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N. J. SUPREME COURT.

BENJAMIN B. CLARK AND THOM-
AS THOMPSON,

Pros.,

On

vs.

Certiorari.

J. BLANCHARD EDGAR ET AL.,

Defendants.

10

WRIT OF CERTIORARI.

Returnable September 8, 1911.

EPHRAIM CUTTER, *Attorney,*
21 Green St., Woodbridge, N. J.

Allocatur Aug. 19, 1911, but this writ shall not
operate as a stay. It shall be argued at the Nov. 20
Term, 1911, of the Supreme Court.

W. P. VOORHEES,
J. S. C.

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Filed July 11, 1911.

MIDDLESEX CIRCUIT COURT.

10 IN THE MATTER OF THE DIVISION
OF THE TOWNSHIP OF WOOD-
BRIDGE, IN THE COUNTY OF
MIDDLESEX, INTO WARDS. } *Order
Appointing
Commissioners.*

20 This matter being opened by J. H. Thayer Martin, of counsel with the petitioners, and a petition having been presented to me requesting the appointment of Commissioners to make division of the Township of Woodbridge, in the County of Middlesex, into Wards, and it appearing from the certificate of the Secretary of State of the State of New Jersey and the affidavits annexed to said petition that said Township has a population of more than eight thousand inhabitants, as shown by the official United States census, and that said petition was signed by at least fifty of the legal voters of said Township.

30 Now, Therefore, pursuant to the provisions of Chapter 158 of the Laws of 1906, being an Act of the Legislature of the State of New Jersey, entitled "A Supplement to an act entitled 'An Act concerning Townships (Revision of 1899),' " approved April 30, 1906, I do, on this Sixth day of July, 1911, appoint Howard Valentine, James E. Berry and John C. Fowler, who are Freeholders of the said County of Middlesex, as Commissioners to make division of said Township into wards pursuant to said Act.

J. J. BERGEN,

*Judge of the Circuit Court of the County of
Middlesex.*

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MIDDLESEX CIRCUIT COURT.

IN THE MATTER OF THE DIVISION OF THE TOWNSHIP OF WOOD- BRIDGE, IN THE COUNTY OF MIDDLESEX, INTO WARDS.	}	<i>Petition.</i>
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To the Honorable, the Judge of the Circuit Court 10
of the County of Middlesex:

We, the undersigned petitioners, being at least fifty of the legal voters of said Township of Woodbridge, in the County of Middlesex and State of New Jersey, do respectfully petition your Honor to appoint a board of three commissioners to make division of said Township into Wards, and your petitioners respectfully show that said Township has a population of more than eight thousand (8,000) inhabitants, as shown by the official United States census, promulgated on the 7th day of March, 1911, as appears by the certificate of the Secretary of State of the State of New Jersey, hereto annexed. 20

Dated June 29, 1911.

Respectfully submitted,

J. Blanchard Edgar	Chas. Drake	
Albert F. Mount, D. S.	C. L. Turner	
George E. McFarlane	Frank Elias	30
E. G. Cone	M. Stricker	
Henry Wiedenhaupt	Theo. A. Liber	
Frank J. Cooper	Franklin Moore	
E. W. Cooper	Richard Sattler	
Jacob Huber	Arthur Liddle	
Adam Snyder	Andrew Kath	
S. B. Brewster	T. E. Drake	
Chas. S. Farrell	John Thompson	
Raymond R. Moore	Peter Greiner	
Gustav Blaum	Louis Greiner	40

	Maurice P. Dunigan	Walter I. Auten
	James P. Gerity	Ellis B. Edgar
	George F. Dunigan	Ellis B. Freeman
	Thomas Somers	Wm. S. Freeman
	Thomas L. Wilbur	E. F. Edgar
	Joseph S. Martin	D. Desmond
	E. C. Ensign	H. A. Tappen
	J. H. Coddington	F. Carlson
	David Coddington	Ivins A. Browne
10	Wm. M. Rowe	J. M. Coddington
	C. F. Carrier, Jr.	Geo. H. Berry
	W. H. Miller	J. H. Thayer Martin
	D. S. Voorhees	Seth Lockwood, V. S.

STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX, } ss.

20 Marcus A. Brown, being duly sworn, on his oath says: I am a resident in and legal voter of the Township of Woodbridge, in the County of Middlesex, and was a member of the election board of the first election district of said Township for the annual election held in November, 1910.

I am personally acquainted with all of the 52 persons whose names appear to be subscribed to the foregoing petition as petitioners, except Messrs. Mount, McFarlane, Cone, Wiedenhaupt and Cooper, and all of said 52 petitioners are legal voters of said Township.

30 MARCUS A. BROWN.

Sworn and subscribed before me, this 29th day of June, 1911.

WM. L. HARNED,
Notary Public, N. J.

STATE OF NEW JERSEY, }
 COUNTY OF MIDDLESEX, } ss.

Seth Lockwood, being duly sworn, on his oath says: I am one of the petitioners named in the foregoing petition. I am personally acquainted with all of the other 51 persons whose names appear to be subscribed to the foregoing petition, and each one of said persons signed said petition in his own name and with his own hand personally in my presence; and I know each of said petitioners is a legal voter of said Township, and said petition was signed by at least fifty of the legal voters of said Township. 10

SETH LOCKWOOD, V. S.

Sworn and subscribed before me, this 29th day of June, 1911.

WM. L. HARNED,
Notary Public, N. J.

20

STATE OF NEW JERSEY.

DEPARTMENT OF STATE.

I, S. D. Dickinson, Secretary of State, Do Hereby Certify, That the official count of the returns of the thirteenth Census of the United States, made by the Department of Commerce and Labor Bureau of Census, to the Governor of this State, and duly promulgated on March 7, 1911, shows the population of Woodbridge Township, of the County of Middlesex, to be Eight Thousand Nine Hundred and forty-eight (8,948), all of which appears by the records on file in this deponent. 30

In Witness Whereof, I have hereunto set my hand and seal this Seventeenth day of March, A. D. 1911.

(SEAL.)

S. D. DICKINSON,
Secretary of State.

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STATE OF NEW JERSEY, }
 COUNTY OF MIDDLESEX, } ss.

Robert G. Brown, being duly sworn, on his oath says: I am an attorney at law of the State of New Jersey.

10 On the seventeenth day of March, 1911, I examined the official return of the official United States census, promulgated in the office of the Secretary of State of the State of New Jersey on the seventh day of March, 1911, and said official census shows the population of the Township of Woodbridge, in the County of Middlesex, to be Eight Thousand nine Hundred and forty-eight (8,948).

ROBERT G. BROWN.

Sworn and subscribed before me, this 28th day of June, 1911.

20 HORACE C. GRICE,
Master in Chancery of New Jersey.

Filed July 26, 1911.

MIDDLESEX CIRCUIT COURT.

30

IN THE MATTER OF THE DIVISION OF THE TOWNSHIP OF WOOD- BRIDGE, IN THE COUNTY OF MIDDLESEX, INTO WARDS.	}	<i>Oath of Commissioner.</i>
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STATE OF NEW JERSEY, }
 COUNTY OF MIDDLESEX, } ss.

40 I, one of the commissioners appointed in the above entitled matter by the Judge of the Circuit Court of the County of Middlesex, by order bearing date the 6 day of July, 1911, to make division of the

Township of Woodbridge, in the County of Middlesex, into Wards, do solemnly and sincerely promise and swear that I will perform my duties as such Commissioner faithfully, so help me God.

J. C. FOWLER.

Sworn and subscribed before me, this 25th day of July, 1911.

BERNARD M. GANNON,
County Clerk of the County of Middlesex. 10

Filed July 26, 1911.

MIDDLESEX CIRCUIT COURT.

IN THE MATTER OF THE DIVISION OF THE TOWNSHIP OF WOOD- BRIDGE, IN THE COUNTY OF MIDDLESEX, INTO WARDS.	}	<i>Oath of Commissioner.</i>	20
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STATE OF NEW JERSEY, }
 COUNTY OF MIDDLESEX, } ss.

I, one of the Commissioners appointed in the above entitled matter by the Judge of the Circuit Court of the County of Middlesex, by order bearing date the 6 day of July, 1911, to make division of the Township of Woodbridge, in the County of Middlesex, into Wards, do solemnly and sincerely promise and swear that I will perform my duties as such Commissioner faithfully, so help me God. 30

HOWARD VALENTINE.

Sworn and subscribed before me, this 25th day of July, 1911.

BERNARD M. GANNON,
County Clerk of the County of Middlesex.

Filed July 26, 1911.

MIDDLESEX CIRCUIT COURT.

IN THE MATTER OF THE DIVISION OF THE TOWNSHIP OF WOOD- BRIDGE, IN THE COUNTY OF MIDDLESEX, INTO WARDS.	}	<i>Oaths of Commissioner.</i>
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10 STATE OF NEW JERSEY, }
 COUNTY OF MIDDLESEX, } ss.

I, one of the Commissioners appointed in the above entitled matter by the Judge of the Circuit Court of the County of Middlesex, by order bearing date the Sixth day of July, 1911, to make division of the Township of Woodbridge, in the County of Middlesex, into Wards, do solemnly and sincerely promise and swear that I will perform my duties as such Commissioner Faithfully, so help me God.

20

JAMES E. BERRY.

Sworn and subscribed before me, this 25th day of July, 1911.

BERNARD M. GANNON,
County Clerk of the County of Middlesex.

Filed Aug. 22, 1911.

MIDDLESEX CIRCUIT COURT.

IN THE MATTER OF THE DIVISION OF THE TOWNSHIP OF WOOD- BRIDGE, IN THE COUNTY OF MIDDLESEX, INTO WARDS.	}	<i>Report of Commissioners. Description of Wards.</i>
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We, the undersigned, Howard Valentine, James E. Berry and John C. Fowler, the board of three commissioners to make division of the Township of Woodbridge, in the County of Middlesex, into wards, pursuant to the provisions of Chapter 158

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of the Laws of 1906, being an Act of the Legislature of the State of New Jersey, entitled "A Supplement to an act entitled 'An act concerning townships (Revision of 1899),' " approved April 30, 1906; appointed in the above entitled matter by an order made on and bearing date the sixth day of July, 1911, by the Honorable James J. Bergen, Judge of the Circuit Court of the County of Middlesex, and filed July 11, 1911, in the office of the Clerk of said County of Middlesex: Do report that we did first severally make oath before Bernard M. Gannon, the Clerk of said County, to perform our duties faithfully, and did file our several oaths with said Clerk of said County; and that we did forthwith proceed, after being duly sworn by said Clerk as aforesaid, to make a division of said township into wards, as provided in said act and as hereinafter set forth; and we do further report that we divided said township into three wards as hereinafter described, and that each of said wards as so described consists of a contiguous territory and that each of said wards contains as nearly as possible an equal number of inhabitants. And we do further report that said three wards into which we divided said township are bounded and described as follows:

First Ward: Beginning at the dividing line between the City of Perth Amboy and said Township of Woodbridge at the intersection of the center line of Spa Spring Creek with the center line of Woodbridge Creek; and running thence in a general direction, northerly along the center line of said Creek, the several courses thereof, to the intersection of the same with the center line of the road running from the First Presbyterian Church in the Village of Woodbridge to Port Reading, and known as the Blazing Star Road; thence in a general direction westerly along the center of said Blazing Star Road to the center line of Rahway Avenue at the said Presbyterian Church; thence northerly along said center line of said Rahway Avenue a short dis-

tance to its intersection with the center line of Freeman Street opposite said Church; thence westerly and northwesterly along the center line of Freeman Street to the intersection of the same with the center line of St. George's Avenue; thence northwesterly along the center line of St. George's Avenue to the intersection of the same with the center line of the right of way of the Port Reading Railroad; thence southerly or southwesterly in a straight line to the intersection of the center line of Main Street with the center line of the road leading to Ford's corner, commonly known as the cross; thence in a general direction southerly along the center line of said road leading to Ford's corner, the several courses thereof, to the intersection of the same with the center line of Flood Street; thence southeasterly along the center line of Flood Street and in continuation thereof to the intersection of said continuation of said center line with the dividing line between the said City of Perth Amboy and the Township of Woodbridge; thence in a general direction northeasterly and easterly along said line of the City of Perth Amboy to the point or place of Beginning.

Second Ward: Beginning at the southerly corner of the First Ward at the intersection of the dividing line between the said City of Perth Amboy and the Township of Woodbridge with the center line of Flood Street as prolonged southeasterly; and from thence running along the westerly boundary of the First Ward northwesterly to the intersection of the center line of Flood Street and the road leading to Ford's corner; thence northerly along the center line of said road leading to Ford's corner to the intersection of the same with the center line of Main Street; thence northerly or northeasterly in a straight line to the intersection of the center line of the right of way of the Port Reading Railroad with the center line of St. George's Avenue; and thence in a general direction northwesterly and

northerly along the center line of said St. George's Avenue the several courses thereof, to the intersection of the same with the dividing line between the City of Rahway and the Township of Woodbridge; thence in a general direction westerly, northerly and westerly along the dividing line between the County of Union and the Township of Woodbridge, being the southerly boundary line of the City of Rahway and the Township of Clark, to the dividing line between the Township of Woodbridge and the Township of Raritan; thence in a general direction southerly along the dividing line between the Township of Raritan and the Township of Woodbridge to the southerly boundary line of the Township of Woodbridge on the Raritan River; thence in a general direction easterly along the southerly boundary line of the Township of Woodbridge on the Raritan River to the dividing line between the City of Perth Amboy and the Township of Woodbridge; thence in a general direction northerly along the dividing line between the City of Perth Amboy and the Township of Woodbridge to the point or place of beginning.

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Including all of said Township of Woodbridge lying generally westerly of the courses hereinbefore mentioned and described in this Second Ward, extending from the City line of the City of Perth Amboy to the city line of the City of Rahway.

Third Ward: Beginning at the dividing line between the City of Perth Amboy and the said Township of Woodbridge at the intersection of the center line of Spa Spring Creek with the center line of Woodbridge Creek, which beginning point is the southeasterly corner of the First Ward and the beginning point of the description of the First Ward as above set out; and extending thence northerly westerly and northerly along the easterly and northerly boundaries of the First Ward and the easterly boundary of the Second Ward as hereinbefore described to the City of Rahway; running from said

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beginning point in a general direction northerly along the center line of said Woodbridge Creek, the several courses thereof, to the intersection of the same with the center line of the road running from the First Presbyterian Church in the Village of Woodbridge to Port Reading and known as the **Blazing Star Road**; thence in a general direction westerly along the center of said Blazing Star Road to the center line of Rahway Avenue at the said

10 Presbyterian Church; thence northerly along said center line of said Rahway Avenue a short distance to its intersection with the center line of Freeman Street opposite said Church; thence westerly and northwesterly along the center line of Freeman Street to the intersection of the same with the center line of St. George's Avenue; thence northwesterly along the center line of St. George's Avenue to the intersection of the same with the center line of the right of way of the Port Reading Railroad;

20 thence northwesterly and northerly along the center line of St. George's Avenue to the intersection of the same with the dividing line between the City of Rahway and the said Township of Woodbridge; thence in a general direction easterly along the dividing line between the County of Union and said Township of Woodbridge, being the southerly boundary of the City of Rahway and of the Township of Linden on the Rahway River to the dividing line between the Borough of Roosevelt and the Township of Woodbridge;

30 thence in a general direction southeasterly along the dividing line between the Borough of Roosevelt and said Township of Woodbridge to Staten Island Sound; thence in a general direction southwesterly and southerly along the westerly boundary of said Township of Woodbridge on the said Staten Island Sound to the said City of Perth Amboy at the intersection of the center line of said Woodbridge Creek at the mouth of said Creek; thence in a general direction westerly along the center

40 line of said Creek; being the dividing-line be-

tween said City of Perth Amboy and said Township of Woodbridge, the several courses thereof, to the point or place of beginning.

In Witness Whereof, We have made this our report signed by all of the said Commissioners, this 21st day of August, Nineteen hundred and eleven.

HOWARD VALENTINE,
JAMES E. BERRY,
J. C. FOWLER,

Commissioners.

10

NEW JERSEY, SS.

The State of New Jersey to
(SEAL.) Bernard M. Gannon, Clerk of the
County of Middlesex, and How-
ard Valentine, James E. Berry and John C. Fowler,
Commissioners appointed to make division of the
Township of Woodbridge, in the County of Middle-
sex, into wards, GREETING:

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We being willing for certain reasons, to be certified of a certain appointment of Commissioners, made by the Honorable James J. Bergen, Judge of the Circuit Court of the County of Middlesex, on the sixth day of July last, on the application of J. Blanchard Edgar, and others, to make division of said Township of Woodbridge into wards, and of the report of the said commissioners, if the same has been filed, and of all things touching and concerning the same; do command you, that the said appointment of commissioners, and the said application, and the said report, if filed, together with all things touching and concerning the same, as fully and entirely, as before you they remain, to our Justices of our Supreme Court of Judicature at Trenton, on the eighth day of September next, you certify and send, together with this writ, that therein may be done, what of right, and according to the laws and constitution of this State, ought to be

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done.

Witness William S. Gummere, Esquire, Chief Justice, at Trenton, the nineteenth day of August, nineteen hundred and eleven.

WILLIAM RIKER, JR.,
Clerk.

EPHRAIM CUTTER, *Attorney.*

10 STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX, } ss.

I, Bernard M. Gannon, Clerk of the County of Middlesex, do herewith send to the Supreme Court of the State of New Jersey, the appointment of Commissioners, Application and all things touching and concerning the same as within I am commanded, as by the transcript, under my hand and seal thereto annexed more fully appears.

20 In Witness Whereof, I have here-
unto set my hand and affixed
(SEAL.) the seal of said County this
23rd day of August, A. D. 1911.

BERNARD M. GANNON,
Clerk.

NEW JERSEY SUPREME COURT.

30

BENJAMIN B. CLARK AND THOMAS THOMPSON, <i>Prosecutors.</i>	}	<i>On Certiorari.</i>
<i>vs.</i>		
J. BLANCHARD EDGAR, ET AL., <i>Defendants.</i>		

40 I, Charles C. Hommann, Supreme Court Commissioner of the State of New Jersey, do hereby certify and send to the Supreme Court of Judica-

ture of New Jersey, the within examination of the witnesses produced before me upon the stipulation made by the respective counsel in the above entitled cause bearing date September 19, 1911, a copy of which is hereto attached. By agreement of Counsel, signatures of witnesses waived.

Witness my hand this twenty-fourth day of October, nineteen hundred and eleven.

CHARLES C. HOMMANN, 10
Supreme Court Commissioner.

NEW JERSEY SUPREME COURT.

BENJAMIN B. CLARK AND THOMAS THOMPSON, <p style="text-align: center;"><i>Prosecutors,</i></p> <p style="text-align: center;"><i>vs.</i></p> J. BLANCHARD EDGAR, ET AL., <p style="text-align: center;"><i>Defendants.</i></p>	}	<i>On Certiorari.</i> <i>Stipulation.</i>	20
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It is hereby stipulated that the taking of depositions in the above entitled cause shall be commenced on behalf of the prosecutors without further notice, on the 13th day of October, nineteen hundred and eleven, at ten and a half o'clock in the forenoon, at the office of Charles C. Hommann, a Supreme Court Commissioner, in the City of Perth Amboy, Middlesex County, New Jersey, and shall be continued daily except Saturdays until the testimony on behalf of the prosecutors is closed, and that depositions on behalf of the defendants shall be commenced within two days thereafter, exclusive of Sundays, and shall be continued daily until the testimony on behalf of the defendants is closed; and that depositions in rebuttal on behalf of the prosecutors shall be taken within two days there-

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after, exclusive of Sundays, and continued daily until closed.

Dated September 19, 1911.

Received Oct. 12, 1911.

EPHRAIM CUTTER,
Attorney of Prosecutors.

GUILD & MARTIN,
Attorneys.

10

On Monday, the sixteenth day of October, 1911, the following witnesses were produced and sworn:

STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX, } ss:

FORREST L. SMITH, a witness produced on the part of the prosecutors, being duly sworn according to law upon his oath deposes and says:

20 Direct examination by Mr. Cutter.

Q. Are you a civil engineer?

A. I am.

Q. Where do you carry on that profession?

A. Perth Amboy and vicinity.

Q. How long have you been carrying on that profession?

A. About twelve years.

30 Q. Have you made a map of the wards recently laid out in the township of Woodbridge?

A. I did.

Q. Will you produce it?

A. This is the map I made (pointing to a tracing marked Ex. A.)

Q. What does this map show?

A. The division of Woodbridge Township into three wards as laid out by the commissioners appointed to divide the township.

Q. What did you make that map from?

40 A. From the United States geological chart.

Q. Did you have the report of the commissioners?

A. I did.

Q. What paper is this? (Mr. Cutter hands witness paper.) Is that what you used in making this map?

A. That is what I used.

Q. What do you find the size of these wards, the length of them?

A. The scale on that map is 2000 feet to the 10
inch. I don't know the dimensions of it.

Q. Can you tell us what the length of the second ward is?

A. 40,600 feet is the length of the second ward.

Q. What is the width of the second ward?

A. Variable.

Q. In the widest part?

A. 13,600 feet.

Q. What did you say was the average width of the second ward? 20

A. 10,000 feet.

Q. How about the first ward, what is the size of that?

A. The extreme length 10,600 feet.

Q. And the average width of it?

A. 6,000 feet wide.

Q. The third ward, what is the length of that?

A. 21,400 feet long.

Q. What is the average width of the third ward?

A. 10,000 feet. 30

Q. Have you indicated the principal villages on the map?

A. Yes, sir.

Q. What is the largest village in the third ward?

A. Port Reading as far as I know.

Q. Is that indicated on the map?

A. That is.

Q. The first ward includes what you would call the village of Woodbridge?

A. Yes, sir. 40

Q. And the second ward includes what villages?

A. Colonia, Iselin, Fords, Keasbey and Ostrander.

Q. And the, which is the largest village in the third ward?

A. Fords I think. I do not know for sure.

Q. Which is the next largest?

A. I imagine Keasbey must be.

Q. And the others are small places?

10 A. Yes, sir.

Q. Would you say Mr. Smith that those wards are geographically compact?

A. I would not call it that.

Q. What would you call them?

A. I don't know just what you intend to express. They are irregular and they adjoin each other on certain lines. That is about all I can say about them.

Cross-examination by Mr. Martin.

20 Q. You say you made this map at the direction of Mr. Cutter?

A. Yes, sir.

Q. And you made this map not from a survey of the ground but from the United States Survey?

A. Yes, sir.

Q. Are all of the lines which you have indicated on this map shown on that United States Survey?

30 A. They are all shown with the exception of the boundary lines between Woodbridge and Rahway and that I had from the Borough map of Roosevelt. I put that on from that.

Q. Then the location of St. George's Avenue, Freeman Street, Woodbridge Creek and Flood Street and the road you call St. George's Post Road all appear on the said United States Survey.

A. Just as indicated.

Q. And the two railroad lines are the Port Reading and Lehigh Valley, also appear on that?

A. Copied right through.

40 Q. You have omitted to show on this map the

Pennsylvania and Jersey Central lines?

A. Yes, that is omitted.

Q. Can you indicate in pencil on this map the approximate location of the New Jersey Central and Pennsylvania Railroads?

A. (Witness draws line in pencil.) That is a very rough approximation of the lines that run almost parallel through the township.

Q. There is also a main line of the Pennsylvania?

10

A. I don't know just how that runs. It is about here (indicating on map).

Q. And the Jersey Central?

A. That is it.

Q. Have you not that on the wrong side of Woodbridge Creek?

A. Yes, sir. That is the Pennsylvania.

Q. Then the main line of the Pennsylvania runs across from the Rahway line near the old Colonia and Iselin and runs out into Raritan Township north, does it? 20

A. Yes, sir.

Q. And the Amboy branch of the Pennsylvania runs from the Rahway line through Avenel across Freeman Street down to about the location near Spa Spring into Amboy?

A. Yes, sir.

Re-direct by Mr. Cutter.

Q. Are you the township engineer, Mr. Smith?

A. Yes, sir.

30

Q. You know the general lines of the township from having made a township map?

A. Yes, sir.

Q. You did not undertake to put down on the map all the railroads?

A. No, I did not.

Q. What railroad did you put down?

A. I only put down the Port Reading because that was mentioned in one of the sub-divisions and I put the Lehigh Valley out near Fords Corner for 40

no apparent reason. Just to show it.

Sworn to before me,

CHARLES O. HOMMANN,
Supreme Court Commissioner.

STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX, } ss:

10 JOHN C. FOWLER, a witness produced on the part of the prosecutors, being duly sworn according to law upon his oath deposes and says:

Direct examination by Mr. Cutter.

Q. Are you one of the commissioners that were appointed to lay out wards in the township of Woodbridge?

A. Yes, sir.

Q. And you were the secretary of the board?

A. Yes, sir.

20 Q. Who was the chairman?

A. Mr. Howard Valentine.

Q. You laid out the three wards?

A. I did.

Q. What did you find the population of the first ward to be that you laid out?

A. 3,092.

Q. And the second ward?

A. 3,044.

Q. And the third ward?

30 A. 2,812.

Q. What method did the commissioners pursue in obtaining the number of population?

A. We employed Mr. Peter Edgar to canvas the districts which was contemplated, taking off one district and adding on to the other. To be square in the matter we thought that by taking a piece of the original No. 1 district and adding that to the original No. 3 district we would get the requisite number for three, and in like manner taking off from old district two and adding on district one.

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With that idea in view Mr. Peter Edgar made a canvas of the parts added to the new districts.

Q. You refer to the old districts?

A. Yes, sir.

Q. 1, 2 and 3?

A. Yes, sir.

Q. And you took a part of the old election district Number 2 and added it to Number 1?

A. Yes, sir.

Q. And part of the old district Number 1 and added it to Number 3? 10

A. Yes, sir.

Q. And do you know what the number was in the old election district?

A. Yes, sir.

Q. Can you tell us what it was?

A. The old district Number 1 according to the United States Census was 3352, Number 2 district 3940 and Number 3156.

Q. These are the figures from the United States Census of 1910 of the old districts? 20

A. Yes, sir.

Q. And you employed Mr. Peter Edgar to count the number of people in the new territory that was attached to the new wards?

A. Yes, sir.

Q. Did the commissioners consider anything else except the population in laying out these wards?

A. They considered the law in the matter which said the territory was to be contiguous? 30

Q. What did the law say?

A. As I understand they must be divided as nearly equal as possible and that the territory must be contiguous?

Q. The populations to be as nearly equal as possible?

A. Yes, sir.

Cross-examination by Mr. Martin.

Q. Did the commissioners consider at all the 40

question of the compactness of the proposed wards?

A. No.

Q. Did the commissioners make any effort to keep each settlement or village as Mr. Cutter has referred to them in one ward rather than to divide it?

A. Yes, sir.

Q. What village or villages or settlements are found in the first ward as laid out by the commissioners?

10 Objected to by Mr. Cutter as not being proper cross-examination.

A. The village of Woodbridge.

Q. Is all of the village of Woodbridge contained in the first ward as laid out?

A. Not all of it.

Q. Substantially all?

A. Substantial.

Q. What portion was left out of the first ward?

20 A. That part north of Freeman Street and what is known as Edgars Hill.

Q. That settlement of Edgars is a small compact settlement with a railroad station of its own?

Objected to by Mr. Cutter as not being proper cross-examination.

A. Yes, sir.

Q. In laying out the lines of this ward what did the commissioners select for boundaries for dividing lines?

30 A. I don't know as I can describe.

Q. The easterly boundary of the first ward is the center line of Woodbridge Creek is it not?

A. It is.

Q. And the northerly boundary is the center line of Freeman Street and St. George's Avenue?

A. Yes, sir.

Q. And the southerly boundary is the City of Perth Amboy of the first ward?

A. Yes, sir.

40 Q. And these three boundaries are well defined

boundaries?

A. Yes.

Q. And the westerly boundary is partly the center line of the road described in the report as the road leading to Fords and shown on this map Ex. A as St. George's post road? And the straight line running from the intersection of the Port Reading Railroad to this St. George's Avenue and the street known as Flood Street and continuation of the line?

10

A. Yes, sir.

Q. There are two lines there which are not streets or natural monuments. Will you tell if there was any natural monument or natural boundary where these arbitrary straight lines were drawn?

A. I don't understand that.

Q. Was there any natural boundary which the commissioners could have used in place of these two arbitrary lines?

20

A. None.

Q. Are there many inhabitants in the part intersected by these two arbitrary lines?

A. Sparsely settled.

Q. In the second ward there are indicated on this map, Ex. A., a number of settlements which have been referred to by Mr. Smith in his testimony, are those all the substantial settlements in the second ward as laid out by the Commissioners?

A. Yes, sir.

30

Q. In the stretch on that map from Fords to Iselin there is a considerable space without any indication of any settlement, are there any substantial number of inhabitants in that territory?

A. Very few.

Q. In that portion of the second ward lying north of Iselin and Colonia are there any substantial number of inhabitants?

A. Very few.

Q. In the third ward there are indicated on this 40

map Ex. A several settlements, are each of these settlements fully contained within the lines of the third ward?

A. Yes, sir.

Sworn to before me,

CHARLES C. HOMMANN,
Supreme Court Commissioner.

10 STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX, } ss:

PETER K. EDGAR, a witness produced on the part of the prosecutor, being duly sworn according to law upon his oath deposes and says:

Direct examination by Mr. Cutter.

Q. Where do you live, Mr. Edgar?

A. In Woodbridge.

Q. You were a former assessor there?

20 A. Yes, sir.

Q. Did you undertake to count the population in the part of the third ward as laid out which was taken away from the old first election district?

A. Yes, sir.

Q. At whose request did you do that?

A. Request of the commissioners.

Q. The commissioners appointed to lay out wards?

A. Yes, sir.

30 Q. When was it you did that?

A. I cannot remember the exact date.

Q. As near as you can recollect?

A. It was in August. It might have been later.

Q. The report of the commissioners was dated the twenty-first day of August, will that enable you to fix the date?

A. The fore part of August.

Q. Will you please state what you did in regard to the third ward that was laid out.

40 A. I took the directions of the commissioners,

the line they made out and made a house to house canvas of the district to ascertain the number of inhabitants.

Q. What do you mean by the old district?

A. The part they gave me lines on which they wished me to follow and ascertain the number of inhabitants.

Q. What were the lines?

A. The line I took started from the line by the Woodbridge Creek and the line between the old third district and the first and came down Rahway Avenue to Port Reading Railroad up the Port Reading railroad to St. George's Road up St. George's Avenue to the Rahway line, that is the first count I made. 10

Q. This territory you undertook to count is bounded on the south partly by Freeman Street and partly by—

A. That is the addition.

Q. What territory was added to the old election district? 20

A. The territory added from the creek up to Freeman Street bounded on the south by Freeman Street and the road to Port Reading?

A. Yes, sir.

Q. How was it bounded on the east?

A. On the east by the Woodbridge Creek.

Q. And the extension of that to Rahway?

A. Yes, sir.

Q. How is it bounded on the north? 30

A. By the Rahway line.

Q. On the west partly the Rahway line by the old first district, by St. George's Avenue?

A. Yes, St. George's Avenue.

Q. That is the territory you undertook to count the population in?

A. Yes, sir.

Q. Tell us what you found it to be.

A. I have not the papers, I turned them over to the commissioners. 40

Q. Can you recollect anything about it?

A. I can recollect the figures Mr. Fowler gave you.

Q. What figures did you recollect?

A. There was added to the third district from the first 1156 and added to the first district from the second district 896.

Q. Is that the number that you ascertained?

A. Yes, sir.

10 Q. In ascertaining the 1156 did you count the inmates of the New Jersey Reformatory?

A. I did.

Q. In the third ward?

A. Yes, sir.

Q. What number did you include for that?

A. Five hundred.

Q. Of inmates?

A. Inmates and those that were counted in the regular census.

20 Q. How many were those?

A. 500.

Q. In the general report from the census the population of the Reformatory is 500, does it say that they are inmates?

A. No.

Q. You do not know whether they were inmates or not?

A. I only know the census—I didn't count them. I only took the state census as they were given there.

30 Q. For the reformatory?

A. Yes, sir.

Q. Did you go to each house in the rest of the district?

A. I did. I tried to.

Q. Can you tell us what you made the population of the third ward after you concluded the count?

A. Yes. 2812.

40 Q. What did you make the first?

A. 3092.

Q. And the second?

A. 3044.

Cross-examination by Mr. Martin.

Q. You also made a house to house canvas of that portion of the old second election district which was included in the out lines of the first ward in the report of the commissioners?

A. Yes, sir.

Q. And the figures you have given are the figures derived at from that canvas? 10

A. Yes, sir.

Q. In making the canvas of the district taken from the first election district and added to the third you have stated you made one count and an additional count. Will you state what the circumstances of that were.

A. Well when I submitted my report to the commissioners—after the first count they decided that they had not sufficient inhabitants to equalize the three districts and that they must have more for the new third ward and I made a further count from the lines they directed. 20

Q. The territory included in the first count was all that part of the old first election district lying north of the Port Reading railroad, bounded on the west by the second election district on the east by the third election district, is that so?

Objected to by Mr. Cutter as irrelevant.

A. Yes, that is so. 30

Q. And the second count covered the rest of the territory of the first election district that was added to the third in making up the third ward?

A. Yes, sir.

Q. And in reporting to the commissioners on the population of the reformatory you reported its population the same as it appeared in the census itself.

A. Yes.

Sworn to before me,

CHARLES C. HOMMANN,
Supreme Court Commissioner.

Examination adjourned to Friday October, the twentieth, at the same hour and place.

CHARLES C. HOMMANN,
Supreme Court Commissioner.

Counsel of prosecutors offers the said map in evidence marked Exhibit A.

10

Hearing continued on Friday, the 20th day of October, 1911.

FORREST L. SMITH, re-called.

By Mr. Cutter.

Q. Since you were here at the last examination have you made any addition to the map?

A. I put on the Pennsylvania and Port Reading railroads and also calculated the area in square miles in each of the wards.

20

Q. What did you find the area to be?

A. The area of the first ward is $1 \frac{98}{100}$ sq. miles, of the second ward $14 \frac{5}{100}$ and of the third ward is $7 \frac{1}{4}$.

Q. You gave measurements at the first examination. Have you any corrections to make?

A. I have none.

Q. Are these wards composed of a contiguous territory?

30

A. My idea of contiguous territory is adjacent. Whether you can consider this—well I believe you can do that—considering that the second and third wards are adjacent and the first and second wards adjoining I consider them contiguous to each other.

Q. Are they compact?

A. No.

By Mr. Martin.

Q. You say they are not compact. Can you suggest any method of dividing this township that would be compact?

40

A. No, I cannot.

By Mr. Cutter.

Q. Why not?

A. On account of the irregularity of the township. It would be hard to divide if it wasn't a perfect square or a perfect circle.

Q. Why could not the village be divided?

A. That can be done. It would be more compact if the lines would run somewhat like that (indicating on map).

10

Q. If the village had been taken as the center and the lines run diagonally from that, it would be more compact, would it not?

A. Yes, sir.

By Mr. Martin.

Q. Whereabouts in the village does that answer of yours contemplate starting the line?

A. To start from a point near the center of the most populated district and that which is nearest the center of it and divide the wards that would radiate from that. (Indicating by a line north from the center and west from the center.)

20

Q. But how would that affect the population?

A. I have no idea.

Q. Do you know of any natural boundaries such as streets or railroads or the like that could be used to make such a division or radiating line as you speak of.

A. No, I have not examined it closely enough for that.

30

CHARLES C. HOMMANN,

Supreme Court Commissioner.

STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX, } ss:

BENJAMIN B. CLARK, a witness produced on the part of the prosecutors, being duly sworn according to law upon his oath deposes and says:—

Direct examination by Mr. Cutter.

40

Q. Where do you reside?

A. Avenel.

Q. Woodbridge Township?

A. Woodbridge Township.

Q. And you are one of the prosecutors in this action?

A. I am.

Q. What is your age?

A. Forty-seven.

10 Q. How long have you resided in the township of Woodbridge?

A. 46 years.

Q. You are a legal voter?

A. I am.

Q. And have voted since you became of age always in Woodbridge Township?

A. Yes, sir.

20 Q. Have you examined the map made by Mr. Smith showing the lines of the new wards as they were laid out?

A. Yes, sir.

Q. Are you familiar with Woodbridge Township, with its center of population and the different villages?

A. I should say so.

Q. In regard to these wards, would you consider them compact, Mr. Clark?

A. I would not with the exception of the first ward.

30 Q. With the exception of the first ward are they convenient for the use of the voters in voting?

Objected to by Mr. Martin as immaterial.

A. No.

Q. Why not?

A. For the reason of their unreasonable proportion.

Q. What is there inconvenient about the third ward?

40 A. The fact that the center of population is at one end.

Q. Where is that?

A. Port Reading and Sewaren.

Q. What effect does that have on the northerly part of the district?

A. It alienates the sparsely settled outlying sections of the district.

Q. Have they any names, the villages?

A. Well Avenel and the greater portion of the part farthest from Sewaren and Port Reading.

Q. Edgar station?

10

A. Lies near.

Q. Is that a village?

A. Part of Woodbridge I should say.

Q. Which is the largest village in the third ward?

A. Port Reading.

Q. That is the largest place where the polling place would naturally be established?

Objected to by Mr. Martin as being a leading question and immaterial.

20

A. Yes.

Q. Where can a polling place be established in the third ward that would accommodate all voters?

Objected to by Mr. Martin as immaterial.

A. I think it would be almost impossible to put a polling place where it would accommodate the entire district.

Q. In what way could they be accommodated in such a territory?

A. Possibly by making more than one polling place. 30

Q. How is it in the second ward? What inconvenience is there there?

A. The same only more exaggerated.

Q. Explain.

A. The center of population lies at one end, and the district is more distended than the third.

Q. At which end does the center of population lay, at what place?

A. Keasbey. 40

Q. Is that part much more thickly settled than the northern part?

A. It is.

Q. What inconvenience in voting would there be to the voters at Iselin, Colonia and the northern part?

Objected to by Mr. Martin as immaterial.

A. The necessity of a long distance in traveling to the polls.

10 Q. Does the road leading from this place to Keasbey pass through Woodbridge?

A. From part of some of the places.

Q. Which places?

A. Colonia. Locust Grove.

Q. Iselin?

A. Iselin.

Q. Mr. Clark, in your judgment could these wards have been laid out more compact and have an equal population?

20 A. I believe they could.

Q. State how that could be done.

A. By dividing the most thickly settled center of population and using that portion of it which was necessary to add in each district to make the same population.

Q. Which is the most thickly populated?

A. Woodbridge.

Q. Which is now put in the first ward?

A. Yes, sir.

30 Cross-examination by Mr. Martin.

Q. Just how do you suggest a more compact division of this township? Specify a line instead of using general terms.

A. By taking the portion which is necessary from Woodbridge.

Q. What portion is necessary?

A. To make the population equal.

Q. What is that portion?

A. That can only be determined by the census.

40 Q. How do you know it can be done?

A. From the fact that the first ward is insufficient in dimension in comparison with the other wards.

Q. How would carving the first ward make any other wards more generally compact?

A. Because the number of residents in the first ward is sufficient to equalize any discrepancies in the other two wards.

Q. Will you kindly state specifically how this can be divided more compactly than it is? Where can a line be drawn or two lines, or three lines? 10

A. It would be impossible to state just where a line would be drawn, but by putting a part of Wood-bridge—

Q. What part?

A. A part of the southern part of the village with Port Reading and Sewaren and another part with Keasbey.

Q. What part of the southern part of the village? 20

A. The southern part.

Q. You said a part of the southern part?

A. This would be the part.

Q. What part?

A. As much of the southern part as is necessary to equalize the other two districts. If the township was divided in three thousands, 1000 in between this district and this district and 2000 distributed over the other portion, you take 500 from the town and put with Port Reading and Sewaren, and Five Hundred from the township with Keasbey, that would leave the other district— 30

Q. What other district?

A. Whatever it was designated to be.

Q. I am asking you to, instead of using general terms, state specifically how you would make a division?

A. It defies anyone to lay out the township without knowledge of the census and the lines necessary to equalize the population. That is merely 40

a matter of investigation when it comes to laying it out.

Q. Then you know nothing as to the population in the several portions of the township?

A. I know a great deal in regard to the population of the several portions of the township.

Q. Why do you not know enough to state specifically?

10 A. Because it cannot be done without the canvassing of each district.

Q. Then you have not made a thorough canvass?

A. I have not.

Q. Then how do you know that such a division as you suggest is possible?

A. From my knowledge of the township and the various centers of population.

Q. Then if you have such a knowledge why can't you state it here?

20 A. To be exact in dividing the township or the population of the township, the variance of a few hundred feet would distort a portion of one or another district. For that reason without going over the ground I believe it would be impossible for any one to lay the township out as it should be done.

Q. Then your objection to the present division is entirely guess work?

A. I would not deem it guesswork.

Q. What foundation have you for it?

30 A. My general knowledge of the township as I said before.

A. Is not that general knowledge enough to enable you to suggest some specific improvement?

Objected to by Mr. Cutter.

A. Not to define any geographical lines.

Q. On either side of Woodbridge creek there is a considerable stretch of salt marsh, is there not?

A. I believe so.

40 Q. Do you think it would add to the compactness of the ward which includes Sewaren, if the

ward line went clear across that salt marsh and including more territory on the west side of the marsh?

A. I believe that the line including Sewaren, the part of the marsh adjoining the Woodbridge Creek, would lend to the compactness of the third district, provided you cut off a part of the northern portion of that district.

Q. Are there any inhabitants on the marsh?

A. You asked me if it would add to the compactness of the district. That has nothing to do with the compactness. 10

Q. Answer the question. Are there any inhabitants on the marsh?

A. The marsh as referred to in my previous answer contains some inhabitants.

Q. Where?

A. Between the road running to Sewaren and the Central Railroad.

Q. Which road running to Sewaren? 20

A. I don't know the name of the road.

Q. Tell where it is.

A. It runs from Woodbridge Creek bridge to Sewaren.

Q. You mean the road where the trolley track is?

A. The trolley track is on a portion of the road.

Q. Then when you speak of inhabitants saying there are some, you meant there are some inhabitants between the creek and that road and Sewaren? 30

A. I meant that there were some inhabitants between the driving road and the creek.

Q. The driving road and the creek run at right angles, does it not?

A. It does. Well between that road and the creek.

Q. Which way? North or south of the road?

A. I should say northeasterly direction. The creek being of varied directions.

Q. Is it not a fact that from the creek at where 40

the trolley line crosses it, northerly between the village of Woodbridge, there is a stretch of at least half a mile in width with no inhabitants?

A. Yes. I don't know that it is a half a mile—for some distance.

Q. From a point where the creek crosses the road to Carteret south along the line of the creek clear to the Pennsylvania line there is substantially a strip of salt marsh half a mile wide, varying somewhat in direction and size to substantially half a mile with no inhabitants separated—?

A. There is a strip of salt marsh lying on either side of the creek which naturally separates one side from the other.

Q. And does not that strip of salt marsh form a more natural dividing line between wards and between population and between interests of citizens than any other dividing line that can be drawn?

A. Naturally it does.

20 Q. Now to come back to your testimony about the convenience of voters. Don't you know that there are enough voters in the second ward to justify a division of that ward into at least two polling or election districts?

A. I don't know anything about that.

Q. Assuming it to be a law that the ward may be divided into two districts if it has over 450 voters, would you say that the second ward could then be divided?

30 A. I would say that each ward can be divided.

Q. It is a fact, is it not, that the second ward as laid out by the commissioners contains over 500 voters?

A. Yes, sir.

Q. And it is a fact is it not that the third ward as laid out by the commissioners contains over 500 voters?

A. Yes, sir.

40 Q. Is it not a fact that each of those two wards contain over 600 voters?

A. I think so.

Q. And don't you know that the township committee has authority to divide each of those wards into at least two election districts?

A. Possibly.

Q. Don't you know that to be a fact?

A. I believe that to be so.

Q. Then if those two wards are divided into two election districts each, will there then be any inconvenience to the voters of any portion of either of those wards? 10

A. It depends on where the polling places are placed.

Q. Who has authority to divide or lay out election districts? Do you know?

A. Not authoritatively.

Q. Don't you know as a matter of fact that the township committee are the authorities who are empowered by the election laws to lay out the district? 20

A. I believe the township committee has that power.

Q. Then if the township committee exercise that power would there be any inconvenience caused to the voters?

A. There would still remain a large territory to be covered in the second district.

Q. Would the territory be any larger than the present election district?

A. Possibly not. 30

Q. Is it not a fact that the second ward as laid out by the commissioners contains less territory than the second election district as it has heretofore existed?

A. It possibly does.

Q. Is it not a fact?

A. I cannot state that as a fact.

Q. Don't you know that the old second election district includes all that portion of the township lying west of St. George's Avenue and the Perth 40

Amboy Avenue?

A. Personally I am informed as to the dividing lines of the old election districts.

Q. If the township committee divided the third ward into two or more election districts would any one of those districts include Avenel, Demarest on the Hilltop and Edgar?

A. It would be possible.

Q. Would not that be the natural division?

10 A. It is possible to assume that that could be divided so.

Q. And if that were done would not you as a voter find it more convenient than you ever had it before?

A. It would depend entirely where the polling places would be put.

Q. How many miles by the road is it from your house to the place where you have previously voted?

20 A. About $1\frac{1}{4}$ — $1\frac{1}{2}$ miles I should say. Don't know exactly.

Q. In fact is it not over two miles?

A. I think not.

Q. How long does it take to walk from your home to the old voting place?

A. I should think you could walk it in 20 minutes.

Q. Did you ever try?

A. No, I never tried.

30 Q. As a matter of fact, Mr. Clark, does not the question of the convenience of voters depend entirely on what the township committee may do in the way of laying out election districts?

A. To a great extent it does.

Q. And the ward lines have really nothing whatever to do with the convenience of voters?

A. Well they would naturally have something to do with it.

40 Q. Don't you know that under the provisions of the new election law these wards ought to be divided into at least two election districts?

Objected to by Mr. Cutter as being a matter of law and not of fact.

A. I cannot say personally that I do.

Q. But you believe that is so do you not?

A. No.

Q. What do you understand or believe on the matter, that it is simply permissive?

A. Yes, sir.

Q. Then in any event the inconvenience so far as voting is concerned would be within the hands of the township committee in laying out the election districts. 10

A. It is possible.

Sworn to before me,

CHARLES C. HOMMANN,
Supreme Court Commissioner.

STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX, } ss:

20

JOHN S. DOOLEY, a witness produced on the part of the prosecutors being duly sworn according to law upon his oath deposes and says:

Direct examination by Mr. Cutter.

Q. Are you a member of the township committee of Woodbridge Township?

A. I am.

Q. And how long have you been a member?

A. One term of three years and this portion of 1911. 30

Q. Do you know the lines of the new wards as they have been laid out by the commissioners?

A. Yes, sir.

Q. Look at the map that has been offered in evidence. Do you recognize the lines of the three wards?

A. Yes, sir.

Q. Are these wards, Mr. Dooley, in your judgment as compact as they could or may be? 40

A. No. 1 has a great advantage and the other two have a great disadvantage.

Q. What do you mean by advantage?

A. No. 1 is small and compact while the other two are not compact. Not compact in proportion to the number of voters.

Q. As a matter of fact are they compact in any sense?

A. No, I would not consider them so.

10 Q. Would there be any trouble in laying them out so they would be made compact?

A. Well considering them as they are I think they could be improved on but not compact.

Q. How could they be improved on?

A. Well you would simply have to divide the village with some of the outlying districts, instead of taking the remainder of the township, and make a ward out of it, and not divide the remainder of it.

20 Q. How are number two and three wards as to convenience of voters for voting?

Objected to by Mr. Martin as immaterial.

A. Very inconvenient on account of facilities for transportation.

Q. Will it be necessary to divide them into election districts to make them convenient, to make them as convenient as at present?

A. Yes it would be necessary.

30 Q. That would make how many election districts out of the township?

A. Not less than five.

Q. How many are there at present?

A. Three.

Cross-examination by Mr. Martin.

Q. The first ward as laid out contains all of the territory of the township that has a big population, is that not so?

A. No.

40 Q. What other portion of the township has a compact settlement?

A. The portion of Keasbey, Fords, Sewaren, Port Reading and I might say Iselin. Them is the main ones. Avenel has some. Edgar has some.

Q. At those places you have mentioned. There may be a small compact settlement, but are there over 500 inhabitants in anyone of those settlements you have mentioned?

A. Yes.

Q. Which?

A. Sewaren and Keasbey. 10

Q. How many inhabitants are there at Sewaren?

A. In figures I don't know the population exactly. Sewaren up to Port Reading has upwards of 500 people.

Q. Very much more than 500?

A. To be exact I don't know the population, I suppose 800.

Q. About how many inhabitants are there in the settlement of Keasbey?

A. I should say 800 to 1000. 20

Q. These are the largest settlements outside of Woodbridge?

A. Yes, sir.

Q. No one of them is large enough to make a complete ward?

A. Not in proportion to the extent of the township when you are limited to three wards.

Q. Well the settlement of Woodbridge itself contains about 3000 does it not? So that Woodbridge village proper is a compact settlement of about 3000 population? 30

A. That is so.

Q. Can you suggest any specific division of the township into wards which would be either more compact as to territory, more compact as to population or more convenient to voters?

A. Why to make a district more equal in area, I suggest all east of the Pennsylvania railroad as one ward. Take the Pennsylvania railroad, and say through Main or Green Street to the Raritan 40

township line as another, and putting the following places centrally it would be more uniform for all concerned.

Q. Do you know how that would affect the population, such a division as you propose?

A. Judging from the township of Woodbridge, it would divide the center of population into three portions with the chances that the difference would not be much, that it might strike very near and average 100 or 200 more either way which would not be a great inconvenience. Further you can make the districts more equal in area, although the population might not be as near as it is supposed to be in the new wards as at present.

Q. In other words the division you suggest would give more nearly an equal area to each ward, but would leave the population less evenly divided than the division by the commissioners?

A. That would be a question which we would have to take a census to find out. Nobody knows at the present time.

Q. But you think the division of population would not be as even as the present division?

A. Considering the report of the commissioners by taking in the people at the reformatory, it is a little too much to expect that they would be that even.

Q. As a matter of fact almost all of the third ward as laid out by the commissioners is country territory except for the settlements of Sewaren which you have mentioned and small settlements of Port Reading is that not so?

A. No.

Q. Is not every bit of the third ward except Sewaren and Port Reading sparsely settled.

A. Well for a country town I consider Edgar and Avenel and the population on Demarest on the Hilltop, I consider them quite a distance from each other, as a country place they are not sparsely settled.

- Q. Those three settlements are quite a distance apart are they not?
- A. I should say not over two miles distant.
- Q. And how many are there at Edgar.
- A. I don't know the population.
- Q. You know all the people who live there?
- A. I know the larger part.
- Q. There are not 50 are there?
- A. I don't think so.
- Q. And there are not 200 in Avenel and De- 10
maarest together?
- A. Yes over 200.
- Q. How much over?
- A. About 231 on the west side of the track,
Pennsylvania.
- Q. And in the second ward except for Keasbey
and Fords there is no settlement in the entire ward
having over 100 inhabitants is there?
- A. Yes, Iselin has more than a 100. Colonia. 20
- Q. How many over 100 has Iselin?
- A. I don't know to be exact.
- Q. It is less than 150 is it not?
- A. I should say 150.
- Q. And Colonia has less than 150?
- A. Yes.
- Q. And from Ford's corner north the second
ward has no settlement of any consequence except
Iselin and Colonia.
- A. It has no named settlement, but people are
quite numerous in that territory. 30
- Q. Is there any settlement of 25 or more people?
- A. Yes. The clay banks has I should judge 250
or 300.
- Q. But they are scattered through the territory
are they not?
- A. They are scattered through quite a large
territory of farming district between there.
- Re-direct by Mr. Cutter.
- Q. What is the line at present, Mr. Dooley, be-
tween the first and second election districts? 40

A. Perth Amboy Avenue and St. George Avenue.

Q. St. George's Avenue as far as the Six Roads?

A. Yes, sir.

Q. Does that line run through the village of Woodbridge?

A. Yes.

Q. And the second district includes everything west of that line, and north of it?

10 A. Yes, sir.

Q. What is the line at present between the first and third election districts?

A. The Woodbridge Creek and at the northerly point of the Woodbridge Creek and the straight line to the City of Rahway.

Q. Everything east and north of that line is in the third election district?

A. Yes, sir.

Re-cross by Mr. Martin.

20 Q. Each of the wards as laid out by the Commissioner contains over 600 qualified voters, does it not?

A. No, I think not.

Q. Which one does not?

A. Number 2 for one and I doubt if Number 3 does. In fact, I am sure it don't. Don't think it has yet 400.

30 Q. Do you know or do you not know what body has authority by the law to lay out and change election districts?

A. I do provided you have the necessary amount of people who voted at the present election.

Q. What body is by law vested with the authority to change election districts?

A. Township Committee.

Q. Of which you are a member?

A. Yes.

40 Q. Do you remember how many voters were registered in the year 1910 in the then first election district?

A. In the neighborhood of little under 600.
 Q. Do you remember how many were registered in the then second election district?

A. Upwards of 500 or 600.
 Q. Do you remember how many were registered in the then third election district?

A. About 353.
 Q. Are you sure as to these figures?
 A. I am sure of Number 1 and Number 2, Number 3 at 350 or 400.

10

Sworn to before me,

CHARLES C. HOMMANN,
Supreme Court Commissioner.

BENJAMIN B. CLARK, recalled.

By Mr. Cutter.

Q. Mr. Clark, in laying out the township of Woodbridge into wards. If four wards had been made instead of three, would it have been easier to make the wards compact in territory?

20

A. I believe it would.

Cross examination by Mr. Martin.

Q. How would you suggest making such a division?

A. Why, use the same means as suggested in dividing it into three.

Q. Let's have something practicable instead of a general principle.

Objected to by Mr. Cutter as improper.

30

A. I don't know. I fail to understand what you mean. If you will ask me any direct question that I can answer directly.

Q. Instead of using general terms, will you state specifically how you would suggest making such a division?

A. I cannot state specifically as regards to line not having canvassed the various territories.

Q. Have you no specific suggestion at all to offer?

40

A. In a general way I would say divide the largest district and the third district and take the population of the first district to equalize the population.

Q. Well, that is a pretty general statement; how would you go about?

A. The rest is merely clerical; at the time of the division it would have to be done by thus sub-dividing the township. In other words I cannot lay out the lines without knowing the number of inhabitants in the proposed district.

Q. You have heard Mr. Dooley state pretty complete the inhabitants of all the portions of the second and third wards, now if you were a commissioner where would you start in laying out the line?

A. I would ascertain the number of inhabitants in the lower end of the third district, also in the lower end of the second district. I would then divide the remaining territory into two sections. That I believe would bring an angle through the township proper which can be thrown one way or the other to equalize the inhabitants in either section. If you draw a line this way through the town and make this two districts, and this two districts (indicating), and using the surplus of the population in the township to make up the deficiency in the sparsely populated portions in the second or third wards.

Q. Tell us why you seem so anxious to have the settlement of Woodbridge split up so as to put part of it in one of the different wards?

A. It is not my anxiety to split up Woodbridge. It is my idea to centralize the interests in each district so far as possible.

Q. How would the interest be centralized by adding to each ward a slice from the village of Woodbridge to the country territory?

A. It would be much more equal than to have portions of one district cover nearly 10 miles in extent, which necessarily alienates the interests of the

one district. In other words, it seems impossible to have unity of interest, with a distance of 10 miles between the inhabitants of one district, likewise in the third.

Sworn to before me,

CHARLES C. HOMMANN,
Supreme Court Commissioner.

It is admitted by both sides that the population of the third ward as testified to by Mr. Edgar includes approximately 500 at the New Jersey Reformatory, of whom all but about fifteen were inmates committed there under sentence, and that such were the figures of the United States census of 1910. 10

Prosecutors rests.

Testimony closed,

CHARLES C. HOMMANN,
Supreme Court Commissioner. 20

NEW JERSEY SUPREME COURT.

Filed Sept. 28, 1911.

BENJAMIN B. CLARK AND THOMAS THOMPSON,	}	<i>Pros.,</i> <i>On Certiorari.</i> <i>Reasons.</i>	30
vs.			
J. BLANCHARD EDGAR ET AL.,			
	<i>Defendants.</i>		

The following are the reasons on which the prosecutors rely, for the setting aside of the report and proceedings removed into this court by the writ issued in the above cause:

1. That under the act of April thirtieth, 1906, entitled "A supplement to an act entitled 'An act concerning Townships (Revision of 1899),' " as amended, the Township of Woodbridge cannot le- 40

gally be laid out into wards.

2. That under the said act, as amended by an act approved April twenty-seventh, 1911, entitled "An act to amend 'An act amending section two of a supplement to an act entitled 'An act concerning townships (Revision 1899),' which said supplement was approved April thirtieth, one thousand nine hundred and six," which amendment was approved April sixteenth, one thousand nine hundred and eight," only in townships having more than
10 ten thousand inhabitants, as shown by the official State or United States census, can two members of the Township Committee be elected from each ward, and one at large, after a division of a township into wards.

3. That, according to the official United States census of the year nineteen hundred and ten, the population of the said township was less than ten thousand inhabitants.

20 4. That the petition presented to the Judge of the Circuit Court of Middlesex County did not allege facts which authorized the appointment of said Commissioners.

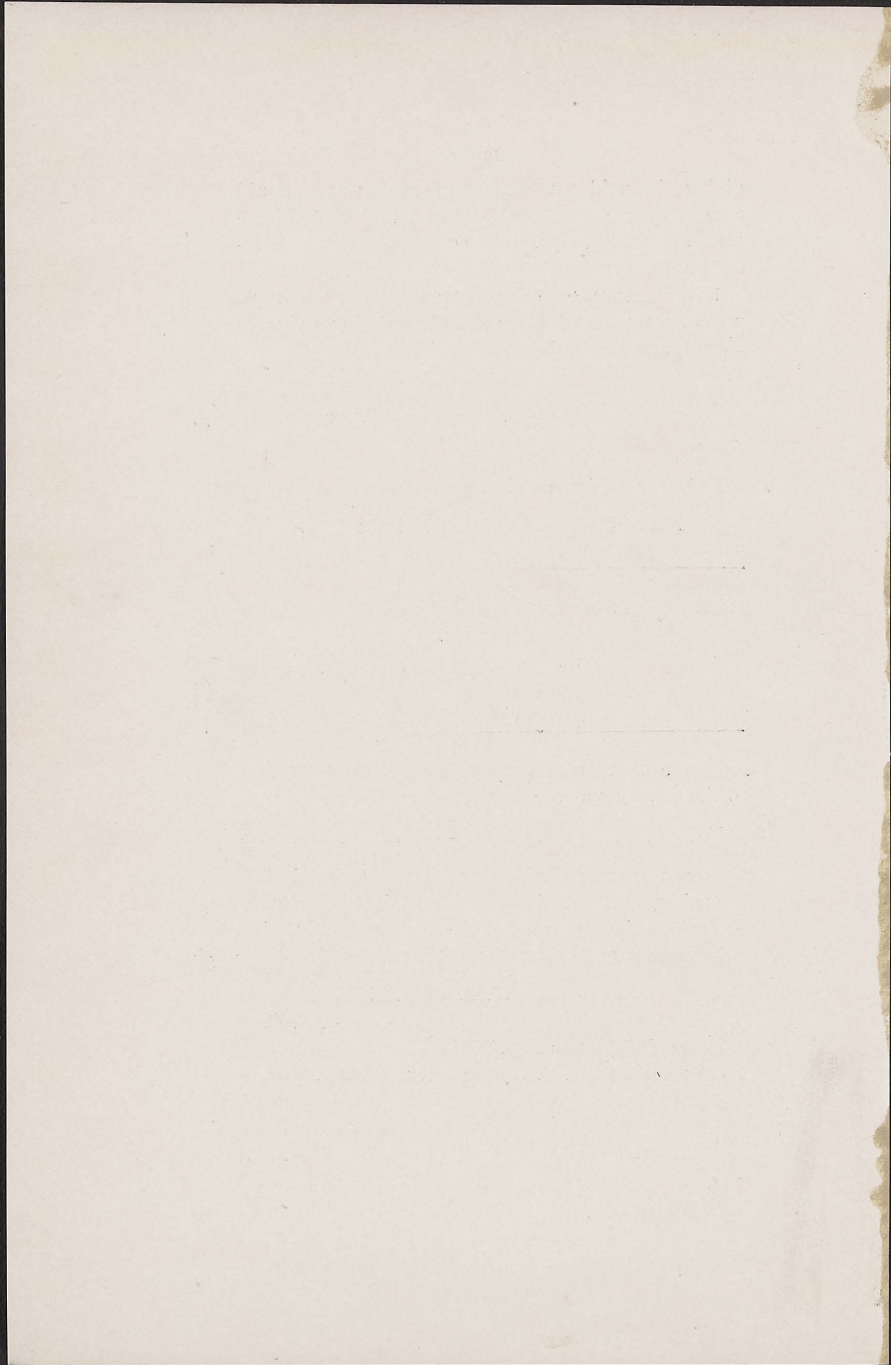
5. That it is useless and of no legal effect to divide the said township into wards, because the Township Committee, notwithstanding such division, will continue to be constituted and elected as theretofore.

30 6. That each ward of the said township, as the same has been divided, does not contain as nearly as possible an equal number of inhabitants.

7. That each ward of the said township, as the same has been divided, does not consist of a contiguous territory, and is not geographically compact.

8. That the said Commissioners in dividing the said township into wards did not endeavor to make the said wards geographically compact.

40 9. That the said Commissioners, in dividing the said township into wards, did not endeavor to so



10 sus, but has not more than ten thousand inhabitants according to the said census, and that according to the provisions of the second section of said act, as amended by an act approved on the twenty-seventh day of April, 1911, two members of the Township Committee are not to be elected from each ward, and one at large, in townships divided into wards under said act, except in townships having a population of more than ten thousand inhabitants, as shown by the official state or United States census; and that a true copy of the said order and the petition in pursuance of which the same was made is hereto annexed.

THOS. THOMPSON.

Sworn and subscribed the 18th day of August, A. D. 1911, before me.

JOHN S. DOOLEY,

Com. of Deeds, Middlesex Co.

20

MIDDLESEX CIRCUIT COURT.

IN THE MATTER OF THE DIVISION
OF THE TOWNSHIP OF WOOD-
BRIDGE, IN THE COUNTY OF
MIDDLESEX, INTO WARDS.

*Order
Appointing
Commissioners.*

30

This matter being opened by J. H. Thayer Martin, of counsel with the petitioners, and a petition having been presented to me requesting the appointment of Commissioners to make division of the Township of Woodbridge in the County of Middlesex, into Wards, and it appearing from the certificate of the Secretary of State of the State of New Jersey and the affidavits annexed to said petition that said Township has a population of more than

40

United States census, and that said petition was signed by at least fifty of the legal voters of said Township.

Now, therefore, pursuant to the provisions of Chapter 158 of the Laws of 1906, being an Act of the Legislature of the State of New Jersey, entitled "A supplement to an Act entitled 'An Act concerning Townships (revision of 1899),' " approved April 30, 1906, I do, on this sixth day of July, 1911, appoint Howard Valentine, James E. Berry and John C. Fower, who are Freeholders of the said County of Middlesex, as Commissioners to make division of said Township into wards pursuant to said Act. 10

J. J. BERGEN,

*Judge of the Circuit Court of the
County of Middlesex.*

MIDDLESEX CIRCUIT COURT.

20

IN THE MATTER OF THE DIVISION
OF THE TOWNSHIP OF WOOD-
BRIDGE, IN THE COUNTY OF
MIDDLESEX, INTO WARDS.

Petition.

*To the Honorable, the Judge of the Circuit Court of
the County of Middlesex:*

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We, the undersigned petitioners, being at least fifty of the legal voters of said Township of Wood-bridge, in the County of Middlesex, and State of New Jersey, do respectfully petition your Honor to appoint a board of three Commissioners to make division of said Township into wards, and your petitioners respectfully show that said Township has a population of more than eight thousand (8,000) inhabitants as shown by the official United 40

States census, promulgated on the 7th day of March, 1911, as appears by the certificate of the Secretary of State of the State of New Jersey, hereto annexed.

Dated June 29, 1911.

Respectfully submitted,

	J. Blanchard Edgar	Maurice P. Dunigan
	Albert F. Mount	James P. Gerity
10	George E. McFarlane	George F. Dunigan
	E. G. Cone	Thomas Somers
	Henry Wiedenhaupt	Thomas L. Webber
	Frank J. Cooper	Jos. H. T. Martin
	E. W. Cooper	E. C. Ensign
	Jacob Huber	J. H. Coddington
	Adam Snyder	David Coddington
	S. B. Brewster	Wm. M. Rowe
	Chas. S. Farrell	C. F. Carrier, Jr.
	Raymond R. Moore	W. H. Miller
20	Gustav Blaum	D. S. Voorhees
	Andrew Kath	Walter I. Auten
	Chas. Drake	Ellis B. Edgar
	C. F. Turner	Ellis B. Freeman
	Frank Elias	Wm. S. Freeman
	M. Stricker	E. F. Edgar
	Thos. A. Liber	D. Desmond
	Franklin Moore	H. A. Tappen
	Richard Sattler	F. Carlsan
	Arthur Liddle	Ivins A. Browne
30	John Thompson	J. M. Coddington
	Peter Griner	Geo. H. Berry
	T. E. Drake	J. H. Thayer Martin
	Louis Greiner	Seth Lockwood, V. S.

STATE OF NEW JERSEY, }
 COUNTY OF MIDDLESEX. } ss:

Marcus A. Brown, being duly sworn, on his oath says: I am a resident in and legal voter of the Township of Woodbridge, in the County of Middlesex, and was a member of the election board in the

first election district of said Township for the annual election held in November, 1910.

I am personally acquainted with all of the 52 persons whose names appear to be subscribed to the foregoing petition as petitioners, except Messrs. Mount, McFarlane, Cone, Wiedenhaupt and Cooper, and all of said 52 petitioners are legal voters of said Township.

MARCUS A. BROWN.

Sworn and subscribed before me this 29th day of June, 1911.

10

WM. L. HARNED,
Notary Public of N. J.

STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX. } ss:

Seth Lockwood being duly sworn, on his oath says: I am one of the petitioners named in the foregoing petition. I am personally acquainted with all of the other 51 persons whose names appear to be subscribed to the foregoing petition, and each one of said persons signed said petition in his own name and with his own hand personally in my presence; and I know each of said petitioners is a legal voter in said Township, and said petition was signed by at least fifty of the legal voters of said Township.

20

SETH LOCKWOOD, V. S.

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Sworn and subscribed before me this 29th day of June, 1911.

WM. L. HARNED,
Notary Public, N. J.

Following the above papers and attached thereto is a certificate from the Secretary of State as to official count of said Township, also affidavit of Robert G. Brown.

40

STATE OF NEW JERSEY, }
 MIDDLESEX COUNTY. } ss:

10 Benjamin B. Clark, of full age, being duly sworn according to law, on his oath saith that he is a freeholder and legal voter of the Township of Woodbridge in the County of Middlesex, and resides at Avenel, in said Township; that on the sixth day of July last Howard Valentine, James E. Berry and John C. Fowler were appointed by the Honorable James J. Bergen, one of the Justices of the Supreme Court, as Commissioners to make division of said Township of Woodbridge into wards, pursuant to an act entitled "A supplement to an act entitled 'An Act concerning townships (Revision of 1899),' " approved April 30, 1906; that the said Township of Woodbridge has more than eight thousand inhabitants according to the last official United States census, but has not more than ten 20 thousand inhabitants according to the said census, and that according to the provisions of the second section of said act, as amended by an act approved on the twenty-seventh day of April, 1911, two members of the Township Committee are not to be elected from each ward, and one at large, in townships divided into wards under said act, except in townships having a population of more than ten thousand inhabitants, as shown by the official state or United States census; and that a true copy of the said order and the petition in pursuance of which 30 the same was made, is hereto annexed.

B. B. CLARK.

Sworn and subscribed the 18th day of August,
 A. D. 1911, before me.

JOHN S. DOOLEY,
Com. of Deeds, Middlesex Co.

RETURN OF COMMISSIONERS.

Filed Sept. 8, 1911.

NEW JERSEY SUPREME COURT.

BENJAMIN B. CLARK AND THOMAS THOMPSON, <i>Prosecutors,</i> <i>vs.</i> J. BLANCHARD EDGAR ET AL., <i>Defendants.</i>	}	<i>On Certiorari.</i>	10
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To the Honorable, the Justices of the Supreme Court of Judicature of New Jersey:

We, Howard Valentine, James E. Berry and John C. Fowler, Commissioners appointed to make division of the Township of Woodbridge in the County of Middlesex, into wards, do in obedience to the command of the writ hereto annexed, to us and the Clerk of said County directed, hereby certify that neither the said appointment of us as Commissioners, nor the application therefor, were before us or filed with us, or were in our possession, but that the same were filed with the said Clerk of said County, who has certified the same as to him directed; and we do further certify that at the time of the issue of said writ we had made division of said Township into wards, and had prepared our report, but had not signed or filed the same, and the allocatur of said writ providing that the same should not operate as a stay, we did thereupon and on the twenty-first day of August, nineteen hundred and eleven, sign our said report, and thereafter, and on the twenty-second day of August, nineteen hundred and eleven, did file our said report with the said Clerk; and that nothing touching or concerning the

same remains before us, wherefore we can make no other return than as hereinbefore set forth.

In witness whereof we have hereunto set our hands and seals, this 30th day of August, nineteen hundred and eleven.

HOWARD VALENTINE,
J. O. FOWLER,
JAMES E. BERRY.

10 *Edmund Gild & Martin, Attorneys*

ADDITIONAL REASON.

Filed Nov. 10, 1911.

NEW JERSEY SUPREME COURT.

20	BENJAMIN B. CLARK AND THOMAS THOMPSON, <i>Prosecutors,</i> <i>vs.</i> J. BLANCHARD EDGAR ET AL., <i>Defendants.</i>	}	<i>On Certiorari.</i>
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30 The prosecutors will rely upon the argument of the above cause upon the following additional reason:

9½. That the act of April thirtieth, 1906, under which the said proceedings were instituted, both before it was amended and afterwards, was unconstitutional and void, because it provided for the appointment of Commissioners upon the application in writing of at least fifty of the legal voters of a township, and for other reasons.

40 EPHRAIM CUTTER,
Attorney of Prosecutors.

OPINION OF SUPREME COURT.

Filed January 29, 1912.

NEW JERSEY SUPREME COURT.

November Term, 1911.

BENJAMIN B. CLARK AND THOMAS THOMPSON, <i>Prosecutors,</i> <i>vs.</i> J. BLANCHARD EDGAR ET AL., <i>Defendants.</i>	}	10
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Argued November 9, 1911; decided January 29, 1912.

SYLLABUS.

1. The act entitled "A supplement to an act entitled 'An act concerning townships (Revision of 1899),' " approved April 30, 1906 (P. L., p. 298) is not unconstitutional as being an unlawful delegation of legislative power. 20

2. Proceedings taken to divide a township into wards, pursuant to sections 1 and 4 of an act entitled "A supplement to an act entitled 'An act concerning townships (Revision of 1899),' " approved April 30, 1906 (P. L., p. 298), are not affected by chapter 256 of P. L. 1911, p. 540, which purports to amend chapter 303 of P. L. 1908, p. 612, which in turn amends section 2 of the act of 1906, when the provisions of the act of 1911 have not been accepted by the voters of the township concerned, in the manner therein provided. 30

On Certiorari.

Before Justices Trenchard and Kalisch.

For the Prosecutors, Mr. Ephraim Cutter.

For the Defendants, Mr. J. H. T. Martin.

Per Curiam. 40

This writ of certiorari brings up for review proceedings taken pursuant to sections 1 and 4, chapter 158 of P. L. 1906, p. 298, to divide the Township of Woodbridge, in the county of Middlesex, into wards.

The return shows that by such proceedings the township was divided into three wards by Commissioners appointed by the Judge of the Circuit Court of the county in which the township is located, upon petition in writing of at least fifty of the legal voters of the township.

We think the reasons assigned for setting aside the proceedings are without merit.

The act entitled "A supplement to an act entitled 'An act concerning townships (Revision of 1899),' " approved April 30, 1906 (P. L., p. 298) is not unconstitutional as being an unlawful delegation of legislative power.

The fact that the act provides that the Commissioners shall be appointed by the Judge does not render the act unconstitutional.

Ross vs. Freeholders of Essex, 40 Vr. 291.

The fact that the Commissioners are to be appointed by the Judge upon the petition in writing of at least fifty of the legal voters of the township, does not render the act unconstitutional. That is not a delegation of power to enact laws. The act is a complete piece of legislation and applies to all townships in the class described. Statutes containing very similar provisions are quite common, and some of them, of which that under consideration in *Hoboken vs. O'Neill*, 74 N. J. L. 57, is an illustration, have been held to be constitutional, and none, so far as we are aware, have been held to be unconstitutional because of such a provision. This ground of objection would have been equally applicable in the case of *Gilhooly vs. Elizabeth*, 37 Vr., 484, yet it is not even mentioned in the opinion which declared the act there considered to be unconstitutional because it gave the Governor power, in his discretion, to appoint commissioners on the

application of one hundred voters. It will be noticed that the act here under consideration vests no discretion in the Judge.

The proceedings in question are not affected by chapter 256 of P. L. 1911, p. 540, which purports to amend chapter 303 of P. L. 1908, p. 612, which in turn amends section 2 of the act of 1906, because the act of 1911 by its terms remains inoperative in any township until after its acceptance by the voters of such township at a general or special election. There has been no such referendum in the township of Woodbridge. 10

The contention that the division in question did not comply with the requirements of the statute that "each ward shall consist of a contiguous territory and shall contain, as nearly as possible, an equal number of inhabitants" we find to be unfounded in fact.

The proceedings under review will be affirmed, with costs. 20

WRIT OF ERROR AND RETURN.

Filed March 15, 1912.

NEW JERSEY SUPREME COURT.

November Term, 1911.

BENJAMIN B. CLARK AND
THOMAS THOMPSON ET ALS.,

Prosecutors,

vs.

J. BLANCHARD EDGAR ET ALS.,

Defendants.

On Certiorari. 30
Rule for
Judgment.

The Writ of Certiorari in the above entitled cause haing been duly returned and argument had at the term of November, nineteen hundred and eleven, on the writ and return and depositions 40

taken in said cause, and the reasons filed by the prosecutors, and the court having considered the same,

It is Ordered that the said writ of certiorari be dismissed and the proceedings reviewed by the said writ be in all things affirmed, with costs to be taxed against the prosecutors.

Entered February 19, 1912.

On motion of

10

J. H. THAYER MARTIN,
Attorney for Defendants.

I, WILLIAM RIKER, Jr., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule entered in the minutes of the Court in the above stated cause.

In testimony whereof I have set my hand and the seal of said Court at Trent-

20

[L. s.] ton, this twenty-seventh day of February, A. D. nineteen hundred and twelve.

WM. RIKER, Jr.,
Clerk.

NEW JERSEY, ss.

The State of New Jersey to our Justices

[L. s.] of our Supreme Court. GREETING:

Because in the record and proceedings, and also in the giving of the judgment in a
 30 between Benjamin B. Clark and Thomas Thompson, Prosecutors, and J. Blanchard Edgar, Albert F. Mount, George E. McFarland, E. G. Cohen, Henry Wiedenhaupt, Frank J. Cooper, E. W. Cooper, Jacob Huber, Adam Snyder, S. B. Brewster, Charles S. Farrell, Raymond R. Moore, Gustav Blaum, Charles Drake, C. L. Turner, Frank Elias, M. Stricker, Theodore A. Liber, Franklin Moore, Richard Sattler, Arthur Liddle, Andrew Kath, T. E. Drake, John Thompson, Peter Greiner, Louis
 40 Greiner, Maurice P. Dunigan, James P. Gerity,

George F. Dunigan, Thomas Somers, Thomas L. Wilbur, Joseph S. Martin, E. C. Ensign, J. H. Coddington, David Coddington, William M. Rowe, C. F. Carrier, Jr., W. H. Miller, D. S. Voorhees, Walter I. Auten, Ellis B. Edgar, Ellis B. Freeman, William S. Freeman, E. F. Edgar, D. Desmond, H. A. Tapen, F. Carlson, Ivins A. Browne, J. M. Coddington, George H. Berry, J. H. Thayer Martin, and Seth Lockwood, defendants, on a certiorari issued out of our said Supreme Court, to Bernard M. Gannon, Clerk of the County of Middlesex, and Howard Valentine, James E. Berry and John C. Fowler, Commissioners appointed to make division of the Township of Woodbridge in the county of Middlesex into wards, directed, as is said manifest error hath intervened, to the great damage of the said Benjamin B. Clark and Thomas Thompson, Prosecutors as aforesaid, as by their complaint we are informed, we being willing that the error, if any there be, should in due manner be corrected, 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 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 fifteenth day of March instant, and this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon what of right and accordini to law, ought to be done.

WITNESS our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the twenty-fourth day of February, in the year of our Lord one thousand nine hundred and twelve.

S. D. DICKINSON,

Clerk.

EPHRAIM CUTTER,

Attorney.

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.

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ALLEGATION OF DIMINUTION.

Filed March 22, 1911.

N. J. COURT OF ERRORS AND APPEALS.

20

BENJAMIN B. CLARK AND
THOMAS THOMPSON,
Prosecutors and Plaintiffs
in Error,
vs.

*On Writ
of Error.*

J. BLANCHARD EDGAR ET AL.,
Defendants in Error.

30

To the Judges of our said Court of Errors and Appeals:

Your petitioners, Benjamin B. Clark and Thomas Thompson, respectfully show that they have taken out a writ of error in the above entitled cause, directed to the Supreme Court of the State of New Jersey, and that in compliance therewith, the said Supreme Court has returned the rule for judgment in the cause in the Supreme Court, but that it is necessary to bring up the affidavits taken upon notice in the said cause, and the reasons filed for reversal therein, and the rule allowing affidavits to be taken.

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and the rule allowing an additional reason to be filed, and the notices on which said rules were granted, and the affidavits on which the writ of certiorari in said cause was granted, and the original writ of certiorari in said cause, and the return thereto, and also the return of certain Commissioners, and the additional reason filed.

Your petitioners therefore pray that a writ of certiorari be issued out of this honorable court, directed to the Justices of the said Supreme Court, directing them to send up to this court the above described papers. 10

And your petitioners will even pray, etc.

Dated March 22, 1912.

EPHRAIM CUTTER,
Attorney of Plaintiffs in Error.

A certiorari to the Supreme Court was issued March 22, 1912, and duly returned and filed March 26, 1912. 20

ASSIGNMENT OF ERRORS.

Filed April 13, 1912.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BENJAMIN B. CLARK AND
THOMAS THOMPSON,

*Prosecutors and Plaintiffs
in Error,*

vs.

J. BLANCHARD EDGAR ET AL.,

Defendants in Error.

*On Writ
of Error.*

30

Afterwards, that is to say, on the thirteenth day of April, nineteen hundred and twelve, before the Judges of the said Court of Errors and Appeals in 40

the last resort in all causes, at Trenton, come the said Benjamin B. Clark and Thomas Thompson by Ephraim Cutter, their attorney, and say that in the record and proceeding aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit, that by the record aforesaid, it appears that the judgment aforesaid in form aforesaid given, affirmed in all things the proceedings removed into the Supreme Court by the

10 the said Writ of Certiorari, whereas by the law of the land judgment ought to have been given by said Court, vacating, annulling and setting aside the said proceedings, and declaring the same to be null and void; and that there is also manifest error in this, to wit, that the Supreme Court decided that the act of the Legislature on which the said proceedings were founded, was constitutional, and that the proceedings of the Commissioners appointed to divide the Township of

20 Woodbridge into wards complied in all things with the requirements of the said act.

Therefore the said Benjamin B. Clark and Thomas Thompson pray that the judgment aforesaid, by reason of the aforesaid errors, be reversed, annulled and held for nothing, and that they may be restored to all things they have lost on occasion of the said judgment, etc.

EPHRAIM CUTTER,

30

*Attorney for and of Counsel with
Plaintiffs in Error.*

40

JOINDER IN ERROR.

Filed May 13, 1912.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

 BENJAMIN B. CLARK AND
THOMAS THOMPSON,

*Prosecutors and Plaintiffs
in Error,*
vs.

J. BLANCHARD EDGAR ET ALS.,

Defendants in Error.

10

*In Error.
Joinder.*

Afterwards, to wit, on the thirteenth day of May,
nineteen hundred and twelve, the said Howard
Valentine, James E. Berry, John C. Fowler, J.
Blanchard Edgar and J. H. Thayer Martin, by
Guild & Martin, their attorneys, come into court
and say that there is no error in the record and pro-
ceedings aforesaid, or in giving the judgment aforesaid,
and they pray 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 may in all things be affirmed, etc.

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GUILD & MARTIN,

*Attorneys for and of Counsel with the
defendants, Howard Valentine, James
E. Berry, John C. Fowler, J. Blanchard
Edgar and J. H. Thayer Martin.*

Service of a copy of the within joinder in error
is acknowledged this 13th day of May, 1912.

EPHRAIM CUTTER,

Attorney of Plaintiffs in Error.

40

NOTICE FILED SEPT. 20, 1911.

N. J. SUPREME COURT.

10	BENJAMIN B. CLARK and THOMAS THOMPSON, Prosecutors,	}	On Certiorari.
	<i>v.</i>		
	J. BLANCHARD EDGAR, et al., Defendants.		

To the Defendants:

20 Please take notice that on Tuesday, the 19th day of September, instant, at the hour of eleven o'clock in the forenoon, at the Court House, in the city of New Brunswick, I shall apply to the Honorable James J. Bergen, Justice of the Supreme Court, for a rule allowing the said prosecutors to take affidavits to be used on the hearing of the above stated cause.

Dated Sept. 16, 1911.

Yours respectfully,

30 EPHRAIM CUTTER,
Attorney of Prosecutors.

Service of the within notice is hereby acknowledged this 16th day of September, 1911.

J. H. THAYER MARTIN,
Attorney.

N. J. COURT OF ERRORS AND APPEALS.

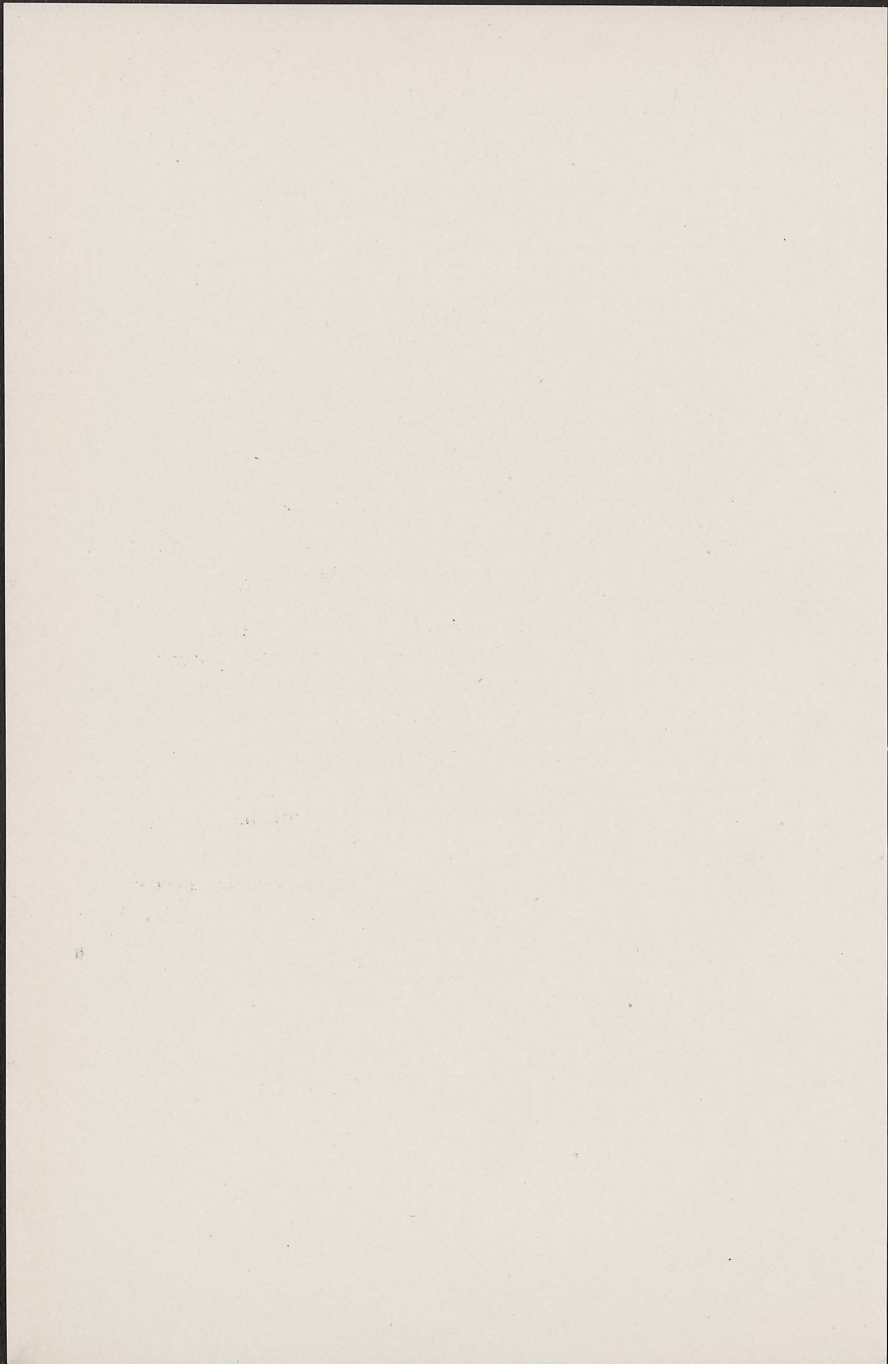
BENJAMIN B. CLARK, AND THOMAS THOMPSON, Plaintiffs in Error. <i>v</i> J. BLANCHARD EDGAR, et al., Defendants in Error.	}	On Writ of Error.	10
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STATE OF NEW JERSEY, }
 MIDDLESEX COUNTY, } ss:

Ephraim Cutter, of full age, being duly sworn, on his oath saith, that he is the attorney of the Plaintiffs in Error in the above cause, that on the thirteenth day of April, 1912, he caused a true copy of the assignment of errors in said cause, to be served on all the persons who signed the petition presented to the Judge of the Circuit Court, asking for a division of the township of Woodbridge, into wards, except Thomas L. Wilbur, whose residence or place of abode, deponent, notwithstanding diligent inquiry, was unable to ascertain. 20

Sworn and subscribed
 the 27th day of May, A.
 D., 1912, before me.
 Ephraim Cutter 30

C. W. DRUMMOND,
Notary Public, N. J.



NEW JERSEY COURT OF ERRORS AND
APPEALS.

BENJAMIN B. CLARK AND THOMAS THOMPSON, <i>Plaintiffs in Error,</i> <i>vs.</i> J. BLANCHARD EDGAR ET AL., <i>Defendants in Error.</i>	}	<i>On Writ of Error.</i>	10.
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POINTS OF PLAINTIFFS IN ERROR.

I.

It is claimed on behalf of the plaintiffs in error that the act of April 30, 1906 (Laws of 1906, page 298), being a supplement to the general township act of 1899 under which the proceedings to divide the township of Woodbridge into wards were taken, is unconstitutional both as originally passed and as amended in 1911 as to the second section (Laws of 1911, page 540), for the following reasons:

(a.) Because the act of 1906 does not become effective in townships until a petition signed by at least 50 of the legal voters of such township is presented to a judge of the Circuit Court of the county, who is then by order to appoint commissioners. This is a delegation of legislative power to individuals which is unconstitutional.

Ranez v. Smith, 133 Cal. 102; People v. Bennett, 29 Mich. 451, 18 A. Rep. 107; Fogg v. Union Bank, 1 Bax. (Tenn.) 435; Winters v. Hughes, 3 Utah 443, 24 Pac. 759; Hutchinson v. Leimbach, 74 Pac. (Kansas) 598; Rutten v. Paterson, 44 Vr. 467, 64 At. 573; Ohio Railroad Co. v. Todd, 12 Ky. L. Rep. 726, 15 S. W. 56.

(b.) The said act is a special act regulating the internal affairs of townships, in violation of the 7th section, Par. 10, of the fourth article of the constitution of this State.

Pell v. Newark, 11 Vr. 550; Gilhooley v. Elizabeth, 37 Vr. 484, 49 At. 1106.

10 (c.) Because the said act authorizes by special law the appointment of commissioners to regulate the internal affairs of a township. Gilhooley v. Elizabeth, 37 Vr. 484, 49 At. 1106.

(d.) Because the legislature cannot delegate the power, either to a commission or to township authorities, to divide a township into wards, thereby changing in a material respect the constitution of the township committee, and without specifying
 20 into how many wards a township of over 8,000 inhabitants is to be divided, the number of wards and the number of members of the township committee, being left to the discretion of the commission or body, to whom the power is delegated. Elliott v. Detroit, 121 Mich. 611, 84 N. W. 820; In re Ridgefield Park, 54 N. J. L. 288, 23 At. 674; People v. Riordan, 73 Mich. 504, 41 N. W. 482; People v. Johnson, 95 Cal. 471, 31 Pac. 611; Dougherty v. Austin, 94 Cal. 601, 29 Pac. 1092, 16 L. R. A. 161;
 30 Dougherty v. Ransom Co., 5 N. D. 1, 63 N. W. 148; Wyandoth Co. v. Abbott, 52 Kan. 148, 34 Pac. 416; Dempsey v. Newark, 53 N. J. L. 4, 20 At. 886; In re Ridgefield Park, 54 N. J. L. 288, 23 At. 674; State v. Morris, C. P. 36, N. J. L. 72; Wood v. Atlantic City, 28 At. 427, 27 Vr. 126; Newark v. McLoughlin, 57 N. J. L. 298, 30 At. 543, 34 At. 13; Dexheimer v. Orange, 36 At. 706, 60 N. J. L. 111; Allison v. Cerker, 67 N. J. L. 596, 52 At. 362; Ven Cleve v. Passaic Valley Sewerage Commissioners, 71 N. J. L. 574, 60 At. 214.
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II.

It is claimed that the act of 1906 as amended April 27, 1911, now applies only to townships having a population of more than 10,000, and does not apply to the township of Woodbridge, the population of which, according to the last census, was 8,948 (Case, page 5). The second section and also the first section, at first applied to townships having a population of more than 8,000 inhabitants. As amended in 1911 the words 10,000 appear in the second section instead of 8,000. When the second section was amended to apply only to townships having more than 10,000 inhabitants, the first section authorizing the division of a township into wards should be held to have been also amended by implication. The object of a division of a township into wards, was for the purpose of providing for the election of members of the township committee by wards. No other object can be suggested. In section 6 of the act of 1906, it is provided that until a division of a township into wards is made, the members of the township committee shall be elected in the manner required by law at the time of passage of said act. By an act approved March 31, 1897 (Laws of 1897, page 133), and also by an act approved April 28, 1905 (Laws of 1905, page 379), provision is made for the division of townships into wards, but the object in each case is to enable the members of the township committee to be elected by wards. The end sought by the creation of wards in cities is the securing of local representation in the municipal government. *Wood v. Atlantic City*, 27 Vr. 126, 28 At. 427; *McLaughlin v. Newark*, 28 Vr. 298; *Dempsey v. Newark*, 53 N. J. L. 4, 20 At. 883.

When, therefore, the scheme of the act of 1906 was so changed that members of the township committee could not be elected from wards except in townships having more than 10,000 inhabitants, section one should be held to have been amended at

the same time by implication, so that it would apply to townships having more than 10,000 population, instead of townships having more than 8,000 population.

When there is an irreconcilable conflict between two acts, the later, as the more recent expression of the legislative will, must prevail, and will amend the earlier act by implication, 26 A. & E. Ency. of law (Second edition), page 708. "A statute may
10 be repealed by implication whenever it becomes apparent from subsequent legislation that the legislature does not intend the earlier act to remain in force," *id.* P. 720; *Chosen Freeholders v. Park Commission*, 33 Vr. 376.

The act of 1906 is to be construed as if section two, as amended, had been incorporated therein, at the time of its passage. *Farrell v. State*, 25 Vr. 421.

If the latter part of a statute is repugnant to a
20 former part, it shall stand, and so far as it is repugnant, be a repeal of the former part. *Harrigan v. Rochester*, 10 Wend. 547; 26 A. & E. Ency. of law (Second edition), page 619.

The act of April 27, 1911, in the second section reads as follows: "This act shall take effect immediately, but its provisions shall remain inoperative in any such township until the same shall be accepted by a resolution of the township committee of such township at least 30 days before the election
30 herein provided for, and provided it be accepted by the voters of said township by a majority of the votes cast." This section must mean that the second section of the act of 1906 shall not be in force in a township until voted upon and accepted. If, however, it means that the said second section shall not be considered as amended until after an election is held, still, as to townships having less than 10,000 inhabitants, said amendment will be in effect, and it will prevent them from taking any proceedings
40 to elect two members from each ward.

III.

Even if the first section of the act of 1906 has not been amended by implication, yet the division of the township of Woodbridge into wards would be a useless proceeding if the right to elect members of the township committee by wards does not exist, and the courts will not sanction the division of a township into wards, if no useful object can be accomplished by such division, and the purpose for which, under the act of 1906, a division was intended, will not be secured. *McCloskey v. Chamberlin*, 8 Vr. 388. 10

IV.

It is claimed that the wards as laid out by the commissioners, with the exception of the first ward, are not composed of "a contiguous territory." These words are often used in acts in relation to wards. Laws of 1894, 387; Laws of 1905, 131; Laws of 1901, 208. In the latter act the words "convenient and contiguous territory in a compact form" are used. The second ward is 40,600 feet in length, and its average width 10,000 feet. The third ward is 21,400 feet in length and its average width 10,000 feet. (Case, page 17). The first ward contains 1.98 square miles, the second, 14.5 square miles, and the third, 7.25 square miles (Case, page 28). The testimony is that it will be necessary to divide the second and third wards into election districts, in order that the voters may conveniently cast their ballots (Case, pages 31, 32 and 40). 20 30

As defined in Webster's Unabridged Dictionary "contiguous" means in actual or close contact; touching; adjacent; near; lying adjoining. The word has different meanings. Sec. 7 A. & E. Enc. of Law (Second edition), page 79.

I think that in this statute the legislature meant something more than that the wards should not be composed of separated tracts. It was intended to place some restriction upon the power of the com- 40

missioners, so that the wards should be compact in form, and convenient for the people in voting.

- In Arkansas the law allowed a debtor a homestead consisting of a house, and land about and contiguous to the dwelling house. It was held that a homestead could not be laid off in an arbitrary, unreasonable, and capricious manner. *Clements v. Crawford Co. Bank*, 40 S. W. 132, 64 Ark. 9. See also *Linn Co. Bank v. Hopkins*, 28 Pac. 606, 47 Kan. 580.

“Contiguous” is defined to be adjacent, in actual, close contact, touching, near. *Askell v. Commerce Ins. Co.*, 69 N. Y. 191.

- It has been held that by “contiguous lands” is understood such lands as are not separated from the corporation by outside land, and are so situated that they may be expected after annexation, to be united with the corporation in making up a homogeneous city. *Vestal v. City of Little Rock (Ark.)*, 11 L. R. A. 778.

- The courts, it has been held, should always consider the mischief which the statute was aimed at, and in order to give it effect, words absolute in themselves, and language the most broad and comprehensive, may be qualified and restricted by other parts of the same statute, or by the facts and circumstances to which they relate. *Blasko v. Wurster*, 150 N. Y. 437, 51 N. E. 303.

- When lands contiguous to a city or town are spoken of, it is easy to see what the word means. When, as in the present instance, a territory is required to be “contiguous,” I think it means compact, that the different tracts of land in the territory shall be as near and adjacent to each other as possible. No attempt evidently has been made by the commissioners to lay out the wards in question in this manner. (*Case*, page 21, L. 40).

V.

In the supplement to the general election law approved April 19, 1911 (Laws of 1911, page 276), known as the Geran act, it is provided in the first section, in relation to election districts, as follows: "Provided that in every division, change, or readjustment, the geographical compactness of each district shall be maintained." It is claimed that, as the new wards, when a township is divided, will each become an election district, until such time as it is found necessary to divide them into two or more election districts, the commissioners were required by this section of the Geran Act, to lay out the wards in question in such a manner that they would be geographically compact, and that the act of 1906 was amended to this extent by the said Geran Act. 10

VI.

It is claimed that each ward under the division, does not contain as nearly as possible an equal number of inhabitants. The first ward contains 280 more persons than the third, and the second, 232 more than the third (Case, p. 20 and 26). 20

No reason is shown why the wards could not have been made more equal in population than this. It is testified that part of the old first election district was added to the old third election district in creating the third ward. (Case, pages 20 and 21). No reason is shown why more of the territory of the first election district could not have been added to the third district, and the population of the third ward thus made larger. 30

Again, it appears that in the third ward about 500 inmates of the New Jersey Reformatory were included in the figures given as the population of that ward. (Case, page 26, L. 10, page 47, L. 10). As the object of the law in requiring equality in the population of the different wards, was that the people of the township might be equally represented 40

in the township committee, the inmates of the Reformatory, who had no right to vote in the township, should not have been included in estimating the population of the third ward. In re Silkman, 84 N. Y. Sup. 1028.

When a public board or body is intrusted with certain powers, such powers cannot be exercised arbitrarily, but are restricted by the statute under which such board or body is appointed. Gregory v. Jersey City, 7 Vr. 166; Griffin v. Wanser, 28 Vr. 533, 31 At. 222.

VII.

It is claimed that the commissioners did not act legally in taking the figures of the United States census of the previous year, as the basis of their work (Case, page 10, L. 33, page 21, page 26, L. 2), and should have made an accurate count of the number of inhabitants in each ward.

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VIII.

It is claimed that the defendants in this case are the persons who signed the application that was presented to the judge, asking for the appointment of the commissioners. State v. Justice, 4 Zab. 413; Miller v. Stout, 4 Vr. 42; Campbell v. Wainwright, 21 Vr. 555; Chasmere v. Convery, 24 Vr. 588; Hutchinson v. Rowan, 28 Vr. 530.

For the above reasons it is respectfully claimed that the judgment of the Supreme Court should be reversed.

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EPHRAIM CUTTER,

Of Counsel with Plaintiffs in Error.

New Jersey Court of Errors and Appeals

BENJAMIN B. CLARK and
THOMAS THOMPSON,
Prosecutors and Plaintiffs
in Error,
vs.

J. BLANCHARD EDGAR ET AL.,
Defendants in Error.

*On Writ
of Error.*

BRIEF FOR DEFENDANTS IN ERROR.

This suit brings up the dismissal of a writ of certiorari to set aside proceedings taken under P. L. 1906, p. 298, to divide the township of Woodbridge, in the county of Middlesex, into wards, and further attacking the division as made by the three Commissioners in those proceedings. The Act of 1906 applies to all townships of over 8,000 inhabitants, and it is not disputed that Woodbridge comes within this act. The principal contention of the prosecutors is that by Chapter 256 of the Laws of 1911 (P. L., p. 540) the act is limited to townships of over 10,000 population, and, therefore, does not apply to Woodbridge, which has only 8,948.

The writ was directed to the County Clerk and the Commissioners, and was served on them. No notice whatever appears to have been given to any other person, except a notice of application for an order to take testimony, served on the counsel for the Commissioners, after appearance for them had been made by filing a return to the writ, and such subsequent notices as were served upon the same counsel.

I.

This certiorari was properly dismissed as to the defendants, Howard Valentine, James E. Berry and John C. Fowler, the Commissioners who made division, with costs, for the reason that they were not proper parties to the suit, and had no interest whatever in the subject-matter.

Kirkpatrick v. Commissioners, 13 Vr. 510.

No papers were ever in their custody; their report, when made, was required to be filed with the County Clerk; they did not institute the proceedings brought up by the writ, and were not in any way interested in sustaining either the proceedings for their appointment or their report. They should, therefore, not have been brought into court, and they should be allowed their costs.

II.

The writ was properly dismissed on the merits, with costs against the prosecutors, because no valid or substantial reason has been offered for setting aside either the report or the earlier proceedings removed into this court by the writ.

The reasons originally filed fall into two classes, one class involving statutory constructions, the other raising questions of fact, and the classes will be considered separately. The constitutionality of the statutes is also involved in a supplemental reason.

The assignment of errors in this court is purely formal and general.

(A.) QUESTIONS OF LAW.

On the legal questions involved in this case, the reasoning contained in the opinion of the Supreme Court appearing on pp. 59 to 61 of the printed case, seems uncontrovertible. It may not be out of place, however, to review here the detailed argument submitted to the court below.

(1) *The act of 1906 is constitutional.*

The prosecutors gave notice of an additional reason, to be numbered 9 $\frac{1}{2}$, an afterthought which questions the constitutionality of the act of 1906. The ground of the challenge is not clearly stated in the reason. The copy of points of plaintiffs in error, as served under the rule, mentions four grounds. The first, marked "(a)", that this statute is a delegation of legislative authority to individuals—that is to the fifty petitioners and the Circuit Court judge. It is submitted, however, that this is not in any sense a delegation of legislative authority. The act is a complete piece of legislation and applies to all townships coming within the class described.

It is true the act does not become effective until some one sets the machinery in motion. The number required to set in motion this particular statute is less than one per cent. of the total population, and when the petition is once filed, there is no discretion or legislative action lodged in the judge or any one else as to whether the act shall apply or how it shall be applied.

Moreover, this ground of objection would have been equally applicable in the case of *Gilhooly v. Elizabeth*, 37 Vr. 484, yet it is not even mentioned in the opinion in that case; and by deciding the case solely on the ground that the act there in question placed upon the Governor the sole *discretion* of acting upon the petition, the Court, by inference, approved the principle of the petition itself. Such a method of initiating public action is recognized in almost all the acts treating of similar matters, and it is believed has not previously been questioned. The principle was approved by this court in one of the cases cited by plaintiffs in error, that of *Allison v. Corker*, 67 N. J. L. 596, at p. 604.

A responsible petition is required in acts providing for municipal investigations, for the construction of sewers, and many other matters, and if in-

valid, would have been attacked long ago. The Supreme Court in its opinion cites an authority on this point, *Hoboken v. O'Neill*, 74 N. J. L. 57.

Plaintiffs in error cite only one New Jersey case on this point, that of *Rutten v. Paterson*, 73 N. J. L. 467, in which it was stated by way of dictum that it would be unconstitutional to delegate final and absolute discretion to a select number of individual citizens, that is to fifty per cent. of persons for the time being constituting the governing body of the city to determine whether the act in question should be adopted or put in effect in the city; but in that case the Judge was discussing the delegation of *discretion* to select individuals. It was substantially one of the referendum statutes hereinafter mentioned, and is therefore not at all in point in the case at bar.

Plaintiffs' second ground, lettered "(b)", sets up that the act is a special act. The case of *Pell v. Newark*, cited by plaintiffs in error, is a clear case of special legislation. The case of *Gilhooly v. Elizabeth*, also cited by plaintiffs in error on this point, was not a case of special legislation, but involved a question of delegation of legislative power. It would seem too clear for argument that the statute involved in the case at bar is not a special act.

The third ground of plaintiffs in error, lettered "(c)", makes the same point that the act is special; but this act is not in any way a special law, and the *Gilhooly* case cited on this point has already been mentioned.

The fourth ground of plaintiffs in error, lettered "(d)," merely reviews the first ground respecting delegation of power, except that it adds the point that the legislature cannot delegate to the discretion of the Commissioners the power of determining the number of wards and consequently the number of members of the governing body. None of the New

Jersey cases cited in support of that proposition bear on it at all, except the case of *Allison v. Corker*, 67 N. J. L. 596, where the court, on p. 604, said:

“The grant of power to commissioners appointed by mayors to fix the number and lines of city wards for general municipal purposes has been upheld by this court in *McLaughlin v. Newark*, 29 Vr. 202.”

The *McLaughlin* case in 29 Vr. was an appeal from a decision of the Supreme Court which is cited by plaintiffs in error. The *McLaughlin* and *Allison* cases, therefore, seem to be express authority against the point made by plaintiffs in error.

The remaining New Jersey cases cited by plaintiffs in error seem to have no bearing on this point. The case of *Dempsey v. Newark*, 53 N. J. L. 4, was a decision on special legislation. It admits that the alteration of the boundaries of wards of a city constitutes a regulation of its internal affairs; it says that a change of the exterior lines of municipalities can only be done by special legislation, but that the division of wards must be by a general act.

The *Ridgefield Park* case, 54 N. J. L. 288, holds that the power of determining the exterior boundaries of municipalities cannot be delegated to a judge.

The case of *State v. Morris*, 36 N. J. L. 72, holds that if an act as passed has taken the form of a complete law, it is not made unconstitutional by requiring a majority vote of a municipality as a condition precedent to the granting of a license.

The case of *Wood v. Atlantic City*, 56 N. J. L. 232, discusses special legislation and holds that an act entitled an act concerning division of wards may contain provisions for representation of the wards in municipal government.

The case of *Derheimer v. Orange*, 60 N. J. L. 111, held that a statute delegating to a common council the power to consolidate offices in its discretion,

would allow a series of consolidations concentrating most of the functions of government in one and the same person, and is therefore a clear delegation of legislation and void; but that case does not resemble the one at bar.

The case of *Van Cleve v. Passaic Valley Sewerage Commissioners*, 71 N. J. L. 574, holds that a delegation of the power of taxation to a body having no governmental functions and representing no political district of the state is void.

It does not seem as if any of these cases bear on the question now before the court, and it seems unnecessary to consider the cases in other jurisdictions cited by plaintiffs in error.

(2) *The effect of the amendment of 1911 cannot be determined in this suit.*

Reasons 1 to 5, inclusive, attempt to question the construction and effect of the 1911 act above mentioned; the prosecutors contending that under this act, which purports to amend P. L. 1908, p. 612, itself amending section 2 of the act of 1906, the Township Committee of Woodbridge is not to be elected by wards. This point is set forth specifically in reason number 2. It is submitted that this contention cannot be raised in the pending suit, for the proceedings brought up by this writ are taken under sections 1 and 4 of the act of 1906 which sections are not at all affected by the amendments of 1908 or 1911. This case can only determine the legality of the division into wards. What the effect of the division will be upon the Township Committee cannot be determined in this proceeding, or by any certiorari. It is, therefore, submitted that the prosecutors have misconceived their remedy, and that reasons 2 and 3 are immaterial.

As the act of 1911 does not amend or affect section 1 or 4 of the act of 1906, reasons 1 and 4 are not well founded, since there is no question that the

petition and proceedings comply with and would be valid under the act of 1906.

It is also submitted that reason number 5 is wholly immaterial. The division into wards would not be useless or of no legal effect merely because the Township Committee would continue as theretofore; but even if the division were useless and of no legal effect, yet, if it is lawful, it cannot be set aside. Plaintiffs in error cite the case of *McCloskey v. Chamberlain*, 37 N. J. L. 388, on the proposition that the court will not sanction the division of a township into wards if no useful object can be accomplished thereby, but that case is simply a decision that a project which forms an entirety and is not merely useless, but is void in an essential involving the unlawful use of public funds, will be stopped.

Plaintiffs in error cite three cases in support of the proposition that the sole end sought by the creation of wards is the securing of local representation in a municipal government. That may be admitted, but it does not follow as argued by plaintiffs in error that the court may set aside an act of the legislature providing for creation of wards because the act fails to accomplish the securing of local representation. The only case cited on this point is that of *Freeholders v. Park Commissioners*, 62 N. J. L. 376, which is a decision on the question of repeal by implication of an earlier act; and the court said, p. 377:

“The special feature of an earlier act is repealed by a later act only when such legislative intent appears.”

It is submitted that no intent to repeal sections 1 and 4 of the Act of 1906 can anywhere be found in the Act of 1911.

(3) *The Act of 1911 does not apply to or affect Woodbridge.*

Even if the prosecutors' point could be raised in this suit, it is submitted that their contention is erroneous, and that the Township Committee should hereafter be elected by wards, under the act of 1906, notwithstanding the amendment of 1911. The act of 1911 is entitled and constructed in a peculiar manner as an amendment of the act of 1908. Its terms, however, show that it was intended by the Legislature to be merely a supplement permitting in townships of 10,000 inhabitants larger salaries than in townships of 8,000. It provides for a referendum with a ballot containing the words " 'For' or 'Against * * * the act * * * fixing the salary,' " &c. If the legislative intent had been to permit the election of committeemen by wards solely in townships of 10,000, the act of 1911 would have amended section 1 of the act of 1906, and not merely section 2; and would have provided a different ballot.

It is submitted that even a township of 10,000 under the act of 1911 would be divided into wards under the provisions of the act of 1906, as amended in 1908; and after the division into wards the special provisions of the act of 1911, namely, the increased salaries, would remain inoperative until after a referendum vote.

Moreover, under the express terms of section 2 of the act of 1911, all of its provisions remain inoperative in any township until after the referendum, and among its provisions is the repealer and the change or amendment of the act of 1908. It is, therefore, submitted that until after the referendum in question the act of 1908 is not repealed or affected in any way by the act of 1911; that the act of 1906, as amended by the act of 1908, is now the law applying to this township, and that the act of 1911 has no application whatever in this suit (there having been no referendum in this township).

It is also submitted that the prosecutors' construction of the act of 1911 would make it both unconstitutional and ridiculous. On prosecutors' argument the act would be unconstitutional as a special law regulating the internal affairs of municipalities, in that it fixes, as the basis for permitting election of committeemen by wards, the purely arbitrary test of whether the township voted to accept "an act fixing salaries." Moreover, if construed as amending any of the act of 1906 but section 2, its object is not expressed in its title; nor is any authority cited for the novel proposition of amendment by implication. Likewise, the act would be ridiculous, in that it would leave townships of 10,000 which rejected the act without any governing body at all.

(4) *The amendment of 1911 is unconstitutional.*

It is further submitted that the act of 1911 is unconstitutional in that it attempts to delegate a legislative function to the Township Committee of the township. The adoption of the act is not submitted unconditionally to the voters of the township, but the referendum is conditioned on the prior *acceptance* of the act by resolution of the Township Committee.

The case of *Booth v. McGuiness*, in the Court of Appeals, 75 *Atl.* 455, seems conclusive on this point. The act of 1911 is clearly one of the "referendum statutes" as classified on page 465 in the opinion of that case. The case of *Noonan v. Hudson Co.*, 52 N. J. L. 398, is mentioned as sustaining a double referendum, but the statute there questioned, as pointed out on page 465 in the Booth case, was not a referendum statute, but one delegating legislative power.

(B) QUESTIONS OF FACT.

The questions of fact raised in Reasons 6 to 9

inclusive are disposed of by the decision in the court below and cannot be questioned in this court.

Moran v. Jersey City, 58 N. J. L. 653.

Even if the decision below were not conclusive on the questions of fact, it is submitted that the decision was right on the evidence.

Reason 7 contains two specifications: first, that each ward does not consist of a contiguous territory; second, that it is not geographically compact. The first objection is disposed of by an examination of the map offered in evidence by the prosecutors themselves. The second part or specification of reason 7 is the same as reason number 8, and is fully met by the answer that the statute does not require the wards to be geographically compact.

The 9th reason is fully disproved by the evidence offered by the prosecutors (p. 21, lines 27 to 35), which conclusively shows, and that without dispute, that the Commissioners did "endeavor" to divide the township in accordance with the requirements of the statute.

The 6th reason attacks not the "endeavor" of the Commissioners, but the result of their act.

It is submitted that the division is as nearly equal in respect to the number of inhabitants as is practically possible. The prosecutors' own evidence shows that there are 3,092 inhabitants in one ward, 3,044 in another, and 2,812 in another, leaving a maximum difference of 280, which is less than one-tenth of the population of the smallest ward, and is less than four per cent. of the total population in the township. It needs no argument to show that it would not be possible to make a division with a smaller variance than this, and the prosecutors have made no attempt to prove that any more equal division was possible. While prosecutors complain that the division is not more equal as to population,

yet in their brief they also object that a part of the population having no right to vote should not have been included in estimating the population of the three wards. In the case of *Griffin v. Wanser*, 57 N. J. L. 535, cited by prosecutors, the court decided that under an act directing a division to be made according to population, the body making the division has no right to base its division on votes instead of population. The case cited, therefore, seems conclusive against the prosecutors.

Reason number 10 (in the printed case) is a general reason, and raises no question.

It is therefore submitted that all of the reasons of the prosecutors have been successfully met, and the writ was properly dismissed because the prosecutors failed to make out a case.

The greater part of the testimony taken by the prosecutors is directed to an attack on the division, not on the ground of illegality, but because it is said to be unfair and not geographically compact. Counsel for plaintiffs in error in his points contends that the Legislature in the act under review meant the word "contiguous" to be construed as "compact," and he cites another statute which used the words "convenient and contiguous territory in a compact form." The omission of those extra words in the present act shows an intent on the part of the Legislature not to require compactness. It is also urged that the testimony shows it will be necessary to divide some of the wards into election districts for the convenience of voters, and that the election law requires that compactness of election districts should be maintained, and that the laying out of these wards was in reality laying out election districts; but the general election law specifically gives to the governing body of municipalities the complete authority to lay out election districts. No other body has this authority and there is not the slightest warrant for the contention that the

Commissioners in laying out these wards were creating election districts. The testimony of prosecutor's witness, Dooley, who is one of the Township Committee, opposing the division into wards, and who appears to have taken as Commissioner of Deeds the affidavits on which the writ of certiorari was issued, himself testified (case, p. 40, lines 20 to 35) that it would be necessary to divide the wards into election districts, and admitted (case, p. 44, lines 28 to 35) that he knew the Township Committee of which he was a member was the body authorized to change election districts. This same witness in his direct examination admitted (case, p. 40, lines 10 to 13) that he thought the ward lines could be improved on *but not made compact*.

Although neither compactness nor fairness of division are statutory requirements, yet if the point is passed without comment, it might be thought that the division was unfair, or that compactness was flagrantly disregarded, and that the defence was attempting to rely on technicalities to sustain its cause, especially as no attempt was made to offer evidence in reply to the prosecutors.

The importance of bringing on the hearing at the first term justified the defence in waiving its right to offer evidence. The delay of prosecutors in taking an order for depositions prevented bringing on the cause before a single justice. It is submitted, however, that the prosecutors' own evidence not only fails to show the division to be unfair, or lacking in compactness, but, on the contrary, fully establishes the essential fairness of the division and the fact that each ward is really as compact, both in territory and in population, as was physically possible in a township so large in area and uneven in density of population as this.

A glance at the prosecutors' map will show that each ward is geographically compact. The testi-

mony shows that the first ward contains the entire village of Woodbridge, and is all closely settled, making a compact village of three thousand inhabitants, obviously picked out by nature as a ward by itself. The second and third wards are each much larger in area, lying on either side of the first ward, the longest dimensions extending about north and south. Both the second and third wards contain at their southerly end two well-settled sections, Sewaren and Port Reading in the third ward, and Keasbey and Fords in the second ward, making a total population of about thirteen hundred in the southern part of each of these two wards. The northern part of each of these two wards consists of a large stretch of sparsely settled territory, having a few small settlements of about one hundred inhabitants each, all of which are mentioned on the map, and making these two wards similar in nature. It is clear from the map and testimony that the dividing lines between the wards are well defined natural divisions, and that the first ward is divided from the second ward by a stretch of thinly settled territory, and it is also clear from the map and from the testimony that the first ward is divided from the third ward by a creek and a broad stretch of marsh. No other possible specific division was suggested by any witness, and the 'prosecutors' witnesses confined themselves to suggesting in general terms that some other division could be made by splitting the village of Woodbridge into three parts, and attaching a part to the territory the other side of the creek, a part to the distant settlements of Keasbey and Fords on the west, and a part to the country territory on the north. While some such division as this might be made so as to make each ward geographically the same size, yet it was admitted (Case, p. 42) that this will probably result in a substantial inequality of population, and the suggested wards would obviously be

so split up by a diversity of interest as to be wholly unreasonable and impracticable. The prosecutors complain in part of the brief submitted on their behalf that the wards were not so laid out as to produce absolute equality, and in another part of the brief complain that a large part of the population should have been absolutely disregarded in making the division, because that population had no right to vote. It is submitted that the Commissioners in making division were not at liberty to consider the question of voting population, but were bound by the statute to make the division so that each ward should contain as nearly as possible an equal number of inhabitants, not voters.

It is also contended that the Commissioners should themselves have made an accurate count of the inhabitants, but their report and the evidence produced shows that the several wards as laid out do contain as nearly as possible an equal number of inhabitants, and no evidence to controvert this was offered by the prosecutors. It is submitted that on this proceeding, it was unnecessary for the defence to introduce any further proof of compliance with the statute until the prosecutors had at least made a claim that the population as computed by the Commissioners was inaccurate.

As none of the reasons filed have any legal merit; as the constitutional objection was lugged in as an afterthought, and as the prosecutors had no real grievance on the facts, they should pay the costs.

Respectfully submitted,

GUILD & MARTIN,

Of Counsel for the Defendants Joining in Error.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

BENJAMIN B. CLARK AND THOMAS THOMPSON, <i>Plaintiffs in Error,</i> <i>vs.</i> J. BLANCHARD EDGAR ET AL., <i>Defendants in Error.</i>	}	<i>On Writ of Error.</i>	10
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ADDITIONAL BRIEF FOR PLAINTIFFS IN
ERROR.

I will discuss more fully than in the points served on the defendants in error the constitutional questions that have been raised. 20

In the Supreme Court, the certiorari had removed into that court certain proceedings for the division of the township of Woodbridge into wards, taken under a supplement to the general township act, approved April 30, 1906, laws of 1906, page 298. The first section of this supplement is as follows:

"1. All townships in this State having a population of more than eight thousand inhabitants, as shown by the official State or United States census, shall be divided into not less than three wards. Each ward shall consist of a contiguous territory and shall contain as nearly as possible an equal number of inhabitants; provided, however, that where any such township shall heretofore have been divided into three or more wards, such division shall continue until changed in accordance with the terms and provisions of this act." 30

Section 2 reads, as amended in 1908, laws of 1908, page 612, as follows: 40

“2. The township committee of any township in this State having a population of more than eight thousand inhabitants as shown by the official State or United States census, shall have two members from each ward, who shall hold office for the term of two years, and one member at large, who shall hold office for the term of two years, and who shall by virtue of his election become chairman of said township committee; and a majority of the members of such committee shall constitute a quorum for the transaction of business, and no ordinance or resolution shall be adopted, nor shall any standing committee be appointed for the ensuing year, except by a vote of a majority of the members thereof; provided, however, that one of the members to be elected from each ward at the first annual election ensuing the passage of this act, shall be elected and hold office for the term of one year.”

The fourth section provides that the division of a township into wards shall be made by a board of three commissioners, to be appointed by the Judge of the Circuit Court; said commissioners to be freeholders of the county and to be appointed by said Judge upon the petition in writing of at least fifty of the legal voters of said township, and that immediately upon the presentation of such petition the said Judge shall appoint such commissioners.

The sixth section provides that in the event of there being no application made to the Judge of the Circuit Court for the appointment of commissioners, then the method of selecting the township committee in any township shall continue to be the same as that provided by law at the time of the passage of said act.

1.

It is claimed that by this act legislative power is delegated to the fifty or more individuals by whom the petition is to be presented to the Judge, and that this is unconstitutional. The act of 1906 does

not become effective in any township until such a petition is presented. In the case of *Rutten v. Paterson*, 44 Vroom, 467, this language is used by Justice Pitney in deciding the case: "If the act were construed as meaning that this petition may proceed from certain individuals happening to constitute one-half or more of the membership of the Board of Aldermen, acting, however, in respect of the petition not as members of the Board, not as voicing the sentiment of the Board in session, not even as expressing the opinion of the signers formed after hearing the views of their brethren in the board; it would, I think, result that under the decisions in this State, the statute must be declared void, as amounting to an unconstitutional delegation of legislative power to private citizens * * * * * If the question whether such an act shall go into effect in a given city is made to depend upon the judgment, opinion or discretion of any man or set of men, this amounts to a delegation of the legislative power." The same principle has been asserted in other States.

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In the case of *Shumway v. Bennett*, 29 Mich. 451, involving proceedings taken under a statute for the formation of villages, in which it was provided that an election should be held on presentation to the court of a petition signed by thirty or more persons, the Court uses this language:

"In examining these proceedings, the fact which is most prominent throughout is, that there is not in their whole course a single act of any importance which is performed by any public agency whatever, whether legislative, executive or judicial; the propriety of the shape or boundary of the proposed village is often the principal thing deemed necessary to be settled by the legislature when it submits a charter to the popular vote, most charters being substantially alike in their scope. Under this law a bare majority collected anywhere may annex in any direction any two square miles of land, in

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spite of courts, supervisors, and all other public authorities. The thirty signers of the petition determine absolutely the contents of the village; they may include farming lands or detached settlements, and they may cut settlements in two, at their pleasure, and without any possible redress. The court cannot refuse to appoint a day and place of election, and this single discretionary power has no bearing on the merits. The power of the clerk, who is a mere ministerial officer, is greater than that of the Court, because notice may be so posted as to give no information where it is most needed. No one has a right to a hearing, and no hearing could avail if had. But it is not in the power of a legislature to abdicate its functions, or to subject citizens and their interests to the interference of any but lawful public agencies. Such legislative and local authority as can be delegated at all, must be delegated to municipal corporations, or local boards and officers."

It has been held that it cannot be left to a trustee to fix the time within which claims shall be presented against an estate. "Embarrassed only by this limitation, it is made the duty of the trustee to fix the time, and that time so fixed is to operate as a statute of limitations, leaving it dependent upon the peculiar temperament and disposition of the trustee, without regard to the interests of the bank, its stockholders or creditors. The act is an attempt on the part of the legislature to delegate its law-making power to individuals, and is prohibited by the constitution of which the legislature is the creature." *Fogg vs. Union Bank*, 1 Bax. (Tenn.) 435.

So it was held by the Supreme Court of Utah before it became a state, that an act was unconstitutional authorizing one hundred legal voters to require a special session of the Court to be held at a place requested. "By this act it is provided that upon petition of not less than one hundred legal

voters and taxpayers, residing in any judicial district, the judge of said district shall hold a special session of court at the time and place specified in the petition, unless a remonstrance of like number be seasonably presented * * * . The legislature is designated by Congress to fix the time and place. This power is entrusted nowhere else, and it belongs to it exclusively without the right of delegation; the power thus granted cannot be delegated. Congress has provided what the legislature may do, 'fix the time and place for holding court,' and the legislature has no right to say the citizen may fix the time and place, thereby authorizing him to perform legislative functions and to do what the legislature alone is authorized to do." *Winters v. Hughes*, 3 Utah, 443. 10

The same principle is affirmed in the state of Kansas. "It will be seen that the power to determine whether the land involved shall be taken out of the city unless it may be said to be conferred upon the court, is not conferred upon the council or any public body or officer, but upon the petitioners who are not in terms required even to be residents upon or owners of the tracts affected, but under the reasoning of the cases already referred to, the Court is not given, nor could it lawfully be given, the power to change the corporate boundaries * * * . We are constrained to hold that for the reason indicated, the act of 1897 is unconstitutional, so far as it attempts to authorize territory to be taken from the city upon the petition of individuals, subject only to the findings of fact for which it provides * * * . Under the provisions of the act, the will that the corporate boundaries shall be changed proceeds not from the legislature, nor from the council, but from the signers of the petition." *City of Hutchinson vs. Leimbach (Kansas)*, 74 Pac., 598. 20 30

In the case of *Ohio Railway Company against Todd (Ky.)*, 15 S. W., 56, it was held that a railroad 40

company could not be compelled to fence its right of way at the mere will of the owner of adjacent land.

2.

It is also claimed that the act is a local or special act regulating the internal affairs of townships.

In the first place, population in itself does not seem to be a proper basis for classifying townships for the purpose of dividing them into wards. Density of population might be a proper reason for dividing a township into wards, but the mere fact that a township has eight thousand population, without regard to the density of the population, is no reason why it should be divided into wards. A township of small population might be more densely populated than one of large population. The act also changes the mode of electing township committeemen, of whom under the act of 1903, laws of 1903, page 21, five were to be elected in townships of over forty-five hundred inhabitants, and increases the number of committeemen, and, as was said in the case of *Gilhooley vs. Elizabeth*, 37 Vr., 484, provides a way by which the constitutional provision relating to special legislation, may easily be rendered nugatory, if acts of this kind are constitutional. It is obvious that the act of 1906 does regulate the internal affairs of townships. *Pell vs. Newark*, 11 Vr., 550.

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3.

It also would appear that the act authorizes by a local and special law, the appointment of commissioners to regulate the internal affairs of the township. "It requires no argument to demonstrate that while the legislature itself could not confer upon one city to the exclusion of others, the power to re-arrange its wards, this act if validated, will provide a ready method by which the constitutional provision may be set at naught. Secondly; this

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act is a return to the regulation of municipal affairs by commission, which called forth unmeasured condemnation throughout the state, and led to the provision of the present constitution prohibiting it.

If the Governor can legally exercise the power committed to him in this case, then the legislature, while impotent to act directly, may authorize the Governor, or the Secretary of State, or A. B. at its pleasure, to exercise his discretion whether he will appoint for any city or other municipality, a commission to assess and collect taxes, or to determine what local improvements shall be made, or what franchises shall be granted, or what ordinances passed." *Gilhooly vs. Elizabeth*, 37 Vr., 484. 10

In the points of the plaintiffs-in-error, the fourth reason for claiming the act to be unconstitutional, was that the legislature cannot delegate the power either to a commission or to township authorities, to divide a township into wards, and thereby change in a material respect the constitution and mode of election of the township committee, and especially without specifying into how many wards a township of over eight thousand inhabitants is to be divided, the number of wards and the number of members of the township committee being left entirely to the discretion of the commission or other body to whom the power is delegated. 20

In the case of *Dempsey vs. Newark*, 53 N. J. L., 4, Chief Justice Beasley in deciding the case, uses this language: "The inquiry therefore presses, are the boundaries of municipal wards susceptible of alteration through a general law?" and this in my apprehension, is the only point of real difficulty in the present case. That such a system, or rather aggregation of wards as are exhibited at present in cities of this state, could not be fabricated by virtue of a general law, seems to be obvious. 30

The ward divisions in each city, as they now exist, 40

constitute a specialty; they are unlike those of every other city; and it is not too much to say that no two wards of ^{the} an entire state can, in any material respects, be assimilated. It is impossible to conceive of such particularity being created or modified, except by a special act for the purpose. How can a general law be framed that must possess in each city a different force from what it has in every other city. It is plain that such an end cannot be

10 more lawfully reached by a delegation of the necessary power to each of these cities; for this would be virtually saying to each separate municipality, you may alter your organization in this respect to suit your own notions; and if such delegated authority in this particular were held legitimate, it would necessarily follow that a similar capacity could be conferred severally on these cities, to modify at will other parts of its organization, the result being that instead of uniformity in the municipal governments of the state, as the constitution

20 designs, we would have infinite multiplicity * * * . But upon mature reflection, I have come to the conclusion that although it is an impossible thing either to create or to modify by a general statute, the present distribution of the areas of the cities of the state into wards, as they now exist, nevertheless, it is practicable, by general legislation, to establish in such cities a general system, and that consequently, these municipal instrumentalities cannot be readjusted or effected in any other

30 mode. For example, if a law should be enacted distributing the cities of the state into classes, on the basis of population, declaring that each class should have a certain number of wards, and that such wards should be so set off that each should contain as nearly as practicable the same number of voters, it is not perceived how such a scheme could be reasonably objected to. A conviction that this or some other plan of the kind, is feasible, of course, inevitably leads to the conclusion that special legis-

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lation in this field is out of place, and that the act under consideration is void on the ground of its unconstitutionality."

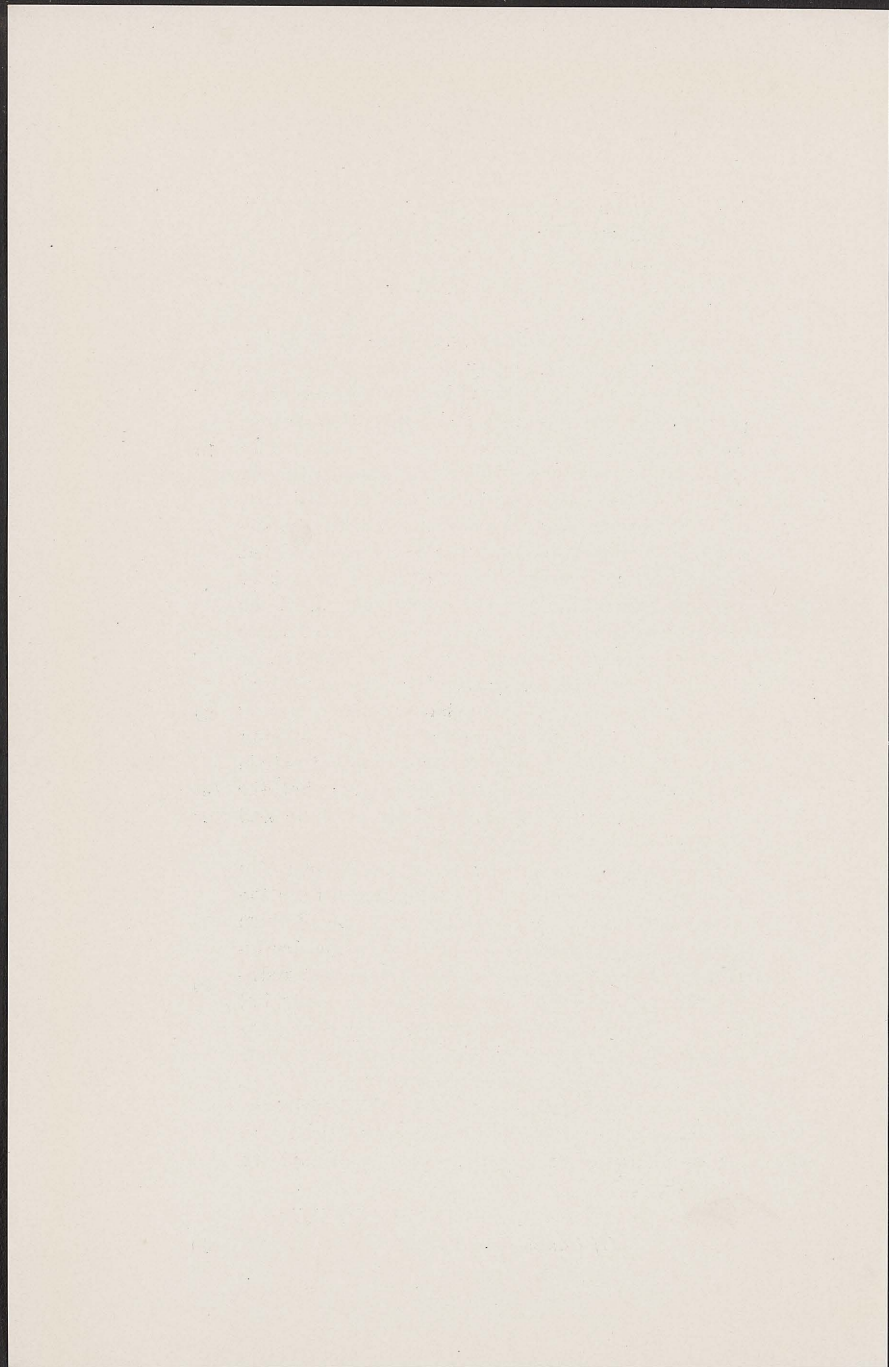
This case was followed in *Wood vs. Atlantic City*, 27 Vr., 126.

In the case of *Dexheimer vs. Orange*, 60 N. J. L., 111, this language is used by the Court:

"The act of 1895 is also objectionable because it attempts to delegate to municipal bodies power, which can only be exercised by the legislature ^{it} self. By its terms, the Common Council can, not only consolidate any two public offices of the city, but they have power by ordinance to fix and determine the nature of the duties of the consolidated office, and to a certain extent, to fix the length of the term for which the holder thereof shall be elected and appointed. By the exercise of these powers, common council can change the whole scheme of government provided by the charter of the city * * * . That this statute attempts to delegate to common council the law making power, and is therefore in disregard of that article of the state constitution which declares that the legislative power shall be vested in a Senate and General Assembly, seems clear."

Similar decisions are found in the reports of a number of other states, which are referred to in the points served. I will mention only one of them here. "This proceeding is not only an inquiry into the authority of the Common Council to redistrict the city and form new supervisor districts, but also to inquire into the authority of the council to increase by its own action, its representation upon the Board of Supervisors of the county * * * . This power is expressly vested in the legislature, and is not one of the powers it may delegate to cities, villages or organized townships." *People vs. Riordan*, 73 Mich., 504.

EPHRAIM CUTTER,
Of Counsel with Plaintiffs-in-Error. 40



New Jersey Court of Errors and Appeals

June Term, 1912. Case No. 111.

BENJAMIN B. CLARK and
THOMAS THOMPSON,
Prosecutors and Plaintiffs
in Error,

vs.

J. BLANCHARD EDGAR, ET ALS.,
Defendants in Error.

*Brief for dis-
missal of writ
as to certain
defendants.*

Due notice was given of a motion to dismiss the writ of error in this case as to certain defendants, on the ground that they had not been made parties to the proceedings below. On the opening day of the June Term this motion was presented, but by direction of the court and consent of counsel on both sides the argument on the motion was postponed to be made at the same time as the argument on the writ of error.

An affidavit served under the rules shows that these defendants are not named in any paper in the cause, and that no service whatever was made upon them. There is no dispute as to these facts, but a copy of this affidavit and of the notice of motion is attached hereto.

The writ of error in this case brings up a judgment of the Supreme Court dismissing a certiorari issued to review certain statutory proceedings relating to a municipality. The defendants on behalf of whom this motion is made were some of the applicants for the statutory proceedings reviewed. It may be conceded that they would have been proper defendants in the Supreme Court. The point of the motion to dismiss, however, is not that they were improperly made defendants below, but that they never were actually made defendants in the Supreme Court. They are nowhere named as defendants; they were never served as defendants in the Supreme Court; there is no appearance for them in that court.

The case of *State v. Justice*, 24 N. J. L. 413, cited by prosecutors, speaks of "the persons named as defendants." The case of *Hutchison v. Rowan*, likewise cited, 57 N. J. L. 530, on p. 532, clearly states that the writ should be either endorsed with the names of the proposed defendants, or possibly their names might be inserted in the body of the writ, but in either event the same should be served upon them.

These cases cited by the prosecutors, therefore, seem to clearly establish that the persons who were neither named in, nor served with, any of the proceedings below, were not in any way parties below, and that the prosecutors are not entitled to make them parties in this court. It is contended by prosecutors that the acknowledgments of service in the cause below were sufficient to bring them into court. It may be conceded that the acknowledgements or appearances would have been sufficient if the proposed defendants had been anywhere named as defendants; but it is submitted that a general appearance for defendants cannot be considered as an appearance for all additional unnamed persons who might have been properly made defendants.

These additional defendants, whom prosecutors have sought to bring before this court by the writ of error, might have desired to be represented in the Supreme Court by other counsel, and might have desired their defence conducted in some other manner than was adopted. It seems highly improper, therefore, that they now be called upon to defend the suit, and it would introduce a very novel rule of procedure.

It is therefore submitted that the writ should be dismissed with costs as to all defendants who did not join in error.

Respectfully submitted,

GUILD & MARTIN,

Of counsel for the motion to dismiss.

COPY OF NOTICE OF MOTION.

Filed May 13, 1912.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

BENJAMIN B. CLARK. and THOMAS THOMPSON, <i>Prosecutors and Plaintiffs</i> <i>in Error,</i> <i>vs.</i> J. BLANCHARD EDGAR, ET ALS., <i>Defendants in Error.</i>	}	<i>In Error.</i> <i>Notice of Motion</i> <i>to Dismiss.</i>
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Notice is hereby given that the undersigned, appearing specially on behalf of the persons herein-after mentioned, who are named in the writ of error in the above entitled cause as defendants, and some of whom were served personally on the thirteenth day of April, nineteen hundred and twelve, with a copy of the assignment of errors in the above entitled cause, and appearing for them in this cause for the purpose of this motion only, will apply to this court on Tuesday, the eighteenth day of June, nineteen hundred and twelve, at the State House, Trenton, New Jersey, at eleven o'clock in the forenoon, or as soon thereafter as counsel can be heard, to dismiss the said writ of error and these proceedings as to Albert F. Mount, George F. McFarlane, E. G. Cone, Henry Wiedenhaupt, Frank J. Cooper, E. W. Cooper, Jacob Huber, Adam Snyder, S. B. Brewster, Charles S. Farrell, Raymond R. Moore, Gustav Blaum, Charles Drake, C. F. Turner, Frank Elias, M. Stricker, Theodore A. Liber, Franklin Moore, Richard Sattler, Arthur Liddle, Andrew Kath, T. E. Drake, John Thompson, Peter Greiner, Louis Greiner, Maurice P. Dunigan, James P. Gerity, George F. Dunigan, Thomas Somers, Henry L.

Webber, Joseph H. T. Martin, E. C. Ensign, J. H. Coddington, David Coddington, William M. Rowe, C. F. Carrier, Jr., W. H. Miller, D. S. Voorhees, Walter I. Auten, Ellis B. Edgar, Ellis B. Freeman, William G. Freeman, E. F. Edgar, D. Desmond, H. A. Tappen, F. Carlson, Ivins A. Browne, J. M. Coddington, George H. Berry and Seth Lockwood. Such application will be made on the ground that the said persons above mentioned were not, nor was any or either of them, in any way made parties to the proceedings in the New Jersey Supreme Court, herein sought to be reviewed, and that they did not, nor did any or either of them appear in said cause in said New Jersey Supreme Court, nor was any or either of them served with any process or notice of the pendency of said suit, or with any paper whatever relating to said suit, until the service of said assignment of errors, above mentioned; and that they are therefore not properly made defendants to the said writ of error.

Dated May 13, 1912.

Yours respectfully,

GUILD & MARTIN,

*Attorneys for the persons mentioned in
the foregoing notice, defendants
named in the writ of error herein.*

To

EPHRAIM CUTTER, ESQ.,
Attorney of Plaintiffs in Error.

Endorsed.

Service of copy of the within Notice of Motion to Dismiss in Error is acknowledge this 13th day of May, 1912.

EPHRAIM CUTTER,
Attorney for Plaintiffs in Error.

COPY OF NOTICE AND AFFIDAVIT.

Filed June 18, 1912.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

BENJAMIN B. CLARK, and THOMAS THOMPSON, <i>Prosecutors and Plaintiffs</i> <i>in Error,</i> <i>vs.</i> J. BLANCHARD EDGAR, ET ALS., <i>Defendants in Error.</i>	}	Notice.
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Notice is hereby given that upon the argument of the motion to dismiss the writ of error in this cause as to certain defendants, we shall use an affidavit copy of which is hereto annexed.

Dated June 10, 1912.

To EPHRAIM CUTTER, ESQUIRE,
Attorney of Plaintiffs in Error.

Yours respectfully,

GUILD & MARTIN,
Attorneys specially appearing for de-
fendants named in the notice of mo-
tion to dismiss.

Service of notice of which the foregoing is a copy, and of a copy of the annexed affidavit, is acknowledged this tenth day of June, 1912.

EPHRAIM CUTTER,
Attorney for Plaintiffs in Error.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

BENJAMIN B. CLARK. and
THOMAS THOMPSON,
Prosecutors and Plaintiffs
in Error,

vs.

J. BLANCHARD EDGAR ET ALS.,
Defendants in Error.

*Affidavit on mo-
tion to dismiss
as to certain
defendants.*

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss:

J. H. THAYER MARTIN, being duly sworn according to law on his oath says: I am one of the attorneys of the defendants who have filed joinder in error in the above entitled cause, and I have also appeared specially for other defendants named in the writ of error, by giving notice of motion to dismiss as to them, on the ground that they were not parties to the suit in the Supreme Court. The defendants on whose behalf said motion to dismiss was noticed are not named in the writ of certiorari issued out of the Supreme Court in this cause, nor are they named in the endorsement thereto, nor was any notice of the proceedings under said writ of certiorari served upon them or any of them. The said writ of certiorari was directed to and served upon Howard Valentine, James E. Berry and John C. Fowler, and was endorsed "Benjamin B. Clark and Thomas Thompson, Prosr, v. J. Blanchard Edgar et al., Defts," and I appeared in the cause as attorney for the defendants named and acknowledged service as attorney for defendants, and papers in the cause were thereafter served upon me. Subpoenas to testify at the taking of depositions in the Supreme Court were also served upon the said

Howard Valentine, James E. Berry and John C. Fowler. No other papers or notice were served upon any of the persons named as defendants in the writ of error issued out of this court in said cause until after the actual issue and return of said writ of error.

Service of a copy of the assignment of errors in this court was made upon many of the defendants named in the writ of error, but not upon all of said defendants. Upon the service of the notice of motion to dismiss, hereinbefore mentioned, upon Ephraim Cutter, attorney for the plaintiffs in error, the said Ephraim Cutter stated to me that no actual service of the proceedings in the court below had been made upon any person except the said Howard Valentine, James E. Berry and John C. Fowler, and upon myself as attorney.

Sworn and subscribed
before me this tenth day
of June, 1912.

J. H. THAYER MARTIN.

OLIVE R. JORDAN,
Notary Public of N. J.

Journal of the
Royal Society of
Medicine

Southern Bond