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TOWN OF MONTCLAIR.

Charles H. Miller,

Prosecutor,

vs.

Town of Montclair and John L. Cox,

Defendants.

} On Certiorari.

CASE.

MONTCLAIR.

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Writ of Certiorari.

(Returnable Sept. 4, 1918.)

NEW JERSEY, ss:

The State of New Jersey to the Honorable William S. Gummere, Chief Justice of the Supreme Court of the State of New Jersey, and to the Town of Montclair, a municipal corporation of the State of New Jersey, and the clerk of said town, GREETING:

10

We being willing for certain reasons to be certified of a certain order made by the Honorable William S. Gummere, Chief Justice of the Supreme Court of the State of New Jersey, on the sixteenth day of July, 1918, setting aside a certain election in a proceeding entitled, "In the matter of the application of John L. Cox to contest the validity of an election held in the Town of Montclair, Essex County, New Jersey, on Tuesday, April 30th, 1918, under the provisions of Chapter 2 of the Laws of 1918," do hereby command you that the said order, together with all things touching and concerning the same, to our Supreme Court to be held at Trenton on the fourth day of September, 1918, you do certify and send, together with this writ, that therein may be done what of right and according to the laws and Constitution of the State of New Jersey ought to be done.

20

WITNESS, WILLIAM S. GUMMERE, Chief Justice of our Supreme Court at Trenton aforesaid, this 15th day of August, 1918.

30

ENOCH L. JOHNSON,
Clerk.

COLLINS & CORBIN,
Attorneys.

Allocatur.

I allow this writ. Let it be sealed. Not to operate as a stay.

WM. S. GUMMERE,
C. J.

40

Dated, August 15, 1918.

50

TOWN OF MONTCLAIR CASE.

Return of Municipal Clerk.

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

10 In obedience to the command of the writ of certiorari directed to
the Clerk of Essex County and to the Town of Montclair, in the
County of Essex, entered on fifteenth day of August, nineteen hun-
dred and eighteen, the subscriber hereto, the Clerk of the Town of
Montclair, in the County of Essex, does hereby certify, under the seal
of the said Town, and make return to the Honorable, the Justices of
the Supreme Court of the State of New Jersey,

20 1. A copy of a petition for an election to determine whether or
not the sale of intoxicating liquor as a beverage, in Montclair, shall
be prohibited, together with the first two (2) names subscribed there-
to and a statement of the total number of signatures appearing there-
on;

2. A copy of the minutes of the meeting of the Board of Com-
missioners of the Town of Montclair, in the County of Essex, for the
month of March, 1918, containing minutes, as found on page four
and pages fourteen to nineteen, inclusive, thereof, relating to and
touching upon all proceedings for the holding of said excise election;

30 3. Also a copy of the minutes of the meeting of the said Board
of Commissioners of the Town of Montclair, in the County of Essex,
for the month of May, 1918, containing minutes, as found on pages
eight, nine and ten thereof, setting forth the statement of the Clerk
of the Town of Montclair, in the County of Essex, as to the results of
the referendum on the excise question;

40 4. A copy of a letter from the Essex County Board of Elections
directed to the Clerk of said Town of Montclair, in the County of
Essex, dated June 3rd, 1918, setting forth the results of the said
County Board's canvass of the soldiers' and sailors' ballots received
from the Secretary of State of New Jersey and purporting to have
been cast at the election held on the said excise question; together
with all papers touching and appertaining to the same, as fully and
entirely as they remain before the Board of Commissioners of the
said Town of Montclair, in the County of Essex, as it is commanded.

50 IN TESTIMONY WHEREOF, I, the Clerk of the Town of
Montclair, in the County of Essex, have hereunto set my
hand as Clerk of the said Town of Montclair and caused
the seal of said Town of Montclair, in the County of
Essex, to be affixed this 29th day of August, one thousand
nine hundred and eighteen.

HARRY TRIPPETT,
*Town Clerk of the Town of
Montclair in the County of Essex.*

Minutes of March 7, 1918.

PETITION FOR ELECTION.

A PETITION

FOR AN ELECTION TO DETERMINE WHETHER OR NOT THE SALE OF
INTOXICATING LIQUOR AS A BEVERAGE, IN MONTCLAIR, SHALL BE
PROHIBITED. 10

To the Board of Commissioners of the Town of Montclair, in the
County of Essex in the State of New Jersey:

We, the undersigned, respectfully represent that we are legal voters
of the Town of Montclair, in the County of Essex, in the State of
New Jersey, and that we hereby request you to order an election
under the provisions of chapter two of the laws of one thousand nine
hundred and eighteen, to determine whether or not the sale of in-
toxicated liquor as a beverage in the Town of Montclair shall be 20
prohibited.

NAME.	STREET AND NUMBER, IF ANY, OR RESIDENCE.	DATE OF SIGNING.
Nicholas Nead,	7 No. Willow	Feb. 18, 1918.
Frederick C. Hall,	18 Willard Pl.,	Feb. 18, 1918.

(Said two names being the first two names of subscribers hereto,
the total number of said subscribers being 1,806.)

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } ss. 30

EDWARD GIBLIN, being duly sworn according to law on his oath says
that the signatures attached to the foregoing petition were made in
his presence at the respective dates set opposite thereto, and that
the several persons who made said signatures bear, to the best of
his knowledge and belief, the names signed thereto by each of them
respectively, and that said persons are legal voters of the municipality
of the Town of Montclair, County of Essex and State of New Jersey.

EDWARD GIBLIN. 40

Sworn and subscribed to before me this
27th day of February, A. D. 1918.

THOMAS F. ROCHE,
Notary Public for New Jersey.

MINUTES OF MARCH 7, 1918.

The Clerk reported the receipt on March 5th, 1918, of a petition
for an election to determine whether the sale of intoxicating liquor
as a beverage in the Town of Montclair shall be prohibited; that
said petition bore 1,806 signatures, all of which, according to the
affidavits attached, were legal voters of the Town of Montclair;
further, that he had fixed March 14th, 1918, at eight o'clock in the 50

TOWN OF MONTCLAIR CASE.

evening, in the Board Room, as the time and place when and where the Commission will consider said petition and hear any objections as to the legality thereof.

MINUTES OF MARCH 14, 1918.

10 The Mayor said the first item on the calendar was the hearing on the petition for excise referendum, and read the following notice, a copy of which had been served on each member of the Board of Commissioners, by the town clerk, namely:

NOTICE OF HEARING OF PETITION FOR EXCISE REFERENDUM.

20 A meeting of the Board of Commissioners of the Town of Montclair, in the County of Essex, will be held on Thursday, March 14th, 1918, at eight o'clock in the evening of said day, in the Board Room, in the Municipal Building, corner of Bloomfield Avenue and Valley Road, in the Town of Montclair; at which time and place the Board of Commissioners will consider, and hear any objections as to the legality of, an application in the form of a petition entitled,

“A PETITION FOR AN ELECTION TO DETERMINE WHETHER OR NOT THE SALE OF INTOXICATING LIQUOR AS A BEVERAGE, IN THE TOWN OF MONTCLAIR, SHALL BE PROHIBITED.”

The said petition was filed with the Town Clerk on March 5th, 1918, is a public record and open for inspection by any person interested.

30 HARRY TRIPPETT,
Town Clerk.

(L. s.) A true copy of record filed March 6th, 1918.

HARRY TRIPPETT,
Town Clerk.

40 In response to a question, the Clerk stated that the petition bore 1,806 signatures, all of whom, according to the affidavits attached thereto, were of legal voters of the Town of Montclair; that at the last Election for Members of the General Assembly there were 2,870 legal votes cast in the Town of Montclair, and that thirty per cent. of this figure would be 864, and that the petition, therefore, bore more than twice the number of signatures required for a special election.

50 The Mayor said that he had personally examined the petition, and each of the Commissioners present stated that they had also personally examined the same. The Town Attorney advised that he had examined the petition carefully, and that it was in proper legal form. The Mayor then asked if there was anyone present desiring to enter any objection as to the legality of the petition and no one responded. The Mayor then asked if there was anyone present desiring to have anything to say in regard to the matter, and Mr. Charles E. Francis stated that he represented a number of people who were opposed to the granting of liquor licenses in the Town of Montclair, but that

Minutes of March 14, 1918.

they were pleased with the opportunity offered to meet this question in the form of a Referendum vote. No one further desiring to be heard in regard to the petition, the Mayor declared the hearing closed.

The Mayor then offered the following resolution, which was adopted by the unanimous vote of the four members present, the vote being polled, namely:

WHEREAS, On March 5th, 1918, there was filed with Harry Trippett, Town Clerk of the Town of Montclair, in the County of Essex, a petition signed by 1,806 of the legal voters of the Town of Montclair, in the County of Essex, entitled, "A petition for an election to determine whether or not the sale of intoxicating liquor as a beverage in Montclair shall be prohibited," which said petition requested the Board of Commissioners of the Town of Montclair, in the County of Essex, to order an election under the provisions of Chapter Two of the Laws of the State of New Jersey for 1918, to determine whether or not the sale of intoxicating liquor as a beverage in the Town of Montclair shall be prohibited;

WHEREAS, Forthwith upon the filing of said petition, Harry Trippett, Town Clerk as aforesaid, prepared a written notice setting the time for the meeting of the Board of Commissioners of the Town of Montclair, in the County of Essex, the governing body of such municipality, said meeting being set for Thursday, March 14th, 1918, in the evening at eight o'clock, in the Board Room, in the Municipal Building, Valley Road and Bloomfield Avenue, in said Town of Montclair; said place being the regular meeting place of the said governing body, and the time for said meeting being not less than eight days or more than twelve days, exclusive of Sunday, from the date of the filing of said petition with said Town Clerk;

WHEREAS, On March 7th, 1918, Harry Trippett, Town Clerk as aforesaid, did deliver a certified copy of the following notice personally to Louis F. Dodd, John C. Barclay, Edwin Mortimer Harrison, Charles G. Phillips and John Picken; said persons being each and every member of the governing body of the Town of Montclair as aforesaid; said notice being as follows:

"A meeting of the Board of Commissioners of the Town of Montclair, in the County of Essex, will be held on Thursday, March 14th, 1918, at eight o'clock in the evening of said day, in the Board Room, in the Municipal Building, corner of Bloomfield Avenue and Valley Road, in the Town of Montclair; at which time and place the Board of Commissioners will consider and hear any objections as to the legality of an application, in the form of a petition entitled,

"A petition for an election to determine whether or not due sale of intoxicating liquor as a beverage in Montclair shall be prohibited."

The said petition was filed with the Town Clerk on March 5th, 1918, is a public record and is open for inspection by any person interested.

WHEREAS, Harry Trippett, Town Clerk as aforesaid, did on March 6th, 1918, post certified copies of the notice as set forth in the pre-

TOWN OF MONTCLAIR CASE.

ceding paragraph in five conspicuous places in said Town, said places being the Town Bulletin Boards located, one in the lobby of the Montclair Post Office, one in the lobby of the Upper Montclair Post Office, one attached to the pole at the northeast corner of Bloomfield Avenue and Valley Road, one attached to the pole on the northerly side of
 10 Bloomfield Avenue, just west of Spring Street, one attached to the northerly end of the Walnut Street station of the New York and Greenwood Lake Railroad; said five places being the five places heretofore designated by the Board of Commissioners of the Town of Montclair, in the County of Essex, as the places for posting copies of ordinances, resolutions, and all public notices required to be given by the Town of Montclair, in the County of Essex;

20 WHEREAS, On March 9th, 1918, Harry Trippett, Town Clerk, as aforesaid, caused to be published in the "Montclair Times," the official newspaper of the Town of Montclair, in the County of Essex, and a newspaper printed, published and circulated in the said Town, the said notice, a copy of which is set out in the second paragraph above, and did also, on the same day, cause to be published in the "Montclair Herald," a newspaper printed, published and circulated in the Town of Montclair, a similar notice;

WHEREAS, Proof of the serving and publishing of said notice duly verified, is now on file in the office of the Town Clerk of the Town of Montclair, in the County of Essex;

30 WHEREAS, On Thursday, March 14th, 1918, at the Board Room, in the Municipal Building, Bloomfield Avenue and Valley Road, in the Town of Montclair, in the County of Essex, at eight o'clock in the evening, the time and place designated in the said notice and in pursuance thereto the Board of Commissioners of the Town of Montclair, in the County of Essex, did meet to inspect the said petition and to hear and consider any objections thereto and to hear any evidence that may be submitted and to determine whether or not said petition is sufficient;

40 WHEREAS, Said Board of Commissioners of the Town of Montclair, in the County of Essex, have inspected said petition and have heard and considered any and all objections made thereto and have heard and considered all evidence that was submitted at said hearing;

Therefore, Be It Resolved; By the Board of Commissioners of the Town of Montclair, in the County of Essex, that they do hereby find and adjudge that the said petition was signed by legal voters of the Town of Montclair, in the County of Essex, in number more than thirty per centum of the number of legal ballots cast in the said municipality at the last preceding election at which members of the General Assembly were elected;

50 *Be It Further Resolved,* That the Board of Commissioners of the Town of Montclair, in the County of Essex, do hereby determine that the said petition is sufficient;

Be It Further Resolved, That the Board of Commissioners of the Town of Montclair, in the County of Essex, in pursuance of the authority vested in them by an Act of the Legislature of the State of

Minutes of May 2, 1918.

New Jersey, entitled, "An Act to prohibit the sale, or offer, or exposure for sale, or furnishing or otherwise dealing in intoxicating liquor as a beverage and the granting of licenses therefor in any Town, Township, Village, Borough, City or other municipality (not a county) in this State where the legal voters thereof shall decide by a majority vote in favor of such prohibition or the continuance thereof," approved January 29th, 1918, does hereby order a special election, to determine by ballot the question whether the sale of liquor as a beverage in the Town of Montclair, in the County of Essex, shall be prohibited, and it is further ordered that such election be held on Tuesday, April 30th, 1918, between the hours of six o'clock in the forenoon to seven o'clock in the evening of said day;

10

Be It Further Resolved, That the Town Clerk of the Town of Montclair, in the County of Essex, proceed to obtain and post and publish such notice of said election as may be required by law and to arrange for the holding thereof.

20

MINUTES OF MAY 2, 1918.

The Clerk read his statement as to the result of the Referendum on the Excise question, as follows:

"Statement of the result of an Election held in the Town of Montclair, in the County of Essex, on the Thirtieth day of April, A. D. 1918, to determine whether the sale of intoxicating liquor as a beverage in the Town of Montclair shall be prohibited.

30

The whole number of votes cast in favor of said Town of Montclair, in the County of Essex, prohibiting the sale of intoxicating liquor as a beverage.....	1,661
The whole number of votes cast against said Town of Montclair, in the County of Essex, prohibiting the sale of intoxicating liquor as a beverage.....	1,631

Majority in favor of prohibiting the sale of intoxicating liquor as a beverage 30

40

The detail of the vote by Districts was as follows:

FIRST WARD.

	Dry	Wet	Rejected
1st District	117	40	7
2nd District	108	44	1
3rd District	115	60	0
4th District	103	61	1

SECOND WARD.

1st District	102	107	0
2nd District	114	118	0
3rd District	105	203	3

50

TOWN OF MONTCLAIR CASE.

THIRD WARD.

1st District	138	102	0
2nd District	166	82	0
3rd District	102	84	4

10

FOURTH WARD.

1st District	61	223	0
2nd District	33	163	6
3rd District	69	65	2

FIFTH WARD.

1st District	76	38	0
2nd District	62	103	3
3rd District	81	82	6
4th District	109	56	1

20 I hereby certify that the foregoing is a true, full and correct statement of the result of the Election above mentioned, and that the same exhibits the whole number of votes cast in favor of and against the proposition submitted and as shown by the statements of the results of the respective District Boards of Election as filed in my office.

In Witness Whereof, I have hereunto set my hand and the seal of the Town of Montclair, in the County of Essex, this Second day of May, A. D. 1918.

HARRY TRIPPETT,
Town Clerk.

30

(Town Seal.)

ESSEX COUNTY BOARD OF ELECTIONS.

Newark, N. J., June 3rd, 1918.

Mr. Harry Trippett, Clerk,
Town of Montclair,
New Jersey.

Dear Sir:

40 We herewith certify that there were 64 soldiers' and sailors' ballots received from the Secretary of State for the Town of Montclair, purporting to have been cast at an election held on Tuesday, April 30th, 1918, on the referendum question "Shall the Sale of Intoxicating Liquor as a Beverage Be Prohibited?"

On May 29th, 1918, the County Board of Elections canvassed said ballots, with the following result, which is hereby certified as true and correct.

50 Eleven votes in favor of prohibiting the sale of intoxicating liquor, and twenty-two votes against prohibiting the sale of intoxicating liquor. There were 31 ballots rejected by the County Board of Elections, as not complying with the law.

Yours very truly,

ESSEX COUNTY BOARD OF ELECTIONS,
WATSON RODEMANN,
Clerk.

*Petition for Contest of Election.***Return of Supreme Court Justice.**

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

I, WILLIAM S. GUMMERE, Chief Justice of the Supreme Court of the State of New Jersey, do hereby certify and return to the Supreme Court of Judicature of the State of New Jersey the petition and order together with all things touching and concerning the same as by the within writ to me directed I am commanded. 10

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of September, A. D. 1918.

WM. S. GUMMERE,
 C. J. 20

Petition for Contest of Election.

To the Honorable William S. Gummere, Chief Justice of the Supreme Court of the State of New Jersey:

The petition of John L. Cox, residing at 60 Forest street, in the Town of Montclair, in the County of Essex and State of New Jersey, respectfully shows:

1. Your petitioner is a legal voter of the Town of Montclair and was legally entitled to vote and did vote at a special election held in the Town of Montclair on the 30th day of April, 1918, to determine whether or not the sale of intoxicating liquor as a beverage should be prohibited in said Town of Montclair, which election was held under the provisions of chapter 2 of the Laws of 1918. 30

2. That under chapter 150, Laws of 1918, it is the duty of the County Board of Canvassers to canvass the vote cast by the qualified electors, residents in the Town of Montclair and in the military service of the United States and that such canvass was had on May 29, 1918, and that the result of said election was determined at that time as follows: 3,325 votes were cast, 1,672 being "YES" and 1,653 being "NO." 40

3. Your petitioner contests the validity of the election so held as above set forth on the following grounds:

a. Because the secretary of state of the State of New Jersey, disregarding the requirements of chapter 150, Laws of 1918, failed to ascertain, sixty days prior to April 30, 1918, the date of such special election, from the adjutant-general of New Jersey or from the adjutant-general or other proper authority of the United States, the names and post-office addresses of every qualified elector in this state in active service in the military forces of this state or of the United States. In actual service as a member of the State Militia, New Jersey National Guard, any branch or department of the army 50

TOWN OF MONTCLAIR CASE.

or navy of the United States or any auxiliary forces acting in co-operation therewith.

10 b. Because the secretary of state of the State of New Jersey, disregarding the requirements of chapter 150, Laws of 1918, failed to forward by mail or otherwise, at least 20 days prior to April 30th, 1918, the date of said special election, to each person in such active service, as aforesaid, a blank ballot conveniently prepared so that such person might vote on the question to be submitted to the voters at such election.

20 c. Because the secretary of state of the State of New Jersey, disregarding the requirements of chapter 150, Laws of 1918, failed to forward, at least 20 days prior to the date of the special election aforesaid, to the town clerk of the Town of Montclair, whose duty it was to prepare the ballots for such election, the names and addresses of the qualified electors in such active service as aforesaid, residing within the limits of the Town of Montclair.

d. Because the secretary of state of the State of New Jersey, disregarding the requirements of chapter 150, Laws of 1918, failed to forward by mail or otherwise, to each qualified elector of this state in such active service as aforesaid, a printed copy of chapter 150, Laws of 1918, or printed directions for voting and transmitting a ballot as required by chapter 150, Laws of 1918, and also failed to forward to such electors two envelopes, as required by the provisions of said chapter 150, Laws of 1918.

30 e. Because chapter 2 of the Laws of 1918, approved January 29th, 1918, under which the said proceedings were had, and the said order made, is unconstitutional and void, in that it violates the provision of the Constitution of New Jersey which vests legislative power in a Senate and General Assembly.

40 f. Because the aforesaid act of the Legislature is unconstitutional and void, in that it attempts to confer upon a minority of the legal voters in the municipalities to which it applies, the right of power of calling a special election for the purpose of determining whether or not the sale of liquor shall be prohibited in said municipalities.

g. Because the aforesaid act of the Legislature is unconstitutional and void, in that it attempts to confer upon the governing bodies of municipalities to which it applies, the right of power of calling a special election for the aforesaid purpose, and fixing a time therefor, upon the petition of a minority of the legal voters of such municipality.

50 h. Because the aforesaid act of the Legislature is unconstitutional and void, in that it is violative of the provisions of the Constitution of this state which forbids the passage by the Legislature of any local or special law regulating the internal affairs of towns and counties.

i. Because the aforesaid act of the Legislature is unconstitutional and void in that it unlawfully provides that the terms of said act shall not apply to particular municipalities therein referred to.

Petition for Contest of Election.

j. Because the aforesaid act is violative of the fourteenth amendment of the Constitution of the United States prohibiting any state from denying to any person within its jurisdiction the equal protection of the laws, in that the said act grants to the petitioners, where the action of the governmental body is adverse to the petition, the right to a summary review of the action of the said governing body, by the Supreme Court, or a justice thereof, and denies to the opponents of the petition such right of review, where the action taken is in favor of the petition. 10

k. Because the aforesaid act is unconstitutional and void in that the objects of the act are not expressed in the title thereof.

l. Because the aforesaid act is in divers other respects unconstitutional and void.

4. Your petitioner further shows that the governor of the State of New Jersey, by virtue of the provisions of chapter 150, Laws of 1918, filed with the secretary of state an order directing that the provisions of said act should be forced, and that thereupon it was the duty of the secretary of state to carry out the provisions of said act until the governor should by further order determine that the emergency ceased to exist, and should direct that the provisions of said act be discontinued. 20

5. Your petitioner charges that by reason of the failure of the secretary of state to carry out the provisions of the said act, as hereinbefore set forth, a large number of qualified electors of the Town of Montclair, in the military service of this state or of the United States were deprived of an opportunity to vote on the question submitted to the voters at the special election held on April 30, 1918, as aforesaid. 30

6. Your petitioner further shows that there were, 20 days prior to April 30, 1918, the date of such special election as aforesaid, upwards of 800 qualified electors of the Town of Montclair in the military service of this state or of the United States, who had a right to vote at the aforesaid election and that the aforesaid qualified electors did not receive the ballot of such election as provided by law and that only 64 ballots cast by said electors were received by the County Board of Canvassers and that of said number 31 were dated or postmarked subsequent to the said date of election and were rejected. 40

Your petitioner therefore prays, your Honor, that such order may be made so that your petitioner may contest the validity of the aforesaid election according to the statute in such case made and provided.

Dated June 7, 1918.

JOHN L. COX,

Petitioner.

HARRISON P. LINDABURY,

Attorney of Petitioner.

(Affidavits of John L. Cox, Frank Transue and Watson Rodemann attached.)

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TOWN OF MONTCLAIR CASE.

Order Fixing Date of Hearing.

10 Upon reading and filing the duly verified petition of the petitioner, it is, on this 7th day of June, 1918, hereby ordered that Tuesday, the 2nd day of July, 1918, at 10:30 o'clock in the forenoon of said day at the Court House, in Newark, be and are hereby fixed as the time and place of hearing on the aforesaid petition.

And it is further ordered, that the petitioner forthwith publish in the "Montclair Times," a newspaper published in the Town of Montclair, New Jersey, a notice announcing the filing of such petition and stating the time and place at which the contest shall be heard by the undersigned, and shall also post copies of such notices in the manner as is provided for the posting of the notices for hearings on application for elections as set forth in section 2 of chapter 2 of the Laws of 1918.

20 AND IT IS FURTHER ORDERED, that a true but uncertified copy of the aforesaid petition and notice shall be served forthwith on the Clerk of the Town of Montclair.

AND IT IS FURTHER ORDERED, that the petitioner within ten days from the date hereof, shall deposit with the Clerk of the County of Essex the sum of two hundred dollars in cash as security for costs on this proceeding.

WM. S. GUMMERE,
Chief Justice of the Supreme Court.

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Notice of Hearing.

NEW JERSEY SUPREME COURT, ESSEX COUNTY.

In the matter of the application of John L. Cox to contest the validity of an election held in the Town of Montclair, Essex County, New Jersey, on Tuesday, April 30th, 1918, under the provisions of chapter 2 of the Laws of 1918.

On petition, etc.

40

NOTICE.

Please take notice that a duly verified petition in the above matter was this day filed by John L. Cox, of the Town of Montclair, Essex County, New Jersey, contesting the validity of an election held in the Town of Montclair, Essex County, New Jersey, on the 30th day of April, 1918, and that upon the filing of such petition, an order was made by his Honor, William S. Gummere, Chief Justice of the Supreme Court of the State of New Jersey, fixing Tuesday, July 2nd, 1918, at 10.30 o'clock in the forenoon at the court house in Newark as the time and place said contest will be heard by said chief justice.

50

June 7th, 1918.

H. P. LINDABURY,
Attorney of Petitioner,
31 Clinton street, Newark, N. J.

(Note: On July 2, an order was made continuing the hearing until July 16.)

*Stipulation of Facts.***Stipulation of Facts.**

The parties hereto by their respective attorneys stipulate as follows:

1. The petitioner is a legal voter of the Town of Montclair and was legally entitled to vote and did vote at the special election held in the Town of Montclair, April 30th, 1918, under the provisions of chapter 2 of the Laws of 1918. 10

2. At a canvass of the result of said election on May 29th, 1918, the result was determined as follows:

3,325 votes were cast of which 1,672 were "Yes" and 1,653 were "No"; included in this final canvass were 33 votes of qualified electors who were in the military service at the date of said election, and of those 33 votes, 11 votes were counted as "Yes" and 22 votes were counted as "No."

At the canvass of the votes of the voters in the military service by the County Board of Elections, 64 votes were received from the secretary of state and of this number, 31 votes were rejected as not complying with the law, as shown by the certificate of the clerk of said County Board of Elections, under date of June 3rd, 1918, the minutes of said County Board of Elections showing the reason for the rejection of the 31 votes are attached and made a part of this stipulation. 20

3. The clerk of said town at the time the said election was held and for many years prior thereto was Harry Trippett; said clerk did not send to any of the qualified electors in the military service of this state or of the United States residing within the limits of the Town of Montclair any ballot containing the question to be voted on at said special election of April 30th, 1918; said clerk did not send any information to any of said qualified voters relative to said election (except the legal advertisement of said election, as set forth hereinafter) or take any other steps for the purpose of procuring the votes of said electors except as follows: 30

On Friday, April 19th, 1918, one Anthony L. Vena, a clerk employed in the office of the secretary of state, called at the office of said clerk in Montclair for the purpose of procuring the names and addresses of the qualified voters in the military service and for the further purpose of obtaining ballots to be forwarded to said electors; at that time the ballots for said special election had not yet been delivered to the clerk, and the said representative called on the town clerk again on Monday, April 22nd, and procured from him and took away the following: 40

(a) A typewritten list of the names and camp addresses of all the men in the Town of Montclair inducted into the military and naval service through the Essex County Draft Board No. 3, who had full charge of the draft in the Town of Montclair. 50

It is hereby stipulated that a copy of these typewritten lists initialed by Mr. Price and Mr. Hobart may be considered as a part of this stipulation and referred to at the argument.

TOWN OF MONTCLAIR CASE.

10 (b) A copy of a newspaper published in Montclair, known as the Montclair Herald, for April 20th, which copy contained a list of the names and camp addresses of all the men from Montclair in the military and naval service, including not only the men who were drafted but all officers and volunteers, so far as the editor had gathered same (copies of said newspaper initialed by said clerk are included as a part of this stipulation and may be referred to at the argument).

(c) 1,000 of the official ballots printed for said special election—which said ballots were the same as the ballots used by the resident voters at said special election, with the exception that the designation of the war and of the district was omitted and in lieu thereof was inserted the words, “Soldiers’ and Sailors’ Ballot.”

20 No canvass was made by the said clerk for the purpose of procuring the names and addresses of the voters in the military service and no further effort was made by him to procure their names and addresses.

30 (4) The typewritten list of the names and addresses referred to in the foregoing paragraph was prepared by Mr. William H. Senior, secretary of the Essex County Draft Board No. 3, on the 19th day of April, 1918, at the request of the representative of the secretary of state. This list was taken from the records of the board and included all men in both the military and naval service who had been inducted into either service through said board up to that time. The Draft Board record of the camp or naval base to which the soldier or sailor was assigned was made at the time he was inducted or enrolled into the service, and was not thereafter changed, corrected or amplified. This list does not contain the names or addresses of any men who may have volunteered prior to Registration Day, June 6th, 1917, but it does contain the names and camp addresses, as above stated, of all the men who were either drafted or volunteered after said date, within the draft age.

40 (5) Also admitted—Statement of Mr. Transue for secretary of state.

(5½) These were 800 qualified soldier voters from Montclair in the National Army or Navy service.

(6) The said list contains the names of men in the military and naval service. It is stipulated that as near as can be determined between sixty and eighty per cent. of the names were legal voters of the Town of Montclair on the date of said election.

50 (7) For some months prior to April 30th, the Home Service Section of the Montclair Red Cross had been engaged in compiling a list of the names and camp addresses of the soldiers and sailors as they went into the service. This list the week before election was admittedly incomplete, but did contain several hundred names with more definite and correct addresses than given in the two previous lists herein referred to. It was compiled to get in closer touch with the men and their families and to get accurate addresses.

Stipulation of Facts.

The Dry Campaign Committee during the week prior to said election of April 30th, sent a printed circular containing an announcement that an election would be held on April 30th to determine whether or not the sale of intoxicating liquor as a beverage should be prohibited in the Town of Montclair and stating that they were entitled to vote at said election and urging them to vote in favor of the prohibition of said sale. It contained no form of ballot, but did urge the voter to vote "Yes."

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The said campaign committee compared said Red Cross list with the list of the Montclair Herald and the list of the Draft Board, and in this connection where the Red Cross list contained a more complete or different address than that contained in either the Herald list or in the Draft Board list, mailed said circular, postage prepaid, to those addresses. About 200 of such circulars were mailed between Wednesday, April 24th, and Friday, April 26th.

(8) At said special election there were men in the military or naval service who voted in their respective election districts in the Town of Montclair.

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(9) Notice of said special election was posted on the five official bulletin boards of the town located in various conspicuous places in the town. At least twenty-five additional notices were posted in various prominent places in the town, such as in front of churches and school houses. All of these notices were posted on Saturday, April 13th, 1918.

(10) Notice of the election was also advertised in the form of a legal notice in the two papers which are published in the town, the Montclair Times and the Montclair Herald. In both of these papers said notice was published on April 13th, April 20th and April 27th. The posted and the published notices were the same and a copy is attached as a part of this stipulation. No sample ballots were prepared or sent out by the town clerk.

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For the general election of the year 1917, the total number of legal ballots cast was 2,826; the total number of names on the registry list for said election was 3,274; and the total number of legal ballots cast at the primary election in September 1917 was 1,911.

It is further stipulated that reference may be made to the vote cast in the Town of Montclair at the elections in 1915, 1916 and 1917, so, far as the same may be material or relevant, as the records thereof appear in Fitzgerald's Legislative Manual.

40

Also admitted, Exhibits X Y Z.

H. P. LINDABURY,
Attorney for Petitioner.

GEO. S. HOBART,
Counsel for Intervenors.

EUGENE W. LEAKE,
Attorney for Town of Montclair.

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(Note: Exhibits X, Y and Z are affidavits of the posting and publication of notice of hearing of petition to contest election and are not printed.)

TOWN OF MONTCLAIR CASE.

LIST OF MEN INDUCTED INTO SERVICE THROUGH
DRAFT BOARD.

FROM MONTCLAIR, NEW JERSEY.

CAMP DIX, N. J.

- | | | | |
|----|--|-----------------------|--|
| 10 | Name. | | |
| | Leon H. Weaver. | Tont Anneloe. | Harry L. Rittner. |
| | Dominick T. Sharkey. | Walter M. Cory. | Eugene M. Syrett. |
| | Lewis S. Catlett. | Espy Boyden. | James C. Elms, Jr. |
| | Theodore H. Morris. | Thorton B. Wierum. | Russell W. Napier. |
| | Clarence E. Bacon. | Vito Frasca. | Joseph P. Crowe. |
| | Adam Parraga. | Bernard Moore. | Andrew Giblin. |
| | Louis Miller. | Harry P. Merritt. | Herbert Stalp. |
| | Vincenzo Carmanale. | Robert Lauckner, Jr. | Luigi Benello. |
| | Gilbert M. Buchanan. | Robert Storz. | Michael F. Gearty. |
| | George McIntyre. | Nicola Antilino. | Michael Tucci. |
| | Andrew G. Osborne. | David Johnston. | Guiseppe Arguziano. |
| 20 | John Noble Sewell. | Michael Maffia. | Luigi Anello. |
| | Walter Lewis. | Guiseppe Fantuzzi. | Hugh Glazer. |
| | Lawrence C. Claggett. | Joseph F. Dyer. | Guiseppe De Alessandro. |
| | Thomas Russo. | Carl M. Mann. | Dennis Mannix. |
| | Machalle Di Ponti. | Falda Rufferidge. | William H. Wheeler. |
| | Thomas D. Madison. | Arthur P. Sheffler. | Martin J. Brady. |
| | Henry B. Harris. | Robert A. Littlejohn. | Michele Dellesanti. |
| | Sherman M. Fowler. | Paul F. Wiggin. | Phillip Pelullo. |
| | Donato Russo. | Henry Temple. | Michael Testa. |
| | Paul Arraghi. | Fred Thomas. | John E. Sundell. |
| | Jerald W. Good. | Edward G. Walsh. | Silvestro Stivale. |
| | William O. Reiss. | Clarence Brown. | James Sheridan. |
| 30 | William M. Tommins. | Alfred Pier. | Daniel J. Kelly. |
| | Edwin Harris. | John Ginsberg. | Michael Geoghegan. |
| | Charles G. Booth. | Joseph Rizzolo. | Robert R. Stager. |
| | William F. Wilson. | John Calvin. | Richard Caruso. |
| | Joseph J. Haupt, Jr. | James E. Harris. | Elmer Range. |
| | Edward S. Perry. | Carmine Dargenio. | Michael A. Anello. |
| | Russell Napier. | Walter R. Johnson. | James Coocheire. |
| | Kyrle Goble. | Walter E. Carpenter. | Charles McCarthy. |
| | Joseph Cestone. | Paul W. Langway. | William Spahn. |
| | Joseph Martino. | Vincent Carellico. | Ferinanda Deraci. |
| | Carl H. A. Klein. | Harry M. Cordes. | Luci L. Fantuzzi. |
| | Joseph W. Whelan. | Newton C. Carey. | Lionel R. Stiles. |
| 40 | Wentworth Collins. | Samuel Pink. | Antonio Tomasane. |
| | Floyd B. Wells. | Charles Dimmick. | Vincenzo Raffucci. |
| | Thomas Finnerty. | Donato Maffucci. | Raymond Halstead. |
| | Ernest Hill. | Leo A. Thompson. | Joseph F. Conroy. |
| | John F. McDonough. | Michael Scarano. | Charles Straub. |
| | Walter A. Boreneman. | Clarence J. Ridsdale. | Michele Di Ponti. |
| | George F. Schmidt. | Antonio Pastrove. | Theodore Rooy. |
| | Willie Clark. | Frank Lee Roy Crane. | Franklin Paxton. |
| | George W. Brown. | | |
| | Thomas S. Morley, Camp Sevier. | | Harold Axworthy, San Antonio Arsenal,
San Antonio, Texas. |
| | Lloyd W. Pierson, Camp Sevier. | | Ira Scott Snead, Tank Corps. |
| 50 | Theodore J. Denoth, Camp Sevier. | | William A. Mitchie, Fort Oglethorpe. |
| | Albert V. Denoth, Camp Sevier. | | John H. Schmidt, Naval Reserve. |
| | Guy R. Jenkins, Paris Island, S. C. | | John A. Ludlow, Fort Slocum. |
| | Harry Gallagher, Fort Oglethorpe. | | Henry A. Strohmeier, Jr., Columbia
University. |
| | Wallace H. Eels, Columbia University. | | Michael J. Walsh, Camp Hancock. |
| | George Andrews, Army Building, New
York City. | | |

List of Names from Draft Board.

- Phillip Martin, Camp McClellan.
 Antonio Proto, Camp Greenleaf.
 Thomas Surella, Camp Greenleaf.
 Charles E. Baker, Camp Greenleaf.
 Robert I. Clark, Camp Greenleaf.
 George J. Schait, Camp Greenleaf.
 Nicola Russo, Camp Greenleaf.
 Jerome Meyers, Camp Greenleaf.
 William B. Cross, Fort Slocum.
 Olaf Hoff, Jr., Fort Hancock.
 Henry C. Crawford, Fort Hamilton.
 Louis M. Wood, Kelly Field.
 Frank E. Ranson, Jr., San Antonio, Tex.
 Thornton C. Kearfoot, Fort Slocum.
 Donal Campbell, Fort Slocum.
 Carleton B. Overton, Amer. Exp. Force.
 Jack E. Ritchie, Camp Lee, Va.
 Archibald Moore, New York Navy Yard.
 Wm. R. McGeary, Paris Island.
 Walter E. Rutan, Waco, Texas.
 Maurice P. Nevin, Camp Lee, Va.
 Richard W. P. Rose, Paris Island.
 John H. Nutting, Paris Island.
 Paul R. Miller, Camp Meade, Va.
 Oswald Pfaelaer, Camp Upton.
 Willie Powell, Aviation Section, San Antonio, Texas.
 Van Cleaf Ross, Amer. Exped. Force.
 Stanley Nevin, Signal Corps.
 John L. Mott, France.
 Francis R. Parish, Camp Stanley, Texas.
 Wallace Stuart, Waterbury, Conn.
 Paul E. Trusdell, Dental Reserve Corps.
 Wesley Trippett, Pelham Bay.
 Oscar Vogte, Naval Reserve.
 Victor Thomas, Navy Yard, Philadelphia, Pa.
 Alfred M. Euhler, U. S. A. S., Allentown, Pa.
 Gavin P. Taylor, Camp Dix, N. J.
 Harold B. Thorne, Jr., Camp Lee, Va.
 Franklin Thorpe, Medical Reserve Corps.
 Edwin B. Thompson, Engineer, Enlisted Reserve Corps.
 Willis H. Taylor, Jr., Amer. Exp. Forces.
 James C. Simester, Amer. Exp. Forces.
 Russel M. Stone, Camp Johnston, Jacksonville, Florida.
 Frederick Suydam, Camp Devens, Mass.
 Wm. S. Snead, U. S. B. R. F.
 Bruce C. Hubbard, Camp Wadsworth.
 Herman Van Cleaf, Camp Johnson, Jacksonville, Florida.
 Edward Strand, Norfolk Naval Training Station, Norfolk, Va.
 Russel Stopworth, Camp McClellan, Ala.
 Allan R. White, Camp Lee, Va.
 Walker Week, Newport, R. I., Naval Reserve.
 David P. Young, Camp Upton.
- Eldridge Wyman, U. S. Steamship President Lincoln.
 Howard L. Cox, Amer. Exped. Forces.
 Lee W. Sellers, Amer. Exped. Forces.
 Arthur R. Thomas, Fort Slocum, N. Y.
 Douglas G. Wolff, Waco, Texas.
 Elmer S. Dodd, Qtm. Corps, Pa.
 Rutger Van Weort, Battery A, Heavy Field Artillery, N. J.
 Raymond S. Ward, Base Hospital No. 48, New York City.
 Frank R. Waite, Camp Meade, Md.
 Austin Barnes, Camp Merritt.
 Frederick Baker, Fort Slocum.
 Thomas G. Bradlee, Camp Meade, Md.
 Henry Holloway, Jr., Ordnance Reserve, Camp Lee, Va.
 John R. Hogan, Camp Hicks, Fort Worth, Texas.
 Roger Broadbent, U. S. Barge Seneca.
 Maurice E. Brown, Camp Alfred Vail, Little Silver, N. J.
 Wm. A. Brooks, Jr., Tompkinsville, S. I.
 Fred Brooks, Camp Upton, N. Y.
 Ralph C. Anderson, Newport News, Va.
 George W. Johnson, Washington, D. C.
 Paul Hughes, Columbia University.
 Olaf Hoff, Jr., Fort Slocum, N. Y.
 Frank E. Ransome, Jr., Fort Slocum, N. Y.
 Myron Seely, Fort Oglethorpe.
 Wm. B. Cross, Fort Slocum.
 Henry G. Gallagher, Fort Oglethorpe.
 Wm. A. Mitchie, Fort Oglethorpe.
 Vernon C. Miller, Fort Oglethorpe.
 Marvin Harrison, Pelham Bay.
 Joseph A. Hoffman, Pelham Bay.
 Lawrence Dodd, Naval Reserve Corps.
 Henry A. Strohmeier, Columbia University.
 Wm. L. Lyman, U. S. Naval Reserve.
 Edward Voight, Jr., U. S. Naval Reserve.
 Henry L. Washington, Ordnance Dept., Bloomfield, N. J.
 Wm. J. Gaston, U. S. Naval Reserve, U. S. Steamship Baltimore.
 Edmund A. Whiting, Naval Reserve Force.
 Victor H. Crawford, Fort Hamilton, N. Y.
 Francis Earle, Navy Yard, N. Y.
 John A. Carlson, Naval Reserve Force.
 Leonard E. Cousins, U. S. Steamship New Hampshire.
 Lawrence K. Groat, Naval Reserve Force.
 George Greey, Naval Reserve Force, Brooklyn Navy Yard.
 Norman Eypper, Camp Wadsworth, S. C.
 Carl H. Laplet, Gun Division, Almarle Building, N. Y.

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TOWN OF MONTCLAIR CASE.

- Carleton W. Cox, Camp Meade, Md.
 George I. Nester, Waco, Texas.
 Frank Gorman, Camp Greene, Charlotte, N. C.
 Abraham W. Jacobus, Naval Reserve Force.
- 10 Christopher Donald, Cornell College.
 Wallace E. Stockwell, Naval Reserve Force.
 Kenneth Baker, Naval Reserve Force.
 James A. Austin, Camp Meade, Md.
 Herbert M. Appleton, Fort Wood, Bedlow's Island.
 Kenneth Allen, Camp Meade, Md.
 James B. Feder, Fort Oglethorpe, Ga.
 Charles B. Alling, San Antonio, Texas.
 James W. Sanders, Fort Hamilton, N. Y.
 Eric Swanson, Traylor Shipbuilding, Cornwall, Pa.
- 20 Edward Benham, Gas Defense, N. Y.
 Albert Gabriel, Medical Reserve Corps, Pa.
 Laverett F. Hooper, Camp Meade, Md.
 Charles Welsh, Jr., Engineers Enlisted Reserve Corps.
 Walter Bliss, Medical Reserve Corps.
 Percy Hunt Alcock, Pikesville, Md., Battery B, Heavy Field Artillery.
 Thos. Alworth, Camp McClellan, Anniston, Ala.
- 30 Phillip F. Green, Medical Reserve Corps.
 Gabriel Iello, Naval Reserve.
 George B. Cordes, Fort Myer, Va.
 Roscoe Conklin, 318th Inf., Camp Lee, Va.
 Frank A. Gale, Camp Meade, Md.
 Wilson F. Dodd, Medical Corps.
 Archibald B. Munn, Qtm. Dept., 357 Broadway, N. Y. City.
 Ira Scott Snead, Fort Oglethorpe, Ga.
 Irving H. Moore, Qtm. Dept., Washington, D. C.
- 40 Sylvestro Prestefillippo, Medical Reserve Corps.
 Wm. N. Packard, Amer. Exped. Force.
 John A. Piquet, 113th Barracks, Vancouver, Wash.
 Arthur E. Peerless, Captain, Qtm. Corps, W. C.
 Fred D. Deusinger, Aviation Corps.
 Chas. H. Eyper, Fort Leavenworth, Kan.
 Nathan Edwards, Naval Reserve Corps.
 Thomas Flannery, Merchants' Auxiliary.
 Max Dobrin, Signal Corps.
- 50 Clayton Du Bosque, Aviation Section.
 Coke Flannigan, Amer. Exp. Force.
 Edward W. O'Brien, Camp Jackson, Jacksonville, Fla.
 Wm. Fisher, Pelham Bay.
 Allan Dodd, 247th Depot Attachment, Washington, D. C.
- Hamilton Coan, Fort Hancock.
 Ernest R. Freeland, Company B, 53rd U. S. Inf., Chattanooga, Tenn.
 George N. Eneslie, U. S. Naval Reserve.
 Wm. C. Mosher, Qtm. Corps, Hoboken, N. J.
 Aaron B. Cutting, Aviation Corps, Princeton, N. J.
 Francis Carter, Captain, Qtm. Corps, Camp Meade, Md.
 Reginald Prielms, Ordnance Dept., Dayton, Ohio.
 E. A. Hine, Camp Wadsworth, S. C.
 Eugene P. Chapel, Naval Reserve Force.
 Maurice Cohen, Camp Logan, Houston, Texas.
 Thomas M. Reamer, Columbia College.
 Richard T. Hobart, Aviation Section.
 Fred Blackford, Second Class Seaman.
 Matthew J. Hoff, Camp Lee, Va.
 Russell E. Holburn, Naval Reserve Force.
 Harry Young, Pelham Bay.
 Gordan Brown, Camp Gordon, Ga.
 Charles W. Baker, Morrison, Va.
 Clifford W. Buck, Camp Dix, N. J.
 Roger S. Brown, Frankford Arsenal, Pa.
 Harold W. Hoile, U. S. Steamship Amphitrite.
 Sidney C. Bursley, Camp McClellan, Ala.
 Alfred K. Halett, De La Vergene Machine Co., 138th street, New York.
 James F. Flannigan, Aberdeen, Md.
 George Fayen, Ordnance Dept., Philadelphia, Pa.
 Lee Forshay, Philadelphia, Pa.
 Thomas Castene, Camp Greene, Charlotte, N. C.
 Edward Gossington, Camp McClellan, Ala.
 Henry M. Gassner, Motor Truck Company, Camp Upton.
 H. Hampden Herring, Amer. Exped. Force.
 Richard C. Christopher, Camp Dix, N. J.
 Wm. N. Cox, Naval Reserve Corps.
 Allan Brown, Naval Reserve Corps.
 Wm. C. Bugbee, Flying Corps.
 John Cook Beams, Ordnance Dept., Amer. Exped. Forces.
 George L. Jordan, Radio Barracks, Newport, R. I.
 Frank T. Bailey, Watertown, N. Y.
 August W. Hertsch, Aero Station, Bay Shore, L. I.
 Adolph Hollman, U. S. Steamship Leviathan.
 Wm. Chestnut, Jr., Pelham Bay.
 Cyril Coons, Amer. Exped. Force.
 Henry Ware Jones, Jr., Camp Lee, Va.
 Thomas Grant.

List of Names from Montclair Herald.

Harold F. Rouse, Aviation Section, Signal Corps, N. Y.	James S. King, Chief of Ordnance, Washington, D. C.
Goulden K. Wight, Fort Jay, N. Y.	Thomas Lee Kane, Bureau of Supplies, Washington, D. C.
Joseph Lawlor, Camp Sevier, S. A.	Herbert De Forest Knight, Bensonhurst, L. I.
Herman Earle, Washington, D. C.	Ernest J. Kluge, Amer. Exped. Force. 10
Robert J. Conklin, Amer. Exped. Force.	Frank K. King, Camp Stuart, Va.
John H. Nichol, U. S. Steamship Martha Washington.	Edward L. Kengle, Disbursing Office, 280 Broadway, N. Y.
Michael J. Kaveny, Camp McClellan, Ala.	John J. O'Hara, Paris Island.
George W. Kasestner, Camp McClellan, Ala.	Thomas P. O'Hara, France.
James H. Jackson, Camp Meade, Md.	Burdet H. O'Connor, Aviation Section.

LIST OF NAMES FROM MONTCLAIR HERALD.

MONTCLAIR ROLL OF HONOR.

In order to keep this Roll of Honor as complete as possible, all are invited to send in the names of Montclair boys in any branch of the service not already here listed, as well as any corrections which ought to be made from time to time. 20

LIEUT. LISLE RAMSAY.
FRANCIS C. PERRINE.
BRIGGS K. ADAMS.
PAUL G. OSBORN.

WALKER WEED.
CAPT. RALPH S. HOPKINS.
ALAN T. BEDELL.
KENNETH G. WEST.

They Gave the Best They Had. May Their Souls Rest in Peace. 30

A

Sergt.-Major Jas. S. Alexander, Jr., Overseas War Risk Insurance, N. A., Amer. Express, 11 Rue Scribe, Paris.

Lyman B. Andrus, U. S. N.

Ronald Andrus, U. S. N.

Donald Aspden, 107th Infantry.

Robt. R. Abrams, Aviation Corps.

Major W. I. Lincoln Adams, U. S. A.

Robt. R. Abram, Aviation Corps

Ensign M. A. Conant, U. S. N. R. F.

James S. Alexander, Amer. Ambulance.

Lieut. Charles Booth Alling, Ft. Myer.

Lieut. Kenneth Slade Alling, Field Art.

Lieut. Paul G. Amberg, O. R. C.

Ensign Wyllys P. Ames, N. A. R.

Wilfred W. Amerman, U. S. S. President Grant.

Clifford Anderson, Fort Miley.

Nicola Angelo, National Army.

Frank W. Arnold, Jr., U. S. N. R.

Lieut.-Com. W. H. Areson, U. S. N. R.

Sergt. Cyril D. Arnold, Q. R. C.

Paul Arrighi, National Army.

Hugh B. Astlett, Norton Ambulance Corps, France.

Alex. Astlett, Norton Ambulance Corps, France.

Lieut. James Auld Austin, Fort Myer.

F. Donovan Axtel, U. S. Amb. Corps, France.

Cecil T. Axworthy, U. S. Army.

Percy Ayres, Essex Troop.

Robert Ayres, Essex Troop.

Stanley W. Ayres, Essex Troop.

Michael A. Anello, Camp Dix.

D. Andrea Angelo, Co. B, 114th Inf.

Sergt. Herbert Appleton, Division Research and Inspection, Signal Corps, A. E. F., France. 40

Richard Henry Andrews, U. S. Army, France.

Gabriel Aiello, U. S. N. R.

B

Ensign Allan Brown, U. S. N. A. R.

Grace Bryan, nurse, Pelham Bay.

Curry Bartlett, 101st U. S. Eng.

Sergt. Charles Bausher, France.

Gerrish Bausher, U. S. Mil. School Aero.

Sergt. Harry Bausher, France.

Charles C. Bettes, Jr., Aviation Corps. 50

Lieut. Jas. J. Bettes, U. S. R. M. C.

Sergt. Raymond H. Bogert, 9th N. G. N. Y., Heavy Artillery.

Lieut. Geo. G. Bradley, France.

Arthur Brentano, U. S. Marada.

Lieut. Grosvenor M. Ball, 306th Inf.

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- Clarence Bacon, National Army.
 Lieut. Frank T. Bailey, U. S. R.
 Chas. W. Baker, Jr., 6th Div., Co. 10.
 Kenneth R. Baker, U. S. R. Sig. Corps.
 Thos. Baker, U. S. Amb. Corps, France.
 David Baldwin, U. S. N. C. R.
 10 Capt. Harry Barker, E. R. C.
 Dick Barr, U. S. Coast Patrol.
 Samuel Barr, Jr., U. S. Coast Patrol.
 Lieut. Wm. B. Beam, O. R. C., Inf.
 Ralph M. Beckwith, N. Y. N. G.
 Chas Malcolm Beddell, U. S. S. Michigan.
 C. C. Benedict, 11th Eng., France.
 Lieut. Charles Bell, Fort Myer.
 Roland E. Bell, E Battery.
 Violet Bennet, Y. M. C. A., France.
 John Bennett, U. S. Navy.
 Ruben Berggren, U. S. S. Vermont.
 20 Philander H. Betts, U. S. S. Amphitrite.
 Maj. Philander Betts, U. S. Eng. Corps.
 Clarence S. Benson, U. S. Navy.
 Arthur Billiard, U. S. A. C.
 John H. Blake, Jr., U. S. S. George
 Washington.
 Don C. Bliss, Jr., U. S. N. R.
 Howard C. Bliss, First N. J. Cavalry.
 Harold V. Bloom, E Battery.
 Wm. Y. Bogle, Jr., Squad 34, Fort
 Worth, Tex.
 Charles Booth, National Army.
 Corporal J. Booth, Co. B, 47th Inf.
 30 W. A. Bornemann, National Army.
 Wallace R. Bostwick, Red Cross Trans-
 portation Dept.
 Harold M. Bowman, Ambulance Unit,
 France.
 Lieut. Thos. Goddard Bradlee, Ft. Myer.
 Harold B. Bradley, R. C. F. C.
 Randolph Brandt, U. S. Coast Patrol.
 Sergt. Jasper Brady, U. S. Reg.
 Capt. F. L. Braunworth, Eng. O. R. C.
 Ensign Stanton F. Brewster, U. S. S.
 Kansas.
 40 Frederick Brooks, Ordnance Dept.
 Elliott Bristow, Naval Res.
 Rolger D. Broadbent, Naval Res.
 Wm. H. Brooks, Jr., Naval Reserve.
 E. Wendell Brooks, Mounted Military
 Police, 27th Div.
 Capt. Clarence F. Brown, O. R. C.
 Lieut. Rogers Stuart Brown, O. R. C.
 Capt. Gordon Brown, O. R. C., Inf.
 Capt. J. Paulding Brown, Infantry.
 Major James Spencer Brown, U. S. Med-
 ical Reserve Corps.
 50 Lieut. James S. Brown, Jr., Sig. Corps,
 France.
 Lieut. Roger S. Brown, Or. Res. Corps.
 Henry A. Bruns, R. C., Aviation Corps.
 Frank T. Bruno, R. C., Aviation Corps.
 Gilbert Buchanan, National Army.
 George Burcham, E Battery.
 Charles E. Burgess, Jr., 1st N. J. Cav.
 Thos. R. Burgess, 1st N. J. Cavalry.
 Sidney C. Bursley, 1st N. J. Field Art.
 Dudley W. Bush, 143d A. S., U. S. A.
 Quartermaster James W. Bush, U. S.
 N. R.
 Lieut. George S. Butcher, Reg. Army.
 Stanley Butcher, 1st N. J. Infantry.
 Lieut. Alban B. Butler, Jr., O. R. C.,
 Artillery.
 Martin Brady, Camp Dix.
 Lieut. George G. Bradley, American Ord.
 Base Depot, France.
 Capt. James Lofland Bruff, Intelligence
 Dept.
 Nicholas Bayard Clinch, American Am-
 bulance, France.
 Ensign Allan Brown, U. S. Naval Auxil-
 iary Reserve.
 Edward M. Benham, U. S. S. C. Gas Def.
 D. V.
 Hayward Beatty, Camp Shelby.
 Lieut. Frank T. Bailey, Ord. Dept.
 Grace Bryan, nurse, Pelham Bay.
 Clifford W. Buck, Field Signal Battalion,
 Camp Dix.
 Ed. Benham, Sanitary Corps.
 Corp. James Booth, Co. B, 47th (trans-
 ferred to 4th Div., Mounted Police).
- C**
- Donald Christopher, U. S. Aero.
 J. Howard Clegg, 309th F. A.
 Capt. Warren W. Chapin, Ord. Dept.
 John M. Chapman, Jr., U. S. N. R.
 William N. Chew, Overseas Training
 Co., W. Toronto.
 Rodney Clark, Naval Reserve.
 Arthur W. Clarke, 4th Div., U. S. A.
 Lieut. Geo. D. V. Cornwell, U. S. N. R. F.
 W. A. Cooper, 1st Reg't. Eng., M. C.
 Lieut. E. M. Crane, 318th Infantry.
 E. Wilfred Congdon, Jr., American Avia-
 tion Service.
 Robert Cameron, U. S. Naval Res.
 Lieut. R. T. Carey, U. S. Res.
 Arthur J. Carlson, U. S. Navy.
 John Arthur Carlson, U. S. R.
 Oscar L. Carlson, Naval Res.
 Capt. Francis H. Carter, U. S. Q. Dept.
 L. A. Cerf, Jr., Amb. Corps, France.
 John N. Chapman, Jr., U. S. Naval Res.
 Ensign Chas. A. Chase, Mine Sweeping
 Force.
 George Chard, 7th Reg., New York.
 Wm. J. Chestnut, Pelham, New York.
 Rev. J. E. Chester, chaplain, 53d U. S.
 Infantry.
 Lieut. Richard C. Christopher, O. R. C.,
 Infantry.

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Harry J. Christensen, 107th U. S. Inf.
 James Cleary, N. Y. Navy Yard.
 Hamilton N. Coan, 13th Co., Coast Art.
 Arthur Coates, U. S. Coast Patrol.
 Shelby Coates, U. S. Coast Patrol.
 Sergt. Geo. Watson Cobb, Jr., Gas De-
 fence Service, Medical Corps.
 Clarence Cockefair, Essex Troop.
 Wentworth Collins, National Army.
 John Conant, Amb. Corps, France.
 Lieut. John K. Conant, Artillery Train-
 ing Camp, France.
 Lieut. Roscoe S. Conkling, O. R. C.,
 Infantry.
 Herbert Conklin, U. S. Army.
 Robert Conklin, Y. M. C. A., Paris.
 Lieut. James H. Conyne, J. G. U. S. S.
 Nebraska.
 Lieut. Leveritt F. Cooper, to be assigned.
 W. Stanley Conyne, Pelham, N. Y.
 Alexander Cox, Aviation.
 Lieut. Cyril A. Coons, Coast Artillery.
 Lieut. George D. Cordes, O. R. C., Inf.
 Harry William Cordes, National Army.
 Robert S. Cornish, U. S. Naval Res.
 Lieut. Kent R. Costikyan, O. R. C., Art.
 Howard L. Cox, 1st U. S. Eng., France.
 Leonard E. Cousins, 1st Reg. Band.
 Capt. Wm. S. Covell, D. S. Res.
 F. Burton Covert, Naval Militia, France.
 Lieut. Carlton Wheeler Cox, Ft. Myer.
 F. Le Roy Crane, dental surgeon, Camp
 Dix.
 Paul H. Crane, U. S. Air Service, France.
 Lieut. Wolcott B. Crane, 307th Machine
 Gun Battalion.
 Lieut. Thomas I. Crowell, Jr., O. R. C.,
 Artillery.
 John Courter, Ordnance Dept.
 Capt. Albert B. Cudebeck, Engineers'
 Corps, France.
 Geo. Cudworth, 28th Infantry.
 Walter J. Cummings, Fifth N. J. N. G.
 Howard G. Curtis, First Reserve Eng.
 Reginald G. Curtis, First Reserve Eng.
 Lieut. Walter M. Cory, O. R. C., France.
 Richard Caruso, Camp Dix.
 James Cochiere, Camp Dix.
 Joseph I. Conroy, Camp Dix.
 Robert Caniff, Camp Dix.
 Sergt. George W. Cobb, Med. Corps.
 J. Howard Clegg, Battery A, 309th H.
 F. A.
 Robert Conklin, Headquarters Co., A. E.
 F., 5 Field Artillery, France.
 Capt. Warren Winthrop Chapin, Con-
 struction Sect., Supply Div., Ord.
 Dept.
 Dr. William Cox.
 Alexander Cox, Aviation Corps, Eng-
 land.

Aaron B. Cutting, Aviation.
 H. Victor Crawford II., Ft. Hamilton.

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Ensign Frederick H. Dutcher, U. S. N. R.
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 G. Gardiner Draper, France.
 Waldemar Deetjen, Co. B, 104th U. S.
 Military Police, 29th Div.
 Edward F. De Selding, Nav. Aux. Res.
 Major Charles I. De Witt, Ord. Dept.
 Allen R. Dodd, 347th Eng. Corps.
 Lieut. Louis Douglas, 347th F. A.
 Robt. G. Davis, U. S. Coast Patrol.
 Wm. J. Dean, Fifth N. J. N. G.
 William Decker, Essex Troop.
 Lieut. William N. Deetjen, O. R. C. 20
 L. W. Deetjen, Camp McClellan.
 Wilbur A. Demarest, E Battery.
 Michael De Ponte, National Army.
 Lieut. F. H. Devitt, S. C. A. S., France.
 Sergt. A. S. Devitt, France.
 J. De Valle, U. S. S. Maine.
 Peter W. Diamond, U. S. Marine Corps.
 Thomas Diveny, E Battery.
 John Divvers, U. S. Marine Corps.
 Lieut. Max Dobrin, Med. Res.
 A. W. Dodd, Y. M. C. A., Camp Dix.
 Albert I. Dodd, E Battery. 30
 Elmer S. Dodd, Quar Dept.
 Francis Donohue, U. S. N.
 Lieut. Robt. C. Doremus, O. R. C. O. D.
 L. Dorffinger, U. S. Naval Res.
 Capt. Walter Dreyfus, O. R. C.
 Fritz Drucklieb, U. S. Naval Res.
 Lieut. Norman Du Bois, Coast Artillery,
 France.
 Joseph F. Dyer, National Army.
 Michael Della Santi, Camp Dix.
 Michael De Pont, Camp Dix.
 Oscar De Long, U. S. N. R.
 C. Melvin Diply, 15th Infantry. 40
 Sergt. L. B. Durbrow, Signal Service.
 Edward Davis.
 Capt. W. S. Dodd, M. D., American Red
 Cross Commission to Palestine, B.
 E. F.
 Emma Young Dickson, International
 Committee, Y. M. C. A., France.
 Harold K. Davies, Aviation Sig. Corps.
 Robert Greener Davis, U. S. N. R.
 Charles Dimmick, Camp Dix.
 John Diveny, Battery E.
 W. Dempsey, U. S. N. 50

E

A. C. Elliot, Jr., Field Artillery.
 Kenneth A. Earl, U. S. Aero. School.
 R. E. Ellinwood, Mallet Res., France.
 Geo. B. Ennever, 19th Co., Coast Art.

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Arthur Eaton, U. S. Navy.
 Ensign Francis Earle, U. S. N. R.
 Jack Earl, Bat. A, N. J. Field Artillery.
 Sergt. J. R. Edgar, Field Artillery.
 Thomas Egan, U. S. Marines.
 Sergt. Gailord Elliott, France.
 10 Sergt. Gaylord W. Elliott, 102d Ammunition Train, 27th Div.
 Capt. Albert H. Ellis, U. S. Quar. Dept., France.
 James C. Elms, Jr., National Army.
 W. Montgomery Engals, Camp Dix.
 Lieut. Harvey M. Ewing, U. S. Medical Res. Corps.
 George W. Eyrper, Lafayette Flying Corps, France.
 Norman K. Eyrper, Spartanburg.
 John Geary Earl, Battery A.

Malcolm W. Force, U. S. Coast Guard Artillery.

G

E. C. De Garmo, Aviation Section.
 James Graham, Aviation.
 Sergt. Johnson Grymes, 23d Engineers.
 Chas. S. Gallagher, Newport, R. I.
 Baldwin Guild, Marconi Wireless Co.
 Albert H. Gabriel, National Army.
 Lieut. Frank Alonzo Gale, Fort Myer.
 Paul Galonica, Camp McClellan.
 Sergt. Henry M. Gassner, Quar. Dept.
 William Gaston, Naval Res.
 Alice Gates, Y. M. C. A., France.
 Richard Gesell, N. S. Naval Res.
 Edward Gillespie, Anniston.
 Edmund J. Gilseidar, Bat. A, Field Art.
 John Ginsberg, National Army.
 Kyrle Gobel, National Army.
 Gerald Good, National Army.
 Francis Goodell, U. S. N. R., Liverpool, England.

Fred S. Goodman, Y. M. C. A.
 Livingston Goodman, Army Y. M. C. A.
 Robt. S. Goodman, Army Y. M. C. A.
 Lieut. Frank T. Goodman, adj general's department.

Capt. Leonard Rider Gracy, Infantry.
 John Graham, Fifth N. J. N. G.
 Lieut. Henry Evans Gray, E Battery.
 George Green, Fifth N. J. N. G.
 Lieut. Edward B. Greene, Ft. Myer.
 Louis C. Greenman, U. S. Naval Res.
 Laurence K. Groat.

Sergt. Ralph W. Grout, Jr., Quartermaster's Dept., E. R. G.

Andrew Gannon, Camp Dix.

M. Geoghegan, Camp Dix.

Timothy Gearty, Camp Dix.

F. Geraci, Camp Dix.

Sergt. Henry M. Gassner, Quar. Dept.

Lieut. Henry Evans Gray, Battery E.

Florence E. Greener, Army Nurse Corps, A. E. F.

Jos. Gardner, U. S. N. R.

Harry Gallagher, Medical Corps.

James Graham, Medical Corps.

H

John Hoatson, Y. M. C. A., France.

Grant Hoatson, 1st air mechanic, R. F. C., Toronto.

Harold Hoatson, U. S. Aviation Corps.

Allan Hanstein, 318th Eng., Vancouver.

Claude S. Harris, Company F.

Sergt. W. S. Holmes, 104th M. P.

Capt. Carroll B. Haff, Camp Merritt.

W. J. Hazel, Army Y. M. C. A.

George B. Hanford, U. S. Navy.

Hobart E. Hare, 124th Infantry.

F

R. S. Fay, C. A. N. G.
 J. R. Flanagan, station unknown.
 L. K. Flynt, Neuilly, Paris, France.
 Lieut. Ross B. Fountain, 309th Inf.
 Roland Frasse, Pelham Bay.
 Milton A. Fuller, U. S. Eng., France.
 Giuseppe Fanteutti, National Army.
 Wm. Farmer, U. S. Battleship Utah.
 Geo. S. Fayen.
 Harold F. Fear, U. S. Navy.
 30 Sergt. James G. Fernald, Quartermasters' Corps.
 John Davier, French Gendarmes.
 Lieut. Carlos de la Mesa Fetterolf, Fort Myer.
 Thomas Finnerty, National Army.
 Sergt. Richard Finlay, Squad A, N. Y.
 Lieut. Geo. D. Finlay, Jr., S. R. C. A. S.
 Thos. Flannery, U. S. Tanker Gargayle
 Mallie Flannery, U. S. Naval Res., in European service.
 James Flanagan, Ord. Dept.
 40 Edward J. Fitzpatrick, Co. K, Fifth N. J. N. G.
 Lieut. Coke Flannagan, Signal Corps, U. S. Res.
 Edward J. Fleming, U. S. S. Wanderer.
 Lieut. Malcolm W. Force, U. S. Coast Artillery
 Albert E. Forstall, Jr., in France.
 T. W. Fowle, O. D. inspector.
 Ernest Freedon, 53d U. S. Infantry.
 Luther H. Frost, Med. Corps, U. S. A.
 Lucis L. Fantuzzi, Camp Dix.
 Carmine Fantuzzi, Camp Dix
 50 Rev Harry Emerson Fosdick, D. D., Y. M. C. A. Service, France and England.
 George S. Fayen, Chem. Ord. Dept.
 Amy Ferris, International Committee, Y. M. C. A., France.

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- Ellis F. Harlow, 101st U. S. Eng., A. E. F.
 G. Roger Harvey, Amer. Flying Corps.
 Arthur C. Heller, U. S. Marine Corps, 43d Co., A. E. F., France.
 Edward Herendeen, U. S. Aero. Div., A. E. F.
 Lieut. Andrew Heuschkel, U. S. R., 1st Div., A. E. F.
 Lieut. Dunbar M. Hinrichs, Reserve Mallet, A. E. F., France.
 Robert Halliday, Kitchener's Own, France.
 John Halpin, N. Y. N. G.
 Capt. Robt. J. Halpin, O. R. C., Inf.
 Lieut.-Commander Jas. T. Hanan.
 Henry K. Hannah, Jr., U. S. N. R.
 Siegfried Hannah, N. S. Naval Acad.
 Hans T. Hansen, 1st N. J. Infantry.
 John Hanson, E Battery.
 Sergt. B. V. Harrison, Jr., France.
 R. C. Harrison, Aviation, Princeton.
 Marvin V. Harrison, Jr., U. S. Navy.
 Jos. Hauph, Jr., National Army.
 J. Elmer Hazen, U. S. N.
 Ronald Helps, U. S. Naval Res.
 George Hemingway, National Army.
 Kenneth A. Henke, Naval Res. U. S. S. Mohican.
 Fred Henry, 1st Reg., N. G. N. J.
 George A. Henderson, Med. Res. Corps.
 Lieut. Hampton W. Herring, O. R. C., Artillery.
 Ben Heyer, Naval Reserves.
 Lieut. E. C. Herman.
 E. F. Heydt, U. S. N. Res.
 Edward Higgins, 6th Div., U. S. Supply Train.
 Wm. Higgins, Fifth N. J. N. G.
 Capt. Harold K. Hines, U. S. N.
 D. A. Hoare, U. S. S. Aeolus.
 James Hoatson, Can. Aviation Corps.
 Grant Hoatson, Can. Aviation Corps.
 John Hoatson, Y. M. C. A., Wrightstown.
 John R. Hobart, U. S. Coast Patrol.
 Lieut. Matthew Hoff, Engineers' Corps.
 Olaf Hoff, Jr., U. S. Ord. Dept.
 Trygve Hoff, U. S. Naval Res.
 Jack Hogan, Cornell Aviation School.
 Henry Hollmann, U. S. Army.
 Otto Hollman, U. S. S. Leviathan.
 Lieut. Henry F. Holloway, Jr., O. R. C., Artillery.
 Corp. Jas. Hoatson, R. F. C., Toronto.
 Sergt. Warren G. Holmes, 1st N. J. Cavalry.
 Miss Katherine Hooper, Smith College Reconstruction, France.
 Capt. W. B. Hopping, Quar. Corps.
 Wm. P. Howell, Panama Canal.
 Wyman Howells, 7th N. Y.
- Bruce Hubbard, 105th Mach. Gun Bat.
 Geoffrey M. Hubbard, N. A. R., abroad.
 Sergt. Harry Hughes, Fifth N. J. Inf.
 Lieut. Paul Hughes, U. S. Amb. Corps, France.
 Herman Hupfeld, U. S. Naval Res.
 Jack Huse, naval cadet. 10
 Sergt. Donald V. Huxham, N. G. N. J.
 William J. Hyland, Battery E.
 A. W. Hortsch, Naval Aero. Service.
 Walter Henry, U. S. A.
 R. Halstead, Camp Dix.
 Charles R. Haight, 58th Aero. Squadron, Aviation Sect.
 George T. Haight, 58th Aero. Squadron, Aviation Sect.
 Major James Wakeman Hubbell, Signal Corps, A. E. F.
 Corp. John H. Halpin, 105th Machine Gun Battalion. 20
 Dr. James T. Hanan, Navy Training Camp, Pelham.
 Henry K. Hannah, Jr., Naval Reserve Officers' Training School, Newport.
 Lieut. Hampden W. Herring, A. E. F., France.
 John Hogan, Squadron 28.
 Harold Horton, Aviation Corps.
 Capt. H. K. Hines, U. S. N.
- I
- David H. Ilgen, U. S. Regulars. 30
 Fred Ives, S. S. U. 3 Convois Autso Pas B.
 Warren M. Ingalls, D. A. O. B. D.
- J
- Donald Jewell, Peekskill, N. Y.
 Capt. Roscoe R. Johnson, 114th Inf.
 C. M. David Johnson, National Army.
 Capt. Henry W. Jones, Jr., O. R. C., Inf.
 Dorothy Jones, Red Cross, France.
 Karl McJones, U. S. S. Geo. Washington. 40
 George W. Johnston, Quar. Dept.
 Henry R. Johnston, Y. M. C. A., Camp Dix.
- K
- Lieut. Stanley J. Kenney, Med. Corps.
 Ensign Robert E. Kerr, Mosquito Fleet.
 Lieut.-Col. Harry E. Knight, Louisville, Ky.
 Ensign T. Leo Kane, U. S. Naval Res.
 Thornton C. Kearfott, U. S. Amb. Service, France. 50
 Geo. W. Kaester, E Battery.
 Philip Keenan, U. S. Naval Res.
 Richard F. Kelly, U. S. Naval Res.
 R. Quinton Keasbey, Camp Upton.
 Capt. Jay E. Kilpatrick, Field Artillery.
 Clarence King, U. S. Marine Corps.

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- Cyrus B. Kitchen, U. S. Naval Res.
 Gordon Kitchen, U. S. Amb. Corps, France.
 Murray Kitchen, U. S. torpedo-boat destroyer in British waters.
 Frank Kleinschmidt, U. S. A.
 10 H. De F. Knight, U. S. N. R.
 James Knipshield, 107th U. S. Infantry.
 Lieut. Ernest J. Kluge, 101st Reg. of Engineers, A. E. F.
 Raymond H. Knowles, Amb. Service, France.
 Lieut. Carrol E. Krichbaum, M. R. C., Camp Greenleaf.
 John R. Kingsland, Camp Dix.
 Lieut. Aertson Keasbey, Ord. Dept.
 William Cortis Kennard, U. S. N. R.
- L
- 20 Lieut. G. Ludford Harvey, Quartermaster's Dept.
 Harold L. Laney, Co. A, Military Police, 27th Div., U. S. A.
 H. Coe Lanpher, Amer. Amb. Service.
 Pierre Le Brun, U. S. Naval Reserve.
 Leslie Ludlam, Aviation Corps, France.
 Clifford Lannin, U. S. Res. Sig. Corps.
 Edward J. Lapp, 2d Field Med. Corps.
 Robert J. Lauckner, National Army.
 Lieut. Jos. Lawlor, O. R. C., Infantry.
 30 Frank J. Lawlor, Ordnance Dept.
 Pierre Napoleon Le Brun, U. S. N. R.
 Jas. Legg, Jr., France.
 Boyden Limric, Essex Troop.
 Adolph Lins, National Army.
 John W. Little, O. R. C.
 Bruce Logie, U. S. Amb., France.
 Howard Logie, 1st N. J. Cavalry.
 Armand J. Lopez, Naval Reserves.
 Lieut. Fred'k H. Lovejoy, O. R. C., Inf.
 Meyer M. Lowitz, 326th Infantry.
 A. Noel Lucas, R. C. Flying Corps.
 40 Lieut. Robt. B. Luchars, O. R. C., Art.
 R. B. Lupton, U. S. S. St. Louis.
 Wm. Paul Lynch, 2d Regulars.
 William L. Lyman, U. S. N. R.
 R. A. Littlejohn, Camp Dix.
 Edw. T. Lynch, Camp Dix.
 Wililam L. Lyman, U. S. N. R.
 Capt. Richard W. Lewis, First Divisional Engineer Train, A. E. F., France.
 Major George F. Lewis, First Corps School, Engineer Sect., A. E. F., France.
- M
- 50 Lieut. Charles Morris Mills, Co. F, 2d Pioneer Infantry.
 Wm. McGarry, Paris Island, S. C.
 Lieut. Donald S. McClure, Coast Artillery, U. S. A.
 Vernon Manners, Aviation Corps.
 Lieut. Harold W. McGraw, 1st Pioneer Regiment.
 Lieut.-Col. R. E. McNally, 361st Inf.
 Lieut. E. C. Mills, Officers' Reserve.
 Ensign Alexander Murray, U. S. N. R.
 Lieut. Lawrence B. Morse, Coast Art. C. M. Marseilles, France.
 Sergt. H. H. McBratney, Canal Zone.
 Sergt. Robt. McBratney, Jr., Q. Corps.
 Corp. Wm. E. McBratney, Anniston.
 Frank MacDowall, 48th C. D., England.
 Karl Jones McAllister, U. S. Naval Res.
 William McAllister, Kitchener's Own.
 Archie McAllister, Can. Forces, France.
 John J. McCarthy, U. S. Regulars.
 Blaine McCord, Amer. Vol. Amb. Corps.
 Wm. McConnachie, R. Can. Dragoons.
 John M. McDonough, National Army.
 Lieut. Philip B. McGhie, O. R. C., Art.
 Lieut. Wm. P. McLean, U. S. Reg.
 Sergt. Eugene C. MacDonald, 11th Railway Engineers, France
 Putnam F. MacDonald, Norfolk.
 Stella MacNaughton, Y. M. C. A., Russia.
 Edgar MacNaughton, Y. M. C. A., Russia.
 Frank MacDowell, 48th Overseas Highlanders.
 Walter K. Mack, Amer. Amb. Service, France.
 Thomas McGurk, U. S. A.
 Michael Maffia, National Army.
 Lieut. Wm. A. Maguire, U. S. S. Maine.
 John J. Mahoney, 64th Infantry.
 Karl M. Mann, National Army Corps.
 Capt. Chapin Marcus, O. R. C., Artillery.
 Philip Martin, Battery C.
 James Martino, National Army.
 Arthur B. Marvin, Austin, Tex.
 C. Ronald Mather, U. S. Amb. Service.
 William H. Massman, Naval Res.
 Capt. H. C. K. Mattison, U. S. R.
 Abraham Mayer, U. S. Marines.
 William McDonough, U. S. Naval Res.
 Terence J. McHugh, Ordnance Dept.
 F. Paul McLaughlin, 2d Field Hospital.
 Lieut. John F. Meagher, U. S. Medical Reserve Corps.
 George V. Menhinick, 102d Div., N. Y. C. S.
 Lieut. Charles E. Merrill, O. R. C., Inf.
 Harry P. Merritt, National Army.
 Major Mervyn ap Rice, France.
 Lieut. Perry K. Miller, E. O. R. C.
 Albert Meyer, Naval Reserves.
 Louis Miller, National Army.
 Lieut. Paul R. Miller, Fort Myer.
 Ralph S. Miller, U. S. Marine Corps.
 Lieut. Charles Morris Mills, Ft. Myer.
 Kenneth M. Mitchell, Bat. A, Field Art.
 Bernard Moora, National Army.

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John L. Mott, Y. M. C. A., France.
 C. Shelton Moore, U. S. N. R.
 Capt. John C. Moora, Co. C, 1st Reg.
 Robt. G. Morehead, Am. Corps, France.
 Miles W. Morey, A. C., Fort Slocum.
 Willie Morton, U. S. S. Utah.
 Raymond I. Mount, U. S. Cavalry.
 Edward Moritz, 114th Infantry.
 Lieut. Frank E. Mullen, Sig. Officers'
 Corps.
 A. B. Munn, Jr., Camp Johnston.
 Leveridge Murphy, Essex Troop.
 Starr J. Murphy, Jr., Naval Coast Res.
 Wm. Mutzell, U. S. Transport Phila.
 Stanley Myers, E Battery.
 John Myers, Aviation Section, U. S. A.
 C. McCarthy, Camp Dix.
 V. Maffucci, Camp Dix.
 Perry K. Miller, Eng. R. C., A. E. F.,
 France.
 Lieut. Dr. W. B. Mount, Medical Reserve
 Corps.
 Lieut. Severn A. Miller, Camp Lee.
 Walter T. Miller, N. R. F.
 Edmund J. Moore, Navy Yard, Norfolk.
 W. McGarry, U. S. Marines.
 Wm. A. Michie, Med. Corps, U. S. A.

N

Lieut. A. W. Newhall, S. R. C.
 Kenneth Nash, U. S. Naval Coast Res.
 D. J. Nerney, U. S. N. R.
 Lieut. Edward H. Nicoll, to be assigned.
 Sergt. Eugene Nighland, 5th N. J. N. A.
 Lieut. Maurice P. Niven, O. R. C., Cav.
 Donald Norris, 7th Rtg., New York.
 John H. Nutting, Military Police, 6th
 Division, New York.

O

Sergt. Jos. Oates, Fifth N. J. N. G.
 Hubert Oates, Fifth N. J. N. G.
 Edmund O'Brien, Camp Johnston.
 Jos. O'Connell, 1st N. G. N. J.
 P. O'Connell, Jr., U. S. Coast Artillery.
 Private O'Connor, Fifth N. J. N. G.
 J. J. O'Hara, U. S. Marine Corps.
 Thos. P. O'Hara, field clerk, France.
 Albert Osborn, U. S. Ambulance Corps,
 France.
 Andrew G. Osborne, National Army.
 Carlton B. Overton, Officers' Training
 Camp, Plattsburg.
 William Owens, Camp McClellan.

P

Miss Emily H. Powell, 7th Regt. C. A.
 C. (Y. M. C. A.)
 Robert H. Piquet, R. F. C., Toronto.
 John A. Piquet, 318th Eng., Vancouver.
 Laurence G. Payson, A. E. F.

Charles K. Pattison, 104th Machine Gun
 Battalion.

Capt. Charles Pearson, Jr., 102d Trench
 Mortar Battery.

W. L. Pierce, Jr., Bergen Co., Field Art.

Lieut. Arthur Pilch, Med. Sec., O. R. C.

Lieut. Robert Rathbun Paret, Ft. Myer. 10

F. D. Peale, R. E. C., Montreal.

Lieut. Wm. M. Packhard, O. R. C., Art.

Peter Panoplis, Camp McClellan.

Park G. Parker, U. S. Naval Res.

M. Douglas Parker, U. S. Naval Res.

Miss Elizabeth Parks, Y. M. C. A. Ser-
 vice, England.

Corp. Francis Rich. Parish, Field Artil.

Sergt. Fred W. Patton, Battery B, 124th

U. S. F. A. 20

Franklin Pearce, Naval Coast Res.

Linden L. Perrine, U. S. Medical Res.

Lieut. O. D. Pfaelzer, U. S. R., 304th
 Field Artillery.

Alfred Pier, National Army.

C. N. Pierson, Essex Troop.

Lieut. J. C. Platt, Jr., 14th Infantry,

U. S. A.

Capt. Arthur Powell, O. R. C., Inf.

B. Bonnell Powell, Sig. Corps.

Willis McD. Powell, Ft. Sam Houston.

Frank Price, Camp McClellan.

Douglas Pugh, U. S. Navy.

Edward S. Perry, Camp Dix. 30

Filippo Pelullo, Camp Dix.

Franklin Paxton, Camp Dix.

Linden L. Perrine, U. S. Med. Reserve.

Lieut. Fred W. Patton, 124th U. S. F. A.

Walworth P. Pattison, U. S. Air Service,

A. E. F., France.

Thereon Prentiss, N. R. F.

Lieut. Robert Paret, 314th Field Art.

R

H. Le Van Richards, 104th Mil. Police.

Jos. Riker, Jr., Quartermaster's Dept. 40

F. L. Rockwell, Quartermaster's Dept.

Lieut. L. L. Rounds, Aviation Reserve,
 U. S. A., France.

George J. Russell, Y. M. C. A., France.

Lieut. Clyde Ramsay, 5th R. H. of Can.

James W. Ramsay, R. F. C., Toronto.

Lieut. Wm. A. Ramsay, Can. Troops.

Lieut. Wm. L. Raymond, 310th Inf.

Percy Campbell Reed, U. S. Naval Res.

Hastings Reddall, U. S. Naval Res.

Ensign Herman Redfield, France.

Lieut. John J. Redfield, O. R. C., Artil. 50

Lieut. William F. Redfield, France.

Fitzhugh Reynolds, U. S. Amb. Corps,
 France.

Lieut. John Reynolds, U. S. Cavalry.

Lieut. Joseph Renwick, Ordnance.

Capt. Clayton E. Rich, Jr., O. R. C., Inf.

TOWN OF MONTCLAIR CASE.

- Captain John T. Rich, Coast Art. Corps.
 Robert S. Richardson, U. S. S. Nevada.
 James Ridgedale, Hospital Corps.
 Dudley B. Rich, U. S. Navy.
 Capt. Arthur C. Ringland, Tenth Engineers, France.
- 10 Albert E. Riegraf, 104th Motor Supply Train.
 Lieut. Frank G. Ringland, Fort Sell.
 Lieut. Fred S. Ritchie, O. R. C., Inf.
 Lieut. Jack E. Ritchie, O. R. C., Inf.
 Gerard Rittenhouse, U. S. Naval Res.
 Harvey Rittner, National Army.
 O. Christie Roberts, R. F. C., Canada.
 Capt. Augustus P. Roberts, 4th Inf.
 Christie Roberts, Royal Av., Toronto.
 Lawrence C. Roberts, Amer. Ambulance Corps, Paris.
- 20 Michael Roche, U. S. Navy.
 Edwin Roehr, Essex Troop.
 Freiderich G. Rosenberg, U. S. Army.
 Byron Ross, U. S. Engineers, Texas.
 Harold F. Rouse, A. S. C., France.
 Falda Rufferidge, National Army
 George Albert Rufferidge, British Royal Flying Corps, Toron, Conn.
 William E. Russell, U. S. N. R.
 Donato Russo, National Army.
 L. D. Rutledge, Camp Hancock.
 John Rutherford, U. S. Aviation Res.
 Lieut. C. H. Rypper, Fort Leavenworth.
- 30 Walter E. Rutan, 47th A. S., Camp MacArthur.
 Daniel J. Kelly, Camp Dix.
 Elmer Range, Camp Dix.
 Theodore Rooy, Camp Dix.
 Dexter Reamer, 104th Artillery Band.
 Thomas Murray Reamer, Aviation.
 Dr. Arthur H. Richardson, Pelham Bay, Unit Hospital.
 Lieut. Jock E. Ritchie, 319th Infantry.
- 40 **S**
 Robert Sayles, Jr., U. S. Naval Aero. Overseas Detachment, Paris.
 E. W. Schoonmaker, Flying Cadet.
 Capt. L. Schoonmaker, Eng. Corps.
 Capt. Joseph D. Sears, School of Military Cinematography.
 Harold J. Seymour, Naval Res. Flying Corps.
 Edward T. Seymour, Ambulance Corps.
 Major M. J. Synnott, Med. O. R. C.
 Harrison L. Scott, Base Hosp. No. 40.
- 50 Lieut. Wm. W. Scudder, Machine Gun Squad No. 2.
 Kenneth H. Sheldon, Naval Res. Force.
 Alfred P. Skinner, Unit 5, Salvataire Section, Par B. C. M., Paris.
 Corp. Donald R. Smith, Co. K, 326th Infantry.
 Eliot G. Smith, Chief Recruiting Officer.
 Platt R. Spencer, Co. D., 101st U. S. Eng. 26th Div., A. E. F.
 Lieut. Wallace Stewart, Amer. Mills Co.
 Lieut. Alexander Stobo, 5th Field Artillery, A. E. F.
 Frederick G. Stroop, Sig. Corps, 113th Aero. Squadron.
 Lieut. H. G. Stephens, Ord. Corps.
 Corp. Robt. C. Snow, 9th Inf., A. E. F., France.
 Allen W. Stephens, Naval Aviation.
 C. Weldon Samuel, 1st N. J. Field Art.
 George W. Samuel, E Battery.
 James W. Sanders, Army Y. M. C. A.
 John Sautter, E Battery.
 Robt. Sayles, U. S. N. Aero., France.
 Arthur Scheffler, National Army.
 Major Scovell, France.
 Howard Fera Schermerhorn, N. J. Cav.
 Miss Winifred Schroeder, France.
 A. R. Schneiderwind, 104th Military Police, 29th Div.
 Wm. Schneiderwind, First N. J. Field Artillery.
 Lieut. D. R. Schimmelphennig, Canada.
 Lieut. Victor B. Seidler, U. S. Medical Reserve Corps.
 Lieut. Barrington West Seilers, Fort Myer.
 William Sharpe, C. E. F., France.
 Vincent Shea, U. S. Naval Res.
 Vincent Shay, Pelham Bay, N. Y.
 John H. Sherman, O. R. C.
 Laurance B. Siegfried, U. S. N. R.
 Henry Sigler, U. S. Reg.
 Morton G. Sigler, Headquarters Troop, 8th Div.
 Jos. Simmons, Aviation School.
 Roger O. Simms, U. S. Navy.
 Lewis S. Sims, Naval Res.
 James Simister, 26th U. S. Aero. Corps, France.
 Mildred Sisson, Red Cross Motor Corps.
 Bernard Skally, Ordnance Dept.
 Edwin L. Slocum, 205th Inf., N. Y.
 James H. Slocum, Jr., U. S. Naval Res.
 Franklin Stoddart Smith 2d, U. S. N. R.
 Maj. R. W. Stovel, Eng. Dept., France.
 Russell Stopford, Med. Corps, U. S. A.
 George F. Smith, National Army.
 Capt. Walter T. Smith, Engineers' Corps, N. Y.
 Curtis P. Snook, O. R. C.
 Harkon Sorenson, U. S. S. Wanderer.
 Lieut. Frank Lewis Soule, France.
 Donald Steel, U. S. Coast Patrol.
 J. M. Speers, Jr., Y. M. C. A., London, England.
 W. E. Speers, U. S. Ambulance.

List of Names from Montclair Herald.

- Lieut. Melvin Spencer, O. R. C., Cav.
 Albert Stalant, Camp McClellan.
 J. Howard Stalker, 23d Engineers.
 Ward Starrett, U. S. Ambulance Corps,
 France.
 Lieut. Orme Standinger, U. S. Signal
 Corps.
 Henry J. Stelhi, O. R. C.
 Robert Stortz, National Army.
 Russell Stopford, Med. Corps, U. S. A.
 V. P. Struthers, First N. J. Engineers.
 Francis Sullivan, U. S. Navy.
 F. D. Suydam, 302d F. A.
 Sergt. Jesse E. Swartz, 23d U. S. Cav.
 Lester J. Sweeley, E Battery.
 Sergt. William H. Swenson, 11th U. S.
 Infantry.
 M. J. Swetland, N. Y. N. G.
 Sergt. E. M. Syrett, Camp Dix.
 Morgan C. Syrett, Naval Res.
 Dominick Sharkey, Camp Dix.
 J. E. Sundell, Camp Dix.
 Silvestro Stivale, Camp Dix.
 James Sheridan, Camp Dix.
 Robert R. Steager, Camp Dix.
 William Spohn, Camp Dix.
 Lionel R. Stiles, Camp Dix.
 Charles Straub, Camp Dix.
 C. Weldon Samuel, 112th Reg., Medical
 Department.
 G. William Schneiderwind, 112th Reg.,
 Medical Department.
 Lieut. Frank L. Soule, Aviation Sect.,
 Signal Corps, A. E. F., Paris.
 William H. Smith, U. S. Auditor.
 F. Stoddart Smith, U. S. N. R.
 Ensign Lawrence B. Siegfried, U. S.
 Naval Battleship Georgia.
 Howard F. Schermerhorn, Ground
 School of Military Aeronautics,
 Princeton.
 Winifred Schroeder, with Mrs. Edith
 Wharton, France.
- T**
- F. Chase Taylor, Naval Reserves.
 Lieut. P. L. Thompson, France.
 Lieut. J. C. Thoms, 116th Co., 4th Bat.
 Depot Brigade.
 Lieut. B. E. Townsend, O. R. C.
 Harry R. Trimble, Camp Meade.
 J. H. Taft, Jr., U. S. Army.
 Corp. Charles E. Taylor, Anniston.
 John H. L. Taylor, Naval Res.
 Lieut. Fred H. Taylor, Field Artillery.
 Lieut. Garvin P. Taylor, O. R. C., Inf.
 Lieut. Willis H. Taylor, France.
 Fred Taylor, Fort Oglethorpe.
 Henry Temple, National Army.
 Wilfred Tener, Y. M. C. A., France.
 Ensign Dwight Tenney, U. S. N. R.
- Sanderson Tenney, 107th Infantry.
 Halsey Tichenor, Jr., E Battery.
 Elliott C. Terhune, U. S. Naval Res.
 Arthur Thomas, U. S. Army.
 C. W. Thomas, U. S. Supply Ship Tide-
 water.
 Sergt. Frank Thomas, U. S. Army. 10
 Fred Thomas, National Army.
 Harold Thomas, U. S. Army.
 Victor C. Thomas, U. S. Navy.
 William H. Thomas, U. S. Army.
 Lieut. Harold B. Thorne, Jr., O. R. C.
 Edward I. Tinkham, U. S. Naval Avia-
 tion, France.
 Clifford M. Tinkham, U. S. A., France.
 Robert Trapnell 3d, Maryland Naval
 Volunteers.
 Richard B. Treacy, R. F. C., Toronto.
 Thomas Truesdell, U. S. Mar. Corps. 20
 Lieut. Cyrus S. Trecartin, Nat. Army.
 Lieut. Harry R. Trimble, Depot Dept.,
 O. R. C.
 Lieut. Henry W. Trimble, Cavalry.
 Michael Testa, Camp Dix.
 A. Tommassone, Camp Dix.
 Lieut. Henry W. Trimble, Cavalry.
 Halsey T. Tichenor, Jr., Battery E,
 110th H. F. A.
- U**
- Lieut. Kenneth Unger, R. F. School. 30
 Chester Reid Underhill, C. E., Pelham.
 Lieut. A. M. Uhler, U. S. Amb., France.
 Howard H. Utter, U. S. Marine Corps.
- V**
- Oscar Voute, U. S. Naval Air Station,
 Company 28.
 Sydney Valentine, Essex Troop.
 Lieut. Henry A. Van Dyke, O. R. C.,
 Infantry.
 Lieut. Hubert Van Wagenen Card, Fort
 Myer. 40
 F. R. Van Dyke, U. S. Coast Defense.
 James Van Dyke, U. S. Naval Res.
 Corporal B. F. Vanderhoof, 33d Inf.
 Ensign Wm. Van Houten, Naval Aux.
 Reserve.
 Ward Vernon, U. S. Naval Res.
 Daniel Vernon, U. S. Coast Patrol.
 Lieut. Guy T. Viskniskki, Nat. Army.
 H. B. Van Cleve, Camp Jos. M. Johnston,
 Jacksonville.
 Paul M. Van Cleve, 43d Company, Ma-
 rine Barracks, Paris Island, S. C. 50
- W**
- Lieut. Donald Walden, 3d Battery, Field
 Artillery, U. S. A., France.
 Eugene E. Weiss, nurse, Pelham Bay.
 Lieut. Winchester Noyes, Naval Res.

TOWN OF MONTCLAIR CASE.

- Edward C. Woodruff, Jr., 107th U. S. Infantry.
- John Ward, R. F. C., Toronto.
- S. Ward, U. S. Ambulance, France.
- Giffert Walcutt, U. S. Nav. Coast Res.
- Harold Waterman, Naval Res.
- 10 Lieut. Newell P. Weed, U. S. A., Third Cavalry, Machine Gun Troop, France.
- Leon H. A. Weaver, National Army.
- Curtis S. Webster, Essex Troop.
- Hosea Webster, Jr., U. S. Gov. Machinist, Boston.
- Howard De Witt Webster, Naval Res.
- Floyd B. Wells, National Army.
- George P. West, E Battery.
- Sergt. T. Norris West, Base Hospital No. 1.
- Miss Charlotte Weeks, France.
- 20 Guy White, U. S. Naval Res.
- Carl Wierum, U. S. Navy.
- Richard F. Wierum, 7th Reg., N. Y.
- Thornton B. Wierum, National Army.
- Paul F. Wiggin, National Army.
- Roland T. Wight, Essex Troop.
- Lieut. Goulding K. Wight, U. S. A.
- Lieut. Allyn R. Wight, Fort Myer.
- Robert P. Wieder, Y. M. C. A.
- Chas. W. Williams, Jr., U. S. Nav. Res.
- Francis L. Winslow, 101st Machine Gun Battalion.
- 30 John Wirtz, U. S. Naval Coast Res.
- Richard B. Wood, R. F. C., Toronto.
- John A. Wood, U. S. Army School.
- Rev. E. M. Wylie, Anniston.
- Elbridge W. Wyman, N. Y. Naval Mil.
- Walter Wyman, 1st N. J. Cavalry.
- J. W. Whelan, Camp Dix.
- John H. Woback, Camp Dix.
- Dr. Raymond S. Ward, Base Hospital No. 48, Fort McHenry, Baltimore.
- Edmund Alden Whiting, Naval Aviation Dept.
- Charlotte Weeks, France.
- A. Richmond Wight, 155th Depot Brigade, Camp Lee.
- David M. Wesson, Convois Automobiles, Paris, France.
- Henry B. Wesson, Aviation Corps.
- Eugenie Weiss, nurse, Pelham Bay.
- Y
- Durward S. Yates, Probation Regiment, Pelham Park.
- S. Percival Young, O. R. C.
- Wm. D. Young, Y. M. C. A., Anniston.
- Harry Young, U. S. Naval Res.
- David Theodore Young, Ord. Dept.
- Z
- Robert H. Zieger, 10th Eng. Forestry, France.
- Kenneth G. Zieger, Officers' Res. Training Camp, Camp Winfield Scott.
- Herbert W. Zieger, Naval Res. Training Station, San Pedro, Cal.
- Julius C. Zingg, Y. M. C. A., Camp Dix.

NOTICE OF ELECTION.

(Referred to in foregoing stipulation.)

SPECIAL ELECTION NOTICE.

Excise Referendum.

- 40 Notice is hereby given that a special election will be held on Tuesday, April 30th, 1918, from 6 o'clock a. m., until 7 o'clock p. m., in the polling places in each of the election districts of the Town of Montclair, for the adoption or rejection by the legal voters of said town, of the question or proposition, namely:

“Shall the Sale of Intoxicating Liquor, as a Beverage, in the Town of Montclair, in the County of Essex, be Prohibited?”

POLLING PLACES.

- 50 The polling places in the respective election districts, for the said special election, are hereby fixed as follows:

FIRST WARD.

First District, 603 Valley road.

Second District, 260 Bellevue avenue.

Statement of Mr. Frank Transue.

Third District, 252½ Park street.

Fourth District, Portable Building, 729 Valley road.

SECOND WARD.

First District, 657 Bloomfield avenue.

Second District, 6 North Fullerton avenue.

Third District, 299 Bloomfield avenue.

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THIRD WARD.

First District, 44 Valley road.

Second District, 338 Bloomfield avenue.

Third District, school, 36 Cedar avenue.

FOURTH WARD.

First District, 119 Bloomfield avenue.

Second District, 216 Bloomfield avenue.

Third District, 319a Orange road.

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FIFTH WARD.

First District, Shelter House, Edgemont Park.

Second District, 1 Christopher street.

Third District, 153 Watchung avenue.

Fourth District, school, 100 Chestnut street.

HARRY TRIPPETT,

Clerk of the Town of Montclair.

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STATEMENT OF SECRETARY OF STATE.

NEW JERSEY SUPREME COURT.

In the matter of
SPECIAL ELECTIONS. } *Schedule A.*

After the passage of chapter 150 of the laws of 1918, and the approval of the same on February 28, 1918, the first action taken by the secretary of state with a view to complying therewith, was to make inquiry of the adjutant general's department of the State of New Jersey as to whether or not it would be possible to procure from said department a list of the names and military addresses of the soldiers and sailors of the State of New Jersey in active military service. This inquiry was made about ten days after the passage of the act. This first inquiry was made of the adjutant general, Frederick Gilkyson, who referred me to the chief clerk, Captain John Rogers, who told me that it would be impossible for the adjutant general's department to furnish the information, and further that it would be impossible to procure this information from the War Department at Washington, D. C., as the adjutant general's department had on file a communication which would indicate that no such list of names and addresses would be furnished by the War Depart-

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TOWN OF MONTCLAIR CASE.

ment. (Copy of letter marked No. 1.) According to Captain Rogers the adjutant general's department had very little data which would be of any use in connection with the voting of the soldiers and sailors and what little he did have the greater part of it did not give the military address of the soldiers and sailors. Captain Rogers then referred me to a Mr. McCullough, who has charge of the service records forwarded to the adjutant general's department by the local exemption boards, and Mr. McCullough, on the same date, likewise advised me that it would be impossible to secure any such list from the adjutant general's department. These inquiries of the adjutant general's department were made previous to the promulgation of the governor's order of April 9, 1918, which order was filed in this office on said date. (Copy of said order marked No. 2.) My recollection is that I also had one or two other conversations with Captain Rogers with respect to this subject, after this first conversation and prior to April 9, 1918. At the time of making these inquiries, I had no official notice whatever of any elections which were scheduled to be held in pursuance with the provisions of chapter 2 of the laws of 1918.

On or about April 18, 1918, I received an official notice of the Montclair election. This notice was sent to this department by Harry Trippett, town clerk, and was dated April 17, 1918, to the effect that an election would be held on the 30th day of April, 1918. (Letter marked No. 3.) On April 18, 1918, I instructed Mr. Anthony L. Vena, of Jersey City, N. J., who was an agent for this department in connection with the soldiers' and sailors' vote, to go to the city clerk's office of Montclair for the purpose of procuring a list of the names and military addresses of the soldiers and sailors resident of Montclair, N. J., who were entitled to vote at the special election to be held in said municipality on April 30, 1918. This list was procured by Mr. Vena and ballots, envelopes, instructions, etc., were mailed to all soldiers whose names appeared thereon, on the 22nd and 23rd days of April, 1918. The ballots so sent were those that I had received from the town clerk of Montclair. The list above referred to contained the names and military addresses of three hundred and sixty-four (364) voters—and the list I refer to is identical with the list furnished me by A. Leslie Price, Esq. A majority of the names which appeared on this list seemed to lack the military address; they referred principally to the camps at which the soldiers are located but did not give the military unit. The ballots, instructions, etc., were mailed to the soldiers and sailors appearing on said list, in the official envelope used by the secretary of state, and in my judgment over fifty per cent. of them were returned as undelivered.

On or about the first day of May we were advised by the postal authorities that letters addressed to "Camp Dix" would not be delivered and that it was absolutely necessary that the envelope contain the military unit in which the soldier belonged. We are still receiving letters which were used in these special elections, marked "Unable to locate." Our Mr. Vena told me that the city clerk of

Statement of Mr. Frank Transue.

Montclair had handed him a list of soldiers and sailors as their names appeared in a publication known as "The Herald." I told Mr. Vena to disregard any newspaper publications and get an accurate list from the city clerk. The newspaper list was never used, nor was it ever made a part of the files of this department. In obtaining the names and addresses of the soldiers and sailors I depended primarily upon the municipal clerks and made no further inquiries. 10

On May 15, 1918, I personally delivered to Mr. Watson Rodemann, secretary of the Essex County Board of Election, Court House, Newark, N. J., a package purporting to contain fifty-nine (59) envelopes and ballots voted by soldiers and sailors resident of Montclair, N. J., at the special election held in said municipality on the 30th day of April, 1918, and took his receipt therefor. After the delivery of these fifty-nine (59) votes, there were some additional votes which purported to be of residents of Montclair, N. J., and these were promptly forwarded to the said secretary on May 28th and May 29th, 1918. 20

There was lodged with the secretary of state a letter from R. P. McCain, the adjutant general of the United States, dated April 9, 1918, addressed to his excellency, the governor, a copy of which letter is herewith submitted and marked No. 4. This was in reply to a letter written by Governor Walter E. Edge to the assistant secretary of war, Washington, D. C., under date of April 1, 1918. (Copy of letter marked No. 5.) Also copy of telegram to the governor from the acting secretary of war, dated April 10, 1918, and marked No. 6. 30

On April 22, 1918, I saw notice in the "Sunday Call," of Newark, N. J., issue of April 21, 1918, to the effect that certain local option elections were scheduled to be held in certain municipalities of this state among which were the Borough of Caldwell, the Town of Montclair, the Township of Denville, the Township of South Orange, which elections were to be held on the 30th day of April, 1918, and also a notice to the effect that special elections would be held in East Orange on May 7, 1918, and in Roselle on May 21, 1918. Up to this time we had received no official communications relative to the holding of said special elections, excepting for the municipalities of Montclair and East Orange. So far as East Orange is concerned, I received a notice of said election on April 9, 1918, said election to be held on May 7, 1918. 40

In making preparations for the coming primary and general elections to be held throughout the State of New Jersey, I addressed a communication to the adjutant general, Frederick Gilkyson, with reference to procuring a list of the names and military addresses of the soldiers and sailors of this state in active military service in the United States, dated June 6, 1918 (copy of letter marked No. 9), and received a reply under date of June 16, 1918, to the effect that the adjutant general's department had but very little data and such as they did have was available for our use (copy of letter marked No. 10). I also addressed a communication under date of June 27, 1918, to the secretary of war at Washington, D. C., but up to July 10, 50

TOWN OF MONTCLAIR CASE.

1918, have received no reply (copy of letter marked No. 11). I likewise addressed a communication under date of June 27th, 1918, to the secretary of the navy (copy of letter marked No. 12) and received a reply from said official under date of July 1, 1918, (copy of letter marked No. 13).

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No. 1.

STATE OF NEW JERSEY.

Office of the Adjutant General. J. M. R. A.

Trenton, February 18, 1918.

From: The Adjutant General.

To: Officer in Charge, U. S. A. Recruiting Office, New York.

20 Subject: Service records of New Jersey men in regular army.

1. It is of the greatest importance that New Jersey should at this time commence the compilation of service records of all men in the state who have enlisted in the regular army since the declaration of war.

2. The record which we contemplate will show every detail concerning the soldier from the time of his enlistment to the date of discharge. To accomplish this purpose, in so far as the men serving in the regular army are concerned, information similar to that shown in typewriting on the enclosed service record form will be required for our files.

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3. I appreciate the volume of work which you are called upon to perform, but in the interests of the future history of the war, and to enable us to compile a correct statistical record of every man in the State of New Jersey who is serving his country at this time, I am asking if you will give us the information as suggested in so far as it relates to men who have enlisted in the regular army from this state. If so, supply of blank forms will be sent to you.

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4. I think you will agree with me as to the importance of compiling this information so that we can hand down to posterity complete and statistical information regarding every man from our state who has engaged in the great conflict in which we are now involved.

By direction of the governor.

(Signed) FREDERICK GILKYSON,
*Lieutenant Colonel,
Acting Adjutant General.*

(SEAL)

1 enc.

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Statement of Mr. Frank Transue--Letter No. 2.

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1st Ind.

H. R. D. of New York, 25 Third Avenue, New York City.

February 19, 1918.

To the Adjutant General, State of New Jersey, Trenton, N. J.

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Returned. It is impracticable for this office to comply with your request to furnish service records of the men who have entered the regular army from your state, for the reason that the officers in this district are accepting offices only, the men accepted being sent to the Recruit Depot, Fort Slocum, N. Y., for medical examination and enlistment, also the making of service records to be sent to the organizations to which they are permanently assigned.

(Signed) W. H. CHATFIELD,
Colonel, U. S. Army, Ret.,
Commanding.

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1 enc. (copy of service record form.)

No. 2.

STATE OF NEW JERSEY.

EXECUTIVE DEPARTMENT.

April 9th, 1918.

30

Hon. Thomas F. Martin,
Secretary of State,
Trenton.

Sir:

Under the provisions of chapter 150, laws of 1918, and pursuant to opinion, filed by Herbert Boggs, assistant attorney general, consider this an order, that the provisions of this act shall be enforced and that I deem the existing emergency of such a nature to permit as far as legal and practical, the collection of the soldiers' and sailors' vote as provided by law. The object of this order at this time is to permit all soldiers and sailors to exercise the right of suffrage at special elections. The question of procedure from a practical standpoint will undoubtedly require a conference which must be arranged in the near future, as many special elections are being called throughout the state under the provisions of chapters 2 and 3 of the laws of 1918.

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WALTER E. EDGE,
Governor.

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(SEAL)

TOWN OF MONTCLAIR CASE.

Attest:

FRANCIS E. CROASDALE,
Secretary to the Governor.

Endorsed:

10 "Filed Apr. 9, 1918.

THOMAS F. MARTIN,
Secretary of State."

No. 3.

20

TOWN OF MONTCLAIR.

CLERK'S OFFICE.

Montclair, N. J.

Harry Trippett,
Clerk.

30 Honorable Thomas F. Martin,
Secretary of State,
State House,
Trenton, N. J.

Dear Sir:

40 The Town of Montclair is going to have an election here under chapter two of the laws of 1918 on the thirtieth of April, and I would respectfully request that you forward to me, at your earliest convenience, seventeen (17) copies of said chapter two of the laws of 1918, and also seventeen (17) copies of the supplements and amendments to the election law enacted during the 1918 session, one of each of which to be used by each of the respective Board of Election in the seventeen (17) districts comprising Montclair.

If there is any expense attached thereto, I shall be glad to remit on receipt of memoranda.

Yours very truly,

HARRY TRIPPETT,
Town Clerk.

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Statement of Mr. Frank Transue—Letter No. 4.

No. 4.

WAR DEPARTMENT,
THE ADJUTANT GENERAL'S OFFICE,
WASHINGTON.

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April 9, 1918.

Hon. Walter E. Edge,
Governor of the State of New Jersey,
Trenton.

Dear Sir:

In response to your letter of the 1st instant, relative to the taking of the votes of New Jersey soldiers under the provisions of the state law recently enacted to govern the matter, in which you requested to be advised regarding the attitude of the Federal Government in this connection, I am directed by the secretary of war to inform you as follows:

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It has been decided by the department that, so far as the soldiers stationed within the borders of the United States are concerned, their votes at either a primary or a general election may be taken by the several state governments without serious interference with military operations or with the training and discipline of the men. Pursuant to this decision the following order was issued to all commanding officers in the United States:

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“Upon application by the secretary of state, or other proper officer of a state government, to the commanding officer of a department or division for permission to take and secure the vote of officers and soldiers of said state serving in said command and within the borders of the United States, for either a primary or general election of said state, such commanding officer shall specify a place or places where all such officers and soldiers in such command may exercise their state franchise, and shall allow the properly qualified election officers of such state the opportunity to secure the votes of its citizens in such command at the place or places so designated, and at or during such specified period or periods of time, and conforming as near as may be to the request of said state officer in this respect as shall not interfere with military efficiency. The place or places so designated shall be in such proximity to each and all sections of the troops as will permit them, under the regulations prescribed, to make deposit of their several ballots. Such election officers shall be permitted, if they desire, to erect at said place or places such inclosure or inclosures as may be necessary for the conduct of such election and at said place or places, but not elsewhere, to disseminate information and literature for the instruction of the voter as to the method to be pursued by him in the marking and casting of his ballot, but this latter privilege shall not be construed to permit the dissemination of information or literature calculated to influence the voter in the exercise of his franchise.”

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TOWN OF MONTCLAIR CASE.

The copy of chapter 150, P. L. 1918, was not received with your letter. However, it appears from your letter that the act provides that when any emergency exists whereby the Governor feels that legal voters either within or without the State should be given the privilege to vote, the Governor is authorized to file an order with the Secretary of State to that effect.

While, as stated above, the soldier vote may be taken at primary or general elections within the borders of the United States without seriously interfering with military affairs, there can be no doubt that very serious interference would result if all the states were to be permitted to take the soldier vote whenever one of the several State governments should deem it advisable to call a special election. The application of the order above quoted must, consequently, be restricted to primary and general elections, as specified therein.

Very respectfully,

R. P. McCAIN,
The Adjutant General.

No. 5.

April 1st, 1918.

Dear Mr. Secretary:

I am enclosing you copy of Chapter 150, P. L. 1918, providing a method for collecting soldiers and sailors votes. This act includes special elections as well as general elections. It just happens in New Jersey a number of special elections are scheduled to occur within the next two or three months and this department has already received request from municipal authorities asking that the soldiers vote be collected under the provisions of this act. You will note that the act provides that when any emergency exists whereby the Governor feels that legal voters either within or without the State should be given the privilege to vote, the Governor shall file an order with the Secretary of State to that effect, etc.

I have withheld filing the necessary order, as provided, inasmuch as under this act, it necessitates election officers mailing to each soldier and sailor who were residents of the district in which the election is being held, a ballot and allows a certain time for the bills to be returned so that the count cannot be decided until this time expires. Has the Government issued any order discouraging such action upon the part of a State. We wish to give the soldiers and sailors every opportunity to exercise their right of franchise, which, of course, the act is calculated to do, but we do not want to arrange this machinery, which is necessarily expensive, if the Government is discouraging soldiers and sailors from exercising this privilege while in the field. A large majority of the New Jersey soldiers effected are, I believe, located either at Camp Dix, Wrightstown, New Jersey, or Camp McClellan, Anniston, Alabama, so that it might not be as difficult as if they were scattered. Won't you kindly give me your opinion as to

Statement of Mr. Frank Transue—Letters No. 6, No. 9.

this and your desire so far as State action is concerned, at as early a date as possible.

Very sincerely,

WALTER E. EDGE,
Governor.

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Hon. Benedict Crowell,
Acting the Secretary of War,
Washington, D. C.

No. 6.

WESTERN UNION TELEGRAM.

818 N. Y. D. 40 Govt.

EI Washington, D. C.,
923 P. M. April 10, 1918.

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To Hon. Walter E. Edge,
Governor of New Jersey,
Trenton, N. J.

Department has recommended to the President that the Vote be not taken from Soldiers on Foreign soil because it would seriously interfere with military efficiency.

BENEDICT CROWELL,
Actg Secretary of War.
9.32 P. M.

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(Note: Letters Nos. 7 and 8 refer exclusively to East Orange and are printed in the record of that case.)

No. 9.

Trenton, June 6th, 1918.

Hon. Frederick Gilkyson,
Adjutant General of New Jersey,
Trenton, N. J.

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Dear Sir:

Section 4 of Chapter 150 of the Laws of 1918, provides that "Within sixty days prior to any primary, general or special election in this State, or any sub-division thereof, the Secretary of State shall ascertain either from the Adjutant General of New Jersey or from the Adjutant General or other proper authority of the United States, the names and post-office addresses of every qualified elector of this State in active service in the military forces of this State, or of the United States as aforesaid * * * "

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The regular primary election will be held in this State on Tuesday, September 24, 1918, and the general election on Tuesday, November 5, 1918. Will you not be good enough to advise this Department whether it will be possible for us to procure from your

TOWN OF MONTCLAIR CASE.

office, on or before July 26, 1918, a list of the names and addresses, both local and military, of the soldiers and sailors of the various municipalities of this State who are now in the active service. July 26, 1918, is the very latest date for procuring this list for use at the primary election and still keep within the sixty day limit above referred to. If this information cannot be procured from your Department, will you advise us which of the Federal Departments would be most likely to furnish us with the information.

Very truly yours,

THOMAS F. MARTIN,
Secretary of State.

No. 10.

STATE OF NEW JERSEY
OFFICE OF THE ADJUTANT GENERAL.

Sea Girt, June 16, 1918.

Honorable Thomas F. Martin,
Secretary of State,
Trenton, New Jersey.

Dear Mr. Martin:

In answer to your letter of the 6th instant relative to information regarding the names and post office addresses of every qualified elector of this State in active service in the military forces of New Jersey or of the United States, I beg to advise you that the Adjutant General's Department has been at work for a period of several months in an effort to compile proper data regarding all men from the State of New Jersey in any branch of the military service, but owing to the great number (probably in excess of eighty thousand) who have either voluntarily enlisted, been drafted in units or as individuals, it has been impossible to secure but little data.

Such as we have is on file in our office and is available for your use.

Additional information may be had from the Adjutant General of the Army or from the Navy Department, Washington, D. C.

Very truly yours,

FREDERICK GILKYSON,
The Adjutant General.

Statement of Mr. Frank Transue—Letters No. 11, No. 12.

No. 11.

Trenton, June 27th, 1918.

Hon. Henry P. McCain,
Adjutant General,
Washington, D. C.

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Dear Sir:

Section 4 of Chapter 150 of the Laws of 1918, a copy of which Chapter is herewith enclosed, provides that the Secretary of State shall, within sixty days prior to any primary or general election, ascertain either from the Adjutant General of New Jersey or from the Adjutant General or other proper authority of the United States, the names and post-office addresses of every qualified elector in this State in active service in the military forces of the United States, etc.

The primary election will be held in this State September 24th, 1918, and the general election on November 5th, 1918. Will it be possible for us to procure from your Department such a list for use at both the primary and general elections? Any information which you can give me upon this subject will be appreciated.

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Very truly yours,

THOMAS F. MARTIN,
Secretary of State.

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No. 12.

Trenton, June 27th, 1918.

Hon. Josephus Daniels,
Secretary of the Navy,
Washington, D. C.

Dear Sir:

Section 4 of Chapter 150 of the Laws of 1918, a copy of which chapter is herewith enclosed, provides that the Secretary of State shall, within sixty days prior to any primary or general election, ascertain either from the Adjutant General of New Jersey or from the Adjutant General or other proper authority of the United States, the names and post-office addresses of every qualified elector in this State in active service in the military forces of the United States, etc.

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The primary election will be held in this State September 24th, 1918, and the general election on November 5th, 1918. Will it be possible for us to procure from your Department such a list for use at both primary and general elections? Any information which you can give me upon this subject will be appreciated.

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Very truly yours,

THOMAS F. MARTIN,
Secretary of State.

TOWN OF MONTCLAIR CASE.

No. 13.

NAVY DEPARTMENT
BUREAU OF NAVIGATION
WASHINGTON, D. C.

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July 1, 1918.

Secretary of State,
State of New Jersey,
Trenton, N. J.

Sir:

Receipt is acknowledged of your letter of June 27, 1918, relative to your procuring a list of every qualified elector from the State of New Jersey now in active Naval Service.

20 The records of the enlisted personnel of the Navy are not kept in any such manner as would be necessary in order to allocate such electors, and the Department is so pressed in attempting to meet the purely military needs of the Naval Service, that I greatly regret the impossibility of complying with your request in this matter.

Very truly yours,

JOSEPHUS DANIELS,
Secretary of the Navy.

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Findings and Conclusions.

NEW JERSEY SUPREME COURT.

Tuesday, July 16, 1918.

In the Matter of the Application of JOHN J. REILLY to contest the validity of an election held in the TOWNSHIP OF SOUTH ORANGE on the 30th of April, 1918, under chapter 2 of the laws of 1918.

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In the Matter of the Application of JOHN A. BRADY to contest the validity of an election held in the BOROUGH OF CALDWELL on the 30th day of April, 1918, under chapter 2 of the laws of 1918.

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In the Matter of the Application of JOHN L. COX to contest the validity of an election held in the TOWN OF MONTCLAIR on the 30th day of April, 1918, under chapter 2 of the laws of 1918.

In the Matter of the Application of ANDREW MURRAY to contest the validity of an election held in the CITY OF EAST ORANGE on the 7th day of May, 1918, under chapter 2 of the laws of 1918.

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GUMMERE, C. J.

Ordinarily, in cases of such public importance, I would take home with me briefs of counsel and give the matters careful consideration and in the light of the arguments which have been submitted. But I have already given careful consideration to the matters involved. I have not heard anything in the arguments that I have not thought of and considered; and I am as ready now as I would be later to decide these cases.

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In the first place, with relation to the constitutionality of the act of 1918, the soldiers' voting act, so called, I conceive that it is not my function sitting as a magistrate in a summary proceeding, to undertake to determine whether a statute of New Jersey is constitutional or not; but, nevertheless, I have given the matter consideration, and perhaps it will not be out of the way to express it.

It is said that the statute is unconstitutional because one of its latter provisions requires the votes, when they are returned, to be delivered to the county election board rather than to the election boards of the various election districts. I would be inclined to hold that the county election board was a proper representative of the various election districts in which these soldiers have their homes, if I was compelled

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TOWN OF MONTCLAIR CASE.

10 to pass on the question. But, assuming that that provision is unconstitutional, it does not necessarily follow that the whole law is void. There was passed shortly after the civil war, when this provision of the constitution was engrafted on the fundamental law, a statute which everybody conceives was a valid one. So far as that statute is changed by constitutional provisions in the act of 1918, that latter act stands; so far as the act of 1918 runs counter to the constitution, the prior act remains in force; so that you have a perfectly workable system under the two laws. But if the law of 1918 is wholly void that is not material to the decision of the cases; for, then, the earlier statute was in force and effect and was required to be complied with—and it is not suggested that there was the slightest effort at such compliance.

20 It is said that our sailors and soldiers have no constitutional right to vote on abstract propositions which are put up to the electorate for its decision, because the constitution limits the right of suffrage to the right to vote for officers, and the opinion in the woman suffrage case is referred to in support of that. I have not looked at the decision for some time and do not now recall the details of it.

30 The government under which we live is a government by the people and for the people; and by "the people" I mean with all due respect to the fair sex, the male citizens of our country; and the underlying and fundamental principle upon which such a form of government rests is the right of suffrage. Destroy that and you destroy the government itself. Now, it is a well settled principle of the democratic theory of government that by adopting a state constitution all the powers of the people are parted with that are not expressly reserved. So it is suggested here that the people, not having expressly reserved to themselves the right to vote on abstract propositions submitted to them by the Legislature, that such right does not exist; that it is not guaranteed by the constitution because it is not reserved in the constitution. I cannot concede this, for if it is a sound proposition then the Legislature alone is clothed with power to determine who shall and who shall not vote on these abstract propositions; and so the Legislature of its own will may say (if the argument is sound), in these local option elections, for instance, that only gentlemen engaged in the liquor business shall vote or that nobody interested in the liquor business shall vote. Clearly that cannot be so. The Legislature cannot single out a class and invest them with elective franchise, so far as these abstract propositions are concerned; at the same time disfranchising all others, and I do not think anybody would consider that this was possible, on careful thought. All men who are entitled to vote for a candidate for office are entitled to vote on these abstract propositions. The Legislature cannot take away that right from you and from me and give it to Brown, Jones and Smith; for it is a *right* inherent in the people, not a *power* surrendered by the people to their governmental representatives.

50 Turning now to the statute itself. On the one side it is said that the soldiers' act of 1918 is mandatory and on the other it is said

Findings and Conclusions.

that it is merely directory. It does not seem to me to be important which it is. The fundamental question is whether by its provisions it affords the members of a class of electors an opportunity to vote on these abstract propositions and protection in the exercise of their rights as electors. It is said by Mr. Hobart that the decision of these cases is of the utmost importance to the whole state, because on that decision the validity of the elections to be held next November, that is, the general elections, may depend. I do not think so. What I am called upon to decide is, I think, a very narrow question, and that is this: Can a special election called for the purpose of obtaining an expression of the wishes of the voters of a municipality, upon a subject which is, as I call it, socialological rather than governmental in its character be valid if it is conducted without affording a large class of the legal voters of that municipality an opportunity to express their views in the matter. I said the question that was submitted was socialological rather than governmental, and what I mean is this: Whether Montclair continues the sale of liquor under statutory restrictions or whether it abolishes the sale altogether is not a governmental question, but a question of morals in a broad sense. Whether there are saloons in Montclair or whether there are not the government of Montclair will remain intact; the mayor will be there on the job, the council, the police and every other part of the governmental machinery. In other words, both the structure and machinery of its government will remain absolutely unaffected by the decision of this question of whether the citizens of Montclair can obtain liquor within their own territorial limits or have to go across the border line for that purpose. That, I think, is the difference between the question which I am called upon to decide and the question that would have been presented if the election which is challenged was an election held for the purpose of carrying on government. It would be a bold court that would undertake to determine that an election of that kind was totally void when the result of such a determination might be to destroy a municipal or even state government. For if it involved the election of a governor and the members of the assembly, such a judicial declaration might leave the executive chair vacant, destroying the existence of the originating branch of the Legislature. The question to be determined in such a situation would be whether it was possible for the officers entrusted with the election machinery to destroy state, county or municipal government, either purposely or through carelessness. Speaking for myself, I do not think that would be the result, for the lesser evil would have to be disregarded if it was to result in governmental chaos. I have said as much as I have upon that subject because I want counsel to understand that I do not think that the determination of the question before me has any bearing upon the validity of elections held for the purpose of determining who shall or shall not be the representatives of the people in carrying on the people's government. All that I am to decide, and I repeat it, is whether a special election called for the purpose of determining

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TOWN OF MONTCLAIR CASE.

whether a proposition not governmental in its character shall be adopted by the voters of a given municipality or shall not is valid when a controlling percentage of the legal voters are not and have not been afforded an opportunity to cast votes expressing their views upon that subject. This question is fairly and squarely presented, as I see it, in the Caldwell case. No attempt in that case was made to afford any voters of Caldwell who are engaged in the military or naval service of the United States an opportunity to vote. They were arbitrarily deprived of what I conceive to be a fundamental right and that being so, and the number of disfranchised voters being so large, that the result of the election might have been changed if they had been afforded an opportunity to and had voted, I think that election is void. I do not mean to say that such an election would be void because the election officers were unable to perform physical impossibilities. I do say, however, that they are bound to use every reasonable effort whether provided by the statute or not, to afford these men an opportunity to vote, to advise them of the pendency of the election, of the date of the election and what is involved in the election and to inform them, as the statute says, how they must vote in order that their votes may be counted. Ordinarily, I suppose the machinery provided by the soldiers' election law would have been ample but unfortunately, as soon as the local option law was passed a large percentage of the municipal organizations of the state conceived the idea that it was very important that in that particular municipality the question should be determined as speedily as possible and the result of it was that from Sussex to Cape May, you may say, these matters were precipitated upon the secretary of state and he was asked by Montclair where the soldiers and sailors from Montclair could be found. Caldwell, perhaps, despairing of getting any answer did not ask at all, and East Orange and Roselle and Toms River and I do not know how many other municipalities asked for the same information and naturally, I suppose, the secretary of state was overwhelmed by the avalanche of questions, calling upon him to advise at one and the same time a large proportion of the people of the state where their sailors and soldiers were located so that I would not be willing to say that because he fell down on the work imposed upon him by the Legislature by this statute these elections should be declared invalid, but I do say that it was the duty of somebody, perhaps the municipal clerk, perhaps the gentlemen who were interested in having these questions so speedily decided to see that every reasonable effort was made that these men should not be disfranchised, to use every reasonable effort to protect the rights of these absentees and this was not done. In the East Orange case it appears that information having leaked out into the camps where some of these soldiers were located that this election was going to be held, a number of them attempted to exercise their franchise, but that they did not get the information early enough to exercise it. They did the best they could, but they were disfranchised because of the failure of somebody to look out after their

Order Setting Aside Election.

rights. Now, if it be true that the right of suffrage is one of the great rights of a free people then those of our boys who are away should have had that right protected as far as possible. This has not been done, so I conclude that in each of these cases, with the exception of the Township of South Orange, the election is void. The deprivation of the right of soldiers and sailors to vote in the Township of South Orange could not have possibly affected the result.

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I have not overlooked the action of the adjutant general of the United States, but the facts in the East Orange case make it plain that notwithstanding such action if reasonable effort had been made to inform absent soldiers and sailors of the pendency of these elections and what should be done by them in order to legally exercise the elective franchise a large number of them would have been enabled to cast the unofficial ballot permitted by the statute.

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Order Setting Aside Election.

This matter coming on to be heard in the presence of counsel for the respective parties, and the parties having stipulated the facts, upon which stipulation by the parties it is found that:

1. An election was held in the Town of Montclair on April 30th, 1918, under the provisions of chapter 2 of the laws of 1918.

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2. The petitioner, John L. Cox, was a duly qualified voter of the Town of Montclair and was legally entitled to vote and did vote at the special election held in the Town of Montclair on April 30th, 1918, pursuant to the provisions of chapter 2 of the laws of 1918.

3. At said election 3,325 votes were cast, of which 1,672 were in favor of the prohibition of license and against the sale of intoxicating liquor as a beverage, and 1,653 against the prohibition of license and in favor of the sale of intoxicating liquor as a beverage, resulting in a majority of 19 in favor of the prohibition of license and against the sale of intoxicating liquor as a beverage. Included in this canvass were 33 votes of qualified electors who were in the military or naval service of this state or of the United States at the date of said election.

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4. On the date of said election there were upwards of 800 male residents of the Town of Montclair who were in the military or naval forces of this state or of the United States, and of this number not less than 480 or more than 640 were legal voters of the Town of Montclair on the date of said election and entitled to vote at the election held therein.

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5. About ten days after the approval on February 28, 1918, of the act entitled, "A supplement to an act entitled 'an act to regulate elections,' approved April fourth, one thousand eight hundred and ninety-eight" (being Chapter 150, P. L. 1918), the secretary of the

TOWN OF MONTCLAIR CASE.

10 State of New Jersey attempted to ascertain from the adjutant general of the State of New Jersey, and from the United States War Department the names and post office addresses of the qualified electors of the State of New Jersey who were in active service in the military forces of the United States, and was advised that it was impossible to obtain such names and addresses from the adjutant general of the State of New Jersey or from the United States War Department.

20 6. By letter dated April 17, 1918, and received the next day, the secretary of state was notified by the town clerk of the Town of Montclair that an election would be held on April 30th, under the provisions of chapter 2 of the laws of 1918, and requesting that 17 copies of said chapter 2 of the election laws enacted during the session of 1918 be sent for the use of the Board of Election in the 17 election districts of the Town of Montclair.

30 7. On April 19, 1918, a representative of the secretary of state called at the office of said town clerk for the purpose of procuring the names and addresses of the qualified voters in the military service and for the purpose of obtaining ballots to be forwarded to said electors. On said date the ballots for said special election had not yet been delivered to the town clerk. The said representative called on the said clerk again on April 22nd and then procured a list on which appeared the names and camp addresses of 364 men, being all the men in the Town of Montclair who had been inducted into the military and naval service of the United States through the Essex County Draft Board No. 3, which board had full charge of the draft in the Town of Montclair. Said list was prepared by the secretary of said board on April 19, 1918, and included all men in either the military or naval service who had been inducted into either service through said board up to that date; and said list did not contain the names or addresses of any men who may have volunteered to go into the military or naval service of the United States prior to June 6, 1917, but did contain the names and addresses of all men within the draft age who had either been drafted or volunteered after June 6, 40 1917, and up to April 19, 1918.

50 8. On April 22nd the said representative of the secretary of state also procured from the said town clerk 1,000 copies of the official ballots printed for said special election; and on April 22d and April 23d, 1918, the said ballots, together with the envelopes and directions for voting as required by said chapter 150, were mailed by the secretary of state to the qualified electors (364 in number) of the Town of Montclair in the military or naval service whose names appeared on the said list procured by the said representative of the secretary of state; the ballots, envelopes and instructions were mailed in the official envelope used by the secretary of state and about 50% thereof were returned undelivered and marked by the post office authorities "Unable to locate."

9. Between the dates of April 24th and April 26th, 1918, a committee of the citizens of the Town of Montclair, known as the Dry

Order Setting Aside Election.

Campaign Committee, mailed about 200 copies of a printed circular announcing that an election would be held in said town on April 30th to determine whether or not the sale of intoxicating liquor as a beverage should be prohibited therein. These circulars were sent to the men in the military service whose names and addresses appeared on a list which had been prepared by the Home Service Section of the Montclair Red Cross. 10

10. Notice of said special election was posted as required by chapter 2, laws of 1918; and in addition to the legal posting 25 additional notices were posted in various prominent places in the municipality; all said notices were posted on Saturday, April 13, 1918; notice of the election was also advertised in the two newspapers published in Montclair, known as the Montclair Times and the Montclair Herald, on April 13th, 20th and 27th.

11. Except as above stated, no notice of any kind, no official ballots, envelopes, copy of act, or direction to voters, were sent or attempted to be sent to the said qualified electors in the military or naval forces of this state or of the United States, or any of them, as required by chapter 150 of the Laws of 1918, by either the secretary of state of New Jersey, the town clerk of the Town of Montclair or any other person. 20

12. The number of qualified electors in the Town of Montclair in the military or naval forces of this state or of the United States to whom no notice of any kind, no official ballots, envelopes, copy of act, or direction to voters, were sent or attempted to be sent, and who did not vote, were sufficient in number to have changed the result of the election. 30

The said facts having been considered, and argument of counsel having been heard, and it appearing that qualified electors of the Town of Montclair in the military and naval service of this state or of the United States who had a right to vote at the aforesaid election were deprived of the right and opportunity to vote at said election, and that the number of said qualified electors so deprived of the right or opportunity to vote was sufficient to have changed the result of said election. 40

It is therefore, on this 16th day of July, 1918, ORDERED, that the aforesaid election and the result thereof be and the same is hereby set aside and for nothing holden.

And it is further ORDERED, that John H. Scott, Esq., clerk of the County of Essex, forthwith return and refund to the petitioner herein or his counsel the deposit heretofore made under the order made herein, less the fees of said clerk taxable in these proceedings against the petitioner. 50

WILLIAM S. GUMMERE,
C. J.

TOWN OF MONTCLAIR CASE.

Reasons.

(Filed Oct. 4, 1918.)

New Jersey Supreme Court

CHARLES H. MILLER,

*Prosecutor,**vs.*TOWN OF MONTCLAIR, a municipal corporation of
the State of New Jersey, and JOHN L. COX,
*Defendants.**On Certiorari.**Reasons.*

The prosecutor files the following reasons upon which he will rely for the reversal of the order under review in this case:

1. The finding or decision of the justice of the Supreme Court by whom the order under review was made that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were deprived of the right and opportunity to vote at the said election, was not justified nor reasonably supported by the stipulation of facts filed with the said justice on the hearing of the contest of the said election.

2. There was no evidence before said justice to support reasonably his finding or decision that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were deprived of the right and opportunity to vote at the said election.

3. All qualified voters, including those absent from the municipality in the military service of the United States, were afforded the right and opportunity to vote at the said election.

4. All qualified voters of the municipality, including those absent therefrom in the military service of the United States, were given notice of the manner in which they are required by law to prepare and transmit their ballots, for the reason that all such voters are presumed to have knowledge of the provisions of chapter 150, laws of 1918, whereby all such voters are authorized and permitted (in the event that they have not received an official ballot prior to the date of such election) to prepare and vote on the date of such election an unofficial ballot indicating thereon the proposition upon which they intend to vote.

5. Assuming that the finding or decision of the said justice that a number of qualified voters sufficient to change the result of the elec-

Reasons.

tion, who were absent from the municipality in the military service of the United States, were deprived of the right and opportunity to vote at said election, was justified or reasonably supported by said stipulation, nevertheless such fact should not operate to invalidate the said election for the reason that it was impossible for the secretary of state to comply with the provisions of chapter 150 of the laws of 1918 by ascertaining either from the adjutant general of New Jersey or from the adjutant general or other proper authority of the United States the names and postoffice addresses of such qualified electors, as required by said statute.

10

6. Assuming that the finding or decision of the said justice that a number of qualified voters sufficient to change the result of the election, who were absent from the municipality in the military service of the United States, were deprived of the right and opportunity to vote at the said election, was justified or reasonably supported by said stipulation, nevertheless such fact should not operate to invalidate the said election for the reason that the failure of the secretary of state to comply with the provisions of said chapter 150 (even if it had been possible for him so to do) was a mere mistake or irregularity which should not be permitted to disfranchise innocent voters who have expressed their will on the question submitted at the said election.

20

7. Assuming that the finding or decision of the said justice that a number of qualified voters sufficient to change the result of the election, who were absent from the municipality in the military service of the United States, were deprived of the right and opportunity to vote at the said election, was justified or reasonably supported by said stipulation, nevertheless such fact should not operate to invalidate the said election for the reason that it does not appear that the failure of such qualified electors to vote, or to have an opportunity to vote, at such election, prevented a full expression of the will of the voters of said municipality.

30

8. Assuming that it was possible for the secretary of state to comply with the provisions of said chapter 150, nevertheless it does not appear that a sufficient number of qualified electors, who were absent from the municipality in the military service of the United States, and who might have voted at said election, would have voted in such a way as to change the result of said election.

40

9. Under the Constitution of the State of New Jersey the right of qualified electors, who are absent from the municipality in which they are living, in the military service of the United States, is limited to vote for persons to fill elective offices, and does not include the right to vote for such a proposition as was submitted at the said election.

50

10. Under the ruling of the Federal authorities charged with the conduct of the present war, qualified voters who are absent from the municipality in which they reside, in the military service of the

TOWN OF MONTCLAIR CASE.

United States, are not permitted to vote at special elections; and the right of any such voters to vote at such elections, which may have been given under the Constitution or laws of the State of New Jersey, is subject to and superseded by the rulings of such Federal authorities.

10 11. The stipulation of facts shows that every reasonable effort was made to obtain the names and addresses of qualified voters of the municipality who were in the military service of the United States, and that notice of the said election was given to all qualified voters whose names and addresses were thus obtained, and that all such voters had the right and opportunity to vote at the said election.

20 COLLINS & CORBIN,
Attorneys of Prosecutor.

Additional Reason.

NEW JERSEY SUPREME COURT.

The prosecutor files the following additional reason upon which he will rely for the reversal of the order under review in this case:

30 The statute entitled, "A supplement to an act entitled 'An act to regulate elections' approved April fourth, one thousand, eight hundred and ninety-eight" (being chapter 150, laws of 1918) is in violation of the Constitution of the State of New Jersey in that it requires the secretary of state to distribute the envelopes containing the ballots of voters in the military service to the County Board of Elections in the county in which said voters reside, instead of providing for the return and canvass of the votes of such voters in the election district in which they respectively reside, as required by article II of said Constitution.

40 COLLINS & CORBIN,
Attorneys of Prosecutor.

CITY OF EAST ORANGE.

Alfred H. Holbrook,

Prosecutor,

vs.

City of East Orange and Andrew Murray,
Defendants.

} On Certiorari.

CASE.

EAST ORANGE.

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Writ of Certiorari.

Writ of Certiorari.

(Returnable September 4, 1918.)

NEW JERSEY, ss.

10

(L.S.) The State of New Jersey to the Honorable William S. Gummere, Chief Justice of the Supreme Court of the State of New Jersey, and to the City of East Orange, a municipal corporation of the State of New Jersey, and the clerk of said city, GREETING:

We being willing for certain reasons to be certified of a certain order made by the Honorable William S. Gummere, Chief Justice of the Supreme Court of the State of New Jersey, on the sixteenth day of July, 1918, setting aside a certain election in a proceeding entitled, "In the matter of the application of Andrew Murray to contest the validity of an election held in East Orange under chapter 2, laws of 1918," do hereby command you that the said order, together with all things touching and concerning the same, to our Supreme Court to be held at Trenton on the fourth day of September, 1918, you do certify and send, together with this writ, that therein may be done what of right and according to the laws and constitution of the State of New Jersey ought to be done.

20

WITNESS, WILLIAM S. GUMMERE, Chief Justice of our Supreme Court at Trenton aforesaid, this fifteenth day of August, 1918.

30

ENOCH L. JOHNSON,
Clerk.

COLLINS & CORBIN,
Attorneys.

Allocatur.

40

I allow this writ. Let it be sealed. Not to operate as a stay.

WM. S. GUMMERE,
C. J.

Dated August 15, 1918.

50

CITY OF EAST ORANGE CASE.

Return of Municipal Clerk.

I, Lincoln E. Rowley, city clerk of the City of East Orange, County of Essex and State of New Jersey, hereby certify that the following are true and correct copies of records in my office relating to special
 10 election held May 7, 1918, on the referendum question "Shall the Sale of Intoxicating Liquor as a Beverage be Prohibited?"

IN WITNESS WHEREOF, I have hereto set my hand and affixed the corporate seal of the City of East
 (SEAL) Orange, this twenty-fourth day of September, A. D. 1918.

LINCOLN E. ROWLEY,
City Clerk.

20 I hereby certify that the following is a true copy of the first sheet of a petition containing 2,191 names, filed in the City Clerk's Office of the City of East Orange, New Jersey, on March 3, 1918.

LINCOLN E. ROWLEY,
City Clerk.

A PETITION.

30 For an Election to Determine whether or not the sale of intoxicating liquor as a beverage in the
 CITY OF EAST ORANGE
 shall be prohibited.

To the City Council of the City of East Orange, in the County of Essex in the State of New Jersey:

40 We, the undersigned, respectfully represent that we are legal voters of the City of East Orange, in the County of Essex, in the State of New Jersey, and that we hereby request you to order an election under the provisions of chapter two of the laws of one thousand nine hundred and eighteen (1918), to determine whether or not the sale of intoxicating liquor as a beverage in the City of East Orange shall be prohibited.

NAME	RESIDENCE (Street and Number)	DATE OF SIGNING PETITION
Blair S. Latshaw	350 Dodd Street	Feb. 25, 1918
David O. Irving	185 Midland Ave.	Feb. 25, 1918
50 Russell E. Titman	302 Dodd Street	Feb. 25, 1918
Peter G. Ohlandt	310 Dodd Street	Feb. 28, 1918
Frederick J. Howlett	298 Dodd Street	Feb. 28, 1918
Edmund J. Hill	284 Dodd Street	Feb. 28, 1918
William C. Schmidt	284 Dodd Street	Feb. 28, 1918
Raymond H. Beach	255 Midland Ave.	Feb. 28, 1918

Notice of Hearing.

Walter Madison	255 Midland Ave.	Feb. 28, 1918
Frank H. Taylor	191 Midland Ave.	Feb. 28, 1918
Leslie A. Gordon	189 Midland Ave.	Mar. 1, 1918
Nathan Harned	255 Midland Ave.	Mar. 1, 1918

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

10

Blair S. Latshaw, being duly sworn according to law, on his oath says that the signatures attached to the foregoing petition were made in his presence at the respective dates set opposite thereto, and that the several persons who made said signatures bear, to the best of his knowledge and belief, the names signed thereto by each of them respectively, and that said persons are legal voters of the municipality of East Orange.

20

BLAIR S. LATSHAW.

Subscribed and sworn to before me this
 1st day of March, A. D. 1918.

F. W. CRAMER,
Notary Public.

PUBLIC NOTICE.

CITY CLERK'S OFFICE OF THE CITY OF EAST ORANGE, NEW JERSEY.

30

Notice is hereby given that there has been filed with the city clerk an application in the form of a petition signed by 2,191 persons claiming to be legal voters for an election in accordance with chapter 2, P. L. 1918, to determine by ballot the question whether the sale of intoxicating liquor as a beverage in the City of East Orange shall be prohibited.

In accordance with the provisions of the law, Tuesday evening, March 26th, 1918, at eight P. M. is hereby fixed as the time when, and the council chamber in the City Hall as the place where, a meeting of the city council will be held to consider said application and hear objections to the legality of such petition.

40

LINCOLN E. ROWLEY,
City Clerk.

I HEREBY CERTIFY that the above is a true and correct copy of public notice posted and published as required by section 2, P. L. 1918.

(SEAL) IN WITNESS WHEREOF I have hereto set my hand and
 affixed the corporate seal of the City of East
 Orange, this sixteenth day of March, A. D. 1918.

50

LINCOLN E. ROWLEY,
City Clerk.

CITY OF EAST ORANGE CASE.

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

10 Virginia Kirkman, of full age, maketh oath and saith that she is bookkeeper of the East Orange Record, a weekly newspaper published in East Orange, in the county and state aforesaid, that an advertisement, of which the annexed is a true copy, was published in said newspaper two times, successively, the first publication being on the sixteenth day of March, 1918, and the last on the twenty-third day of March, 1918, making two weekly insertions.

VIRGINIA KIRKMAN.

Sworn and subscribed before me this
 21st day of September, 1918.

20 LINWOOD C. GILLIS,
 (L. S.) Notary Public, N. J.

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

30 Charles O. Flatt, of full age, being duly sworn according to law, on his oath saith, that he is a clerk in the office of the "Newark Evening News" and that a notice of which the annexed is a true copy, was published on the 16th day of March, A. D. 1918, in the said "Newark Evening News," a public newspaper, printed and published at Newark, in this state, and continued therein on March 23rd, 1918, making two insertions in all.

CHARLES O. FLATT.

Sworn and subscribed this 19th day of
 September, 1918, before me.

40 HENRY W. MORRIS,
 (L. S.) Notary Public.

MINUTES OF CITY COUNCIL MEETING HELD ON MARCH
 26, 1918.

Council Chambers, City Hall, 388 Main St.

East Orange, N. J., March 26, 1918.

A special meeting of the city council was held this evening.

50 Roll was called at eight o'clock with all the members of the council present excepting Mr. Louis C. Geils and Mr. Wm. E. Wilson; i. e., Messrs. F. Joseph Greer, Warren J. Stoddard, Robert M. Dixon, Frank B. Colton, Frederick O. Lindsley, Nathaniel P. Gardner, Joseph M. Brown and Chairman Charles H. Martens.

Chairman Martens then stated—We have come together to-night on a call from the city clerk, and I will ask the clerk whether this

Minutes of March 26, 1918.

meeting has been duly called and all members of the city council notified, and has the law been complied with in all respects?

Mr. Rowley (clerk): The law states that upon the filing of a petition, the city clerk shall forthwith prepare a written notice, setting a time for a meeting of the governing body of such municipality, to be held at the regular meeting place of such governing body; the time fixed for such meeting shall be not less than eight nor more than twelve days, exclusive of Sundays, from the date of the filing of such petition; the clerk shall at least five days before the time fixed for such meeting, mail a certified copy of said notice to each member of the governing body of such municipality, and he shall also post notices in five conspicuous places in such municipality, and a copy of said notice shall also be published by said clerk at least once in a paper published within the city.

10

This petition was filed on the thirteenth day of March. On March fourteenth I did prepare the notices as required by law, and posted them in five conspicuous places, viz: City Hall, East Orange Station (D. L. & W. R. R.), Grove Street Station (D. L. & W. R. R.), corner of Dodd and Prospect streets, and corner of Central avenue and Oak street; and mailed a certified copy of that notice to each member of the council fixing to-night, the twenty-sixth, as the date of this hearing. Later, on the two Saturdays following, the notice appeared in both the East Orange Record and the Newark Evening News.

20

Chairman: I will ask Mr. Gedney, the city counsel, to outline the law and the purpose of the meeting.

30

Mr. Gedney (city counsel): Mr. Chairman, Ladies and Gentlemen: This meeting is called, as you have heard from the city clerk, pursuant to a law which provides that on the filing of a petition, under this act, to determine whether or not the sale of intoxicating liquors shall be prohibited in the City of East Orange, the city council shall meet and determine whether the petition is sufficient, and that is the sole question to be determined. Under the law, if 30% of the voters at the last previous election signed a petition, it is then mandatory upon the city council to call an election, or order an election, which shall be held not less than thirty and not more than sixty days from the date of the meeting.

40

The city clerk has reported that there were 5,249 votes cast at the last election, and that there are 2,191 signers on the petition. This being somewhat over thirty per cent. that provision of the law which makes an election mandatory not less than thirty days and not more than sixty days from the date of this meeting, is effective; and, as I say, the only question to be considered before the council orders that election is the sufficiency of the petition; and anyone who desires to offer any objection to the petition will be heard, and the hearing I would suggest be in the form of testimony taken—the witnesses sworn and the evidence taken. The law provides that the city council shall keep a transcript of the proceedings of this meeting, which must be certified in case of contest or appeal.

50

CITY OF EAST ORANGE CASE.

Chairman: Is there anyone present who wishes to object to the legality of this petition, or is there anybody here present who would like to make any remarks in regard to the petition? (No response.)

Is there any gentlemen in the the council who wishes to be heard?

10 Councilman Stoddard then offers the following resolution:

“WHEREAS ON March 13, 1918, there was presented to the city clerk of the City of East Orange, New Jersey, a petition signed by 2,191 legal voters of the city; and the city clerk did on March 14, 1918, issue a call for a special meeting of the city council of said city to be held on March 26, 1918, at the hour of 8 P. M. to consider said petition; and

20 WHEREAS the city council did meet on March 26, 1918, at 8 P. M., agreeable to said call, to consider said petition and did find the petition to be signed by legal voters in numbers equal to more than 30% of the number of legal ballots cast in said municipality at the last preceding election at which members of the general assembly were elected; therefore, be it

RESOLVED, that the city council of the said, the City of East Orange, hereby determines the petition sufficient for a special election as provided in chapter 2, P. L. 1918, and said city council hereby orders that a special election be held on Tuesday, May 7, 1918, to determine by ballot the question whether the sale of intoxicating liquor as a beverage in said municipality shall be prohibited; and be it further

30 RESOLVED, that the city clerk is hereby authorized and directed to do all things needful for carrying out the provisions of the law for such case made.” (I-56.)

Chairman: Is that resolution seconded?

Councilman Dixon: I second it.

Chairman: You have heard this resolution. Are there any remarks?

40 Councilman Colton: I shall vote for this resolution, because I am advised by the city counsel that the law requires that I do so. In voting for it, my vote is not to be taken as an indication whatever of my judgment as to the advisability of holding this election and putting the citizens of East Orange to the expense of it at this particular time. I shall vote for the resolution, because, as I say, the law compels me to and leaves no other course open to me whatever, on the assumption that the petition has been filed with the required number of names and conforms in all other respects to the act of the Legislature.

50 Chairman: Are there any other remarks? If not, the clerk will call the roll.

On roll call the following councilmen voted in favor of the resolution: Messrs, Greer, Stoddard, Dixon, Colton, Lindsley, Gardner, Brown and Chairman Martens.

Chairman: Any further business before the council?

Notice of Special Election.

Mr. Rowley (clerk): I would like to ask that an appropriation be made to cover the expenses of the election, so that they may be promptly met.

Councilman Dixon: How much do you think it will require?

Mr. Rowley (clerk): Not less than \$2,000. I ask that from \$2,200 to \$2,500 be appropriated. 10

On motion, duly made and seconded, the meeting was adjourned.

LINCOLN E. ROWLEY,
City Clerk.

SPECIAL ELECTION.

Tuesday, May 7, 1918. 20

Notice is hereby given that a special election will be held in the City of East Orange on Tuesday, May 7, 1918, to determine by ballot the question whether the sale of intoxicating liquor as a beverage in the City of East Orange shall be prohibited.

The registry for this special election shall be the registry list containing the names of those persons qualified to vote at the last preceding general election. Qualified voters whose names do not appear on that registry list may have their names added to such registry list by applying to a judge of the Court of Common Pleas during the week next preceding this special election. 30

Names may also be added to the registry list by order of the County Board of Elections. Those interested should watch the papers for announcements by that board. Provision is also made for transfers in cases of voters who have moved into other election districts.

The polls will be open from 6 A. M. to 7 P. M.

The Boards of Election will meet and said election will be held at the following named places:

FIRST WARD.

District 1—Leonard A. Lariciia's Barber Shop, 159 North Park street. 40

District 2—Albert F. Perrini's Barber Shop, 143 North Park street.

District 3—Sylvester Proto's Shoe Shop, 505 Prospect street.

District 4—W. S. Gibson's Store, 245 Prospect street.

SECOND WARD.

District 1—Frank Bruno's Shoe Shop, 8 Washington street.

District 2—City Hall, 388 Main street.

District 3—Stewart & Co., Inc., Office, 536 Main street.

District 4—John Cooney's Stationery Store, 340 Park avenue. 50

THIRD WARD.

District 1—Peter Wooley's Barber Shop, 24 Washington place.

District 2—Frank Baumgartner's Barber Shop, 1 South Arlington avenue.

CITY OF EAST ORANGE CASE.

District 3—Nassau Public School (front hall), corner Central and Arlington avenues.

District 4—Rosario Italia's Shoe Shop, 525A Central avenue.

District 5—Gus Pennisi's Barber Shop, 469 Central avenue.

10 District 6—Elmwood Presbyterian Church Parish House, Elmwood avenue and Eppirt street.

FOURTH WARD.

District 1—Free Public Library, Main street and Munn avenue.

District 2—Walter R. Pruden's Real Estate Office, 139 Main street.

District 3—Public Service Railway Office Building, 39 Main street.

District 4—Albert Roloff's Florist Shop, Union place.

FIFTH WARD.

District 1—Israel Stertz, Tailor Shop, 11 North 15th street.

20 District 2—Stockton Public School (auditorium), Greenwood avenue and North Nineteenth street, at William street.

District 3—J. T. Ransom's Real Estate Office, 136 Eaton place.

District 4—Chas. E. Rousek's Real Estate Office, 336 Main street.

District 5—Arthur W. Richard's Real Estate Office, 40 Fourth avenue.

District 6—William H. Doig's Barber Shop, 441 North Grove street.

District 7—B. Cohen's Tailor Shop, 22 Greenwood avenue.

LINCOLN E. ROWLEY,
City Clerk.

30 The East Orange Record,
April 20, 27 and May 4, 1918.

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

40 VIRGINIA KIRKMAN, of full age, maketh oath and saith that she is bookkeeper of THE EAST ORANGE RECORD, a weekly paper published in East Orange, in the county and state aforesaid, that an advertisement, of which the annexed is a true copy, was published in said newspaper three times, successively, the first publication being on the twentieth day of April, 1918, and the last on the fourth day of May, 1918, making three weekly insertions.

VIRGINIA KIRKMAN.

Sworn and subscribed before me this
21st day of September, 1918.

50 LINWOOD C. GILLIS,
(L. S.) Notary Public, N. J.

Minutes of June 10, 1918.

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

CHARLES O. FLATT, of full age, being duly sworn according to law, on his oath saith, that he is a clerk in the office of the "Newark Evening News" and that a notice of which the annexed is a true copy, was published on the 27th day of April A. D. 1918, in the said "Newark Evening News," a public newspaper, printed and published at Newark, in this state, and continued therein on May 4th, 1918, making two insertions in all.

10

CHARLES O. FLATT.

Sworn and subscribed this 20th day of
September, 1918, before me.

HENRY W. MORRIS,
(L. S.) Notary Public.

20

Extract from minutes of a meeting of the city council held on June 10, 1918, at which meeting all the ten members of the city council were present.

"The following communications and petitions were presented, read and acted upon as stated:

Communication from the city clerk giving the result of special election held in East Orange on May 7, 1918, on the question, "Shall the sale of intoxicating liquor as a beverage in East Orange be prohibited?"

30

The clerk was directed to enter the same on the minutes and place on file.

The statement of results follows:

The election held on the seventh day of May in the year of one thousand nine hundred and eighteen within and for the City of East Orange, in the County of Essex, and State of New Jersey, under chapter 2, of the laws of one thousand nine hundred and eighteen, supplemented by soldiers' vote reported by County Board of Elections on June 7, 1918, resulted as follows:

40

Whole number of votes cast in favor of said City of East Orange prohibiting the sale of intoxicating liquor as a beverage—two thousand, four hundred and ninety (2,490).

Whole number of votes cast against said City of East Orange prohibiting the sale of intoxicating liquor as a beverage—two thousand, four hundred and seventeen (2,417).

Majority in favor of prohibiting the sale of intoxicating liquor as a beverage—seventy-three (73).

50

CITY OF EAST ORANGE CASE.

The vote by wards and districts was as follows:

		Yes.	No.
	1 W. 1 D.	52	139
	2 D.	85	101
10	3 D.	98	83
	4 D.	72	56
	2 W. 1 D.	85	120
	2 D.	101	100
	3 D.	135	75
	4 D.	66	63
	3 W. 1 D.	92	111
	2 D.	113	82
	3 D.	97	59
	4 D.	122	125
20	5 D.	107	122
	6 D.	67	164
	4 W. 1 D.	142	60
	2 D.	130	82
	3 D.	38	140
	4 D.	137	64
	5 W. 1 D.	68	113
	2 D.	80	42
	3 D.	168	58
	4 D.	121	77
30	5 D.	102	132
	6 D.	138	87
	7 D.	67	55

Soldier's vote as reported by County
Board of Elections:

7 107

2,490 2,417

Majority in favor of no license:

73

Note: Attached to the return are copies of the following:

40 Letter dated April 9, 1918, from city clerk to secretary of state.
(This is the same as the letter marked "No. 7" in "statement" of
secretary of state and letter marked "Exhibit A" in the "statement"
of city clerk, as included in the stipulation.)

Letter dated April 10, 1918, from secretary of state to the city
clerk. (This is the same as the letter marked "No. 8" in "statement"
of secretary of state and letter marked "Exhibit B" in the "state-
ment" of city clerk, as included in the stipulation.)

50 Letter dated April 30, 1918, from city clerk to secretary of state.
(This is the same as the letter marked "Exhibit C" in "statement"
of city clerk, as included in the stipulation.)

*Petition for Contest of Election.***Return of Supreme Court Justice.**

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

I, WILLIAM S. GUMMERE, Chief Justice of the Supreme Court of the State of New Jersey, do hereby certify and return to the Supreme Court of Judicature of the State of New Jersey, the petition and order, together with all things touching and concerning the same as by the within writ to me directed, I am commanded. 10

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of September, A. D. 1918.

WM. S. GUMMERE,
 C. J.

20

Petition for Contest of Election.

NEW JERSEY SUPREME COURT.

To the Honorable William S. Gummere,
 Chief Justice of the Supreme Court of New Jersey.

The petition of Andrew Murray, residing in the City of East Orange, County of Essex and State of New Jersey, respectfully shows: 30

1. On May 7th, 1918, a special election was held in said City of East Orange, under the act commonly known as "The Local Option Law," being chapter 2 of the Laws of 1918, the object being to determine whether licenses should thereafter be granted to hotels and saloons for the sale of malt, vinous and spirituous liquors in said municipalities.

2. Petitioner is a legal voter of said municipality and voted at said election, as required by section 25 of said act. 40

3. The result of said election has been officially determined to be that 2,483 ballots were cast and counted against license and 2,310 in favor of license.

4. Petitioner contests the validity of said election and the determination of the result thereof upon the following grounds:

(1) Because about 1,500 legal voters of said municipality are engaged in the active military and naval of the United States on account of the existing war between the United States and the Imperial Government of Germany. That article II, paragraph 1 of the constitution of this state provides "That in time of war no elector in the actual military service of the state or of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from his election district; and the Legislature shall 50

CITY OF EAST ORANGE CASE.

have power to provide the manner in which, and the time and place at which, such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside." In pursuance of the constitution the general election act of 1899, Compiled Statutes, volume 2, pages 2,141, sections 220-232, provides the method of voting, the return and canvass of the votes of such absent electors in the districts in which they reside, and makes it the duty of the secretary of state to forward to them 30 days before any general or especial election necessary materials under the act with which to vote. These provisions in the general election act purport to be superceded by chapter 150 of the Laws of 1918, entitled "A supplement to an act to regulate elections, approved April 4, 1898." This act provides that it go into effect and operation under it be discontinued, by order of the governor. Section 4 provides that with 30 days prior to any election the secretary of state shall ascertain from the adjutant general of New Jersey or of the United States, the names and post-office addresses of every qualified voter of this state in active military service, and at least 20 days prior to any election he shall forward by mail or otherwise, ballots conveniently prepared so that he may vote for any candidate or question submitted to the voters. Section 5 provides that in case of a municipal election, where the ballots are prepared by the municipal clerk, the secretary of state shall at least 20 days prior thereto forward to the municipal clerk the names and addresses of such qualified voters, and then it becomes the duty of the municipal clerk to forward at once ballots and envelopes to such voters, but in case the secretary of war objects to the municipal clerk being furnished with such information then it is the duty of the secretary of state to forward the same. (Sec. 7.) Said act further provides for the return of the votes cast under it to the secretary of state and the canvass of the same by the county board of elections, instead of the return and canvass in the election districts in which such voters respectively reside, as required by the constitution, wherefore petitioner charges that said act is unconstitutional, and the votes canvassed under it, as appears in the next reason, are void. Petitioner further charges that the secretary of state nor the municipal clerk did not, at any time prior to said election, mail to said voters ballots, envelopes and other matter as required by the aforesaid statutes; said voters had neither official nor constructive notice, nor had any of them notice of any kind of the date said election was to be held except those who voted as aforesaid, and that they were unlawfully deprived of their constitutional right to vote, and that said election is void.

(2) Because section 9 of said chapter 150, Laws of 1918, provides that in case such voter does not receive an official ballot prior to any special election, he shall be entitled to prepare and vote an unofficial ballot on the day of the election, but not before such date, which the voter shall seal in an inner and outer envelope, directing the outer envelope to the secretary of state, and endorsing on the back thereof (a) the name of the military organization to which he

Petition for Contest of Election.

belongs, (b) his home voting address, (c) the date on which it was prepared, (d) his signature .

Section 10 provides that the secretary of state shall deliver official and unofficial envelopes containing such ballots, so received by him, to the county board of elections, who, within 30 days after the date of such election shall meet and open the envelopes and count the votes. The Essex County Election Board held such meeting, with reference to said election, on June 6, 1918; that before said meeting the secretary of state delivered to said board 208 envelopes received by him, which were all unofficial, 114 of which petitioner understood and believes were from such voters stationed at "Camp Dix," in this state, and which were counted by said board, and are contained in the aforesaid total result of said election as officially declared. About 90 of said envelopes were from such voters stationed at camp at Anniston, in the State of Alabama. Said 90 were rejected by said board, because they bear a date of preparation after the date of said election, with an explanation thereon above the signature of the voter, that the voter had no prior knowledge of the date of the election, and immediately upon acquiring such knowledge he prepared his ballot. Four other envelopes were rejected by said board because they bear no date of preparation, but all of them were received by the secretary of state and placed in the hands of the election board within the 30 days allowed said board to canvass the vote. Said rejected ballots are a sufficient number to, and may, if counted, change the result of said election.

Petitioner charges that the rejection of said 94 envelopes by said board is unlawful, in that the said duties charged upon the secretary of state, or the municipal clerk, had not been performed; that said voters did not have knowledge of the date of said election; that said act is mandatory only so far as prohibiting the preparation of such ballots before the date of the election; that the purpose of the act as expressed in section 3 is to afford every such person the right to vote, which right carries with it an opportunity, and section 14 provides that the act shall be liberally construed for the purpose of affording the opportunity to such persons to vote.

5. Petitioner prays that your Honor will grant hearing hereon, under the terms and in the manner and form required by law (Chap. 2, 1918—25) to the end that said election may be declared invalid, or said rejected votes be allowed and counted into the result of said election.

ANDREW MURRAY,
Petitioner,

14 South Burnett Street,
East Orange, N. J.

JAMES R. NUGENT,
Attorney for Petitioner.

(Affidavit of Petitioner Attached.)

CITY OF EAST ORANGE CASE.

Order Fixing Date of Hearing.

10 Upon reading and filing the duly verified petition of the petitioner, it is on this 13th day of June, 1918, ORDERED that Saturday, the sixth day of July, 1918, at 11 A. M. at the Court House in the City of Newark, be and the same is hereby fixed as the time and place of hearing on the above stated matter.

And it is further ORDERED that the petitioner forthwith publish in East Orange Record, a newspaper printed and published in the City of East Orange, a notice announcing the filing of said Petition, and stating the time and place of the hearing thereon, and shall also post copies of such notice in the same manner provided for the posting of notices for hearings on applications for elections as set forth in section 2, chapter 2, Laws of 1918.

20 And it is further ORDERED, that the petitioner, within three days from the date hereof, shall deposit with the clerk of the County of Essex the sum of two hundred and fifty dollars in cash as security for the costs on these proceedings.

WM. S. GUMMERE,
C. J.

(Note: Hearing was continued until July 16, 1918.)

30

Stipulation of Facts.

It is agreed and stipulated that the statement of the secretary of state, copies of which be furnished counsel, shall be used as evidence in this matter, and that the statement of the city clerk of East Orange shall be taken as evidence in this matter.

40 To be supplemented by the minutes, papers, envelopes containing ballots rejected, of the county election board and such evidence as the clerk of said board may give.

ALFRED H. HOLBROOK,
GEO. S. HOBART,
Counsel for Intervenors.

JAMES R. NUGENT,
Counsel for Andrew Murray, Petitioner.

JEROME D. GEDNEY,
City Counsel of East Orange.

50

Statement of Secretary of State.

STATEMENT OF SECRETARY OF STATE.

(Referred to in foregoing Stipulation.)

This statement is the same as the statement printed in the record of the Montclair case (including the letters), with the following additional statement and attached letters—which are peculiar to the East Orange case. 10

With respect to the special election to be held in the City of East Orange, I would say, that the secretary of state received a communication from Lincoln E. Rowley, city clerk, East Orange, N. J., dated April 9, 1918, to the effect that a special election would be held in pursuance with the provisions of chapter 2 of the Laws of 1918, on the 7th day of May, 1918 (copy of letter marked No. 7). On the 10th day of April, 1918, I replied to Mr. Rowley's letter, to the effect that a representative from this office would visit him in the course of four or five days, for the purpose of procuring a list of the names and addresses of the soldiers and sailors resident of East Orange. (Copy of letter marked No. 8.) The list of names and addresses, together with the ballots, were received on or about April 30, 1918, and immediately mailed to the soldiers whose names appeared upon said list. The list contained approximately 400 names, which list was furnished by the city clerk of East Orange. The ballots were also furnished by said city clerk. We had no other information relative to any other soldiers and sailors, except those named in said list. These ballots were mailed in the official envelope of the secretary of state and about fifty per cent. of same have been returned marked "Unable to locate." 20 30

On May 22, 1918, there was delivered to the secretary of the Essex County Board of Election at his office in the court house, Newark, N. J., a package purporting to contain one hundred and thirty-six (136) envelopes voted by soldiers and sailors resident of East Orange. On May 28, 1918, there were delivered to said official a package purporting to contain one (1) envelope voted by a soldier resident of East Orange, N. J., and on June 5, 1918, there was delivered to said official a package purporting to contain seventy-one (71) envelopes voted by soldiers and sailors resident of East Orange. 40

No 7.

The City of East Orange, New Jersey.
Office of the City Clerk.

April Ninth, 1918.

Lincoln E. Rowley,
City Clerk.

Hon. Thomas F. Martin,
Secretary of State,
Trenton, New Jersey.

50

My dear Sir:

Chapter 150, Laws of 1918, make certain provisions which lead me to notify you that on May 7, 1918, there is to be held a Special

CITY OF EAST ORANGE CASE.

Election in the City of East Orange, as provided for in Chapter 2, P. L. 1918, to determine by a ballot whether the sale of intoxicating liquor as a beverage shall be prohibited in this City.

10 It would seem from Section 5 of Chapter 150 that it becomes the duty of the Secretary of State to certify to the Municipal Clerk the names and addresses of the qualified electors in the military forces in this State or of the United States residing within the limits of this city, and that as soon thereafter as possible, the City Clerk is expected to send by mail a list of names of candidates. Of course there are no candidates at this election, and I am wondering just what should be done.

Any advice or help that you will give me in this matter will be greatly appreciated.

Very truly yours,

20 LINCOLN E. ROWLEY,
City Clerk.

No. 8.

Trenton, April 10th, 1918.

Hon. Lincoln E. Rowley,
City Clerk,
East Orange, N. J.

Dear Sir:

30 I have your letter of the 9th inst., relative to the special election to be held in the City of East Orange.

The Governor has filed with this Department an order directing the Secretary of State to proceed under the provisions of Chapter 150 of the Laws of 1918. A representative from this office will visit you in the course of four or five days, for the purpose of determining what procedure shall be taken with reference to the procuring of the lists of soldiers and the mailing of the ballots.

Very truly yours,

40 THOMAS F. MARTIN,
Secretary of State.

EAST ORANGE, N. J.

CAMP DIX, N. J.

9/5/17.

Fitzpatrick, Frank G., 41 N. Sterling street.

Banks, Harvey W., 130 N. Walnut street.

Du Bois, Louis T., 177 Harrison street.

9/6/17.

50 Wallace, Robert B., 132 N. Grove street.

Hay, Paul F., 109 Harrison street.

Sicoransa, Emil A., 152 Sandford street.

9/7/17.

Mooney, Thomas F., 28 Nassau place.

Cosler, Arthur W., 155 S. Arlington avenue.

9/8/17.

Ambrose, Thomas, 65 Crawford street.

Evans, George, 10 Baldwin street.

9/19/17.

Goodman, Arthur, 15 Emerson street.

Soper, Merle, 12 Lindsley place.

King, Lester, 459 Norwood street.

McCabe, Patrick, 41 States street.

Winter, William C., 74 Lenox street.

McInerney, Patrick, 584 Main street.

Daly, Stanley, 23 Tichenor St., Newark.

MacKinnon, Morton, 573 Main street.

Wood, Jay C., 108 N. Sixteenth St.

List of Men in Military Service.

- Shaw, Edward J., 134 N. Fifteenth St.
 Powelson, Charles, 15 Nassau place.
 Fostvedt, Andres S., 301 Amherst street.
 Simpson, William H., 311 Halsted street.
 Ruark, George, 469 Main street.
 Mack, Daniel T., 94 Washington street.
 Mooney, John W., Jr., 28 Nassau place.
 Moreaux, Gilbert, 20 Washington street.
 Sylvia, Charles, 22 Washington place.
 Miele, Frank, 265 Shepard avenue.
 McDermot, Philip, 25 Lake street.
 Fluck, Arthur, 269 N. 19th street.
 Howard, John N., 76 Sterling street.
 Stuart, Charles, 44 Schuyler terrace.
 Salanitro, Alfio, 48 Sussex avenue.
 Scheper, Frank, 475 Norwood street.
 La Brode, Henry J., 28 1-2 Sussex
 avenue.
 Botwinick, Reuben, 54 S. Sixteenth
 street.
 Owen, Arthur T., 175 N. Maple avenue.
 Holme, Furman D., 147 Park avenue.
 Nordt, Carl, 53 Warrington place.
 Binder, Gottfried, 75 S. Clinton street.
 Coghlan, John F., 158 N. Eighteenth
 street.
 Shedd, Kenneth, 30 States street.
 Frick, Henry, Jr., 306 Halsted street.
 Rizzato, Mariano, 108 Tremont avenue.
 Reilly, Eugene, Jr., 58 Sussex avenue.
 Wilby, John, 35 N. Maple avenue.
 McManus, Lawrence, 31 Norman street.
 Ward, E. Bernard, 197 Central avenue.
 Wiley, William, 196 Sandford street.
 Russo, Pasquale, 206 Sandford street.
 McCrea, Kenneth, 35 N. Eighteenth
 street.
 Coffee, Burt E., 246 N. Twentieth street.
 Anderson, Charles A., 44 Elliot place.
 Curtis, Clarence D., 155 Greenwood
 avenue.
 Bushby, Robert B., 73 Cleveland terrace.
 Shane, Ralph, 208 S. Clinton street.
 Van Orden, Howard E., 59 Westcott
 street.
 Wilkes, Herbert, 13 Olive street.
 Devitt, Christopher, 34 Girard avenue.
 Wiley, John, 196 Sandford street.
 Freisig, Frederic, 351 Glenwood avenue.
 Walker, Alexander, 313 Main street.
 Lavelle, James, 18 Washington street.
 Kurzyna, Vincent, 12 Springdale avenue.
 Tenerello, Joseph, 255 Rhode Island
 avenue.
 Miele, Michael, 265 Shepard avenue.
 Nagel, Alfred C., 189 Hollywood avenue.
 Wooley, William, Jr., 324 Newfield
 street.
 Van Nest, Wallace, 66 N. Maple avenue.
 Chew, Herbert, 142 N. Seventeenth
 street.
- Heinerich, Karl W., 343 N. Eighteenth
 street.
 Rothard, Edward C., 73 Carnegie avenue.
 Weber, Richard, 44 N. Park street.
 Bez, Alfred, 308 Glenwood avenue.
 Becker, Albert, Jr., 27 N. Sixteenth
 street. 10
 Crosby, Donald A., 22 S. Burnett street.
 Dorer, Harry C., 257 N. Grove street.
 Moore, John J., Jr., 9 Mitchell place.
 Bilz, James, 18 Baldwin street.
 Voyes, Joseph W., 71 Harrison street.
 Switzer, Jas. M., 76 Vernon terrace.
 Hart, Stanley W., 84 Halsted street.
 McCarthy, Nicholas, 134 Shepard avenue.
 Dunn, Robert E., 163 Prospect street.
 10/31/17.
 Baldwin, William D., 11 Grove place.
 11/13/17. 20
 Dalhgren, Charles, 159 N. Arlington
 avenue.
 11/20/17.
 Benham, Charles M., 418 William street.
 Shay, Frank, 19 W. Eighth street.
 Arace, John, 210 Shepard street.
 Van Der Pyle, John, 223 N. Sixteenth
 street.
 Knutson, Knut, 279 Halsted street.
 Johnson, Arthur, 270 N. Park street.
 Johnson, Patrick, 61 E. Park street,
 Newark. 30
 Friedeberg, Irving, 176 Hollywood ave-
 nue.
 Hum, Foon Wah Du, 356 Main street.
 Clumentz, Nicholas, 365 Main street.
 Eck, Norman L., 48 N. Sixteenth street.
 Tokmajian, Garabed, 22 Eaton place.
 Weimer, Howard C., 251 N. Nineteenth
 street.
 Cooney, Martin J., 225 N. Clinton street.
- COLORED MEN.**
- Garnett, Clare, 14 Oak street. 40
 Davis, Thomas, 45 N. Arlington avenue.
 Galvin, Dennis, 10 N. Clinton street.
 Miller, Arinzer, 51 Linden avenue.
 Davis, Otis H., 40 N. Parkway.
 Smith, William H., 18 N. Parkway.
 Parkinson, Leslie, 14 S. Sixteenth street.
 Williams, Walter J., 18 N. Clinton street.
 Francis, John, 9 North street.
 Townsend, William L., 50 Sterling street.
 Sears, Alexander, 98 N. Clinton street.
 Thomas, Frederic, 374 Main street.
 McWilliams, Jas., 36 N. Arlington ave-
 nue. 50
 Quarles, Robert, 336 Main street.
 Cary, Townsend, 3 McKinley avenue.
 11/23/17.
 Page, Charles O., 31 S. Sixteenth street.

CITY OF EAST ORANGE CASE.

WHITE MEN.

- 11/23/17.
Lequin, Eugene, 55 Chestnut street.
Sturken, Frank, 15 Broad street, New York.
- 12/15/17.
10 Murray, John E., 15 Bedford street.
1/6/18.
Kirk, James W., 476 William street.
1/25/18.
Dye, Robert L., 25 N. Eighteenth street.
1/23/18.
Taltavall, John, 54 Prospect street.
2/26/18.
Whitney, Howard, 47 William street.
Cassa, Charles, 479 William street.
Dally, Clarence M., 24 N. Burnett street.
Coss, Walter F., 68 S. Burnett street.
20 Wolf, Leroy, 384 N. Grove street.
De Nourie, Elmer, 42 Dodd street.
Kennedy, Alfred C., 156 Park avenue.
Buck, Charles C., 94 Prospect street, Dover, N. J.
Fussell, Raymond K., 46 Myrtle avenue, Newark.
Reiter, Samuel H., 48 N. Eighteenth street.
Kearnes, John J., 166 Lakeside avenue, Orange.
Kerr, Harold W., 52 Watson avenue.
30 Lindsley, Fred B., Jr., 82 Sandford street.
Murray, Jos. Eugene, Mendham avenue, Morristown, N. J.
McCunn, Walter T., 197 Central avenue.
Babbage, Chester J., 249 William street.
Wilhelms, Charles, 10 N. Park street.
Bonnett, Herbert A., 11 Bloomfield avenue, Caldwell.
Longstreet, Nelson, 64 Ashland avenue.
Paullin, Joseph J., 15 Ridgewood avenue.
Messer, John S., 74 Sterling street.
2/26/18.
40 Cassidy, William G., 55 Sandford street.
Foran, John J., 223 N. Sixteenth street.
Griffin, William R., 120 N. Fourteenth street.
Carden, Dominick, 53 Linden avenue.
Armitage, Leroy, 140 Park avenue.
Abrahams, Herman L., 31 Hedden place.
Danner, Charles H., 113 Fleming avenue, Newark.
McDonald, Arthur, 24 Emerson street.
Asmund, John J., 16 New street.
50 Barron, John J., 23 Washington place.
Myers, Guy, 21 Lake street.
Kapner, Jacob, 868 S. Sixteenth street, Newark.
4/3/18.
Teague, John M., 73 N. Thirteenth street.
- Newhouse, Otto, 32 Centre street, Newark, N. J.
Ogle, Edward W., 57 Amherst street.
Sottong, Peter, 64 Hamilton street.
Lindsay, Harry M., 189 William street.
Buckley, Edward J., 184 Hollywood avenue.
Mueller, George A., 81 Rhode Island avenue.
McKeon, John J., 167 N. Clinton street.
Spangler, Edgar B., 57 Washington terrace.
Stevens, Frank A., 416 Central avenue.
Bylund, Nils F., 329 Park avenue.
Pierson, William H., 26 Bedford street.
Mortimer, John E., 275 Springdale avenue.
Andrews, William H., 35 Prospect street, Bloomfield.
Lea, Sergeant, 425 William street.
Anderson, Charles, 444 Norwood street.
4/3/18.
Soverel, Clifton E., 697 Springdale avenue.
Genovese, Giro, 90 Tremont avenue.
Bing, Ng Ah, 465 Central avenue.
English, John A., 338 Central avenue.
Schuler, John F., 223 N. Sixteenth street.
Vincent, Oliver F., Jr., 280 N. Park street.
Weimer, Clifford F., 251 N. Nineteenth street.
Brouwer, Harold, 17 Linden avenue.
Forbes, John G., 96 Evergreen place.
Hawkins, George R., 361 N. Grove street.
Dreyer, H. Frederic, 184 Central avenue.
Dech, Clinton, 119 Tremont avenue.
Grant, Frederic W., 197 N. Nineteenth street.
Imken, Otto, 276 Dodd street.
Bruns, Carston H., 38 Clifford street.
Falcone, Joseph, 124 Main street.
Reismuller, John L., 131 N. Sixteenth street.
Fichetti, Michael, 479 Park avenue, Brooklyn, N. Y.
Moore, Elmer B., 119 Washington street.
Dwyer, Mark S., 22 Lindsley place.
Churchhouse, Joseph J., 263 Halsted street.
Telfer, F. George, 162 N. Seventeenth street.
Hector, Henry J., Jr., 70 Hamilton street.
Woods, James J., 88 Hamilton street.
Birrner, Albert J., 19 William street.
Keckeissen, Frank P., 361 Glenwood avenue.
Thompson, Albert E., 204 N. Sixteenth street.
Payton, Patrick F., 38 Long street.
Lavery, Charles, 30 Telford street.

List of Men in Military Service.

Sewell, Charles L., 43 Hilton street.
 Weatherhead, Millard J., 540 Main street.
 Heims, Joseph G., 65 Springdale avenue.
 Meade, John J., 120 Steuben street.
 Pennycook, Edward A., 172 S. Arlington
 avenue.
 Casey, Harry M., 147 N. Clinton street.
 Stevens, Benjamin, 129 Shepard avenue.
 Hever, James J., 117 Sandford street.
 4/10/18.
 Burns, Harold, 167 Prospect street.

FORT HOWARD, N. J.

12/19/17.

McCrickard, John F., 258 Glenwood
 avenue.
 Gamble, Roy, 22 Crawford street.
 Kaas, Walter, 103 S. Sixteenth street.
 Garesche, Creighton, 75 Lenox avenue.
 Beck, Walter, 271 Elmwood avenue.
 Seifert, Charles, 130 S. Grove street.
 Krutz, George, 32 S. Parkway.
 Dignan, George I., 53 Kearney street.
 Hanan, Alfred, Jr., 64 William street.
 Atwater, Charles W., 75 Stockton place.
 Stiles, Edward C., 646 Springdale avenue.
 Zink, William, 38 Linwood place.
 Frank, Bromley H., 90 Hillyer street.
 Davis, Charles E., 96 Sanford street.
 Bowers, Roosevelt, 262 Midland avenue.
 Woods, John, 73 Sterling street.
 Bird, Charles, 136 Glenwood avenue.
 Cox, James, 298 Halsted street.
 Lindsay, Lester M., 189 William street.
 1/22/18.
 Cooper, Henry, 43 S. Walnut street.
 McFarland, Daniel J., 63 Amherst street.
 Dobbs, John H., 12 Baldwin street.

CAMP GRANT, ROCKFORD, ILL.

10/3/17.

Garesche, Claude F., 75 Lenox avenue.

FORT OGLETHORPE, GA.

1/7/18.

Straehle, Charles J., 185 N. Seventeenth
street.**KELLY FIELD, SAN ANTONIO, TEX.**

1/16/18.

Thomas, Roy E., 329 N. Eighteenth
street.**COLUMBIA UNIVERSITY, NEW YORK**

1/16/18.

Lindsley, Eldriege D., 115 Washington
street.

Lane, William R., 28 Washington street.

CAMP JOSEPH E. JOHNSTON, FLA.

1/29/18.

Johnson, Wilbur W., 144 Harrison street.

FORT SLOCUM, NEW YORK.

2/4/18.

Fry, Charles W., 100 Hollywood avenue. 10

**CHIEF OF ORDNANCE, WASHING-
TON, D. C.**

1/31/18.

Evans, Frederic, 2326 Seventh avenue,
New York.**CAMP GREEN, CHARLOTTE, N. C.**

2/7/18.

Austin, Marvin L., 18 Washington ter-
race.Lindbloom, Albert, 380 Springdale 20
avenue.**FORT SLOCUM, NEW YORK.**

2/15/18.

Johnson, Leigh M., care Bronx Y. M.
C. A., New York.**CHIEF OF ORDNANCE, WASHING-
TON, D. C.**

2/16/18.

Hillyer, Robert S., 402 William street.

ALLENTOWN, PA.

2/18/18.

Miller, Herbert W., 66 Hawthorne
avenue. 30**CAMP GREENE, NORTH CAROLINA.**

2/25/18.

Dungan, Thomas, 11 N. Fifteenth street.
Belis, Joseph, 19 Day street, Orange.**PORT OF EMBARKATION, HOBOKEN,
N. J.**Bament, Lawrence, 94 New England
avenue, Summit, N. J. 40**COLLEGE OF THE CITY OF NEW
YORK, N. Y.**

3/5/18.

Fanarjian, Thomas, 44 N. Nineteenth
street.**FORT OGLETHORPE, GEORGIA.**

3/4/18.

Inglis, William C., 21 Chelsea place. 50

CAMP GRANT, ROCKFORD, ILL.

3/5/18.

Davis, Ralph T., 33 New street.

CITY OF EAST ORANGE CASE.

FORT SLOCUM, NEW YORK.

3/15/18.

Chase, Harley A., 331 Springdale avenue.

FORT SLOCUM, NEW YORK.

3/25/18.

Stover, Sumner, 36 Park avenue.

KELLY FIELD, SAN ANTONIO, TEX.

3/4/18.

Corby, Raymond D., 47 N. Grove street.
Reber, Fred L., 47 Schuyler terrace.

MEDICAL DEPARTMENT (328 Greenwich Avenue, New York, N. Y.)

3/26/18.

Munn, Albert C., 322 N. Eighteenth street.

ALLENTOWN, PA.

3/19/18.

Lappe, Earl H., 213 Amherst street.

KELLY FIELD, SAN ANTONIO, TEX.

Miele, Joseph, Shepard avenue.

CAMP MERRITT, NEW JERSEY.

3/19/18.

Kubler, Ferdinand, 89 N. Eighteenth street.

LAUREL, MARYLAND.

4/9/18.

Waters, Benjamin, 194 Elmwood avenue.

10

20

STATEMENT OF CITY CLERK OF EAST ORANGE.

(Referred to in Stipulation.)

STATEMENT.

Lincoln E. Rowley, City Clerk of the City of East Orange.

30

40

On March 26, the date for the election, which was held May 7, 1918, in East Orange, under P. L. 1918, chapter 2, was fixed and on April 9, 1918, I wrote the secretary a letter, of which Exhibit A hereto attached is a copy, and I received a reply thereto, dated April 10, 1918, of which Exhibit B is a copy; within a few days after I received the letter last mentioned a representative of the office of the secretary of state called upon me at my office, City Hall, East Orange. This gentleman stated that the secretary of state did not have the names and addresses of the soldiers and sailors in the military or naval service of the United States and that the secretary of state had been unable to obtain these names and addresses from the Federal authorities, and he asked me where in East Orange he could obtain a list of the soldiers and sailors who were in the Federal, naval or military service from East Orange, whereupon I told him that he could obtain a list of the national army men from the local board and that I knew that the Soldier and Sailor Welfare Committee, Y. M. C. A. Building, had made a very diligent effort to secure a complete list.

50

Soon after this conversation this same gentleman telephoned me and asked me to have 500 ballots printed for his use. I had them printed and on April 30 wrote secretary of state a letter, of which Exhibit C is a copy, but on the same day a representative from secretary of state's office called for the ballots.

I am a member of local board under selective service law, as well as city clerk. The secretary of state did not obtain from me a list of names and addresses of soldiers and sailors, etc., but I know that

Statement of City Clerk—Exhibit C.

he did obtain a list of national army men from the office of the East Orange Local Board.

At the time of election, May 7, 1918, there were approximately 1,000 men from East Orange in military or naval service of United States from East Orange.

Exhibit D is a copy of the report showing the result of the election, including the soldier and sailor votes canvassed June 8, 1918. 10

Exhibit E is a copy of County Board's letter showing canvass of soldier and sailor votes.

On May 7, 1918, the vote cast in East Orange was canvassed in East Orange in each district election and the results filed with me on the evening of that day—with the result that there were cast in East Orange 2,483 ballots against license and 2,310 in favor of license—a majority of 173 against license.

The election held May 7, 1918, in East Orange, under P. L. 1918, chapter 2, was duly advertised as required by law. 20

GEO. S. HOBART,
ALFRED H. HOLBROOK,
Attys. for Intervenor.

JAMES R. NUGENT,
Atty. for Andrew Murray, Petitioner.

JEROME D. GEDNEY,
City Counsel of East Orange.

Note: Letter marked "Exhibit A" in the above statement is the same as letter marked "No. 7" in statement of secretary of state; letter marked "Exhibit B" is the same as letter marked "No. 8" in statement of secretary of state. 30

Exhibits "C", "D" and "E" referred to in above statement are as follows:

EXHIBIT C. 40

THE CITY OF EAST ORANGE, NEW JERSEY

Office of the City Clerk.

Lincoln E. Rowley
City Clerk

April 30, 1918

Hon. Thomas F. Martin,
Secretary of State,
Trenton, New Jersey. 50

My dear Sir:

I beg to advise you that the Special Election Ballots which you asked us to have printed for you to be mailed to the soldiers have been waiting here for some time to be called for. If there is any other

CITY OF EAST ORANGE CASE.

disposition you would care to have made of them, will you kindly notify me.

Very truly yours,

(Signed) LINCOLN E. ROWLEY,
City Clerk

10 (Copy)

EXHIBIT D.

THE CITY OF EAST ORANGE, NEW JERSEY.

Office of the City Clerk.

Lincoln E. Rowley
City Clerk

(Copy of Certificate of City Clerk
to City Council, submitted June 8th)

20

RESULT OF SPECIAL ELECTION held on May 7, 1918, on the question "Shall the sale of intoxicating liquor as a beverage in East Orange be prohibited?"

The Election held on the seventh day of May in the year One thousand Nine Hundred and eighteen within and for the City of East Orange, in the County of Essex, and State of New Jersey, under Chapter 2, of the laws of One Thousand nine hundred and eighteen supplemented by Soldiers vote reported by County Board of Elections on June 7, 1918, resulted as follows:

30

Whole number of votes cast in favor of said City of East Orange prohibiting the sale of intoxicating liquor as a beverage—Two thousand four hundred and ninety..... (2490)

Whole number of votes cast against said City of East Orange prohibiting the sale of intoxicating liquor as a beverage Two thousand four hundred and seventeen..... (2417)

Majority in favor of prohibiting the sale of intoxicating liquor as a beverage—Seventy-three..... (73)

40

(Signed) LINCOLN E. ROWLEY,
City Clerk.

June 8, 1918.

*Statement of City Clerk—Exhibit E.*CITY CLERK'S CANVASS OF RETURNS OF
SPECIAL ELECTION HELD MAY 7, 1918.

	Yes	No	
1 W. 1 D.	52	139	
2 D.	85	101	10
3 D.	98	83	
4 D.	72	56	
2 W. 1 D.	85	120	
2 D.	101	100	
3 D.	135	75	
4 D.	66	63	
3 W. 1 D.	92	111	
2 D.	113	82	
3 D.	97	59	20
4 D.	122	125	
5 D.	107	122	
6 D.	67	164	
4 W. 1 D.	142	60	
2 D.	130	82	
3 D.	38	140	
4 D.	137	64	
5 W. 1 D.	68	113	
2 D.	80	42	
3 D.	168	58	30
4 D.	121	77	
5 D.	138	87	
7 D.	67	55	
Soldier's vote as reported by County Board of Elections	7	107	
	<hr/>	<hr/>	
	2490	2417	
Majority in favor of No License		73	

I hereby certify that the above is a true and correct statement of the results of said Special Elections as reported to this office. 40

(Signed) LINCOLN E. ROWLEY,
City Clerk.

Dated June 7, 1918

EXHIBIT E.

Newark, N. J., June 7, 1918.

Mr. Lincoln E. Rowley,
City Clerk,
East Orange, N. J.

50

Dear Sir:

We hereby certify that there were 208 Soldiers and Sailors' ballots received from the Secretary of State for the City of East Orange, purporting to have been cast at an election held on Tuesday, May

CITY OF EAST ORANGE CASE.

7th, 1918, on the Referendum question "Shall the Sale of Intoxicating Liquor as a Beverage be Prohibited?"

On June 6th, 1918, the County Board of Elections canvassed said ballots, with the following result, which is hereby certified as true and correct.

10 One hundred and seven against prohibiting the sale of intoxicating liquor, and seven votes in favor of prohibiting the sale of same. There were ninety-four ballots rejected by the County Board of Elections as not complying with the law.

Yours very truly,

ESSEX COUNTY BOARD OF ELECTIONS

(Signed) WATSON RODEMANN,
Chief Clerk.

20 (COPY)

MINUTES OF COUNTY BOARD OF ELECTION.

(Referred to in Stipulation.)

June 6th, 1918.

Meeting of the Essex County Board of Elections called to order by Chairman.

All members present.

Minutes of last meeting were read and approved.

30 The Board met this day in accordance with Chapter 150, Laws 1918, for the purpose of canvassing the Soldiers and Sailors ballots, received from the Secretary of State at Trenton, N. J., for the Local Option Election held in the City of East Orange on Tuesday, May 7th, 1918.

Mr. Alfred H. Holbrook of East Orange appeared for "The No License League of East Orange," and Mr. Walter E. Hampton of Montclair appeared for those favoring the issue of licenses in East Orange.

40 After an examination of the outer envelopes containing the Soldiers and Sailors ballots, it was regularly moved and seconded that 90 envelopes purporting to contain Soldiers and Sailors ballots of the City of East Orange, be rejected on account of bearing a statement on the back thereof, that they had been prepared on certain days, which days were subsequent to the day of election, May 7, 1918.

Carried. Four members voting in the affirmative.

Mr. Walter E. Hampton, on behalf of those favoring the sale of liquor in East Orange, desired to be placed on record as objecting to the rejection of these 90 ballots.

50 His request was granted and the clerk directed to enter same upon the minutes.

It was regularly moved and seconded that the envelope containing the ballot of George Morgan, be rejected on account of the investigation showing him to be under age.

Carried. Four members voting in the affirmative.

Minutes of County Board of Election.

It was regularly moved and seconded that the envelope containing the ballot of Charles J. Bellytine be rejected on account of the investigation showing him to be a non-resident of East Orange.

Carried. Four members voting in the affirmative.

It was regularly moved and seconded that the envelopes purporting to contain the ballots of Harry D. Schaedel and Patrick A. Taxter, be rejected on account of the investigation showing them as not found in East Orange.

10

Carried. Four members voting in the affirmative.

Before beginning the canvass of the ballots of the City of East Orange, the Board unanimously adopted the rules as set forth in the previous meeting governing the canvass of the ballots of the Town of Montclair.

The affidavits of Frank Transue and Anthony L. Vena of the Secretary of State's office, submitted by Walter E. Hampton on behalf of those persons favoring the sale of liquor in the City of East Orange, were ordered received and placed on file.

20

Mr. Alfred H. Holbrook on behalf of the No License League of East Orange desired to have a challenge and protest against the counting of each and all of the soldiers and sailors ballots of the City of East Orange, entered on the minutes as set forth in his communication submitted.

Request was granted and clerk ordered to receive communication and place same on file.

The Board then proceeded to canvass the remaining 114 votes of the City of East Orange with the following result.

30

Seven (7) votes in favor of prohibiting the sale of intoxicating liquor and one hundred and seven (107) against prohibiting the sale of intoxicating liquor.

There were Ninety-four (94) ballots for the City of East Orange rejected by the County Board of Elections as not complying with the law.

There being no further business, it was regularly moved and seconded to adjourn.

Carried.

40

A. C. SNYDER,
Secretary.

WATSON RODEMANN,
Clerk.

I hereby certify that the above statement is a true copy of the Minutes of the meeting of the Essex County Board of Elections held on June 6th, 1918.

(Sgd.) WATSON RODEMANN,
Clerk.

50

ESSEX COUNTY BOARD OF ELECTIONS.

(Seal)

CITY OF EAST ORANGE CASE.

Findings and Conclusions.

These are the same as in the Montclair case, as printed in the record of that case. (Page 41, *et seq.*)

10

Order Setting Aside Election.

This matter coming on regularly to be heard in the presence of counsel for the respective parties, and from the facts stipulated and admitted it is found that:

1. An election was held in the City of East Orange on May 7, 1918, under the provisions of chapter 2 of the Laws of 1918.

20

2. The petitioner, Andrew Murray, was a duly qualified voter of said city and voted at said election.

30

3. At said election 4,893 votes were cast, of which 2,483 were in favor of the prohibition of license and against the sale of intoxicating liquor as a beverage, and 2,410 against prohibition of licenses and in favor of the sale of intoxicating liquors as a beverage, resulting in a majority of 73 in favor of the prohibition of licenses and against the sale of intoxicating liquor as a beverage. Included in this canvass were 114 votes of qualified electors who were in the military service of this state or of the United States at the date of said election, which were received and counted by the Essex County Board of Elections. Said canvass did not include 90 votes of qualified electors who were in the military service of this state or of the United States at the date of said election.

40

4. About ten days after the approval on February 28, 1918, of the act entitled "A supplement to an act entitled 'An act to regulate elections,' approved April fourth, one thousand eight hundred and ninety-eight" (being chapter 150, P. L. 1918), the secretary of the State of New Jersey attempted to ascertain from the adjutant general of the State of New Jersey, and from the United States War Department the names and post-office addresses of the qualified electors of the State of New Jersey who were in active service in the military forces of the United States, and was advised that it was impossible to obtain such names and addresses from the adjutant general of the State of New Jersey or from the United States War Department.

50

5. By letter dated April 9, 1918, and received the next day, the secretary of state was notified by the city clerk of the City of East Orange that an election would be held on May 7, 1918, under the provisions of chapter 2 of the Laws of 1918, and requesting to be advised what should be done by said city clerk. On April 10, 1918, the secretary of state replied to said letter that the governor had filed an order directing the secretary of state to proceed under the provisions of chapter 150 of the Laws of 1918, and that a representative of said secretary of state would visit the said city clerk in four

Order Setting Aside Election.

or five days for the purpose of determining what procedure should be taken with reference to the procuring of the lists of soldiers and the mailing of ballots.

6. A few days after April 10th a representative of the secretary of state called upon said city clerk and informed him that the secretary of state did not have the names and addresses of the soldiers and sailors in the military or naval service of the United States and that he had been unable to obtain a list of such names and addresses from the federal authorities, and said representative asked to be advised where such list might be obtained in East Orange and was told that he could obtain a list of the men in the draft from the local draft board. 10

7. At the request of the representative of the secretary of state the city clerk had 500 ballots printed for the use of the secretary of state. On April 30th these ballots were delivered to said representative, and on the same day were mailed, together with the directions and envelopes required by chapter 150, Laws of 1918, to the 400 men in the military service whose names and addresses appeared on the list which the said representative had obtained from the draft board. This was the only information the secretary of state had relative to the names and addresses of the men in the military service from the City of East Orange. No notice of said election and no ballots, envelopes or directions to voters were mailed or sent by the secretary of state or by the city clerk to any persons other than the said 400 men whose names appeared on said draft list. 20 30

8. Said 400 ballots were mailed in the official envelope of the secretary of state, and about 50% thereof have been returned undelivered and marked by the post-office authorities "Unable to locate."

9. Notice of said special election was posted and published as required by the provisions of chapter 2, Laws of 1918.

10. On the date of said election there were upwards of 1,000 male residents of said city in the military and naval service of this state or of the United States. There was no proof as to whether the said 1,000 residents, or any of them, were or were not qualified to vote at said election, except the said 114 electors whose votes were counted and the said 90 electors whose votes were not counted, as set forth in paragraph 3. 40

11. On May 22, 1918, the secretary of state delivered to the Essex County Board of Elections a package containing 136 envelopes which purported to contain ballots voted by soldiers and sailors resident in East Orange; on May 28, 1918, there was delivered to said board a package containing 1 such envelope, and on June 5, 1918, there was delivered to said board a package purporting to contain 71 such envelopes. 50

12. 94 envelopes purporting to contain ballots of voters in the military or naval service were mailed by the voters to the secretary

CITY OF EAST ORANGE CASE.

of state and were by him transmitted to the Essex County Board of Elections (said 94 envelopes being part of those that were so delivered as set forth in paragraph 11). Said county board rejected one of said ballots on the ground that an investigation showed that the person whose name appeared on the envelope purporting to contain same was under age, and rejected three of said ballots on the ground that an investigation showed that the persons whose names appeared on the envelopes purporting to contain same did not reside in East Orange. Said board determined that the persons whose names appeared on the remaining 90 of said envelopes were legal voters of the City of East Orange and then rejected the balance, purporting to be contained therein, because it appeared by endorsement thereon that the same were prepared and mailed at Anniston, Alabama, where a military camp is located—a place not mentioned on the list of names and addresses procured by the secretary of state as aforesaid, and to which place said secretary of state did not mail notice of said election or ballots, envelopes, copy of the act or directions to voters; said 90 envelopes have an endorsement thereon above the signature of the voter, that he did not have knowledge of the date on which said election was to be held before the date thereof, and that he prepared his ballot as soon thereafter as he acquired such knowledge.

13. Said 94 envelopes and contents thereof were produced before the justice before whom the petition herein was heard, and he declined to open same or to canvass the ballots purporting to be contained therein.

The said facts having been considered, and argument of counsel having been heard, and it appearing that qualified electors of the City of East Orange in the military and naval service of this state or of the United States who had a right to vote at the aforesaid election were deprived of the right and opportunity to vote at said election, and that the number of said qualified electors so deprived of the right or opportunity to vote was sufficient to have changed the result of such election;

It is therefore, on this 16th day of July, 1918, ORDERED, that the aforesaid election and the result thereof be and the same is hereby set aside and for nothing holden.

And it is further ORDERED, that John H. Scott, Esq., clerk of the County of Essex, forthwith return and refund to the petitioner herein or his counsel, the deposit heretofore made under the order made herein, less the fees of said clerk taxable in these proceedings against the petitioner.

WM. S. GUMMERE,
C. J.

*Reasons.***Reasons.**

(Filed Oct. 1918.)

New Jersey Supreme Court

10

ALFRED R. HOLBROOK,

*Prosecutor,**vs.*CITY OF EAST ORANGE, a municipal corporation
of the State of New Jersey, and ANDREW
MURRAY,*Defendants.**On Certiorari.**Reasons.*

20

The prosecutor files the following reasons upon which he will rely for the reversal of the order under review in this case:

1. The finding or decision of the justice of the Supreme Court by whom the order under review was made that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were deprived of the right and opportunity to vote at the said election, was not justified nor reasonably supported by the stipulation of facts filed with the said justice on the hearing of the contest of said election.

30

2. There was no evidence before said justice to support reasonably his finding or decision that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were deprived of the right and opportunity to vote at the said election.

3. All qualified voters, including those absent from the municipality in the military service of the United States, were afforded the right and opportunity to vote at the said election.

40

4. All qualified voters of the municipality, including those absent therefrom in the military service of the United States, were given notice of the manner in which they are required by law to prepare and transmit their ballots, for the reason that all such voters are presumed to have knowledge of the provisions of chapter 150, Laws of 1918, whereby all such voters are authorized and permitted (in the event that they have not received an official ballot prior to the date of such election) to prepare and vote on the date of such election an unofficial ballot indicating thereon the proposition upon which they intend to vote.

50

5. Assuming that the finding or decision of the said justice that a number of qualified voters sufficient to change the result of the

election, who were absent from the municipality in the military service of the United States, were deprived of the right and opportunity to vote at said election, was justified or reasonably supported by said stipulation, nevertheless such fact should not operate to invalidate the said election for the reason that it was impossible for the secretary of state to comply with the provisions of chapter 150 of the Laws of 1918 by ascertaining either from the adjutant general of New Jersey or from the adjutant general or other proper authority of the United States the names and post-office addresses of such qualified electors, as required by said statute.

6. Assuming that the finding or decision of the said justice that a number of qualified voters sufficient to change the result of the election, who were absent from the municipality in the military service of the United States, were deprived of the right and opportunity to vote at the said election, was justified or reasonably supported by said stipulation, nevertheless such fact should not operate to invalidate the said election for the reason that the failure of the secretary of state to comply with the provisions of said chapter 150 (even if it had been possible for him so to do) was a mere mistake or irregularity which should not be permitted to disfranchise innocent voters who have expressed their will on the question submitted at the said election.

7. Assuming that the finding or decision of the said justice that a number of qualified voters sufficient to change the result of the election, who were absent from the municipality in the military service of the United States, were deprived of the right and opportunity to vote at the said election, was justified or reasonably supported by said stipulation, nevertheless such fact should not operate to invalidate the said election for the reason that it does not appear that the failure of such qualified electors to vote, or to have an opportunity to vote, at said election, prevented a full expression of the will of the voters of said municipality.

8. Assuming that it was possible for the secretary of state to comply with the provisions of said chapter 150, nevertheless it does not appear that a sufficient number of qualified electors, who were absent from the municipality in the military service of the United States, and who might have voted at said election, would have voted in such a way as to change the result of said election.

9. Under the Constitution of the State of New Jersey the right of qualified electors, who are absent from the municipality in which they are living, in the military service of the United States, is limited to vote for persons to fill elective offices, and does not include the right to vote for such a proposition as was submitted at the said election.

10. Under the ruling of the Federal authorities charged with the conduct of the present war, qualified voters who are absent from the municipality in which they reside, in the military service of the

Additional Reason.

United States, are not permitted to vote at special elections; and the right of any such voters to vote at such elections, which may have been given under the Constitution or laws of the State of New Jersey, is subject to and superseded by the rulings of such Federal authorities.

11. The stipulation of facts shows that every reasonable effort was made to obtain the names and addresses of qualified voters of the municipality who were in the military service of the United States, and that notice of the said election was given to all qualified voters whose names and addresses were thus obtained, and that all such voters had the right and opportunity to vote at the said election.

COLLINS & CORBIN,
Attorneys of Prosecutor.

10

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Additional Reason.

NEW JERSEY SUPREME COURT.

The prosecutor files the following additional reason upon which he will rely for the reversal of the order under review in this case:

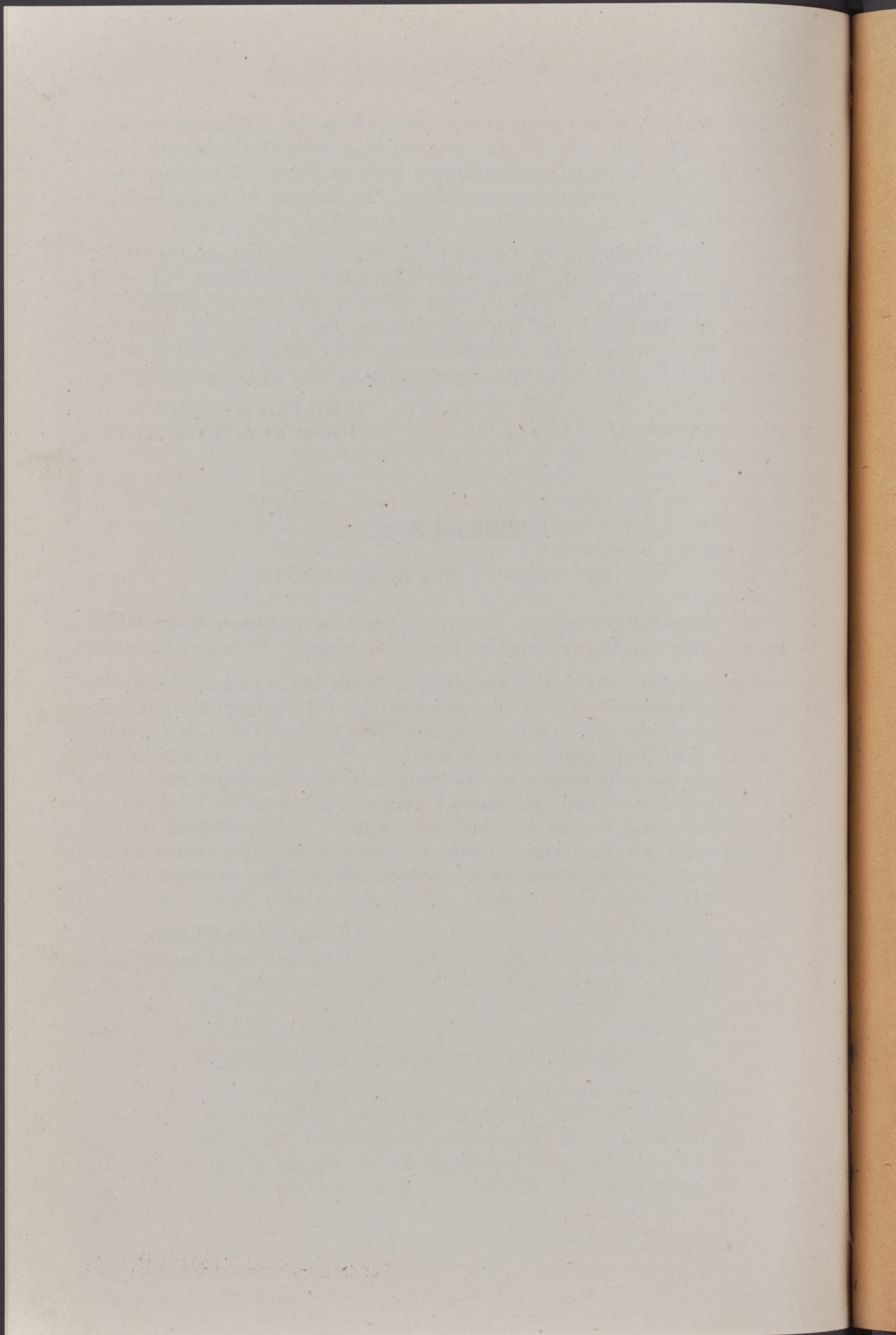
The statute entitled, "A supplement to an act, entitled 'An act to regulate elections' approved April fourth, one thousand, eight hundred and ninety-eight (being chapter 150, Laws of 1918), is in violation of the Constitution of the State of New Jersey in that it requires the secretary of state to distribute the envelopes containing the ballots of voters in the military service to the County Board of Elections in the county in which said voters reside, instead of providing for the return and canvass of the votes of such voters in the election district in which they respectively reside, as required by article II of said Constitution.

30

COLLINS & CORBIN,
Attorneys of Prosecutor.

40

50



BOROUGH OF CALDWELL.

Charles A. Nutting,

Prosecutor,

vs.

Borough of Caldwell and John A. Brady,
Defendants.

} On Certiorari.

CASE.

CALDWELL.

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Writ of Certiorari.

Writ of Certiorari.

(Returnable August 28, 1918.)

NEW JERSEY, ss.

10

(L. s.) The State of New Jersey to the Honorable William S. Gummere, Chief Justice of the Supreme Court of the State of New Jersey, and to the Borough of Caldwell, a municipal corporation of the State of New Jersey, and the clerk of said borough, GREETING:

We being willing for certain reasons to be certified of a certain order made by the Honorable William S. Gummere, Chief Justice of the Supreme Court of the State of New Jersey, on the sixteenth day of July, 1918, setting aside a certain election in a proceeding entitled, "In the matter of the application of John A. Brady to contest the validity of an election held in the Borough of Caldwell, Essex County, New Jersey, on Tuesday, April 30th, 1918, under the provisions of chapter 2 of the Laws of 1918," do hereby command you that the said order, together with all things touching and concerning the same, to our Supreme Court to be held at Trenton on the twenty-eighth day of August, 1918, you do certify and send, together with this writ, that therein may be done what of right and according to the laws and Constitution of the State of New Jersey ought to be done.

20

30

WITNESS, WILLIAM S. GUMMERE, Chief Justice of our Supreme Court at Trenton aforesaid, this ninth day of August, 1918.

ENOCH L. JOHNSON,

Clerk.

COLLINS & CORBIN,
Attorneys.

Allocatur.

40

I allow this writ. Let it be sealed. Not to operate as a stay.

Dated August 9, 1918.

WM. S. GUMMERE,

C. J.

50

BOROUGH OF CALDWELL CASE.

Return of Municipal Clerk.

FIRST SHEET.

A PETITION

10 FOR AN ELECTION TO DETERMINE WHETHER OR NOT THE SALE OF
INTOXICATING LIQUOR AS A BEVERAGE IN THE BOROUGH OF CALDWELL,
SHALL BE PROHIBITED.

To the Mayor and Council of the Borough of Caldwell, in the County
of Essex, in the State of New Jersey:

20 We, the undersigned, respectfully represent that we are legal
voters of the BOROUGH OF CALDWELL, in the COUNTY OF ESSEX, in the
STATE OF NEW JERSEY, and that we hereby request you to order an
election under the provisions of chapter two of the Laws of one
thousand nine hundred and eighteen (1918), to determine whether
or not the sale of intoxicating liquor as a beverage in the BOROUGH
OF CALDWELL, shall be prohibited.

NAME	RESIDENCE (Street and Number)	DATE OF SIGNING PETITION
1—Wilbur B. Gould	26 Cleveland Street	February 16th, 1918
2—E. Stanley Gore	16½ Cleveland St.	February 17th, 1918
3—Alex. B. Gore	16½ Cleveland St.	February 17th, 1918
4—Howard H. Hall	36 Whitfield Street	February 17th, 1918
5—William Stark	28 Campbell Ave.	February 16th, 1918
30 6—Daniel C. Jacobus	15 Hanford Place	February 16th, 1918
7—John H. Van Houten	16 Hanford Place	February 16th, 1918
8—Archibald Wettsch	27 Hanford Place	February 16th, 1918
9—Frederick Klein	13 Whitfield Street	February 16th, 1918
10—Edward R. Jones	7 Ravine Ave.	February 18th, 1918
11—Charles Fred. Thomas	37 Brookside Ave.	February 18th, 1918
12—James S. Throckmorton	21 Hanford Place	February 20th, 1918
13—Charles B. Canfield	14 Hanford Place	February 21st, 1918

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

Wilbur B. Gould, being duly sworn according to law, on his oath
says that the signatures attached to the foregoing petition were made
in his presence at the respective dates set opposite thereto, and that
the several persons who made said signatures bear, to the best of
his knowledge and belief, the names signed thereto by each of them
respectively, and that said persons are legal voters of the munic-
ipality of Borough of Caldwell.

50 (Signed) WILBUR B. GOULD.

Subscribed and sworn to before me, this
21st day of February, 1918.

(Signed) JOHN I. JACOBUS,
Notary Public.

Notice of Hearing.

I hereby certify the above to be a true copy of the first sheet of a petition presented to the mayor and council of the Borough of Caldwell, at a meeting of said mayor and council held March 18th, 1918, and that said petition contained two hundred and forty-four (244) signatures.

JOHN J. VAN ORDER,
Borough Clerk.

10

BOROUGH OF CALDWELL.

PUBLIC NOTICE.

TO WHOM IT MAY CONCERN:

It is hereby certified that a petition requesting the mayor and council of the Borough of Caldwell, Essex County, New Jersey, for an election to determine whether or not the sale of intoxicating liquor as a beverage in the Borough of Caldwell shall be prohibited, having been filed with me:

20

Notice is hereby given that at a meeting of the said mayor and council of the Borough of Caldwell, Essex County, New Jersey, to be held at the Borough Council Rooms in the Fire House, Roseland Ave., Caldwell, on Monday evening, March 18th, 1918, at 8 o'clock P. M., the said mayor and council will inspect the aforesaid petition as to its sufficiency and hear any objections that may be made thereto, as to its legality.

30

(Signed) JOHN J. VAN ORDER,
Borough Clerk.

I hereby certify that the foregoing is a true and correct copy of a notice of hearing, which notice was posted in five public places in the Borough of Caldwell, at least eight days before the time of such hearing, and that the said notice of hearing was published in the Caldwell Progress for two successive issues prior to the date of the hearing.

40

JOHN J. VAN ORDER,
Borough Clerk.

THE CALDWELL PROGRESS

CALDWELL, N. J.

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

George F. Brown, Jr., of full age, being duly sworn according to law, on his oath saith, that he is a clerk in the office of "The Caldwell Progress," and that a notice, of which the annexed is a true copy, was published on the ninth day of March, A. D. 1918, in the said "The Caldwell Progress," a public newspaper printed and published at Caldwell, in this state, and continued therein for one

50

BOROUGH OF CALDWELL CASE.

weeks successively thereafter, at least once in every week, the last publication being on the sixteenth day of March, 1918, making two insertions in all.

GEORGE F. BROWN, JR.

10 Sworn and subscribed this 23rd day
of August, 1918, before me.

THOMAS H. BRADY,
(L. S.) *Notary Public.*

EXCERPT FROM THE MINUTES OF THE MEETING OF THE
MAYOR AND COUNCIL OF THE BOROUGH OF CALD-
WELL, HELD MONDAY, MARCH 18th, 1918.

20 The clerk made a report to the mayor and council, that a petition for an election to determine whether or not the sale of intoxicating liquor as a beverage in the BOROUGH OF CALDWELL, shall be prohibited, had been filed with him, and pursuant to the requirements of the law, he had made due and legal advertisement of a HEARING, to be held by the MAYOR AND COUNCIL, on Monday evening, March 18th, 1918, at 8 o'clock P. M., to inspect the said petition as to its sufficiency and hear any objections that may be made thereto, as to its legality.

30 Mayor Peck thereupon declared the regular order of business suspended for the purpose of said hearing. No objections, either written or oral being presented, the mayor declared the hearing closed. After discussion, on motion, the mayor and council deferred action "to determine the sufficiency of the petition" until Monday evening, March 25th, 1918; all the members present voting in the affirmative.

I hereby certify that the foregoing is a true and correct copy taken from the minutes of the Borough of Caldwell of a meeting held Monday evening, March 18th, 1918, and that the mayor and four members of the council were present.

40 JOHN J. VAN ORDER,
Borough Clerk.

Excerpt from the minutes of the Borough of Caldwell, of a meeting of the mayor and council held Monday, March 25th, 1918.

50 "The regular order of business was suspended for the purpose of taking from the table, the petition for an election to determine whether or not, the sale of intoxicating liquor as a beverage in the Borough of Caldwell, shall be prohibited and to determine the sufficiency of the petition.

The clerk proceeded to read the petition and the names signed thereto: The petition showed signatures to the number of two hundred and forty-four (244), and having reported that the number of votes cast at the preceding general election, was four hundred and

Notice of Special Election.

ninety-seven (497) votes, Councilman Anderson, offered the following resolution:

'WHEREAS, the petition for an election to determine whether or not, the sale of intoxicating liquor as a beverage in the Borough of Caldwell, shall be prohibited, which petition was presented at a meeting of the mayor and council of the Borough of Caldwell, held March 18th, 1918, at which time a hearing was held, in accordance with legal requirement and advertisement, and an examination of the said petition, showing that the number of signatures thereon are more than thirty per cent. of the total number of legal votes cast at the last preceding general election;

10

THEREFORE, be it resolved, that the time for holding a special election be fixed and determined as TUESDAY, the 30th day of April, 1918, at which, shall be submitted to the legal voters of the Borough of Caldwell, the question to be determined.'

20

On roll call, the foregoing resolution was adopted by the unanimous vote of all the members present.

(Signed, approved)

EDW. E. PECK,
Mayor.'

I hereby certify the foregoing to be a true and correct copy, taken from the minutes of the Borough of Caldwell of a meeting held Monday evening, March 25th, 1918, and that the mayor and five members of the council were present.

30

JOHN J. VAN ORDER,
Borough Clerk.

BOROUGH OF CALDWELL.

NOTICE OF SPECIAL ELECTION.

Notice is hereby given that a special election will be held in the Borough of Caldwell, Essex County, New Jersey, on Tuesday, April 30, 1918.

40

This election is held under the provisions of chapter 2, Laws of New Jersey of 1918, and in accordance with a petition for an election to determine whether or not the sale of intoxicating liquor as a beverage in the Borough of Caldwell shall be prohibited.

The said petition having been examined by the mayor and council of the Borough of Caldwell, and determined to be sufficient as to form and legal requirement in accordance with chapter 2, Laws of 1918, the mayor and council by resolution fixed the time of holding said election for Tuesday, April 30th, 1918.

50

The registry for the election is the registry list containing the names of those persons qualified to vote at the last preceding election. Qualified voters whose names do not appear on the registry list

BOROUGH OF CALDWELL CASE.

may have their names added to such registry list by applying to the Court of Common Pleas of Essex County during the week next preceding the election.

The polling places in the Borough of Caldwell are as follows:

First District—Firehouse, Roseland avenue.

10 Second District—Budd Building, Bloomfield avenue.

The polls will remain open from 6 o'clock A. M. to 7 o'clock P. M. (revised time).

JOHN J. VAN ORDER,
Borough Clerk.

THE CALDWELL PROGRESS.

CALDWELL, N. J.

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

30 GEORGE F. BROWN, JR., of full age, being duly sworn according to law, on his oath saith, that he is treasurer in the office of "The Caldwell Progress," and that a notice, of which the annexed is a true copy, was published on the 30th day of March, A. D. 1918, in the said, "The Caldwell Progress," a public newspaper printed and published at Caldwell, in this state, and continued therein for four weeks successively thereafter, at least once in every week, the last publication being on the 27th day of April, 1918, making five insertions in all.

GEORGE F. BROWN, JR.

Sworn and subscribed this twenty-third day
of August, 1918, before me

THOMAS H. BRADY,
(L. S.) *Notary Public.*

40 Excerpt from the minutes of the Borough of Caldwell, of a meeting of the mayor and council held Monday, May 6th, 1918.

"The clerk reported the result of the special election held in the Borough of Caldwell, on the 30th day of April, 1918, to determine the following question, 'Shall the Sale of Intoxicating Liquor as a Beverage in the Borough of Caldwell be Prohibited,' as follows:

Whole number of votes cast in favor of said Borough of Caldwell prohibiting the sale of intoxicating liquor as a beverage, two hundred and fifty-five (255).

50 Whole number of votes cast against said Borough of Caldwell prohibiting the sale of intoxicating liquor as a beverage, two hundred and fifty-two (252).

Majority in favor of said Borough of Caldwell, prohibiting the sale of intoxicating liquor as a beverage, three (3).

On motion, the clerk was directed to make a proper record of said election in the minutes: all the members voting in the affirmative.

BOROUGH OF CALDWELL CASE.

3. Your petitioner contests the validity of the election so held as above set forth on the following grounds:

10 (a) Because the secretary of state, of the State of New Jersey, disregarding the requirements of chapter 150, Laws of 1918, failed to ascertain, sixty days prior to April 30th, 1918, the date of such special election, from the adjutant-general of New Jersey or from the adjutant-general or other proper authority of the United States, the names and post-office addresses of every qualified elector in this state in active service in the military forces of this state or of the United States, in actual service as a member of the State Militia, New Jersey National Guard, any branch or department of the army or navy of the United States or any auxiliary forces acting in co-operation therewith.

20 (b) Because the secretary of state of the State of New Jersey, disregarding the requirements of chapter 150, Laws of 1918, failed to forward by mail or otherwise, at least 20 days prior to April 30th, 1918, the date of said special election, to each person in such active service, as aforesaid, a blank ballot, conveniently prepared so that such person might vote on the question to be submitted to the voters at such election.

30 (c) Because the secretary of state of the State of New Jersey disregarding the requirements of chapter 150, Laws of 1918, failed to forward, at least 20 days prior to the date of the special election aforesaid, to the borough clerk of the Borough of Caldwell, whose duty it was to procure the ballots of such election, the names and addresses of the qualified electors in such active service as aforesaid, residing within the limits of the Borough of Caldwell.

40 (d) Because the secretary of state of the State of New Jersey disregarding the requirements of chapter 150, Laws of 1918, failed to forward by mail or otherwise, to each qualified elector of this state in such active service as aforesaid, a printed copy of chapter 150, Laws of 1918, or printed directions for voting and transmitting a ballot as required by chapter 150, Laws of 1918, and also failed to forward to such electors two envelopes, as required by the provisions of said chapter 150, Laws of 1918.

(e) Because chapter 2 of the Laws of 1918, approved January 29, 1918, under which the said proceedings were had, and the said order made, is unconstitutional and void in that it violates the provision of the Constitution of New Jersey which vests legislative power in a Senate and General Assembly.

50 (f) Because the aforesaid act of the Legislature is unconstitutional and void, in that it attempts to confer upon a minority of the legal voters in the municipalities to which it applies, the right of power of calling a special election for the purpose of determining whether or not the sale of liquor shall be prohibited in said municipalities.

(g) Because the aforesaid act of the Legislature is unconstitutional and void, in that it attempts to confer upon the governing bodies of municipalities to which it applies, the right or power of calling a

Petition for Contest of Election.

special election for the aforesaid purpose, and fixing a time therefor, upon the petition of a minority of the legal voters of such municipality.

(h) Because the aforesaid act of the Legislature is unconstitutional and void, in that it is violative of the provisions of the Constitution of this state which forbids the passage by the Legislature of any local or special law regulating the internal affairs of towns and counties. 10

(i) Because the aforesaid act of the Legislature is unconstitutional and void, in that it unlawfully provides that the terms of said act shall not apply to particular municipalities therein referred to.

(j) Because the aforesaid act is violative of the Fourteenth Amendment of the Constitution of the United States, prohibiting any state from denying to any person within its jurisdiction the equal protection of the laws in that the said act grants to the petitioners, where the action of the governmental body is adverse to the petition, the right to a summary review of the action of the said governing body by the Supreme Court, or a justice thereof, and denies to the opponents of the petition such right of review, where the action taken is in favor of the petition. 20

(k) Because the aforesaid act is unconstitutional and void in that the objects of the act are not expressed in the title thereof.

(l) Because the aforesaid act is in divers other respects unconstitutional and void. 30

4. Your petitioner further shows that the governor of the State of New Jersey, by virtue of the provisions of chapter 150, Laws of 1918, filed with the secretary of state an order directing that the provisions of said act should be enforced, and that thereupon it was the duty of the secretary of state to carry out the provisions of said act until the governor should by further order determine that the emergency ceased to exist, and should direct that the provisions of said act be discontinued. 30

5. Your petitioner charges that by reason of the failure of the secretary of state to carry out the provisions of said act, as hereinbefore set forth a large number of qualified electors of the Borough of Caldwell, in the military service of this state or of the United States were deprived of an opportunity to vote on the question submitted to the voters at the special election held on April 30th, 1918, as aforesaid. 40

6. Your petitioner further shows that there were twenty days prior to April 30th, 1918, the date of such special election as aforesaid, upwards of twenty-five qualified electors of the Borough of Caldwell in the military and naval service of this state or of the United States, who had a right to vote at the aforesaid election, and that none of the aforesaid qualified electors received the ballot of such election, as provided by law, and that no ballots were received from said electors by the County Board of Canvassers, and on information and belief says they did not vote at said special election. 50

BOROUGH OF CALDWELL CASE.

Your petitioner therefore prays your Honor, that such order may be made so that your petitioner may contest the validity of the aforesaid election according to the statute in such case made and provided.

Dated June 7th, 1918.

10 JOHN A. BRADY,
Petitioner.

H. P. LINDABURY,
Attorney of Petitioner.

(Affidavits of John A. Brady, Frank Transue, Charles H. Schlaefer and Watson Rodeman attached.)

20 **Order Fixing Date of Hearing.**

Upon reading and filing the duly verified petition of the petitioner, it is, on this 7th day of June, 1918, hereby ordered that Tuesday, the 2nd day of July, 1918, at ten o'clock in the forenoon of said day, at the Court House in Newark, be and are hereby fixed as the time and place of the hearing on the aforesaid petition.

30 And it is further ordered, that the petitioner forthwith publish in Caldwell Progress, a newspaper published in Caldwell, Essex County, New Jersey, a notice announcing the filing of such petition and stating the time and place at which the contest shall be heard by the undersigned, and shall also post copies of such notices in the same manner as is provided for the posting of the notices for hearings on application for elections as set forth in section 2 of chapter 2 of the Laws of 1918.

And it is further ordered, that a true but uncertified copy of the aforesaid petition and notice shall be served forthwith on the clerk of the Borough of Caldwell.

40 And it is further ordered, that the petitioner within ten days from the date hereof, shall deposit with the clerk of the County of Essex the sum of one hundred and fifty dollars in cash as security for costs on this proceeding.

WM. S. GUMMERE,
Chief Justice of the Supreme Court.

*Stipulation of Facts.***Notice of Hearing.**

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

In the matter of the application of JOHN A. BRADY to contest the validity of an election held in the BOROUGH OF CALDWELL, ESSEX COUNTY, NEW JERSEY, on Tuesday, April 30th, 1918, under the provisions of chapter 2 of the Laws of 1918.

*On Petition, Etc.**Notice.*

10

Please take notice that a duly verified petition in the above matter was this day filed by John A. Brady, of the Borough of Caldwell, Essex County, New Jersey, contesting the validity of an election held in the Borough of Caldwell, Essex County, New Jersey, on the 30th day of April, 1918, and that upon the filing of such petition, an order was made by his Honor, William S. Gummere, Chief Justice of the Supreme Court of the State of New Jersey, fixing Tuesday, July 2nd, 1918, at ten o'clock in the forenoon, at the Court House in Newark, as the time and place said contest will be heard by said Chief Justice. June 7th, 1918.

20

Yours, etc.,

H. P. LINDABURY,
Attorney of Petitioner,
31 Clinton St.,
Newark, N. J.

30

(Note: On July 2 an order was made continuing the hearing until July 16.)

Stipulation of Facts.

40

FIRST: It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that the following are the facts submitted to the Court upon which the above matter is to be heard; First, that the "statement of Mr. Transue, of secretary of state's office," hereto annexed and made a part hereof and marked "Schedule A," may be used so far as pertinent and material to the above entitled case.

SECOND: Statement made by John J. Van Order, clerk of the Borough of Caldwell, hereto annexed, and marked "Schedule B."

50

THIRD: Statement of Charles H. Schlaefter, chief clerk of Local Board No. 4, County of Essex, Caldwell, N. J., hereto annexed, and marked "Schedule C."

BOROUGH OF CALDWELL CASE.

FOURTH: Communication dated July 15, 1918, from Progress Publishing Company to J. H. Harrison, hereto annexed and marked "Schedule D" and issues of Caldwell Progress, submitted herewith of April 6, 13, 20 and 27, containing notice of election of April 30, 1918.

10

FIFTH: That addresses of the qualified electors in military service and their respective stations were ascertainable.

SIXTH: That the Legislative Manuals published by T. F. Fitzgerald, may be referred to and used for the purpose of determining the number of votes cast at the general election of 1916, 1917 and 1918.

H. P. LINDABURY,

Attorney for John A. Brady.

20

THOMAS C. PROVOST,

Attorney for the Borough of Caldwell.

GEO. S. HOBART,

Attorney for Interested Citizens Intervening under the Statute.

SCHEDULE A.

STATEMENT OF SECRETARY OF STATE.

(Referred to in foregoing Stipulation.)

30

This statement is the same as the statement printed in the record of the Montclair case (including the letters), with the following additional statement:

BOROUGH OF CALDWELL.

So far as concerns the Borough of Caldwell, nothing was done by the secretary of state for the reason that he was of the opinion that there was not sufficient time to procure a list of the names and addresses of the men in the military service to mail ballots, so that such voters would receive them in time for the special election which was called for April 30th—the first notice of the secretary of state that this special election had been called being that observed by him in the "Sunday Call" of Newark of April 21, 1918, which he saw on April 22, 1918. He received no formal notice of any kind from the borough clerk of Caldwell, nor from any other individual. So far as the records of the office of the secretary of state are concerned, there were no soldier votes received at said office for said special election.

40

50

SCHEDULE B.

Statement made by John J. Van Order, clerk of the Borough of Caldwell, July 12, 1918.

The special election was held on April 30th, 1918.

Stipulation of Facts—Schedule C.

Before that time he did not get up a list of soldiers who came from Caldwell nor did he have such a list.

He sent no list of soldiers to the secretary of state nor to any one else.

He did not receive a list of Caldwell soldier voters from the secretary of state. 10

He did not send the soldiers any ballots.

There were no sample ballots sent out to the voters by the clerk or any other Caldwell official.

That the election was won by a majority of three: there being 255 votes in favor of prohibition of license and 252 votes against the prohibition of license.

That only two of the attached list of soldiers cast ballots in the election; that the rest of the soldiers did not vote. The two who did vote were as follows:

#17 James H. Grady, Forest Ave., Caldwell. 20

#34 Vincent T. Wyckoff, Roseland Ave.

JOHN J. VAN ORDER,
Borough Clerk.

SCHEDULE C.

Statement of Charles H. Schlaefler, chief clerk of Local Board No. 4, County of Essex, Caldwell, N. J.

The attached list of names and addresses is made up of residents of Caldwell, N. J., in the naval and military service of the United States Government who to my best knowledge and belief were voters and entitled to vote at the special election held April 30th, 1918. 30

Dated July 12th, 1918.

CHARLES H. SCHLAEFER,
Chief Clerk.

LIST OF SOLDIER VOTES. 40

- 1 James Wesley Lefler, Peronette street, Caldwell, N. J., 1st.
- 2 Clyde E. Manning, Central avenue, Caldwell, N. J.
- 3 George G. Belder, Campbell avenue, Caldwell, N. J., 2nd.
- 4 William Robert Sweeney, Bloomfield avenue, Caldwell, N. J.
- 5 Leon Harrison Gibson, Elm road, Caldwell, N. J., 1st.
- 6 Anthony Gagliano, Elizabeth street, Caldwell, N. J., 2nd.
- 7 Herbert Alpheus Hill, Westover avenue, Caldwell, N. J., 2nd.
- 8 Malcolm B. Jacobus, Campbell avenue, Caldwell, N. J., 2nd.
- 9 Edmund L. Miller, Campbell avenue, Caldwell, N. J., 2nd.
- 10 Col. A. V. P. Anderson, Cedars road, Caldwell, N. J., 2nd. 50
- 11 Frank D. Baker, Overlook road, Caldwell, N. J., 2nd.
- 12 Herbert Barnard, Forest avenue, Caldwell, N. J., 1st.
- 13 Alvin Beck, Campbell avenue, Caldwell, N. J., 2nd.
- 14 Russell Duston, Caldwell, N. J., 1st.
- 15 Edwin R. D. Fox, Hillside avenue, Caldwell, N. J., 1st.

BOROUGH OF CALDWELL CASE.

- 16 Elliott Fox, Hillside avenue, Caldwell, N. J., 1st.
 17 James H. Grady, Forest avenue, Caldwell, N. J., 1st.
 18 David Hoffman, Central avenue, Caldwell, N. J., 1st.
 19 Wesley J. Hopper, Arlington avenue, Caldwell, N. J., 1st.
 20 Edwin B. Howard, Mountain avenue, Caldwell, N. J., 1st.
 10 21 Louis W. Jacobus, Cleveland avenue, Caldwell, N. J., 2nd.
 22 Alva B. MacChesney, Roseland avenue, Caldwell, N. J., 1st.
 23 William T. Maxwell, Academy road, Caldwell, N. J., 2nd.
 24 Raymond Poole, Forest avenue, Caldwell, N. J., 1st.
 25 Alfred W. Provost, Bloomfield avenue, Caldwell, N. J., 1st.
 26 W. Earle Roydhouse, Cleveland street, Caldwell, N. J., 2nd.
 27 Wilbur C. Shears, Central avenue, Caldwell, N. J., 1st.
 28 James Sigler, Washburn place, Caldwell, N. J., 2nd.
 29 Lloyd Simms, Cleveland street, Caldwell, N. J., 2nd.
 20 30 Walter Sigler, Jr., Washburn place, Caldwell, N. J., 2nd.
 31 LeRoy A. Sullivan, Gould avenue, Caldwell, N. J., 2nd.
 32 Dr. George B. Verbeck, 26 Washburn place, Caldwell, N. J., 2nd.
 33 Fred W. Wright, Forest avenue, Caldwell, N. J., 1st.
 34 Vincent T. Wyckoff, Roseland avenue, Caldwell, N. J., 1st.

SCHEDULE D.

Weekly on Saturday.

Progress Publishing Co.

THE CALDWELL PROGRESS

30

Officially recognized as the Representative Newspaper of Western
 Essex and East Morris Counties.

PRINTING and PUBLISHING

Wm. H. Van Wart, Editor

F. G. Johnson, Manager

Geo. F. Brown, Jr., Treasurer

CALDWELL, N. J., July 15, 1918.

40

J. Henry Harrison,
 Caldwell, N. J.

Dear Mr. Harrison:

In response to your request of even date, we have made an effort to learn how many of the thirty-four young men in army and navy service, entitled to vote at the special election on April 30th were in the habit of receiving weekly copies of The Caldwell Progress containing information concerning that election, our report is as follows:

50

These four men are regular subscribers to The Progress, and were receiving the paper every week, on or about April 30th:

1. James Wesley Lefler, subscription began Sept. 22, 1917.
11. Frank Baker, subscription began Sept. 9, 1915.
23. William T. Maxwell, subscription began March 16, 1918.
25. Alfred W. Provost, subscription began Dec. 1, 1917.

Findings and Conclusions.

The following two young men were in Caldwell, on April 30th and voted at the special election:

17. James H. Grady.
34. Vincent T. Wyckoff.

Inquiry was made at the homes of the following, where it was said that copies of *The Progress* were mailed weekly to those named prior to and including the month of April, 1918. 10

6. Anthony Gagliano.
7. Herbert A. Hill.
8. Malcolm B. Jacobus.
9. Edmund L. Miller.
12. Herbert Barnard.
20. Edwin B. Howard.
21. Louis W. Jacobus.
22. Alva B. MacChesney. 20
26. W. Earle Roydhouse.
27. Wilbur C. Shears.
28. James C. Sigler.
29. Lloyd Simms.
30. Walter Sigler, Jr.
32. Dr. George S. Verbeck.
33. Fred W. Wright.

13. Alvin Beck comes home quite frequently, so parents do not send paper. Mother wrote, however, and also told him about coming election, and his brother wrote also on same subject. 30

2. Clyde Manning. Could not find his wife or family. Believe they have moved.

5. Leon H. Gibson. Could not find family.

Regarding other cases, some of the men were known to have received *The Progress* occasionally, and where the men had no relative here it was difficult to learn whether friends or relatives had sent the paper.

The *Progress* has been sent weekly to the Soldiers' Club at Camp Dix since last fall for the benefit of Caldwell boys in service. 40

Very truly yours,

PROGRESS PUBLISHING COMPANY,

F. G. JOHNSON,

Manager.

FGJ/MDC.

Findings and Conclusions.

50

These are the same as in the Montclair case, as printed in the record of that case. (See page 41.)

BOROUGH OF CALDWELL CASE.

Order Setting Aside Election.

This matter coming on to be heard in the presence of counsel for the respective parties, and the parties having stipulated the facts, upon which stipulation by the parties it is found that:

10

1. An election was held in the Borough of Caldwell on April 30th, 1918, under the provisions of chapter 2 of the Laws of 1918.

2. The petitioner, John A. Brady, was a duly qualified voter of the Borough of Caldwell and was legally entitled to vote and did vote at the special election held in the Borough of Caldwell on April 30th, 1918, pursuant to the provisions of chapter 2 of the Laws of 1918.

20

3. At said election, 507 votes were cast, of which 255 were in favor of the prohibition of license and against the sale of intoxicating liquor as a beverage, and 252 against the prohibition of license and in favor of the sale of intoxicating liquor as a beverage, resulting in a majority of 3 in favor of the prohibition of license and against the sale of intoxicating liquor as a beverage.

30

4. On the date of said election there were 34 qualified electors of this state, resident in said Borough of Caldwell and entitled to vote at any election held therein, who were in the military or naval forces of this state or of the United States, of which said qualified electors, two voted at said election, both of whom voted in person.

5. No notice of any kind, no official ballot, envelopes, copy of act, or instruction to voters, were sent or attempted to be sent to said 34 qualified electors in the military or naval forces of this state or of the United States, or any of them, as required by chapter 150 of the Laws of 1918, by either the secretary of state of New Jersey, the borough clerk of the Borough of Caldwell, or any other person.

40

6. About ten days after the approval on February 28, 1918, of the act entitled, "A supplement to an act entitled 'an act to regulate elections,' approved April fourth, one thousand eight hundred and ninety-eight" (being chapter 150, P. L. 1918), the secretary of state of New Jersey attempted to ascertain from the adjutant general of the State of New Jersey, and from the United States War Department the names and post-office addresses of the qualified electors of the State of New Jersey who were in active service in the military forces of the United States, and was advised that it was impossible to obtain such names and addresses from the adjutant general of the State of New Jersey or from the United States War Department.

50

No formal notice of the special election held at Caldwell April 30, 1918, was received by the secretary of state or sent to him. On April 22, 1918, the secretary of state read a news item in the Newark Sunday Call, dated April 21, 1918, stating that said special election was to be held at Caldwell, April 30, 1918. The secretary of state was of the opinion that there was not sufficient time to procure a list of names and addresses of the men in the military service and to mail

Order Setting Aside Election.

ballots so that they would receive them in time to vote on or before the date of said election, and therefore did nothing.

7. A copy of each issue of the Caldwell Progress dated April 6, 13, 20 and 27, containing notice of said election, was mailed weekly to 19 of said electors who did not vote at said election. Relatives of Alvin Beck, another of said electors who did not vote, mailed two letters, addressed to him, in which he was advised of the coming election.

10

8. The number of qualified electors so in the military or naval service of this state or of the United States who were thus deprived of their vote were sufficient in number to have changed the result of the election.

9. The addresses of the said qualified electors in the military or naval service and their respective stations were ascertainable.

20

And said facts having been considered, and argument of counsel having been heard, and it appearing that qualified electors of the Borough of Caldwell in the military and naval service of the state or of the United States who had a right to vote at the aforesaid election were deprived of the right and opportunity to vote at said election, and that the number of said qualified electors so deprived of the right or opportunity to vote was sufficient to have changed the result of said election.

It is therefore, on this 16th day of July, 1918, ORDERED, that the aforesaid election and the result thereof be and the same is hereby set aside and for nothing holden.

30

And it is further ORDERED, that John H. Scott, Esq., clerk of the County of Essex, forthwith return and refund to the petitioner herein or his counsel the deposit heretofore made under the order made herein, less the fees of said clerk taxable in these proceedings against the petitioner.

WM. S. GUMMERE,

C. J.

40

50

Reasons.

(Filed Oct. 4, 1918.)

New Jersey Supreme Court

CHARLES A. NUTTING,

*Prosecutor,**vs.*BOROUGH OF CALDWELL, a municipal corporation
of the State of New Jersey, and JOHN A.
BRADY,*Defendants.**On Certiorari.**Reasons.*

The prosecutor files the following reasons upon which he will rely for the reversal of the order under review in this case:

1. The finding or decision of the justice of the Supreme Court by whom the order under review was made that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were deprived of the right and opportunity to vote at the said election, was not justified nor reasonably supported by the stipulation of facts filed with the said justice on the hearing of the contest of the said election.

2. There was no evidence before said justice to support reasonably his finding or decision that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were deprived of the right and opportunity to vote at the said election.

3. All qualified voters, including those absent from the municipality in the military service of the United States were afforded the right and opportunity to vote at the said election.

4. All qualified voters of the municipality, including those absent therefrom in the military service of the United States, were given notice of the manner in which they are required by law to prepare and transmit their ballots, for the reason that all such voters are presumed to have knowledge of the provisions of chapter 150, Laws of 1918, whereby all such voters are authorized and permitted (in the event that they have not received an official ballot prior to the date of such election) to prepare and vote on the date of such election an unofficial ballot indicating thereon the proposition upon which they intend to vote.

Reasons.

5. Assuming that the finding or decision of the said justice that a number of qualified voters sufficient to change the result of the election, who were absent from the municipality in the military service of the United States, were deprived of the right and opportunity to vote at said election, was justified or reasonably supported by said stipulation, nevertheless such fact should not operate to invalidate the said election for the reason that it was impossible for the secretary of state to comply with the provisions of chapter 150 of the Laws of 1918 by ascertaining either from the adjutant general of New Jersey or from the adjutant general or other proper authority of the United States the names and post-office addresses of such qualified electors, as required by said statute. 10

6. Assuming that the finding or decision of the said justice that a number of qualified voters sufficient to change the result of the election, who were absent from the municipality in the military service of the United States, were deprived of the right and opportunity to vote at the said election, was justified or reasonably supported by said stipulation, nevertheless such fact should not operate to invalidate the said election for the reason that the failure of the secretary of state to comply with the provisions of said chapter 150 (even if it had been possible for him so to do) was a mere mistake or irregularity which should not be permitted to disfranchise innocent voters who have expressed their will on the question submitted at the said election. 20

7. Assuming that the finding or decision of the said justice that a number of qualified voters sufficient to change the result of the election, who were absent from the municipality in the military service of the United States, were deprived of the right and opportunity to vote at the said election, was justified or reasonably supported by said stipulation, nevertheless such fact should not operate to invalidate the said election for the reason that it does not appear that the failure of such qualified electors to vote, or to have an opportunity to vote, at said election, prevented a full expression of the will of the voters of said municipality. 30

8. Assuming that it was possible for the secretary of state to comply with the provisions of said chapter 150, nevertheless it does not appear that a sufficient number of qualified electors, who were absent from the municipality in the military service of the United States, and who might have voted at said election, would have voted in such a way as to change the result of said election. 40

9. Under the Constitution of the State of New Jersey the right of qualified electors, who are absent from the municipality in which they are living, in the military service of the United States, is limited to vote for persons to fill elective offices, and does not include the right to vote for such a proposition as was submitted at the said election. 50

10. Under the ruling of the Federal authorities charged with the conduct of the present war, qualified voters who are absent from the

BOROUGH OF CALDWELL CASE.

10 municipality in which they reside, in the military service of the United States, are not permitted to vote at special elections; and the right of any such voters to vote at such elections, which may have been given under the Constitution or laws of the State of New Jersey, is subject to and superseded by the rulings of such Federal authorities.

COLLINS & CORBIN,
Attorneys of Prosecutor.

Additional Reason.

20 The prosecutor files the following additional reason upon which he will rely for the reversal of the order under review in this case:

The statute entitled, "A supplement to an act entitled 'An act to regulate elections' approved April fourth, one thousand, eight hundred and ninety-eight" (being chapter 150, Laws of 1918), is in violation of the Constitution of the State of New Jersey in that it requires the secretary of state to distribute the envelopes containing the ballots of voters in the military service to the County Board of Elections in the county in which said voters reside, instead of providing for the return and canvass of the votes of such voters in the election district in which they respectively reside, as required by article II of
30 said Constitution.

COLLINS & CORBIN,
Attorneys of Prosecutor.

40

50

BOROUGH OF ROSELLE.

Harry S. Myers,

Prosecutor,

vs.

Borough of Roselle and Stanley McIntosh,
Defendants.

} On Certiorari.

CASE.

ROSELLE.

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Writ of Certiorari.

Writ of Certiorari.

(Returnable August 19, 1918.)

NEW JERSEY, ss.

10

(L. s.) The State of New Jersey to the Honorable James J. Bergen, Justice of the Supreme Court of the State of New Jersey, and to the Borough of Roselle, a municipal corporation of the State of New Jersey, and the clerk of said borough, GREETING:

We being willing for certain reasons to be certified of a certain order made by the Honorable James J. Bergen, Justice of the Supreme Court of the State of New Jersey, on the eighteenth day of July, 1918, setting aside a certain election in a proceeding entitled, "In the matter of the application of Stanley McIntosh to contest the validity of an election held in the Borough of Roselle, Union County, New Jersey, on Tuesday, May 21st, 1918, under the provisions of chapter 2 of the Laws of 1918," do hereby command you that the said order, together with all things touching and concerning the same, to our Supreme Court to be held at Trenton on the nineteenth day of August, 1918, you do certify and send, together with this writ, that therein may be done what of right and according to the laws and constitution of the State of New Jersey ought to be done.

20

WITNESS, WILLIAM S. GUMMERE, Chief Justice of our Supreme Court at Trenton aforesaid, this first day of August, 1918.

30

ENOCH L. JOHNSON,
Clerk.

COLLINS & CORBIN,
Attorneys.

Allocatur.

40

I allow this writ. Let it be sealed. Not to stay the order to be reviewed.

Dated August 1, 1918.

J. J. BERGEN,
Jus. Sup. Ct.

50

BOROUGH OF ROSELLE.

Return of Municipal Clerk.

To the Honorable Justices of the Supreme Court of Judicature of New Jersey.

10 In obedience to the command of this writ to Hon. James J. Bergen, Justice of the Supreme Court of the State of New Jersey, and to the Borough of Roselle, a municipal corporation of the State of New Jersey, and the clerk of said borough, directed, I, clerk of the Borough of Roselle, do send under seal to the Honorable Justices of the Supreme Court of Judicature of New Jersey the petition for a special election pursuant to chapter 2 of the laws of 1918 and my acts and the acts of the said borough in the holding of an election in accordance therewith, together with all things touching the same as fully as they remain of record in my office at the Borough of Roselle.

20 In WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said borough this 19th day of August, one thousand nine hundred and eighteen.

Borough Clerk.

The following petition was filed in my office on the 19th day of March, 1918.

“A PETITION

30 FOR AN ELECTION TO DETERMINE WHETHER OR NOT THE SALE OF INTOXICATING LIQUOR AS A BEVERAGE IN THE
BOROUGH OF ROSELLE
SHALL BE PROHIBITED.

To the MAYOR AND COUNCIL of the BOROUGH OF ROSELLE, in the County of Union, in the State of New Jersey.

40 We, the undersigned, respectfully represent that we are legal voters of the

BOROUGH OF ROSELLE

in the County of UNION, in the State of New Jersey, and that we hereby request you to order an election under the provisions of chapter two of the Laws of one thousand nine hundred and eighteen (1918), to determine whether or not the sale of intoxicating liquor as a beverage in the

BOROUGH OF ROSELLE

shall be prohibited.

50	RESIDENCE	DATE OF SIGNING
NAME	(Street and Number	PETITION
G. J. Banker	#400 Pine Street	March 2/18.”

Notice of Hearing.

There were eight other signers of the said petition. The following affidavit is at the foot of the petition:

“STATE OF NEW JERSEY, }
COUNTY OF UNION. } ss.

E. A. Albright, of Roselle, N. J., being duly sworn according to law, on his oath says that the signatures attached to the foregoing petition were made in his presence at the respective dates set opposite thereto, and that the several persons who made said signatures bear, to the best of his knowledge and belief, the names signed thereto by each of them respectively, and that said persons are legal voters of the municipality of Borough of Roselle.

10

E. A. ALBRIGHT.

Subscribed and sworn to before me this
14th day of March, A. D. 1918.

20

DAVID C. LEWIS,
(SEAL) *Notary Public.*”

Annexed to the said petition are eighteen other petitions in the same form and having 248 signers, making a total of 257 on all of the petitions which were annexed together and filed as stated above.

“NOTICE.

30

Pursuant to the provisions of chapter 2, Laws of 1918, you are hereby notified that I have set Friday, the 29th day of March, 1918, at 8:00 o'clock, in the council chamber, Borough Hall, for the mayor and council to meet, for the purpose of considering application and hearing any objections as to the legality of petitions filed with me requesting a special election to determine whether or not the sale of intoxicating liquors as a beverage in the Borough of Roselle, shall be prohibited.

Copy of notices mailed to C W. MacQuoid, J. L. Warner, E. H. Graves, F. G. Wright, E. C. Lass, J. C. Riley, W. J. Simpson at Roselle post-office, 3/23/18 at 8 o'clock A. M.”

40

“BOROUGH OF ROSELLE

PUBLIC NOTICE.

A PETITION having been filed with the clerk of the Borough of Roselle, making application for a special election under the provisions of chapter two of the Laws of 1918 to determine WHETHER OR NOT the sale of intoxicating liquor as a beverage in the Borough of Roselle shall be prohibited.

50

Now, therefore, I, J. F. Ostrander, clerk of the Borough of Roselle, hereby give notice that the mayor and council of the Borough of Roselle, County of Union, New Jersey, will meet on Friday, the 29th day of March, A. D. 1918, at eight o'clock in the evening of that day,

BOROUGH OF ROSELLE.

at the Borough Hall, Chestnut St., for the purpose of considering said application and hearing any objections as to the legality of such petition.

10

J. F. OSTRANDER,
Clerk of the Borough of Roselle.

The Spectator, Mar. 22, '18.

Copy of notice posted March 22nd, 1918, Bulletin Board

1st Ave. & Chestnut St.

2nd Ave. & Locust St.

2nd Ave. & Drake Ave.

4th Ave. & Locust St.

2nd Ave. & Walnut St.

20

J. F. OSTRANDER,
Clerk."

"BOROUGH OF ROSELLE

PUBLIC NOTICE.

30

A PETITION having been filed with the clerk of the Borough of Roselle, making application for a special election under the provisions of chapter two of the Laws of 1918 to determine WHETHER OR NOT the sale of intoxicating liquor as a beverage in the Borough of Roselle shall be prohibited.

Now, therefore, I, J. F. Ostrander, clerk of the Borough of Roselle, hereby give notice that the mayor and council of the Borough of Roselle, County of Union, New Jersey, will meet on Friday, the 29th day of March, A. D. 1918, at eight o'clock in the evening of that day, at the Borough Hall, Chestnut St., for the purpose of considering said application and hearing any objections as to the legality of such petition.

40

J. F. OSTRANDER,
Clerk of the Borough of Roselle.

The Spectator, Mar. 22, '18.

PROOF OF PUBLICATION.

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

50

I, Grover C. Kempson, of full age, being duly sworn, on my oath saith that I am a publisher in the office of The Spectator, a newspaper published in the Boroughs of Roselle and Roselle Park, in the County of Union, State of New Jersey, and that the attached notice was published in the said newspaper, The Spectator, on March 22, 1918, and again on March 29, 1918, making two insertions in all.

Minutes of March 29, 1918.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 29th day of March, A. D. 1918.

GROVER C. KEMPSON,
Editor the Spectator.

Sworn and subscribed to before me this 29 day of March, A. D. 1918. 10

GUY W. GORDON,
Attorney at Law of N. J.

“Special meeting of council called for Friday night, March 29th, 1918, adjourned to Saturday night, March 30th, at 9 o'clock.

An adjourned special meeting of the Borough Council was held in the Borough Hall Saturday night, March 30th, 1918.

Meeting called to order by the mayor at 9 o'clock. 20

On roll call the following councilmen answered to their names:

Warner	Graves
Lass	Riley
Simpson	

The clerk read the call for the meeting which was as follows:

Notice.

Pursuant to the provisions of chapter 2, Laws of 1918, you are hereby notified that I have set Friday, the 29th day of March, 1918, at 8 o'clock, in the council chamber, Borough Hall, for the mayor and council to meet, for the purpose of considering application and hearing any objections as to the legality of petitions filed with me requesting a special election to determine whether or not the sale of intoxicating liquors as a beverage in the Borough of Roselle, shall be prohibited. 30

Copy of notices were mailed to C. W. MacQuoid, J. L. Warner, E. H. Graves, F. G. Wright, E. C. Lass, J. C. Riley and W. J. Simpson at Roselle post-office, 3/23/18, at 8 o'clock A. M.

The clerk reported that notices of meeting had been mailed to the mayor and each member of council at the post-office, Roselle, March 23rd, at 8 o'clock A. M. That notice of meeting had been posted in five places in the borough and also advertised in the Spectator, Friday night, March 22nd, 1918. 40

The clerk reported that a petition for an election to determine whether or not the sale of intoxicating liquors as a beverage in the Borough of Roselle shall be prohibited had been filed with him March 19th, said petition contained 257 signers, 235 of the signers were found to be on the registry lists of the last election.

Councilman Lass offered the following resolution: 50

WHEREAS a petition for a special election to determine by ballot the question whether the sale of intoxicating liquor as a beverage in the Borough of Roselle shall be prohibited, has been filed with the clerk of this borough, and

BOROUGH OF ROSELLE.

WHEREAS the said petition had been signed by legal voters of the Borough of Roselle and the number of said legal voters signing said petition is more than thirty per cent. of the number of legal ballots cast in the said municipality at the last preceding election at which members of the General Assembly were elected, and

10 WHEREAS notice of this meeting was duly given to each member of the governing body and notice of public hearing was duly posted by the clerk of Borough of Roselle, in accordance with the law, calling a meeting at the Borough Hall in the Borough of Roselle at 8 o'clock P. M. on the 29th day of March, 1918, and

WHEREAS THE SAID MEETING WAS DULY CONVENED and adjourned to 9 o'clock P. M. on the 30th day of March, 1918, and

WHEREAS the mayor and council of the Borough of Roselle has examined the said petitions and find that they have been made and filed in accordance with the law.

20 IT IS THEREFORE ORDERED that a special election to determine by ballot the question whether the sale of intoxicating liquor as a beverage in the Borough of Roselle shall be prohibited shall be held in the Borough of Roselle on the 21st day of May, 1918.

Seconded by Councilman Riley and a roll call resulted as follows:

Ayes—Warner	Graves
Lass	Riley
Simpson	

30 There being no further business the meeting on motion of Councilman Simpson, seconded by Councilman Lass and duly carried

ADJOURNED.

J. F. OSTRANDER,
Clerk.

I hereby certify that the foregoing is a true & correct copy of the minutes of the special meeting of the mayor & council held Saturday night, Mch. 30, 1918.

J. F. OSTRANDER,
Clerk."

40

“BOROUGH OF ROSELLE

PUBLIC NOTICE OF SPECIAL ELECTION.

PUBLIC NOTICE is hereby given that on Tuesday, the 21st day of May, A. D. 1918, a

SPECIAL ELECTION

50 will be held in and for the Borough of Roselle, New Jersey, in accordance with chapter 2 of the Laws of the State of New Jersey for the year 1918, at which special election the following question will be submitted:

‘Shall the sale of intoxicating liquor as a beverage in the Borough of Roselle, County of Union, State of New Jersey, be prohibited.’

Proof of Publication.

Notice is further given that the District Boards of Registry and Election in and for the Borough of Roselle, New Jersey, will meet in the places hereinafter designated on said Tuesday, May 21st, A. D. 1918, between the hours of 6 A. M. and 7 P. M. for the purpose of conducting said special election.

The places of meeting of the Boards of Registry and Election are as follows:

First Election District:

Lorraine School, Linden avenue,

Second Election District:

Borough Hall, Chestnut street,

Third Election District:

Residence of D. Ratzman, Locust St.

Dated, May 3rd, 1918.

J. F. OSTRANDER,
Borough Clerk."

"Copy of notice posted

1—Bulletin Board

1—1st Ave. & Chestnut St.

1—2nd Ave. & Locust St.

1—3rd & Linden Ave.

1—4th Ave. & Locust St.

J. F. OSTRANDER."

"PROOF OF PUBLICATION.

COUNTY OF UNION, }
STATE OF NEW JERSEY. }^{ss.}

I, Grover C. Kempson, of full age, being duly sworn, on my oath saith that I am a publisher in the office of The Spectator, a newspaper published in the Boroughs of Roselle and Roselle Park, in the County of Union, State of New Jersey, and that the attached notice was published in the said newspaper, The Spectator, on May 3, 1918, and again on May 17, 1918, making two insertions in all.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 17 day of May, A. D. 1918.

GROVER C. KEMPSON.

Sworn and subscribed to before me this
17th day of May, A. D. 191

GUY W. GORDON,
Attorney at Law of New Jersey.

BOROUGH OF ROSELLE.

PUBLIC NOTICE OF SPECIAL ELECTION.

PUBLIC NOTICE is hereby given that on Tuesday, the 21st day of May, A. D. 1918, a

SPECIAL ELECTION

10 will be held in and for the Borough of Roselle, New Jersey, in accordance with chapter 2 of the Laws of the State of New Jersey for the Year 1918, at which special election the following question will be submitted:

“Shall the sale of intoxicating liquor as a beverage in the Borough of Roselle, County of Union, State of New Jersey, be prohibited.”

20 Notice is further given that the District Boards of Registry and Election in and for the Borough of Roselle, New Jersey, will meet in the places hereinafter designated on said Tuesday, May 21st, A. D. 1918, between the hours of 6 A. M. and 7 P. M. for the purpose of conducting said special election.

The places of meeting of the Boards of Registry and Election are as follows:

First Election District:

Lorraine School, Linden avenue,

Second Election District:

Borough Hall, Chestnut street,

30 Third Election District:

Residence of D. Ratzman, Locust St.

Dated May 3rd, 1918.

J. F. OSTRANDER,
Borough Clerk.

REPORT OF ELECTION.

40 The following is a true copy of a portion of the minutes of a regular meeting of the mayor and council of the Borough of Roselle held on the 21st day of June, 1918.

“The clerk reported as follows:

The election held on the 21st day of May in the year 1918 within and for the Borough of Roselle in the County of Union in the State of New Jersey, under chapter 2 of the Laws of 1918 resulted as follows:

50 Whole number of votes cast in favor of said Borough of Roselle prohibiting the sale of intoxicating liquor as a beverage was two hundred and seventy-three (273).

Whole number of votes cast against said Borough of Roselle prohibiting the sale of intoxicating liquors as a beverage was two hundred and sixty-three (263).

Majority in favor of prohibiting the sale of intoxicating liquors as a beverage was ten (10).”

*Petition for Contest of Election.***Return of Supreme Court Justice.**

In obedience to the command of this writ to me, James J. Bergen, justice of the Supreme Court of the State of New Jersey, directed, I DO HEREBY CERTIFY and send to our Supreme Court, at Trenton, within mentioned, the petition and affidavit, order fixing time and place of hearing, findings of fact and conclusions of law, and order setting aside election, whereof mention is within made, with all things touching and concerning the same, as fully and entirely as they remain on file in the county clerk's office of Union County, New Jersey.

10

J. J. BERGEN,
Justice of the Supreme Court.

20

Petition for Contest of Election.

To the Honorable James J. Bergen, justice of the Supreme Court of the State of New Jersey.

Your petitioner, Stanley McIntosh, respectfully shows:

1. That he is a legal voter of the Borough of Roselle, Union County, New Jersey, and resides at No. 208 Aldene road, in the Borough of Roselle, Union County, New Jersey, and that he voted at an election held at the said Borough of Roselle, on the 21st day of May, 1918, which said election was held under an act entitled, "An act to prohibit the sale, or offer, or exposure for sale, or furnishing or otherwise dealing in intoxicating liquor as a beverage and the granting of licenses therefor in any town, township, village, borough, city or other municipality (not a county) in this state where the legal voters thereof shall decide by a majority vote in favor of such prohibition or the continuance thereof," chapter of the Laws of 1918, page 14.

30

2. Your petitioner is informed that section 5 of chapter 150 of the Laws of 1918, page 437 at page 439, provides as follows:

40

"The secretary of state shall, at least twenty days prior to any primary, general or special election, forward to the county clerks, who are to prepare the ballots for such election, or, if such ballots are to be prepared by clerks of any municipalities, then to the clerks of such municipalities, the names and addresses of the qualified electors in the military forces of this state or of the United States, residing within the limits of such county or such municipality, as the case may be, and the clerk of such county or of such municipality, as the case may be, shall, as soon as possible, forward to each of such persons, by mail or otherwise, a printed or written list of the names of the candidates whose names will appear on the ballot for such election, together with the names of the nomination or office for which such person is a candidate; provided, however, that the names of the persons in the active military service of the United States

50

BOROUGH OF ROSELLE.

shall not be forwarded by the secretary of state to any county clerk or clerk of any municipality if the secretary of war of the United States shall object, but in such case, the secretary of state shall, as soon as possible, forward, by mail or otherwise, to the persons in active military service, as aforesaid, the names of the candidates to be voted for at such election.”

10 3. That the clerk of the Borough of Roselle did not at any time forward to each of the qualified voters in the military force of this state or of the United States residing within the limits of the said Borough of Roselle, any ballot containing the proposition submitted at the aforesaid election, nor did the secretary of state forward by mail or otherwise to the persons in active military service as aforesaid, a ballot containing the proposition submitted at the aforesaid election.

20 4. That at the said election 536 votes were cast—273 being YES and 263 being NO.

5. That there were 20 days prior to the aforesaid election about 100 qualified electors of the Borough of Roselle in active service in the military forces of this state or of the United States, who had a right to vote at the aforesaid election, and that none of the aforesaid qualified electors received the ballot of such election as provided by law.

30 Your petitioner therefore prays your Honor that such order may be made so that your petitioner may contest the validity of the aforesaid election according to the statute in such case made and provided.

STANLEY McINTOSH,
Petitioner.

ABE J. DAVID,
Attorney of Petitioner.

(Affidavit of Petitioner Attached.)

40 **Order Fixing Date of Hearing.**

Upon reading and filing the duly verified petition of the petitioner, IT IS, on this 28th day of May, 1918, hereby ordered that Saturday the 22nd day of June, 1918, at ten o'clock in the forenoon of said day, at my chambers in the Borough of Somerville, New Jersey, be and are hereby fixed as the time and place of the hearing on the aforesaid petition.

50 AND IT IS FURTHER ORDERED, that the petitioner forthwith publish in THE ELIZABETH EVENING TIMES, a newspaper published in the County of Union, New Jersey, a notice announcing the filing of such petition and stating the time and place at which the contest shall be heard by the undersigned, and shall also post copies of such notices

Notice of Hearing.

in the same manner as is provided for the posting of the notices for hearings on application for elections as set forth in section 2 of the chapter 2 of the Laws of 1918.

AND IT IS FURTHER ORDERED, that a true, but uncertified copy of the aforesaid petition and notice shall be served forthwith upon the clerk of the Borough of Roselle. 10

AND IT IS FURTHER ORDERED, that the petitioner within three days from the date hereof, shall deposit with the clerk of the County of Union the sum of two hundred and fifty dollars in cash as security for costs on these proceedings.

J. J. BERGEN,
Judge of the Supreme Court.

Notice of Hearing. 20

PLEASE TAKE NOTICE, that a duly verified petition in the above matter was this day filed by Stanley McIntosh of the Borough of Roselle, Union County, New Jersey, contesting the validity of an election held in the Borough of Roselle, Union County, New Jersey, on the twenty-first day of May, 1918, and that upon the filing of such petition, an order was made by his Honor, James J. Bergen, justice of the Supreme Court of the State of New Jersey, fixing Saturday, June 22nd, 1918, at 10 o'clock in the forenoon, at his office in the Borough of Somerville, County of Somerset, New Jersey, as the time and place at which said contest will be heard by said justice. 30

Yours, etc.,

ABE J. DAVID,
Attorney of Petitioner,
215 Broad street,
Elizabeth, N. J.

Dated May 28th, 1918.

40

50

BOROUGH OF ROSELLE.

New Jersey Supreme Court

UNION COUNTY.

10

In the matter of the application of STANLEY McINTOSH to contest the validity of an election held in the Borough of Roselle, Union County, New Jersey, on Tuesday, May 21st, 1918, under the provisions of chapter 2 of the Laws of 1918.

On Petition, etc.

20

Stipulation of Facts.

The following facts are stipulated between the parties:

30

1. That the petitioner is a legal voter of the Borough of Roselle, and voted at a special election held on the 21st day of May, 1918, which special election was held under an act entitled, "An act to prohibit the sale, or offer, or exposure for sale, or furnishing or otherwise dealing in intoxicating liquor as a beverage and the granting of licenses therefor in any town, township, village, borough, city or other municipality (not a county) in this state where the legal voters thereof shall decide by a majority vote in favor of such prohibition or the continuance thereof," chapter 2 of the Laws of 1918, page 14.

2. That at the said special election 536 votes were cast—273 being YES and 263 being NO.

40

3. That more than 20 days prior to the aforesaid special election an emergency existed whereby it became necessary to concentrate within and without the State of New Jersey legal voters for the purpose of defense against foreign enemies.

4. The secretary of state did not at least 20 days prior to the said special election, forward to the clerk of the Borough of Roselle the names and addresses of the qualified voters in the military forces of this state or of the United States, residing within the Borough of Roselle.

50

5. The secretary of state did not at any time prior to the said election forward to the qualified voters of the Borough of Roselle in the active military service a ballot for the purpose of obtaining the vote of such persons on the question to be submitted at the said special election. He did not send a printed copy of the act under which the said election was held or printed directions for voting and transmitting the ballot and he did not send to each of such qualified voters two envelopes, the outer of which was addressed to the secretary of state.

Stipulation of Facts.

6. The clerk of the Borough of Roselle did on the 14th day of May, 1918, one week before the said special election, send a sample ballot of the official ballot to be voted at said special election to each one of the qualified voters of the Borough of Roselle to his address in the said Borough of Roselle including all of the 50 electors who are in the military service as hereinafter stated. 10

7. The clerk of the Borough of Roselle did not forward to each of the qualified electors of the Borough of Roselle in the military service any ballot or other notice except as stated in paragraph numbered 6.

8. The clerk of the Borough of Roselle did post notice at least 15 days before the date of said special election in not less than 5 conspicuous places in the said municipality and did publish notice of the said election in at least one newspaper published in such municipality, as provided for in section 6 of chapter 2 of the Laws of 1918. 20

9. The number of voters registered and the number of votes cast in the Borough of Roselle at the primary and general elections in 1915, 1916 and 1917 were as follows:

Year.	Registered Voters	Primary Election	General Election
1915	846	450	490
1916	957	504	685
1917	1,016	651	652

10. Thirty days have elapsed since said special election and no votes from electors in the military service have been received and canvassed by the County Board of Electors and none of the said 50 electors hereinafter mentioned voted at the said special election. 30

11. At the date of the said special election and 20 days prior thereto, there were 50 qualified electors of the Borough of Roselle in the active service in the military force of this state or of the United States concentrated within and without the United States for the purpose of defense against foreign enemies.

12. That of the said 50 qualified electors in said service, 30 were then without the United States and 20 were within the United States. 40

13. That of the said 20 qualified electors in said service who were within the United States, 6 were stationed at Camp Dix, Wrightstown, N. J.; one at Fort Hamilton, Brooklyn, New York; one at Garden City, New York; one at Fort Totten, New York; one at Fort Wright, New York; one at Mineola, New York; one at U. S. Naval Academy, Annapolis, Md.; one at Springfield Arsenal, Springfield, Mass.; one at Newport, R. I.; two at Washington, D. C.; one at Brooklyn Navy Yard; two at Camp McClellan, Anniston, Ala., and one at Standard Aircraft Company, Elizabeth, N. J., who resides at his home in the Borough of Roselle. 50

14. Attached hereto is a copy of the testimony of Frank Transue, Esquire, chief clerk in the office of the secretary of state of the State

BOROUGH OF ROSELLE.

of New Jersey given on a similar application before Justice Kalisch in reference to the special election in the Township of Dover, New Jersey, which is made part of this stipulation.

This is respectfully submitted as the agreed stipulation of facts.

10 Dated July 3rd, 1918.

ABE J. DAVID,
Attorney of Petitioner.

GUY W. GORDON,
Attorney of the Borough of Roselle.

NEW JERSEY SUPREME COURT.

20

In the matter of the application of GEORGE W. HOLMAN, JR., to contest the validity of a special election held in the TOWNSHIP OF DOVER, in the County of Ocean and State of New Jersey, under chapter 2 of the Laws of one thousand nine hundred and eighteen.

30 Before SAMUEL KALISCH, Justice of the Supreme Court of the State of New Jersey.

FRANK TRANSUE, a witness produced on behalf of the petitioner, being duly sworn on his oath, says:

Direct examination by Maja Leon Berry, Esq.

Q What is your official position? A I am chief clerk in the office of the secretary of state of the State of New Jersey.

40 Q How long have you occupied that position? A For more than ten years.

Q Are you familiar with chapter 150 of the Laws of 1918? A I am.

Q Who, in the office of the secretary of state, had charge of the detail work of compliance with that act? A I did.

Q Did anyone else in the office do that work besides you? A I was assisted by one or two special agents.

Q They all came under your direct supervision? A All under my supervision.

50 Q Nothing was done by them of which you were not cognizant? A No.

Q You recall the provisions of section 2 of chapter 150, providing for the filing in the office of the secretary of state of an order by the governor? A I recall such a provision.

Q Was such an order filed? A The order was filed April 9, 1918.

Frank Transue, direct.

Q And have you a copy of that order there? A I have a copy of the order with me.

The order is introduced in evidence and marked Exhibit P. 1, and is as follows:

STATE OF NEW JERSEY,
EXECUTIVE DEPARTMENT.

April 9, 1918.

Hon. Thomas F. Martin,
Secretary of State,
Trenton.

Sir:

Under the provisions of chapter 150, Laws of 1918, and pursuant to opinion, filed by Herbert Boggs, Assistant Attorney General, consider this an order, that the provisions of this act shall be enforced and that I deem the existing emergency of such a nature as far as legal and practical, the collection of the soldiers' and sailors' vote as provided by law. The object of this order at this time is to permit all soldiers and sailors to exercise the right of suffrage at special elections. The question of procedure from a practical standpoint will undoubtedly require a conference which must be arranged in the near future, as many special elections are being called throughout the State under the provisions of chapters 2 and 3 of the Laws of 1918.

WALTER E. EDGE,
Governor.

(SEAL)

Attest:

FRANCIS E. CROASDALE,
Secretary to the Governor.

Endorsed:

Filed Apr. 9, 1918.

THOMAS F. MARTIN,
Secretary of State.

Q Mr. Transue, you knew of the proposed local option election in Dover Township, did you not? A I did; I gathered my information from a Newark newspaper.

Q Do you remember the date of that newspaper? A April 21, 1918.

Q You knew from the notice in that newspaper, that an election, a local option election was to be held in Dover Township on May 28, 1918? A I assumed such an election would be held on May 28, 1918.

Q Did you, within sixty days prior to that special election, obtain from the adjutant general of New Jersey, or the adjutant general or other proper authority of the United States, the names and post-

BOROUGH OF ROSELLE.

office addresses of the qualified voters of Dover Township, in active service in the military forces of the state or of the United States?

A I did not.

10 Q Did you, at least twenty days prior to May 28th, 1918, the date of said special election, forward by mail or otherwise, to each person, that is to each qualified elector of the Township of Dover, in active service in the military forces of the state or of the United States, a blank ballot conveniently prepared so that such person could vote at that special election? A I did not.

Q Did you, at least twenty days prior to this special election, forward to the clerk of Dover Township, the names and addresses of the qualified electors of Dover Township, in the military service of this state or of the United States? A I did not.

20 Q Did you, at least twenty days prior to May 28, 1918, send to each qualified voter of Dover Township in active service in the military forces of the state or of the United States, a printed copy of chapter 150 of the Laws of 1918, or printed directions for voting and transmitting the ballot, as required by that act? A I did not.

Q Did you, at least twenty days prior to May 28, 1918, mail to such qualified voters of Dover Township in active military service of the state or of the United States, two envelopes to be used by them in casting their ballots at the special election to be held on May 28, 1918? A I did not.

30 Q Has the secretary of war of the United States filed any objection in the office of the secretary of state, to the furnishing by you of the names and military addresses of the persons in active military service of the United States, to the municipal clerk? A He has not.

Q If no ballots or instructions for voting at this election were sent to the qualified electors of Dover Township in the military service of the United States, you received no ballots to be cast at that election? A We received no ballots.

Cross examination by Mr. Wilfred H. Jayne, Jr.

40 Q After you had received notice of a special election to be held in Dover Township on May 28, 1918, did you make any inquiry of the adjutant general of New Jersey, of the adjutant general or other proper authority of the United States, to ascertain the names and post-office addresses of every qualified elector in the Township of Dover, in active service in the military forces of the United States? A I did not.

50 Q I note in a communication addressed to the township clerk of the Township of Dover, bearing date April 22, 1918, purporting to have been despatched from the office of the secretary of state of New Jersey, appears the statement that—"It is impossible for this department to procure a list of the names and addresses of the soldiers and sailors of your municipality"—why was it impossible to procure the list of the names and addresses of the soldiers and sailors of the Township of Dover?

Objected to by Mr. Berry as not cross examination, the letter referred to not being in evidence, is immaterial and irrelevant.

Frank Transue, cross.

A We were advised by the adjutant general's department of the State of New Jersey that it was impossible to furnish any lists of names and military addresses of the soldiers and sailors of the State of New Jersey.

Q To your knowledge then the secretary of state of the State of New Jersey had, prior to the special election held in the Township of Dover on May 28, 1918, attempted to procure from the adjutant general of New Jersey, the names and post-office addresses of the qualified electors of the state, in active service in the military forces of the state and the United States? A He had. 10

Q What was the result of such an attempt? A The adjutant general and his chief clerk advised us that it was impossible to furnish such a list.

Q Accordingly, did you, or to your knowledge the secretary of state advise the clerk of the Township of Dover, prior to the special election held on May 28, 1918, of the inability of the secretary of state to procure the names and addresses of the qualified electors of that township who were in the active service of the military forces of the state or of the United States? A We did. 20

Objected to by Mr. Berry on the same ground as the above objection.

Q Have you a true copy of that communication? A I have.

Mr. Jayne. If counsel will not object to the presentation of a copy of this communication, because of the absence of the original, I will offer the copy of the communication in evidence. 30

Mr. Berry. Counsel does not object to the offer on the ground of its being a copy, but I do object on the ground that the communication is immaterial, irrelevant, non-competent, and is not offered in cross examination.

Q Has any correspondence been had between the secretary of state of the State of New Jersey and the adjutant general of New Jersey, concerning the names and post-office addresses of qualified electors of the state, in active service in the military forces of the state or of the United States? A There has not. 40

Q Is there any communication on file in the office of the secretary of state of the State of New Jersey, from the adjutant general of New Jersey, in which the secretary of state is advised that the adjutant general of New Jersey is unable to furnish the names and post-office addresses of qualified electors of this state in active service in the military forces of the state or of the United States? A No such communication on file.

Q Was any attempt made prior to May 28, 1918, to ascertain, in behalf of the secretary of state of New Jersey, from the adjutant general of the United States, the names and post-office addresses of the qualified electors of the Township of Dover, in active service in the military forces of the state or of the United States? A No attempt was made. 50

BOROUGH OF ROSELLE.

Q Prior to May 28, 1918, has the secretary of state of New Jersey endeavored to procure from the adjutant general, or from any other authority of the United States, the names and post-office addresses of qualified electors of New Jersey in active service in the military forces of the state or of the United States?

10

Objected to by Mr. Berry, as it is not directed to this election.

A We endeavored to procure information from the adjutant general's office of the State of New Jersey, but not from any other state or federal authority.

Q No attempt was made to ascertain the names and post-office addresses of the qualified electors of the state, prior to May 28, 1918, from the adjutant general of the United States, or from any other authority of the United States? A Not from the adjutant general of the United States or other proper authority of the United States.

20

Q To your knowledge, has the secretary of state of New Jersey been informed, prior to May 28, 1918, why the adjutant general of the United States or other proper authority of the United States, that the names and post-office addresses of the qualified electors of the State of New Jersey in active service in the military forces of the state or of the United States could not be obtained?

Objected to unless the question is directed to this particular election.

30 A Indirectly, yes.

Q Kindly explain how, indirectly. A The secretary of state has in his possession a communication from the war department at Washington, to the governor of New Jersey, in which it is stated that no assistance will be rendered by the war department in connection with the holding of special elections.

Q Assistance in what respect, as mentioned in this communication?

A The concluding paragraph of the letter referred to, reads as follows:

40

“While, as stated above, the soldier vote may be taken at primary or general elections within the borders of the United States without seriously interfering with military affairs, there can be no doubt that very serious interference would result if all the states were to be permitted to take the soldier vote whenever one of the several state governments should deem it advisable to call a special election. The application of the order above quoted must, consequently, be restricted to primary and general elections, as specified therein.”

50

Q Why, therefore, did not the secretary of state, at least twenty days prior to the special election held in the Township of Dover on May 28, 1918, forward to the clerk of that township, the names and addresses of the qualified electors of that township in the military forces of the state or the United States? A Because he did not have the names and addresses in his possession.

Frank Transue, re-direct—re-cross.

Q But the statute to which you have referred heretofore, provides the source from which such information should be acquired—why was not the information procured? A For the reason that we were unable to get it from the adjutant general's office, and were advised by the adjutant general's department that it would be impossible to procure it from the war department, and for the reasons stated in the letter of the war department to Governor Edge. 10

Re-direct by Mr. Berry.

Q You received no reply to this letter of yours of April 22, 1918, addressed to the township clerk of Dover Township, at Toms River? A I did not.

Q I want this clear. Do I understand you to have said that the secretary of state made no application to the adjutant general of the United States or to any other officer of the United States? A That is true. 20

Q No such application was made? A No such application was ever made.

Q The only application for the military addresses of these soldier voters was made to the adjutant general of the State of New Jersey? A That is correct so far as the state authorities were concerned; of course, we made application to municipal clerks.

Q In this particular case you made your application to the municipal clerk, but obtained no response? A That is right.

Q Now you, or rather the secretary of state never had any communication of any kind with the adjutant general of the United States in reference to this particular question? A No. 30

Q And the only information that you had as to the duties of the war department, is what comes to you through a third person? A Indirectly.

Q May I ask the date of that letter which you read an abstract from? A April 9, 1918.

Q And that is a letter addressed to the governor and not the secretary of state? A That is right.

Q When did you make application to the adjutant general of the State of New Jersey for these addresses? A I cannot recall the dates, but I spoke to both the adjutant general and his chief clerk on a number of occasions both prior to the date of the holding of the election in Dover Township? 40

Q Was it sixty days prior? A No, it was immediately after the passage of the act that I made the first inquiry.

Q You would not say positively that you had made the inquiry within sixty days prior to this election? A No, I could not say that; perhaps so. I do not know because we had no knowledge of any elections. 50

Re-cross examination by Mr. Jayne.

Q The communication from the adjutant general of the United States, addressed to the governor of New Jersey, from which you have

BOROUGH OF ROSELLE.

quoted in your previous testimony, was filed in your office when?

A April 12, 1918.

Q Was it because of information contained in this communication that the secretary of state of New Jersey made no direct inquiry of the adjutant general of the United States for the names and addresses of the qualified electors of the state in the military service?

A No, it was not.

Q Why was no such inquiry made?

Objected to on the ground that it does not make any difference why the inquiry was not made.

A Because of conversations had with the adjutant general's department of the State of New Jersey.

Q To what effect? A To the effect that in their opinion it would be just as impossible for them to furnish information as it was for the adjutant general of the state of New Jersey to furnish the information, and further that it would no doubt be regarded by the war department as interference with the routine duties of the war department; and further that the emergency order of the government was not filed in this office until April 9, 1918.

Q And you depended upon the opinion of the adjutant general of New Jersey? A We did.

Q Then since the filing of the order provided for in section 2 of chapter 150 in the office of the secretary of state, no attempt whatever has been made to obtain the military addresses of the qualified voters of Dover Township in the active military service of the state or of the United States, that is no application was made to the adjutant general of New Jersey or the adjutant general of the United States? A Subsequent to the filing of this order I made application to the attorney general's department of the State of New Jersey, but nothing whatever to the war department at Washington.

Sworn and subscribed before me this
twenty-fifth day of June, A. D. 1918.

*Findings and Conclusions.***Findings and Conclusions.**

(Filed July 9, 1918.)

Petition to contest validity of an election to determine whether intoxicating liquors may be licensed to be sold as a beverage in the Borough of Roselle, heard by a justice of the Supreme Court under a statute providing therefore. 10

Abe J. David, for petitioner contestant.

George S. Hobart and G. W. Gordon, Contra.

Findings of fact and conclusions of law by Bergen, J.

The facts I find to be, that a special election was held in the Borough of Roselle, May 21st, 1918, to determine whether the sale of intoxicating liquors should be prohibited therein; that there was a majority of ten in favor of prohibition; that more than twenty days prior to the election the Governor of the state had declared that an emergency to concentrate, within and without the state, legal voters as soldiers in the service of the United States, existed; that the secretary of state, of this state, did not furnish to the clerk of Roselle the names and addresses of the qualified voters of that borough then in the service of the United States as soldiers, nor, prior to the election, send to such voters any ballot or envelope for use at such election, or copy of the law under which the election was to be held, or printed directions for voting and transmitting a ballot; that the clerk of Roselle sent to each registered voter a sample ballot addressed to all qualified voters, including soldiers, to their home address in Roselle; that the holding of the election was duly advertised by posters and newspaper publication; that no votes were cast by absent soldiers of whom there were 50, there being 30 without the United States and 20 within, one residing in Roselle; that no attempt was made by the secretary of state to send either ballot or copy of the election law to these soldiers, nor was there any effort made by the clerk of the borough to send sample ballots to them, although the record shows that as to 20 of them, their addresses were ascertainable. 20
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My conclusion of law is that the duty of the secretary of state to send to each soldier, at least so far as their addresses were ascertainable, a copy of the law, or printed directions instructing the soldier in what manner to forward his vote, is mandatory, and, as the number of qualified voters in the service, whose addresses were ascertainable, exceeds the majority in favor of prohibition, their votes if cast might have changed the result, and the election not having been held according to law cannot be sustained. 40

As the pertinent questions presented in this case were dealt with by me in detail in my conclusion filed in *Thompson v. South Brunswick*, I will adopt that part of it applicable to this case which reads: 50

“The remaining question is whether qualified voters absent in the service of the United States as soldiers, were afforded an opportunity to vote at the special election. The constitution of the state seems to

BOROUGH OF ROSELLE.

10 limit the right of this class of electors to vote for persons to fill offices, and does not include voting for propositions of the character submitted at the election now contested, but the statute of 1918, P. L. 437, does require that an opportunity be afforded to such absent electors to vote for or against all propositions submitted to the electors. This statute prescribes the method of affording such electors an opportunity to vote on all propositions submitted to the voters, and, irrespective of any constitutional question, the right to have that opportunity is fixed by law and must be complied with.

20 The statute declares that the purpose of the act is to afford every qualified elector of this state, who is in active service in the military forces of this state, or of the United States, the right to vote at any primary, general or special election held in this state, or any subdivision thereof, notwithstanding the fact that such person may be absent on said election day from the election district in which he resides, and notwithstanding the fact that he may not be registered as required by law.

30 The act further provides that within sixty days prior to any such special election the secretary of state shall ascertain the names and post-office addresses of every qualified elector in active service in the military forces of the United States, and at least twenty days prior to such election forward by mail or otherwise, to each of such persons a blank ballot so prepared that any such person may vote for any candidate at such election, or on any question to be submitted to the voters at such election; that the ballots may contain the names of the candidates when known to him, or may provide that the person voting shall write the names of the persons, for whom he is voting upon the ballot, or may print some names and leave others blank; that the secretary of state shall at least twenty days before any election, forward to the county clerks or to the clerks of any municipalities who are to prepare the ballots for such election, the names and addresses of such absent electors who shall forward the same as soon as possible to each of such persons, provided, however, that the names of persons in active service shall not be forwarded by the secretary of state to such clerks if the secretary of war of the United States shall object, but in such case the secretary of state shall, as soon as possible, forward by mail or otherwise to such absent electors the name of the candidates to be voted for.

40 Section 6 of the act provides that the secretary of state shall send with each ballot a copy of the act, or printed directions for voting and transmitting a ballot as required by the act, he is also to send two envelopes addressed to him endorsed with the name of the organization to which such person belongs, and the home address of the voter.

50 Section 9 of the act provides that any such person who shall not have received an official ballot prior to the election shall be entitled to prepare and vote an unofficial ballot which he shall seal in a plain envelope and place it in an outer envelope which 'shall contain the information required for the outer envelope mentioned in the next preceding section.' Thus it will appear from this statute that the absent voter is required to prepare his ballot, if unofficial, according

Findings and Conclusions.

to the terms of the statute of which he is supposed to have a copy, or printed directions as to manner of transmitting his ballot, mailed to him by the secretary of state.

It is admitted in this case, that the secretary of state did not forward to any such absent electors, entitled to vote in this municipality, a copy of the law, or printed directions as to method of transmitting his ballot, and the presumption therefore is, and that presumption has not been overcome by proof, that the elector was not given any notice of the manner in which he is required by law to prepare and transmit his ballot, or of any copy of the proposed proposition, for the adoption or rejection of which he was entitled to vote.

It may be argued that to carry out this law would be very difficult, but if that be so the fault is with the law, and not with its construction. The right to vote is not an inherent right, it is either conferred by the Constitution or statute, and when, as in this case, the Legislature has undertaken to prescribe the method by which such class of electors may vote for a proposition as distinguished from officers, that method must be followed and the Court cannot set up its own judgment as the advisability of the legislation. Under this statute all these electors were entitled to vote, and it was made the duty of the secretary of state, or the clerk of the municipality in which the election was to be held to see that they had a proper form of ballot, or in default of that it was the duty of the secretary of state to furnish him with a copy of the law, or directions prescribed by the statute in order that he might be able to prepare his ballot and transmit it in such kind of an envelope as the law requires, and without a copy of the statute, or of the required printed directions, he had no notice, such as the law intends he shall have, of the character of the ballot he was entitled to prepare and use, nor was any effort made to give him any such notice."

In the case of Roselle borough it is admitted that no copy of the law or printed directions were sent to the absent voters, and therefore they were not able to prepare the kind of envelope in which to enclose an unofficial ballot as required by the statute, so that the soldier could not forward a proper unofficial ballot. The result is that the election under contest was not held as required by law so as to afford the soldier an opportunity to vote an unofficial ballot, if not provided with an official one, and must be set aside.

The statute does not provide that the municipality shall pay costs if the election is set aside in such a contest and none will be allowed.

The election will be set aside.

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BOROUGH OF ROSELLE.

Order Setting Aside Election.

10 The petitioner having filed his petition contesting an election held
in the Borough of Roselle, Union County, on May 21st, 1918, which
election was held under an act of the Legislature of New Jersey en-
titled, "An act to prohibit the sale, or offer, or exposure for sale,
or furnishing or otherwise dealing in intoxicating liquor as a bever-
age, and the granting of licenses therefore in any town, township,
village, borough, city or other municipality (not a county) in this
state, where the legal voters thereof shall decide by a majority vote
in favor of such prohibition or the continuance thereof," P. L. 1918,
and a day having been fixed for the hearing of such application, and
the same coming on to be heard in the presence of all parties in in-
20 terest, and it appearing from the proofs and stipulated facts that the
election was not held as required by the provisions of an act of the
Legislature of this state entitled, "A supplement to an act entitled 'an
act to regulate elections' approved April 4th, 1898," P. L. 1918, p.
437, which statute is applicable to the holding of such an election.

IT IS THEREFORE on this 18th day of July, 1918, ORDERED, that the
aforesaid election be set aside and for nothing holden.

IT IS FURTHER ORDERED, that the clerk of the County of Union repay
to the petitioner, or his counsel, the sum of money heretofore de-
posited with said clerk as security for any costs as provided in the
order under which the deposit was made, the entire sum deposited to
30 be refunded to the petitioner or his counsel, except fees or costs due
to said clerk under these proceedings.

J. J. BERGEN,
Justice of Supreme Court.

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*Reasons.***Reasons.**

Filed.

New Jersey Supreme Court

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HARRY S. MYERS,

*Prosecutor,**vs.*BOROUGH OF ROSELLE, a municipal corporation
of the State of New Jersey, and STANLEY
MCINTOSH,*Defendants.**On Certiorari.**Reasons.*

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The prosecutor files the following reasons upon which he will rely for the reversal of the order under review in this case:

1. The finding or decision of the Justice of the Supreme Court by whom the order under review was made that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were not afforded an opportunity to vote at the election, was not justified nor reasonably supported by the stipulation of facts filed with the said justice on the hearing of the contest of said election.

30

2. There was no evidence before said justice to support reasonably his finding or decision that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were not afforded an opportunity to vote at the said election.

3. According to the stipulation of facts filed with the said justice on the hearing of the contest of said election all qualified voters, including those absent from the municipality in the military service of the United States, were afforded an opportunity to vote at the said election.

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4. The finding or decision of the said Justice that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were not given any notice of the manner in which they are required by law to prepare and transmit their ballots, was not justified nor reasonably supported by the said stipulation for the reason that all such voters are presumed to have knowledge of the provisions of chapter 150, Laws of 1918, whereby all such voters are authorized and permitted (in the event that they have not received an official ballot prior to the date of said election) to prepare and vote on the date of such election an unofficial ballot indicating thereon the proposition upon which they intend to vote.

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BOROUGH OF ROSELLE.

5. There was no evidence before said Justice to support reasonably his finding or decision that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were not given notice of the manner in which they are required by law to prepare and transmit their ballots, for the reason that all such voters are presumed to have knowledge of the provisions of chapter 150, Laws of 1918, whereby all such voters are authorized and permitted (in the event that they have not received an official ballot prior to the date of such election) to prepare and vote on the date of such election an unofficial ballot indicating thereon the proposition upon which they intend to vote.

6. All qualified voters of the municipality, including those absent therefrom in the military service of the United States, were given notice of the manner in which they are required by law to prepare and transmit their ballots, for the reason that all such voters are presumed to have knowledge of the provisions of chapter 150, Laws of 1918, whereby all such voters are authorized and permitted (in the event that they have not received an official ballot prior to the date of such election) to prepare and vote on the date of such election an unofficial ballot indicating thereon the proposition upon which they intend to vote.

7. The finding or decision of the said Justice that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were not given any notice of the proposition for the adoption or rejection of which they were entitled to vote, is not justified nor reasonably supported by the said stipulation, for the reason that the advertisement of said election was made as required by law, and all persons, including such voters, are thereby presumed to have notice of such proposition.

8. There was no evidence before such Justice to support reasonably his finding or decision that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were not given notice of the proposition for the adoption or rejection of which they were entitled to vote, for the reason that the advertisement of said election was made as required by law, and all persons, including such voters, are thereby presumed to have notice of such proposition.

9. All qualified voters of the municipality, including those absent therefrom in the military service of the United States, were given notice of the proposition for the adoption or rejection of which they were entitled to vote, for the reason that the advertisement of said election was made as required by law, and all persons, including such voters, are thereby presumed to have notice of such proposition.

10. Assuming that the finding or decision of the said Justice that a number of qualified voters sufficient to change the result of the

Reasons.

election, who were absent from the municipality in the military service of the United States, were not afforded an opportunity to vote at the said election, was justified or reasonably supported by said stipulation, nevertheless such fact should not operate to invalidate the said election for the reason that it was impossible for the secretary of state to comply with the provisions of chapter 150 of the Laws of 1918 by ascertaining either from the adjutant general of New Jersey or from the adjutant general or other proper authority of the United States the names and post-office addresses of such qualified electors, as required by said statute. 10

11. Assuming that the finding or decision of the said Justice that a number of qualified voters sufficient to change the result of the election, who were absent from the municipality in the military service of the United States, were not afforded an opportunity to vote at the said election, was justified or reasonably supported by said stipulation, nevertheless such fact should not operate to invalidate the said election for the reason that the failure of the secretary of state to comply with the provisions of said chapter 150 (even if it had been possible for him so to do) was a mere mistake or irregularity which should not be permitted to disfranchise innocent voters who have expressed their will on the question submitted at the said election. 20

12. Assuming that the finding or decision of the said Justice that a number of qualified voters sufficient to change the result of the election, who were absent from the municipality in the military service of the United States, were not afforded an opportunity to vote at the said election, was justified or reasonably supported by said stipulation, nevertheless such fact should not operate to invalidate the said election for the reason that it does not appear that the failure of such qualified electors to vote, or to have an opportunity to vote, at said election, prevented a full expression of the will of the voters of said municipality. 30

13. Assuming that it was possible for the secretary of state to comply with the provisions of said chapter 150, nevertheless it does not appear that a sufficient number of qualified electors, who were absent from the municipality in the military service of the United States, and who might have voted at said election, would have voted in such a way as to change the result of said election. 40

14. Under the Constitution of the State of New Jersey the right of qualified electors, who are absent from the municipality in which they are living, in the military service of the United States, is limited to vote for persons to fill elective offices, and does not include the right to vote for such a proposition as was submitted at the said election. 50

15. Under the ruling of the Federal authorities charged with the conduct of the present war, qualified voters who are absent from the municipality in which they reside, in the military service of the United States, are not permitted to vote at special elections; and the

BOROUGH OF ROSELLE.

right of any such voters to vote at such elections, which may have been given under the Constitution or Laws of the State of New Jersey, is subject to and superseded by the rulings of such Federal authorities.

10

COLLINS & CORBIN,
Attorneys of Prosecutor.

Additional Reason.

The prosecutor files the following additional reason upon which he will rely for the reversal of the order under review in this case:

20 The statute entitled, "A supplement to an act entitled, 'An act to regulate elections,' approved April fourth, one thousand, eight hundred and ninety-eight" (being chapter 150, Laws of 1918), is in violation of the Constitution of the State of New Jersey in that it requires the secretary of state to distribute the envelopes containing the ballots of voters in the military service to the County Board of Elections in the county in which said voters reside, instead of providing for the return and canvass of the votes of such voters in the election district in which they respectively reside, as required by article II of said Constitution.

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COLLINS & CORBIN,
Attorneys of Prosecutor.

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BOROUGH OF DUNELLEN.

Ernest R. Brown,

Prosecutor,

vs.

Borough of Dunellen and Gustav Winter,
Defendants.

} On Certiorari.

CASE.

DUNELLEN.

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Writ of Certiorari.

Writ of Certiorari.

(Returnable Sept. 6, 1918.)

NEW JERSEY, ss.

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The State of New Jersey to the Honorable James J. Bergen, justice of the Supreme Court of the State of New Jersey, and to the Borough of Dunellen, a municipal corporation of the State of New Jersey, and the clerk of said Borough, GREETING:

We being willing for certain reasons to be certified of a certain order made by the Honorable James J. Bergen, justice of the Supreme Court of the State of New Jersey, on the seventeenth day of August, 1918, setting aside a certain election in a proceeding entitled, "In the matter of the application of Gustav Winter to contest the validity of an election held in the Borough of Dunellen, Union County, New Jersey, on Tuesday, June 11, 1918, under the provisions of chapter 2 of the Laws of 1918," do hereby command you that the said order, together with all things touching and concerning the same, to our Supreme Court to be held at Trenton on the twenty-fourth day of September, 1918, you do certify and send, together with this writ, that therein may be done what of right and according to the laws and Constitution of the State of New Jersey ought to be done.

20

Witness, WILLIAM S. GUMMERE, Chief Justice of our Supreme Court at Trenton aforesaid, this sixth day of August, 1918.

30

ENOCH L. JOHNSON,
Clerk.

COLLINS & CORBIN,
Attorneys.

Allocatur.

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I allow this writ. Let it be sealed. Not to stay the order to be reviewed.

Dated September 6th, 1918.

J. J. BERGEN,
Justice Supreme Court.

50

BOROUGH OF DUNELLEN CASE.

Return of Municipal Clerk.

10 In obedience to the command of this writ to it the Borough of Dunellen, a municipal corporation in the County of Middlesex and State of New Jersey, I, Wilson S. Frederick, clerk of the Borough of Dunellen aforesaid, do hereby certify to the honorable justices of the Supreme Court of Judicature of New Jersey, the said order, together with all things touching and concerning the same as fully and entirely as they remain before me, in the matter of the election held in said Borough of Dunellen, on Tuesday the elventh day of June, A. D. nineteen hundred and eighteen, under the provisions of chapter 2 of the Laws of 1918.

20 WILSON S. FREDERICK,
Borough Clerk of the Borough of Dunellen.

(SEAL)

(FORM OF PETITION.)

A petition for an election to determine whether or not the sale of intoxicating liquor as a beverage in the Borough of Dunellen shall be prohibited.

To the mayor and council of the Borough of Dunellen in the State of New Jersey.

30 We, the undersigned, respectfully represent that we are legal voters of the Borough of Dunellen in the County of Middlesex, in the State of New Jersey, and that we hereby request you to order an election under the provisions of chapter 2, of the Laws of one thousand nine hundred and eighteen, to determine whether or not the sale of intoxicating liquors as a beverage in Borough of Dunellen shall be prohibited.

No.	Name	Street Number	Date of Signing
1.	George K. Post	New Market Road	Mar. 19/18
2.	Christian G. Hurt	321 Madison Ave	Mar. 20 1918
3.	Henry L. Rankin	661 North Ave	Mar. 20 1918
40 4.	J. T. Sutphen	225 South Ave	Mar. 21 1918
5.			
6.	Jacob Vassler	Prospect Ave	March 25th
7.	George Burgard	Prospect Ave	March 26th

This is to certify that the attached is a true copy of the first page of the local option petition filed with me on the 30th day of March, 1918, which petition contains in all 247 names.

50 WILSON S. FREDERICK,
Borough Clerk.

(SEAL)

Affidavit of Borough Clerk.

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

Frank W. Smalley, being duly sworn according to law,, on his oath says that the signatures attached to the foregoing petition were made in his presence at the respective date set opposite thereto, and that the several persons who made said signatures, bear, to the best of his knowledge and belief, the names signed thereto by each of them respectively, and that said persons are legal voters of the municipality of Borough of Dunellen. 10

FRANK W. SMALLEY.

(SEAL)

Subscribed and sworn to before me this
 30 day of March, A. D. 1918.

CHARLES F. STARKER,
Notary Public. 20

AFFIDAVIT OF CLERK.

Wilson S. Frederick, clerk of the Borough of Dunellen, being duly sworn according to law on his oath says that he received on March 30th, 1918, a petition with 247 signatures as per form herewith which is a part copy of the original now on file.

In pursuant to chapter 2, section 2, Laws of 1918, the necessary notice was given to each member of the governing body also published April 4th and 11th in the "Weekly Call" as per proof of publication herewith and that proper notice was posted in five conspicuous places in different localities within the said borough. 30

Subsequent to meeting of the mayor and council, April 12th, the petition was examined as to its sufficiency and on April 19th, 1918, issued an order fixing the date June 11-18 for a special election which was duly advertised as per proof of publication herewith of which five copies were posted in five conspicuous places in different localities of said borough. 40

The election was held as advertised on June 11th, 1918, which resulted in the casting of 469 ballots, there being 260 "yes" and 209 "no" as per reports from the two election boards herewith which reports were duly summarized as per copy herewith the original being filed.

He further says and swears that the accompanying abstracts from the borough minutes of April 12th and 19th, 1918, are true copies of the resolutions and minutes authorizing the special election held June 11th, 1918. 50

WILSON S. FREDERICK.

(SEAL)

BOROUGH OF DUNELLEN CASE.

Subscribed and sworn to before me this
16th day of September, 1918.

CHARLES F. STARKER,
Notary Public of N. J.

10 (SEAL)

NOTICE OF HEARING.

PROOF OF PUBLICATION.

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

20 Ruth F. Voorhees, of full age, being sworn, on her oath saith, that she is one of the employees of the Dunellen Publishing Company, publishers of THE WEEKLY CALL, a newspaper printed and published in the Borough of Dunellen, Middlesex County, State of New Jersey, and that a notice, of which the annexed is a true copy, was published in said newspaper for the term of two times, once in each week successively, on each of the following days, to-wit: April 4, 11, 1918. Commencing on the fourth day of April, 1918.

RUTH F. VOORHEES.

30 Sworn and subscribed to before me this twenty-fifth day of June, A. D. one thousand nine hundred and eighteen.

GEORGE W. DAY,
Notary Public for New Jersey.

(SEAL)

PUBLIC NOTICE.

40 Pursuant to law, notice is hereby given to the voters of the Borough of Dunellen, County of Middlesex, and State of New Jersey, that a petition for an election to determine whether or not the sale of intoxicating liquors as a beverage in the Borough of Dunellen shall be prohibited, has been filed with the borough clerk, also that there will be a public hearing on said petition in the council chamber at the Borough Hall, North and Prospect avenues, Dunellen, N. J., on Friday, April 12, at 8 o'clock P. M.

50 The mayor and members of the borough council will be present at said hearing at the time and place appointed to hear any objection as to the legality of such petition.

WILSON S. FREDERICK,
Borough Clerk.

Dunellen, N. J.
April 2, 1918.

Minutes of April 12 and April 19, 1918.

MINUTES OF APRIL 12, 1918.

Minutes of April 12, 1918, public notice of local option petition was read as follows:

PUBLIC NOTICE.

Pursuant to law, notice is hereby given to the voters of the Borough of Dunellen, County of Middlesex, and State of New Jersey, that a petition for an election to determine whether or not the sale of intoxicating liquors as a beverage in the Borough of Dunellen shall be prohibited has been filed with the borough clerk, also that there will be a public hearing on said petition in the council chamber at the Borough Hall, North and Prospect avenues, Dunellen, N. J., on Friday, April 12, at 8 o'clock P. M. 10

The mayor and members of the borough council will be present at said hearing at the time and place appointed to hear any objection as to the legality of such petition. 20

WILSON S. FREDERICK,
Borough Clerk.

Dunellen, N. J.

April 2, 1918.

also the petition was read verbatim and by order of the mayor was referred to the councilman as a committee of the whole for inspection.

Upon motion of Ryan and Castner it was unanimously resolved that the members of the borough council proceed to inspect the petition and report as to the sufficiency of same on Friday, April 19th, 1918, at 8 o'clock P. M., all voting aye on roll call. 30

(SEAL)

I, Wilson S. Frederick, clerk of the Borough of Dunellen, of the County of Middlesex and State of New Jersey, do hereby certify that the above is a true copy of a resolution adopted at a meeting of the borough council, held on the 12th day of April, 1918.

WILSON S. FREDERICK,
Clerk. 40

(SEAL)

MINUTES, APRIL 19, 1918.

Mr. Jones reported that the local option petition presented by certain people asking for a special election on the liquor question had been carefully checked by the members of the council and was found to contain a sufficient number of signatures of legal voters necessary to call a special election. 50

Upon motion of Wrage and Runyon the following resolution was offered:

Whereas the borough council of the Borough of Dunellen, pursuant to notice from the borough clerk, met in the council chambers at 359 North avenue in the Borough of Dunellen on the 12th day of April,

BOROUGH OF DUNELLEN CASE.

1918, for the purpose of inspecting the petition praying for a special election to be held for the purpose of ascertaining whether the sale of intoxicating liquors shall be prohibited in the said borough and also to hear any objections that may be made thereto and to determine from such inspection and upon any evidence that may be submitted in the hearing whether or not said petition is sufficient.

(SEAL)

In the above mentioned place and hour the mayor and councilmen being duly present the said council proceeded to inspect said petition and to hear any objections to be made thereto, upon motion duly made and seconded it was moved that the inspection of the petition be continued until Friday, April 19th, 1918, at the council chambers, #359 North Ave. in the Borough of Dunellen. There were no objections made to the petition and the council duly adjourned until said last mentioned date. On April 19th, 1918, the council re-assembled and determined that the petition is sufficient in all respects and that it was signed by legal voters in number more than 30% of the legal ballots cast in said municipality at the preceding general election at which members of the General Assembly were elected, therefore be it Resolved—that said council does hereby forthwith issue an order for a special election to be held in said Borough of Dunellen, according to provisions of chapter 2 of the Laws of 1918, and for the purpose of determining by ballot the question whether the sale of intoxicating liquor as a beverage in such municipality shall be prohibited, said special election to be held on Tuesday, the 11th of June, 1918.

Upon roll call all voted "aye" except Mr. Ryan, who explained his vote.

The mayor declared the resolution adopted.

I, Wilson S. Frederick, clerk of the Borough of Dunellen, of the County of Middlesex and State of New Jersey, do hereby certify that the above is a true copy of a resolution adopted at a meeting of the borough council, held on the 19th day of April, 1918.

WILSON S. FREDERICK,
Clerk.

(SEAL)

NOTICE OF SPECIAL ELECTION.

PROOF OF PUBLICATION.

STATE OF NEW JERSEY, }
COUNTY OF MIDDLESEX. }

Ruth F. Voorhees, of full age, being duly sworn on her oath saith, that she is one of the employees of the Dunellen Publishing Company, publishers of THE WEEKLY CALL, a newspaper printed and published in the Borough of Dunellen, Middlesex County, State of New Jersey, and that a notice, of which the annexed is a true copy, was published

Notice of Special Election.

in said newspaper for the term of three times, once in each week successively, on each of the following days, to wit: May 23, 30, June 6, 1918.

Commencing on the twenty-third day of May, 1918.

RUTH F. VOORHEES.

10

Sworn and subscribed to before me this twenty-fourth day of June, A. D. one thousand nine hundred and eighteen.

GEORGE W. DAY,
Notary Public for New Jersey.

LEGAL NOTICES.

20

NOTICE OF SPECIAL ELECTION.

Notice is hereby given that a special election under the provisions of chapter 2, Laws of 1918, entitled "An act to prohibit the sale, or offer, or exposure for sale, or furnishing, or otherwise dealing in intoxicating liquor as a beverage and of granting of licenses therefor in any town, township, village, borough, city or other municipality (not a county) in the state where the legal voters thereof shall decide by a majority vote in favor of said prohibition of the continuance thereof," approved January 23, 1918, will be held in the Borough of Dunellen, County of Middlesex and State of New Jersey, on

30

TUESDAY, JUNE 11, 1918,

between the hours of 6 A. M. and 7 P. M., for the purpose of determining by ballot the question whether the sale of intoxicating liquor as a beverage in said Borough of Dunellen shall be prohibited or shall be permitted.

Said election shall be held at the following places:

In District No. 1, in said Borough, at the plumbing store of Otto M. Webber on North avenue.

40

In District No. 2, in said Borough, at the Borough Hall, North and Prospect avenues.

In pursuance of the provisions of the election laws of the state, notice is hereby given to the voters of the said Borough of Dunellen that the County Board of Elections will set at the Court House at New Brunswick, from 10 o'clock in the forenoon to five o'clock in the afternoon, June 6th and 8th, for the purpose of adding to the various registry lists of the Borough the names of any person or persons that may have been inadvertently or improperly left off the registry list, but any such person left off the list must apply to the County Board of Elections in person and present evidence that he is entitled to be placed on the registry list.

50

And notice is hereby given that on Tuesday, June 11, 1918, between the hours of 6 A. M. and 7 P. M., the several District Boards of

BOROUGH OF DUNELLEN CASE.

Registry and Election will meet at their respective meeting places for the purpose of conducting the special election as required by law.

Witness my hand this 20th day of May, nineteen hundred eighteen.

10 WILSON S. FREDERICK,
Borough Clerk.

STATEMENT OF RESULT OF ELECTION.

NOTICE.

FILL OUT AT ONCE THE ENCLOSED STATEMENT IN DUPLICATE AND IMMEDIATELY SEND BOTH TO THE MUNICIPAL CLERK.

20 A statement of the result of a Special Election held in the Second Election District, ——— Ward, in the Borough of Dunellen, N. J., on the eleventh day of June, 1918.

The whole number of names on the Registry Book is three hundred twenty-three (323).

The whole number of names on Poll Book is two hundred five (205).

The whole number of ballots rejected is three (3).

HOME RULE ACT.	(State number of votes received in words written out in full length and repeat in outer column in figures.)	
	Received.	Votes.
Shall the sale of intoxicating liquors as a beverage in the Borough of Dunellen be prohibited?	YES	One hundred three · 103
	NO	Ninety-nine 99

40 WE DO CERTIFY that the foregoing is a true, full and correct statement of the result of the election above mentioned, and the same exhibits the whole number of the names on the Registry Book, the Poll Book, and of the ballots rejected, and the number of votes given for or against the adoption of the above act.

IN WITNESS WHEREOF, we have hereunto set our hands, this eleventh day of June, 1918.

CORNELIUS M. RYNO,
J. T. SUTPHEN,
(SEAL)

FRANK W. SMALLEY,
G. SUMNER SMITH,
Board of Registry and Election.

Statement of Result of Election

NOTICE.

FILL OUT AT ONCE THE ENCLOSED STATEMENT IN DUPLICATE AND IMMEDIATELY SEND BOTH TO THE MUNICIPAL CLERK.

A statement of the result of a Special Election held in the First Election District, _____ Ward, in the Borough of Dunellen, N. J., on the eleventh day of June, 1918. 10

The whole number of names on the Registry Book is three hundred seventy-nine (379).

The whole number of names on the Poll Book is two hundred and sixty-eight (268).

The whole number of ballots rejected is one (1).

HOME RULE ACT.	(State number of votes received in words written out in full length and repeat in outer column in figures.)	Received.	Votes.
AN ACT—To prohibit the sale or offer or exposure for sale, or furnishing or otherwise dealing in intoxicating liquor as a beverage and the granting of licenses therefor in any town, township, village, borough, city or other municipality (not a county) in this state where the legal voters thereof shall decide by a majority vote in favor of such prohibition or the continuance thereof.	YES	One hundred and fifty-seven	157
AN ACT—To prohibit the sale or offer or exposure for sale, or furnishing or otherwise dealing in intoxicating liquor as a beverage and the granting of licenses therefor in any town, township, village, borough, city or other municipality (not a county) in this state where the legal voters thereof shall decide by a majority vote in favor of such prohibition or the continuance thereof.	NO	One hundred and ten	110

WE DO CERTIFY that the foregoing is a true, full and correct statement of the result of the election above mentioned, and the same exhibits the whole number of the names on the Registry Book, the Poll Book, and of the ballots rejected, and the number of votes given for or against the adoption of the above act. 50

BOROUGH OF DUNELLEN CASE.

IN WITNESS WHEREOF, we have hereunto set our hands, this eleventh day of June, 1918.

C. F. STARKER,
GEORGE D. HEAUME,
10 (SEAL)

EDWARD J. HERLICH,
CHAS. A. CORIELL,
Board of Registry and Election.

The Special Election held on the eleventh of June in the year 1918, within and for the Borough of Dunellen in the County of Middlesex in the State of New Jersey under chapter 2, Laws of New Jersey, 1918, resulted as follows:

Whole number of votes cast in favor of said Borough of Dunellen prohibiting the sale of intoxicating liquor as a beverage (260) two hundred and sixty.

20 Whole number of votes cast against said Borough of Dunellen prohibiting the sale of intoxicating liquor as a beverage (209) two hundred and nine.

Majority in favor of said Borough of Dunellen prohibiting the sale of intoxicating liquor as a beverage (51) fifty-one.

(SEAL)

W. S. FREDERICK,
Borough Clerk.

Dunellen, N. J., June 11, 1918.

30

Return of Supreme Court Justice.

STATE OF NEW JERSEY, }
COUNTY OF } ss.

40 I, JAMES J. BERGEN, Justice of the Supreme Court of the State of New Jersey, do hereby certify and return to the Supreme Court of Judicature of the State of New Jersey the petition and order, together with all things touching and concerning the same, as by the within writ to me directed, I am commanded.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of September, 1918.

J. J. BERGEN,
J. S. C.

50

*Petition for Contest of Election.***Petition for Contest of Election.**

To the Honorable James J. Bergen, Justice of the Supreme Court of the State of New Jersey.

The petition of Gustav Winter, residing in the Borough of Dunellen, County of Middlesex, State of New Jersey, respectfully shows: 10

1. That petitioner is a legal voter of the Borough of Dunellen, in the County of Middlesex, and was legally entitled to vote and did cast his vote at a special election held in the said Borough of Dunellen, on Tuesday, the 11th day of June, 1918, to determine whether or not the sale of intoxicating liquor as a beverage should be prohibited in said Borough of Dunellen, which election was held under the provisions of chapter 2 of the Laws of 1918.

2. That the result of the aforesaid election as determined was a majority of 51 votes in favor of YES. 20

3. That 20 days prior to the aforesaid election and at the time the said election was held, more than 100 qualified electors of the Borough of Dunellen were in active service in the military forces of this state or of the United States, who had a right to vote at the aforesaid election, and that none of the aforesaid qualified electors received the ballot of such election as provided by law.

4. That the clerk of the Borough of Dunellen did not at any time forward to each of the qualified voters in the military force of this state or of the United States residing within the limits of the said Borough of Dunellen, any ballot containing the proposition submitted at the aforesaid election, nor did the secretary of state forward by mail or otherwise to the persons in active military service as aforesaid, a ballot containing the proposition submitted at the aforesaid election. 30

5. Your petitioner is informed and believes that the said special election was not held at the place advertised for the holding of the aforesaid special election.

6. Your petitioner is informed and believes that the polling place where the said election was held in the aforesaid borough, was not opened at the time provided by law and as advertised, for some considerable time thereafter. 40

7. Your petitioner is informed and believes that the law under which the aforesaid election was held is unconstitutional and void.

Your petitioner therefore prays your Honor that such order may be made so that your petitioner may contest the validity of the aforesaid election according to the statute in such case made and provided.

Dated June 20th, 1918.

GUSTAV WINTER, 50
Petitioner.

ABE J. DAVID,
Attorney of Petitioner.

(Affidavit of Petitioner Attached.)

BOROUGH OF DUNELLEN CASE.

Order Fixing Date of Hearing.

10 Upon reading and filing the duly verified petition of the petitioner, it is, on this 20th day of June, 1918, hereby ordered that Saturday, the 13th day of July, 1918, at ten o'clock in the forenoon of said day, at my chambers in the Borough of Somerville, New Jersey, be and are hereby fixed as the time and place of the hearing on the aforesaid petition.

20 AND IT IS FURTHER ORDERED, that the petitioner forthwith publish in the DUNELLEN CALL, a newspaper published in the County of Middlesex, New Jersey, a notice announcing the filing of such petition and stating the time and place at which the contest shall be heard by the undersigned, and shall also post copies of such notices in the same manner as is provided for the posting of the notices for hearings on application for elections as set forth in section 2 of the chapter 2 of the Laws of 1918.

AND IT IS FURTHER ORDERED, that a true, but uncertified copy of the aforesaid petition and notice shall be served forthwith upon the clerk of the Borough of Dunellen.

AND IT IS FURTHER ORDERED, that the petitioner within four (4) days from the date hereof, shall deposit with the clerk of the County of Middlesex the sum of two hundred and fifty dollars in cash as security for costs on these proceedings.

J. J. BERGEN,

Judge of the Supreme Court.

Notice of Hearing.

PUBLIC NOTICE

NEW JERSEY SUPREME COURT
MIDDLESEX COUNTY.

40 In the matter of the application of GUSTAV WINTER to contest the validity of an election held in the Borough of Dunellen, Middlesex County, New Jersey, on Tuesday, June 11, 1918, under the provisions of chapter 2 of the Laws of 1918.

On Petition.

NOTICE.

50 PLEASE TAKE NOTICE that a duly verified petition in the above matter, was this day filed by Gustav Winter, of the Borough of Dunellen, Middlesex County, New Jersey, contesting the validity of an election held in the Borough of Dunellen, Middlesex County, New Jersey, on

Stipulation of Facts.

the eleventh day of June, 1918, and that upon the filing of such petition, an order was made by his Honor, James J. Bergen, Justice of the Supreme Court of the State of New Jersey, fixing Saturday, July 13, 1918, at 10 o'clock in the forenoon, at his office in the Borough of Somerville, County of Somerset, New Jersey, as the time and place at which said contest will be heard by said Justice. 10

Dated June 20, 1918.

Yours, etc.,

ABE J. DAVID,
Attorney of Petitioner,
215 Broad Street, Elizabeth, N. J.

20

Stipulation of Facts.

The following facts are stipulated between the parties:

1. That the petitioner is a legal voter of the Borough of Dunellen, and voted at a special election held on the 11th day of June, 1918, which special election was held under an act entitled, "An act to prohibit the sale or offer or exposure for sale, or furnishing or otherwise dealing in intoxicating liquor as a beverage and the granting of licenses therefor in any town, township, village, borough, city or other municipality (not a county) in this state where the legal voters thereof shall decide by a majority vote in favor of such prohibition or the continuance thereof," chapter 2 of the Laws of 1918, p. 14. 30

2. That at said special election 469 votes were cast—260 being YES and 209 being NO.

3. That more than 20 days prior to the aforesaid special election an emergency existed whereby it became necessary to concentrate within and without the State of New Jersey legal voters for the purpose of defense against foreign enemies. 40

4. The secretary of state did not at least 20 days prior to the said special election, forward to the clerk of the Borough of Dunellen the names and addresses of the qualified voters in the military forces of this state or of the United States, residing within the Borough of Dunellen.

5. The secretary of state did not at any time prior to the said election forward to the qualified voters of the Borough of Dunellen in the active military service a ballot for the purpose of obtaining the vote of such persons on the question to be submitted at the said special election. He did not send a printed copy of the act under which the said election was held or printed directions for voting and transmitting the ballot and he did not send to each of such qualified voters two envelopes, the outer of which was addressed to the secretary of state. 50

BOROUGH OF DUNELLEN CASE.

6. The clerk of the Borough of Dunellen did post notice at least 15 days before the date of said special election in not less than 5 conspicuous places in said municipality and did publish notice of the said election in at least one newspaper published in such municipality, as provided for in section 6 of chapter 2 of the Laws of 1918.

10

7. The clerk of the Borough of Dunellen did not forward to each of the qualified electors of the Borough of Dunellen in the military service any ballot or other notice.

8. At the date of the said special election and 20 days prior thereto, there were 54 qualified electors of the Borough of Dunellen in the active service in the military force of this state or of the United States concentrated within and without the United States for the purpose of defense against foreign enemies.

20

9. That of the 54 qualified electors in said service of the United States, 30 did receive due notice of the said special election to be held in the Borough of Dunellen in time to vote if they so desire, viz: That on twenty-fifth day of May, 1918, and on the first and eighth days of June, 1918, and on each Saturday of each week thereafter until after the said election had been held the Dunellen Call, a weekly newspaper printed and published in the Borough of Dunellen was mailed postage prepaid to each of the thirty of the said legally qualified voters in the military service of the United States and then stationed within the United States, which newspapers were mailed to the proper post-office address of each of the said legally qualified voters in the military service; that in the issues of said newspaper of the twenty-fifth day of May, 1918, and the thirtieth day of May, 1918, and the sixth day of June, 1918, legal notices of said election were printed and were mailed to the said thirty legally qualified voters in the military service of the United States on the dates first above mentioned.

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10. Thirty days have elapsed since said special election and no votes from electors in the military service have been received and canvassed by the County Board of Elections and none of the said 54 electors hereinbefore mentioned voted at the said special election.

40

11. That reasons numbers 5 and 6 in the petition are hereby waived.

12. That of the said 54 qualified electors in said service, 7 were then without the United States and 47 within the United States.

13. That the copies of the letters of the governor, the secretary of the state, the adjutant general of New Jersey, the secretary of war, the secretary of the navy and the adjutant general of the United States, in compliance with and in reference to said statute and respecting their acts in the premises may be used in this case and are hereto annexed and made a part of this stipulation.

50

14. Attached hereto is a copy of the testimony of Frank Transue, Esquire, chief clerk in the office of the secretary of state of the State

Order Setting Aside Election.

of New Jersey given on a similar application before Justice Kalisch in reference to the special election in the Township of Dover, New Jersey, which is made part of this stipulation.

It is respectfully submitted as the agreed stipulation of facts.

Dated July 27th, 1918.

10

Note: The letters referred to in paragraph 13 of the foregoing stipulation are the same as the letters marked Nos. 1, 2, 4, 5, 6, 9, 10, 11, 12, 13, as in the statement of the secretary of state printed in the record in the Montclair case.

The testimony referred to in paragraph 14 of the foregoing stipulation is the same as the testimony attached to the stipulation as printed in the record in the Roselle case.

ABE J. DAVID,

Attorney of Petitioner.

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RENE P. F. VON MINDEN,

Attorney of the Borough of Dunellen, Respondent.

GEO. S. HOBART,

Attorney for Ernest R. Brown and others, Intervenors.

Order Setting Aside Election.

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The petitioner having filed his petition contesting an election held in the Borough of Dunellen, Middlesex County, on June 11th, 1918, which election was held under an act of the Legislature of New Jersey entitled, "An act to prohibit the sale, or offer, or exposure for sale, or furnishing or otherwise dealing in intoxicating liquor as a beverage, and the granting of licenses therefore in any town, township, village, borough, city or other municipality (not a county) in this state, where the legal voters thereof shall decide by a majority vote in favor of such prohibition or the continuance thereof," P. L. 1918, and a day having been fixed for the hearing of such application, and the same coming on to be heard in the presence of all parties in interest, and it appearing from the proofs and stipulated facts that the election was not held as required by the provisions of an act of the Legislature of this state entitled, "A supplement to an act entitled, 'an act to regulate elections' approved April 4th, 1898," P. L. 1918, p. 437, which statute is applicable to the holding of such an election.

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IT IS THEREFORE on this 17 day of August, 1918, ORDERED, that the aforesaid election be set aside and for nothing holden.

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Reasons.

New Jersey Supreme Court

10

ERNEST R. BROWN,

*Prosecutor,**vs.*BOROUGH OF DUNELLEN, a municipal corporation
of the State of New Jersey, and GUSTAV
WINTER,*Defendants.**On Certiorari.**Reasons.*

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The prosecutor files the following reasons upon which he will rely for the reversal of the order under review in this case:

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1. The finding or decision of the justice of the Supreme Court by whom the order under review was made that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were not afforded an opportunity to vote at the election, was not justified nor reasonably supported by the stipulation of facts filed with the said justice on the hearing of the contest of said election.

2. There was no evidence before said justice to support reasonably his finding or decision that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were not afforded an opportunity to vote at the said election.

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3. According to the stipulation of facts filed with the said justice on the hearing of the contest of said election all qualified voters, including those absent from the municipality in the military service of the United States, were afforded an opportunity to vote at the said election.

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4. The finding or decision of the said justice that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were not given any notice of the manner in which they are required by law to prepare and transmit their ballots, was not justified nor reasonably supported by the said stipulation for the reason that all such voters are presumed to have knowledge of the provisions of chapter 150, Laws of 1918, whereby all such voters are authorized and permitted (in the event that they have not received an official ballot prior to the date of said election) to prepare and vote on the date of such election an unofficial ballot indicating thereon the proposition upon which they intend to vote.

Reasons.

5. There was no evidence before said justice to support reasonably his finding or decision that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were not given notice of the manner in which they are required by law to prepare and transmit their ballots, for the reason that all such voters are presumed to have knowledge of the provisions of chapter 150, Laws of 1918, whereby all such voters are authorized and permitted (in the event that they have not received an official ballot prior to the date of such election) to prepare and vote on the date of such election an unofficial ballot indicating thereon the proposition upon which they intend to vote. 10

6. All qualified voters of the municipality, including those absent therefrom in the military service of the United States, were given notice of the manner in which they are required by law to prepare and transmit their ballots, for the reason that all such voters are presumed to have knowledge of the provisions of chapter 150, Laws of 1918, whereby all such voters are authorized and permitted (in the event that they have not received an official ballot prior to the date of such election) to prepare and vote on the date of such election an unofficial ballot indicating thereon the proposition upon which they intend to vote. 20

7. The finding or decision of the said justice that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United State, were not given any notice of the proposition for the adoption or rejection of which they were entitled to vote, is not justified nor reasonably supported by the said stipulation, for the reason that the advertisement of said election was made as required by law, and all persons, including such voters, are thereby presumed to have notice of such proposition. 30

8. There was no evidence before such justice to support reasonably his finding or decision that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were not given notice of the proposition for the adoption or rejection of which they were entitled to vote, for the reason that the advertisement of said election was made as required by law, and all persons, including such voters, are thereby presumed to have notice of such proposition. 40

9. All qualified voters of the municipality, including those absent therefrom in the military service of the United States, were given notice of the proposition for the adoption or rejection of which they were entitled to vote, for the reason that the advertisement of said election was made as required by law, and all persons, including such voters, are thereby presumed to have notice of such proposition. 50

10. Assuming that the finding or decision of the said justice that a number of qualified voters sufficient to change the result of the

BOROUGH OF DUNELLEN CASE.

10 election, who were absent from the municipality in the military service of the United States, were not afforded an opportunity to vote at the said election, was justified or reasonably supported by said stipulation, nevertheless such fact should not operate to invalidate the said election for the reason that it was impossible for the secretary of state to comply with the provisions of chapter 150 of the Laws of 1918 by ascertaining either from the adjutant general of New Jersey or from the adjutant general or other proper authority of the United States the names and post-office addresses of such qualified electors, as required by said statute.

20 11. Assuming that the finding or decision of the said justice that a number of qualified voters sufficient to change the result of the election, who were absent from the municipality in the military service of the United States, were not afforded an opportunity to vote at the said election, was justified or reasonably supported by said stipulation, nevertheless such fact should not operate to invalidate the said election for the reason that the failure of the secretary of state to comply with the provisions of said chapter 150 (even if it had been possible for him to do so) was a mere mistake or irregularity which should not be permitted to disfranchise innocent voters who have expressed their will on the question submitted at the said election.

30 12. Assuming that the finding or decision of the said justice that a number of qualified voters sufficient to change the result of the election, who were absent from the municipality in the military service of the United States, were not afforded an opportunity to vote at the said election, was justified or reasonably supported by said stipulation, nevertheless such fact should not operate to invalidate the said election for the reason that it does not appear that the failure of such qualified electors to vote, or to have an opportunity to vote, at said election, prevented a full expression of the will of the voters of said municipality.

40 13. Assuming that it was possible for the secretary of state to comply with the provisions of said chapter 150, nevertheless it does not appear that a sufficient number of qualified electors, who were absent from the municipality in the military service of the United States, and who might have voted at said election, would have voted in such a way as to change the result of said election.

50 14. Under the Constitution of the State of New Jersey the right of qualified electors, who are absent from the municipality in which they are living, in the military service of the United States, is limited to vote for persons to fill elective offices, and does not include the right to vote for such a proposition as was submitted at the said election.

15. Under the ruling of the Federal authorities charged with the conduct of the present war, qualified voters who are absent from the municipality in which they reside, in the military service of the United States, are not permitted to vote at special elections; and the right

Additional Reason.

of any such voters to vote at such elections, which may have been given under the Constitution or laws of the State of New Jersey, is subject to and superseded by the rulings of such Federal authorities.

16. The stipulation of facts shows that thirty of the qualified voters of the municipality who were in the military service of the United States, received due notice of said election; and after deducting said thirty from the total number of qualified voters, namely, fifty-four, who were absent in the military service, the remaining number was insufficient to change the result of said election. 10

COLLINS & CORBIN,
Attorneys of Prosecutor.

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Additional Reason.

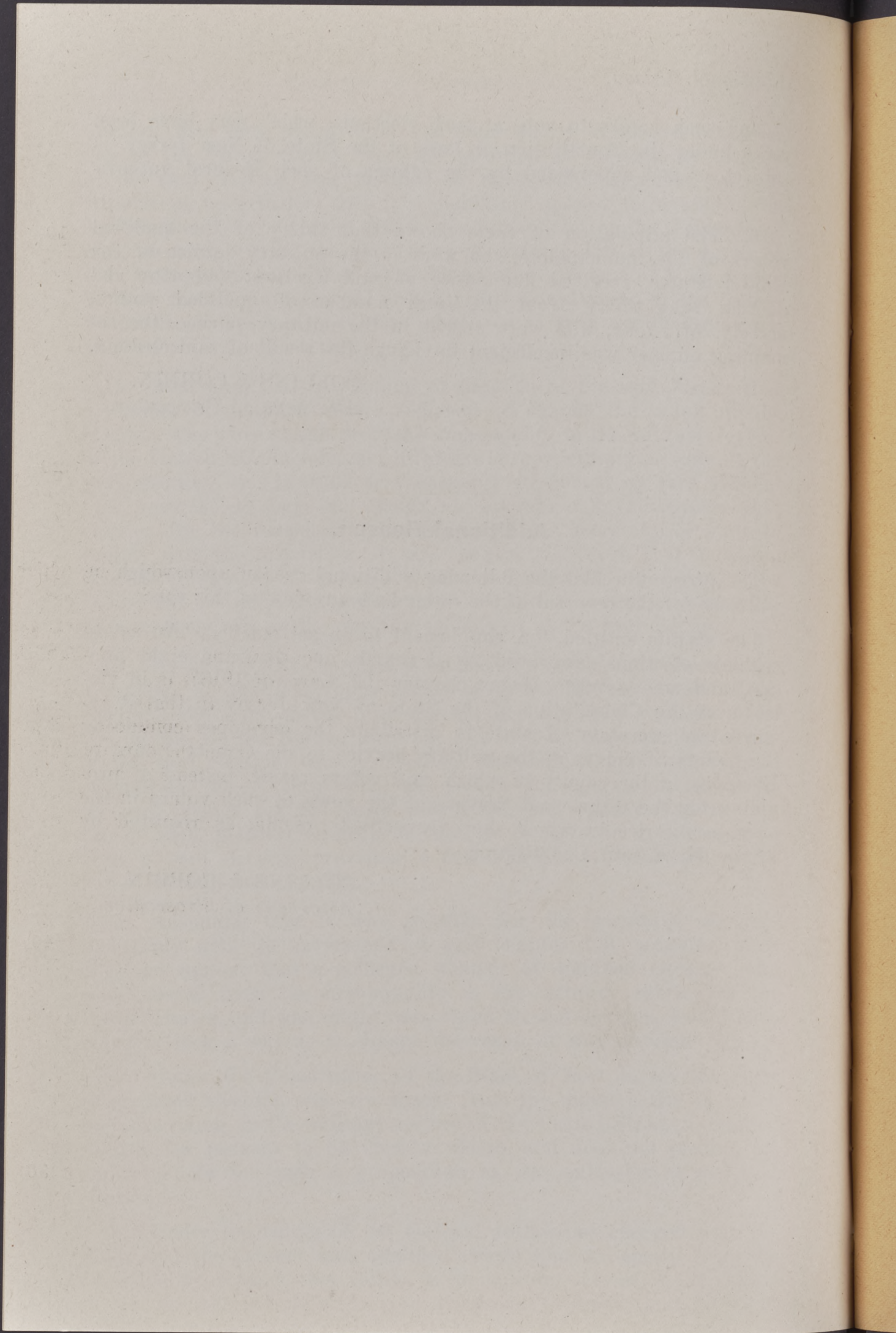
The prosecutor files the following additional reason upon which he will rely for the reversal of the order under review in this case:

The statute entitled, "A supplement to an act entitled, 'An act to regulate elections' approved April fourth, one thousand eight hundred and ninety-eight" (being chapter 150, Laws of 1918), is in violation of the Constitution of the State of New Jersey in that it requires the secretary of state to distribute the envelopes containing the ballots of voters in the military service to the County Board of Elections in the county in which said voters reside, instead of providing for the return and canvass of the votes of such voters in the election district in which they respectively reside, as required by article II of said Constitution. 30

COLLINS & CORBIN,
Attorneys of Prosecutor.

40

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TOWNSHIP OF DOVER.

William H. Fischer,

Prosecutor,

vs.

Township of Dover and George W.
Holman, Jr.,

Defendants.

} On Certiorari.

CASE.

TOWNSHIP OF DOVER.

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*Writ of Certiorari.***Writ of Certiorari.**

(Returnable September 24, 1918.)

NEW JERSEY, ss.

10

(L. s.) The State of New Jersey to the Honorable Samuel Kalisch, Justice of the Supreme Court of the State of New Jersey, and to the Township of Dover, in the County of Ocean, a municipal corporation of the State of New Jersey, and the clerk of said township, GREETING:

We being willing for certain reasons to be certified of a certain order made by the Honorable Samuel Kalisch, Justice of the Supreme Court of the State of New Jersey, on the day of July, 1918, setting aside a certain election in a proceeding entitled, "In the matter of the application of George W. Holman, Jr., to contest the validity of a special election held in the Township of Dover, in the County of Ocean and State of New Jersey, under chapter 2 of the Laws of one thousand nine hundred and eighteen," do hereby command you that the said order, together with all things touching and concerning the same, to our Supreme Court to be held at Trenton on the twenty-fourth day of September, 1918, you do certify and send, together with this writ, that therein may be done what of right and according to the laws and constitution of the State of New Jersey ought to be done.

20

30

WITNESS, WILLIAM S. GUMMERE, Chief Justice of our Supreme Court at Trenton aforesaid, this eleventh day of September, 1918.

ENOCH L. JOHNSON,
Clerk.

COLLINS & CORBIN,
Attorneys.

40

Allocatur.

I allow this writ. Let it be sealed. Not to stay the order to be reviewed.

Dated September 4, 1918.

SAMUEL KALISCH,
J. S. C.

50

TOWNSHIP OF DOVER CASE.

Return of Municipal Clerk.

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

10 I, Theodore Fischer, township clerk of the Township of Dover, in the County of Ocean, in obedience to the command of the writ hereto annexed, directed to me and the Township of Dover, in the County of Ocean, do hereby certify and send to you, the said Justices, all things touching and concerning a special election held in the Township of Dover, in the County of Ocean, under chapter 2 of the Laws of 1918, as fully and entirely as before me they remain, to-wit:

(1) Nineteen petitions for an election filed with me as township clerk on April 1, 1918.

20 (2) A written notice prepared by me as township clerk, on April 4, 1918, setting a time for a meeting of the township committee of the Township of Dover.

(3) A proof of the mailing of certified copies of said notice to each member of the township committee and of posting the same.

(4) A proof of publication of a certified copy of said notice in the New Jersey Courier, a newspaper printed and published in said Township of Dover.

30 (5) Determination of township committee of the Township of Dover of the sufficiency of petitions and order for a special election.

(6) Minutes of township committee of the Township of Dover, at a meeting held April 12, 1918.

(7) Proof of posting notices of special election and of causing same to be published.

(8) Proof of publication of notice of special election.

(9) Statement of result of special election in the eastern district of the Township of Dover, as filed with the township clerk and entered upon the records of the township clerk.

40 (10) Statement of result of special election in the western district of the Township of Dover, as filed with the township clerk and entered upon the records of the township clerk.

(11) The result of special election as entered upon the records of the township clerk.

as appears by the schedule hereunder written.

50 IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the said township, this day of July, nineteen hundred and eighteen.

Township Clerk:

Petition for Special Election.

FIRST SHEET.

A PETITION FOR AN ELECTION TO DETERMINE WHETHER OR NOT THE SALE OF INTOXICATING LIQUOR AS A BEVERAGE IN THE DOVER TOWNSHIP SHALL BE PROHIBITED.

To the Dover Township Committee of the Dover Township, in the County of Ocean in the State of New Jersey. 10

We, the undersigned, respectfully represent that we are legal voters of the Dover Township in the County of Ocean, in the State of New Jersey, and that we hereby request you to order an election under the provisions of chapter two of the Laws of one thousand nine hundred and eighteen (1918), to determine whether or not the sale of intoxicating liquor as a beverage in the Dover Township shall be prohibited.

NAME	RESIDENCE	DATE OF SIGNING	PETITION
1. Chas. McKelvey	Toms River, R. F. D.	March 2, 1918	
2. Wilbur B. McKelvey	Toms River, R. F. D.	March 2, 1918	
3. Harry McKelvey	Toms River, R. F. D.	March 2, 1918	
4. Ed. Hagaman	Toms River, R. F. D.	March 2, 1918	
5. Alexander Marlatt	Toms River, R. F. D.	March 2, 1918	
6. C. M. Tilton	Toms River, R. F. D.	March 2, 1918	
7. G. V. Hyers	Toms River, R. F. D.	March 2, 1918	
8. Edward W. Clayton	Toms River, R. F. D.	March 2, 1918	

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

Charles McKelvey, being duly sworn according to law, on his oath says that the signatures attached to the foregoing petition were made in his presence at the respective dates set opposite thereto, and that the several persons who made said signatures bear, to the best of his knowledge and belief, the names signed thereto by each of them respectively, and that said persons are legal voters of the municipality of Dover Township. 30

CHAS. McKELVEY. 40

Subscribed and sworn to before me this 4th day of March, A. D. 1918.

Jos. B. WILLITS,

Commissioner of Deeds for the State of New Jersey.

(The above petition consisted of 18 additional sheets, containing 291 additional names.) 50

TOWNSHIP OF DOVER CASE.

NOTICE OF HEARING.

NOTICE.

10 Notice is hereby given that the township committee of the Town-
 ship of Dover, in the County of Ocean, will meet at the Town Hall,
 Robbins street, in the Village of Toms River, within the corporate
 limits of the Township of Dover aforesaid, on Friday, the twelfth
 day of April, A. D. 1918, at 8 o'clock P. M., at which time the town-
 ship committee of said Township of Dover will consider the applica-
 tion by a petition of certain legal voters of said township for an
 election under the provisions of chapter two of the Laws of one
 thousand nine hundred and eighteen, to determine whether or not the
 sale of intoxicating liquor as a beverage in said township shall be
 20 prohibited. Said township committee at said meeting will also hear
 any objections as to the legality of said petition.

Dated April 4, 1918.

THEODORE FISCHER,

Township Clerk of the Township of Dover, in the County of Ocean.

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

30 Theodore Fischer, of full age, being duly sworn according to law,
 on his oath saith, that he is the township clerk of the Township of
 Dover, in the County of Ocean; and that on the fourth day of April,
 A. D. 1918, he mailed a copy of the annexed notice to each member
 of the Township Committee of the Township of Dover, in the County
 of Ocean, postage prepaid, addressed to the last known post-office
 address of each member, to wit:

David O. Parker,	Toms River, N. J.
John C. Post,	Toms River, N. J.
Anthony A. Dunham,	Toms River, N. J.

40 Deponent further saith that on the fourth day of April, A. D. 1918,
 he posted at least five of the annexed notices in not less than five
 conspicuous places in said Township of Dover, to wit:

Marion Inn.
 Ocean House.
 Riverside House.
 Store of Joseph Grover & Son.
 Toms River Post-Office.
 Barber shop of Theodore Fischer.
 Barber shop of U. S. Grant.

THEODORE FISCHER.

50 Sworn and subscribed to before me this
 twelfth day of April, A. D. 1918.

WM. HOWARD JEFFREY,
Attorney at Law of New Jersey.

Notice of Hearing.

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

William H. Fischer, of full age, being duly sworn according to law, on his oath saith, that he is the editor and publisher of the New Jersey Courier, a newspaper printed and published in the Township of Dover, in said County of Ocean; that in the issue of said newspaper of April 5, 1918, there was published a notice of which the annexed is a true copy.

10

WM. H. FISCHER.

Sworn and subscribed to before me this
 twelfth day of April, A. D. 1918.

WM. HOWARD JEFFREY,
Attorney at Law of New Jersey.

20

NOTICE.

Notice is hereby given that the Township Committee of the Township of Dover, in the County of Ocean, will meet at the Town Hall, Robbins street, in the Village of Toms River, within the corporate limits of the Township of Dover aforesaid, on Friday, the twelfth day of April, A. D. 1918, at 8 o'clock P. M., at which time the Township Committee of said Township of Dover will consider the application by a petition of certain legal voters of said township for an election under the provisions of chapter two of the laws of one thousand nine hundred and eighteen, to determine whether or not the sale of intoxicating liquor as a beverage in said township shall be prohibited. Said Township Committee at said meeting will also hear any objections as to the legality of said petition.

30

Dated April 4, 1918.

THEODORE FISCHER,
Township Clerk of the Township of Dover, in the County of Ocean.

40

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

I, Theodore Fischer, township clerk of the Township of Dover, in the County of Ocean, do hereby certify that the above is a true copy of a written notice setting a time for a meeting of the Township Committee of said Township of Dover, prepared by me in accordance with the provisions of chapter 2, Laws of 1918, approved January 29, 1918.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Township of Dover, this fourth day of April, A. D. one thousand nine hundred and eighteen.

50

THEODORE FISCHER,
Township Clerk of the Township of Dover, in the County of Ocean.
 (L. S.)

TOWNSHIP OF DOVER CASE.

TOMS RIVER, N. J., April 12, 1918.

The Township Committee of the Township of Dover, in the County of Ocean, met at the Town Hall, Robbins street, in the Village of Toms River, in the Township of Dover, on the above date, at 8 o'clock P. M., pursuant to the following notice:

NOTICE.

Notice is hereby given that the Township Committee of the Township of Dover, in the County of Ocean, will meet at the Town Hall, Robbins street, in the Village of Toms River, within the corporate limits of the Township of Dover aforesaid, on Friday, the twelfth day of April, A. D. 1918, at 8 o'clock P. M., at which time the Township Committee of said Township of Dover will consider the application by a petition of certain legal voters of said township for an election under the provisions of chapter two of the laws of one thousand nine hundred and eighteen, to determine whether or not the sale of intoxicating liquor as a beverage in said township shall be prohibited. Said Township Committee at said meeting will also hear any objections as to the legality of said petition.

Dated April 4, 1918.

THEODORE FISCHER,

Township Clerk of the Township of Dover, in the County of Ocean.

Present: Committeemen Anthony A. Dunham, John C. Post and David C. Parker.

The Township Clerk presented the application by petition of certain legal voters of the Township of Dover for an election under the provisions of chapter two of the laws of one thousand nine hundred and eighteen, to determine whether or not the sale of intoxicating liquor as a beverage in said township shall be prohibited. The petitions were read. The committee proceeded to compare the signatures on said petitions with the registry lists of the last general election for said township.

The committee signed and filed with the township clerk a determination and order of which the following is a true copy:

Whereas, There has been heretofore filed with the clerk of the Township of Dover, in the County of Ocean, a petition of certain legal voters of said township for an election under the provisions of chapter II. of the laws of one thousand nine hundred and eighteen, to determine whether or not the sale of intoxicating liquor as a beverage in said township shall be prohibited; and

Whereas, The clerk of said township did prepare a written notice setting a time for a meeting of the Township Committee of the Township of Dover to consider the application by petition aforesaid, and hear any objections as to the legality of said petition; and

Whereas, Pursuant to said notice, a certified copy of which was mailed to each member of the Township Committee of the Township of Dover and posted and published as required by law, the Township

Minutes of April 12, 1918.

Committee of the Township of Dover has met at the time and place prescribed in said notice and has inspected the petition, no objections having been made thereto, and being satisfied from such inspection of said petition that the said petition is sufficient; now,

Therefore, the Township Committee of the Township of Dover, in the County of Ocean, do, on this twelfth day of April, A. D. 1918, hereby determine that the said petition is sufficient, and do find that said petition was signed by legal voters in numbers more than thirty per centum of the number of legal ballots cast in said Township of Dover at the last preceding election at which members of the General Assembly were elected. 10

And the Township Committee of the Township of Dover, in the County of Ocean, do hereby order that a special election be held in said Township of Dover to determine by ballot the question whether the sale of intoxicating liquor as a beverage, in said Township of Dover, shall be prohibited; 20

And it is further ordered that the date of said special election be, and the same is hereby fixed for Tuesday, the twenty-eighth day of May, A. D. 1918.

And it is further ordered that the clerk of said Township of Dover shall, at least fifteen days before the date of said special election, post in not less than five conspicuous places in said Township of Dover a notice stating the date of said election and the question to be submitted thereat; such notice shall also be published by said Clerk at least once in a newspaper published in said Township of Dover. Said clerk shall also print and distribute to the various district boards of registry and election a sufficient supply of ballots, which ballots shall be numbered, shall contain the signature of the clerk printed thereon, and no ballot shall be taken from the polling places or distributed under any pretext whatever. Such ballots shall be printed and distributed at the expense of the municipality. The district boards of registry and election in the several districts of the Township of Dover shall conduct said special election; the polls shall be opened and closed at the time fixed by law for opening and closing the polls at the election for members of the General Assembly, and said special election shall be conducted, and the vote cast therein shall be counted and canvassed, so far as practicable, in the same manner as required by law for conducting elections for members of the General Assembly, and the members of said boards of registry and election shall receive the same compensation from the Township of Dover for said special election as in the case of other special elections. The registry for said special election shall be the registry lists containing the names of those persons qualified to vote at the last preceding general election at which members of the General Assembly were elected. 30 40 50

This determination and this order is made by the Township Committee of the Township of Dover, in the County of Ocean, under the provisions of chapter II. of the laws of one thousand nine hundred and eighteen, entitled "An act to prohibit the sale, or offer, or exposure for sale, or furnishing or otherwise dealing in intoxicating

TOWNSHIP OF DOVER CASE.

liquor as a beverage and the granting of licenses therefor in any town, township, village, borough, city or other municipality (not a county) in this state where the legal voters thereof shall decide by a majority vote in favor of such prohibition or the continuance thereof," and said special election is to be held and conducted in accordance with the provisions of said act, notwithstanding any omissions herein contained.

JOHN C. POST,
D. O. PARKER,

his
ANTHONY X A. DUNHAM,
mark

*Township Committee of the Township of Dover, in the
County of Ocean.*

Upon motion the committee adjourned.

THEODORE FISCHER,
Township Clerk.

NOTICE OF SPECIAL ELECTION.

Take notice, that pursuant to an order of the Township Committee of the Township of Dover, in the County of Ocean, bearing date April 12, 1918, a special election will be held within the territorial limits of said Township of Dover, on Tuesday, May 28, 1918, between the hours of six o'clock A. M. and seven o'clock P. M. of said day, at which election there will be submitted to the legal voters of said Township of Dover, the question whether the sale of intoxicating liquor as a beverage in said Township of Dover shall be prohibited. Said question to be submitted thereat shall be in the following form:

40	Shall the sale of intoxicating liquor as a beverage in the Township of Dover, in the County of Ocean be prohibited?	Yes.	
		No.	

Said election will be conducted at the time aforesaid by the Boards of Registry and Election of the Township of Dover at the following places:

West District, Veeder Hall, Main street, Toms River, New Jersey.

East District, Town Hall, Robbins street, Toms River, New Jersey.

Said special election shall be conducted, and the vote cast therein shall be counted and canvassed, so far as practicable, in the same manner as required by law for conducting elections for members of the general assembly. The registry for said special election held under the provisions of this act shall be the registry lists containing the names of those persons qualified to vote at the last pre-

Notice of Special Election.

ceding general election at which members of the general assembly were elected.

Said election has been ordered and this notice is given and the election will be held and in all things pertaining thereto, will be conducted according to the provisions of chapter II. of the Laws of 1918. Dated April 19, 1918.

10

THEODORE FISCHER,
*Township Clerk of the Township of Dover,
in the County of Ocean.*

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

Theodore Fischer, of full age, being duly sworn according to law, upon his oath saith; that he is and has been for a number of years last past the township clerk of the Township of Dover, in the County of Ocean; and that as such township clerk, on the nineteenth day of April, A. D. 1918, he posted in not less than five conspicuous places in said Township of Dover, to wit:

20

Ocean House, Main street, Toms River, N. J.

Riverside House, Main street, Toms River, N. J.

Marion Inn, Water street, Toms River, N. J.

U. S. Grant's Barber Shop, Main street, Toms River, N. J.

Theodore Fischer's Barber Shop, Main street, Toms River, N. J.

Store of Joseph Grover & Son, Main street, Toms River, N. J.

30

Store of Alonzo Hyers, Water street, Toms River, N. J.

a notice, of which the annexed is a true copy.

Deponent further saith, that he also published in the New Jersey Courier, a newspaper published in said Township of Dover, a copy of annexed notice, in the issues of April 19th and April 26th, 1918, of said newspaper.

THEODORE FISCHER.

Sworn and subscribed before me this
31st day of May, A. D. 1918.

40

WILLIAM HOWARD JEFFREY,
Attorney at Law of New Jersey.

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

William H. Fischer, of full age, being duly sworn according to law, upon his oath saith: that he is the editor and publisher of the New Jersey Courier, a newspaper published in the Township of Dover, in the County of Ocean aforesaid; that there was published in said newspaper in the issues of April 19th, 1918, and April 26th, 1918, a notice, of which the annexed is a true copy as taken from said newspaper.

50

WM. H. FISCHER.

TOWNSHIP OF DOVER CASE.

Sworn and subscribed before me, this
31st day of May, A. D. 1918.

WILLIAM HOWARD JEFFREY,
Attorney at Law of New Jersey.

10

STATEMENT OF RESULT.

A statement of the result of a special election held in the eastern election district of the Township of Dover, in the County of Ocean, in the State of New Jersey, under chapter 2 of the Laws of one thousand nine hundred and eighteen:

	The whole number of names on the registry list is	
	Three Hundred and Sixty Nine	(369)
	The whole number of names on the poll book is	
20	Two Hundred and Fifty Nine	(259)
	The whole number of ballots rejected is	
	Three	(3)
	Whole number of votes cast in favor of said Township of Dover, prohibiting the sale of intoxicating liquor as a beverage	
	One Hundred and Thirty Five	(135)
	Whole number of votes cast against said Township of Dover, prohibiting the sale of intoxicating liquor as a beverage	
	One Hundred and Twenty One	(121)
30	Majority in favor of prohibiting the sale of intoxicating liquor as a beverage	
	Fourteen	(14)

We do certify that the foregoing is a true, full and correct statement of the result of the election above mentioned, and that the same exhibits the whole number of the names on the poll book and the ballots rejected.

40 In witness whereof, we have hereunto set our hands this twenty-eighth day of May, in the year of our Lord, one thousand nine hundred and eighteen.

W. BURTIS HAVENS,
LEROY THOMAS,
ZACH HANKINS,
HENRY M. DUNHAM,

*Board of Registry and Election of the Eastern
District of the Township of Dover.*

STATEMENT OF RESULT.

50

A statement of the result of a special election held in the western election district of the Township of Dover, in the County of Ocean, in the State of New Jersey, under chapter 2 of the Laws of one thousand nine hundred and eighteen:

The whole number of names on the registry list is
Four Hundred and Sixty Nine (469)

Statement of Result of Election.

The whole number of names on the poll book is Three Hundred and Nineteen	(319)	
The whole number of ballots rejected is Nine	(9)	
Whole number of votes cast in favor of said Township of Dover, prohibiting the sale of intoxicating liquor as a beverage		10
One Hundred and Fifty Six	(156)	
Whole number of votes cast against said Township of Dover, prohibiting the sale of intoxicating liquor as a beverage		
One Hundred and Fifty Four	(154)	
Majority in favor of prohibiting the sale of intoxicating liquor as a beverage		
Two	(2)	

We do certify that the foregoing is a true, full and correct statement of the result of the election above mentioned, and that the same exhibits the whole number of the names on the poll book and the ballots rejected. 20

In witness whereof, we have hereunto set our hands this twenty-eighth day of May, in the year of our Lord, one thousand nine hundred and eighteen.

MARK BAILEY,
EUGENE HAVEN,
EDWARD M. GARNAR,
W. F. HERBERT, *Clerk.*

30

*Board of Registry and Election of the Western
District of the Township of Dover.*

The election held on the twenty-eighth day of May, in the year nineteen hundred and eighteen, within and for the Township of Dover, in the County of Ocean, under chapter 2 of the Laws of one thousand nine hundred and eighteen, resulted as follows:

Whole number of votes cast in favor of said Township of Dover, in the County of Ocean, prohibiting the sale of intoxicating liquor as a beverage, two hundred and ninety-one (291). 40

Whole number of votes cast against said Township of Dover, in the County of Ocean, prohibiting the sale of intoxicating liquor as a beverage, two hundred and seventy-five (275).

Majority in favor of prohibiting the sale of intoxicating liquor as a beverage in the Township of Dover, in the County of Ocean, sixteen (16).

In witness whereof, I have hereunto set my hand this twenty-eighth day of May, A. D. nineteen hundred and eighteen. 50

THEODORE FISCHER.
*Township Clerk of the Township of
Dover, in the County of Ocean.*

TOWNSHIP OF DOVER CASE.

Return of Supreme Court Justice.

I, Samuel Kalisch, justice of the Supreme Court of the State of New Jersey, do hereby make return to the within writ as I am commanded.

10

SAMUEL KALISCH,
Justice of Supreme Court.

Petition for Contest of Election.

To the Honorable Samuel Kalisch, justice of the Supreme Court of the State of New Jersey:

20

The petition of George W. Holman, Jr., of the Township of Dover, County of Ocean and State of New Jersey, respectfully shows:

1. That your petitioner is a legal voter of the Township of Dover, County of Ocean and State of New Jersey, and has been a legal voter of such municipality for upwards of ten years last past.

30

2. That on Tuesday, the 28th day of May, A. D. 1918, a special election, under chapter 2 of the Pamphlet Laws of 1918, was held in said Township of Dover, and the clerk of said township has entered upon his records of said township, a statement of the result of such election, whereby it appears that the total number of votes cast in said Township of Dover in favor of prohibiting the sale of intoxicating liquor as a beverage was two hundred and ninety-one (291); that the total number of votes cast in said township against prohibiting the sale of intoxicating liquor as a beverage was two hundred and seventy-five (275), and that there was a majority of sixteen votes cast in said township in favor of prohibiting the sale of intoxicating liquor as a beverage in said township. A copy of the statement of the result of said special election, as filed by the Board of Registry and Elections of the eastern election district of the Township of Dover and a copy of the statement of the result of said special election as made by the Board of Registry and Elections of the western district of the Township of Dover, and a copy of the statement of the result of said special election in said township as entered upon the records of the clerk of said township, are annexed hereto, marked respectively, schedules A, B and C, and made a part thereof.

40

50

3. That fifty-four (54) qualified electors of said Township of Dover were on the date of said election, and twenty days prior thereto, in active service in the military forces of the United States, within the meaning of chapter 150 of the Laws of 1918, and were absent on said election day from the election district of said Township of Dover in which they respectively resided, and said qualified electors, so in the active military service of the United States, were entitled to vote at said special election. The following is a list of the

Petition for Contest of Election.

names of said qualified electors of said Township of Dover who were in the active military service of the United States on the date of said special election, and who were absent on said date from the election district in said township, in which they respectively resided, and who were entitled to vote at said special election:

Capt. Clifford M. Elwell	Atwood Hyers	10
Sgt. Leo W. McClenahan	Ralph Thompson	
Cpl. Alexander J. Taylor	Otis Tilton	
Reuben Applegate, Jr.	William J. Gruler	
George Henry Hitt	G. Guion Pike	
Harry James Layton	Josiah Gerhart	
Edward P. Knox	Leon Johnson	
George Jessath	Jacob Applegate	
Oscar Applegate	George Davison	
Martin Schwarz, Jr.	Charles Newman	20
Harry Forcanser	Chas. Wm. C. Houck	
Wm. M. Camburn	Louis McConnell	
Ellsworth Grant	Lloyd Smires	
Albert Duffy	Frank Peterson	
Milton Sterns	Wilfred Potts	
Nelson Brahn	Harry Pierson	
Milton McKelvey	William D. Townsend	
Rufus Thompson	Thomas A. Gant	
Theodore P. Archer	Samuel S. Dunham	
Burley Walton	Anderson Seaman	30
Lieut. James W. Lillie	Charles T. Patterson	
Sgt. A. S. Tilton, Jr.	Loren Tilton	
Edward Watson Allen	Vincent A. Clayton	
Theodore Applegate Bryant	David H. Tilton	
John Russell Clayton	Clarence D. Gant	
William Brandt	Royal R. Cowdrick	

None of said qualified electors voted at said special election, nor were they afforded any opportunity to vote as provided in chapter 150 of the Laws of 1918.

40

4. That your petitioner voted at said special election, and hereby contests the validity of said election upon the following grounds, to wit:

(a) No sample ballots were mailed to the qualified electors of the Township of Dover by the Election Boards of the respective election districts of said township, as required by law.

(b) No registry lists of the voters entitled to vote at said special election were posted in the respective election districts of said township, as required by law.

50

(c) No blank ballots were forwarded by the secretary of state of New Jersey to the qualified electors of said Township of Dover who were in active service in the military forces of the United States, and who were absent from the election districts of said township in which they respectively resided, on the date of said election, nor

TOWNSHIP OF DOVER CASE.

were any directions for voting, or envelopes to be used by the qualified electors of said township in active service in the military forces of the United States as aforesaid mailed by the secretary of state, or any other person, to said qualified electors as required by said chapter 150 of the Laws of 1918.

10 (d) Because the clerk of said Township of Dover did not forward by mail or otherwise to said qualified electors of said township in active service in the military forces of the United States any statement of the proposition to be voted upon at such election, as required by law, or any notice of, or any information concerning said special election, as required by law.

20 (e) Because in the eastern election district of said Township of Dover there were three ballots rejected as marked ballots, and in the western election district of said Township of Dover there were nine ballots rejected as marked ballots, whereas said ballots were not marked ballots, and should have been canvassed and counted. A majority of said ballots should have been counted against said Township of Dover prohibiting the sale of intoxicating liquor as a beverage.

(f) Because none of the qualified electors of said Township of Dover in the active military service of the United States, who were absent from their respective election districts on the day of said election, voted at said election, and were not afforded any opportunity to vote thereat.

30 (g) Because the votes of said qualified electors in active military service of the United States who did not vote at said election, and who were not afforded an opportunity to vote, might have changed the result of said election.

(h) Because the popular will of the qualified electors of said Township of Dover was not expressed at said election.

40 1. Because by the failure of the clerk of said Township of Dover and the secretary of State of New Jersey to comply with the provisions of chapter 150 of the Laws of 1918, a sufficient number of the qualified electors of said Township of Dover to have changed the result of said election was deprived of their right to vote thereat.

5. Your petitioner therefor prays that your Honor will set aside the result of said election as filed on the records of the clerk of the Township of Dover, and that said election may be annulled and declared void, and that your petitioner may have such further and other relief as may be just.

And your petitioner will ever pray, etc.

50 GEORGE W. HOLMAN, JR.,
Contestant.

(Statement of result and affidavits of petitioner and of Frank Transue attached.)

*Order Fixing Date of Hearing.***Order Fixing Date of Hearing.**

Application having been made to me by George W. Holman, Jr., a legal voter of the Township of Dover in the County of Ocean and State of New Jersey, by petition duly verified, whereby it appears that on the 28th day of May, A. D. 1918, a special election was held in said Township of Dover under chapter 2 of the Laws of 1918, and whereby it appears that the total number of votes cast at said election in favor of prohibiting the sale of intoxicating liquor as a beverage in said township was two hundred and ninety-one and that the total number of votes cast against the prohibiting the sale of intoxicating liquor as a beverage in said township was two hundred and seventy-five, and that the majority in favor of prohibiting the sale of intoxicating liquor as a beverage in said township was sixteen, and whereby it appears that said George W. Holman, Jr., voted at said election, and that there were irregularities in the conduct of said election resulting in depriving fifty-four qualified electors of the municipality in active service with the military forces of the United States who were absent from the respective election districts in said township in which they resided on the date of such election, of their right and opportunity to vote at said election, and whereby it appears that the number of qualified electors so deprived of their right and opportunity to vote was sufficient to change the result of said election, and said petition having been filed with me within ten days after the result of said election was duly determined;

IT IS THEREFORE, on this seventh day of June, A. D. 1918, ORDERED that the twenty-eighth day of June A. D. 1918, at eleven o'clock in the forenoon of said day be fixed as the time, and that the court house in the village of Toms River, Ocean County, New Jersey, be fixed as the place at which the said contest shall be heard;

AND IT IS FURTHER ORDERED that the petitioner deposit with the clerk of the County of Ocean the sum of two hundred and fifty dollars, as security for costs herein;

AND IT IS FURTHER ORDERED that the petitioner forthwith publish in New Jersey Tribune, a newspaper printed and published in the Township of Dover and County of Ocean, a notice announcing the filing of such petition, and stating the time and place at which the said contest shall be heard.

AND IT IS FURTHER ORDERED that copies of such notice shall also be posted in the manner provided for the posting of the notice for a hearing on application for an election as set forth in section 2, chapter 2 of the Laws of 1918, and that a copy of the petition filed herein with schedules and affidavits annexed thereto, and of said notice, be served forthwith upon the clerk of the said Township of Dover.

IT IS FURTHER ORDERED that either party have leave to take depositions upon three days' notice, to be read upon the hearing.

SAMUEL KALISCH,
J. S. C.

Dated June 7, 1918.

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TOWNSHIP OF DOVER CASE.

Notice of Hearing.

To whom it may concern:

10 Notice is hereby given that on Friday, the 7th day of June, A. D. 1918, the undersigned filed with Honorable Samuel Kalisch, one of the justices of the Supreme Court of the State of New Jersey, in the above stated cause, a petition contesting the validity of the special election held in the Township of Dover, in the County of Ocean and State of New Jersey, on Tuesday, May 28th, A. D. 1918, under chapter 2 of the Laws of one thousand nine hundred and eighteen, and that said contest will be heard by said justice at the court house in the village of Toms River, Ocean County, New Jersey, on Friday, the 28th day of June, A. D. 1918, at eleven o'clock in the forenoon.

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GEORGE W. HOLMAN, JR.,
Contestant.

BERRY & RIGGINS,
Attorneys of Contestant.

Stipulation of Facts.

It is hereby stipulated and agreed by and between Berry & Riggins, attorneys for petitioner, and William Howard Jeffrey, attorney for the Township of Dover:

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1. That the petitioner, George W. Holman, Jr., was on the 28th day of May, 1918, a legal voter of the Township of Dover, in the County of Ocean, and voted at a special election held in said township on said day.

2. That a special election under the provisions of chapter 2, P. L. 1918, was held in said Township of Dover on said 28th day of May, 1918.

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3. Attached hereto and made a part hereof is a true copy of the statements of result of said election as filed by the Boards of Registry and Election of the eastern and western election districts of the Township of Dover, and a copy of the result of said election as entered upon the records of the clerk of said township. Said statements of result were also entered upon the records of the clerk of said township.

4. That no sample ballots were mailed to the qualified voters of the Township of Dover prior to said special election.

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5. That no registry lists were posted in the respective election districts of said township prior to said special election.

6. That the township clerk did not mail to the qualified electors of the said township in active military service of the United States any statement of the proposition to be voted upon at the said special election or any notice of or information concerning said election.

List of Voters in Military Service.

7. That none of the qualified electors of the Township of Dover in the active military service of the United States who were absent from their respective election districts on the day of said election voted at said election.

8. Attached hereto is a list of the qualified electors of the Township of Dover in the active military service of the United States and who were absent from their respective election districts on the date of said election, together with their military addresses as of May 8th, and May 28th, 1918, as obtained from a member of their respective families or persons having knowledge thereof. The respondent admits that the petitioner would be able to prove that such information was obtained and that the addresses given were those obtained and does not deny but what they are correct. 10

9. Attached hereto are copies of three telegrams sent to three qualified electors of the Township of Dover in the active military service of the United States on May 29th, 1918, and the respective replies thereto. 20

10. That the total number of votes cast in the Township of Dover, at the last general election was as follows:

Eastern district 237 votes	359 Registered
Western district 285 votes	452 Registered

11. That Hon. Walter E. Edge, governor of New Jersey, wrote the letter, a copy of which is hereto attached, and received the reply, a copy of which is also hereto attached.

12. That the records in connection with said special election on file with the township clerk, will be considered and accepted as a part of these proceedings, so far as they are relevant. 30

BERRY & RIGGINS,
Attorneys of Petitioner.

W. H. JEFFREY,
Attorney of Township of Dover.

STATEMENT OF RESULT.

This is the same as the "statement of result" which appears in the return of the municipal clerk. 40

LIST OF NAMES OF QUALIFIED ELECTORS OF THE TOWNSHIP OF DOVER, IN ACTIVE SERVICE IN THE MILITARY FORCES OF THE UNITED STATES.

Capt. C. M. Elwell, Q. M. U. S. R. P. O. 717, M. T. S., Am. Ex. Force, France.	Harry J. Layton, M. S. T. U., No. 307, Q. M. Corps, A. E. F., A. P. O., 714.	
Sgt. Leo W. McClenahan, Co. D, 311th Inf., Camp Dix.	Sgt. Frederick M. Xydias, M. D. U. S. A. Evacuation Hospital, No. 8, Am. Exp. Force, via N. Y.	
Alexander J. Taylor, Camp McClellan, Anniston, Ala.	Edward P. Knox, France.	50
Reuben H. Applegate, Co. B, 21st Engineers, A. E. F., via N. Y.	George Jessath, 811 Aero. Squadron, General Repair Depot, Indianapolis, Ind.	
Geo. H. Hitt, 1,745,891, Co. B, 303d Field Signal Battalion, 78th Division, A. E. F., France.	Oscar Applegate, Camp McClellan, Anniston, Ala.	

TOWNSHIP OF DOVER CASE.

- 10 Martin Schwarz, Jr., Camp Jos. E. Johnston, 4th Infantry Band, No. 777901, Jacksonville, Fla.
- Lieut. James W. Lillie, F. A. R. R. U. S. A. P. O. 722, A. E. F., France.
- Theodore A. Bryant, Camp Dix, N. J., care Camp Bell Quartermaster.
- William M. Brandt, 22d Inf. Band, Governor's Island, N. Y.
- Atwood Hyers, 652 Aero. Squadron, Morrison, Va.
- Ralph Thompson, Co. F, 404 Tele. Battalion, Signal Corps, Camp Dodge, Des Moines, Iowa.
- Wm. J. Gruler, Chauffeurs Bo. No. A 772441 Overseas Casuals, Camp Merritt, N. J.
- 20 Harry J. Forcanser, Motor Truck Co. 422, Camp Merritt, N. J.
- William M. Camburn, Fort Hamilton, N. Y., 20 Co.
- Elsworth S. Grant, France.
- Albert Duffy, Co. E, 19th Regt. Rwy. Eng., A. E. F., France.
- Milton D. Stern, Co. B, 307 Machine Gun Battalion, Camp Dix, N. J.
- Nelson Brahn, B. F. 307, F. A., Camp Dix, N. J.
- Wilfred B. Potts, U. S. S. South Carolina, care Postmaster, N. Y.
- Harry Pierson, 307 F. A., Battery F, Camp Dix, N. J.
- Samuel C. Dunham, 109 Coast Guard Station, Seaside Park, N. J.
- Anderson Seaman, U. S. C. G. Station 99, Sea Bright, N. J.
- George Guion Pike, Camp Jos. E. Johnston, Jacksonville, Fla., Hdqrs. Guard.
- Leon F. Johnson, 61 Inf. Reg., Co. E, via N. Y., Am. Ex. Force, France.
- Jacob E. Applegate, 311th Infantry, Medical Dept., Camp Dix, N. J.
- George W. Davison, 307 Machine Gun Battalion, Battery B, Camp Dix, N. J.
- Frank A. Peterson, U. S. Air Station, Sec. 26, Montchie, France, care Postmaster, N. Y.
- Lawrence Tilton, Coast Guard Station No. 1, Sandy Hook, N. J.
- Vincent A. Clayton, Avon, N. J., Station No. 103.
- David H. Tilton, Lavalletee, N. J., Station No. 108.
- Clarence D. Gant, Barnegat City, N. J., Station No. 113.
- Royal R. Cowdrick, Sig. Sect. Hdqrs. Co., 5th Regt. Marines, Am. Ex. Force, France, care Postmaster, N. Y. City.
- John R. Clayton, G. M. Corps, Camp Dix, N. J.

30 The following names of qualified electors of the Township of Dover in active service in the military forces of the United States were not included in the original petition filed herein:

- Conrad Brandt, Hdq. Co. 306 Inf., A. E. F., B. E. F.
- Robert Lee Johnson, 311th Regt. Inf., Camp Dix, N. J., Medical Corps.
- Benj. G. Irons, 311th Inf. Regt., Medical Dept., Camp Dix, N. J.
- John H. Sawyer, U. S. Submarine Base, New London, Conn., Cyre-compass School.
- Samuel Novaselsky, Co. G, 106th Inf., Camp Wadsworth, Spartanburg, S. C.
- Lester Irons, Co. H, 113th U. S. Inf., Newport News, Camp Stewart, Va.
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LETTER OF GOVERNOR EDGE.

April 1st, 1918.

Dear Mr. Secretary:

I am enclosing you copy of chapter 150, P. L. 1918, providing a method for collecting soldiers' and sailors' votes. This act includes special elections as well as general elections. It just happens in New Jersey a number of special elections are scheduled to occur within the next two or three months and this department has already received request from municipal authorities asking that the soldiers' vote be collected under the provisions of this act. You will note that the act provides that when any emergency exists whereby the governor feels that legal voters either within or without the state should

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Letter from Governor Edge to Secretary of War.

be given the privilege to vote, the governor shall file an order with the secretary of state to that effect, etc.

I have withheld filing the necessary order, as provided, inasmuch as under this act, it necessitates election officers mailing to each soldier and sailor who were residents of the district in which the election is being held, a ballot, and allows a certain time for the bills to be returned so that the count cannot be decided until this time expires. Has the government issued any order discouraging such action upon the part of a state. We wish to give the soldiers and sailors every opportunity to exercise their right of franchise, which, of course, the act is calculated to do, but we do not want to arrange this machinery, which is necessarily expensive, if the government is discouraging soldiers and sailors from exercising this privilege which in the field. A large majority of the New Jersey soldiers affected are, I believe, located either at Camp Dix, Wrightstown, New Jersey, or Camp McClellan, Anniston, Alabama, so that it might not be as difficult as if they were scattered. Won't you kindly give me your opinion as to this and your desire so far as state action is concerned, at as early a date as possible.

Very sincerely,

Governor.

Hon. Benedict Crowell,
Acting the Secretary of War,
Washington, D. C.

WESTERN UNION TELEGRAM.

181 NY. D. 40 Govt.
El Washington, D. C. 923 P. M.
April 10, 1918.

Hon. Walter E. Edge,
Governor of New Jersey,
Trenton, N. J.

Department has recommended to the President that the Vote be not taken from Soldiers on Foreign soil, because it would seriously interfere with military efficiency.

Benedict Crowell,
Actg. Secretary of War.
923 P. M.

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TOWNSHIP OF DOVER CASE.

TELEGRAM.

Toms River, N. J.
May 29, 1918.

10 Martin Schwarz, Jr.,
Camp Jos. E. Johnston,
Jacksonville, Fla.

4th Infantry Band, 777901.

Local option election here yesterday. Vote close. Soldier vote may change result. Did you receive ballot from secretary of state for this election. Wire answer immediately.

Andrew Schwarz.

WESTERN UNION TELEGRAM.

20	"Received at 10.57 P. M. 7 N. Y.	10 collect 60 5 <hr/> 65
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Camp Johnston, Fla.
9.40 A. M. May 30, 18.

Andrew Schwarz,
Toms River, N. J.

Telegram just received. did not receive ballot to vote.

Martin."

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TELEGRAM.

Toms River, N. J.
May 30, 1918.

George F. Jessath,
811 Aero Repair Squadron,
Indianapolis, Ind.
General Repair Depot.

40 Local option election here yesterday. Vote close. Soldier vote may change result. Did you receive ballot from Secretary of State for this election. Wire Answer immediately.

Martin Schwarz.

WESTERN UNION TELEGRAM.

50	"Received at 408 P. M. 10 N. Y.	11 Collect 50 5 <hr/> 55
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Av. Speedway, Indianapolis, Ind. 2 33 P. M.

Martin Schwarz,
Toms River, N. J.

Haven't received ballot as yet will be looking for it.

Geo. F. Jessath."

Deposition of Frank Transue.

TELEGRAM.

Toms River, N. J.
May 30, 1918.

Atwood Hyers,
652 Aero Squadron,
Morrison, Va.

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Local option election here yesterday. Vote close. Soldier vote may change result. Did you receive ballot from Secretary of State for this election. Wire answer immediately.

Alonzo Hyers.

WESTERN UNION TELEGRAM.

"Received at 1140 A. M.
8 N. Y.

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Camp Morrison, Va. 1103 A. M. May 30, 18

Alonzo Hyers,
Toms River, N. J.

Did not receive ballot look into matter immediately.

Atwood M. Hyers."

DEPOSITION.

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Depositions taken before Barton B. Hutchinson, one of the Supreme Court Commissioners of the State of New Jersey, at his office, 817 Broad St., Bank Bldg., Trenton, New Jersey, on Tuesday, June twenty-fifth, A. D. nineteen hundred and eighteen, at eleven-thirty o'clock in the forenoon (pursuant to notice and stipulation hereto attached) in the presence of Maja Leon Berry, Esquire, of counsel with petitioner, and Wilfred H. Jayne, Esquire, representing William Howard Jeffrey, Esquire, of counsel with the Township of Dover, in the County of Ocean and State of New Jersey.

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B. B. HUTCHINSON,
Supreme Court Commr.

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TOWNSHIP OF DOVER CASE.

Note: The only deposition taken was that of Frank Transue. His evidence is as printed in the record of the Roselle case. Attached to the deposition is the order of Governor Edge, dated April 9, 1918 (marked "Exhibit P. 1")—which is the same as letter No. 2 attached to the statement of the secretary of state, as printed in the record of the Montclair case. Exhibit D. 1 is as follows:

EXHIBIT D. 1.

Trenton, April 22nd, 1918.

Township Clerk,
Dover Township,
Toms River, N. J.

Dear Sir:

I notice in the "Newark Sunday Call" (April 21, 1918), that a special election is to be held in your municipality May 28th, 1918, to vote upon the local option question.

According to chapter 150 of the Laws of 1918, the secretary of state is obliged to look after this phase of the election. If you will prepare and forward us a list of the names and addresses of the soldiers who are to vote under the provisions of chapter 150 of the Laws of 1918, together with a sufficient number of ballots, as per form enclosed, we will then mail said ballots to the soldiers whose names appear upon the list which you are to furnish us. These ballots will be prepared by the soldiers and returned to this office and upon receipt of same they will be delivered to either the municipal clerk or the County Board of Elections.

It is impossible for this department to procure a list of the names and addresses of the soldiers and sailors of your municipality, hence our request for you to furnish such list.

Very truly yours,

(Signed) THOMAS F. MARTIN,
Secretary of State.

N. J. Supreme Court before Samuel Kalisch, Esq., Justice, &c.
In the matter of the application of George W. Holman, Jr., &c.
Exhibit D. 1 for Township of Dover, County of Ocean, N. J.
June 25, 1918.

B. B. HUTCHINSON,
Sup. Ct. Commr.

Findings and Conclusions.

Filed July 29, 1918.

On petition. 10

For the petitioner, Berry and Riggins.
Contra., William Howard Jeffrey.

KALISCH, J.

A special election was held on Tuesday, May 28, 1918, in the Township of Dover, in the County of Ocean, in this state, under chapter two of the Laws of 1918, on the question whether the sale of intoxicating liquor, as a beverage, shall or shall not be prohibited. The result of the election, as announced, was two hundred and ninety-one votes for and two hundred and seventy-five votes against prohibiting such sale, thus making a majority of sixteen votes in favor of prohibition. 20

The admitted facts, presented by a stipulation, in writing, entered into by counsel of the respective parties, in the case are, that on the date of the special election and more than twenty days prior thereto there were forty-three qualified electors of the township in active service in the military forces of the United States, and who were absent from their respective election districts; that out of these forty-three qualified electors, as appears from a list attached to the stipulation, there were thirty-four within the United States, with their military addresses obtainable upon due inquiry; that out of these thirty-four eighteen were distributed among the camps and coast guard stations within the State of New Jersey; that no sample ballots were mailed to any of the absent qualified electors; that no registry lists were posted in the respective election districts of the township prior to said special election; that the township clerk did not mail to the qualified electors of the township in the military service of the United States any statement of the proposition to be voted upon at such special election or any notice of, or information concerning, said election; that none of the qualified electors of the township in the active military service of the United States who were absent from their respective election districts on the day of said election voted thereat. From the testimony taken under an order made by me in the cause, it appears and I do find that the secretary of state did not at least twenty days prior to the said special election or at any other time forward to the clerk of Dover Township, in Ocean County, the names and addresses of the qualified electors in the military forces of the United States, residing within the limits of the township, as required by section five of the act of 1918. 30 40

It further appears from the testimony, and I do find, that no attempt was made by the secretary of state to obtain the names and post-office addresses of the qualified electors of the state in the military service of the United States residing in the Township of Dover from the adjutant general of the United States or other proper authority of the United States. 50

TOWNSHIP OF DOVER CASE.

10 It further appears from the testimony, and I do find, that there is no record either in the office of the secretary of state or in the office of the adjutant general of New Jersey of any application made by the secretary of state to the adjutant general for the names and post-office addresses of the qualified electors in the military service of the United States residing within the Township of Dover.

20 There is, however, testimony to the effect that the office of the secretary of state was advised by the department of the adjutant general of this state that it was impossible for the latter to furnish any list of names and military addresses of the soldiers and sailors of the State of New Jersey. But I think it is wholly unimportant whether or not the failure of the secretary of state or of the adjutant general to comply with the provisions of the statute was due to their wilfulness or neglect, or of either of them, or because of the impracticability of carrying the statutory behests into execution, so long as it appears that the qualified electors were deprived of their right to vote at the election and were sufficient in number to have changed the result, if they had been afforded an opportunity to cast their votes and had voted against prohibition. I find further as a fact that the secretary of state made no attempt to comply with section six of the act, which requires him to send to each of such qualified voters either a printed copy of this act or printed directions for voting and sending therewith a ballot, etc.

30 In view of the fact that section nine of the act permits a qualified voter in the military forces of this state, or of the United States, to vote by an unofficial ballot, I am not prepared to say that if this had been a general election a failure of compliance with sections four, five and six would be sufficient to justify the setting aside the result accomplished at such election, even though it appeared that the qualified absent electors, if they had voted, would have changed the result. The reason for this view is founded upon a marked difference which exists between a general and special election. The day for holding a general election is fixed and certain. It is a legal holiday, and it is fair to presume that every person of intelligence has knowledge of it. It is the duty of every good citizen to vote, but he is not compellable to do so. It is a right which he is free to exercise or not. The absent soldier is afforded an opportunity to acquire the necessary information, by applying to the proper sources, as to who the candidates are, or the questions to be voted on, or how he may properly register his vote at the election, before the day of election arrives. As has been said, section nine permits the absent soldier to cast an unofficial ballot. Thus it is to be observed that he is, at least, afforded an opportunity to cast his vote. But this cannot be properly said in the case of a special election. For he has no means of knowing when such election is to take place unless he receives actual notice. It is plain that if he receives no such notice he is practically deprived of the opportunity and right to vote. It is argued that the right to vote is not an inherent right. As a general proposition I think it is manifestly unsound. For it is clear that the citizens of a democracy have an inherent right to a voice in their government and to participate

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Findings and Conclusions.

in the selection and election of those to be entrusted with the administration of their governmental affairs and to make laws to govern themselves. This inherent right can only be exercised through the ballot or by like means, in order to express the popular will. The right to vote inheres in citizenship. The common law did not create the right to vote. The right pre-existed the common law. It is only necessary to point to both sacred and profane history for confirmation of this statement. The common law of England fostered class distinctions and only recognized the right of local self-government in a certain class of citizens, *e. g.*, such as is accorded to the citizens of London to participate in the governmental affairs of their municipality, granted by charter, and as an ancient and sanctioned prerogative. The common law of England is impotent to serve as a safe guide in the matter of the suffrage of citizens, in a government of and by the people. But whatever may be the state or condition of peoples living under different forms of government from ours, the question of the inherent right of a citizen to vote in a democracy cannot be an open one here. Now it is to be observed that the federal constitution does not create or confer the right to vote, but guarantees that right, and recognizes such right to exist in every male citizen of the United States who has arrived at the age of twenty-one years. Our state constitution likewise does not create or confer the right to vote, but like the federal constitution guarantees it and limits the right to vote to male citizens of the United States who have attained the age of twenty-one years, and who have resided in this state for one year, and in the county in which he claims his vote for five months next before the election. Our constitution further declares "that in time of war no elector in the actual military service of the state or the United States, in the army or navy thereof, shall be deprived of his right to vote by reason of his absence from such election district; and the Legislature shall have power to provide the manner in which, and the time and place at which, such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside."

The Legislature in conformity to the constitutional mandate passed such laws. The evidence before me shows that they were not complied with. I am not prepared to hold that the provisions of the statute are mandatory, in that a failure to observe them would have the effect of vitiating the election, irrespective of the fact whether or not the disfranchised vote, if voted, would have changed the result.

I find as a fact that a sufficient number of qualified electors were absent from the Township of Dover, in the County of Ocean, who were in the military forces of this state and of the United States, and that in violation of the constitution of this state and the provisions of the statute, they were deprived of their votes at the special election held in the township, which votes, if cast against prohibition, would have changed the result of the election, and therefore the election must be set aside.

TOWNSHIP OF DOVER CASE.

Order Setting Aside Election.

This matter coming on to be heard before Samuel Kalisch, one of the Justices of the Supreme Court of the State of New Jersey, pursuant to an order entered herein on the 7th day of June, A. D. 1918, and the said Justice having found the facts to be as follows:

That a special election was held on Tuesday, May 28, 1918, in the Township of Dover, in the County of Ocean and State of New Jersey, under chapter 2 of the Laws of 1918 on the question whether the sale of intoxicating liquor as a beverage shall or shall not be prohibited; the return of said election showed 291 votes for and 275 votes against prohibiting such sale and a majority of 16 votes in favor of prohibition; on the date of the special election, and more than twenty days prior thereto, forty-three qualified electors of the township were in active service in the military forces of the United States, and were absent from their respective election districts; of said forty-three qualified electors thirty-four were within the United States and their military addresses were obtainable upon due inquiry; eighteen of said qualified electors were stationed within the State of New Jersey; no sample ballots were mailed to any of the absent qualified electors; no registry lists were posted in the respective election districts of the township prior to said special election; the township clerk did not mail to the qualified electors of the township in the military service of the United States any statement of the proposition to be voted upon at such special election, or any notice of or information concerning said election; none of the qualified electors of the township in the active military service of the United States who were absent from their respective election districts on the day of said election voted thereat; the secretary of state did not, at least twenty days prior to the said special election or at any time, forward to the clerk of the Township of Dover, in Ocean County, the names and addresses of the qualified electors in the military forces of the United States residing within the limits of the township as required by section 5 of chapter 150 of the Laws of 1918; no attempt was made by the secretary of state to obtain the names and post-office addresses of qualified electors of the said township in the military service of the United States from the adjutant general of the United States or other proper authority of the United States; no record exists either in the office of the secretary of state or in the office of the adjutant general of New Jersey of any application made by the secretary of state to the adjutant general for the names and post-office addresses of the qualified electors in military service of the United States, residing within the Township of Dover; the secretary of state made no attempt to comply with section 6 of chapter 150 of the Laws of 1918, requiring him to send to each of such qualified electors either a printed copy of said act or printed directions for voting, together with a ballot to be used at such election; that a sufficient number of qualified electors of the Township of Dover, in the County of Ocean, who were in the military

Order Setting Aside Election.

forces of this state and of the United States were absent from said township on the date of said election; and that in violation of the constitution of this state and the provisions of the statute they were deprived of their votes at the said special election, and which votes if cast against prohibition would have changed the result of the election.

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And the arguments of counsel for the petitioner and for the respondent having been heard and considered;

IT IS, on this _____ day of July, A. D. 1918, ORDERED, that said special election, so held in the Township of Dover on the 28th day of May, A. D. 1918, pursuant to the provisions of chapter 2 of the Laws of 1918, be, and the same is, hereby declared null and void, set aside and for nothing holden; and

IT IS FURTHER ORDERED, that the clerk of the County of Ocean return to the petitioner forthwith the cash deposit of two hundred and fifty dollars made with said clerk as security for costs in pursuance of said order of June 7, A. D. 1918; and

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IT IS FURTHER ORDERED, that the question of costs is to be heard and determined hereafter upon application and notes; and

IT IS FURTHER ORDERED, that a true copy of this order be served upon the clerk of the Township of Dover, in the County of Ocean, within three days from the date hereof.

SAMUEL KALISCH,
Justice of Supreme Court.

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Reasons.

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New Jersey Supreme Court

WILLIAM H. FISCHER,

*Prosecutor,**vs.**On Certiorari.*TOWNSHIP OF DOVER, IN THE COUNTY OF OCEAN,
a municipal corporation of the State of New
Jersey, and GEORGE W. HOLMAN, JR.,*Reasons.*

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Defendants.

The prosecutor files the following reasons upon which he will rely for the reversal of the order under review in this case:

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1. The finding or decision of the Justice of the Supreme Court by whom the order under review was made that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were deprived of their votes at the said election, in violation of the constitution of this state and the provisions of the statute, was not justified nor reasonably supported by the stipulation of facts filed with the said Justice on the hearing of the contest of said election.

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2. There was no evidence before said Justice to support reasonably his finding or decision that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were deprived of their votes at the said election, in violation of the constitution of this state and the provisions of the statute.

3. All qualified voters, including those absent from the municipality in the military service of the United States, were afforded the right to vote at the said election.

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4. All qualified voters of the municipality, including those absent therefrom in the military service of the United States, were given notice of the manner in which they are required by law to prepare and transmit their ballots, for the reason that all such voters are presumed to have knowledge of the provisions of chapter 150, Laws of 1918, whereby all such voters are authorized and permitted (in the event that they have not received an official ballot prior to the date of such election) to prepare and vote on the date of such election an unofficial ballot indicating thereon the proposition upon which they intend to vote.

Reasons.

5. Assuming that the finding or decision of the said Justice that a number of qualified voters sufficient to change the result of the election, who were absent from the municipality in the military service of the United States, were deprived of their votes at said election, was justified or reasonably supported by said stipulation, nevertheless such fact should not operate to invalidate the said election for the reason that it was impossible for the secretary of state to comply with the provisions of chapter 150 of the Laws of 1918 by ascertaining either from the adjutant general of New Jersey or from the adjutant general or other proper authority of the United States the names and post-office addresses of such qualified electors, as required by said statute. 10

6. Assuming that the finding or decision of the said Justice that a number of qualified voters sufficient to change the result of the election, who were absent from the municipality in the military service of the United States, were deprived of their votes at the said election, was justified or reasonably supported by said stipulation, nevertheless such fact should not operate to invalidate the said election for the reason that the failure of the secretary of state to comply with the provisions of said chapter 150 (even if it had been possible for him so to do) was a mere mistake or irregularity which should not be permitted to disfranchise innocent voters who have expressed their will on the question submitted at the said election. 20

7. Assuming that the finding or decision of the said Justice that a number of qualified voters sufficient to change the result of the election, who were absent from the municipality in the military service of the United States, were deprived of their votes at the said election, was justified or reasonably supported by said stipulation, nevertheless such fact should not operate to invalidate the said election for the reason that it does not appear that the failure of such qualified electors to vote, or to have an opportunity to vote, at said election, prevented a full expression of the will of the voters of said municipality. 30

8. Assuming that it was possible for the secretary of state to comply with the provisions of said chapter 150, nevertheless it does not appear that a sufficient number of qualified electors, who were absent from the municipality in the military service of the United States, and who might have voted at said election, would have voted in such a way as to change the result of said election. 40

9. Under the constitution of the State of New Jersey the right of qualified electors, who are absent from the municipality in which they are living, in the military service of the United States, is limited to vote for persons to fill elective offices, and does not include the right to vote for such a proposition as was submitted at the said election. 50

10. Under the ruling of the federal authorities charged with the conduct of the present war, qualified voters who are absent from the

TOWNSHIP OF DOVER CASE.

municipality in which they reside, in the military service of the United States, are not permitted to vote at special elections; and the right of any such voters to vote at such elections, which may have been given under the constitution or laws of the State of New Jersey, is subject to and superseded by the rulings of such federal authorities.

10 11. The stipulation of facts shows that every reasonable effort was made to obtain the names and addresses of qualified voters of the municipality who were in the military service of the United States, and that notice of the said election was given to all qualified voters whose names and addresses were thus obtained, and that all such voters had the right and opportunity to vote at the said election.

COLLINS & CORBIN,
Attorneys of Prosecutor.

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Additional Reason.

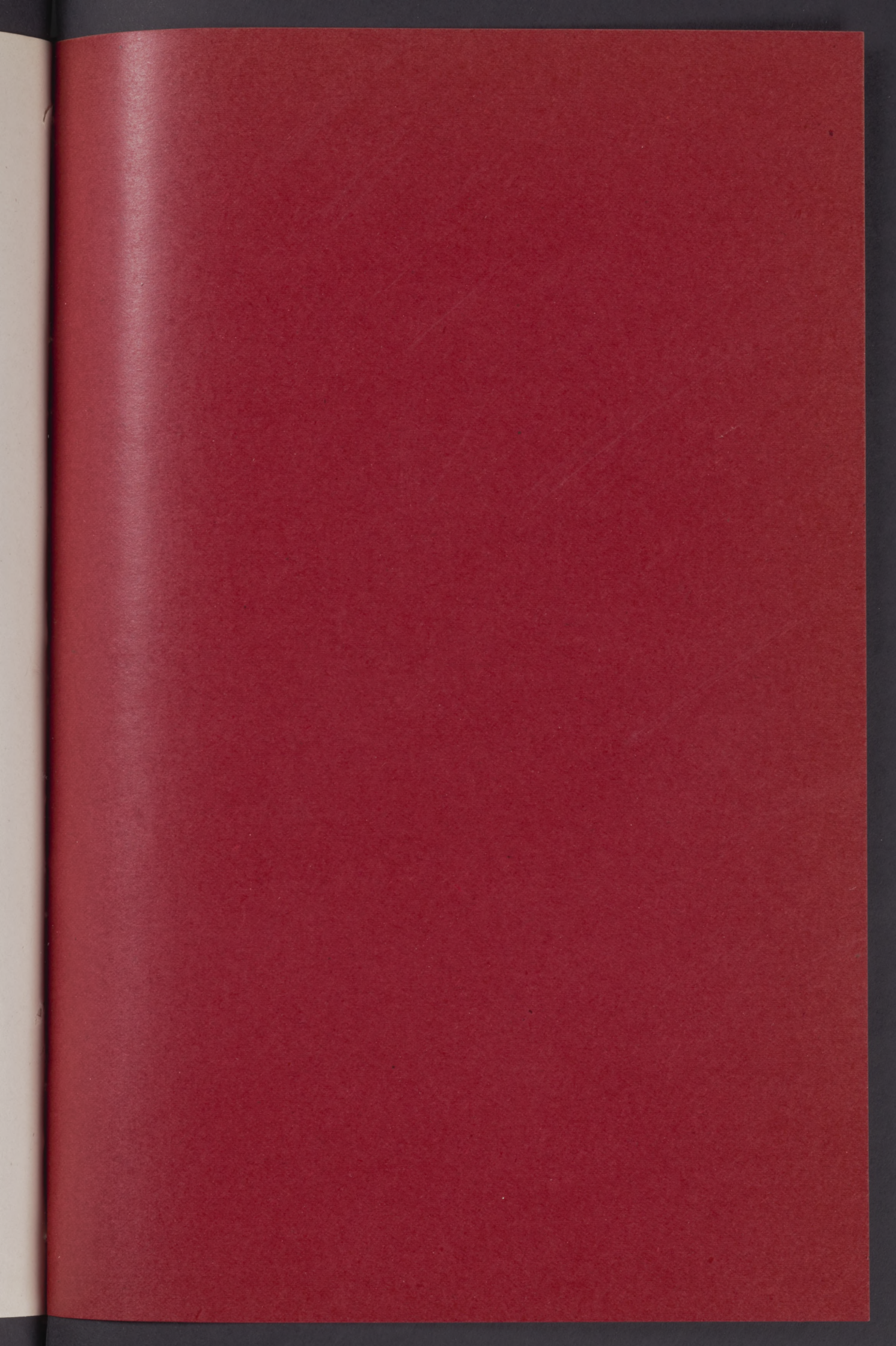
The prosecutor files the following additional reason upon which he will rely for the reversal of the order under review in this case:

30 The statute entitled "A supplement to an act entitled 'An act to regulate elections' approved April fourth, one thousand eight hundred and ninety-eight" (being chapter 150, Laws of 1918), is in violation of the Constitution of the State of New Jersey in that it requires the secretary of state to distribute the envelopes containing the ballots of voters in the military service to the County Board of Elections in the county in which said voters reside, instead of providing for the return and canvass of the votes of such voters in the election district in which they respectively reside, as required by article II. of said Constitution.

COLLINS & CORBIN,
Attorneys of Prosecutor.

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ADDITIONAL INDEX.

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Opinion of Supreme Court.

(Filed Feb. 19, 1919.)

NEW JERSEY SUPREME COURT.

November Term, 1918.

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CHARLES H. MILLER,

*Prosecutor,**vs.*

TOWN OF MONTCLAIR and JOHN L. COX.

No. 210.

ALFRED H. HOLBROOK,

*Prosecutor,**vs.*

CITY OF EAST ORANGE and ANDREW MURRAY.

No. 211.

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CHARLES A. NUTTING,

*Prosecutor,**vs.*

BOROUGH OF CALDWELL and JOHN A. BRADY.

No. 212.

HARRY S. MYERS,

*Prosecutor,**vs.*

BOROUGH OF ROSELLE and STANLEY MCINTOSH.

No. 213.

ERNEST R. BROWN,

*Prosecutor,**vs.*

BOROUGH OF DUNELLEN and GUSTAV WINTER.

No. 214.

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WILLIAM H. FISCHER,

*Prosecutor,**vs.*TOWNSHIP OF DOVER IN THE COUNTY OF OCEAN
and GEORGE W. HOLMAN, JR.

No. 215.

Argued November 6 and 7, 1918; decided Feb. 1919.

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1. By reason of the Soldiers' Vote Act (P. L. 1918, p. 437), the provisions of the Local Option Act (*Id.*, p. 14) as to giving notice of a special election by posting and publication are rendered inoperative as constructive notice to voters in the national service coming within the provisions of the Soldiers' Vote Act.

2. The Soldiers' Vote Act, P. L. 1918, p. 437, is not rendered nugatory nor does it lose its effect as a statute, because of a temporary impracticability of carrying out its provisions, due to official

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Opinion of Supreme Court.

action of the federal authorities in withholding addresses of men in service.

10 3. A failure to carry out the requirements of the Soldiers' Vote Act, P. L. 1918, p. 437, whereby a substantial percentage of voters lose the opportunity to vote, is more than a mere irregularity in conduct of an election, it is a practical disfranchisement of such voters.

4. Where the Soldiers' Vote Act, P. L. 1918, p. 437, required the Secretary of State to mail voting papers to each voter in service at least twenty days before any general or special election, and he was unable to do so because of the failure of local authorities to notify him in time, that such special election was to be held, it cannot be said that there was a reasonable attempt to comply with the provisions of the act.

20 5. The statutory review of local option elections under P. L. 1918, p. 14, is not an election contest to determine which party was successful but a review of the legality of the entire election, to determine whether it was held according to law.

6. The Soldiers' Vote Act, P. L. 1918, p. 437, is not unconstitutional as providing a different method of counting the soldier vote from that provided in Const. Art. II, par. 1.

For the prosecutors, George S. Hobart and Benjamin F. Jones.

For the defendants, John L. Cox and John A. Brady, Harrison P. Lindabury.

For the defendant, Andrew Murray, John R. Nugent.

For the defendants, Stanley McIntosh and Gustav Winter, Abe J. David and Samuel Koestler.

For the defendant, George W. Holman, Jr., Wilfred H. Jayne, Jr.

30 The opinion of the Court was delivered by PARKER, *J.*

These writs bring before this court for review the several determinations of three justices of this court, each sitting as a special legislative tribunal pursuant to Sections 25 and 26 of the Local Option Act (P. L. 1918, pp. 32, 33), setting aside special election held under said act in the Town of Montclair, the City of East Orange and the Borough of Caldwell, in Essex County; the Boroughs of Roselle and Dunellen in Union County, and the Township of Dover in Ocean County. In each of the cases the election was set aside because the justice held that proper opportunity was not afforded as required by law for the casting of the vote of soldiers and sailors absent in government service, as provided in Chapter 150 of the Laws of 1918 (P. L. p. 437), and that sufficient of such votes were missing to have changed the result. We are asked to reverse those decisions and declare the elections valid, on several grounds. All five cases were argued together and for the most part are susceptible of consideration as one case.

50 The first general ground of reversal urged is that the absentees were afforded an opportunity to vote at the special elections; first, because

Opinion of Supreme Court.

legal notice of each of such election was given and this charged them with notice that it was to be held; and, secondly, that having such constructive notice, they were entitled under Chapter 150 to prepare and forward unofficial ballots.

This argument rests on the claim, supported by the evidence, that the public notice of special election required by the local option act was duly given; and it may well be conceded that as to absentees generally who receive no notice in fact, the statutory notice is binding. As to the voters in the military and naval service the case is different. Apart from the constitutional proviso, Art. II, par. 1, which it is argued applies only to elections for officers and not to referendums, Chapter 150, which may be called the soldier vote act, declares a legislative intent to procure the military absentee vote for special elections *eo nomine*, and provides how it is to be procured. And in our estimation it evinces a clear intent to disregard the doctrine of constructive notice, at least so far forth as respects the local option act, and to apply a rule of actual notice by mail or messenger if within reasonable limits of possibility. Instead of advertisement set up and published at least fifteen days before the election, as in the local option act, we find that a list of names and addresses of men in military service is to be made up, and at least twenty days before the election, blank or printed ballots are to be mailed to the voters, by the Secretary of State (Section 4) and a list of candidates, when there are candidates to be voted for, is to be forwarded in a similar manner by the municipal clerk or the Secretary of State "as soon as possible" "by mail or otherwise." Two things are plain: the fifteen day notice is not taken into account as sufficient in time for these absentees; and each one is to be notified if possible personally or by mail and to receive information sufficient, independently of all advertisement, to enable him to prepare his ballot. Nay more: the absentee is not even charged with notice of the act itself to the same extent as a civilian; for he is entitled to receive from the Secretary of State, with his ballot, either a printed copy of the act or printed directions how to prepare and transmit the ballot (Sec. 6, p. 439). Under these circumstances we think the argument of constructive notice of a special election is without force, and of course if there were no constructive notice, actual notice cannot be presumed, and if none, the right to cast an unofficial ballot is an empty form, in no way meeting the requirement of Sec. 14, that the act "shall be liberally construed for the purpose of affording an opportunity to persons in active service * * * to vote at any primary, general or special election."

The next point is that under the condition as they developed, it was impossible to comply with the requirements of the soldier vote act. It is made plain that for military reasons information with respect to men overseas was refused by the National Government. From this it is argued that because of the temporary impracticability of compliance with the requirements of the soldier vote act, those requirements may, so far as the impracticability extends, be ignored, neither than that the special election should wait until they can be complied with. We cannot take this view. The Legislature said, on

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Opinion of Supreme Court.

January 30, "You may have special election for local option by taking certain procedure." February 28 it modified that and said "soldiers and sailors are to have the right to vote at all primary, general and special elections, and are with respect thereto, to be communicated with and their ballots taken in the manner now laid down." 10 It did not say that if the War Department should refuse to aid, any other course might be pursued or the act disregarded. It is said that the law does not require impossibilities, but the temporary condition existing should not be classed as an impossibility. Our conclusion on this point is that the requirements of the soldier vote act controlled, and it was necessary substantially to comply with them.

The next point is that this failure of compliance was only an irregularity which should not invalidate an otherwise full and fair election, particularly in the absence of evidence that the absentees 20 would have voted against local prohibition.

We cannot concede that it was a mere irregularity. It was failure to carry out the law whereby a substantial percentage of voters must be held to have lost the opportunity to register their will. The rule urged as to burden of proof, that it should appear and does not, that the absentees would have voted "wet," is one perhaps applicable to a contest between opposing candidates at a valid election, but not, as we view it, to an inquiry such as we are now reviewing. Under the statute (P. L. 1918, p. 32, Sec. 25), the attack is not on the result but on "the validity of the election." Such is the statutory language, and this is plain from the fact that the matters now attacked are judicial declarations that the elections were void, and orders setting them aside. In such an inquiry, the rule contended for we think does not apply. *Allison v. Blake*, 57 N. J. L. 6.

30 The next point is that "qualified electors who are absent in the military service have no constitutional right to vote for (*sic*) such a proposition as was submitted at the several elections." This may be conceded for present purposes. The respondents properly rely on the statute, Chapter 150 of the Laws of 1918, whose intent as respects soldier votes is clear, and which is at present the law. We think no further basis of the right need be discussed.

40 Point V. is that the right of soldiers and sailors to vote was subject to and superseded by federal regulations.

We see no reason why such regulations should be viewed as superseding the soldiers vote act alone, without any corresponding effect on the local option act as well. The same argument in another form has already been discussed. Our answer again is, that the soldier vote act became part of the machinery of the local option act, and if federal interference cut off the soldier vote, it left the local option act without the means of taking effect through referendum so long as the soldier vote remained so cut off, and the soldier vote act remained in force.

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Point VI. relates to the Montclair and East Orange cases only, and challenges the finding of fact by the Chief Justice, who sat in those cases, that the soldier vote act was not complied with, nor was every reasonable effort made to comply with it, as he held it should be. The challenge cannot be sustained. In the Montclair case the council passed a resolution on March 14, for an election to be held April 30, nearly seven weeks later. No notice of this was sent to the Secretary of State till April 18, reaching him on the 19th; so that it was impossible for him to do any of the things required of him at least twenty days before the election, Secs. 4 and 5. The town clerk sent out no communication to the voters in service at any time. The Secretary of State did send out ballots on April 22 and 23 to the number of 364. He did probably as well as he could, but was hopelessly late through no fault of his own. There were about 800 men in service and say 70 per cent. of them voters; the stipulation of facts says 60 to 80 per cent.; probably 500. The campaign committee also wrote to voters in service. Sixty-four ballots were received, of which 31 had to be rejected. The majority for prohibition, with about 450 potential votes outstanding, was 19. How it can be said that all reasonable effort was made to get in these votes when no one moved for five weeks after the election was ordered, we are at a loss to understand. 10 20

In the East Orange case the argument proceeds upon what we conceive to be the false assumption, as already noted, that the contest is over the number of votes pro and con rather than over the validity of the election. It appears that there were about 1,000 men in the service, only 500 ballots were printed, and these mailed on April 30, seven days before the election. Proof is lacking as to how many of the 1,000 were qualified voters, but it is hardly conceivable that in view of the rules of enlistment and draft there were not many more than the 114 whose ballots were received and counted, and 90 whose ballots were rejected as not prepared in time. As in the Montclair case, the municipal clerk did not move in time to have the ballots sent out at least 20 days before the election. At least they could have been ready, and if so, a question might arise as to the inability of the Secretary of State to procure the proper addresses, which under the circumstances, seems to be not before us. We consider that the finding by the Chief Justice was supported by the evidence. 30

Point VII. relates to the Dunellen case and is that the number of absent voters not actually notified of the election was insufficient to change the result. 40

The election was ordered on April 19 to be held June 11th. The majority was 51, three less than the 54 absent electors. Of these, 7 were overseas, and what we have said above relating to the federal inhibition applies to them. As to the others, it is stipulated that the regular issues of the local paper of May 25, May 30, and June 6, containing advertisements of the election, were duly mailed to 30 of them in regular course. Hence it is argued that these 30 received actual or constructive notice of the election in time to prepare and forward unofficial ballots, though no ballot was sent to any of the 54 50

Opinion of Supreme Court.

by the Secretary of State, or the municipal clerk, no copy of the soldiers' vote act, and no printed direction how to prepare ballots as therein required. There was no constructive notice, because as we have said, the soldiers' vote act makes that rule inapplicable. As to actual notice, if it be said the presumption of due receipt of a letter mailed in peace time is to apply to fourth class mail in war time and during a confusion in the mail service which is matter of common knowledge, it does not follow that the recipients read the papers through and saw the notices of election printed therein. It strains the doctrine of presumption to the breaking point to charge actual notice on the soldier because there was mailed to him a folded newspaper containing such notice in its columns with nothing to call attention to it. Moreover, if he should see it, yet he had no knowledge how to prepare and send in his unofficial ballot. No official ballots were sent, either printed or blank; no copies of the act, and no instructions. In lieu of this, prosecutors rely on the weekly paper from home. We think their reliance is misplaced.

VIII. Lastly, and as an additional reason filed, after the others, it is said the soldiers' voting act is unconstitutional because it requires the Secretary of State on receiving the returned ballots from voters, to transmit them for counting to the county board of elections instead of the local board. The constitutional language is: "The Legislature shall have power to provide * * * for the return and canvass of their votes in the election districts in which they respectively reside." Const. Art. II, par. 1. We have no particular difficulty with this language. It does not say that the votes are to be counted by the local election boards. What the constitution aims at is the counting of each vote so that it appear on the return in the district where it belongs; the method of securing this result is left to the Legislature, which in the present case has said that the county board shall open and count the votes. No particular place is specified for this in the act and if the constitution means that actual counting should be done in the election district, the county board may attend there for that purpose. We do not think it appears whether they did so or not; and at all events, the only point made is that the act violates the constitution. We are clear that it does not. There is no question that such votes as were received and counted appeared on the returns of the proper districts.

We find no adequate reason for setting aside the findings of the Supreme Court Justices in any of the cases, and the several writs will therefore be dismissed.

Rule for Judgment—Notice & Grounds of Appeal (Montclair).

**Rule for Judgment.
Town of Montclair.**

Filed March 15, 1919.

The Court having inspected the transcript and proceedings in the matter of the application of John L. Cox to contest the validity of an election held in the Town of Montclair, Essex County, New Jersey, on Tuesday, April 30, 1918, under the provisions of Chapter 2 of the Laws of 1918, returned with the Writ of Certiorari issued out of this Court on August 15, 1918, directed to the Honorable William S. Gummere, Chief Justice of the Supreme Court of New Jersey, and to the Town of Montclair, a municipal corporation of the State of New Jersey, and the clerk of said town, and made returnable September 4, 1918, in this cause; the reasons for reversing the judgment below setting aside said election; and having heard the argument of counsel therein; and having duly considered the same; and no adequate reason for setting aside the findings in this cause appearing,

It is thereupon ordered that the said writ of certiorari be, and hereby is dismissed.

Entered March 15, 1919.

On motion of

HARRISON P. LINDABURY,
Attorney of Defendant, John L. Cox.

**Notice and Grounds of Appeal.
Town of Montclair.**

Filed February 27, 1919.

To EUGENE W. LEAKE, Esq.,
Attorney of Town of Montclair, and

HARRISON P. LINDABURY, Esq.,
Attorney of John L. Cox.

TAKE NOTICE that the prosecutor appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause, on the following grounds:

1. The Supreme Court erred in affirming the order setting aside the election held in the Town of Montclair under review herein.
2. The Supreme Court should have reversed said order setting aside said election under review herein for one or more of the reasons filed by the prosecutor in said Court, and should have sustained the said election.

COLLINS & CORBIN,
Attorneys of Prosecutor-Appellant.

(Note: Like Notice and Grounds filed April 17, 1919.)

*Rule for Judgment—Notice & Grounds of Appeal (East Orange).***Rule for Judgment.
City of East Orange.**

Filed February 27, 1919.

10 This cause coming on regularly to be heard on briefs and argument of counsel for the respective parties, and the Court having considered the same:

It is on this twenty-seventh day of February, Nineteen hundred and nineteen, on motion of James R. Nugent, of counsel for the respondent, Andrew Murray, ORDERED, that the writ of certiorari granted and allowed in the above entitled cause be and the same is hereby dismissed with the costs of the respondent to be taxed, against the prosecutor.

20 Rule actually entered February 27, 1919.

On motion of

JAMES R. NUGENT,
Of Counsel for the Respondent, Andrew Murray.

**Notice and Grounds of Appeal.
City of East Orange.**

Filed February 28, 1919.

30

TO JEROME D. GEDNEY, Esq.,
Attorney of City of East Orange, and

JAMES R. NUGENT, Esq.,
Attorney of Andrew Murray.

TAKE NOTICE that the prosecutor appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause, on the following grounds:

40 1. The Supreme Court erred in affirming the order setting aside the election held in the City of East Orange under review herein.

2. The Supreme Court should have reversed said order setting aside said election, under review herein, for one or more of the reasons filed by the prosecutor in said Court, and should have sustained the said election.

COLLINS & CORBIN,
Attorneys of Prosecutor-Appellant.

*Rule for Judgment—Notice & Grounds of Appeal (Caldwell).***Rule for Judgment.
Borough of Caldwell.**

Filed March 15, 1919.

The Court having inspected the transcript and proceedings in the matter of the application of John A. Brady to contest the validity of an election held in the Borough of Caldwell, Essex County, New Jersey, on Tuesday, April 30, 1918, under the provisions of Chapter 2 of the Laws of 1918, returned with the writ of certiorari issued out of this Court on August 9, 1918, directed to the Honorable William S. Gummere, Chief Justice of the Supreme Court of the State of New Jersey, and to the Borough of Caldwell, a municipal corporation of the State of New Jersey, and the clerk of said borough, and made returnable August 28, 1918, in this cause; the reasons for reversing the judgment below setting aside election; and having heard the argument of counsel therein; and having duly considered the same; and no adequate reason for setting aside the findings in this cause appearing,

It is thereupon ordered that the writ of certiorari be, and hereby is dismissed.

Entered March 15, 1919.

On motion of

HARRISON P. LINDABURY,
Attorney of Defendant, John A. Brady.

**Notice and Grounds of Appeal.
Borough of Caldwell.**

Filed February 28, 1919.

To J. HENRY HARRISON, Esq.,
Attorney of Borough of Caldwell, and

HARRISON P. LINDABURY, Esq.,
Attorney of John A. Brady.

TAKE NOTICE that the prosecutor appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause, on the following grounds:

1. The Supreme Court erred in affirming the order setting aside the election held in the Borough of Caldwell under review herein.
2. The Supreme Court should have reversed said order setting aside said election, under review herein, for one or more of the reasons filed by the prosecutor in said Court, and should have sustained the said election.

COLLINS & CORBIN,
Attorneys of Prosecutor-Appellant.

(Note: Like Notice and Grounds filed April 22, 1919.)

*Rule for Judgment—Notice & Grounds of Appeal (Roselle).***Rule for Judgment.
Borough of Roselle.**

Filed February 24, 1919.

10 This cause having been duly argued at the present term of this Court, and the Court having considered the same and finding no error in the record or proceedings had before the Honorable James J. Bergen, a Justice of the Supreme Court,

It is thereupon ordered, adjudged and decreed, that the writ of certiorari allowed in this cause, be dismissed.

Entered February 24, 1919.

On motion of

20 ABE J. DAVID,
Attorney for Defendant.

A true copy.

ENOCH L. JOHNSON,
Clerk.

**Notice and Grounds of Appeal.
Borough of Roselle.**

Filed February 28, 1919.

30 To GUY W. GORDON, Esq.,
Attorney of Borough of Roselle, and

ABE J. DAVID, Esq.,
Attorney of Stanley McIntosh.

40 TAKE NOTICE that the prosecutor appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause, on the following grounds:

1. The Supreme Court erred in affirming the order setting aside the election held in the Borough of Roselle, under review herein.

2. The Supreme Court should have reversed said order setting aside said election under review herein, for one or more of the reasons filed by the prosecutor in said Court, and should have sustained the said election.

50 COLLINS & CORBIN,
Attorneys of Prosecutor-Appellant.

Rule for Judgment—Notice & Grounds of Appeal (Dunellen).

Rule for Judgment.
Borough of Dunellen.

Filed February 24, 1919.

This cause having been duly argued at the present term of this Court, and the Court having considered the same and finding no error in the record or proceedings had before the Honorable James J. Bergen, a Justice of the Supreme Court,

It is thereupon ordered, adjudged and decreed, that the writ of certiorari allowed in this cause, be dismissed.

Entered February 24, 1919.

On motion of

ABE J. DAVID,
Attorney for Defendant.

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Notice and Grounds of Appeal.
Borough of Dunellen.

Filed February 28, 1919.

TO R. P. F. VON MINDEN, Esq.,
Attorney of Borough of Dunellen, and

ABE J. DAVID, Esq.,
Attorney of Gustav Winter.

30

TAKE NOTICE that the prosecutor appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause, on the following grounds:

1. The Supreme Court erred in affirming the order setting aside the election held in the Borough of Dunellen, under review herein.

2. The Supreme Court should have reversed said order setting aside said election, under review herein, for one or more of the reasons filed by the prosecutor in said Court, and should have sustained the said election.

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COLLINS & CORBIN,
Attorneys of Prosecutor-Appellant.

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*Rule for Judgment—Notice & Grounds of Appeal (Dover).***Rule for Judgment.****Township of Dover.**

Filed February 24, 1919.

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The Court having inspected the order made by the Honorable Samuel Kalisch, Justice of the Supreme Court of New Jersey, on the day of July, 1918, setting aside a certain election in a proceeding entitled, "In the matter of the application of George W. Holman, Jr., to contest the validity of a special election held in the Township of Dover, in the County of Ocean and State of New Jersey, under Chapter two of the Laws of One thousand nine hundred and eighteen," and the transcript and proceedings touching and concerning the same, returned with the certiorari in this cause, and having considered the reasons for reversing the decision of said Justice and having heard the argument of counsel thereon, do ORDER that the writ of certiorari allowed in said cause, be dismissed.

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Entered February 24, 1919.

On motion of

WILFRED H. JAYNE, JR.,
Attorney for George W. Holman, Jr., Defendant.

Notice and Grounds of Appeal.**Township of Dover.**

30

Filed February 28, 1919.

TO WILLIAM H. JEFFREY, Esq.,
Attorney of Township of Dover, and

WILFRED H. JAYNE, JR., Esq.,
Attorney of George W. Holman, Jr.

40

TAKE NOTICE that the prosecutor appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause, on the following grounds:

1. The Supreme Court erred in affirming the order setting aside the election held in the Township of Dover, under review herein.

2. The Supreme Court should have reversed said order setting aside said election under review herein, for one or more of the reasons filed by the prosecutor in said Court, and should have sustained the said election.

COLLINS & CORBIN,
Attorneys of Prosecutor-Appellant.

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New Jersey Court of Errors and Appeals

CHARLES H. MILLER,
Prosecutor-Appellant,
vs.
TOWN OF MONTCLAIR and JOHN L. COX,
Defendants-Respondents.

ALFRED H. HOLBROOK,
Prosecutor-Appellant,
vs.
CITY OF EAST ORANGE and ANDREW MURRAY,
Defendants-Respondents.

CHARLES A. NUTTING,
Prosecutor-Appellant,
vs.
BOROUGH OF CALDWELL and JOHN A. BRADY,
Defendants-Respondents.

HARRY S. MYERS,
Prosecutor-Appellant,
vs.
BOROUGH OF ROSELLE and STANLEY MCINTOSH,
Defendants-Respondents.

ERNEST R. BROWN,
Prosecutor-Appellant,
vs.
BOROUGH OF DUNELLEN and GUSTAV WINTER,
Defendants-Respondents.

WILLIAM H. FISCHER,
Prosecutor-Appellant,
vs.
TOWNSHIP OF DOVER and GEORGE W. HOLMAN, JR.,
Defendants-Respondents.

*On Appeal from
Supreme Court.*

BRIEF IN FAVOR OF PROSECUTORS-APPELLANTS.

(1)

Statement of the Case.

These six cases involve questions as to the construction and constitutionality of the so-called Soldier Vote Act—Chapter 150, Laws of 1918. In each case the prosecutor (now the appellant) is a citizen and voter of the respective municipal defendant, and in each case a writ of certiorari was allowed to review the decision of one of the Justices of the Supreme Court, setting aside a *special* election held under the provisions of Chapter 2, Laws of 1918, commonly called the Local Option Act. In each case a petition was filed with a Justice of the Supreme Court, sitting as a summary tribunal, as provided by Section 25 of said act. In each case the election had resulted in a majority vote in favor of the prohibition of the sale of intoxicating liquor as a beverage; and in each contest the election was set aside, and on the review of the proceedings the Supreme Court affirmed the summary tribunal.

The appeals which are now brought before the Court were taken in each case from the judgment of the Supreme Court sustaining such order of the summary tribunal. As the questions involved in each case are similar (with one or two exceptions, as hereinafter pointed out) a joint brief is presented for all of the cases.

Three of the contests: to wit, Montclair, East Orange and Caldwell, were decided by Chief Justice Gummere; two, Roselle and Dunellen, were decided by Justice Bergen; and one, Township of Dover, by Justice Kalisch. For a report of the last named case, see 104 Atl., 212, under the title of *re Holman*.

In each case the facts relative to the election and the efforts to obtain the votes of the men in the military service, were presented to the Justices in the form of a stipulation, with various exhibits attached. The facts therefore being undisputed, the point to be considered by this Court is whether on the undisputed facts the decisions were correct as a matter of law. As Section 26 of the Local Option Act provides that in a contested election case the decision of the Justice who hears the case shall be conclusive as to all questions of fact, the further question is involved as to whether the findings of fact as expressed in the decisions and orders are supported by the evidence presented to the Justice in the form of said stipulation.

So far as relates to the extent of the review which the Court is authorized to make of the findings of the Justices before whom the contests were heard, this section of the Local Option Act is substantially similar to Section 38 of the act concerning public utilities which authorizes the Supreme Court to set aside an order of the Board of Public Utility Commissioners "when it clearly appears that there was no evidence before the board to support reasonably such order, or that the same was without the jurisdiction of the board." This section has been considered in several cases and the extent of the review thereunder has been stated as follows by this Court in the case of *West Jersey & S. R. R. Co. v. Board of P. U. Commrs.*, 87 N. J. L., 171, as follows:

"That court (Supreme Court) can upon certiorari, or under the statutory procedure provided by Section 38 of the Act of 1911, review such action for the purpose of ascertaining whether or not it is purely arbitrary, whether or not it has a reasonable basis to rest upon, whether or not it is supported to any extent by the facts submitted to the board for its consideration; and if it shall be made to appear to the court that such action is purely arbitrary, or that it has no reasonable basis upon which to rest, or is unsupported by the facts laid before the board, the court may declare it null and void, and order it to be set aside" (p. 178).

(2)

Grounds of Appeal.

In each case the grounds of appeal are similar and read as follows:

1. The Supreme Court erred in affirming the order setting aside the election.
2. The Supreme Court should have reversed said order setting aside said election under review herein, for one or more of the Reasons filed by the prosecutor in said court, and should have sustained the said election.

The Reasons filed in each case are as hereinafter stated; and in order to avoid confusion, we will recite the Reasons in full, stating to which cases they are severally applicable. They are as follows:

- "1. The finding or decision of the justice of the Supreme Court by whom the order under review was made that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from

the municipality in the military service of the United States, were deprived of the right and opportunity to vote at the said election, was not justified nor reasonably supported by the stipulation of facts filed with the said justice on the hearing of the contest of the said election."

Applies to all cases and appears in each case as Reason 1 (pages 48, 79, 100, 127, 146 and 178). The wording of this and some of the other Reasons which are similar in each case is, however, not identical, the language being changed to correspond to the findings of the respective justices, but the underlying legal question is the same.

"2. There was no evidence before said justice to support reasonably his finding or decision that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were deprived of the right and opportunity to vote at the said election."

Applies to all cases and appears in each case as Reason 2, with slight change of wording to correspond to the findings.

"3. All qualified voters, including those absent from the municipality in the military service of the United States, were afforded the right and opportunity to vote at the said election."

Applies to all cases and appears in each case as Reason 3, with slight change of wording to correspond to the findings.

"4. All qualified voters of the municipality, including those absent therefrom in the military service of the United States, were given notice of the manner in which they are required by law to prepare and transmit their ballots, for the reason that all such voters are presumed to have knowledge of the provisions of Chapter 150, Laws of 1918, whereby all such voters are authorized and permitted (in the event that they have not received an official ballot prior to the date of such election) to prepare and vote on the date of such election an unofficial ballot indicating thereon the proposition upon which they intend to vote."

Applies to all cases and appears as Reason 4 in Montclair, East Orange, Caldwell and Dover; and as Reason 6 in Roselle and Dunellen.

"5. Assuming that the finding or decision of the said justice that a number of qualified voters sufficient to change the result of the election, who were absent from the municipality in the military service of the United States, were de-

prived of the right and opportunity to vote at said election, was justified or reasonably supported by said stipulation, nevertheless such fact should not operate to invalidate the said election for the reason that it was impossible for the Secretary of State to comply with the provisions of Chapter 150 of the Laws of 1918 by ascertaining either from the Adjutant General of New Jersey or from the Adjutant General or other proper authority of the United States the names and postoffice addresses of such qualified electors, as required by said statute."

Applies to all cases and appears as Reason 5 in Montclair, East Orange, Caldwell and Dover; and as Reason 10 in Roselle and Dunellen.

"6. Assuming that the finding or decision of the said justice that a number of qualified voters sufficient to change the result of the election, who were absent from the municipality in the military service of the United States, were deprived of the right and opportunity to vote at the said election, was justified or reasonably supported by said stipulation, nevertheless such fact should not operate to invalidate the said election for the reason that the failure of the Secretary of State to comply with the provisions of said Chapter 150 (even if it had been possible for him so to do) was a mere mistake or irregularity which should not be permitted to disfranchise innocent voters who have expressed their will on the question submitted at the said election."

Applies to all cases and appears as Reason 6 in Montclair, East Orange, Caldwell and Dover; and as Reason 11 in Roselle and Dunellen.

"7. Assuming that the finding or decision of the said justice that a number of qualified voters sufficient to change the result of the election, who were absent from the municipality in the military service of the United States, were deprived of the right and opportunity to vote at the said election, was justified or reasonably supported by said stipulation, nevertheless such fact should not operate to invalidate the said election for the reason that it does not appear that the failure of such qualified electors to vote, or to have an opportunity to vote, at such election, prevented a full expression of the will of the voters of said municipality."

Applies to all cases and appears as Reason 7 in Montclair, East Orange, Caldwell and Dover; and as Reason 12 in Roselle and Dunellen.

"8. Assuming that it was possible for the Secretary of State to comply with the provisions of said Chapter 150, nevertheless it does not appear that a sufficient number of qualified electors, who were absent from the municipality in the military service of the United States, and who might have voted at said election, would have voted in such a way as to change the result of said election."

Applies to all cases and appears as Reason 8 in Montclair, East Orange, Caldwell and Dover; and as Reason 13 in Roselle and Dunellen.

"9. Under the Constitution of the State of New Jersey the right of qualified electors, who are absent from the municipality in which they are living, in the military service of the United States, is limited to vote for persons to fill elective offices, and does not include the right to vote for such a proposition as was submitted at the said election."

Applies to all cases and appears as Reason 9 in Montclair, East Orange, Caldwell and Dover; and as Reason 14 in Roselle and Dunellen.

"10. Under the ruling of the Federal authorities charged with the conduct of the present war, qualified voters who are absent from the municipality in which they reside, in the military service of the United States, are not permitted to vote at special elections; and the right of any such voters to vote at such elections, which may have been given under the Constitution or laws of the State of New Jersey, is subject to and superseded by the rulings of such Federal authorities."

Applies to all cases and appears as Reason 10 in Montclair, East Orange, Caldwell and Dover; and as Reason 15 in Roselle and Dunellen.

"11. The stipulation of facts shows that every reasonable effort was made to obtain the names and addresses of qualified voters of the municipality who were in the military service of the United States, and that notice of the said election was given to all qualified voters whose names and addresses were thus obtained, and that all such voters had the right and opportunity to vote at the said election."

Applies only to Montclair and East Orange. See pages 50 and 81. (NOTE: This same Reason appears as No. 11 in the Dover case but is not applicable to that case.)

ADDITIONAL REASON.

“The statute entitled ‘A supplement to an act entitled “An act to regulate elections” approved April fourth, one thousand, eight hundred and ninety-eight’ (being Chapter 150, Laws of 1918), is in violation of the Constitution of the State of New Jersey in that it requires the Secretary of State to distribute the envelopes containing the ballots of voters in the military service to the County Board of Elections in the county in which said voters reside, instead of providing for the return and canvass of the votes of such voters in the election district in which they respectively reside, as required by Article II of said Constitution.”

Applies to all cases.

In addition to the above Reasons there are certain Reasons which were filed only in the cases of Roselle and Dunellen, due to the fact that the matters therein set forth are specifically referred to only in the findings of the Justice who heard these two cases. These Reasons appear in each of said cases as Nos. 4, 5, 7, 8 and 9 and are as follows:

“4. The finding or decision of the said Justice that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were not given any notice of the manner in which they are required by law to prepare and transmit their ballots, was not justified nor reasonably supported by the said stipulation for the reason that all such voters are presumed to have knowledge of the provisions of Chapter 150, Laws of 1918, whereby all such voters are authorized and permitted (in the event that they have not received an official ballot prior to the date of said election) to prepare and vote on the date of such election an unofficial ballot indicating thereon the proposition upon which they intended to vote.”

“5. There was no evidence before said Justice to support reasonably his finding or decision that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were not given notice of the manner in which they are required by law to prepare and transmit their ballots, for the reason that all such voters are presumed to have knowledge of the provisions of Chapter 150, Laws of 1918, whereby all such voters are authorized and permitted (in the event that they have not received an official ballot prior to the date of such election) to prepare and vote on the date of such election an unofficial ballot indicating thereon the proposition upon which they intend to vote.”

"7. The finding or decision of the said Justice that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were not given any notice of the proposition for the adoption or rejection of which they were entitled to vote, is not justified nor reasonably supported by the said stipulation, for the reason that the advertisement of said election was made as required by law, and all persons, including such voters, are thereby presumed to have notice of such proposition."

"8. There was no evidence before such Justice to support reasonably his finding or decision that any qualified voters, or a sufficient number thereof to change the result of the election, who were absent from the municipality in the military service of the United States, were not given notice of the proposition for the adoption or rejection of which they were entitled to vote, for the reason that the advertisement of said election was made as required by law, and all persons, including such voters, are thereby presumed to have notice of such proposition."

"9. All qualified voters of the municipality, including those absent therefrom in the military service of the United States, were given notice of the proposition for the adoption or rejection of which they were entitled to vote, for the reason that the advertisement of said election was made as required by law, and all persons, including such voters, are thereby presumed to have notice of such proposition" (pp. 127 and 146).

The argument on the above Reasons will, however, be consolidated with other Reasons which are common to all the cases, as the same legal questions are involved.

There is also one point which is peculiar to the Dunellen case and which is raised by Reason 16 in that case as follows:

"16. The stipulation of facts shows that thirty of the qualified voters of the municipality who were in the military service of the United States, received due notice of said election and after deducting said thirty from the total number of qualified voters, namely, fifty-four, who were absent in the military service, the remaining number was insufficient to change the result of said election" (p. 149).

The legal questions raised by all of the Reasons may be conveniently considered under the following headings:

I.

All qualified voters, including those absent from the several municipalities in the military service of the United States, were afforded an opportunity to vote at the respective elections, because (a) all voters had legal notice of the election, and (b) all absent voters had the right to vote an unofficial ballot, even if no official ballot was forwarded.

(Reasons 1-4: Montclair, East Orange, Caldwell and Dover;

Reasons 1-9: Roselle and Dunellen.)

II.

The stipulations show that it was impossible for the Secretary of State to comply with the provisions of Chapter 150 of the Laws of 1918 by ascertaining either from the Adjutant-General of New Jersey or from the Adjutant-General or other proper authority of the United States the names and post-office addresses of qualified electors who were in the military service.

(Reason 5: Montclair, East Orange, Caldwell and Dover;
Reason 10: Roselle and Dunellen.)

III.

The failure of the respective municipal clerks or of the Secretary of State to comply with the provisions of Chapter 150 of the Laws of 1918 was an irregularity which should not disfranchise innocent voters when it appears that there was a full expression of the will of the voters on the question submitted at the several elections, particularly when there is no evidence that absent voters would have voted in such a way as to change the result of the several elections.

(Reasons 6, 7 and 8: Montclair, East Orange, Caldwell and Dover;

Reasons 11, 12 and 13: Roselle and Dunellen.)

IV.

Qualified electors who are absent in the military service have no constitutional right to vote upon such a proposition as was submitted at the several elections.

(Reason 9: Montclair, East Orange, Caldwell and Dover;
Reason 14: Roselle and Dunellen.)

V.

Whatever rights absent voters may have to vote for such a proposition as was submitted at the several elections are subject to and superseded by the rulings of the federal authorities in time of war.

(Reason 10: Montclair, East Orange, Caldwell and Dover;
Reason 15: Roselle and Dunellen.)

VI.

In the cases of Montclair and East Orange notice of the special elections was given to all absent voters whose names and addresses could be obtained.

(Reason 11: Montclair and East Orange.)

VII.

In the Dunellen case the number of absent voters who failed to receive actual notice of the election was insufficient to change the result of the election.

(Reason 16: Dunellen.)

VIII.

The statute under which the votes of men in the military service are taken does not conform to the requirements of the constitution of the State of New Jersey in that it requires the Secretary of State to distribute the envelopes containing the ballots to the respective County Boards of Elections in the county wherein the voters reside, instead of providing for the

return and canvass of the votes in the election districts in which they respectively reside, as required by Article II. of said Constitution.

(Additional Reason—All Cases.)

I.

All qualified voters, including those absent from the several municipalities in the military service of the United States, were afforded an opportunity to vote at the respective elections, because (a) all voters had legal notice of the election, and (b) all absent voters had the right to vote an unofficial ballot, even if no official ballot was forwarded.

Reasons 1-4: Montclair, East Orange, Caldwell and Dover;

Reasons 1-9: Roselle and Dunellen.)

Assuming for the purpose of argument that voters who are absent in the military service are entitled to vote on the questions which were submitted at the special elections, notwithstanding the fact that the constitutional right of suffrage is limited to voting for *officers* that are elected by the people (as to which see Point IV), the mere fact that they did not vote would not operate to invalidate the elections; if that were so then no election could ever be valid unless every person who is entitled to vote did in fact vote. But the basis of the decisions setting aside these elections is that certain qualified voters did not have an *opportunity* to vote (p. 44, ll. 1-10).

The present point is limited to a discussion of this question of opportunity, but it should be observed that in this respect the cases of Montclair and East Orange are different from the other cases in that in Montclair and East Orange ballots were sent to those voters whose names and addresses were ascertainable. (See Point VI.)

The present argument is applicable to all cases, including those where no ballots were sent; and we urge that if the question of opportunity is important, then the stipulations in every case show that all voters did have such opportunity because legal notice was given of the election; and even if the voters did not have actual notice, nevertheless they must be presumed to have knowledge of the statute (Chapter 150, Laws of 1918)

pursuant to which they could have voted an unofficial ballot even if no official ballot was received.

Section 6 of the Local Option Law requires the municipal clerk to give notice of the holding of special elections thereunder by posting, at least fifteen days before the date of the election, in not less than five conspicuous places in the municipality, a notice stating the date of the election and the question to be submitted thereat, and by publishing such notice at least once in a newspaper published or circulating in the municipality.

The stipulations show that in every one of the cases under consideration the legal requirements as to notice were met; in some of the cases more notice was given than was required by law and in other cases additional notices were sent to the men in the military service. The facts on this point may be summarized in each case as follows:

MONTCLAIR.

In this case 1,806 voters out of a total of 2,870 that had voted at the last election signed a petition for the special election (p. 4, l. 40). The time and place for the hearing of the petition were duly advertised and on such occasion no objection was made to the legality of the petition (pp. 3 and 4). Thereupon an election was ordered for April 30th (p. 7, l. 18). On April 13th notice of the election was posted on the five official bulletin boards of the town and at least twenty-five additional notices were posted in other prominent places, such as in front of churches and schoolhouses. The notice was also advertised three times in the two papers which are published in the town (p. 15, ll. 20-35). In addition to the legal notice efforts were made to get further notice to the men in the military service; on April 22nd a representative of the Secretary of State obtained from the Town Clerk a list of the names and addresses of all the men in the town who had been inducted through the Draft Board for the town (p. 13, l. 50). On the same day he procured a copy of a newspaper containing a list of the names and addresses of all the men in the service, so far as the editor had obtained same. He also obtained 1,000 of the ballots printed for the special election, designated as "Soldiers' and Sailors' Ballot." The list of the men inducted into the service through the Draft Board was prepared by its Secretary from the records of the Board and included all men who were either inducted into the service through the Board or who volunteered after Regis-

tration Day, June 6, 1917. It did not include any men who may have volunteered prior to that day.

When these lists and ballots were delivered to the Secretary of State he immediately mailed the ballots, with envelopes, instructions, etc., to all soldiers whose names appeared thereon (p. 30, ll. 30-40). About one-half of these were returned undelivered on account of insufficient address (p. 30, ll. 40-50).

The Dry Committee in Montclair during the week prior to the election mailed a circular containing an announcement of the election to be held on April 30th, to about 200 of the men in the service (p. 15, l. 15).

At the special election there were some men (number not known) in the service who voted in their election districts (p. 15, l. 20). The Secretary of State received 64 soldier votes and forwarded same to the County Board of Elections (p. 31, ll. 10-20; p. 13, ll. 20-30). Of these 31 were rejected and 33 were counted (p. 13, ll. 10-30).

EAST ORANGE.

The petition for the special election in East Orange was signed by 2,191 voters out of 5,249 (p. 53, l. 35; p. 55, l. 45), and thereupon the prescribed notice of hearing was posted and published (p. 55, ll. 10-30). At this hearing no one made any objection to the election (p. 56, l. 5) and thereupon a special election was ordered for May 7th (p. 56, l. 28). This election was duly advertised as required by law (p. 71, l. 20). The Secretary of State inquired of the City Clerk where he could obtain a list of the names and addresses of the men in the service and was referred to the Local Draft Board and to the Welfare Committee. He obtained a list from the Draft Board (p. 70, l. 40, to p. 71, l. 1). There were about 400 names on this list. 500 ballots were printed by the City Clerk for the use of the Secretary of State and he sent these to every man whose name appeared on the list (p. 65, ll. 20-30; p. 70, l. 50).

207 ballots were received by the Secretary of State and forwarded to the County Board (p. 65, ll. 30-40). 90 of these ballots were rejected as it appeared by the statement on the back thereof that they had been prepared subsequent to the date of the election, May 7, 1918—and therefore did not comply with Sections 8 and 9 of Chapter 150, Laws of 1918, which require that such ballots be prepared on or prior to the date of

the election. Several other ballots were rejected for other reasons and 114 were counted (pp. 74, 75).

CALDWELL.

The petition in this case was signed by 244 voters (p. 85, l. 10); out of a total of 497 votes that were cast at the preceding election (p. 87, l. 1). Notice of hearing on the petition was duly given and no objections were presented (pp. 85-86). Thereupon the election was called for April 30th (p. 87, l. 28). Notice of the election was duly advertised—not once, but five times (p. 88, ll. 20-30). The local newspaper containing the advertisement of the election was sent to many of the 34 voters who were in the service; four of these were regular subscribers and received the paper every week; two were present in the Borough on the date of the election and voted; fifteen received the paper every week from members of their family; one received word of the election through his mother and brother; two could not be found; and as to the other cases some were known to have received the paper occasionally, but it was not possible to ascertain whether friends or relatives had sent them the paper. This paper was also sent every week to Camp Dix (pp. 96, 97).

ROSELLE.

257 voters—more than 30% of the number who voted at the last election—signed the petition for the special election (p. 105, l. 28; p. 108, ll. 1-10). Notice of hearing was duly posted and advertised (p. 106, ll. 1-50). The election was ordered for May 21st (p. 108, l. 25). Notice was posted in five public places and was advertised on May 3rd and May 17th (p. 109; p. 115, ll. 15-20).

In addition to the legal notice the Borough Clerk sent a sample of the ballot that was to be voted at the special election to each of the qualified voters of the municipality to his address therein, including all of those who were in the military service (p. 115, ll. 1-10).

DUNELLEN.

The petition for an election was signed by 247 voters (p. 132, ll. 40-50); and was found to contain a sufficient number of signatures required to call a special election (p. 135, ll. 40-50). Notice of hearing of the petition was duly posted and advertised (pp. 133, 4).

The election was ordered for June 11th and was duly advertised by posting and publication (p. 136, l. 40, to p. 138, l. 10; p. 144, ll. 1-10).

There were 54 voters in the military service, 30 of whom received "due notice" of the special election in time to vote, if they so desired. This notice was in the form of the advertisement of the election which was published in a newspaper on May 25th, May 30th and June 6th, copies of which newspaper were sent to all of these 30 men, postage prepaid, at their proper postoffice addresses (p. 144, ll. 20-30).

TOWNSHIP OF DOVER.

The petition was signed by 299 voters (p. 153, l. 50); which was more than 30% of the votes cast at the last election (p. 157, ll. 10-15). Notice of hearing on the petition was duly posted and published (pp. 154, 155).

The election was ordered for May 28th (p. 157, l. 22) and due notice thereof was posted and published (pp. 158, 159).

It will therefore be seen that in every one of the cases the notice of election required by the statute was given, and in some of the cases additional notice was given either by sending ballots or letters or newspapers. We submit that in order to hold a valid election it was not necessary to bring home to every voter *actual* notice of the time and place of the election. When the legislature specifies what notice shall be given and the manner in which it is to be given, compliance with such provisions is sufficient to charge every voter with notice; if this is not so then it would be impossible to hold any election, as it is safe to say that there are always some voters who do not have actual knowledge of an election.

But if we are wrong in our argument that every voter is *presumed* to have had notice when it appears that the notice specified by the statute has been given, there is still another presumption upon which we rely, to-wit, that every man is presumed to know the law. The importance of this matter in the present cases rests in the fact that under Section 9 of Chapter 150, Laws of 1918, any person who does not receive an official ballot is entitled to prepare and vote an *unofficial* ballot, indicating the candidates and the propositions for or upon which he is voting; and, under Section 13, any ballot received from any person in the active military service must be counted al-

though the ballot may be informally prepared. We quote from Section 13 as follows:

“No ballot shall be rejected for or on account of *any* informality in its preparation. Wherever the intent of the voter is apparent upon an examination of the ballot, the vote shall be counted in accordance with such intent, whether such intent is expressed in the manner now provided by law or otherwise.”

Section 14 provides as follows:

“This act shall be liberally construed for the purpose of affording an opportunity to persons in active service in the military forces of this State or of the United States to vote at any primary, general or special election.”

Under this statute voters in the military service could have voted on any kind of a ballot, no matter how informal, whereon the intent was apparent upon an examination of the ballot. The voter was not limited to an official ballot but could vote in any way that would indicate his intent. Suppose, for example, he wrote on a piece of newspaper the words “I want to vote in favor of prohibition”—such ballot should undoubtedly be counted.

But it may be urged that no voter would be likely to vote even an informal or unofficial ballot unless he in fact knew the date of the special election, and the question upon which the vote was to be taken. The answer is, first, that he is presumed to have notice of the election by reason of the fact that it was legally advertised; or in any event when it appears that the election was legally advertised—the burden of proof rests upon the contestant to show that the voters who were in the military service did not have actual notice. There was no attempt made to show this in any of the cases. Furthermore, *actual* notice was given to the men in the military service, or at least to all of them whose addresses could be ascertained, by sending them ballots, in the cases of East Orange and Montclair; such notice was given in the form of newspapers and letters in the Caldwell and Dunellen cases and in the form of sample ballots mailed to their home address in the Roselle case.

The case of East Orange and Montclair are in a class by themselves so far as this point is concerned, for the reason that (as we show under Point VI) notice of the special elections was in fact given to all absent voters whose names and addresses could be obtained. But even with respect to the other four cases the Court should look with small favor upon the con-

testants, in view of the fact that they made no attempt to contest the election until after the result had been adverse to them. If they were sincere in their profession that they were anxious that the men in the military service should be afforded an opportunity to vote, why did they not make the objection *before* instead of after the election? It is true that under the Local Option law they had the right to make a contest within ten days after the election, but it is also true that they could easily have ascertained *before* the election that the Secretary of State was not in a position to send ballots to the men in the service. The election proceeded and the expense thereof was incurred by the respective municipalities without any objection on the part of these contestants. None of the voters who were in the service, and who it is alleged had no opportunity to vote, are complaining of the result. We submit that the principle laid down in the case of *Bott v. Secretary of State*, 63 N. J. L. 289, should apply. We quote:

“Under the statute the election proceeded throughout the state without objection on the part of any person, and, so far as appears, every qualified voter who desired to exercise his franchise has done so in a mode satisfactory to himself, without seeking to vote on some of the amendments while refraining from voting on the rest. So that no right has been denied; no will competent to influence the election has been thwarted, and the discrepancy between the statute and the constitution, if there be any, has proved to be of no practical moment. Under these circumstances we think the same public policy which permitted the prosecutors to present the supposed public grievances now requires us to declare that this is not such a grievance, and the theoretical objection has been waived” (p. 302).

The Supreme Court overruled this point on the ground that the provisions in Chapter 150, of Laws of 1918 (known as the “Soldier Vote Act”) for the sending of ballots and instructions for voting to the men in the military service at least twenty days before an election indicated a legislative intention that actual notice should be given of an election to the men in the service; and that therefore the rule as to constructive notice which might be applicable to other absentee voters did not apply to the men in the service (p. 182, l. 50 to p. 183, l. 40).

Even if this view be correct (which we do not concede) the question still remains in all of these cases as to whether there is any proof from which may be deduced the conclusion that the men who were in the service did *not* have actual notice of

the election, or that such a number of such men did not have actual notice as would be sufficient to change the result of the election if they had all voted in favor of the sale of liquor. The stipulation in each of the several cases is limited to a statement that on the date of the election a certain number of voters in the several municipalities was in the military service. But the mere fact that certain voters were in the service does not justify the conclusion that they, or any of them, did not have *actual* notice of the election, and still less does it justify the conclusion that they did not have an opportunity to vote by means of the *unofficial* ballot, even if some or all of them did not receive an official ballot.

The contestants in these several cases have contented themselves with a stipulation that certain numbers of voters were in the military service; but in no case was any effort made to show that any of these men did not in fact know of the election or that any of them did not in fact receive a ballot—except that in the case of the Township of Dover, there were three telegrams from men in the service stating that they had not received a ballot. That fact would not affect the argument in that particular case as the majority therein in favor of prohibition was sixteen, and hence a change of three votes would not affect the result. In making this assertion, we have not overlooked the stipulation showing that in certain cases the Secretary of State did not forward official ballots or instructions for voting. Granting that to be the fact, the question still remains whether these voters had notice from some other source. The burden of proof to show that the men in the service of some of them, did not have actual notice of the election rests in each case upon the contestant and cannot be shifted merely by showing that these men were absent in the service on the day of the election. Why should it be *presumed*, in the absence of proof, that the men in the service did not have notice of the election? Even if notice of the election was not given to these men as required by Chapter 150, it does not thereby follow that they had no notice at all of the election.

In the cases of Montclair, East Orange and Caldwell, there is a finding of the summary tribunal to the effect that no notice of any kind (except as specifically recited in the order) was given to the men in the service (p. 47, ll. 20 to 30; p. 77, ll. 20 to 30; p. 98, ll. 30 to 40). So also in the cases of Roselle and Dunellen, there was a finding of the summary tribunal that the election

was not held as required by the provisions of Chapter 150, (p. 126, l. 24; p. 145, l. 45); and a similar finding was made in the case of the Township of Dover (p. 176, ll. 20 to 50). These findings, we submit, are not conclusive when there is no evidence to sustain the same, other than the mere fact that the men who were in the service did not receive notice from the municipal clerk or the Secretary of State. We submit that such fact does not justify the conclusion that these voters did not have actual notice; and as the several contestants rely upon the lack of notice to sustain their respective contests, they should have produced proof in support of their allegations that these voters did not have notice of the election and therefore did not have a reasonable opportunity to vote. In the absence of such proof, we submit that the findings of the summary tribunal were not supported by the facts submitted to them for consideration. (See *West Jersey & S. R. R. v. Board of P. U. Commissioners*, 87 N. J. L., 171, at page 178.)

If the conclusion of the Supreme Court is correct on this point, it follows that every voter in the service in an election of this kind must receive actual notice of the election; and in default thereof, the election is bound to fail—always provided that the number of voters in the service is sufficient to change the result, if all had voted contrary to the majority vote. Under the provisions of Chapter 150, there is no intermediate stopping place between notice to all and notice to none who may be in the service. We cannot believe that the Legislature intended any such incongruous situation.

The Supreme Court said that the Legislature intended to apply a rule of actual notice “if within reasonable limits of possibility” (p. 183, l. 23). No such qualification of the absolute duty cast upon the Secretary of State can be found in Chapter 150; but if we assume for the purpose of discussion that the statute required such a modification, then we may ask the question, where is the proof in any of these cases, that actual notice was within “reasonable limits of possibility.” No such proof can be found—indeed, the evidence shows to the contrary, as many of the ballots that were forwarded by the Secretary of State in certain of the cases were returned to him marked “not found.”

There is, however, a provision in the Local Option Act which may be fairly construed to modify the literal requirements of the Soldier Vote Act. Section 7 of the former act provides:

"The district boards of registry and election in the several districts or precincts shall conduct any special election held hereunder; the poll shall be opened and closed at the times fixed by law for opening and closing the polls at the election for members of the General Assembly, and such special election shall be conducted, and the vote cast therein shall be counted and canvassed, *so far as practicable*, in the same manner as required by law for conducting elections for members of the General Assembly, except as otherwise directed in this act * * *."

Under this section, it may well be said that a special election is to be conducted "so far as practicable" in the same manner as required for election for members of the General Assembly; and that therefore if there is no proof that it was practicable to comply with the Soldier Vote Act, the failure so to do should not operate to invalidate the election.

II.

The stipulations show that it was impossible for the Secretary of State to comply with the provisions of Chapter 150 of the Laws of 1918 by ascertaining either from the Adjutant-General of New Jersey or from the Adjutant-General or other proper authorities of the United States the names and post-office addresses of qualified electors who were in the military service.

(Reason 5: Montclair, East Orange, Caldwell and Dover;

Reason 10: Roselle and Dunellen.)

Under Section 4 of Chapter 150 the Secretary of State is directed to ascertain "either from the Adjutant-General of New Jersey, or from the Adjutant-General or other proper authority of the United States" the names and addresses of men in active service in the military forces; and he is then required to forward ballots "to each person in such active service, as aforesaid" at least twenty days prior to the election. No doubt it was the intention of the Legislature to select the only available official sources for the purpose of obtaining information as to the names and addresses of men in the service; and the Legislature apparently assumed that such information would not only be available from one or the other or both of the sources named in the statute, but also that a request for such information would be cheerfully granted, overlooking entirely the fact that in time

of war it is not only difficult (and in many cases impossible) to obtain the addresses of men in the active service, but also that even if such addresses were obtainable the War Department as a matter of public policy would be almost certain to refuse to give the information.

No other method of obtaining the names and addresses is provided in the statute; and it was at this point that the well-meant effort of the Legislature to afford the men in the service every facility for voting broke down; for when the Secretary of State undertook to perform the duty laid upon him by this statute he found that the War Department refused to give him the information. We are therefore confronted with a situation where the Legislature of New Jersey has said a certain thing must be done in a certain way, but the supreme Federal authority says that it shall not be done in that or any other way. The efforts of the Secretary of State to obtain the information necessary to enable him to comply with the statute by sending ballots to the men in the service, and the insurmountable difficulties which he met in such attempt, may be best understood by a chronological summary of the statement of Mr. Transue and the exhibits thereto attached.

1918

- Jan. 29 Local Option Act takes effect.
- Feb. 18 Adjutant-General of New Jersey attempts to obtain service records of New Jersey men in the Army, by inquiry of the officer in charge of the U. S. A. Recruiting Office, New York (p. 32).
- Feb. 19 Adjutant-General of New Jersey is advised in reply to such inquiry that it is impracticable to comply with the request (p. 33).
- Feb. 28 Chapter 150 takes effect.
- Mar. 5 Secretary of State attempts to procure from the Adjutant-General of New Jersey a list of the names and addresses of the men from the State who are in the active military service, and is informed that it is impossible to furnish such information; and is further informed that it would be impossible to procure it from the War Department at Washington, as the New Jersey Adjutant-General had on file a communication which indicates that no such list of names and addresses would be furnished; and it further

- advised that the Adjutant-General of New Jersey had very little data which would be of any use, and the greater part of what he did have did not give the military addresses (p. 29, l. 40, to p. 30, l. 5).
- Mar. 5 On same day Secretary of State is referred to the clerk who had charge of the service records forwarded to the Adjutant-General of New Jersey by the local Draft Boards and is again advised that it would be impossible to secure any such list from the New Jersey Adjutant-General.
- Apr. 1 Governor of New Jersey writes to the U. S. Secretary of War calling attention to Chapter 150 and stating that a number of special elections are scheduled, and inquiring whether the U. S. Government has issued any order discouraging the mailing of ballots to men in the Service, and asking for the opinion and desire of the Secretary of War (pp. 36, 37).
- Apr. 9 Governor of New Jersey files with the Secretary of State an order, pursuant to Sec. 2 of Chapter 150, that he deems the existing emergency of such a nature as to permit "as far as legal and practical" the collection of the soldiers' and sailors' vote as provided by law (p. 33, ll. 30-50).
- Apr. 9 The U. S. Adjutant-General writes the Governor in reply to his inquiry of April 1st addressed to the Secretary of War stating that it has been decided by the Department that so far as concerns soldiers within the borders of the United States their votes may be taken at a primary or a general election without serious interference with military operations or with the training of the men, and that pursuant to this decision an order has been issued to all commanding officers in the United States providing that the vote of officers and soldiers within the borders of the United States *for either a primary or general election* may be taken and for that purpose the commanding officer shall specify a place where the voters may exercise their franchise, etc. The letter from the Adjutant-General then states:
- "While, as stated above, the soldier vote may be taken at primary or general elections within the borders of the United States without seriously interfering with military affairs, there can be no doubt

- that very serious interference would result if all the states were to be permitted to take the soldier vote whenever one of the several State governments should deem it advisable *to call a special election*. The application of the order above quoted must, consequently, *be restricted to primary and general elections*, as specified therein." (pp. 35, 36.)
- Apr. 9 City Clerk of East Orange writes Secretary of State for advice as to his duty under Chapter 150 (p. 65, l. 45, to p. 66, l. 20).
- Apr. 10 Secretary of State advises Clerk of East Orange of the filing of the Governor's order of April 9th and says that a representative of his office will visit him for the purpose of determining the procedure (p. 66, ll. 30-40).
- Apr. 10 Secretary of War wires the Governor that "Department has recommended to the President that the vote be not taken from soldiers on foreign soil because it would seriously interfere with military efficiency" (p. 37, ll. 20-30).
- Apr. 18 Secretary of State receives notice dated April 17th of Montclair election from the Town Clerk (p. 30, ll. 25-30; p. 34, ll. 30-40).
- Apr. 18 Secretary of State instructs his agent to obtain from the Clerk of Montclair a list of names and addresses of the men in the service (p. 30, ll. 30-35).
- Apr. 22) Ballots, envelopes and instructions mailed to Mont-
and 23) clair voters by Secretary of State (p. 30, ll. 30-40).
- May 1 Secretary of State is advised by the postal authorities that letters addressed "Camp Dix" will not be delivered and that it is absolutely necessary that the envelope contain the military unit of the soldier (p. 30, ll. 50-55).
- June 6 Secretary of State writes the Adjutant-General of New Jersey for a list of the names and addresses of the men in the service for use at the primary and general elections (pp. 37, 38).
- June 16 Adjutant-General of New Jersey informs Secretary of State that his department has been at work for several months in an effort to comply proper data but that it has been possible to secure "but little data," and that additional information might be had

- from the Adjutant-General of the Army or from the Navy Department (p. 38, ll. 20-40).
- June 27 Secretary of State writes to the U. S. Adjutant-General for a list of the names and addresses of men in the service (p. 39).
- June 27 Secretary of State writes the Secretary of the Navy for a list of names and addresses of the men in the service (p. 39).
- July 1 Secretary of the Navy advises Secretary of State that the records of the enlisted personnel of the Navy are not kept in such a way as would be necessary in order to "allocate" the electors, and the Department is so pressed in attempting to meet the military needs of the Service that it is impossible to comply with his request (p. 40, ll. 10-30).
- July 10 Up to this date Secretary of State had received no reply to his inquiry of June 27th addressed to the United States Adjutant-General (p. 31, l. 52 to p. 32, l. 1).

In the meantime, while the Secretary of State was making these vain efforts to obtain the names and addresses from the authorities specified by the statute, proceedings were under way for the holding of special elections, in accordance with the provisions of Chapter 2, Laws of 1918.

Following is a list of the important dates with respect to each of the elections in question:

MONTCLAIR

March 5th	Petition filed
March 14th	Election ordered
April 30th	Election held

EAST ORANGE

March 13th	Petition filed
March 26th	Election ordered
May 7th	Election held

CALDWELL

March 9th	Petition filed
March 25th	Election ordered
April 30th	Election held

ROSELLE

March 19th	Petition filed
March 30th	Election ordered
May 21st	Election held

DUNELLEN

March 30th	Petition filed
April 19th	Election ordered
June 11th	Election held

DOVER

April 1st	Petition filed
April 12th	Election ordered
May 28th	Election held

All of the foregoing facts are undisputed. We therefore have a situation where the United States War Department not only refused to permit the taking of the soldier votes but directly ordered that they be not taken at the special elections; and furthermore refused to furnish the information which it was necessary for the Secretary of State to have in order to be in a position to mail ballots and instructions. Under these circumstances, how can it be said that there was any failure on the part of the Secretary of State to perform the duty laid upon him by Section 4 of Chapter 150? The record shows that he made every possible effort to get the information from the sources specified in the statute; and when through no fault of his own, he found it impossible to get the information from such sources he then did the next best thing (although it was entirely extra-legal) and attempted to get what information he could from the municipal clerks. As we have shown under Point VI, ballots were mailed to a substantial number of soldier voters from Montclair and East Orange—indeed, to all of them whose addresses could be ascertained, and we shall hereafter urge, so far as these two municipalities are concerned, that there is no basis for the finding that the voters from these municipalities did not have an opportunity to vote. But under the present point our claim is that if the Secretary of State did the best he could to obtain the information from the sources specified in the statute, and by reason of the unprecedented war conditions was unable to comply with the statute, his failure to do so should not be allowed to invalidate any of the elections—particularly when, as we show under Point III, there was a full ex-

pression of the will of the voters, notwithstanding the failure to give actual notice to some of the voters who were in military service.

The law does not require the impossible. The facts in these cases show that it was impossible for the Secretary of State to comply with the provision of the Soldier Vote Act. Hence his failure to comply therewith should not be allowed to invalidate any of the elections.

“That the law does not require vain, absurd or impossible things of men is one of its favorite maxims; and it is the plain duty of the courts, in the interpretation of a statute, unless restrained by the rigid and inflexible letter of it, to lean most strongly to that view which will avoid absurd consequences, injustice, and even great inconvenience, for none of these can be presumed to have been within the legislative intent.”

Moore v. Given, 39 Ohio St. 663.

The Supreme Court disposed of this point by holding that the “temporary condition” should not be classed as an impossibility (page 184, l. 15). The necessary inference from this is that elections under the Local Option Act must be postponed until and unless the proponents thereof are satisfied that it would be possible to comply with the provisions of the Soldier Vote Act. We cannot believe that such was the intention of the Legislature. When proper proceedings have been taken under the Local Option Act a mandate is imposed upon the proper municipal officers to proceed with an election thereunder—either an election on a special day or on the same day as the date of the general election—according as the petition may be filed by one or the other of certain percentages of the legal voters of the municipality; so also, a certain percentage of the voters have the absolute right under the Local Option Act, to require an election upon the question named in such Act. At the time the petitions for the several elections in question were filed, no one could anticipate how long a period of time would elapse before it would be possible to obtain the names and addresses of the men in the military service—indeed, in many cases it is not possible to obtain them even now. We respectfully insist that the Legislature never intended that the operation of the Local Option Act should be suspended until it was possible to comply literally with the provisions of the Soldier Vote Act—particularly as at the time of the passage of the Local Option Act, for all that anyone knew, the war which was then going on might have continued indefinitely. We therefore have a situation where under

one statute the Secretary of State was required to do something which it was impossible for him to do under the rules of the War Department; and under another statute, the specified percentage of the legal voters had the right to proceed with an election, and the municipal officers were bound to carry out their desire. By a literal construction of the Soldier Vote Act, an "impossible" situation was thus created. But it cannot be assumed that the Legislature intended any such absurdity; and we submit that such result can be readily avoided by construing Chapter 150 to require the Secretary of State to act thereunder *when it is possible* for him to procure the names and addresses, in the manner thereby required, or at all events, that a *substantial* compliance with the statute would be sufficient.

As was said in the case of *State v. Clark*, 29 N. J. L., 96: "If a literal construction of the words of a statute be absurd, the act must be so construed as to avoid the absurdity."

Again, in the case of *Walker v. Essex County*, 82 N. J. L., 348, it was said: "It is not to be assumed that the Legislature intended an absurdity, or that absurd consequences shall flow from its enactments."

III.

The failure of the respective municipal clerks or of the Secretary of State to comply with the provisions of Chapter 150 of the Laws of 1918 was an irregularity which should not disfranchise innocent voters when it appears that there was a full expression of the will of the voters on the question submitted at the several elections, particularly when there is no evidence that absent voters would have voted in such a way as to change the result of the several elections.

(Reasons 6, 7 & 8: Montclair, East Orange, Caldwell and Dover;

Reasons 11, 12 & 13: Roselle and Dunellen.)

It should first be observed that Chapter 150 does not impose upon the municipal clerk any duty with respect to special elections at which questions or propositions are to be submitted.

The only duty cast upon the municipal clerk by Chapter 150 is that set forth in Section 5 thereof. This provides that the Secretary of State, at least twenty days prior to any primary, general or special election, shall forward to the *county* clerks, who are to

prepare the ballots for such election, or if such ballots are to be prepared by clerks of such municipalities, then to the clerks of such municipalities, the names and addresses of the qualified electors in the military forces, and the clerk of such county or municipality shall, as soon as possible, forward to each of such persons, by mail or otherwise, "a printed or written list of the *names of the candidates* whose names will appear on the ballot for such election, together with the names of the nomination or office for which such person is a *candidate*"; provided, that the names shall not be forwarded by the Secretary to any clerk if the Secretary of War shall object, but in such case the Secretary of State shall forward the names of the "candidates." If there are no *candidates* to be voted for, it is obvious that this section has no application, and hence, so far as concerns the duty of the municipal clerk, he is not required by this statute to forward to the voters in the military service a statement of *the question or proposition* which is to be submitted. The duty of the municipal clerk is limited to the case of an election at which names of candidates appear on the ballot. Hence there was no failure of duty on the part of any of the municipal clerks, so far as concerns any of these special elections.

Let us next assume that there was a complete failure on the part of the Secretary of State to comply with the provisions of Chapter 150. Such assumption is not justified in some of the cases, particularly Montclair and East Orange, but we will take it for granted for the purpose of the argument under this point; still we insist that the failure of an election official to comply with a ministerial duty does not operate to invalidate an election when it appears that such failure has not prevented a full expression of the will of the voters.

In all the cases, the elections were advertised as required by the statute, and it must therefore be assumed that every voter had *legal* notice of the elections; but even if the voters in the military service did not receive a ballot from the Secretary of State, and even if the Secretary of State did not attempt to comply with the statute, nevertheless, the elections should not be set aside, if it appears that there has in fact been a fair expression of the will of the voters. It is settled that irregularity of even misconduct on the part of election officers shall not operate to invalidate the same, if in fact there has been a fair expression of the popular will.

The general rule in contested election cases, as laid down in this State in the case of *Love v. Freeholders of Hudson County*, 35 N. J. L. 269, is:

“Elections should never be held void, unless clearly illegal. It is the duty of the court to give effect to them, if possible” (p. 277).

One of the leading cases on this point is *People v. Wood*, 148 N. Y. 142; 42 N. E. 536, where a mistake was made by the county clerk in the form of the official ballot, in that he included in a party column on a ballot the names of candidates who had not been duly nominated by such party. The Court said:

“We can conceive of no principle which permits the disfranchisement of innocent voters for the mistake, or even the wilful misconduct, of election officers in performing the duty cast upon them. The object of elections is to ascertain the popular will, and not to thwart it. The object of election laws is to secure the rights of duly-qualified electors, and not to defeat them. Statutory regulations are enacted to secure freedom of choice and to prevent fraud, and not by technical obstructions to make the right of voting insecure and difficult. There can be no justification for the claim in this case to disfranchise the 681 voters in Queens County who voted for state and judicial officers by using the party ticket and emblem of the Regular Democratic party of Queens County, unless by force of some imperative provision of statute, which admits of no other construction.”

The above rules were applied in the case of *People v. Chandler*, 41 App. Div., 178; 58 N. Y. Supp. 794, where the town clerk posted notices only *four* days before the town meeting that the license questions would be submitted. It was held that the failure to file with the town clerk the request for such vote, twenty days before the meeting, and the failure of the *clerk* to give at least ten days' notice that a vote would be taken at the town meeting, as required by the statute, did not vitiate the election, where it appeared that there was a full vote.

Again, in the case of *Re Clement*, 29 Misc. Rep. 29; 60 N. Y. Supp. 328, there was a serious irregularity in the petition for the submission of the license question to a vote under the Local Option law in that the petition was not signed by the full number of one-tenth of those who had voted at the last general election. It appeared, however, that there was a full and fair vote on the question and there was nothing to show that this irregularity affected the expression of the will of the people; and it was held it did not affect the validity of the election.

A similar rule was applied by the Supreme Court of New York in the case of *Peters v. Sisson*, 102 Misc. Rep. 465; 169 N. Y. Supp. 940, where the Court refused to set aside an election held under the Liquor Tax Law, although it appeared that the notice of the election was not given in the manner required by the statute in that said notice was signed and published by the town clerk instead of by the county clerk. In reaching this conclusion the Court said (*italics ours*):

“The case falls within the rule that laws enacted in the interest of the public welfare or convenience, for the protection of human life, in regard to the rights of franchise, and providing remedies against either public or private wrongs, should be liberally construed, with a view to promote the object in the mind of the legislature.

* * * * *

“The requirements of a statute which are mandatory must be strictly construed, while those which are directory should receive a liberal construction for the accomplishment of the purpose of the act. As a general rule statutes relating to remedies and procedure are to be construed liberally, with the view to the effective administration of justice; 36 Cyc. 1188. Statutes in regard to the franchise and elections should be construed liberally in favor of the voters.

* * * * *

“I am mindful of the fact that a situation may arise where an official failure to perform a duty demands a re-submission of the questions, especially so if the petition was suppressed, and no notices posted or published within the time prescribed by law, *and the voters misled or kept in ignorance of the submission of the questions, but nothing of that sort was claimed here.*”

The above decision has recently been reversed by the Appellate Division (171 N. Y. Supp. 62); but the reversal was put solely on the ground that that part of the statute in question which required notice to be given by the County Clerk was mandatory and could not be disregarded. The reversal therefore does not affect the principle for which we are contending, unless this Court should conclude that the provisions of Chapter 150, Laws of 1918, are mandatory, and must be literally complied with—in which event it would be impossible to hold an election, either special or general, which would be valid, as it was and is impossible for the Secretary of State to comply with the provisions of said statute.

A somewhat similar case arose in Texas under the Local Option Law of that state. In *Norman v. Thompson*, 72 S. W. 64; 30

Tex. Civ. App. 537, it appeared that one of the five copies of the order for the election which were posted as notices was posted for only nine days instead of twelve days before the election, as required by the statute. The voters had actual notice of the election and there was nothing to show that the result was affected by the failure to post this copy the full twelve days. The statute in that case required the clerk to post "at least five copies of said order of election at different places within the proposed limits for at least twelve days prior to the date of election." In holding that the failure to post the notice strictly in accordance with the requirements of the statute did not render the election invalid, the Court said:

"We think that literal compliance with the statute should be required only when necessary to protect the electors in their right of suffrage, and that such was the intention of the legislature. To hold otherwise would be to sacrifice the purpose and spirit of the law to form and literalism, and this cannot be permitted."

In support of this conclusion the Court cited the cases of *Wheat v. Smith*, 7 S. W. 161 (Ark.); *Re Rowley*, 70 N. Y. Supp. 208; *Little v. Langlie*, 67 N. W. 958 (N. D.); 32 L. R. A. 723.

In each of the six cases now under consideration it appears that there was a full expression of the popular will on the question that was submitted. The vote was as follows:

	<i>For</i> <i>Prohibition</i>	<i>Against</i> <i>Prohibition</i>	<i>Total</i>	<i>Dry</i> <i>Majority</i>
Montclair	1672	1653	3325	19
East Orange	2490	2417	4907	73
Caldwell	255	252	507	3
Roselle	273	263	536	10
Dunellen	260	209	469	51
Dover	291	275	566	16

The total vote compares as follows with the vote cast for members of the General Assembly at the general election in 1917 (taking the leading candidate in each municipality):

	<i>Republican</i>	<i>Democrat</i>	<i>Total</i>
Montclair	1912	622	2534
East Orange	3849	970	4819
Caldwell	348	97	445
Roselle	422	118	540
Dunellen	234	148	382
Dover	311	122	433

The above figures are taken from the official returns as published in Fitzgerald's Manual. The Court has the right to take judicial notice of election returns.

Thomas v. Commonwealth, 90 Va. 92; 17 S. E. 788;

State v. Stearns, 72 Minn. 200; 75 N. W. 210;

Kokes v. State, 55 Neb. 691; 76 N. W. 467.

The above figures do not include the scattering vote for the Prohibition and Socialist candidates, the returns for which are not classified in the Manual according to municipalities, only the total vote for the County being given. These scattering votes, however, are small in number, and even if they were included it will be seen that in every one of the present cases a very large majority of the possible voters did in fact vote; and under such circumstances we submit that any irregularity on the part of any election official ought not to be permitted to deprive innocent voters of the fruits of victory, when it appears that there has been a full expression of the popular will.

It will be seen from the above figures that the vote cast at the special elections in all of the municipalities exceeded the vote cast for the two principal parties at the last general election for members of the General Assembly, except that in the case of Roselle the vote at the special election was 536 and the vote at the general election was 540.

If the vote cast at these special elections had been only a small proportion of the possible vote, the situation would be very different, but in every case the vote cast was a full expression of the popular will and the elections should not be set aside merely because of the failure to comply strictly with the technicalities of a law which, as we have shown under other points, was impossible of practical operation under war conditions.

It is also said that the elections should be set aside in these cases because it was admitted that the number of men in the military service who did not vote exceeded in each case the dry majority. This conclusion is necessarily based upon the idea that *all* of the men in the service would have voted against prohibition. We challenge the soundness of such conclusion. There is no evidence whatever that any of the men in the service would have voted against prohibition; and it is, to say the least, a very violent presumption to take it for granted that *all* of them would have so voted. Cases of this importance to the communities involved ought not to be decided on a mere *possibility*. If there is any presumption at all as to how men in the service would have voted on the question presented at these elections, it would seem as if the only reasonable presumption would be that the men in the service would on the average vote the same as the men who were not in the service; and of course, if the same proportion of the men in the service voted for prohibition, as voted in person at the election, the result would not be changed.

Our argument as above set forth, is further supported by a decision in the State of Michigan, in the case of *Bauer v. Denmark*, 122 N. W. 120. The notice of the election was not given for the full period of three weeks, as required by the statute, the first publication being four days short of such period of three weeks. In the course of the opinion sustaining the election, the Court said:

“If such an election is to be held invalid, and the decisive will of the people thwarted by the mistake of the county clerk in failing to publish the notice for the exact time, it must be because the rules of law are so inexorable that they will never tolerate a harmless error or mistake of a ministerial officer. * * * There were but few if any, electors who did not vote upon the proposition. There is no showing or claim that any voter in the county did not understand the issue and was not afforded an opportunity to vote. A ministerial officer—the county clerk—failed in his duty to publish the first notice within the exact time required by the statute. It must be conceded that a four days’ earlier notice would have been of no benefit to the electors. A technical violation on the part of a ministerial officer is the sole ground for setting aside the deliberate decision of the people of a county, after the fullest and freest discussion possible.

“We choose to rest our decision in this case upon the fact that a strict compliance with the law as to notice would have made no difference with the result of the election, inasmuch as a majority of all the voters of the county

voted for prohibition. Under such circumstances, omissions of duty by ministerial officers in giving notice will not invalidate the election. *Seymore v. Tacoma*, 6 Wash. 427, 33 Pac. 1059; *State v. Doherty*, 16 Wash. 382, 47 Pac. 958, 58 Am. St. Rep. 39; *Irving v. Gregory*, 86 Ga. 605, 13 S. E. 120. See also, *People v. Highland Park*, 88 Mich. 653, 50 N. W. 660; *Dishon v. Smith*, 10 Iowa 212."

To the same effect, see *Bowers v. Smith*, 111 Mo. 45, 20 S. W. 101, 16 L. R. A. 754; *Bine v. Jackson County*, 181 S. W. 36.

The same ruling was recently applied by the Supreme Court of this State in the case of *Lindabury v. Township of Clinton*. In that case there was a contest of a local option election, the principal point being that proper advertisement thereof had not been given. The contest was heard before Justice Trenchard. He sustained the election, and in the course of his opinion, cited several of the recent cases in New Jersey holding that an election would not be set aside for lack of a proper notice, if it appeared that there had been a full and fair expression of the will of the voters. As his opinion is not reported, we quote in full on this point as follows:

"The petitioners, however, seem to contend that in case, as here, the question is to be voted upon at the *general election*, advertisement is required by sec. 7 of the General Election Law, C. S. p. 2074. With respect to that contention it is to be observed that such section does not in terms so provide. But assuming, without deciding, that, by construction, that section requires the municipal clerk to advertise a referendum which is to be held at the *general election*, nevertheless I think such election should not be set aside when it appears, as here, that there has been a full and fair expression of the voters.

"A case in point is *Fletcher v. Collingswood*, 59 Atl. 90. The question was the validity of an election by which the majority of the voters of the municipality authorized the issue of bonds for the construction of streets and sewers. The election was held at the same time and place as the *annual election* for Borough officers; notice of the time and place of the annual election was given as required by the election law. There were 599 registered voters, of whom 438 voted for officers, 426 voted on bonds for streets and 427 on sewers, of whom 236 voted in favor of the bonds for streets and 237 in favor of the sewers. Notices of the election upon the issue of bonds for streets and the construction of sewers were given, *except* that they failed to designate the

place in the Borough where the election was to be held. The Court pointed out that as the election was held on the day fixed by law for the *annual Borough election* (the second Tuesday in March) the voters must be presumed to know that the election was to be held on that date. In discussing the point that the vote for the bonds and the sewers was on a separate ballot instead of on the official ballot, the Court said:

‘The will of the voters, if there has been a full and fair expression of opinion, cannot be thwarted by the error of those who attended to printing the ballots. In this case a clear majority of all who voted for Borough officers voted also in favor of the bonds and the sewers. *That fact demonstrates that there was a full and fair expression of opinion in favor of both propositions.*’

“In *Winters v. Warmolts*, 70 N. J. L. 615, the City Clerk in publishing the notice of an *annual election* for aldermen in the City of Paterson failed to make any mention at all of one of the offices (that is, for the so-called ‘short term’) that was to be filled. Notwithstanding this failure to advertise, as required by Section 7 of the General Election Law, the Court sustained the election on the ground that it appeared from the pleadings that there was a ‘full and fair election,’ saying that ‘its results, therefore, cannot be ignored by reason of the failure of the clerk to give the statutory notice.’ (P. 618.)

“In *Brown v. Street Lighting District*, 70 N. J. L. 762, the Township Clerk failed to put up notices of the *election, the time, place and purpose of which were fixed by the statute* under which the vote was to be taken. The statute required that notice be set up at least ten days before the election, but the clerk put up the notices only three days before the election. 210 votes were cast, of which 150 were in favor of an appropriation for a certain amount and 60 in favor of a certain smaller amount. The argument against the validity of the election was based solely on the failure to set up the notice 10 days in advance. It appeared that there was a very full vote at the election. The Court of Errors and Appeals affirmed the judgment of the Supreme Court sustaining the election. Speaking for the Court, Mr. Justice Pitney said:

‘The rule to be derived from a review of the authorities is that where the time, place and purpose of an election are fixed by public law, all voters must take notice thereof, and such an election, if held, is not invalid because no special notice was given nor proclamation made; certainly not if it appear that there has been a fair expression of the

will of the voters. *Special notice, where prescribed by statute, is intended for the purpose of greater publicity; but the right to hold the election comes from the statute and not from the official notice. * * ** The question here is whether, in face of the fact that the will of the people has been fairly expressed, the election must be held void by reason of the mere failure to give in due season the statutory notice. In our view, in this as *in all cases of stated public elections, the requirement of notice is directory, intended to insure that knowledge of the approaching event shall be brought home to all the voters, but not essential to the validity of the election.*'

"So in this present case even if the general election law requires notice of the Local Option referendum at a general election to be published, the failure to do so does not invalidate the result of the election when it appears that there has been a full and fair expression of the popular will, and I think that fact appears from the number of voters who voted upon the question presented."

The conclusion of Justice Trenchard was sustained by the Supreme Court in an opinion filed March 20, 1919.

In the case of *Attorney General v. Town of Belleville*, 81 N. J. L. 200, there was an election to decide the question of incorporating the Township of Belleville as a Town. An attack was made on the result of the election on the ground that the form of the ballot was not such as was required by law. The election was sustained by the Supreme Court. The opinion pointed out that out of 1725 votes that were polled on the question, 1014 were in favor thereof; and then continued: "There is nothing to indicate that there was any unfairness about the election, or that the expression of the popular will was not accurately reflected in these figures, and even if we were of opinion that the form of the ballot should have been different, we should still think that the defect was not sufficient to vitiate the result." (Page 207.)

In all of the cases now before the Court, the fact that there was great popular interest in the several elections as well as the fact that the result was a fair expression of the popular will are demonstrated by the large vote that was cast. Thus we find that in Montclair the total vote was 3325. This was 791 more votes than were cast for members of the General Assembly at the general election of the preceding November; it was 499 more than the *total ballots cast* at such election, and it was 51 more than the *total number of registered voters* for such general election. (Page 15, ll. 35 to 40.)

In East Orange, the total vote cast at the special election under review was 4,907, as compared with a total vote for members of the General Assembly in November, 1917, of 4,819.

In the Caldwell case the total vote cast at the special election was 62 more than the vote cast for members of the General Assembly at the preceding general election.

In the Roselle case the total vote cast at the special election was 536. This was only 4 less than the vote cast for members of the General Assembly in 1917.

In the Dunellen case the total vote at the special election was 469—which was 87 more than the vote cast for members of the General Assembly in 1917.

In the case of the Township of Dover, the total vote at the special election was 566—which was 133 more than the vote cast for members of the General Assembly in 1917. In this case the stipulation further shows the total number of votes that were cast at the last general election and the total number of registered voters for such election; the total number of votes cast was 522, out of a total registry of 811. (Page 167, ll. 20 to 25.) Hence it will be seen that the vote cast at the special election was 44 more than the total votes cast at the general election.

When we consider the well-known fact that the vote cast on a referendum is usually somewhat less than that cast for candidates for office, these figures demonstrate that the popular will was fairly expressed, as in every case but one (that of Roselle) the vote cast on the referendum was materially greater than that cast for members of the General Assembly at the preceding general election, and in the Montclair case the total vote cast even exceeded the total number of names that were on the registry list at the general election. In view of the fact that under Section 7 of the Local Option Act the registry for special elections is the same as the registry that was used at the last preceding election, it is quite apparent that in Montclair at least, every effort was made to obtain votes on each side of the question. But we should add that this fact does not indicate any fraud, as under the same Section 7, additions to the registry might be made for special elections by following the procedure therein set forth, and no doubt the excess vote is accounted for by such additions.

IV.

Qualified electors who are absent in the military service have no constitutional right to vote for such a proposition as was submitted at the several elections.

Reason 9: Montclair, East Orange, Caldwell and Dover.
Reason 14: Roselle and Dunellen.

The question that was submitted at each of the elections in question was that specified in Chapter 2, Laws of 1918, to wit:

“Shall the sale of intoxicating liquor as a beverage in
* * * * (the municipality in question) be prohibited?”

So far as the Constitution of this State is concerned there is no requirement that voters who are absent from their election district be allowed to vote on such a proposition. Article II. of the Constitution reads (*italics ours*):

“Every male citizen of the United States, of the age of twenty-one years, who shall have been a resident of this state one year, and of the county in which he claims his vote five months, next before the election, shall be entitled to vote for all *officers* that now are, or hereafter may be *elective by the people*; provided, that no person in the military, naval, or marine service of the United States shall be considered a resident in this state, by being stationed in any garrison, barrack, or military or naval place or station within this state; and no pauper, idiot, insane person, or person convicted of a crime which now excludes him from being a witness unless pardoned or restored by law to the right of suffrage, shall enjoy the right of an elector; and provided further, that in time of war no elector in the actual military service of the state, or of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from such election district; and the legislature shall have power to provide the manner in which, and the time and place at which such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside.”

It will be seen that the constitutional right to vote is limited to “*officers*” that are elected by the people. The provisions in this Article relative to persons in the military service obviously apply *only* to voting for such officers. The constitutional right therefore does not extend to a vote on a question or proposition such as is involved in the present case.

This Article has been under consideration in several cases.

In *Allison v. Blake*, 57 N. J. L. 6, held that a statute which attempted to confine the right to vote for road commissioners to the freeholders of the district and to extend the right to females or to non-residents of the district, was in violation of the State Constitution. In the course of the opinion the Court said:

“It cannot be denied that the office now in question falls within the terms of this constitutional definition, for it is plainly an office elective by the people.

“Notwithstanding the universality of the expressions, it is insisted on the part of the defendant that the provision is applicable only to such offices as are created by the constitution itself, and not to those that come into being through legislation. But such a contention is, it is deemed, plainly untenable. The constitutional language is clear and unambiguous, and there is not a syllable of the instrument that throws it in doubt. In the presence of such a fact, there is no room for construction. Under such circumstances, the rule of reason as well as of law peremptorily requires that the plain language of the primary law must be taken to express the purpose of its framers. ‘Possible, or even probable meanings,’ says Professor Cooley, ‘when one is plainly declared in the instrument itself, the courts are not at liberty to search for elsewhere.’ *Cooley Const. Lim.*, §55. In view of this principle, that should never be overlooked, it is impracticable to transmute the general declaration of the constitution that every citizen possessed of certain qualifications should be entitled to vote for all officers elective by the people into a right to vote only for a certain class of officers. To say that the phrase ‘all officers’ means all constitutional officers is conspicuously to interpolate the clause and not to interpretate its language” (p. 9).

In *McArdle v. Jersey City*, 66 N. J. L. 590, it was held that a statute which provided for a board of excise commissioners of four members in cities of the first class, to be elected two members at each annual election for the term of two years, but that no ballot should contain the names of more than one candidate, was to be in violation of Article II. In the course of the opinion the Court said:

“The construction of this constitutional provision, so vital to the existence of popular government, is not at all in doubt. The constitutional mandate is clear and distinct that every qualified voter ‘shall be entitled to vote for all officers that now are or hereafter may be elective by the people.’ So far as the construction of this constitutional mandate has been presented to the courts of this state there is entire unanimity in its construction. The decisions on this subject arose under these circumstances: The constitution provides that the members of assembly ap-

portioned to any county shall be selected by the legal voters of the county. In *State v. Wrightston*, 27 Vroom 126, 199, it was held that an act of the legislature providing for the election in assembly districts of members of assembly apportioned to any county was unconstitutional and void. This decision was made on the ground that to every qualified voter was secured, by the fundamental law, the right to a voice in the election of all officers which, by the constitution or otherwise, are elective by the class of legal voters to which he belongs. In *Allison v. Blake*, 28 *Id.* 6, it was decided by the Supreme Court that all persons within the class designated by the constitution are entitled to vote for all officers elective by the people, whether the offices to be filled be created by the constitution or by legislation; and that the class of voters who shall be entitled to the elective franchise cannot be diminished or enlarged by the legislature; and that, consequently, a statute which confined the right to vote for road commissioners to the freeholders of the districts, excluding qualified voters who were not freeholders, was unconstitutional. The same principal was adjudged in *Kimball v. Hendee*, *Id.* 307, with respect to the election of school trustees" (p. 596).

In *State v. Carrigan*, 82 N. J. L. 225, a judgment was pronounced upon the defendant that he be imprisoned and that he be disfranchised as a voter and disqualified to hold any office of trust or profit for two years. The only authority for the addition to the penalty of imprisonment was Section 212 of the election law. This was held unconstitutional because it undertook to add to the qualifications of the voters as prescribed in Article II.

If the Legislature has no power to change the qualifications of voters or to limit or to extend the class of officers for whom they are entitled to vote, it follows that the Legislature is equally without power to provide that men in the military service shall be authorized to vote on certain questions or propositions, when the Constitution itself expressly limits the right of franchise to *all* voters, including those absent in the military service, to vote for *elective officers*, without any provision for voting on questions or propositions.

Justice Bergen in his findings in the Roselle case said on this subject:

"The Constitution of the State seems to limit the right of this class of electors to vote for persons to fill offices, and does not include voting for propositions of the character submitted at the election now contested" (p. 123, l. 55, to p. 124, l. 3).

But in that same case Justice Bergen further held that Chapter 150 of the Laws of 1918 required that an opportunity be afforded to such absent electors to vote on the proposition, and that such opportunity must be given irrespective of any constitutional question (p. 124, l. 15).

Chief Justice Gummere in his findings ruled that: "All men who are entitled to vote for a candidate for office are entitled to vote on these abstract propositions" (p. 42, l. 50). He based this conclusion, not upon a construction of the constitutional provision above quoted, but on the theory that such right was "inherent in the people" (p. 42, l. 53). With great deference it is our duty to point out that the right to vote, even for officers, is not inherent in the people. We submit that this is the necessary conclusion from the decision of the Court of Errors and Appeals in the case of *Carpenter v. Cornish*, 83 N. J. L. 696, from which we quote as follows:

"The plaintiff in error argues that even if the constitution of 1844 is adopted as our guide, that constitution does not fix the qualification of voters for members of the senate and assembly, municipal officers, questions referred to the people, presidential electors, primary elections and election of delegates to national and state conventions. It is said that in the absence of any qualifications fixed by the constitution the right to vote at such election belongs to the people—women as well as men. With respect to members of the senate and assembly the argument is that they are not officers, and that article 2 of the state constitution as to the right of suffrage relates only to votes for officers that may be elected by the people. Section 2 and section 3 of article 4 provide that the senate and assembly shall be composed of senators and members elected by the legal voters of the counties. Unless the qualifications of legal voters are prescribed by article 2 there is no constitutional definition of their qualifications, and it is open to the legislature to confer or withhold the right. The legislature has tacitly, if not expressly, adopted the qualifications of article 2 of the constitution, except so far as it has permitted women to vote at school meetings, which right by construction is limited so as to avoid conflict with the provision limiting to male citizens the right of voting for officers. *Landis v. School District No. 44*, 28 Vroom 509; *Chamberlain v. Cranbury, Id.*, 605. The objection made by the plaintiff in error is that there is a natural and inherent right in all of the people, male and female, to vote. If this were so, the limitation of the right to those over twenty-one years of age would be without justification. It is, however, well settled that the right to vote is not a natural inherent right, but is the creation of

constitutions and statutes. *Ransom v. Black*, 25 *Id.* 446, 448, 449. The opinion is that of a majority of the Supreme Court, but was approved by Mr. Justice Dixon (*Id.* 459), and we affirmed on his opinion, 36 *Id.* 688. It is supported by cases in other jurisdictions. *Minor v. Happersett*, 21 Wall. 162; *United States v. Reese*, 92 U. S. 214; *United States v. Cruikshank*, *Id.* 542; *Pope v. Williams*, 193 *Id.* 621; *Stone v. Smith*, 159 Mass. 413; *Gougar v. Timberlake*, 148 *Ind.* 38; *Van Valkenburg v. Brown*, 43 Cal. 43. As was said in *Gougar v. Timberlake*, if women have a natural inherent right to vote, they are not subject to the limitations as to age, residence and naturalization. Those limitations are imposed on males only. This disposed also of the contention that women have the right to vote for municipal officers, upon questions referred to the people, and at primary elections and election of delegates. They have no such right unless they can show a statute or constitutional provision giving it to them. There is no such statute, and the implication, if not the express language of the constitution, is adverse to the right claimed; the contention of the plaintiff in error fails. We have only to add that as to the right claimed to vote for presidential electors the matter is wholly within the control of the state. *McPherson v. Blacker*, 146 U. S. 1 (the Michigan Electors case)" (p. 702).

If any further authority is needed for the proposition that the right of suffrage is not inherent, but is the creation of constitutions and statutes a collocation and discussion of the various cases will be found in McCrary on Elections (Fourth Edition, pp. 1-11, sec. 1-10). We quote from Section 4 as follows:

"The right to vote is not a natural right, such as the right to personal security, personal liberty, and the right to acquire and enjoy property. It is not such a right as belongs to a man in a state of nature, and even in the organized government he receives it as a conferred franchise. In the United States the people are the source of all political power, and it is within their power to give, refuse or restrict the elective franchise. And when conferred, it is not a vested right, but may be taken away by the power that gave it."

Again, we quote from 15 Cyc., page 280, as follows:

"In all periods and in all countries it may be safely assumed that no privilege has been held to be more exclusively within the control of governmental power than the privilege of voting, each state in turn regulating the subject by sovereign political will. The right of suffrage once granted may be taken away by the exercise of sovereign power, and if taken away no vested right is violated or bill of attainder passed. None of the elementary writers

include the right of suffrage among the rights of property or of person. It is not an absolute unqualified personal right, but is altogether conventional. It is not a natural right of the citizen, but a franchise dependent upon law, by which it must be conferred to permit its exercise. In England the elective franchise is not regarded as a natural right, although it has been declared to be a vested right."

In *Re Opinion to the Governor* (R. L.), 102 Atl. 913, it was held that a law authorizing men in the military service to vote was applicable only to the officers who were named in the State Constitution and that when the Constitution authorized voters to vote for "general officers of the State" it included only the Governor and certain other State officials and did not include members of the General Assembly and officers of cities and towns.

On that same principle the provision of the New Jersey Constitution is applicable only to voting for officers that are elective by the people, as those are the only persons named in the Constitution for whom absent electors are authorized to vote.

It was suggested by Chief Justice Gummere that if men in the military service were excluded from voting on propositions, as distinguished from voting for officers, it would follow that the Legislature alone has the power to determine who shall and who shall not vote on propositions (p. 42, ll. 35-45). But this argument is based on the assumption that there is an inherent right to vote, aside from the provisions of Constitutions or statutes, which, as we have shown above, is not the fact. Furthermore, under *State v. Carrigan, supra*, the Legislature has no power to change the qualifications of voters, as the same are expressed in the State Constitution, and hence there is no power in the Legislature to "single out a class and invest them with the elective franchise, so far as these abstract propositions are concerned" (p. 42, l. 45), even if it is conceivable that any Legislature would undertake to pass such a law. The whole matter is regulated and limited by the Constitution, and the only right which is therein conferred is to vote for elective officers.

It follows therefore that if the provisions of the state constitution do not apply to an election on a proposition such as was submitted in each of the present cases there was no violation of any inherent right of the men in the military service to cast their ballots at such election, by reason of the alleged failure to give them an opportunity to vote; and if this statute is itself unconstitutional (as we attempt to show under Point VIII) it also follows that the failure to comply with such a statute would not

operate to invalidate an election at which the provisions of the statute were disregarded.

It was suggested by the Chief Justice that if the statute of 1918 does not conform to the state constitution, nevertheless the soldier vote should have been taken under the earlier statute which was passed after the Civil war (p. 42, ll. 1-20). We doubt if the two statutes could be combined in such a way as to make them workable, but however that may be, an examination of the earlier statute shows on its face that it is limited to voting "for all *officers* for whom he would have a right to vote;" and hence it would not be applicable to an election on such a proposition as was involved in the present cases. (See Sec. 221, Laws of 1898, p. 334; Sec. 148, Laws of 1876, p. 208.)

The argument on this point may therefore be summarized as follows:

(a) The state constitution does not authorize the voting of men in the military service on propositions, and hence there could be no violation of any constitutional right by reason of any alleged failure to give such men an opportunity to vote.

(b) The original Soldier Vote Act of 1876 (afterwards incorporated in the General Election Law of 1898) likewise does not extend to propositions but is limited to voting for "officers" and hence there was no violation of that statute in the present cases.

(c) The Soldier Vote Act of 1918 is itself unconstitutional in that it does not provide for the return and canvass of the votes in the manner prescribed by the constitution and hence a failure to comply therewith could not invalidate an election.

(d) Aside from the provisions of constitutions or statutes, there is no inherent right to vote, and hence if there are not provisions in the Constitution or in statutes under which men in the military service would have the right to vote on a proposition such as was submitted in the present cases, the fact that such voters may not have had an opportunity to vote is not a legal ground to invalidate the elections.

If it be urged that it is unjust and unfair for men in the military service to be deprived of their vote on account of their absence from the election districts in which they respectively

reside, the answer is that the right to vote depends upon constitutions or statutes and unless the right is thus conferred it does not exist. In the leading case of *Chase v. Miller*, 41 Pa. St. 403, the Supreme Court of Pennsylvania held that under the constitution of that State the right of a soldier to vote was confined to the election district wherein he resided at the time he entered the military service. In the course of the opinion the Court said:

“A good deal has been said about the hardship of depriving so meritorious a class of voters as our volunteer soldiers of the right of voting. As a court of justice we cannot feel the force of any such consideration. Our business is to expound the constitution and laws of the country as we find them written. We have no bounties to grant to soldiers, or anybody else. It may be said, however, in answer to this suggestion, that the hardship of missing an annual election is one of the least the soldier is called on to endure, and this they share in common with the patriot soldiers of all the loyal states, for it is understood that no state but Pennsylvania has attempted to extend civil suffrage to an army in the field. To voluntarily surrender the comforts of home, and friends, and business, and to encounter the privations of the camp and the perils of war, for the purpose of vindicating the constitution and laws of the country, is indeed a signal sacrifice to make for the public good, but the men who make it most cheerfully and from the highest motives, would be the very last to insist on carrying with them the right of civil suffrage, especially when they see, what experience proves, that it cannot be exercised amidst the tumults of war without being attended with fraudulent practices that endanger the very *existence* of the right. Whilst such men fight for the constitution, they do not expect judges to sap and mine it by judicial constructions” (p. 427).

The same view was adopted by the Supreme Court of Vermont in the case of *Opinion of the Judges*, 37 Vt. 665, where, in construing the constitution of that state, they followed the above decision in Pennsylvania. This last case in turn was followed in New Hampshire in the case of *Opinion of the Justices*, 45 N. H. 596.

See also:

- Bourland v. Hildreth*, 26 Cal. 161.
- Opinion of Judges*, 30 Conn. 591.
- Twitchell v. Blodgett*, 13 Mich. 127.
- Morrison v. Springer*, 15 Ia. 304.
- Lehman v. McBride*, 15 Ohio St. 573.
- Chandler v. Main*, 16 Wis. 398.

Baldwin v. Trowbridge, 2 Bart. Election Reports 46.
Re Opinion to the Governor, 103 Atl. 513.

The Supreme Court disposed of this point with the statement that it might be conceded that the electors in the military service had no *constitutional* right to vote upon such a proposition, and then said: "The respondents properly rely on the statute, Chapter 150 of the Laws of 1918, whose intent as respects soldier votes is clear, and which is at present the law. We think no further basis of the right need be discussed."

It appears from this that the Supreme Court was of the view that the *right* to vote upon the proposition is conferred by *statute*; to wit, Chapter 150, Laws of 1918; but we respectfully insist that this conclusion disregards the rule that has been settled in other jurisdictions to the effect that the Legislature has no power to authorize voters to cast ballots outside the district of their residence or outside the limits of the county or state wherein they reside *except when the constitution of the state expressly gives authority to the Legislature to pass such statute; or at least when the constitution is silent on the subject.*

If the state constitution designates the place as well as the time of holding elections, a statute which authorizes soldiers to vote beyond the boundaries of the state is unconstitutional—except as to votes cast for members of Congress. But if the state constitution does not prescribe the *place* of voting, then the Legislature may by statute provide for the casting of ballots outside of the state.

15 Cyc., 301, 302, and cases cited.

The question of the power of the Legislature in any particular state to pass a statute providing for the casting of ballots outside of the state therefore depends upon the language of the constitution of that state.

The leading case on this point is *Bourland v. Hildreth*, 26 Cal. 161. In that case the provision in the constitution was "every white male citizen of the United States of the age of twenty-one years, who shall have been a resident of the State six months preceding the election, and the county or district in which he claims his vote thirty days, shall be entitled to vote at all elections which now or hereafter may be authorized by law." It was held that the words, "in which he claims his vote" fixed the *place* at which the elector must vote if he votes at all, and that therefore the act of the Legislature allowing soldiers from that state

in the service of the United States to vote without the county in which they resided was unconstitutional.

The California case discusses the various decisions at length, including the Iowa case of *Morrison v. Springer*, 15 Iowa 304, wherein a different conclusion had been reached. The difference of opinion in the two courts was based entirely upon a disagreement as to the meaning of the words "claims his vote." The Iowa court held that this did not prescribe the *place* of exercising the elective franchise as a test of the qualification to vote and that therefore the power to fix the place of the exercise of such franchise was left to the discretion of the Legislature. The California court, in a very elaborate discussion, reached the conclusion that the expression "in which he claims his vote" was equivalent to "in which he was a legal resident."

It must be conceded that the two cases are irreconcilable, but the California case is supported by decisions in Connecticut, Michigan, Pennsylvania and Vermont.

Opinion of Judges, 30 Conn. 591.

People v. Blodgett, 13 Mich. 127.

Chase v. Miller, 41 Pa. St. 403.

Opinion of Judges, 37 Vt. 665.

The Connecticut case turned upon the language of the constitution of that state requiring "meetings of the electors" and authorizing the "electors present" to vote.

In Michigan the constitutional provision was, "no citizen or inhabitant shall be an elector, or entitled to vote at any election, unless he has resided in the township or ward in which he *offers to vote*, ten days next preceding such election."

In Pennsylvania the constitutional provision was, "in elections by the citizens, every white freeman of the age of twenty-one years, having resided in the state one year, and in the election district where he *offers to vote* ten days immediately preceding such election, * * * shall enjoy the right of an elector."

The provision in Vermont was that "representatives shall be chosen by ballot by the freemen of every town in this state on the first Tuesday in September annually forever."

In all of these cases it was held that there was no power in the Legislature to provide for the taking of votes outside of the state or county wherein the electors resided.

Counsel for respondents will no doubt cite the case of *State v. Main*, 16 Wis., 398, as sustaining the power of the Legislature

to provide for the casting of ballots outside of the limits of the State. But the decision in that case was put entirely upon the ground that there was no provision of the State Constitution which attempted to prescribe where the right of suffrage should be exercised. (See star page 412.) This case would be in point if there was nothing in the Constitution of this State which limited the place of voting; but as shown by the California case of *Bourland v. Hildreth*, the expression in a constitution, "of the county in which he claims his vote," does fix the place at which the elector must vote, if he votes at all.

Counsel will also cite the case of *Lehman v. McBride*, 15 Ohio St., 573, but here again there was no expressed limitation in the State Constitution as to the place of voting, neither was there any provision therein similar to that in California, Michigan or Pennsylvania. (See page 599.)

It is reasonable to assume that the proviso for voting in time of war found in Article II. of the New Jersey Constitution of 1875 was inserted as a result of these cases, as no such proviso appears in the corresponding article in the Constitution of 1844.

In the absence of such a provision in the constitution, we submit that under the authority of the above cases there is no power in the Legislature to enact a statute whereby electors might vote outside of the district wherein they reside. The language used in the constitutions of Michigan and Pennsylvania, "offers to vote," and that used in the constitution of California, "claims his vote," is practically identical with the language used in the constitution of New Jersey, to wit, "claims his vote." Hence, we submit that the place at which an elector must vote is by the constitution of this State limited to his place of residence, in exactly the same way in which it was held to be so fixed by the constitutions of these other states, save and except as the proviso for voting in time of war authorizes the Legislature to pass laws for such voting.

The result, therefore, is that, as the constitution does not of itself confer upon electors the right to vote upon questions or propositions, but limits such right to voting for officers (that are or may be elective by the people), and further limits such right to those who reside in the state or in the county in which they claim their vote, the Legislature has no constitutional power to provide for the voting in time of war by electors outside of their place of residence, upon a question or proposition such as was involved in the present case. To summarize the argument:

(a) The state constitution does not authorize men in the military service to vote on questions or propositions;

(b) Even if Chapter 150, Laws of 1918, is not unconstitutional by reason of the fact that it does not provide for the return and canvass of votes in the manner prescribed by the constitution (see Point VIII.), nevertheless the Legislature had no power to enact same insofar as it relates to voting upon questions or propositions, for the reason that the New Jersey Constitution requires that the right to vote must be exercised in the place of residence of the voter, except with respect to voting for officers.

(c) Chapter 150, Laws of 1918, is, therefore, without constitutional support, insofar as it purports to authorize men in the military service to vote upon questions or propositions.

V.

Whatever rights absent voters may have to vote for such a proposition as was submitted at the several elections are subject to and superseded by the rulings of the federal authorities in time of war.

(Reason 10: Montclair, East Orange, Caldwell and Dover;

Reason 15: Roselle and Dunellen.)

According to the order of the War Department, as quoted in the letter from General McCain to Governor Edge of April 9th, the Department had no objection to the taking of the votes of soldiers at primary or general elections within the borders of the United States, but such voting would not be permitted at *special elections* (Letter No. 4, pp. 35, 36). We therefore have a direct conflict of authority. The State of New Jersey, by Chapter 150, Laws of 1918, instructed the Secretary of State to procure the votes of men in the military service at primary, general and special elections, but the U. S. War Department ordered that such votes should not be taken at special elections. Under these circumstances, the law of the State of New Jersey is necessarily superseded by the ruling of the U. S. War Department, and the officials of the State of New Jersey were bound to comply with that ruling. Granted that everyone desires to afford the men in the service every opportunity to exercise the right of suffrage,

the fact nevertheless remains that it is far more important to win the war, and to do it quickly, than to vote at any election, whether it be primary, general or special. In time of war all civil authority is subordinate to military rule, and the necessary affairs of government must be conducted in such a manner as not to interfere in the slightest degree with such military rule.

The above statement would seem to be axiomatic, but it is well to remind ourselves of them in view of the well meaning but impractical attempt of the State officials to afford the men in the service an opportunity to vote. Insofar as the acts of the State or of its citizens do not interfere with the sovereign power of the Federal Government to carry on war with the least possible loss of life and property, such acts are legal and binding, but when they interfere with such power in the slightest degree there is no room for argument as to which is supreme. As was said by the U. S. Supreme Court in *Horn v. Lockhart*, 17 Wall. 570, 21 L. Ed. 657 (holding that an investment by an executor in bonds of the Confederate government by authority of a law of a Confederate State was illegal):

“We admit that the Acts of the several States, in their individual capacities, and of their different departments of government, executive, judicial and legislative, during the war, so far as they did not impair or tend to impair the supremacy of the national authority, or the just rights of citizens under the Constitution, are, in general, to be treated as valid and binding. The existence of a state of insurrection and war did not loosen the bonds of society, or do away with civil government or the regular administration of the laws. Order was to be preserved, police regulations maintained, crime prosecuted, property protected, contracts enforced, marriages celebrated, estates settled, and the transfer and descent of property regulated precisely as in time of peace. No one, that we are aware of, seriously questions the validity of judicial or legislative Acts in the insurrectionary States touching these and kindred subjects, where they were not hostile in their purpose or mode of enforcement to the authority of the National government, and did not impair the rights of citizens under the Constitution.”

VI.

In the cases of Montclair and East Orange notice of the special election was given to all absent voters whose names and addresses could be obtained.

(Reason 11: Montclair and East Orange.)

In these two cases the Secretary of State obtained a list of the names and addresses of many of the men who were in the military service. In both cases ballots were sent to all the men at the addresses which appeared on these lists; and in both cases some ballots came back and were counted; in Montclair 33 such ballots were counted and in East Orange 114. In both cases other ballots were cast but were not counted because of some irregularity, or of failure to comply with the provisions of Chapter 150.

While the Secretary of State did not in either case obtain his list from the Adjutant-General of New Jersey or from the Adjutant-General or other proper authority of the United States, as directed by Chapter 150, he nevertheless did the best he could under the extraordinary conditions; and hence we urge that there was a substantial compliance with the statute—indeed, the *utmost* compliance that was possible under the circumstances. A brief recital of the efforts that were made to obtain the names and addresses in each of these cases will show that every reasonable effort was exercised in order to give these voters the necessary information as to the election.

In the first place, all voters had legal notice of the election and all of them had the right to vote an unofficial ballot, even if no official ballot was forwarded, and for the reasons which we have urged under Point I these facts are sufficient in themselves, without anything further, to demonstrate that the voters in the service had an opportunity to vote. But in these two cases we go a step further, and if we are wrong in our argument under Point I, nevertheless so far as Montclair and East Orange are concerned the election should be sustained for the reason that information of the election was sent to all the voters whose addresses were obtainable.

Following is a recital of what was done in *Montclair*:

The election was called for April 30th on a petition signed by 1,806 out of a total of 2,870 that had voted at the last election. Notice was posted in thirty prominent places in the town and

was advertised three times in each of the two local papers. The Town Clerk on April 18th notified the Secretary of State of the election and on April 22nd furnished him with a list of the names and addresses of all the men who had been inducted into the military and naval service through the Draft Board (p. 13, ll. 55-60; p. 30, ll. 25-30). This list is printed in full in the record (pp. 16-19). It contains the names of 130 men whose military unit was not known but who were sent to Camp Dix (p. 16); and the names of 217 men whose camp addresses were known but not the military unit; for example, one of the names is John L. Mott, "France"; in many cases the only address was "American Expeditionary Forces"; in other cases the address was that of the camp to which the soldier was assigned, such as Camp Meade, Md., Fort Oglethorpe, Camp McClellan, Ala. This list was prepared by the Secretary of the Draft Board from its records and it showed the camp or naval base to which the soldier or sailor was assigned and contained the names of all the men who were either drafted or volunteered after Registration Day, June 6, 1917 (p. 14, ll. 25-35). The list did not contain the names of any men who might have volunteered prior to that date, but there was no proof offered by the contestant of the number of such voters, nor indeed that there were any such voters—it is not likely that the number would be large in any event as war was not declared until April, 1917.

Official ballots, with the appropriate envelopes and instructions, were mailed to all these men on April 22nd and 23rd (p. 30, l. 38). Mr. Transue, of the office of the Secretary of State, said that he mailed 364 ballots (p. 30, l. 40), but as there are only 347 names on the Draft Board list it is apparent that he must have sent ballots to some other men whose names were not on that list.

In the absence of any information, official or otherwise, from either the Adjutant-General of New Jersey or from the U. S. War Department, it is difficult to suggest how any better information could have been obtained by the Secretary of State except that which was in fact obtained from the Draft Board. If this was incomplete either as to names or addresses, certainly it was no fault of the Secretary of State or of the Town Clerk or of any of the committees who were interested in one side or the other of the question upon which the vote was to be taken.

But as a matter of fact additional notice of the election was given. It appears that one of the local papers kept a list of the

men in the service so far as the editor had gathered the same (p. 14, ll. 1-12). This list is printed in full in the record (pp. 19-28). But in the great majority of cases the addresses are incomplete. It contains 863 names. For example, we take at random the name of William McAllister, whose address is given as "Kitchener's Own"; Michael Maffia, whose address is given as "National Army." The list also includes the names of several women who are serving either as nurses or in Y. M. C. A. work, and obviously they cannot be included in the list of possible voters.

The stipulation shows that the Dry Campaign Committee, during the week prior to the election, mailed about 200 circulars with an announcement that an election was to be held. These advised the men to whom they were sent that the question at the election would be whether or not the sale of intoxicating liquor should be prohibited and that they were entitled to vote. The addresses of the men to whom these circulars were sent were obtained by comparison of the list of the Draft Board with the newspaper list and also with another list known as the Red Cross list (p. 15, ll. 10-20). The latter list was incomplete but contained more definite and correct addresses than the other two lists (p. 14, ll. 40-50); and in those cases where the address was more complete or different, as indicated by the Red Cross list, circulars were sent to that address (p. 15, ll. 15-20). An examination of the two lists that are found in the record shows the utter impossibility of sending notices of the election to *all* the men who were in the service, but the stipulation of facts, including the statement of Mr. Transue, shows that notice of the election was sent to every address that was obtainable. It is difficult to conceive what more could be done under such circumstances. Ballots were sent to every man whose name appeared on the official Draft Board list; and in addition notice of the election was sent to every man whose address could be obtained either by an examination of the Draft Board list, the Red Cross list or the newspaper Honor list. The Secretary of State sent out 364 ballots and the Dry Committee sent out 200 circulars. The total number of qualified voters in the service was 800 (p. 14, l. 42). It would be very simple to demonstrate by an examination of the printed lists that at least half of the men whose names appeared thereon did not have an available address. For example, 130 names on the Draft list have their address as "Camp Dix." But according to Mr. Transue, over half of the ballots that he sent were returned undelivered, and on May 1st

he was advised by the postal authorities that letters addressed "Camp Dix" would not be delivered and that it was absolutely necessary that the envelope contain the military unit (p. 30, ll. 40-50). A very small percentage of the names on either list contain both the military unit and the camp address.

What is to be done in such a case? Are the voters who are not in the service to be forbidden to take any action whatever under the Local Option law until after the war is over and until such time thereafter as the voters who may be in the service have returned home? If that be so, what becomes of the peremptory requirements of the Local Option law that when the necessary petition is filed an election "shall" be ordered by the governing body? This argument, of course, applies with equal force to all the other cases because it appears equally in all the cases that it was impossible to get the names and addresses from the sources specified in the statute. But assuming for the purpose of the argument that every reasonable effort must be made, even by methods not prescribed by the statute, to give notice of the election to all possible voters, then certainly in the case of Montclair every such effort was exhausted; and that election at least should be sustained unless the court takes the view that no election can be valid unless it affirmatively appears that every possible voter has had actual notice.

In the case of *East Orange* the foregoing argument also applies. In that case also every effort was made to notify the men in the service of the election. The petition for the election was signed by 2,191 voters out of 5,249, and the election was ordered for May 7th. On April 9th the City Clerk notified the Secretary of State of the date of the election and asked what should be done as to the men in the military service (p. 65, l. 45, to p. 66, l. 20). The next day the Secretary of State wrote that a representative from his office would call within four or five days for the purpose of determining the procedure (p. 66, ll. 30-40). Shortly thereafter a representative of the Secretary of State called on the City Clerk, and said that the Secretary did not have the names and addresses of the men in the service, that he had been unable to obtain them from the Federal authorities, and asked where he could obtain such a list. The clerk advised him that he could obtain the list of the men in the National Army from the Draft Board and that the Welfare Committee had attempted to secure a complete list. The list was obtained from the Draft Board (p. 70, l. 30, to p. 71, l. 1). This list was received by the Secretary of State, together with 500 ballots, on or about

April 30th, and the ballots were immediately mailed to the soldiers whose names appeared thereon (p. 5, ll. 20-25; p. 70, l. 50).

This list is printed in full in the record (pp. 66-70), and by reference to same it will be seen that it contains 260 names. Of these 210 were located at Camp Dix. The Secretary of State had been advised about May 1st that letters addressed to Camp Dix would not be delivered (p. 30, l. 50), and hence it is not surprising that about half of the ballots sent by the Secretary of State were returned "Unable to locate" (p. 65, l. 30).

There is one important point in connection with this case wherein it differs from the Montclair case; namely, *there is nothing in the stipulation or elsewhere in the record to show that any of the men on this list were entitled to vote.* It is true that the statement of the City Clerk, which is included in the stipulation, recites that at the date of the election there were about 1,000 men from East Orange in the military or naval service (p. 71, ll. 5-10), but nowhere does it appear how many, or, if any, of these men were qualified voters. Hence, the East Orange case depends entirely upon the claim that certain men who were located at Camp McClellan at Anniston, Ala., did not have an opportunity to vote.

The finding of the Justice on this point is that the County Board of Elections determined that the persons whose names appeared on 90 envelopes that had been received by the Secretary of State and transmitted to said Board were legal voters of the City of East Orange, and then rejected the ballots purporting to be contained therein because it appeared by endorsement thereon that the same were prepared and mailed at Anniston, Ala., and that the voter did not have knowledge of the date of the election *before* the date thereof and that he prepared his ballot as soon thereafter as he acquired such knowledge (p. 78, ll. 10-20).

The dry majority was 73 (p. 73, l. 38). Hence, if all these ballots had been counted, and if it is true that the voters did not have knowledge of the date of the election, there is the *possibility* that the result of the election might have been changed, assuming that at least 74 out of these 90 ballots would have voted wet.

It was stipulated that the statements of the Secretary of State and of the City Clerk should be used as evidence, to be supplemented by the minutes, papers and envelopes of the County Board of Elections, and such evidence as the Clerk might give (p. 64, ll. 30-40). No evidence was given by the Clerk but by

reference to the minutes of the Board it will be seen that the 90 ballots mentioned in the findings of the Justice were rejected because it appeared from the statement on the back thereof that they had been prepared subsequent to the date of the election (p. 74, ll. 40-50). This ruling was in accord with the provisions of the statute, which provides in Section 8 that the ballots forwarded by the Secretary of State must be voted, on or before the day of the election; and which provides in Section 9 that ballots which have not been received from the Secretary of State (called unofficial ballots) must be voted, *on* the date of the election but not before such date. These ballots were all prepared and mailed at Anniston. This camp is not mentioned on the list of the names and addresses which was prepared by the Secretary of State (p. 78, ll. 15-20; pp. 66-70). It therefore follows that if these envelopes did in fact contain ballots (as to which there was no proof whatever because the envelopes were not opened) they must have been unofficial ballots, and consequently in order to be counted must have been voted, *on* the date of the election, as required by Section 9 of the statute. There is nothing in the Local Option Act or in the Soldier Vote Act which either expressly or impliedly permits envelopes, purporting to contain ballots, to be opened and counted by the Justice before whom the contest is heard, and hence there can be no doubt that the action of the Justice in refusing to open said envelopes or to canvass the ballots said to be contained therein was correct (p. 78, l. 30).

The record in this case is therefore barren of any proof either that these envelopes contained ballots or that if they did contain ballots that the same were voted wet. For all that appears, every one of them may have been dry.

We assume, however, that it will be claimed by the contestant that the recital on the back of these 90 envelopes that the voters whose names appeared thereon did not have knowledge of the date of the election, justifies the conclusion of the Justice that these men were deprived of the opportunity to vote. This argument depends entirely upon the assumption that the voters who were located at Anniston did not know of the election. But on this point we have no proof whatever except the recital on the envelope itself. There is no direct proof that these men did not know of the election. The date of the election was May 7th. The list of names and addresses gives the dates when men were inducted into the service of the Draft Board. The earliest date

on the list of those who were sent to Camp Dix is September 5, 1917 (p. 66, l. 45). Other men were sent to Camp Dix on various other dates down to and including April 10, 1918. The men at the other camps, as shown by the list, were sent at various dates between October 3, 1917 (p. 69, l. 38) and April 9, 1918 (p. 70, l. 18).

For all that appears in this record many, if not all, of the men who were sent to these camps may have been at Anniston at the date of the election and for some considerable time prior thereto; and in the ordinary course of events letters sent to them at Camp Dix or at the other points named in the list would be forwarded. But whatever may be the fact in that regard, it must always be remembered that a contestant in a case of this kind has the burden of proof, and we submit that the proof in this record is insufficient either to show that the men whose names appeared on these 90 ballots did not have notice of the election, or that their ballots, if counted, would have changed the result of the election.

Moreover, there is no proof that the Draft Board or that the City Clerk or that the "Welfare Committee" had any knowledge that at the date of the election and shortly prior thereto there were any voters of East Orange at Anniston. The same situation is therefore presented as in the Montclair case. It was impossible to get information from either the State or Federal officials, and in the absence of such information ballots were sent to every address that was obtainable; certainly the next best thing to the records of the Adjutant-General of the State or of the U. S. War Department was the record of the Draft Board. Notice of the election, with ballots, etc., was sent to every man whose name appeared on the records of that Board. What more could be done?

It must be remembered that the burden of proof rests upon the contestant. Thus, in *Lippincott v. Felton*, 61 N. J. L. 290, contestant's petition charged that eighteen illegal ballots were cast for incumbent by persons whom he named therein as known to him. His proofs established the fact that eighteen ballots were cast illegally but not by whom they were cast or that they were cast by the persons named in his petition. Held, that these charges were not thereby sufficiently proved, and in the absence of other grounds in support of the petition, the failure justified its dismissal. The Court said:

"The failure of contestant to prove that the illegal votes which he claimed had been cast for incumbent were cast by

the persons who were named in his petition, in my judgment is fatal to his contest" (p. 295).

In *Roche v. Bruggemann*, 53 N. J. L. 122, held that where there is fraudulent voting at an election, a *prima facie* case must be made to show that it is at least probable that sufficient false votes were cast to change the result, before an information in the nature of *quo warranto* will be allowed to test the title of an incumbent to his office.

The same principle, we submit, should apply in the East Orange case. There should be *some* proof that it is *probable* that the ballots that were cast at Anniston would have changed the result; and in the absence of any proof at all on the subject it surely cannot be presumed that such would be the case if the ballots were counted.

VII.

In the Dunellen case the number of absent voters who failed to receive actual notice of the election was insufficient to change the result of the election.

(Reason 16: Dunellen.)

In this case the dry majority was 51. The stipulation shows that there were 54 qualified electors who were in the military service (p. 144, ll. 10-15); and that none of them voted at the election (p. 144, ll. 35-40). But of these 54, 7 were outside of the United States at the time of the special election (p. 144, l. 45); and hence under the recommendation of the War Department to the President under date of April 10th the vote of these 7 electors could not have been taken in any event (p. 37, ll. 20-30).

But however that may be, the stipulation also shows that of the 54 voters 30 of them in fact received *due notice* of the election; and therefore had an *opportunity* to vote (p. 144, l. 20). The stipulation on this point reads as follows:

"9. That of the 54 qualified electors in said service of the United States, 30 did receive *due notice* of the said special election to be held in the Borough of Dunellen in time to vote if they so desire, viz.: That on twenty-fifth day of May, 1918, and on the first and eighth days of June, 1918, and on each Saturday of each week thereafter until after the said election had been held the Dunellen Call, a weekly newspaper printed and published in the Borough of Dunellen was mailed, postage prepaid, to each of the thirty of the said legally qualified voters in the military service

of the United States and then stationed within the United States, which newspapers were mailed to the proper post-office address of each of the said legally qualified voters in the military service; that in the issues of said newspaper of the twenty-fifth day of May, 1918, and the thirtieth day of May, 1918, and the sixth day of June, 1918, legal notices of said election were printed and were mailed to the said thirty legally qualified voters in the military service of the United States on the dates first above mentioned."

Hence, even if the validity of the election depends upon the question of whether the men in the service had an opportunity to vote, the fact remains *that the number—24—who did not receive notice and who therefore did not have an opportunity to vote was less than the dry majority of 51, and therefore if all of these had voted wet the result would not have been changed.*

It may be urged that the 30 who received notices of the election did not receive any official ballots. But that does not alter the fact that they had an opportunity to vote—and if they wanted to, could have voted an *unofficial* ballot, as we have shown under Point I.

In *Luckey v. Thompson*, 138 Pac. 454, the local option election resulted in a majority of 59 for prohibition. There were 79 electors who failed to vote, of whom 45 were prevented by an erroneous ruling of the election board in refusing to receive their votes because, as was alleged, they had not been resident in the municipality for the period required by the statute. It appeared, however, that as to 25 of the other electors who did not vote no reason or explanation for their failing to vote was given, and the election was sustained.

So, in the present case no reason appears why the 30 voters who in fact received due notice of the election did not vote. They had the right to vote an *unofficial* ballot and their mere failure to do so should not invalidate the election, especially when it appears that the number of other voters who had no actual notice of the election and did not vote was insufficient to change the result.

VIII.

The statute under which the votes of men in the military service are taken does not conform to the requirements of the constitution of the State of New Jersey in that it requires the Secretary of State to distribute the envelopes containing the ballots to the respective County Boards of Election in the county wherein the voters reside, instead of providing for the return and canvass of the votes in the election districts in which they respectively reside, as required by Article II. of said Constitution.

(Additional Reason all cases.)

Chapter 150 of the Laws of 1918 provides in Section 10 thereof as follows:

“Upon the receipt of envelopes containing ballots from persons in active service in the military forces of this State or of the United States, the Secretary of State shall distribute said envelopes to the county board of elections in the county in which the persons so voting shall reside, and upon the delivery of such ballots to such county board of elections, shall take from the secretary or clerk of said board a receipt therefor, which receipt shall specify the number of official envelopes and the number of unofficial envelopes delivered. The county board of elections, at a meeting or meetings to be held for that purpose not more than thirty days subsequent to the day of the primary or other election, proceed to open said envelopes and count the ballots in the manner now provided by law, and shall act as a canvassing board. After the outer envelopes have been removed, the plain envelopes therein contained shall be mixed together before the same are unsealed.”

It will be seen that the statute directs that the ballots be delivered to the County Board and that such Board is to count the ballots and act as a canvassing Board. This is in direct contradiction of the provision of Article II of the State Constitution which states that:

“The legislature shall have power to provide the manner in which, and the time and place at which, such absent electors may vote, and for the return and canvass of their votes *in the election districts in which they respectively reside.*”

It is obvious that Section 10 of Chapter 150 is an integral part of the statute as there would be little use in casting ballots unless some method was provided by which they could be counted. It may be said that it would be much more convenient for votes to

be returned to the County Board, but that does not change the fact that such provision does not conform to the Constitution. The statute cannot be sustained on the theory that the County Boards may be considered as the agents or representatives of the District Boards of Election. The constitutional mandate is plain and the provisions of the statute are equally plain. They are in direct conflict and there is no room for construction. As the statute is unconstitutional in this vital respect the entire statute must fall; and hence we submit that the failure to comply with a statute which is itself invalid cannot operate to invalidate an election by reason of an alleged failure to comply with the provisions thereof.

The Supreme Court overruled this point on the ground that the provision of the state constitution did not say that the votes were to be counted by the local election boards, and that the aim of the constitution was the counting of each vote, so that it appeared on the return in the district where it belonged. We respectfully submit that in reaching this conclusion the Supreme Court has undertaken to read into the constitution an additional provision which is not expressed therein. The language is plain; the only power which the Legislature is given with respect to votes cast by the men in the military service is to provide:

(a) for the manner, time and place for voting by such absent electors; and

(b) for the return and canvass of the votes in the election districts of the residence of such voters.

The "canvass" of votes has been held to mean the proceedings for determining the result of an election, including the counting of the votes.

Bowler v. Eisenhood, 48 N. W. 136; 1 S. D. 577; 12 L. R. A. 705.

Clark v. Tracy, 64 N. W. 290, 95 Iowa 410.

Re Stewart, 48 N. Y. Supp. 957; 24 App. Div. 201.

Hudson v. Solomon, 19 Kan. 177.

Graham v. Peters, 93 N. E. 315; 248 Ill. 50.

As we have shown above, there is no provision in Chapter 150 for the return and canvass of soldier votes in the election districts in which the voters reside. The ballots are returned directly to the County Board of Elections, and that board is the only authority under the statute which has anything to do with the examination or counting of the ballots; and, likewise, that

board is the only authority which is permitted or required to make any investigation as to whether or not the persons by whom the ballots were cast were actually entitled to vote. (See Section 12 of the statute.)

It seems obvious that one of the purposes of the constitutional provision that the votes be returned and canvassed in the election districts of the residence of the voters was to enable the election officers in such districts to make the necessary inquiry as to the qualifications of the voters; the local boards prepare the official registry lists and presumably are better acquainted with the voters in their respective districts than are the members of the County Board, whose jurisdiction covers the entire county.

The aim of the constitution is something more than merely to have each vote counted on the return in the district where it belongs; the aim is also to see that the person who casts his vote is properly qualified to do so.

But whatever may have been the reason for the language used in the constitution, the fact is that it expressly provides that the votes be returned and canvassed in the election districts of the residence of the voters; and Chapter 150 does not conform with this requirement.

IX.

In each of the cases, the judgment of the Supreme Court dismissing the writ of certiorari should be reversed and the petition upon which the contest was based should be dismissed and the election sustained.

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New Jersey Court of Errors and Appeals

CHARLES H. MILLER,

vs.

TOWN OF MONTCLAIR and JOHN L. COX.

CHARLES A. NUTTING,

vs.

BOROUGH OF CALDWELL and JOHN A. BRADY,
and other cases, consolidated.

BRIEF OF ARGUMENT ON BEHALF OF RESPONDENTS JOHN L. COX AND JOHN A. BRADY.

1. The decision of the Justice on questions of fact is conclusive and may not be reviewed.

MONTCLAIR.

The facts found by the Justice in the Montclair case are set forth at pages 45, 46 and 47 of the book.

The facts found by the Justice in the Caldwell case are set forth at pages 98 and 99 of the book.

These findings of fact cannot be questioned unless it appears that there is no evidence to support the findings. In each of these cases the facts were stipulated. By the stipulation in the Montclair case it appears that on April 30th, 1918, an election was held under Chapter 2 of the Laws of 1918 (page 13 of book, line 10), at which election there were 1,672 votes "Yes" and 1,653 votes "No," a difference of 19. (Book, page 13, line 15.) Included in the total vote were 64 soldiers' votes. (Book, page 13, line 20.) The Clerk of the Town of Montclair did not send any ballots to the qualified electors in the military service, relative to said election, and gave no notice except the regular advertisement of the election. (Book, page 13, line 30.) On April 19th, 1918, a representative of the Secretary of State procured the names and addresses of qualified voters in the military service for the purpose of forwarding ballots to said electors, which lists included drafted men. (Book, page

13, lines 40 to 50, and pages 16, 17, 18 and 19.) A copy of the Montclair Herald of April 20th, 1918, contained a list of names. (Book, page 14, line 1, and pages 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28.) The Secretary of State could not obtain a list of qualified electors in military service from the Adjutant General of New Jersey, nor from the Adjutant General of the United States, nor a list of qualified voters in the navy from the Secretary of the Navy. (Book, pages 35, 36, 37, 38, 39 and 40.) Ballots, instructions, etc., were mailed to the soldiers and sailors appearing on the list of drafted men, 364 being so mailed, of which over 50% were returned undelivered. This list of drafted men appeared to lack the military address, the address referring principally to the camp at which the soldiers were located, and did not give the military unit. (Book, page 30, line 24.) The list and addresses contained in the Montclair Herald was disregarded and the Secretary of State did not mail any ballots to the soldiers and sailors. The names and addresses in that list were not the same as the names and addresses in the list of drafted men. The Secretary of State, in obtaining the names and addresses of soldiers and sailors, depended primarily upon municipal clerks and made no further inquiry. (Book, page 31, lines 1 to 10.) There were 800 qualified voters in the Town of Montclair in the national army or naval service, of which number 60 to 80 per cent., in numbers 480 to 640, were legal voters of the Town of Montclair on the date of said election and entitled to vote at the election held therein. (Book, page 14, line 40.) No official ballots or other notice was sent to any of said qualified voters except a notice of the fact that an election was to be held on April 30th, 1918, such a notice having been mailed to 200 of said qualified voters whose names appeared in a list compiled by the Home Service Section of the Montclair Red Cross, which list contained several hundred names with more definite and correct addresses than given in the two previous lists herein referred to. (Book, page 14, line 48, and page 15, lines 1 to 12.)

CALDWELL.

In the Caldwell case it appears that an election was held, under the same act, on April 30th, 1918. (Book, page 94, line 50.) No notice of said election was sent to the Secretary of State, nor were ballots or other matter in connection with said election mailed to qualified electors in the military or naval

service. (Book, page 94, line 35.) No list of the qualified electors in the military or naval service was prepared prior to said election, and no ballots were sent by the Borough Clerk. (Page 94, line 50, page 95, lines 1 to 20.) At the election there were 255 votes in favor of prohibition of license and 252 votes against prohibition of license, a difference of 3. (Book, page 95, line 15.) There were 34 men in the military and naval service from the Borough of Caldwell and entitled to vote at said election. Of this number 2 voted. (Book, page 95, lines 20, 40, page 96, line 1.) A notice of said election was published in the Caldwell Progress, a newspaper published in the Borough of Caldwell, which newspaper was mailed addressed to certain of said men in the military service, and a copy of said paper was also sent weekly to the Soldiers' Club at Camp Dix for a period prior to the filing of the petition, before the election and until after said election was held. (Book, page 96, line 40, page 97, lines 1 to 40.) The addresses of these qualified voters in military service and their respective stations were ascertainable. (Page 94, line 10.)

It thus appears that the official ballots and notice of election were mailed by the Secretary of State in the Montclair case to 364 men; that the addresses were incomplete, the address given generally referring only to the camp where these men were sent by the Draft Board. Beyond inquiry of the Adjutant General of New Jersey and of the Adjutant General of the United States, no effort was made by the Secretary of State to obtain accurate addresses. No ballots or notices were mailed by the Secretary of State except according to the list furnished to him by the Draft Board.

It is therefore submitted that there was a failure to comply with the provisions of Chapter 150 of the Laws of 1918. The stipulation of facts and circumstances considered by the Justice, at most could only be subject to argument, and having been considered and determined by the Justice, and being of such a character as to support his findings of fact, such findings are not now subject to review, even though it may be urged that the Justice might have found other than he did find.

The same is true in the Caldwell case to a greater degree. The Secretary of State had no opportunity to even attempt to comply with Chapter 150 of the Laws of 1918. If the Secretary of State had had due notice of the election, the necessary ballots could have been mailed to the electors in the military and naval

service, as it is expressly stipulated that the addresses were ascertainable. Therefore, the only question that can be presented hereon these facts is whether the fact that more qualified electors in the military or naval service, sufficient in number to have changed the result if they had all voted one way, justifies an order upsetting the election.

2. Even though there be a presumption that the voters had knowledge of the provisions of Chapter 150 of the Laws of 1918, there is no presumption that they knew an election was being held under Chapter 2 of the Laws of 1918, at which they had the right to vote, pursuant to the provisions of Chapter 150 of the Laws of 1918.

It is a common expression that men are presumed to know the law, and while this presumption might be extended so as to charge them with the knowledge that an election could be held under the provisions of said Chapter 2, and that qualified electors in the military or naval service could vote under any such election, an informal method being provided for such vote by Chapter 150 of Laws of 1918, they are not presumed to know the fact that certain citizens of Montclair or Caldwell have seen fit to put the machinery in motion, and that an election is to be held at which they might vote.

3. Qualified voters in the military or naval service had the right to vote at elections held under Chapter 2 of the Laws of 1918, either (a) under Section 1 of Article II of the Constitution of New Jersey, or (b) by virtue of Chapter 150 of the Laws of 1918.

Chapter 150 provides for this vote and in all respects conforms to said Article II of the Constitution except that said article provides for the soldiers' vote for the election of "officers," whereas Chapter 150 provides for the soldiers' vote on a question of regulation within the municipality. If this section of the Constitution is not to receive a broad enough interpretation to secure this vote on any question submitted to the electors, then there is no provision in the Constitution, either providing for or prohibiting such vote. The power of the Legislature to pass Chapter 2 of the Laws of 1918 is not questioned by the prosecutor. Therefore, for the purpose of this argument, authority in the Legislature is assumed, and it has submitted the decision to the qualified electors. There being no qualifi-

election fixed other than that contained in the Constitution, it must be assumed and treated as it has always been treated when acts of this character have been under consideration—that the qualified electors referred to are those coming within the definition contained in the Constitution, that is, male citizens 21 years of age, resident within the State one year and within the county five months. The Legislature has frequently enacted laws providing machinery for collecting the votes of such persons, providing for districting, officers to conduct elections, etc., and the power of the Legislature to enact such laws is too well established to require citation of authorities. Chapter 150 of the Laws of 1918 in nowise goes beyond such powers as heretofore exercised by the Legislature. If the Legislature has the power to provide where an elector shall cast his ballot within the territory where the election is to be held, it is not thought that there can be any question but that it has the power to provide for collecting the votes of such qualified electors in places outside of the territory within which the election is to be held. It amounts to no more than the establishment of a polling place for a certain class of electors temporarily absent, which absence is involuntary in that it is in answer to the call of duty, to which all citizens must respond. And it is submitted that the Legislature has full power to provide a machinery by which such persons, discharging the highest duty of citizenship, may not be deprived of a voice in the affairs of that community for which they are discharging the highest duty of a citizen.

It is submitted that the Legislature not only had the power to provide for the taking of the soldier votes while in military or naval service, but that it would be a gross neglect of duty if this class of citizens were deprived of the right of franchise.

4. The right to vote under the provisions of Chapter 150 of the Laws of 1918 has not been taken away by the ruling of any Federal authority.

This point, 10 of the prosecutor's brief, raises an abstract question. While it is true that the Adjutant General of the United States and the Secretary of the Navy could not or did not furnish the necessary addresses of soldiers in the military service, there is nothing in the record of the case showing that the soldiers or sailors could not vote or that any objection was made to arrangements by the State authorities for the taking of their vote. It is a fact as appears in the stipulation, that

certain of the sailors did vote, and this in itself shows that there was no prohibition against such vote. It is not necessary or right that the Court here should determine whether or not the Federal authorities could by appropriate proceeding suspend the right of any qualified voter to vote under any act of the New Jersey Legislature.

5. Chapter 150 of the Laws of 1918 is not unconstitutional because of the provision that the soldier votes shall be delivered by the Secretary of State to the County Board of Election for the purpose of being counted.

Section 1 of Article II of the Constitution of New Jersey, as amended, reads as follows:

“Every male citizen of the United States, of the age of twenty-one years, who shall have been a resident of this State one year, and of the county in which he claims his vote five months, next before the election, shall be entitled to vote for all officers that now are, or hereafter may be elective by the people; provided that no person in the military, naval or marine service of the United States shall be considered a resident in this State, by being stationed in any garrison, barrack, or military or naval place or station within this State; and no pauper, idiot, insane person, or person convicted of a crime which now excludes him from being a witness unless pardoned or restored by law to the right of suffrage, shall enjoy the right of an elector.

“And provided further, that in time of war no elector in the actual military service of the State, or of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from such election district; and the legislature shall have power to provide the manner in which, and the time and place at which, such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside.”

The Constitution provides for the return and canvass of votes in the election district in which they (the electors) respectively reside. This provision is very general in its terms and merely directs that some procedure be established by which the ballots are returned and operate in the district where the elector is entitled to vote. It is the ultimate destination only that is fixed by the Constitution, and no matter how many steps may occur in the transmission of these ballots, so long as they ultimately

arrive in that district where they are to influence the result, the constitutional requirement is met. The words "return" and "canvass" have no particular technical meaning and it is submitted only require that the ballots shall be so handled that the will of the voter is recorded in ascertaining the result of the election. This requirement is fully met no matter how many boards or officials have some duty to discharge in connection with the transmission of such votes, and all of such boards or officials are mere agencies or conduits through which these ballots pass in finally arriving at the point where they must arrive in order that the ballot shall receive due effect.

The prosecutor considers the last clause of the proviso to Section 1 of Article II, as amended, which clause reads "and for the return and canvass of their votes in the election districts in which they respectively reside," as referring to that particular territorial unit in which the voter would cast his ballot if at home, so that, as I understand his contention, soldier votes cast by electors resident in the Town of Montclair would have to be sent to the election board presiding in each election district in which the electors respectively reside within the Town of Montclair, and that some machinery would have to be provided by the act so disposing of such ballots in order to comply with Article II of the Constitution; and the question here presented is, has the term "election districts," as it appears in this clause of the Constitution, such meaning? This section of the Constitution provides that male citizens aged twenty-one, resident in this State one year and of the county in which he claims his vote five months, shall be entitled to vote, etc. It further provides, in the proviso added by the amendment, that no elector in actual military service shall be deprived of his vote by reason of his absence "from such election district." The use of the phrase "such election district" indicates clearly that it refers to something that has been before referred to. The phrase "election district" is not used in any preceding part of Section 1 of Article II. At the end of the proviso we find a reference to the "election districts in which they respectively reside." Taking this phrase and the phrase "such election district" and the phrase "who shall have been a resident of this State one year and of the county in which he claims to have his vote five months," and considering the order in which they appear, it irresistibly appears that the phrase "such election district" refers to that unit in which the elector resides, which

is the county, so that the expression "shall be deprived of his vote by reason of his absence from such election district," means the same as "he shall not be deprived of his vote by reason of his absence from the county in which he claims his vote," and this is the district or territorial unit referred to by the words "election district" used at the end of the proviso. It is submitted that the election district referred to in the Constitution is the county in which the elector resides and is entitled to vote. Therefore, if it was necessary for the New Jersey Legislature, in order to make Chapter 150 of the Laws of 1918 valid, to provide for the return and canvass of the votes in a particular place as the election districts in which the respective electors reside, it has met this requirement by Section 10 of the act by providing for the distribution of the ballots to the County Board of Elections in the county in which the person voting shall reside, for the purpose of having the votes counted by such board.

It is respectfully submitted that the judgment of the Supreme Court should be affirmed.

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