted upon more than once in three years.

4. Article XIII of the act to which this act is an amendment be and the same is hereby amended by adding thereto a new section to be known as section eight, and which section shall read as follows:

"8. In case there shall be submitted to the governing body of any municipality a petition signed by twenty per centum of the legal voters of the municipality, requesting that there shall be submitted to the legal voters of such municipality the question of fixing the salary or salaries of any officer or officers or of the members of any department of the municipality at the amount or amounts stated in such petition, such governing body shall cause such question to be submitted to the legal voters of such municipality at the next general election therein occurring more than thirty days after the receipt of such petition by said governing body."

New Jersey Court of Errors and Appeals

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| <p>FREDERICK MENGE, et als., Plaintiffs-Appellant.</p> <p style="text-align: center;">vs.</p> <p>THE TOWN OF UNION, IN THE COUNTY OF HUDSON, Defendant-Respondent.</p> | } | Action at Law. |
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BRIEF FOR DEFENDANT-RESPONDENT.

Statement.

The plaintiffs, being the members of the Police Department of the respondent Town of Union, brought the suit to recover an alleged balance of salary due to them for the year, over and above the salaries paid and accepted by them for and during that period. 30

The case was tried before Circuit Court Judge Cutler who directed a verdict for the defendant upon the evidence and under the provisions of "The Home Rule Act," Chapter 152, L. of 1917, page 319, and particularly under the pertinent provisions of Article XIII of that act beginning at page 350 of the Laws of 1917, as that article was amended by Chapter 163 of the Laws of 1918. 40

An examination of appellant's brief will disclose that the only reason for reversal of the judgment is this direction of a verdict in favor of the defendant, upon which the judgment brought up was entered.

The law affecting the case and to be construed by the court is as follows:

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"ARTICLE XIII.

"Salaries.

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"The governing body of every municipality shall have power and authority, by ordinance, notwithstanding any maximum or minimum limitation now fixed by statute, to fix and determine the amount of salary, wages and compensation to be paid to each officer, employee, servant and agent of such municipality who, by law, is entitled to be paid a salary, wage or compensation, excepting the members of any governing body therein whose salaries shall be fixed by vote of the legal voters as hereinafter provided; and also *excepting all officers whose salaries shall have been adopted or determined by a referendum vote of the voters in such municipality, which salaries shall not be changed except by another and further referendum vote therefor*; provided, that this section shall not authorize the increase or decrease of the salary of any officer during the term for which he was elected or appointed or within the period intervening between the election of an officer and his assumption of the duties of his office; provided, however, that in case any elective officer entitled to receive a salary is reelected to succeed him

“self after having served one full term in such
 “office that the salary of such officer may be
 “increased not more than once during such
 “term for which the said officer is duly re-
 “elected, and as herein otherwise provided.”

Laws 1919, page 26.

“2. Salaries, wages or other compensation 10
 “shall not be paid the members of any govern-
 “ing body until the legal voters of such muni-
 “cipality shall have voted for the payment of
 “such salaries, wages or other compensation
 “at a general election held in such munici-
 “pality; provided, however, that this section
 “shall not apply to municipalities governed
 “under the provisions of an act entitled ‘An
 “‘act relating to, regulating and providing 20
 “‘for the government of cities, towns, town-
 “‘ships, boroughs, villages and other munici-
 “‘palities governed by boards of commission-
 “‘ers or improvement commissions in this
 “‘State,’ approved April twenty-fifth, one
 “thousand nine hundred and eleven.”

Laws of 1917, page 350.

“3. In case the governing body of any mu- 30
 “nicipality shall *be required by petition*, or
 “shall *deem it advisable to fix* the salaries of
 “its members or of *any officer, or the salaries*
 “*paid in any municipal department*, in cases
 “where under the provisions hereof *it is neces-*
 “*sary* to have a referendum *vote* thereon, such
 “governing body shall pass an ordinance *defi-*
 “*nately fixing such salary or salaries*, with the
 “date when the same shall commence. The
 “clerk of the municipality shall forthwith for- 40

ward a certified copy of such ordinance to
 “the proper officer, notifying such officer that
 “a vote is desired upon the question. Such
 “officer shall, in the manner and form pro-
 “vided by law, place the same upon the ballots
 “used at the next general election in such mu-
 “nicipality in substantially the following
 “form: ‘Shall the salary (or salaries) of the
 10 “ (title of office,
 “department or group) of.....
 “(name of municipality) be fixed as follows:
 “ (amount or amounts)
 “per annum?’ If a majority of the legal
 “voters voting at such election shall vote ‘Yes’
 “the salary or salaries so adopted shall be paid
 “to the members of the said governing body,
 “*department* or officer on and after the date
 20 “*specified and until the said salary or salaries*
 “*shall be again changed* by a referendum vote
 “as aforesaid. In case a majority of the legal
 “voters voting at such election shall vote ‘No’
 “such salary or salaries *shall continue as*
 “*theretofore*; provided, that the salary or
 “salaries to be paid *any officer or in any de-*
 “*partment shall not be voted upon* more than
 “*once in three years.*”

30 Laws of 1917, page 351, as amended by Laws
 of 1918, page 479.

“4. Any salary, wage or other compensation
 “*now* paid to a member of any governing body,
 “officer, employee, agent or servant shall not
 “be affected by the provisions hereof, but shall
 “*continue until changed in accordance with*
 “*the provisions hereof*; provided, this section
 “shall not authorize the payment or accept-
 40 “ance of any salary, wage or other compensa-
 “tion not authorized by law.

“5. It shall be lawful for the governing body
 “of any municipality, by ordinance, to modify,
 “from time to time, the salary of such mu-
 “nicipal officers as hold their offices during
 “good behavior or for an indefinite term; but
 “not more than one change shall be made in
 “and such salary during any fiscal year.”

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Laws of 1917, pages 351-352.

“8. In case there shall be submitted to the
 “governing body of any municipality a peti-
 “tion signed by twenty per centum of the legal
 “voters of the municipality, requesting that
 “there shall be submitted to the legal voters
 “of such municipality the question of fixing
 “the salary or salaries of any officer or officers
 “or of the members of any department of the
 “municipality at the amount or amounts
 “stated in such petition, such governing body
 “shall cause such question to be submitted to
 “the legal voters of such municipality at the
 “next general election therein occurring more
 “than thirty days after the receipt of such
 “petition by said governing body.”

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Sect. 8, Laws of 1918, page 480.

“ARTICLE XIV.

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“General Regulations.

“1. The governing body of every munic-
 “pality shall have power to make, publish,
 “enforce, amend or repeal ordinances for the
 “following purposes:

“(a) To manage, regulate and control the
 “finances and property, real and personal, of
 “the municipality.

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“(b) * * * * *

“(c) To provide for the employment and
 “compensation of such officials and employees,
 “in addition to those provided for by statute,
 “as may be deemed necessary for the proper
 “and efficient conduct of the affairs of the mu-
 “nicipality.”

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Laws of 1917, page 352.

“ARTICLE XVI.

“Police.

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“1. The governing body of every munici-
 “pality shall have power to make, enforce,
 “amend or repeal ordinances to establish,
 “maintain, regulate and control a police de-
 “partment, and to prescribe and establish just
 “rules and regulations respecting such depart-
 “ment for the better government and disci-
 “pline thereof.”

Laws of 1917, page 359.

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Under the foregoing provisions of law, the mem-
 bers of the Police Department of the Town of
 Union caused to be submitted—or at least there
 was submitted—to the Board of Council of the
 Town of Union on the fifth day of August, 1918, a
 petition, signed by legal voters of the Town of
 Union, together constituting twenty per centum of
 said legal voters, requesting said Board of Council
 to submit to the legal voters of the Town of Union,
 in the County of Hudson, at the then next general
 election, the *question of fixing* the salaries of the
 officers of the Police Department of the Town of
 Union, at the following amounts, viz:

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For the office of Chief of Police, the sum of \$2,500 per annum.

For the office of Captain and Captains of Police, the sum of \$2,250 per annum.

For the office of Lieutenant, Lieutenants of Police and Lieutenant Detectives, the sum of \$2,000 per annum.

For the office of Sergeant, Sergeants of Police, 10
Rounds Sergeants and Detective Sergeants the sum of \$1,800 per annum.

For the office of Patrolman, for the first year of service \$1,200 per annum; for the second year of service \$1,300 per annum; for the third year of service \$1,400 per annum; for the fourth year of service \$1,500 per annum; for the fifth year of service and for every year of service thereafter \$1,600 per annum; all of the foregoing salaries to go into effect on January 1, 1919. (Case, pages 20
20-21.) 20

That petition was received and on September 16th, 1918, the Board of Council of the Town of Union thereupon adopted a resolution submitting *the question of fixing* the salaries of the officers of the Police Department of the Town of Union to the electorate of that town at the general election to be held in the year 1918 (Case, pages 22-23), and said question was submitted at said election in the following language: 30

“Shall the salaries of the officers of the
“Police Department of the Town of Union,
“County of Hudson, on and after January 1,
“1919, *be fixed* at the following amounts, viz:”
(here follows the schedule contained in the
petition filed with the Board of Council on
August 5th, 1918). (Case, pages 32-33.)

and upon the question thus submitted the electo- 40
rate of the town thereupon at said election voted

"Yes", 2012; "No", 310. (Case, page 33, fol. 20.)

The voters of the town, therefore, at the general election held in November, 1918, agreed that the salaries of the officers of the Police Department of the Town of Union should on and after January 1, 1919, be fixed at the sums mentioned in the schedule then submitted to them in connection with the referendum.

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Pursuant to the wishes expressed by the voters of the town, the Board of Council of the Town of Union thereupon and on the sixteenth day of December, 1918, adopted *an ordinance*, pursuant to the provisions of Article XIV, entitled "General Regulations," Section 1, Subdivision a and c, found in the Laws of 1917 at page 352, entitled "An ordinance regulating the salaries of the officers of the Police Department of the Town of Union, in the County of Hudson," in and by which the Board of Council *actually fixed* the salaries of the officers of the Police Department at the amount fixed in the schedule hereinbefore referred to (Case, pages 26-27), and beginning with January 1, 1919, and from thence forward, the members of the Police Department of the Town of Union have been paid in accordance with the provisions of this police salary ordinance.

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Within three years of the general election held on November 5th, 1918, and on the seventh day of September, 1919, the members of the Police Department of the Town of Union, caused to be—or at least there was—submitted to the Board of Council of the Town of Union a petition, signed by legal voters of the Town of Union together constituting twenty per centum of said legal voters, requesting said Board of Council to submit to the legal voters of the town at the then next general election, *the question of fixing* the salaries of the officers and patrolmen of the Police Depart-

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ment of the Town of Union, in the County of Hudson, at a *new and increased* schedule of amounts, viz:

For the office of Chief of Police, the sum of \$3,500 per annum;

For the office of Captain and Captains of Police the sum of \$3,250 per annum;

For the office of Lieutenant, Lieutenants of Police and Lieutenant Detectives, the sum of \$3,000 per annum; 10

For the office of Sergeant and Sergeants of Police the sum of \$2,800 per annum;

For the office of Patrolman: for the first year of services, \$2,300 per annum; for the second year of service, \$2,400 per annum; for the third year of service and for every year of service thereafter \$2,500 per annum. (Case, page 10.) 20

When this petition was received the Board of Council adopted a resolution submitting the question of whether or not the salaries of the members of the Police Department should be fixed at this *schedule of increased salaries* to the voters of the town at the general election to be held on the second day of November, 1920 (Case, pages 16-17), and said question was submitted to the electorate of the town at said general election in the following manner: 30

“Shall the salaries of the members of the “police department of the Town of Union in “the County of Hudson on and after January “1, 1921, be *fixed* at following amount, viz:” (here follows the schedule of increased salaries contained in the second petition).

Upon the question thus submitted the electorate voted in the affirmative, 2827 votes being cast for 40

and 2382 votes being cast against the proposition thus submitted (Case, pages 12-13), and the result of this second election was filed in the office of the Clerk of the Town of Union (page 18, fol. 10) but the Board of Council of the Town of Union *took no further action in the matter* (page 18, fol. 1), excepting that it received an opinion from its town attorney regarding the legality of the proceeding, which was spread in full upon the minutes (page 18, fol. 20).

This action is brought to recover from the Town, for the period commencing January 1st, 1920, until the date of the issuance of the summons in the case, i. e., April 26th, 1922, for the members of the Police Department of the Town of Union the *increase in salary*, over and above the first schedule hereinbefore referred to, and as fixed and determined by the *second* schedule hereinbefore referred to, and it is the contention of plaintiff that the *mere affirmative vote* of the electorate of the Town of Union upon the question submitted to them at the general election held in November, 1920, *ex proprio vigore destroys* the ordinance fixing salaries adopted by the Board of Council in December, 1918, pursuant to the determination of the voters of the Town at the general election held on November 5th, 1918, determining that the salaries of the police department should be fixed at the amounts mentioned in the schedule submitted at the general election of 1918, and that the mere adoption of the second schedule by the voters entitles them to bring suit for this increase.

The defendant, however, contends that the petition of 1920, the action of the council thereon, submitting the question therein contained to the voters of the Town at the election held in 1920, and the referendum election held thereon at the election of 1920, *are all void and of no effect be-*

cause of the provisions in the law that the salary or salaries to be paid to any officer or in any department *shall not be voted upon* more than once in *three years* (Laws of 1918, Section 3, page 479, at end of section on page 480), and that in any event no relief can be had in this case because the Town *has never adopted an ordinance* providing for the payment of the salaries contained in the schedule of 1920, as directed by Subdivisions A and C of Article XIV of "The Home Rule Act", Laws of 1917, page 352. 10

POINT I.

The referendum election held in November, 1920, is void.

In discussing this point, defendant desires to call the attention of the court to some elementary and cardinal principles of construction, namely: 20

A statute which is amended is thereafter, for all acts *subsequently done*, to be construed as the statute stands *after* the amendments are introduced.

Barnaby vs. Barnaby, 60 N. J. L., 158.

Statutes are to be construed prospectively, unless the language is such as to *show* that they are to be construed retrospectively. 30

Roxbury Lodge vs. Hocking, 60 N. J. L., 439.

Statutes must be construed so as to give effect to the entire statute, and, *if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant.* 40

Steel vs. Freeholders of Passaic, 89 N. J.
L., 609.

The defendant contends that the following statutory provisions affect the case at bar and that *all* of them must be given effect in deciding the case.

10 Chapter 152, Laws of 1917, as amended Laws 1919, page 26, Article XIII, Section 1:

Excepting ^{con} number two which limits the power of council to *fix* and *determine* the amounts of salaries * * * to be paid to each officer and which reads as follows:

20 “Excepting all officers whose salaries shall
“have been *adopted* or *determined* by a refer-
“endum vote of the voters of such municipi-
“pality, which salaries shall not be changed
“except by another and further *vote* therefor.”

Chapter 152, Laws of 1917, Article XIII, Section 3, as amended by Chapter 163, Laws of 1918, page 480, which limits the *right of the voters* of any municipality by referendum *to vote* upon the salary or salaries to be paid any officer or in any department to not more than *once* in *three* years and which reads as follows:

30 “Provided, that the salary or salaries to be
“paid any officer or in any department *shall*
“*not be voted upon more than once* in three
“years.”

It is the contention of the defendant that an analysis of the legislation involved will show:

40 That once there has been a *vote* of the legal voters upon the question of the salary or salaries to be paid to *any* officers of the municipality, as the result of which *vote* such salary or salaries have been *adopted* or *determined*, that the power

of the Board of Council thereafter, *by ordinance*, to modify, fix, adopt or determine the salary or salaries of such officers is gone.

Section 3, Article XIII, L. 1917, page 350, second exception.

Corcoran vs. West Hoboken Supreme Court, Feb. 20, 1923.

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And then such salaries can be fixed *only* by a referendum *vote* thereon.

Section 3, Article XIII, as amended L. 1918, page 479.

That proceedings for such a referendum vote may be initiated under Section 3 as amended by L. 1918, page 479, *or* under Section 8 of Article XIII.

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That under Section 3, Article XIII, as amended L. 1918, page 479, council *may, in its discretion*, initiate such a referendum vote "in cases where under the provisions hereof (hereof being synonymous with Article XIII) it is *necessary* to have a referendum *vote* thereon" by passing "an ordinance *definitely fixing* such salary or salaries with the date when the same shall commence."

That under Section 3 Article XIII, as amended L. 1918, page 479, if council "shall be *required* by petition * * * *to fix* the salaries * * * of any officer or the salaries paid in any municipal department, where under the provisions *hereof* it is *necessary* to have a referendum vote thereon, such governing body *shall* pass an ordinance *definitely fixing* such salary or salaries with the date when the same shall commence and *shall* then initiate the referendum vote."

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That, whether initiated by council in its discretion or whether initiated by council as the result

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of the receipt of a petition requiring action—in both events, the limitation applies “that the salary or salaries to be paid to any officer or in any department shall not *be voted upon* more than once in three years.”

10 The petition, which is the basis of suit in this case, does not, however, require *council* to *fix the salaries*. It admittedly is *not* filed under Section 3. It is filed under Section 8 of Article XIII and the question for determination, therefore, is “Does the limitation of the proviso in Section 3 apply to Section 8?”

I contend it does.

20 1st. Because it is an amendment to an existing general act intended—through Article XIII—to cover the *whole* subject of municipal salaries. It must therefore be viewed as part of the *general scheme* outlined in this act—and in this article of this act—for the regulation of all municipal salaries, and being part of the general scheme, must be subject to the *general* limitations imposed upon that scheme by the legislature.

30 2nd. Because the limitation in question, namely that “the salary or salaries to be paid *any* officer or in *any* department *shall not be voted upon* more than once in three years,” is a plain, unambiguous mandate, absolute in form, containing no reservation, no limitations and no exception and applying by the plain import of the language used to the instant situation.

3rd. Because the legislature actually intended that this proviso should limit the provisions of Section 8 as will appear from a comparison of Section 3 as it stood before and after amendment.

40 Thus Section 3 before amendment does *not* speak of any proceeding initiated *by petition*, nor

does it mention *the salary paid in any municipal department*. Both the body of the section and the proviso are silent upon and do not deal with these topics. The proviso, before amendment, reads:

“that the salary to be paid any *officer* shall
“not be voted upon more than once in three
“years.”

10

With the law in this condition, the legislature in 1918 passed the amendatory act. It passed but *one* act and in and by this *one* act *added* section eight and amended section three to conform to the *added section* by introducing into Section 3, line 2, the words “shall be required by petition, or,” in line 4, after the word “officer”, the words “or the salaries paid in any municipal department,” in line 25 the word “department”, and in line 30—in the *very proviso itself*—the words “or salaries” and the words “in any department.”

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See Section 3 as amended L. 1918, page 479, and for comparison L. 1917, page 351.

The very act which gave to 20 per cent of the legal voters the right to initiate a referendum therefor amended Section 3 so that the grant of power conferred by Section 8 should be *fitted into* the *general scheme* concerning salaries as it had theretofore existed, and so that the grant of power conferred by section eight *should be* subject to the limitations of the proviso in Section 3—for the legislature expressly and intentionally *opened* this proviso and *enlarged* its scope to cover “the * * * salaries to be paid * * * in any department.”

30

The result as affecting these plaintiffs then is this:

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Council has power by ordinance, pursuant to Section 5, to fix salaries, but not more than once in any fiscal year, *until* such salaries shall have been fixed by a referendum vote when the power of council by mere ordinance to fix salaries disappears.

10 Twenty per cent of the legal voters have power by petition to initiate proceedings to fix salaries at amounts certain, whether salaries have theretofore been fixed by referendum or not, provided that the salaries to be paid any officer shall not be voted upon more than once in three years.

This gives to the voters power to initiate proceedings to increase or decrease salaries but not more often than once in three years.

20 And the power thus granted to the voters is not made dependent upon the existence of a previous referendum vote as is the power of council herein-after next set out.

Council is empowered—provided salaries have been fixed by a previous referendum vote—upon its own initiative, or when required by petition so to do, by ordinance to initiate referendum proceedings to fix and determine salaries, provided that the salaries to be paid any officer shall not be voted upon more than once in three years.

30 This gives to council power to initiate proceedings to increase or decrease salaries but not more often than once in three years.

Under this construction full effect is given to all language in the act to both limitations in the act, and *both* council and the people are given power *once* in three years to initiate proceedings to increase *or* decrease existing salaries by a referendum *vote*.

40 It will be noted that the proviso in Section 3 prohibits a vote more than once in three years. I therefore submit that since the referendum *vote*,

upon which plaintiffs rely, was taken within three years of the last referendum vote taken upon the salaries to be paid in this police department, that the *vote* upon which plaintiffs rely is absolutely void and of no effect.

The question of the effect of a referendum under Section 8 was recently before the Supreme Court in the case of Corcoran vs. West Hoboken, decided February 20th, 1923. In that case there had, in 1920, been a referendum *vote* of salaries to be paid in a police department. The electorate had voted *against* the salaries proposed and council thereupon undertook to and by ordinance did establish a schedule of increased salaries *without* the intervention of a referendum vote. 10

The Supreme Court in its opinion said that the question for determination comes up under Pamph. L. 1919, page 26. This is Section 1 Article XIII of the "Home Rule Act" as amended, and contains the limitation upon power which prevents council from *fixing* and *determining* salary for "all officers whose salaries shall have been *adopted* or *determined* by a referendum *vote* of the voters in such municipality, which salaries shall not be changed except by another and further referendum *vote* therefor." The Supreme Court said: 20

"The question for determination comes up "under P. L. 1919, page 26. Sufficient to say "in this case, the record shows, that, there "were no salaries that were fixed by any referendum under that act. If the referendum "had adopted the salaries, then of course, "under the statute, the ordinance increasing "the same would be invalid according to the "provisions of the act. But as the salaries of "the police department were never fixed by a "referendum vote, the ordinance is valid." 30 40

10 In the Corcoran case the proviso in Section 3 was not before the court and the case is not directly in point in so far as the facts can be gathered from the opinion. It does, however, indicate that the Supreme Court considered that Section 8 is affected by the other sections of Article XIII and must be construed in connection with those other sections. If this is done, it necessarily follows that Section 8 must be construed in connection with the proviso contained in Section 3.

POINT II.

20 **The mere fact that in the referendum election of 1920 the proposition submitted to the electorate was carried is not sufficient to entitle the plaintiffs to the increase in pay provided under the schedule of salaries then submitted to the electorate.**

Section 8 grants power to the electorate merely to pass upon "the question of fixing the salary or salaries of any officer or officers, or of the members of any department * * * at the amount or amounts stated in such petition."

30 It was not intended by the enactment of this section to relieve council of all further duties in connection with salaries thus favorably acted upon by any such referendum vote.

40 It was intended by Section 8 to furnish to council *authority* for performing the *actual* act of fixing salaries. This must necessarily be the construction unless we ignore the other provisions of the "Home Rule Act" and particularly those *general regulations* for the government of the activities of council which are set out in Article XIV of the

act, Laws of 1917, page 352. By these general regulations the *method* of actually fixing the salaries is prescribed. It must be done by ordinance. These general regulations provide as follows:

“Section 1. The governing body of every
 “municipality shall have power to make, pub- 10
 “lish, enforce, amend or repeal ordinances for
 “the following purposes:

“(a) To manage, regulate and control the
 “finances and property, real and personal, of
 “the municipality.

“(b) * * * * *

“(c) To provide for the employment and
 “compensation of officials and employees, *in*
 “*addition to those provided for by statute*, as 20
 “may be deemed necessary for the proper and
 “efficient conduct of the affairs of the mu-
 “nicipality.”

It is my contention that these general regula-
 tions contain an absolute limitation upon the
 power of council to actually fix the salaries to be
 paid in all cases to which the general regulations
 apply.

And these general regulations do apply to a
 police officer because he is not a statutory officer 30
 since his employment is created and provided for
 by ordinance pursuant to the provisions of Article
 XVI of the “Home Rule Act” P. L. 1917, Section 1,
 Article XVI, page 359.

Under Subdivisions A and C of the general regu-
 lations aforesaid, salaries of the police officers
 must therefore finally be fixed and regulated by
 ordinance, even though the question of whether
 they should be thus fixed has been submitted to
 the legal voters of the municipality pursuant to 40
 the provisions of Section 8 aforesaid.

In the case at bar there was no ordinance putting into effect the salary schedule upon which plaintiffs stand and plaintiffs rested their case after proving only the adoption of the salary schedule upon referendum.

10 When the salary schedule upon which plaintiffs claim the right to recover was adopted, there was in effect in the Town the ordinance providing for the salaries which had been adopted in 1918 and this ordinance still remains without having been repealed. Under the circumstances, the salaries payable under the ordinance adopted in 1918 are still the lawful salaries to be paid to the police department.

The ordinance putting into effect the salaries voted in 1918 will remain the law of the Town until it is repealed by some later ordinance.

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Bohan vs. Weehawken, 65 N. J. L., 490.

30 There is therefore no money due to these plaintiffs and their remedy—if they had any—arising out of the adoption of the salary schedule of 1920, was not to bring suit for moneys due but was to compel by mandamus the adoption of an ordinance putting into effect the salary schedule under which they claim, for if they had a right to action in their favor on behalf of council as the result of the adoption of the salary schedule of 1920, the action to be taken by council was a purely ministerial act involving no discretion, one which could be properly enforced by mandamus.

40 I therefore submit that on the proof in this case the plaintiffs are not entitled to recover because at the time of the institution of their suit they could draw no more pay than was provided for them by the ordinance then in effect, i. e., the salary ordinance adopted in December, 1918.

CONCLUSION.

It is respectfully submitted that the judgment entered upon the direction of the verdict below should be affirmed.

Respectfully submitted,

ADOLPH J. H. PETERS, 10
Attorney for Defendant.

J. EMIL WALSCHEID,
of Counsel with Defendant.

March Term, 1923.

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