

New Jersey Court of Errors and Appeals

DAVID A. BROWN,
Plaintiff in Error,
vs.

"STREET LIGHTING DISTRICT
NUMBER ONE" of the Township
of Woodbridge, and JOHN H.
LEISEN, Township Assessor,
Impleaded,
Defendants in Error.

ON ERROR.

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BRIEF OF NEILSON ABEEL, ATTORNEY OF PLAINTIFF IN ERROR.

The writ in this case brings up the orders dismissing a writ of certiorari in the Court below. David A. Brown, the plaintiff in error, was the prosecutor of the writ, and as a taxpayer sought to set aside an appropriation of \$3,000, purported to have been made at an election held June 2, 1903, in Street Lighting District Number One of the Township of Woodbridge, in the County of Middlesex.

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The law allowing an appropriation to be made for lighting the streets of this district is entitled "An act authorizing the divisions of townships into street lighting districts and the erection and maintenance of street lights therein and the election of street light commissioners in said district," passed May 25, 1894. See General Statutes, Volume III, page 3669. The first section of this act was amended by the laws of 1896, page 132.

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The principal reason that the prosecutor relied upon for setting aside the appropriation purported to have been made for street lighting at an election held in said district on the first Tuesday of June

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last, was that the notice of said election was not set up by the township clerk ten days before the said election, as required by law. From the evidence this fact cannot be disputed, it showing that the two notices which were put up were not posted until May 30, 1903, and according to law the notice should have been posted on May 22; the third notice not having been posted at all, but shoved
 10 under a door (see case, page 17); and the question would naturally arise, is the giving of notice of such an election requisite to sustain an appropriation of money made by the voters at such an election.

The claim of the prosecutor is that such notice must be given as required by law, and is mandatory.

The method of raising an appropriation for street lights under this act is similar to the raising
 20 of taxes in school districts of this State and in a long line of decisions in the courts of this State it has been held, that where proper notice of the meeting for the appropriation of money for school purposes was not given the tax would be set aside.

State v. Van Winkle, 1 Dutcher 73; State v. Rapp, 14 Vroom 594; Apgar v. Van Syckel, 17 Vroom 492; Canda Mfg. Co. v. Woodbridge, 29 Vroom 134.

30 The security of taxpayers in this age of progress requires that the powers conferred by special acts of legislators should be exercised in strict conformity with the provisions of such acts, and that the compliance should clearly appear.

State v. Garrabrant, 3 Vroom 444.

Legal notice (to impose special taxes) to the taxpayers lies at the foundation of the whole authority.

State v. Hardcastle, 2 Dutcher 143.

40 That the meeting at which an appropriation was

made under this act is a special meeting seems obvious. And though the election, if an election is held is fixed by law, the whole situation is controlled by the Township Committee and it is for this reason that the legislature puts the duty of giving notice of such election on the Township Clerk. By the first section of the law, as amended, the Township Committee is given power to alter and change the boundaries of the street lighting district at any time. The second section of the act requires the Township Committee to designate the time and place at which such election shall be held. 10

In elections of a special character, where time and place are not fixed by law, notice of the election must be given. In such case, the direction to give notice is mandatory.

Morgan v. Gloucester City, 15 Vroom 137.

And although the day of the election is fixed by law, the time of the day and place must be designated by the Township Committee. 20

The Township Committee, according to the evidence, did not designate the place for this election until the twenty-ninth day of May, 1903, which was too late to allow the Township Clerk or anyone else to give the requisite notice. From this it can well be seen why such meeting is a special meeting; it leaves the whole decision as to whether such an election shall be held with the Township Committee, and they can refuse to have such an election if they so desire. The election is not imperative. The second section of the act simply authorizes the voters of the street lighting district to meet, but not until the township Committee has designated the time and place for holding such an election and giving notice of same. 30

If proper notice of such a meeting for the appropriation of taxes need not be given, it can be readily seen to what an extent the doors would be 40

open for fraud and wilful and malicious mis-use of the power of taxation.

The Township Committee could alter the boundaries of the district at a moment's warning, for there is no restriction in the law as to this; the act, first section as amended, saying that they may do this at any time. They could so alter it as to include within such district property not included before, hold an election for the appropriation of lighting the district, thereby imposing a tax upon property not before taxed without any knowledge on the part of such property owner. It was undoubtedly for this reason that the legislature required the Township Committee, through its Township Clerk, to give the ten days' notice of such election.

If this notice is not mandatory a majority of the Township Committee could hold a "snap" election each year, designate an out-of-the-way place for holding the election an hour before such election, take a few friends in such district to such an election, vote an excessive appropriation in order to help along some lighting company, to whom the Commissioners, who would be their tools, could award a contract at an exorbitant figure. It would seem unnecessary to cite other methods by which fraud could be perpetrated on an unsuspecting public if the notices as required by law were not given.

If notice of such an election was not necessary to be given by the township authorities, could not any clique of men hold an election, make out the certificates and notices, and claim that a legal appropriation had been made?

It is not imperative that such an election shall be held unless the Township Committee shall call it, for the Township laws give authority to the Township Committee to appropriate money for lighting the streets of the respective Townships

(Laws 1899, p. 399, sec. 67), and should they decide to exercise such rights it would be unnecessary for them to call an election for the appropriation of money for such a purpose within the lighting district, and it would seem perfectly legal and proper if they so choose to take this course. This would seem one of the reasons why this case is on all fours with the cases cited in relation to the raising of a special school tax. 10

The Court below upheld the contentions of the Prosecutor that this election was a special election and as the ten days' notice was not given that it would be fatal, but denied the relief asked for by the Prosecutor, on the ground that he was estopped from raising this question because it appeared that he attended, voted and participated at the election, without protest or objection. The opinion further says that the prosecutor comes before the Court upon the merest technicality; but from the fact that the Court already has said that it would be fatal if the writ had been prosecuted by one who did not vote, counsel cannot concede that it is a mere technicality; but if it is, it is such an one that he believes this honorable Court will consider to be fatal. 20

The question brought to issue is, was the prosecutor estopped to raise the question of the illegality of the election by reason of his attending, participating and voting at said election? 30

Was this election by reason of proper notice not being given, void, illegal and nugatory and a mere nullity?

When it is discretionary with the municipal authorities whether they will hold any election or not, votes at an unauthorized election *are simply nullities*. Elections fixed by law at a certain time and place may be legally holden, although notice has not been published or given; but if the time be not defined by statute (and this would apply equally 40

to the place), and is to be fixed by notice, the notice required is imperative.

Dillon on Municipal Corporations, 4th Ed., sec. 197 (136); Cooley's Cons. Lim., 6th Ed., page 759.

If the time or place is not fixed by law notice is essential. *Ibid.*

In *State v. Young*, 4 Iowa 561, the question was similar to this one; the time was fixed, but the
 10 place was not, and the election was held to be void (although in the case being considered the day is fixed by law, but not the time of the day).

When the time and place of the election are to be fixed by some authority, the failure to give the notice will render the election a *nullity*.

A. & E. E. of Law, 1st Ed., vol. 6 pages 298 and 300, and cases therein cited.

Even if the election is held by consent of all the voters the election is illegal.

20 *Ibid*, page 318.

When the statutory provisions and regulations in respect to public elections are not substantially observed, the election is *void*, though it may have been conducted fairly and honestly.

Van Amringe v. Taylor, 108 N. C. 196; 12 S. E. Rep. 1005.

Where an election was irregular and futile, the fact that every voter in the Township voted for a township officer would not validate it. Majorities
 30 go for nothing at an irregular election.

Commonwealth v. Baxter, 35 Pa. St. (11 Casey), 263.

Where the statute requires the notice "to specify the business to be done" an omission to comply with this requirement makes the meeting void, and it is held that a notice stating generally "to do any proper business" is insufficient, and the acts and votes of a meeting held under it are of no binding
 40 or legal force.

Dillon on Municipal Corporations, 4th Ed., sec. 268 (206).

If this contention is correct that this election was void, nugatory and a nullity, and I do not think that this can be controverted, how can the doctrine of estoppel apply. It is shown by the evidence that the Township Clerk failed to give the ten days' notice of election, and if this was mandatory, then there was no election, and simply a meeting which purported to be an election, and if the prosecutor below voted, as is shown by the evidence, at this meeting which was a mere nullity, how can this be said to create an estoppel? Can the fact that he voted at this illegal meeting validate an illegal appropriation; and yet this is what the opinion of the Court below does. It practically says that it may be true that the election was illegal and consequently the appropriation also, but the prosecutor having voted, the illegal appropriation is upheld.

The doctrine of estoppel does not appear to be applicable to cases of this character. As is well said in the introduction of Bigelow, "It is safe to say that at the present day it is seldom employed in any questionable way to exclude the truth; its whole force being directed to preclude parties from unsettling what has been fittingly determined." Surely it cannot be said that a void election was fittingly determined, and would not the estoppel in rather a questionable way exclude the truth in this case? Counsel has been unable to find from any of the text-books the doctrine as applied in the Court below. Bigelow says, Estoppel in pais arises (1) from contract; (2) independently of contract, from act or conduct which has induced a change of position in accordance with the real or apparent intention of the party against whom the estoppel is alleged.

In Coke's day there seems to have been only a few instances of estoppel in pais, namely the fol-

lowing acts, livery of seizin, entry, acceptance of rent, partitions, and the acceptance of an estate. "Indeed, the estoppel in pais of the present day has grown up almost entirely since the time of Coke, and embraces cases never contemplated in that character by him or by lawyers of even much later times." But has the doctrine been carried as far as to estop a person from contesting an illegal election? The typical example of estoppel by conduct is misrepresentation of some fact. This is enough to indicate that there may be danger in using the term "estoppel" freely. It is common enough at present to speak of acquiescence and ratification as an estoppel. Neither the one nor the other, however, can be more than part of an estoppel at best.

Bigelow, 5th Ed., p. 456.

In its most common aspect this estoppel is founded upon deceit, and has its justification in the duty of the courts to prevent the accomplishment of fraud.

Ibid, 556.

Now it seems to me if the estoppel is allowed to intervene in this case it has the very opposite effect of what the law intended, it shields fraud.

An estoppel can never be allowed where it would itself perpetrate fraud, work injustice, or fail to protect the innocent.

Mills v. Graves, 38 Ill., 455; 87 Am. Dec., 314.

The doctrine of estoppel is never applied in aid of a fraudulent purpose.

Royce v. Watrous, 73 N. Y., 597.

Estoppel by conduct must be considered in connection with the elements of deceit, namely, false representation; the representation must have been made with knowledge of the facts, the party to whom it was made must have been ignorant of the truth of the matter, it must have been made with

the intention that the other party should act upon it; the other party must have been induced to act upon it.

Bigelow, p. 570.

The text books show that all these elements must be shown to create this equitable estoppel. The fact that the prosecutor voted at the election did not create these elements of estoppel, and would seem to establish the fact that the doctrine has no application. There have been some cases of this kind where the doctrine has been interposed, but in which a careful consideration of the doctrine of estoppel has evidently not been given. The doctrine has been carried to another class, sometimes called quasi-estoppel as waiver, acquiescence, and inconsistent position, but a study of these show that the principles before mentioned govern largely, and that there must be some change of position caused by the party against whom the estoppel is urged.

Bigelow says, in regard to these, "the doctrine of estoppel has been extended during the present century, and especially, within thirty or forty years past, to a variety of cases, embraced under the heads of election and inconsistent position, called quasi-estoppel. There are cases, too, in which the term appears to have been used merely for convenience, as equivalent to 'bar.' Such need not be considered" and it would seem that the so-called estoppel in the case being considered falls under this head. The affirming of this case would extend the doctrine, and give text writers an opportunity to enlarge their works.

The doctrine of equitable estoppel has no place, where usurped powers have been exercised by municipal officers, who in so doing were contravening public policy, as well as known, positive law.

Schumm v. Seymour, 9 C. E. Green, 154; App. v. Stockton, 32 Vroom, 524.

In South Ottawa v. Perkins, 94 U. S., 267, Justice Bradley says, "There can be no estoppel in the way of ascertaining the existence of a law. That which purports to be a law of a State is a law, or it is not a law, according as the truth of the fact may be, and not according to the shifting circumstances of parties. * * * And whether it be a law, or not, a law is a judicial question, to be settled and determined by the courts and judges. The doctrine of estoppel is totally inadmissible in the case.

See also Counterman v. Dublin, 38 Ohio St., 515.

The prosecutor claims that the evidence taken by the defendants to show that he voted at the election was inadmissible. He sought to set aside the appropriation on the ground that the ten days' notice of the election was not given, and the issue should have been confined to that (or the other reason) as any other issue at law.

Nor do we think that a party, by consenting or participating in a void election, deprives himself of his right to dispute the validity. A few men, or even the entire public, cannot make valid an election held in direct violation of a mandatory statute.

Elliott v. Burke, 68 S. W. Rep., 445.

Participating in an election at which a subscription for a railroad was voted, followed by an issue of bonds in payment, will not estop the people of the municipality to set up the illegality of the tax.

Bigelow, 5th Ed., p. 669; Cruger v. Dougherty, 43 N. Y., 107; Greencastle v. Black, 5 Ind., 557; State v. Barton, 51 Pac. Rep., 218; Cameron v. Stephenson, 69 Mo., 373.

By participating in a meeting illegally called, a party is not estopped to deny its legality. This decision says, "Nor do we concur in the suggestion that the defendant is estopped to deny the legality of the meeting, from the circumstances that he was

present at it. He might have supposed it was legally called. * * * Having ascertained that such was not the fact, he may avail himself of this defence.

School District v. Atherton, 12 Met. (Mass.), 105.

The prosecutor did not know when he voted that the election was not a legal one. He had a right to assume when he heard of the election that it was legal and there was consequently no reason for his making any protest or objection at that time. The court below seems to have assumed that he knew of its illegality, and therefore should have protested, but the evidence does not show this, nor would there have been any way of knowing of its illegality without putting the township clerk on oath. 10

An estoppel cannot be predicted upon an act done in ignorance of one's rights, no other being misled, and the rights being asserted as soon as ascertained. 20

Young v. Young, 80 Tenn., 335.

In order to constitute an estoppel by silence or acquiescence, it must appear that the facts were known to the party against whom the estoppel is urged.

Pierce v. Chace, 108 Mass., 254.

A person is not estopped by words or acts when he did not intend to bind himself thereby, and when his conduct did not furnish reasonable cause for the other party to believe that he would be bound. 30

The essential elements of an estoppel are wanting.

Nourse v. Nourse, 116 Mass., 101; *Parker v. Moore*, 59 N. H., 454; *Mallony v. Horan*, 49 N. Y., 111.

Before a party can urge an estoppel against another he must be misled by the other's conduct as to facts known to the latter. 40

Burritt v. Dickson, 8 Cal., 113.

An answer setting up an estoppel by conduct must show that defendant relied upon plaintiff's representations or conduct and was influenced thereby, and was ignorant of the truth.

Robbins v. Magee,, 76 Ind., 381.

10 The doctrine that a person remaining silent when he ought, in the exercise of good faith, to have spoken, will not be allowed to speak when, in the exercise of the same good faith, he ought to remain silent, cannot be extended to a person who is innocently ignorant of the fact upon which his right depends.

Tone v. Columbus, 39 Ohio St., 302.

20 To hold that a man is bound at his peril to take notice of illegal action on the part of the public authorities, is carrying the doctrine of constructive notice very much farther than the authorities will warrant. We think, on the other hand, that the citizen has a right to assume that the law is being obeyed instead of violated, by the public authorities, and that at least in the absence of any evidence of previous knowledge on his part of their unlawful action, he is in time with his protest when they proceed to deprive him of his rights under such proceedings.

30 Steckert v. East Saginaw, 22 Mich., 111; In re Sharp, 56 N. Y., 257; Ridgefield v. Reynolds, 46 Conn., 375; Taylor v. Burnap, 39 Mich., 739; Loan Association v. Topeka, 20 Wallace (U. S.), 667.

An alderman who is a candidate for mayor, and who is declared not elected, does not, by participating in the installation of his opponent, estop himself from contesting the election, when it does not appear that at the time he had knowledge of any facts discrediting the correctness of the canvass.

40 Murphy v. Battle, 115 Ill., 182; 40 N. E. Rep., 470.

There is another important reason why the prosecutor should not have been estopped. It appears that there were only two tickets in the field, one ticket carrying an appropriation of \$3,000, which was the ticket elected; and the other an appropriation of \$2,500, which was not carried, and for which the prosecutor voted (see testimony, p. 26).

The prosecutor was interested in seeing the least burden of taxation fall on his property, and not only did he have a right to vote for the lower appropriation but he was entitled to have proper notice of the election given to every voter in the district, so that they also could exercise their suffrage and vote for the ticket carrying the smaller appropriation, which, if proper notice had been given, might have been carried and a smaller tax thereupon have fallen upon the prosecutor. Can it be said that he acquiesced in the appropriation of \$3,000 when he voted for an appropriation lower than this? Can it be said that he is inconsistent by reason of his voting at this election, where he had no knowledge of its illegality, when he voted for the lower appropriation and when he was prompt to exercise his rights when knowledge of the illegality was brought to him?

Should the court encourage a citizen in acquiescing and sitting idle, after he has discovered that the election at which he has voted was held fraudulently and in defiance of law. On the other hand should he not be commended for bringing to the attention of the courts a wilful violation of a mandatory law? It would be placing too much of a premium on good citizenship to hold otherwise. And should municipal authorities and election officers be encouraged in supposing that the courts will approve of their illegal acts? And yet this would be the effect if this case is upheld.

It is said in the opinion of the court below that

there was a very full vote at the election, a greater number than usual—208 voted.

It is contended by counsel that parol evidence was not admissible to show what the vote was or what it had been in previous years, and that if it was admissible it was not proved by the proper parties.

School District v. Atherton, 12 Met. (Mass.), 105.

10 But can the statutory requirement of notice be dispensed with for this reason even though the vote was twice as large? There is no evidence to show what is the number of legal voters in this lighting district nor the increase of population from previous elections. Such an argument is untenable for the reason that if it were not necessary to give the statutory notice, fraud could be perpetrated as shown before and any number of voters polled that the people holding such an election might desire.

20 Commonwealth v. Baxter, 35 Pa. St. (11 Coxey), 263.

Fraud can be presumed by the court for the very reason that as practically only one day's notice of the election was actually, though not legally, given, the vote was so large.

30 The Court further says that if the resolution be set aside there would be no method for the reconsideration of the action of the lighting commissioner. This may be true, but we do not think that this should validate an election that was a mere nullity. As stated before this election is discretionary with the Township Committee and if they do not choose to call the election it does not appear to be mandatory, particularly as the township laws give them authority to light the streets of the township.

Laws 1899, p. 399, sec. 67.

40 The Court below further says that the prosecutor came before the Court without showing that a single person who wished to vote did not do so, or that

any voter in the district did not in fact have notice of the election. We do not think that he was called upon to prove this. He seeks to set aside the appropriation on the ground that notice of the election was not given and under the cases before cited, which hold that such notice is mandatory, all he was required to show was that the notice was not given, certainly the burden was not on him to show these additional facts, but was on the defendants, if admissible, to show some reason for upholding an illegal election. 10

Nor does the doctrine that the vote would not have been changed if proper notice had been given, apply to special elections of this character where the notice is mandatory. Nor should the doctrine of estoppel be favored when it would shut out the truth against reason and public policy.

It has well been declared that citizens who have petitioned for the making of an improvement have still the right to assume that things will be done lawfully, that they are not bound to take notice of illegal proceedings on the part of the municipality, and therefore are not estopped by their silence to object to them. 20

Bigelow, 5th Ed., p. 692.

Estoppel cannot be set up as against invalid act.

See *Doe v. Ford*, 3 Adolphus & Ellis, 649.

Doe v. Howells, 2 Barnewall & Adolphus, 742. 30

Merriam v. Boston R. R., 117 Mass. 241.

Lowell v. Daniels, 2 Gray (Mass.) 170.

The technical doctrine of estoppel is one to be applied with great caution, for it sets aside general rules on supposed equities, and the danger is always imminent that wrong may be done. (*Cooley on Taxations*, 3d Ed., p. 1518.)

Definitions of equitable estoppel:

Mutual Life Ins. Co. v. Norris, 4 Stewart 585.

Philipsburg v. Fulmer, 2 Vroom 55. 40

One who voted under an unconstitutional law providing for the assessment of taxes for schools is not afterwards estopped to allege the invalidity of that law. *Greencastle v. Black*, 5 Ind. 557.

NEILSON ABEEL,
Attorney of Plaintiff in Error.

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New Jersey Court of Errors and Appeals.

DAVID A. BROWN, <i>Plaintiff in Error,</i> <i>vs.</i> STREET LIGHTING DISTRICT NO. 1, TOWNSHIP OF WOODBRIDGE, &C., <i>Defendants in Error.</i>	}	On Error.
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BRIEF OF DEFENDANT STREET LIGHTING DISTRICT NO. 1.

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This writ of error brings up for your consideration but one subject, the validity of a resolution fixing the sum of money to be raised and expended in the lighting district No. 1 of the Township of Woodbridge under the authority of the Street Lighting District Act.

Gen. Statutes, vol. 3, p. 3669.

The validity of this resolution depends upon the title the Commissioners of Street Lighting District No. 1 had to the office held by them. This title depends upon the regularity of the election. If the election at which they were elected was not legally conducted they hold no office and could pass no such resolution.

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The statute creating street lighting districts provides that any township committee may set off and divide the township into districts for purpose of lighting the same. On the first Tuesday in June in each year the voters therein are authorized to elect

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their commissioners to appropriate a fixed sum of money "to be expended within such district for the ensuing year for the erection and maintenance of street lights." The commissioners to make the contract. "Notice of said time and place of such election shall be given by the township clerk and set up in at least three of the most public places within the said district ten days before said election." To have an election there must be (1) notice, (2) the notice to be given by the township clerk, (3) notice to be given ten days before the election, (4) notice to be posted in three public places. The contention of the prosecutor is that this election was void because the notice was not posted ten days prior to the election. The other requirements were complied with. The facts, as they appear in the testimony, are that the township clerk was sick in the hospital undergoing an operation for appendicitis and did not come from there until May 29th. The notices should have been posted ten days prior to June 2, 1903, which was May 22, 1903. They were not posted until the 29th day of May. So instead of there being ten days' notice there was but three days' notice of this election. The prosecutor participated in the election. He participated in the organization of the election officers, he voted, got other people to vote, and worked at the poles in behalf of the unsuccessful candidates. The election was participated in by the electors of this district to a greater extent than any previous election. There were 208 votes cast. Ephriam Cutter received 152; Charles S. Farrell 149; B. J. Dunigan 149, and were declared elected. The vote in previous years had been as follows: 1901, the highest man on the ticket, who ran on both tickets, received 181 votes. The highest man, when there was a contest, 117 votes, and his opponent 74 votes; in 1902, the highest man received 111 votes and the lowest 32. The total vote cast, 143 votes. The district was not organized until 1900, and the election of 1901 was the first election.

40 There are two reasons why this election is not void

and should not be set aside. First: Because, although the proper notice was not given, notice was given and the electors had notice in fact. Second: Because the prosecutor participated therein.

I.

IT IS A WELL ESTABLISHED RULE THAT IN AN ELECTION SUCH AS THIS ALL OF THE REQUIREMENTS OF THE STATUTES MUST BE COMPLIED WITH. IF ANY ARE OMITTED THE ELECTION IS VOID. 10

If any other person than the town clerk had noticed the election such notice would have been faulty. It must be posted for ten days in three public places. If not the election is void. This rule, however, has an exception. This notice is prescribed by the statute for the purpose of notifying the electors of the election. If they, in fact, have notice, and acting on that notice, fully participate in the election, the result of the election will be sustained. It must be shown that there was not notice in fact, and that if the regular notice had been given the result of the election would probably have been different. In all the cases that have been examined by the defendant where an election has been set aside through the lack of notice, the fact has clearly appeared that there was no notice in fact, that the contest was not participated in by but few of the electors, and that if the notice had been given the result would or might have been different. 20

When the contrary appears the election has been sustained. Now in this case the person upon whom the law put the duty of giving this notice was in the hospital undergoing an operation. As he tersely puts it he was thinking of something else then than electing lighting commissioners. At the first opportunity he posts the notices. There was public notice for three days. The electors of this district had knowledge *in fact* of this election. They participated in the contest. Two tickets were in the field, and more votes 30 40

were cast than ever before in the history of the district. The successful candidates were overwhelmingly elected. Nothing could have changed the result of this contest. Certainly seven days of advertising could not have done it. It should also be borne in mind that the day on which the election is held is fixed by the statute and the place where it was held is the place where it had always been held. The voters are presumed to know the law. They are presumed to know the date of the election. The place of holding it was all that there was to be fixed. This was fixed by custom. The result shows a knowledge of the time and place of the election, and a general participation therein. If the election had not been held on that day, no other election could have been held for a year, and no money used to light the district. There would have been no one authorized to contract for lighting. The district would have had to go in darkness. With these facts before the court the prosecutor asks to have this election declared void. Certainly the voice of the people is not to be rejected for a defect, when they have spoken in such unmistakable accents. This district is not to go in darkness when the people have by such a majority expressed their desire that it should be lighted. A disgruntled and defeated minority is not to defeat the will of the majority expressed so unmistakably. No ends of justice demand the suppressing of the will of the people.

30 "In the case of a special election, however, where the law does not fix the time and place for holding the same, but they are to be fixed by some authority, failure to give notice or issue a proclamation of the election will render it a nullity, *unless the people have actual knowledge and attend, so that the result is not affected.*"

Am. & English Ency. of Law, 2d ed., vol.10, p. 626.

40 "It appearing that the people generally had actual knowledge of a special election, so that

the result would not have been different if proper notice had been given, failure to give such notice does not vitiate the election."

Am. & Eng. Ency. of Law, 2d ed., vol. 10, p. 626.

"It is essential that the electors should have notice of the time, place and objects of the election. That is, they should have knowledge of them, but an omission to follow the particular mode provided by statute for publication of such notice may not render the election void, and will not, if the electors have actual notice, and do in fact take part in the election." 10

McCrary on Elections, sec. 143.

This doctrine was laid down in *Dishon v. Smith*, 10 Iowa, 212, where the court held as follows: "The courts have held that the voice of the people is not to be rejected for a defect or even a want of notice, if they have, in truth, been called upon and have spoken. In the present case, whether there was notice or not, there was an election, and the people of the county voted, and it is not alleged that any portion of them failed in knowledge of the pendency of the question or to exercise this franchise." 20

"An election will not be set aside because the law requiring the giving of notice thereof has not been exactly followed, if such notice was given as that the great body of the electors were in fact informed of the time, place and purpose of the election." 30

Commonwealth v. Smith, 132 Mass., 289.

"It is doubtless perfectly true that where the election has been held at the proper time and the proper place and the electors have had notice and participated in it, the want of such notice as the law provides, will not render it void."

McCrary on Elections, sec. 144.

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10 "The doctrine that want of formal notice will not render an election void unless it appears that the failure to give notice has in fact, either changed or made doubtful the result was recognized as early as 1796 by the House of Representatives of the United States in *Lyon v. Smith*. There it appeared that no notice had been given of the time and place of holding the election in two towns of the district; but as it did not appear that the votes of all the freemen of those towns could have changed the result if duly given, the House refused to set aside the election."

20 "When a vacancy occurs in the office of county commissioner more than 30 days before a general election, it is to be filled thereat, and the failure of the county clerk to call attention to such vacancy in the election notices posted by him, when the fact is generally known and acted on by the voters of the county, will not invalidate the vote cast to fill said vacancy."

State v. Skirving, 27 Atl. Rep., 723.

Of the 3,124 votes cast for other officers, 2,989 were cast for the commissioner. The court said:

30 "Here it seems to have been generally understood by the electors of the county that a vacancy existed, and they sought to fill said vacancy, nearly all those voting at that election casting their ballots for one of the candidates named (or for commissioner). This, we think, was sufficient to show that the election was general, and participated in by all the electors who desired to vote upon the question."

A justice of Supreme Court died 13 days before general election, and after notice thereof had been given, both parties nominated a candidate and polled a large vote. Held that it was a valid election.

40 *Troop on Municipal Officers*, sec. 152.
People v. Cowles, 13 N. Y. 350.

In *Commonwealth v. Reynolds*, 8 Pa. Co. Ct. Rep., 568, it was held that a school election was not vitiated by failure to issue a proclamation, when the election was generally known, and a reasonable number of votes were cast.

In *Foster v. Scarff*, 15 Ohio St., 532, it appeared that the great body of electors had no notice *in fact*. The court said :

“We do not intend to go beyond the case before us, as presented by its own peculiar facts. We do not intend to hold nor are we of the opinion, that the notice by proclamation, as prescribed by law, is *per se*, and in all supposable cases necessary to the validity of an election. If such were the law it would be in the power of a ministerial officer, by his misfeasance, always to prevent a legal election. We have no doubt that when an election is held in other respects as prescribed by law, and notice *in fact* of the election is brought home to the grand body of the electors, though given through means other than the proclamation which the law prescribes, such election will be valid.”

See also to the same effect:—

People v. Santa Anna, 67 Ill., 57.

People v. Larnna, 67 Ill., 67.

Wheat v. Smith, 50 Ark., 267.

In this later case the law required notice to be given by publication and posting a copy at each posting place. The sheriff did the latter but not the former. It was generally known that the election was to take place, and the vote cast was *not less* than that usually polled. Held that the failure to make publication did not invalidate the election.

In this State there are no direct adjudications upon this subject. This point has, however, been raised. There is at least dictum on the subject.

In *Morgan v. Gloucester*, 15 Vr., 137, the court set aside an election because it was a special election and

no notice had been given as required by statute, but in doing so said :

"It cannot be urged in this case that, if notice was not strictly legal, yet information that the election would be held, and the locating of the polling places, was brought home to the great body of electors. There is no proof of this, but the contrary appears, if the number of votes cast be taken as a criterion."

10

Also in *Bolton v. Good*, 12 Vr., 296 (299), the court in setting aside an election said :

"No intimation was given in the notice that an election would be held for city judge, and the evidence shows very clearly that those who voted that day were not aware that such an officer was to be elected. Out of a poll of over 800 votes, only 29 were cast for city judge, of which Bolton, the relator, received twenty-six."

20

In order to set aside an election facts must appear rendering probable *prima facie*, a conclusion that the result would have been changed.

Lehlbach v. Haynes, 25 Vr., 77.

30

In the case now before the court it clearly appears that notice in fact was given, that the great body of the electors participated in the election, that the result could not have been different if the ten days' notice had been given. This case is in harmony with all the cases on the subject. It is even stronger. All the requisites to a valid election appear—two tickets, rival candidates, different amounts to be appropriated for lighting, a hot contest participated in by all the voters and an overwhelming majority for the successful candidates.

II.

THE PROSECUTOR SHOULD BE ESTOPPED FROM QUESTIONING THE RESULT OF THIS ELECTION, HE HAVING PARTICIPATED THEREIN, VOTED AND WORKED FOR THE DEFEATED CANDIDATE AND APPROPRIATION.

It appears that there were two tickets in the field, one having the names of the successful candidates and appropriating three thousand dollars; the other having the names of three other citizens and appropriating twenty-five hundred dollars. This prosecutor was in the thick of the contest from the beginning. He was present and took part in the organization of the election board, presenting a name in nomination. He voted at the election and got others to vote. He seems to have worked all the day for the defeated candidates. Should he now be permitted to thwart the will of the majority of the voters? Shall the district be relegated to a year's darkness by the act of such a citizen and after such participation? Is this court to give its aid to a disgruntled and defeated elector to accomplish what could not be accomplished at the polls? Is there to be established the rule that a defeated participant in an election plus the court can over-rule the will of the people so unquestionably pronounced at the polls? This seems to be a favorite proceeding in this locality. In the case of *Canda v. Woodbridge*, 29 Vr., 134, the court said:

"The defendant urges that the prosecutor is estopped from setting up the illegality, because Mr. Savage, its general manager and superintendent, was one of the school trustees, voted at the meeting of June 25th to raise the money then ordered, and saw the school house being enlarged, without making any objection.

"It is, however, clear that none of this action or information can be imputed to the prosecutor."

Because it could not, the court set aside the election. If it could have been imputed it is evident from the

context of the decision that the court would have held the prosecutor estopped.

"The conduct of the relator, such as his acquiescence, delay, etc., and all other circumstances bearing upon the question, will be considered in determining whether a *quo warranto* will be awarded."

Troop on Pub. Off., sec. 782.

- 10 When the result of the election would not have been different if proper notice had been given, the election would not be set aside at the suit of persons who had participated in it.

Am. & Eng. Ency. of Law, II Ed., vol. 10, p. 626.

Ellis v. Karl, 7 Neb., 381.

State v. School Dist. No. 13, 13 Neb., 466.

- 20 Where an election for school trustees was held, but not at the place designated in the notice thereof, and the relator, who sought to avoid the election on that ground, participated in the same, by voting, and running as an opposing candidate, it was held that sound public policy would forbid him from having the election of his opponent declared void on this ground.

People v. Waite, 70 Ill., 25.

There the court said :

- 30 "Relator knew then, as well as now, what irregularities had intervened in the conduct of the election, and he ought not to be permitted to disturb the public welfare by having an election declared void, in which he participated with full knowledge of all irregularities that existed. A sound public policy forbids it."

"The fact that the relator took part in an election of trustees of a church, is a fatal objection to an application on his part to file an information in the nature of a *quo warranto* charging them with unlawful acting as such trustees."

People v. Moore, 73 Ill., 132.

- 40 *King v. Trevenen*, 2 B. & A., 339.

An information in the nature of a *quo warranto* by a private citizen to test the legality of a city organization must show, etc., (2) that he did not by his vote or otherwise concur in the proceedings of which he complains, etc.

State v. Town of Tipton, 109 Ind., 73.

III.

10

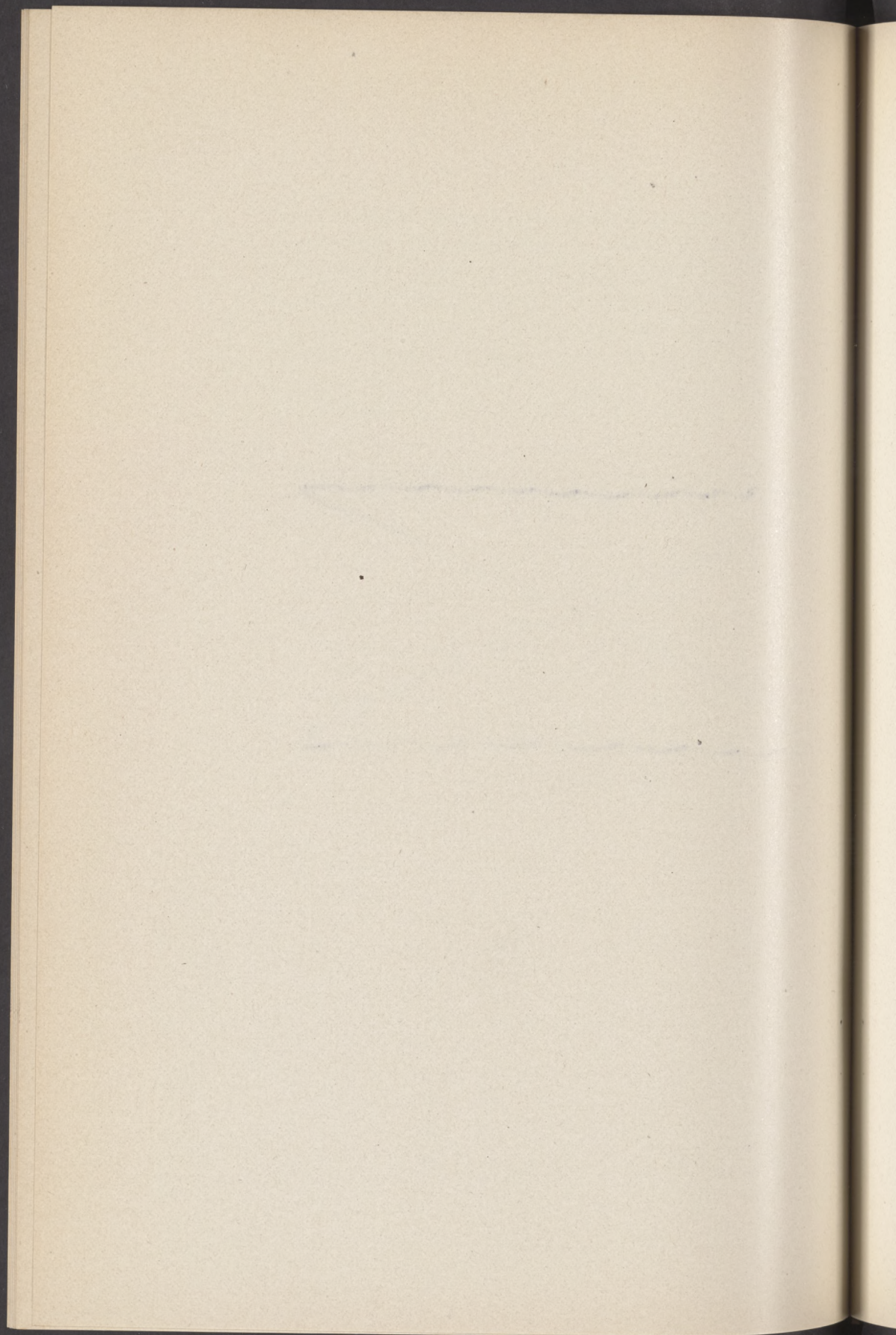
~~The court's attention is also drawn to the fact that the writ of error in this case was issued October 29, 1903, and that it did not bring up any questions relating to the collection of the tax nor any act of John H. Leeseir, the assessor. The rule to dismiss the writ of certiorari was not entered in the Supreme Court on behalf of the Street Lighting District No. 1, Township of Woodbridge, until November 4, 1903, some time after the filing of the writ of error. So far as the street lighting district is concerned the writ is certainly prematurely issued.~~

20

Respectfully submitted,

MALCOLM MACLEAR,
Attorney for Street Lighting District No. 1,
Township of Woodbridge.

30



New Jersey Court of Errors and Appeals.

DAVID A. BROWN,
Prosecutor, Plaintiff in Error,

vs.

STREET LIGHTING DISTRICT NO. 1
OF THE TOWNSHIP OF WOOD-
BRIDGE, &C., *et al.*,

Defendants in Error.

10

In Error.

BRIEF OF DEFENDANT, JOHN H. LEISEN, ASSESSOR.

20

This writ brings up a judgment dismissing a certiorari to test the validity of an election held in June, 1903, at which a sum of money was appropriated for street lighting, and the proceedings thereunder, including the certificate directing the assessor to raise the money appropriated at the election. The ground of attack is that the official notices required by the act (G. S. 3669, Sec. 450), were not posted in time.

30

The township assessor, as such, is no longer interested in the case, for the assessment has already been made, under the restrictive endorsement on the writ (p. 5 of case, ll. 15-18). At the time of the argument in the court below, the township government, of which this defendant is the representative, was seriously interested, because of the necessity for some determination as to the duty of the collector regarding the collection of the assessment. In the present status of the case, however, the only question is as to the col-

40

lection of the prosecutor's tax, which is so small as to be of little concern to the township government. The principal burden of this appeal, therefore, is born by the brief of the other defendant.

In so far as the township is concerned its points are:

FIRST. *That the election was legal.*

10 It is admitted that the official notices were not posted in time. But it is established that actual effective notice was given, for a larger number voted at the election than ever before in the history of the district. (Stipulation, p. 12, l. 34, and ff., of case for votes cast at this election and the majority for the successful ticket; and testimony of Mr. Lansley, p. 32, for votes at previous elections.) It is not attempted to be shown that if all the remaining voters in the district had participated they could have overcome the
20 immense majority by which the appropriation was carried. It is unnecessary to do more than refer to the authorities cited in the brief of the other defendant to establish that this is sufficient to validate an election.

Prosecutor attempts to distinguish this case on the ground that it was a special election to raise money, and therefore within the cases of *Morgan v. Gloucester*, 15 Vr., 138, and *Canda v. Woodbridge*, 29 Vr., 134. But in the latter case the election was not held at a
30 fixed time. It was held under an act which authorized a special meeting to be called at any time, "in the manner provided in section 86 of this act * * * and no business shall be transacted at such special meetings except such as has been set forth in the notices by which said meeting was called," and section 86 of the act required the district clerk to give ten days' notice "setting forth the time, place and object of such meeting, and the amount of money desired to be raised * * * provided * * * it shall not be lawful for such meeting to order a greater sum of money
40 to be raised by district tax than shall have been men-

tioned and designated in the notice of such meeting set up *in the manner required by law.*" And the district clerk was appointed by and under the control of the board who called the meeting. So in the Gloucester case, 15 Vr., 143, the court said "whether there should be any election on this subject was at the option of the common council."

In the case at bar, the election is an annual one, and its date is fixed by law (G. S. 3669, Sec. 450), and could *not* be held at any other time, while the lighting commissioners had absolutely no control over the township clerk. It cannot reasonably be contended that the act gives to the township clerk, by neglecting his duty, the power to prevent the holding (on the date fixed by the statute), of this election, with a consequent total failure of light for the year in the district. The two cases discussed are therefore not in point and the election stands on the same footing as the general election, where the date is fixed, but the place is left to the local clerk.

SECOND. *The prosecutor is estopped from contesting the validity of the election.*

The prosecutor admits his participation in the election (case, p. 25, ll. 27, 33), and it is also in evidence and undisputed that he participated in the organization of the meeting (case, p. 35, ll. 10-13). It is also in evidence and undisputed that the prosecutor's real objection was not to the election of the commissioners or the size of the appropriation, but to the "manner in which" the commissioners awarded the contract for the expenditure of the appropriation (case, p. 30, l. 20). This remark refers to a pending suit in the Supreme Court to set aside the contract awarded by the commissioners.)

It is sufficient to refer to the authorities cited in the brief for the other defendant to establish that this prosecutor under these circumstances is estopped from attacking the validity of the election, and it is sub-

mitted that the court below exercised a wise discretion in dismissing the writ of a prosecutor who really objects, not only to the fact that his ticket lost, but to the *manner in which* the officers elected are using the money appropriated. He should be left to his action to set aside the contract.

10 THIRD. *The decision of the court below being based on an exercise of its discretion, that discretion will not be reviewed in this court.*

20 The ground of the decision below is very tersely put by the justice who dismissed the writ (case, p. 41, ll. 18-33). It is unnecessary to cite authorities on the proposition that the allowance of a certiorari in matters of municipal assessment rests in the discretion of the court. The decision in question was put squarely on the ground of discretion. It is sufficient to cite the case of *State (Weart, pros.) v. Mayor, &c. of Jersey City*, 15 Vr., 662, to establish that this court will not review a discretionary act of the court below. The court there said that "It might, indeed, declare that, in its opinion, the Supreme Court erred in judgment, but it could not declare that any principle of law had been violated."

30 FOURTH. *Whatever be the decision, no costs should be allowed against this defendant, for he is in no way responsible for the situation.*

Respectfully submitted,

J. H. THAYER MARTIN,
Attorney for and of Counsel with John H.
Leisen, Assessor, Defendant.

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NEW JERSEY, ss.:

[SEAL.] *The State of New Jersey to our*
 Justices of our Supreme Court,
 Greeting: 10

Because in the record and proceedings, and also
in giving of the judgment in a plaint, which was in
our Supreme Court, before you, between David A.
Brown, Prosecutor, and "Street Lighting District
Number One" of the Township of Woodbridge, in
the County of Middlesex and John H. Leisen,
Township Assessor of the Township of Wood- 20
bridwe in the County of Middlesex, Defendants,
on a certiorari issued out of our said Supreme
Court, to the said defendants, as it is said mani-
fest error hath intervened to the great damage of
the said David A. Brown, as by his complaint we
are informed, we being willing that the error, if
any there should be, should in due manner be cor-
rected and full and speedy justice be done to the
parties aforesaid in this behalf, do command you
that if judgment be thereupon given, then you 30
send distinctly and openly, under your seal, the
record and proceedings and plaint aforesaid, with
all things touching and concerning the same, to
our Court of Errors and Appeals, before the
judges thereof, on the second day of November
next, and this writ, and the records and proceed-
ings aforesaid being inspected, we may cause to be
further done thereupon what of right and accord-
ing to law ought to be done.

Witness William J. Magie, our Chancellor and 40

President Judge of our said Court of Errors and Appeals, at Trenton, this sixteenth day of October, nineteen hundred and three.

S. D. DICKINSON,
Sec'y of State.

NEILSON ABEEL,
Attorney for Plaintiff in Error.

Filed Oct 29, 1903.

10

The answer of the Justices of the Supreme Court of the State of New Jersey within named, the record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE [L. S.]
C. J.

20

(Writ of certiorari to bring up outlying branches of record):

NEW JERSEY, ss.: *The State of New Jersey to our Justices of our Supreme Court, Greeting:* Whereas, a writ of error was issued out of the Court of Errors and Appeals directed to you, wherein

30

David A. Brown was Plaintiff in Error and "Street Lighting District Number One" of the Township of Woodbridge, in the County of Middlesex, and John H. Leisen, Township Assessor of the Township of Woodbridge, in the County of Middlesex were Defendants in Error, which writ was made returnable on November second, nineteen hundred and three, together with the record of our Supreme Court upon proceedings in certiorari; and whereas it has been alleged that there

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is a diminution in the record and matters returned

by you with said writ of error, which it is suggested to the Court here, are necessary to be returned in order that it may correct and redress the errors which it is alleged have happened in our Supreme Court in said certiorari proceedings; and whereas it is alleged that the diminution consists in the omission to return the following matters and things, to wit:

The writ of certiorari, the return thereto, a stipulation and admission between counsel in said proceedings, together with the reasons filed by the prosecutor of said writ in said Supreme Court. 16

Now, therefore we command you, that you send distinctly and openly under your seal, all the matters and things hereinbefore specified and mentioned, and constituting, as it is alleged, the diminution of the record and proceedings had upon certiorari in our Supreme Court, together with this writ hereto annexed, to our Court of Errors and Appeals to be held at Trenton, on the eighteenth day of November inst., that we may further cause to be done in said premises what of right ought to be done. 20

Witness, William J. Magie, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, this sixth day of November, nineteen hundred and three.

S. D. DICKINSON,
Clerk.

NEILSON ABEEL, 30
Attorney of Plaintiff in Error.

Filed Nov. 19, 1903.

I do herewith send to the Court of Errors and Appeals of the State of New Jersey the proceedings within commanded under the seal of the Supreme Court of N. J. and my hand.

WM. RIKER, JR.,

[SEAL.]

11-7-03. 40

NEW JERSEY, to wit:

*State of New Jersey, to "Street
Lighting District Number One,"
of the Township of Woodbridge,
[SEAL.] in the County of Middlesex and
State of New Jersey, a body
politic of the State of New Jer-
sey and John H. Leisen, Town-*

10 *ship Assessor of the Township of Woodbridge, in
the County of Middlesex and State of New Jersey,
Greeting:*

20 We being willing, for certain reasons, to be cer-
tified of a certain certificate, made by the commis-
sioners of "Street Lighting District Number One"
of the Township of Woodbridge, in the County of
Middlesex and State of New Jersey, certifying the
sum fixed and appropriated for the erection and
maintenance of street lights in said district for the
ensuing year by the majority of the votes of those
present and voting at an election held in said
"Street Lighting District Number One" on the
second day of June, nineteen hundred and three,
and also of a certain notice given by the Commis-
sioners of Street Lighting District Number One
of the Township of Woodbridge aforesaid, of the
sum so fixed and appropriated as aforesaid, to
John H. Leison, Township Assessor of the Town-
ship of Woodbridge, aforesaid.

30 We do command you, that the said certificate
so made by the commissioners of Street Lighting
District Number One of the Township of Wood-
bridge aforesaid, and the said notice given by the
said commissioners to said John H. Leisen, Town-
ship Assessor of the Township of Woodbridge, to-
gether with all things touching and concerning the
same, as fully and entirely as before you then re-
main, to our Justices of our Supreme Court of
Judicature, at Trenton, on the fifteenth day of July
40 instant you certify and send, together with this

writ, that therein may be done what of right and according to the laws of this State should be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton, this third day of July, nineteen hundred and three.

WILLIAM RIKER, JR.,
Clerk.

NEILSON ABEEL,
Attorney.

10

Filed July 14, 1903.

This writ is allowed; let it be sealed. This writ is not to operate as a stay upon the assessor in assessing the lamp tax alleged to have been voted, but only to prevent the collection of such taxes until the further order of the court.

J. FRANKLIN FORT,
S. C. C.

20

July 3, 1903.

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

In obedience to the command of the annexed writ, we, the Commissioners of Street Lighting District Number One, of the Township of Woodbridge, in the County of Middlesex, and State of New Jersey, do certify and send to you, a certain certificate made by the officers of a certain election held in said district on the second day of June, 1903, also a copy of a certain resolution adopted by said commissioners, at a meeting held June 5, 1903. The certificate and notice made by us of the amount appropriated at said meeting for the erection and maintenance of street lights in said district was sent to the assessor of said township, and is not now in our possession, or under our control.

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40

In witness whereof we have hereto set our hands and affixed the seal of said district, the tenth day of July, A. D. 1903.

B. J. DUNIGAN,
CHAS. S. FARRELL,
EPHRAIM CUTTER,

[SEAL.]

Commissioners.

10 At an election of the legal voters of Lighting District Number One in the Township of Woodbridge, held at the Town Committee room in said district, on Tuesday, June 2, 1903, at the hour of four o'clock in the afternoon, pursuant to notice, John Ohmenheiser was elected Judge, George V. Kelly, Inspector and Thomas H. Morris, Clerk.

The polls were kept open from four o'clock in the afternoon until seven o'clock in the evening.

Two hundred and eight ballots were cast.

20 For commissioners, Ephraim Cutter received one hundred and fifty-two votes.

Charles S. Farrell received one hundred and forty-nine votes, Bernard J. Dunigan received one hundred and forty-nine votes; and said Ephraim Cutter, Charles S. Farrell and Bernard J. Dunigan were declared elected.

30 For the amount to be raised and expended for the ensuing year for the erection and maintenance of street lights, the sum of three thousand dollars (\$3,000) received one hundred and fifty votes by ballot, out of two hundred and eight votes cast, and that sum was declared to be the amount voted and appropriated.

In testimony whereof we have hereto set our hands the second day of June, 1903.

JOHN OHMENHEISER,
Judge.

GEORGE V. KELLY,
Inspector.

THOMAS H. MORRIS,
Clerk.

Resolved, That a certificate and notice be executed and sent to the assessor of the township, that the sum of three thousand dollars was appropriated at a meeting of the legal voters of the district, held on the second day of June, 1903, at the Town Committee room, for the erection and maintenance of street lights in said district for the ensuing year.

10

We, the commissioners of Street Lighting District Number One, in the Township of Woodbridge, do certify the foregoing to be a true copy of a certain certificate filed with us by the officers of a certain election, held in said district, on the second day of June, 1903, also a certain resolution adopted by us at a meeting held by us on the fifth day of June, 1903.

Dated July 10, 1903.

B. J. DUNIGAN,
CHAS. S. FARRELL,
EPHRAIM CUTTER,
Commissioners.

20

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

I, John H. Leisen, Township Assessor of the Township of Woodbridge, in the County of Middlesex and State of New Jersey, in obedience to the command of the writ hereto annexed, to me directed, do certify and send to you the said Justices, the notices given by the commissioners of Street Lighting District Number One of the Township of Woodbridge aforesaid, to me, of the sum fixed and appropriated for the erection and maintenance of street lights in said district for the ensuing year, by the majority of the votes of those present and voting at an election held in said "Street Lighting District Number One" on the second day of June nineteen hundred and three.

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40

In witness whereof, I have hereto set my hand and seal this eleventh day of July, nineteen hundred and three.

JOHN H. LEISEN,
Township Assessor.

Dated July 11th, 1903.

10 *To John H. Leisen, Assessor of the Township of
Woodbridge, Middlesex County, N. J.:*

20 We, the commissioners of Street Lighting District Number One in said township, do hereby certify that at a meeting of the voters of said district legally held pursuant to notice, at the Township Committee room in said township, on the second day of June, 1903, at the hour of four o'clock in the afternoon, it was determined by ballot by the vote of the majority of those present and voting, that the sum of three thousand dollars be raised and expended within said district for the ensuing year, for lighting the streets of said district, and notice is hereby given to you of the said appropriation.

In witness whereof we have hereto set our hands the fifth day of June, 1903.

EPHRAIM CUTTER,
B. J. DUNIGAN,
CHAS. S. FARRELL,
30 *Commissioners.*

Woodbridge, N. J., June 10th, 1903.

*To John H. Leisen, Assessor of Woodbridge
Township, N. J.:*

40 You are hereby notified that an election, held on June 2d, 1903, in the Town Hall, Woodbridge, N. J., for the purpose of electing three commissioners and appropriating money for Street Lighting District No. 1. The legal voters so met, by vote

of a majority, elected three commissioners and appropriated three thousand dollars (\$3,000) for lighting purposes.

You are therefore directed to assess the sum of three thousand dollars on the inhabitants of Lighting District No. 1, their estates and taxable property therein, pursuant to the statute in such case made and provided.

Signed, CHARLES S. FARRELL, 10
Secretary.
 District No. 1.

20

30

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NEW JERSEY SUPREME COURT.

DAVID A. BROWN,
Prosecutor,

vs.

“STREET LIGHTING DISTRICT
NUMBER ONE” of the Town-
ship of Woodbridge, in the
County of Middlesex, and
JOHN H. LEISEN, Township
Assessor of the Township of
Woodbridge, in the County of
Middlesex,

Defendants.

*On certiorari
reasons*

The prosecutor, by Neilson Abeel, his attorney, comes and prays that the certificates, resolution and notices brought up by the said writ of certiorari may be set aside, reversed and for nothing holden for the following reasons.

- 20 1. That the notices of the election and meeting, held on the second day of June, nineteen hundred and three, in “Street Lighting District Number One” in the Township of Woodbridge, for the purpose of electing three persons, commissioners of said Street Lighting District Number One and also for the purpose of determining by ballot, by the vote of the majority of those present and voting, the sum of money to be raised and expended within such district for the ensuing year for the erection and maintenance of street lights, were not
- 30 set up in at least three of the most public places within the said district ten days before the said election.
2. That the notice of the time and place of said election was not given by the township clerk as required by law.
3. That the meeting at which the sum of three thousand dollars was purported to be appropriated for lighting the streets of the said district for
- 40 the ensuing year was not legally convened.

4. That the commissioners were not legally elected and therefore had no authority to give the certificate and notice to the township assessor.

5. That the officers of said election and meeting by reason of improper notice of same, acted unlawfully and had no authority to make their certificate.

6. That the certificate of the election officers does not show that proper notice of said election was given and that the law was complied with.

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7. That the certificate of the election officers is not certified to by the commissioners as required by law.

8. That the notices of said election were insufficient and irregular.

9. That the notice given by said commissioners to the township assessor do not show that the law was complied with.

10. That the said certificates and notices aforesaid, are in divers other respects illegal, unjust and oppressive, and should be set aside and be for nothing holden.

20

NEILSON ABEEL,

Attorney of Prosecutor.

30

40

NEW JERSEY SUPREME COURT.

DAVID A. BROWN,
Prosecutor,

vs.

10 "STREET LIGHTING DISTRICT
 NUMBER ONE" and JOHN H.
 LEISEN, Township Assessor,
Defendants.

It is hereby admitted by and between counsel in the above-stated cause that David A Brown, the prosecutor herein is a resident, property owner and taxpayer in "Street Lighting District Number One" of the Township of Woodbridge, in the County of Middlesex and State of New Jersey.

Dated July 28, 1903.

20

LINDSLEY & MacLEAR,
Attorneys of Street Lighting Dist. No. 1.

J. H. THAYER MARTIN,
Attorney of John H. Leisen, Assessor Deft.

Filed Aug. 25, 1903.

NEW JERSEY SUPREME COURT.

30 It is stipulated between Neilson Abeel, attorney for the prosecutor, and Malcolm MacLear, attorney for the defendant, that at the result of the election held by Voting District No. 1, Woodbridge Township, for the election of Electric Light Commissioners, on June 2, 1903, was as follows: Total number of votes cast two hundred and eight, of which Ephraim Cutter received one hundred and fifty two; Charles Farrell received one hundred and fifty-nine; B. J. Dunigan received one hundred and fifty-nine; appropriation of \$3000 received one hundred and fifty votes; William Edgar
 40 received fifty-nine votes; William L. Harned re-

ceived fifty-nine votes; and George H. Brown received sixty votes; appropriation of \$2,500 received sixty votes.

That there were no other candidates or tickets in the field except the aforesaid.

NEILSON ABEEL,
Attorney of Prosecutor.

MALCOLM MACLEAR,
Attorney of Defendant. 10

Filed Aug. 25, 1903.

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NEW JERSEY SUPREME COURT.

DAVID A. BROWN,
Prosecutor,
vs.

10 STREET LIGHTING DISTRICT
 NUMBER ONE and JOHN H.
 LEISEN, Township Assessor
 of the Township of Wood-
 bridge, in the County of Mid-
 dlesex,
Defendants.

20 Examination of witnesses, etc., in the
 above-stated cause, pursuant to notice,
 before the subscriber, one of the Supreme
 Court Commissioners of this State, at the
 hour of 11 o'clock in the forenoon of
 Friday, the 24th day of July, 1903, at my
 office in the Prudential Building, Newark,
 N. J., in the presence of Neilson Abeel
 Esq., counsel for the prosecutor, Messrs.
 Lindsley & McLear, for the District Num-
 ber One of the Township of Woodbridge,
 in the County of Middlesex; Messrs. Guild
 & Martin for John H. Leisen, Township
 Assessor.

30 By agreement and consent of counsel
 the said depositions are taken in short-
 hand and the signatures of the witnesses
 thereto waived.

M. IRVING DEMAREST, called and sworn for
 the prosecutor.

Direct Examination by Mr. Abeel:

Q. What is your full name? A. I sign my name
 M. Irving Demarest. My full name is Matthias
 Irving Demarest.

40 Q. Where do you reside? A. Sea Warren.

Q. New Jersey? A. Yes, sir.

Q. You are the township clerk of the Township Committee of the Township of Woodbridge? A. Yes, sir.

Q. In the County of Middlesex and the State of New Jersey? A. Yes, sir.

Q. And that township is divided into street lighting districts, is it not? A. Yes, sir.

Q. Into how many street lighting districts is it divided? A. Two. 10

Q. What is the name of those street lighting districts? A. They are known as No. 1 and No. 2.

Q. Street Lighting District Number One, and Street Lighting District Number Two? A. Yes, sir.

Q. Have you the minutes of the Township Committee with you? A. Yes, sir.

Q. Will you turn to those minutes and tell me at what date the Township Committee designated and defined those street lighting districts? A. I cannot, without looking it up. It was before my time. 20

Q. Well, you have got a record there, haven't you? A. I suppose so. I presume it is in this book. They were changed a few years ago. This book runs back to 1899, I think the change was made in 1900.

It is admitted by the attorneys for the defendants that the Street Lighting District Number One, was defined and the limits and boundaries of the same fixed at their present location on May 9, 1901. 30

Q. There was an election held on the first Tuesday in June last, in the Street Lighting District No. One of the Township of Woodbridge, for the purpose of electing three persons as commissioners of said street lighting district, and also for the purpose of determining by ballot by the vote of a 40

majority of those present, the sum of money to be raised and expended within said district for the ensuing year for the erection and maintenance of said street lights? A. Yes, sir.

Q. Was such election called for that purpose by the Township Committee? A. Yes, sir.

Q. Have you the minutes of the Township Committee in relation to the calling of the election. A. Yes, sir.

Q. Will you please refer to the minutes of the Township Committee and read what action was taken by the Township Committee in regard to the said election? A. On page 496 of the minutes I find, under date of May 29th, 1903, this resolution:

“Resolved, That the Township Hall be designated as the place for holding an election on June 2d, 1903, for Lighting District No. 1.”

“Resolved, That the poles be open for said election at four o’clock in the afternoon, and remain open until seven o’clock in the evening.”

Q. May 29th, 1903, was the day on which that action was taken? A. Yes, sir.

By Mr. Lindsley: I object to this testimony as irrelevant, and I move that it be stricken out.

Q. As the township clerk, did you give notice of this election? A. I did.

Q. Will you please state in what manner you gave notice of the election? A. What do you mean—in what manner?

Q. Well, how did you give notice of the election? A. I put up three notices in the district.

Q. In Street Lighting District No. 1? A. Yes, sir.

Q. And only three notices? A. Yes, sir.

Q. Where did you set those notices up in that district? A. One in Judge Wylie’s office; one in Mr. Harnerd’s grocery store, and one in the post office.

Q. Now, upon what date did you set up the notices for this election in Mr. Harnerd's grocery store? A. On May 30th.

Q. 1903? A. Yes, sir.

Q. Can you state at what time of the day you set them up? A. Between nine and ten o'clock in the morning.

Q. At what time did you set up the notice in the office of Judge Wylie? A. At about the same time.

Q. And on the same day? A. Yes, sir.

Q. Now, did you yourself set up the notice of election in Judge Wylie's office? A. As the door was shut I put the notice under the door. 10

Q. So that you don't know actually when that notice was set up in Judge Wylie's office? A. I know it was up the next morning when I went into his office to see whether he had put it up or not.

Q. That was on the first of June? A. Yes, sir.

Q. Now, Mr. Demarest, I show you a paper and ask you what it is? A. That is the notice of election of Lighting District No. 1. 20

Q. That notice in your handwriting? A. Yes, sir.

Q. Was it signed by you? A. Yes, sir.

Q. And is that one of the notices which was actually set up? A. It is.

Q. For that election? A. Yes.

Q. And were the other two notices of election exactly similar to that particular notice? A. They were supposed to be unless I made an error in copying them. 30

By Prosecutor's Counsel: I offer this notice in evidence, and ask that it be marked Exhibit No. 1 for Prosecutor.

The same was so marked.

Q. I show you another paper and ask you what that is. A. The same thing. 40

Q. You mean that is another notice of the election which you set up? A. Yes, sir.

Q. And, as far as you know, the third notice of election that was set up was similar to that? A. Yes, sir.

10 By Prosecutor's Counsel: I offer this notice in evidence and ask that it be marked Exhibit No. 2 for Prosecutor.
The same was so marked.

Q. Do you know of your own knowledge who set up the notice in Judge Wylie's office? A. No, I don't.

Q. Now, that is all you had to do with the election in your official capacity, is it not? A. I think so.

20 Q. Do you recollect at what time you put the notice under Judge Wylie's office door? A. At about the same time in the morning, because I went right from one place to the other with a horse and wagon.

Q. You mean on the morning of May 30th? A. Yes, sir.

Q. 1903? A. Yes, sir.

Q. That was Decoration day, wasn't it? A. Yes, sir.

30 Q. And the next day was Sunday, wasn't it? A. Yes, sir.

Q. Was Judge Wylie's office open on Sunday? A. It was.

Q. At what time did you go to Judge Wylie's office on Sunday? A. I think it was somewhere between nine and ten o'clock on Sunday morning.

Q. Who was there when you got there? A. Judge Wylie.

Q. And you then saw the notice set up on that Sunday morning? A. Yes, sir, I did.

40 Q. That is all. You may cross-examine.

Cross-Examination by Mr. Martin:

Q. In answer to a question put to you by Mr. Abeel, you stated that the election was called by the Township Committee. Did they call the meeting in any other way than by designating a place for the holding of an election as read by you from your minutes? A. I was instructed by the Township Committee to call the meeting.

Q. Yes; but was there any other official action taken than is shown by the resolution which you read from the minutes? A. No, sir. 10

Q. Was the place fixed for the meeting in that resolution, the same place as was fixed for the previous elections? A. Yes, sir.

Q. What was the nature of the localities where you posted these notices? A. I considered them the most public places in the town.

Q. Is there any other post office in Lighting District No. 1 than the one in which you placed your notice? A. No, sir. 20

Q. What kind of a store does Mr. Harnerd keep? A. Grocery store.

Q. Is his business a large or small one? A. It is a large one; yes, sir.

Q. Is he connected in any way with the Carteret Lighting Company?

Prosecutor's Counsel objects to this testimony as immaterial.

A. Not to my knowledge. 30

Q. What is Judge Wylie's office? A. Justice of the peace.

Q. Is Judge Wylie connected with the Carteret Company? A. Not to my knowledge.

By Prosecutor's Counsel: I object to this kind of testimony as immaterial and irrelevant, and also because this witness cannot speak of his own personal knowledge in regard to the matter inquired of. 40

Q. Do many people enter Judge Wylie's office?

A. Yes, sir, certainly.

Q. These notices should have been posted by you on or before the 23 day of May, 1903? Why did you fail to post them in time? A. I was in St. Barnabas Hospital.

Q. For what reason? A. For appendicitis.

Q. When did you go to the hospital? A. May 12th.

Q. Were you seriously ill at the hospital? A. Yes, sir.

Q. How ill were you? A. I had an operation performed by Dr. Ill.

Q. When was the first day you were able to appear again in Street Lighting District No. 1 after you went to the hospital? A. May 29th.

Q. 1903? A. 1903.

20 *Re-Direct:*

Q. When were you taken sick? A. I was taken sick before May 12th, but I went to the hospital on that day.

Q. Mr. Demarest, if you had been well, would you have put up the notices for the Township Committee if they had not designated the place for the holding of election? A. I suppose I would.

Q. Do you mean to say you would have put up the notices without knowing at what place the election was to have been held? A. It has been held at the same place for years.

Q. That's the reason why you would have put them up if you had been well notwithstanding that the Township Committee did not designate the place? A. If I had been well I would undoubtedly have asked the Township Committee about it.

Q. Did you consider that because you were sick, for the time being, your duties ceased until such time as you got well? A. I wasn't thinking very much about it.

40

Q. But if the Township Committee had designated a place for holding an election in time to have given proper notice of the election, don't you think you could have gotten somebody else to act as your agent in the putting up of those notices?

A. If it had been my duty to, I suppose I would.

Q. Are you a stockholder in the Carteret Electric Light & Power Company? A. Yes, sir.

Q. Are these notices that have been offered in evidence dated? A. Yes, sir. 10

Q. And what is the date on them? A. May 23, 1903.

Q. Why did you date the notices May 23, 1903? A. Because I was instructed to by the Township Attorney.

Q. That is all.

Cross-Examination by Mr. Lindsley:

Q. Did the Township Committee in 1902 fix a place and time for the holding of this election? A. I would have to look back on my minutes to see. 20

Q. Were you the township clerk of that year? A. Yes, sir. Would you like to look back and see?

Q. I thought perhaps you would recollect it, and could speak of your own knowledge? A. No, sir, I don't know much about that.

Q. Well, go on, look it up then? A. (After referring to the minutes): Yes, I was instructed by the Township committee. 30

Q. That was not an answer to the question I asked you. My question was, did the Township Committee, in the year 1902, fix a day and a place for the election? A. I don't know as they fixed a day; I understood a day always was fixed.

Q. Yes, that is what I am getting at. You posted the notices in 1902, ten days prior to the election by instruction of the Township Committee, did you? A. Yes, sir. 40

Q. In 1903, if you had been well, would you have posted the notices ten days prior to the election without any date and place having been fixed? A. I would.

Q. On May 22d or 23d of this year, ten days prior to the date of election, could you have posted these notices? A. No, sir.

Q. You could not? A. No, sir, I could not.

10 Q. Was it on account of any improper motive on your part that you did not post these notices until the 30th of May?

By Prosecutor's Counsel: This is objected to as immaterial.

A. No, sir.

Q. Do you know how many votes were polled at the election this year? A. Yes, sir.

Q. How many?

20

By Prosecutor's Counsel: That is also objected to as immaterial.

A. 203.

Q. Do you know whether Judge Wylie is connected in any way with the Central Lighting Company? A. I don't know, but he is supposed to be their headquarters in Woodbridge.

30 By Prosecutor's Counsel: I object to this evidence, and ask that it be stricken out.

Q. My question to you was do you know? A. It is their headquarter's office in Woodbridge.

By Prosecutor's Counsel: I ask that that be stricken out also.

40 Q. Now, are there any signs in the office of Judge Wylie that would lead you to believe that he was connected with that company? A. There is a sign on the office.

Q. How does that sign read? A. Central Lighting Company.

Q. Do you know Mr. Demarest, that these notices now before you, Exhibits 1 and 2 for the Prosecutor, are the notices that you posted? A. Yes, sir.

Q. Do you know where you posted this particular notice (handing witness one of them)? A. No, sir, except from something that is marked on the notice in pencil. Otherwise I do not know. 10

Q. Do you know how long they remained posted in those particular places? A. I do not.

Q. Do you know how they got here to-day? A. No, sir.

Q. Do you know who took them down from the places at which they were posted? A. No, sir.

Q. That is all.

Re-Direct:

Q. Do you mean to say that the Central Electric Company's name is on Judge Wylie's office? A. It is "C. E. Co." 20

Q. And that you judge stands for Central Electric Company? A. It stands for Central Electric Company.

Q. Was there any reason why you selected Judge Wylie's office—was it on account of its connection with the Central Lighting Company? A. Yes, sir.

Q. You seem to be adverse to the Central Electric Company, don't you? A. No, sir, no, sir; but on account of my being a stockholder in the Carteret Company, I did not want them to think that I did not want them to know of the election. 30

Q. And that is the reason you shoved it under the door of the Judge's office? A. Yes, sir.

Further Cross by Mr. Martin:

Q. Mr. Abeel's last question to you was in regard to why you shoved the notice of election un- 40

der Judge Wylie's office door. Did you mean by your answer to that question to say that you shoved it under the door so that it would not be seen so vividly, or do you mean by your answer to say that you shoved it under the door in order to get the notice to the attention of the Central Electric Company? A. I certainly did it on that account. I could not get into the office.

10 Q. You say you certainly did it on that account? What account? A. Because I could not get into the office. At that time I was still under the doctor's care, or I would have gone back again that day to see that the notice was up.

20 By Mr. Lindsley: I think you answered that before. You said you pushed it under the door because you could not get into the office; that you had intended to tack it up in the building but found the door closed.

By the Witness : Yes, sir.

Further Direct.

Q. Did anyone act in your place as town clerk when you were sick? A. They appointed a clerk *pro tem* of each meeting.

30 Q. During your absence? A. Yes, sir.

By Mr. Lindsley:

Q. How do you know that? A. By my minute book; he signed the minutes.

By Mr. Martin:

40 Q. Do you know whether the clerk *pro tem* had any other duties than to keep the minutes? A. I do not.

Q. Was the clerk *pro tem* ever any other person than a Town Committee man? A. No, sir.

Sworn to before me (the signature being waived) this 24th day of July, A. D., 1903, at Newark, N. J.

W. J. KNIGHT,
S. C. C. 10

PROSECUTOR RESTS.

DAVID A. BROWN, called and sworn on behalf of District No. 1 of the Township of Woodbridge, in the County of Middlesex.

Direct Examination by Mr. Lindsley:

Q. Where do you live? A. Woodbridge, New Jersey. 20

Q. In what street lighting district do you live? A. No. 1.

Q. Did you attend the election of June 3d of the Street Lighting District No. 1 for an appropriation, etc., for street lighting? A. I did.

Q. What made you go to that election? A. Why, late in the afternoon, some friend of mine told me that there was an election in No. 1 Lighting District. I did not know anything about it and hadn't thought much about it, and I went around and voted. 30

Q. You did vote? A. Yes, sir, that is what I said.

Q. Tell me how many votes were cast at that election? A. I don't know.

Q. Didn't you vote at that election and get other people to go there and vote? A. I did not any more than when I went around to vote, I took two tickets back with me to the Club House where I 40

was busy that afternoon, and gave them to friends and said to them that there was an election going on; they didn't know anything about it until I gave them the tickets; those were the only two tickets I gave out—the two tickets I took away with me when I went in to vote. These friends of mine didn't know anything about the election until I told them.

10 Q. Was the ticket you voted for carried? A. It was not.

Q. Did you vote last year at the election in the same district? A. I could not tell you; I don't think I did but I am not sure.

Q. Do you know how many votes were cast last year? A. No, I do not.

Q. Do you say that you did not know of this election until late in the afternoon of the day on which it was held? A. I said I hadn't thought anything about it.

20 Q. Well, did you or not know of it before that time? A. I think that I saw one of the notices up in Mr. Wylie's office on the Monday before the election.

By Mr. Abeel:

30 Q. What date was that—June first? A. That was the day before the election, and that was the first time that anyone had a chance to see the notice in Mr. Wylie's office, as it was put in on Saturday--sometime during that day—which was a holiday, and the next day was Sunday, therefore it only gave us one day's notice.

Further Direct:

40 Q. Do you not know that there is an election held every year for that purpose? A. I was not aware that there was an election held every year for that purpose unless it was called by the Township Committee.

Q. Do you not know that an election every year has been called by the Township Committee? A. I have generally seen the notices up a few days before election—notice by the Township Committee calling the election.

Q. Didn't you know a week previously that there was to be an election held at that time? A. No, sir, I did not; I knew there was to be an election held sometime but I did not know when,—that is, there would be if they intended to light the town, and I did not know whether the Township Committee intended to light the town again or not. 10

Q. How many notices did you see up? A. That one notice in Judge Wylie's office on the Monday afternoon before election.

Q. Where did you get these notices from, Exhibits 1 and 2 on behalf of the prosecutor in this case? A. I did not get them at all.

Q. That is at all. 20

NO CROSS-EXAMINATION.

Sworn to before me (the signature being waived) this 24th day of July, A. D., 1903, at Newark, N. J.

W. J. KNIGHT,
S. C. C.

30

M. IRVING DEMAREST recalled for Direct Examination on the part of Lighting District No. 1.

Direct Examination by Mr. Lindsley:

Q. You stated in your former testimony that there were 203 votes polled at this election; is that true? A. No, sir; I find upon looking it up that there were 208 votes polled instead of 203.

Q. That is all. 40

NOT CROSS-EXAMINED.

Sworn to before me (the signature
being waived) the 24th day of
July, A. D., 1903, at Newark,
N. J.

W. J. KNIGHT,
S. C. C.

16

The further examination of witnesses,
etc., in this case, stands adjourned until
the hour of 11 o'clock in the forenoon of
Tuesday the 28th day of July, 1903, at
my office in Newark, N. J.

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NEW JERSEY SUPREME COURT.

DAVID A. BROWN,

*Prosecutor,**vs.*

STREET LIGHTING DISTRICT No.

1 of the Township of Wood-
bridge, in the County of Mid-
dlesex, and JOHN H. LEISEN,
Township assessor of Town-
ship of Woodbridge, County
of Middlesex,*Defendants.*

10

The taking of depositions, etc., in the above matter pursuant to adjournment before the subscriber, one of the Supreme Court Commissioners of this State, at the Prudential Building, Newark, N. J., at the hour of two o'clock in the afternoon, on Wednesday, the 5th day of August, 1903, in the presence of Neilson Abeel, Esq., Counsel for prosecutor; Messrs. Lindsley and MacLear, Counsel for Street Lighting District No. 1, and J. H. Thayer Martin, counsel for John H. Leisen, As-

20

essor.

Said depositions being taken by consent of counsel, in shorthand, and the signatures of the witnesses to their depositions waived.

30

JOHN Q. QUINN sworn.

Direct Examination by Mr. McLear:

Q. Mr. Quinn, where do you reside? A. Carteret, New Jersey.

Q. How long have you resided there? A. Since May, 1889.

Q. Are you acquainted with David A. Brown?
A. Yes, sir.

40

Q. The prosecutor in this suit? A. Yes, sir; I am.

Q. Have you had any conversation with him in reference to this suit? A. I did.

Q. Where and when? A. On Main street, in Woodbridge.

Q. And what was that conversation? A. I met
10 Mr. Brown.

Q. When? A. I am not positive of the date but it is sometime after June 5th. He informed me that on that date he had commenced a suit, I don't know what day of the month but it was in the evening. I met Mr. Brown and he said, "I have commenced suit against you people to-day, and I said, "What for?" He said to find out whether the election held was legal, and to find out whether the commissioners have a right to award the contract in the manner in which they did. He said "We
20 are going to make you show your books."

Q. Are you a member of the Lighting Commission? A. No, sir.

Q. Who do you suppose or know he meant by "you people"? A. I am president of the Carteret Lighting Company, and I suppose he referred to the Light Company, and he said "These fellows are all stockholders in the Light Company and we are going to see whether anybody and everybody can put up poles in this district or not every year, see whether they have a right or not, and if so, Male Valentine and I are going to start a light company and go for the contract next year." I
30 said, "Dave, I am sorry you brought this suit. I think we are entitled to some consideration as we made a first bid lower than the other companies and you were paying but 19 when you commenced business; we had a franchise here in the township but the other company came into the field and we were just getting ready to do business when they came in and took this contract and took it at a
40 higher figure than we bid." I said, "We did not

make any complaint, just went quietly along. You remember also at that time that the other people refused to do any commercial lighting in your village and did not do anything with the exception of the Methodist church until we came on the field. I said we built our line as far as the church—(interrupted)

Q. What did he say to you? A. I know all that; that is true, but your light company is a political machine. He said, "You fellows have opposed me right along, and I am going to oppose you, I am going to get square; I won't lay down." 10

Q. He said, "These fellows are all stockholders; who did he mean by "these fellows"? A. He only mentioned the two names; he said the town clerk had stock in the company which he got right after election, and Drummond had stock in the company which he got right before election.

Q. Were they members of the Lighting Commission? A. No, sir. 20

By Mr. Abeel: I move that all the testimony be stricken out as irrelevant, immaterial and incompetent on the question at issue.

I have no examination.

WILLIAM J. LANSLEY sworn.

30

Direct Examination by Mr. MacLear:

Q. Where do you live? A. Woodbridge.

Q. How long have you lived there? A. Five Years.

Q. Do you know David A. Brown, the prosecutor in this suit? A. Very well.

Q. Were you present at the election of the Street Lighting Commissioners for District No. 1 of the Township of Woodbridge for the year 1903? A. I was. 40

Q. Were you there at the time of the organization of the Board of Elections? A. I was.

Q. Do you know whether or not Mr. Brown was present at that time? A. I am not sure, I think he was.

Q. Do you know how many people were present at that time? A. 15 to 20.

Q. Do you know of your personal knowledge what the vote in that district was for the year 1902? A. I do.

Q. How did you acquire that information? A. I was there when the votes were counted.

Q. Can you tell us what it was? A. I can.

Q. What was it? A. The winning ticket? Do you want the total of the footing?

Q. Total of the footing, that is all? A. The two highest men received 143 votes.

Q. What is the total? A. 143. The highest man on one ticket received 111, and on the other 32.

Q. Now, can you tell us how many votes were cast? A. I can tell you the vote for each person; I don't know how many defective ballots there were, probably not over three or four.

Q. Can you tell us the vote for the year 1901? A. Yes, sir.

Q. Did you acquire your knowledge in the same way? A. Yes, sir, I was there when the votes were counted. The highest man on one ticket received—there was one man ran on both tickets; he received 181 votes. The highest man where there was a contest, one received 117 and the other 74.

Q. Now, Mr. Lansley, what is your profession? A. Civil engineer and electrical engineer.

Q. Can you tell us how large this street lighting district is, Street Lighting District No. 1, approximately? A. It is less than a quarter of the entire township.

Q. And in square feet or square miles, about

how large is it? A. About a mile and a half one way by two and one-quarter the other.

Q. What? A. About a mile and a half across and two and one-quarter long.

Q. And what does that include? A. Lighting District No. 1 of the Township of Woodbridge.

Q. Does it include anything more than the village of Woodbridge? A. No, sir.

Q. Do you know the population of the village of Woodbridge? A. No, sir, I do not. 10

Q. Can you tell me whether or not since this electric street lighting district, being known as Street Lighting District No. 1, whether all the elections have been held at the same place where this election was held? A. They have.

By Mr. Abeel: I move that all the testimony of this witness be stricken out on the ground that it is incompetent, irrelevant and immaterial. 20

I have no cross-examination.

THOMAS H. MORRIS sworn.

Direct Examination by Mr. MacLear:

Q. Where do you reside? A. Woodbridge.

Q. How long have you resided there? A. Fifty 30
years or more.

Q. Were you present at the organization of the election board for the election of Street Lighting District No. 1—for the election of Street Lighting District No 1 for the year 1903? A. Yes, sir; I was.

Q. How many people were there at the time? A. I should say fifteen—from fifteen to twenty.

Q. And do you know whether or not Mr. David A. Brown, the prosecutor, was there? A. My impression is that he was. 40

Q. Do you know whether he was or not? A. Yes, sir, he was there.

Q. Do you know whether he took any part in the organization of the board? A. I am not positive as to that.

Q. Do you know how long he remained there? A. Three quarters of an hour first and last—he was in and out of course.

16 Q. Did you hear him make any remarks about the election? A. I did.

Q. What were they? A. That the other side were working, and that we must get out and work, meaning the Central Electric Lighting Company.

Q. And after he had made that remark what did he do? A. He went out.

Q. Did he come back? A. He did.

Q. Did you see him at any work around the poles after that? A. Do you mean inside or outside?

20 Q. Well, what we know as working around the poles there, inside or outside? A. Outside.

Q. Outside of the building you mean? A. Yes, sir.

Q. Did you see him doing any work outside? A. Yes.

Q. At the time of the organization or any time after that, was there any objection to the election? A. There was not.

30 By Mr. Abeel: I move that the testimony be stricken out as incompetent, irrelevant and immaterial.

CLARENCE M. LIDDLE sworn.

Direct examination by Mr. MacLear:

Q. Where do you reside? A. Woodbridge.

Q. And how long have you resided there? A. All my life.

Q. How long is that? A. Thirty-one years.

40 Q. Were you present in the morning or after-

noon, at the time of the organization of the election board for Street Lighting District Number 1, for the year 1903? A. I was.

Q. Do you know how many people were there at the time? A. I imagine between 15 and 20.

Q. Do you know whether David A Brown was there? A. Yes, sir.

Q. Do you know whether he took any part in the organization of the election board? A. Yes, sir; 10
he made one nomination—I would not say who it was, but he made one nomination; I don't remember who it was.

By Mr. Abeel: I move that this testimony be stricken out for the reasons already given.

Adjourned until Friday, August 7,
1903, at 2 P. M. 20

EXHIBIT No. 1.

NOTICE OF ELECTION.

10 Notice is hereby given that on Tuesday, the second day of June, 1903, an election will be held for Lighting District No. 1, at the Township Hall, for the purpose of electing three commissioners for the ensuing year and to determine by ballot the sum of money to be raised and expended within said district for the ensuing year for the erection and maintenance of said lights.

The polls will be opened at 4 o'clock in the afternoon and will remain open until 7 o'clock in the evening.

Dated May 23d, 1903.

M. IRVING DEMAREST,
Township Clerk.

20 Put up May 30, 1903 in Wm. Harneid's grocery store, at Woodbridge.

EXHIBIT No. 2.

NOTICE OF ELECTION.

30 Notice is hereby given that on Tuesday, the second day of June, 1903, an election will be held for Lighting District No. 1, at the Township Hall, for the purpose of electing three commissioners for the ensuing year and to determine by ballot the sum of money to be raised and expended within said district for the ensuing year for the erection and maintenance of said lights.

The polls will be opened at 4 o'clock in the afternoon and will remain open until 7 o'clock in the evening.

Dated May 23, 1903.

M. IRVING DEMAREST,
Township Clerk.

40 Pasted in Judge R. J. Wylie's office, Woodbridge, May 30, 1903.

NEW JERSEY SUPREME COURT.

DAVID A. BROWN,	}	<i>On Certiorari</i>	<i>Rule</i>	<i>Dismissing Writ.</i>	10
<i>Prosecutor,</i>					
<i>vs.</i>					
STREET LIGHTING DISTRICT NO.					
1, et al.,					
<i>Defendants.</i>					

The Court having inspected the return to the writ in the above-entitled cause and the assessment of taxes removed by said writ, and having examined the testimony in said cause and considered the arguments of counsel and the reasons filed by the prosecutor,

It is ordered, that said assessment of taxes be affirmed and that the writ of certiorari be dismissed with costs. 20

Entered October 9, 1903.

On motion of
J. H. THAYER MARTIN,
Attorney of John H. Leisen, Assessor,
Defendant.

NEW JERSEY SUPREME COURT.

	DAVID A. BROWN,	} <i>On Certiorari</i> <i>Rule to Dismiss.</i>
	<i>Prosecutor,</i>	
	<i>vs.</i>	
10	STREET LIGHTING DISTRICT No. 1, Township of Woodbridge, impleaded, etc.	
	<i>Defendants.</i>	

The Court having inspected the return to the writ in the above-stated cause and the testimony taken in said cause and considered the arguments of counsel and the reasons filed by the prosecutor,

20 It is ordered that said writ of certiorari be dismissed with costs.

Entered Nov. 4, 1903

On motion of
MALCOLM MACLEAR,

Att'y for Street Lighting Dist. No. 1, Township of Woodbridge.

Filed Nov. 4, 1903.

NEW JERSEY SUPREME COURT.

 DAVID A. BROWN,

Prosecutor,
vs.

 STREET LIGHTING DISTRICT
 NUMBER ONE of the Town-
 ship of Woodbridge, et als.

10

Submitted September 12th, 1903. Decided Oc-
 tober ,1903.

On certiorari to review the proceedings
 of Street Lighting District meeting.

SYLLABUS.

1. The Legislature may confer upon a single
 Justice of the Supreme Court, power to hear and
 determine after return and notice, any proceed-
 ing in certiorari and direct that the order and de-
 termination of such justice therein shall be entered
 as the judgment of the Supreme Court. 20

2. Where the prosecutor was present at and par-
 ticipated in, an election, in a street lighting dis-
 trict and without objection or protest, voted upon
 the question of the sum to be raised for street light-
 ing purposes, in the district for the ensuing year,
 he will be held to be *estopped* from questioning the
 regularity of the election, because of an allegation,
 that the requisite ten days' notice thereof, was not
 given by the township clerk. 30

Heard before Justice Fort, upon notice under
 the fifth section of an act relative to the writ of
 certiorari.

(Revision of 1903.)

NEILSON ABEEL for the Prosecutor.

MALCOLM MACLEAR and

J. H. THAYER MARTIN for the Defendants. 40

FORT, J.

In this case the Court has reached the following conclusions:

First, The Legislature may confer upon a single Justice of the Supreme Court, the power to hear and determine proceedings in certiorari and authorize the entry of his order and direction therein as the judgment of the Supreme Court.

10

Mott's Practice Act, p. 135, Sec. 5.

By the act relative to Supreme and Circuit Courts, the Supreme Court may be held by the Chief Justice, or any one of the Justices (P. L. 1900, p. 250, Sec. 7).

The same provision is found in the Revision of 1874, and was carried into that Revision from existing statutes. Gen. Stat. Vol. 1, p. 1022, Sec. 19.

20

Wood vs. Fithean, 4 Zab. 838.

Second: Certiorari is the proper remedy to review the legality of the passage of a resolution fixing the sum of money to be raised and expended in the lighting district for the ensuing year, under the authority conferred by the Street Lighting District Act.

Gen. St., Vol. 3, p. 3669, Sec. 450.

30

Third: Under the proof taken in this case, it appears that less than ten days' notice of the election held for the purpose of fixing said sum, as required by the statute, was given by the Township Clerk, and for this reason the prosecutor asks that the action of the meeting in voting the sum directed to be expended in the district for the ensuing year be set aside.

The statute fixes the first Tuesday in June of each year for the legal voters of each district to meet, after the district is set up, to elect the light-

40

ing commissioners and to determine by ballot by a majority of those present, the sum to be raised and expended for street lighting. The polls are required to be open at o'clock in the afternoon and to close at seven o'clock at night.

The township clerk is required to give ten days' notice of the time and place of the meeting.

Under the proof in this case, it is clear that the requisite notices were not set up for the required 10 ten days.

I think this would be fatal under the decisions in this State if no other fact appeared in the case.

Canda Manufacturing Co. vs. Wood-
bridge, 29 Vr. 134.

Davis vs. Rapp, 14 Vr. 594.

But it appears in this case that the prosecutor attended and participated in and voted at, the election, without protest or objection. There was a 20 very full vote at the election; a greater number than usual—208 voted. If the resolution be set aside there would be no method for a reconsideration of the action of the lighting district. The prosecutor comes before the Court upon the merest technicality, without showing that a single person who wished to vote did not do so, or that any voter in the district did not in fact have notice of the election. He admits he did and that he voted. I think he should be held to be estopped from rais- 30 ing the question of the irregularity of the notice.

The writ of certiorari will therefore be dismissed with costs.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

DAVID A. BROWN,
Plaintiff in Error,
vs.

10 "STREET LIGHTING DISTRICT
NUMBER ONE" of the Town-
ship of Woodbridge in the
County of Middlesex, and
JOHN R. LEISEN, Township
Assessor of the Township of
Woodbridge, in the County
of Middlesex.

Defendants in Error.

*Assignment
of Errors.*

And now, at this day, the plaintiff in error as-
signs the following causes of error:

20 First: Because the Supreme Court decided that
because the plaintiff in error attended, participated
in and voted at the election in question he was es-
topped from raising the question of the irregu-
larity of the notice of said election, whereas the
said Court should have decided that as the statu-
tory notice of the election was not given the appro-
priation voted at said election should be set aside,
notwithstanding the fact that the plaintiff in error
voted at said election.

Dated November 30, 1903.

30 NEILSON ABEEL,
Attorney of Plaintiff in Error.

Filed Dec. 1, 1903.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

DAVID A. BROWN,
Plaintiff in Error,
vs.

STREET LIGHTING DISTRICT
NUMBER ONE, of the Town-
ship of Woodbridge, and
JOHN H. LEISEN, Township
Assessor, Impleaded,
Defendants in Error.

In Error
Joinder in
Error.

10

And whereupon afterwards, to wit, on the thirteenth day of December, nineteen hundred and three, the said Street Lighting District Number One of the Township of Woodbridge, in the County of Middlesex, by Malcolm MacLear, its attorney, came into court and says, that there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid, and he prays that the Court here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid in manner aforesaid given him, in all things be affirmed, etc. 20

MALCOLM MACLEAR,
Attorney for and of Counsel with the Defendant,
the Street Lighting District Number One of the
Township of Woodbridge, in the County of Middlesex. 30

Filed Dec. 29, 1903.

