Article 3, Constitution as Amended in 1882, and Laws 1883, Ch. 29 ⅀1.		Chap. 211, Laws 1885.
Sec. 1. (Subd. 1.)	Every male person, (citizens of the United States.)	Every woman, who is a citizen of this State,
Sec. 1.	of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided within the State for one year next preceding any election, and in the election district where he offers to vote ten days, shall be deemed a qualified elector at such election.	of the age of twenty-one years or upwards, (exceptions noted below) who has resided within the State one year, and in the election district where she offers to vote ten days next preceding any election *pertaining to school matters*, shall have a right to vote at such election.
Sec. 2	No person under guardianship, *non compos mentis* or insane, shall be qualified to vote at any election; nor shall any person convicted of treason, etc.	Except paupers, persons under guardianship, and persons otherwise excluded by Section 2, Art. 3 of the constitution of Wisconsin.

It will be seen at once that the language of these two provisions is identical in meaning and effect with a single exception, to-wit; in the one and not in the other the word "*election*" is qualified by "*pertaining to school matters.*" This law would without question or doubt grant general and universal suffrage to women possessing proper qualifications if the phrase "*pertaining to school matters,*" had been omitted. Why the legislature used this phrase and at the same time used language so broad and general and with full knowledge of the political and municipal machinery of the state and city of Racine as we are bound to presume, neither court nor counsel, we apprehend, can tell. It is an old rule of construction which says, "It gives great light to the interpretation of obscure passages, to

compare them with others that have some affinity with them; or to compare them with *what goes before or follows in the context.*"

Puffendorf's Rules. Potter's Dwarris 133.

Used in Harrington vs. Smith, 28 Wis. 62.

"As they both" to wit: the general expressions and the qualified word "*election*" "came from the same hand, so they are both found together in the same writing."

Rutherford's Rule. Potter's Dwarris 136-7.

Used in Harrington vs. Smith, supra. 63.

"We must prefer the evident meaning of the *whole law* to the inconsistent meaning of a *defective expression.*"

Domat's Rule. Potter's Dwarris 140,

Used in Harrington vs. Smith, supra 62.

"If he who has expressed himself in an obscure or equivocal manner, has spoken elsewhere more clearly on the same subject, he is the best interpreter of himself. We ought to interpret his obscure or vague expressions in such manner that they may agree with those terms that are clear and without ambiguity, *which are used elsewhere, either in the same treaty*, or some other of the like kind."

Vattel's Rule 17. Potter's Dwarris 128,

Used in Harrington vs. Smith, supra 62.

These are the old rules, subjected to the criticism of a hundred courts, and have come through the ages down to us, and are used and applied by this court to a vague law of the legislature in 1871. On page 59 of Harrington vs. Smith, the Court say: "This principle in the construction of a statute, that every part of it must be

viewed in connection with the whole, and, in addition, that it must be construed so as to make all parts harmonize if practicable, and give a sensible and intelligible effect to each, and not to place one portion in antagonism to another, has been recognized and enforced in a great variety of cases, and is, in fact elementary."

Harrington vs. Smith, 28 Wis., 59.

Ogden vs. Strong, 2 Paine C. C. R., 581.

Brooks vs. Mobile School Commissioners, 31 Ala. 227.

Dillingham vs. Fisher, 5 Wis., 475.

Calkins vs. Harvey, 13 Wis. 370.

Mason vs. Finch, 2 Scam. 223.

The Belleville R. R. Co. vs. Gregory, 15 Ill. 20.

Torrance vs. McDougald, 12 Ga. 526.

Granting for the present that the intent of the legislature was as found by this Court, to infer that the same was the intent of the people who ratified said Chap. 211 is simply to *imagine* the *intent of the people*. "We are not at liberty to imagine an intent, and bind the letter of the act to that intent, much less can we indulge the license of striking out and inserting and remodeling, with a view of making the letter express an intent which the statute in its native form does not evidence. Every construction is therefore vicious, which requires great changes in the letter of the statute."

Alexander vs. Worthington, 5 Md. 485.

Harrington vs. Smith, 28 Wis. 70.

Permit us respectfully to ask the learned Court's attention further to a portion of its opinion filed herein, beginning

with the sentence, "On March 10, 1885, the special joint committee on Woman Suffrage * * reported three several Senate bills * * with recommendations for and against." And ending with the sentence: "This is in accordance with the action of the Senate in defeating the bill and memorial, in each of which it was proposed to give women the unlimited right of surffrage." Has not the Court in this language *bound* the phrase "*pertaining to school matters*" to the intent inferred from sources improper to be considered on an argument on demurrer, and improperly and untimely submitted to the Court by counsel and improperly *supposed* to be the intent of the people in ratifying said Chap. 211? Should not this phrase be considered in its connection with what precedes and what follows and if possible harmonized therewith? And has not the learned Court given undue weight and importance to the *title* of said act and to the *form of the ballot* used? Shall it be said that the people did not know what they were doing when they deliberately by their ballots ratified said Chap. 211? Courts are not the *guardians* of the people nor of their rights except such rights be guaranteed by the constitution, *Bennett vs. Boggs, 1 Bald. 74 and 75*. The question for the courts is what have the people *done*, and not what did they *think they were doing*. The form of the ballot used might help in arriving at the legislative intent, but not in arriving at the *intent of the people*. That the people have reserved to themselves the question of extending the suffrage and have ratified said Chap. 211, seems to have been overlooked by the opposing counsel and by the learned Court in this case.

The title of an act cannot restrain or restrict its purview.

Hadden vs. Collector, 5 Wall. 107.

U. S. vs. Fisher, 2 Cranch p. 358.

Postmaster vs. Early, 12 Wheat. 136.

Sedgwick on Stat. Constr. p. 39.

Tuttle vs. Strout, 7 Minn. 465.

Doubtless the title may sometimes aid in interpretation, but it can never be permitted to antagonize and override the purview. But let the phrase "any election pertaining to school matters," the title, and the form of ballot used be considered together, and when so considered, what is the fair inference from the language used? Simply and of necessity that women are to participate through existing elections, in the management and control of the schools in our state without exception. This is undeniable. There is no other meaning contended for or possible. And if there is but one possible interpretation or construction, then the law is not *ambiguous* as stated in the opinion of the learned Court.

See Mundt vs. Sheboygan and Fond du Lac R. R. Co., 31 Wis. 457.

And therefore Courts cannot consider the history of the bill and must give such interpretation as will harmonize all parts of the law, if possible. And if such interpretation is impossible, then such as will *save* rather than *avoid* a statute is preferred.

Ruggles vs. Fond du Lac, 53 Wis. 436.

Bigelow vs. R. R. Co., 27 Wis. 478.

Atkins vs. Fraker, 32 Wis. 510.

Bound vs. R. R. Co., 45 Wis. 543.

Grenada vs. Broughn, 112 U. S. 261 (268).

How, in view of the present machinery by which

schools are managed and controlled, and which we *must presume* the legislature knew, and enacted said Chap. 211 with reference to the same,—*how*, we ask, *are women to participate* in such control and management? If this question be narrowed down to the City of Racine, we assert positively there is no way *except to vote at the municipal election.* Then said election must pertain to school matters within the meaning of the act. This is the whole contention, and is and must be within the intention of the act. To avoid the *consequences* of such construction is not for the Court.

Harrington vs. Smith, 28 Wis. 43.

Bushnell vs. Beloit, 10 Wis. 155.

Attorney General vs. R. R. Cos. 35 Wis. 425, 553.

The *only* question involved in this case is *does the municipal election of Racine pertain to school matters*, within the meaning of the act. Enough, we apprehend, has been said of the word *pertaining* and its meaning. But we venture to repeat a conclusion from page 27 of Respondent's brief. The original meaning of this word implied a *material relation or extension* clear through (per) to a certain limit. This was the literal meaning of this word.

In its figurative sense the *material* extension, became an extension to be thought of, conceived or supplied by the mind. This is the meaning in our language.

See page 27, Respondent's Brief.

The Board of Education, consisting of two members from each ward, controls and manages the schools of the city. This Board is appointed by the Mayor and Common Council, who in turn are voted for at the munic-

ipal election. Is not such an election an *election pertaining to school matters* within the meaning of the purview of a statute whose object is to give to women the privilege and right of participating through existing elections in the control and management of schools? To say, as the learned Court does say in its opinion, "If the plaintiff had the right to cast the vote offered, then it would be very difficult, if not impossible, to give any substantial reason for rejecting her vote for most, if not all state officers," is to avoid a law because of its *possible* consequences; and further it is not a part of the question involved in this suit. Does the municipal election pertain to school matters, is our only question. But, say the Court, by Ryan C. J. in *The Attorney General vs. R. R. Cos. 35 Wis. 553.* "We cannot look to the consequences of legislation. Let the legislature do that. We have no discretion. We, at least, must obey the law." Said Chap. 211 is a valid law, was passed by the legislature, and ratified by the people, and now women should be permitted to enjoy its full privileges, for *Ita lex scripta est.*

It is suggested by the learned Court in its opinion that further legislation may be necessary to secure to women the *full* benefits of the rights sought to be conferred by Chapter 211, Laws of 1885." Further legislation would seem to be required before *any* benefits may accrue therefrom to schools or to women. But what further legislation? It is not the policy of the state to interfere in the internal concerns of municipal corporations, in matters of electing school officers and school management. And such law would in effect be *declaratory* not only of a legislative act, but also of an act of the people, and must be disregarded.

LaFayette Co. vs. Knowlton, 2 Pinney 523.
Munger vs. Lenroot, 32 Wis. 656-7.

To vote for State Superintendent of schools would certainly *pertain to school matters,* but only "qualified electors" under the constitutional meaning of the phrase are permitted to vote for such officer.

Constitution of Wis., Art. X, Sec. I.

School district meetings pertain *directly* to school matters, and electors at these meetings must be "qualified electors."

R. S. 1878, Sect. 428.

The legislature might amend this, but "school districts" are not "election districts," and can not be made such, for they are both constitutional terms, with specific and technical meanings.

Constitution of Wis., Art. 10, Sect. 2 and 3.

" " " Art 3, Sect. 1, as amended in 1882.

What further legislation will accomplish the confessed meaning of Chap. 211? But the legislature and the people must be presumed to have enacted and ratified Chap. 211 with view to and with full knowledge of the political machinery of the state. They must be presumed to have known how "school matters" were involved with other matters, and must be presumed to have acted with reference to things as they are. No other presumption is warranted. To hold that the privileges conferred by Chap. 211 cannot be exercised without further legislation, is: 1st, to construe Chap. 211 as meaning "any election pertaining *directly* and *exclusively* to school matters," which seems to border closely upon judicial legislation, which courts seldom indulge in and are careful to avoid.

Tynan vs. Walker, 35 Cal. 634.

And 2nd, to hold as above is to hold that a statute confers no *present* rights and imposes no *present* obligations. A statute is not a constitutional provision, they are clearly distinguished.

1 Abb. U. S. Pr., 170.

We submit that the court should construe the phrase "pertaining to school matters" contained in Chap. 211 in connection with what precedes and what follows said phrase, and then harmonize the whole with view to securing the *present* privileges to women which the law clearly contemplates, to-wit: "full participation through existing elections in the management and control of all our schools."

The phrase "pertaining to school matters" is a prepositional phrase modifying the noun "election," and shows a *relation* between the two words "election" and "school matters." The municipal election of Racine bears a *relation* in fact to the school matters of the city.

See Respondent's brief, p. 28.

If there is such relation in fact to correspond with the grammatical relation of the terms, then said municipal election must be an "election" contemplated by the act.

What does "election" in said act and in the connection used mean? The learned court in its opinion defines this word to mean: "1, The act of choosing; choice; the act of selecting one or more from others." This is the meaning of *election* as *an act* of an individual. The *elector* expresses his *election* (choice) by voting at an *election* held. The court defines the former, while the law uses the latter as appears from the connection "ten days *next preceding* any election." and "shall have a right to vote *at* such election. This court has heretofore defined election as used in said Chap. 211. "A town meeting is an election, within the general meaning of that word. Every lawful assemblage of the voters for the purpose of making *choice* or determining by vote or ballot, is an election." Dixon C. J., in

Phillips vs. Albany, 28 Wis. 355.

There is still another meaning of this same word, though it may be not in the connection used in Chap. 211, to-wit, in this sentence: The result of the *general election* is the *election* (choice) of Mr. A. as Governor. In this sense *election* may be defined *an act*, the concurrent act of the electors, that is, the result is an act. But before the words, "*ten days next preceding* any election," can have any force, the term "*any election*" must have definiteness in meaning and time. Election is not an *act* until after it is done (actus), a thing done. Election, in the mind of the legislators and of the people, must have been the public proceeding or ceremony *at* which officers are elected. These are fixed in meaning, time, and place by our statutes and charters. In such an event only can the phrase "ten days next preceding any election," have a meaning.

See Supplement of R. S., Sect. 12, note p. 19.

Citing Anthony vs. Halderman, 7 Kan. 50.

People vs. Holden, 28. Cal. 123.

What absurity in the legislature to fix a residence of "ten days next preceding" something which had no existence on any day of the ten previous to end of the last day thereof when the *election* becomes an *act*. The logical conclusion from the definition given in the opinion of the learned court herein is as given "The act of the person so choosing or selecting by vote or ballot, must itself relate to school matters." But the act of the person

is not *election*, although it may express his *election or choice, it is a vote*; while the result of all the votes is an *election*.

Sandford vs. Prentice, 28. Wis. 362.

Chap. 211 does not say that the *act* of the voter must pertain to school matters but that the *election* i. e. the result it may be, but more accurately, the public proceeding known in our laws as "election" must pertain to school matters. In harmony with this view is the concluding part of Chap. 211, "shall have a *right* to *vote* at *such* election." This word "*election*" certainly cannot mean *the act of a person*. But the word *such* requires the same meaning to both words "election."

And here permit us to call the attention of the learned Court to a misunderstanding by the Court of the claim made by this respondent. We refer to this statement in the opinion: "For these reasons, it is claimed, that the *election of each of the four officers named*,—Mayor, Clerk and Comptroller, Alderman, and Supervisor,—'was an election pertaining to school matters,' within the meaning of the act." The claim is that the election *at which* such officers are elected; or, it may be, the result of such election is an "election pertaining to school matters" within the meaning of said act. This is the contention of the respondent.

But there is in said Chap. 211 another clause which strongly supports respondent's view, to-wit: "*who has resided * * in the election district where she offers to vote.*" The language clearly contemplates voting in an *election district*, for "*where*" as used, is a relative adverb, showing relation and place, and is equivalent to the phrase "*in which.*" The whole state is divided into *election districts* for purposes of the general election, while

cities, villages, and towns are either divided into or compose *election districts* for purposes of municipal, village or town elections. In no other connection is the term used in our statutes or charters. The term is a strictly technical term and its meaning must be sought for in the statutes and charters where it is used.

Sedgwick on Stat. Constr. p. 221.

1 Kent Comm. 462.

Clark vs. Utica, 18 Barb. 451.

State vs. Mace, 5 Md. 337, 350,

"but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning, in the law, shall be construed and understood according to such peculiar and appropriate meaning."

R. S. 4971, Subd. 1.

This term "election district" is of comparatively recent origin in our laws and statutes. We are not able to find it previous to the bill known as 160 A., which became Chap. 445, Laws of 1864, which is known as the Registration Act. We must admit however our investigation has not been exhaustive in reference to this.

In the Territorial statutes "*town or district* in which he resides" is the phraseology used.

Territorial Statutes, 1839, § 11, p. 38.

"Every elector shall vote * * in the *town or ward* where he resides at the time of the election," is used in the statutes of 1849, § 28, p. 68.

"But (but) no elector shall vote except in the *township or ward* in which he actually resides."

Statutes 1858, § 29, p. 104.

"A general election shall be held in the several *towns and wards* in this state."

Taylor Statutes, Title 2, Chap. 7, § 3, p. 210, and §50, p. 222.

"The persons authorized by law to act as inspectors of of elections in any *town, ward, or incorporated village* in this state, shall constitute a board of registry for their respective *towns, wards, or villages.* * * * The said board shall annually make a list * * * of all persons qualified and entitled to vote at the then ensuing election, in the *election district* of which they are inspectors."

Chap. 445, §1, Laws of 1864, Taylor St., §25.

"Said registers shall each contain a list of the persons so qualified and entitled to vote in said *election district.*" §26 Taylor Statutes. "Any person who shall cause his name to be registered in more than one *election district,*" etc. Taylor Statutes.

Can there be any doubt that *election district* is well defined, and is both synonymous with, and coextensive with "town, ward, and village" found in Sec. 1 of this law? Wherever thereafter used in statutes and laws of the same state, must it not have the same meaning unless the context *clearly* gives it a different meaning? But in 1882 this term was inserted into our constitution, with the meaning above contended for, and ever thereafter the meaning must be understood as fixed therein; otherwise there is no guide to the interpretation of legal phraseology, and we are thrown into the utmost confusion, and nothing can be considered as settled. Will the learned court permit the doctrine of *stare decisis* to attach to a construction so subversive of rules of construction and interpretation?

But still further notice the identity of language used in Chap. 211, and in the Constitution Art. 3, as amended, and also in the general election laws, R. S. §12.

Const. Art. 3	R. S. §12.	Chap. 211.
Every male person * * who shall have resided * * in the *election district* where he offers to vote * * not exceeding thirty days.	Every male person * * who shall have resided * * in the *election district* where he offers to vote ten days.	Every woman * * who has resided * * in the *election district* where she offers to vote ten days.

Is this identity meaningless as a guide to interpretation of Chap. 211? Now bearing in mind that "election district" is a well defined term, a constitutional term, and a well known term, what is the logical inference? That the legislature and the people used this term with *new* and *undefined* meaning?

It will also be noticed that the city charter of the city of Racine does not use this term "election district" until its amendment by act of the legislature March 23, 1887. In this amendatory act the following language is used "Section 8, of Title 2, of said act is amended to read as follows: Section 8. All elections shall be by ballot and a plurality of votes shall *elect.* All persons entitled to vote *at any election* for the state or county officers, and who shall have resided *in the state for one year* next preceding *such* election *and for ten days within the election district* where they offer to vote, shall be entitled to vote for any officer to be elected under this act and be *eligible to any* office hereby created." Compare this language with Chap. 211. "All persons * * who shall have resided * * for ten days within the *election district.*" Here, after the passage of Chap. 211, and after its ratification

by the people of the state, the city of Racine uses the same language. Has this no force or meaning in interpreting the meaning and intent of "election district" as understood by the people? This term is used in the constitution, in the general election laws, in the registry laws, in Chap. 211, and last of all the city has selected it in lieu of *ward* which was previously used.

In this connection let us call attention of the court to its language in the opinion filed herein. "School officers are mostly elected in districts. Sections 424-32, 703, R. S." These districts, (Secs. 424-32) are *never* and *nowhere* understood as "election districts." Should *technical terms* be thus interchanged in legal interpretation? Sec. 703, R. S. provides for dividing certain counties into two *districts*, but these are *superintendent districts*. The second superintendent shall be appointed "to hold until his successor is elected" but elected where? Presumably in some "election district" within the superintendent district No. 2. Is not this language, used in the opinion, also *binding the letter of the law to the intent, obtained from improper sources in an argument on demurrer?*

We again call the Court's attention to a case cited in respondent's brief and comments there made thereon, to-wit, the case of *Chase vs. Miller, 41 Penn. St. 403.*

Respondent's Brief, pp. 29, 30, 31,

and particularly to this language: "This amendment to the constitution introduced not only a new test of the right of suffrage, to-wit, a district residence, but a rule of voting also. *Place* became an element of suffrage for a two-fold purpose. WITHOUT A DISTRICT RESIDENCE, *no man shall vote, but having had the district residence, the right it confers is to vote* IN THAT DISTRICT. *Such is the voice of the constitution.* The *test* and the *rule* are equally

obligatory." The constitutions of the two states are similar in this respect, and why should not the decision of Pennsylvania be followed in this state, in the absence of any decision to the contrary?

Metcalf, J. in *Commonwealth vs. Hartnell, 3 Gray, 450*, on page 451 uses the following well recognized rule: "It is a common learning, that the *adjudged* construction of the *terms of a statute* is enacted, as well as the terms themselves, when an act, which has been passed by the legislature of one state or country, is afterwards passed by the legislature of another. So when the *same legislature*, in a later statute, uses the terms of an earlier one which has received a judicial construction, that construction is to be given to the later statute. And this is manifestly right. *For if it were intended to exclude any known construction of a previous statute*, the *legal presumption* is, that its terms would be so changed as to effect that intention." What has become of this *legal presumption* in the case of Brown vs. Phillips in regard to the use, by the legislature and its ratification by the people, of the term "election district," a term used by the legislature on several occasions, and by the people on two separate occasions, and last of all incorporated by the City of Racine in its city charter?

Truly school officers are mostly elected in districts, but Chap. 211, does not say *any election of school officers*, for the legistature well knew there were no such exclusive elections held in "election districts," but does say aptly and purposely "pertaining to school matters," so as to give women full and effective participation through existing elections, in the management and control of schools. A work so important to the interest and welfare of the state and for which women have shown themselves so well

fitted. How can effect be given to this intent and at the same time deny women the right and privilege of participating in all elections affecting schools? And especially in cities, where women can *in no way* participate in school matters, and *at no place* so participate therein, except by casting their ballot at the municipal election where the officers are elected, who thereafter control the whole subject of school matters by appointment of the proper board, effect can be given to the intent of the law in no other way than by participation in such elections.

Take still another view of this branch of the question. R. S. 428 reads as follows: "Every person shall be entitled to vote in any *school district meeting*, who is qualified to vote at a general election for state and county officers, and *who is a resident of such school district*." Compare the language of Chap. 211 with this Section of of our statutes, what is the inference?

Chap. 211, "Every woman * * * who has resided * * * in the *election district* where she offers to vote *ten days*."

R. S. 428, "Every person * * *who is a resident of such school district*."

If women have only a right to vote for school officers, in school districts, then why is the phrase "ten days" used in the former, when it is not used in the latter?

The Court will observe further also this difficulty in the way of a narrow construction of Chap. 211, and while observing it will bear in mind that it is admitted on all sides to have been the intent of the legislature and the people to give to women full participation in the school matters of the state thereby. The elections held in this state and provided for by our statutes are the following:

1. GENERAL ELECTIONS to be held in the several towns, wards, villages and election districts. (R. S. 14) where this election is called "The general election *prescribed by the constitution*." The privilege given is "the right of suffrage" before specified in Art. 3, of Cons. Wis. and again in the proviso under which Chap. 211 was passed and ratified. One condition only is imposed, to-wit: the *election* must pertain to school matters. That is the *election* as a public proceeding must in its results as a concurrent act affect schools, relate to schools; *school matters* and not *school officers*, is the language used.

2. The MUNICIPAL ELECTIONS to be held in the several cities, this is the one in question in this suit. Turning then to the city charter of Racine we find the following: "All persons entitled to vote at any election for the state or county officers," to-wit: all persons who have a right to vote at a general election can vote at the municipal election.

Charter-Amendments, 1887, § 3.

3. TOWN MEETINGS also known by judicial construction as *elections*, held in the several towns of the state for election of town officers. R. S. 798 provides that "every person * * * who shall be otherwise qualified to vote at a general election, may vote at such town meeting."

4. VILLAGE ELECTIONS to be held in certain villages. R. S. 873 provides that "every *qualified elector* then actually resident in such village, may vote at any election." What is a *qualified elector?* Simply one who possesses certain prescribed *qualifications.*

5. SPECIAL ELECTIONS are subject to the same rules as a matter of course.

6. SCHOOL DISTRICT MEETINGS, which are held in school districts, we find confronting us R. S. 428. "Every person shall be entitled to vote * * who is qualified to vote at a general election."

Here is a list of all the elections—to vote at any after the first, one must be entitled to vote at the first. Now permit us to ask where are women to vote, "who are citizens of this state, * * who have resided in the state one year, and in the election district, *where she offers to vote?*" The right to vote at any election known to our laws hinges upon the right to vote at a general election. Then how are women *by voting* to have a participation in school matters; but this is the intent of the law confessedly, and in order so to participate in the control of school matters, women must act through these several avenues. The law is a valid law, and the legislature and the people knew what they were doing, and if not, the courts are the guardians of neither.

As well expressed by the Court in its opinion herein, "The plain duty of the court is, under the well established rules of law, to declare the intention of the legislature *as expressed in the act*, nothing adding, nothing subtracting." And also, "still if such is the manifest purpose of the act, *as expressed in the language employed*, then the courts are bound to so declare,—any inferences arising from the history of the bill to the contrary notwithstanding."

Recurring once more and lastly to the opinion of the learned Court we find the following language:

"The bill as it originally passed the senate, contained, in place of the words, 'and in the election district where she offers to vote,' now found in the act, the words 'and within the city or town in which she claims a right to

vote.'" "One of the apparent objects in making such change, would seem to have been, to dispel any inference, which might otherwise have arisen favorable to the right of women to vote at town meetings or municipal elections, *the latter of which had been defeated some ten days before.*" The several bills mentioned in said opinion were reported to the senate. Chap. 211, known as Bill 208 S. passed the senate March 13, 1885. The bill for municipal suffrage was defeated March 17, 1885, four days later. Assemblyman Taylor asked for and obtained consent to offer said amendment, who was not a member of the committee which reported said bills to the senate, and presumably did not know of the other bills; at any rate there is no evidence before the Court that he did know.

The terms generally used in the election laws are "towns, wards, villages and election districts," (R. S., 13 and 14); "election district," (R. S., 12); "towns, wards *or* election districts," (R. S., 20); in the registry laws as a rule, "election district" alone is used; Chap. 389, Laws of 1885, Sect. 1, provides for dividing *wards* into *election districts*; otherwise election district or precinct is used in said Chap. 389; in Chap. 310, Laws of 1885, we find: "In each ward *or* election district of every city;" in R. S. 27, we find provision for dividing a town into election districts; when one's vote is challenged one of the questions is: "When did you last come into this *town, ward, or village?* (R. S., 36). The constitutional requirement under which such question is asked is "residence in an election district." So we might proceed. What is the logical inference? Simply this, "election district" is the *unit* of territory for election purposes. Towns, cities, wards, and villages may be divided into these unit portions. Further, the constitutional residence

required is residence in an "election district." Mr. Taylor knew this and asked to have this term inserted as such unit, to conform to the election laws of the state, and to conform to the constitutional requirement.

The inference of the learned court would seem untenable also for another reason. The language of the act again confronts us, "*Every* woman, *who is a citizen of this state*," of proper age, and with specified exceptions. Election districts are, in the agregate of units, coextensive in territory with the state; "every woman who is a citizen of this state" admits of no exception other than those specified and is coextensive with the state; the general election of the state and the municipal election held in Racine, and we care for no others at this time, are both held in election districts, where women are said in Chap. 211, to have *a right* to offer their vote, for the general election and said municipal election both pertain to school matters within the meaning of the act, or the act has *no meaning* and the legislature and the people had *no intention*. Such elections are the only place at which and the only way in which male electors have of participating in the management and control of state school matters and Racine city school matters. We have said the language of this act admits of no exceptions other than those specified; Courts have held time and again that they can create none. This state has so held in

Gilbank vs. Stephenson, 30 Wis. 155.

Cothern vs. Connaughton, 24 Wis. 134.

Harrington vs. Smith, 28 Wis. 43.

Encking vs. Simmons, 28 Wis. 272.

Georgia has so held in

Torrance vs. McDougald, 12 Ga. 530,

where the court say the word *all* in a statute could not be restrained, the statute itself containing no exception. And further, "that the rule was considered so inflexible that the Statute of Wills, (32 Hen. VIII) having authorized *all* and *every* person or persons to devise their lands, it was feared it might enable infants and insane to do it. Consequently (34 Hen. VIII) was passed to introduce exceptions."

Beckford vs. Wade, 17 Ves. 88.

Maryland has so held in

Collins vs. Carman, 5 Md. 505-533,

and Dixon, C. J. in commenting upon this case in Harrington vs. Smith, supra page 61, says: "This (which) was certainly a hard case, and one which appealed most strongly to the sympathy of the court to find its way out of and escape the operation of this rule, it was still held to be inflexible. The question was upon the right of a widow, who was *insane* at its date, and so continued, to renounce the provision made for her in the will of her late husband, and to receive her share of his estate as given by law. By the statute of the state it was necessary that she should *dissent* from the provision made in the will, a thing which, being insane, she was incapable of doing. The language of the statute was comprehensive enough to include *every widow*, whether sane or insane, and the statute having made no exception in favor of the latter, it was decided that none could be made by the courts, whether of law or equity."

New York has also held to the same rule in Demorest vs. Wynkoop, 3 Johns Ch. 142. Apply this rule to the language of said Chap. 211, "*every* woman" with certain exceptions specified and *where* is the avenue of escape?

The *natural import* of the words of any legislative act, according to the common use of them, when applied to the subject matter of the act, is to be considered as expressing the intention of the legislature.

7 Mass. 523.

Brooks vs. Hill, 1 Mich. 123.

Cooley on Const. Lim. p. 70.

Way vs. Way, 64 Ill. 406.

R. S. Wis. 4971 Subd. 1.

Brown vs. Phillips, filed herein.

There is no other way of arriving at the intent of the people who ratified said act.

1 Story on Const. §401.

Cooley on Const. Lim. pp. 68, 72, 81.

Manly vs. State, 7 Md. 135.

In view of the *political media* (elections) through which and by means of which only the people of the state and city of Racine control and manage their schools; and in view of the fact that the legal presumption is that the legislature knew this and the people knew it, any other presumption than which would be to convict the legislature and the people of unpardonable ignorance; and in view of the language used in said Chap. 211; we submit to the court that its construction utterly defeats said act, and the intent clearly expressed therein, and the will of both legislature and people. And why? Simply because woman cannot perchance exercise the rights *clearly* and *expressly* given by the terms of said act, without purchance exercising some rights not within the intent of a narrow construction of said act. But this court has held

a number of times that that construction is preferred which will *save* rather than *avoid* a statute.

Ruggles vs. Fond du Lac, 53 Wis. 436.

Bigelow vs. R. R. Co., 27 Wis. 478.

Atkins vs. Fraker, 32 Wis. 510.

Bound vs. R. R. Co., 45 Wis. 543.

Why not permit women to exercise the clearly expressed intent of said act *until* the legislature and the people shall have better defined their intent and purpose, if such intent and purpose can be better defined.

Chap. 211, is clearly an *enabling remedial act* within the definition given of the same by, Sedgwick on Stat. Constr. (2d ed.) p. 32, and Pomeroy in his Article on "Statutes" in Johnson's Encyclopedia.

"Remedial acts are those made from time to time to supply defects in the existing law, whether arising from the inevitable imperfection of human legislation, *from change of circumstances*, from mistakes, or from any other cause." And being remedial, it should be construed *liberally*, and so as to remove the evil, and *extend* the benefit proposed.

White vs. Steam Tug, 5 Cal., 462.

Sedgwick on Stat. Constr., p. 308.

Dwarris, p. 632.

White vs. The Mary Ann, 6 Cal., 462.

Cullorden vs. Mead, 22 Cal., 95.

Jackson vs. Warren, 32 Ill., 331.

Wilbur vs. Paine, 1 Ohio, 256.

We regret that time did not permit us to make this argument at the hearing, but we have confidence that the Court will yet further consider their decision and overrule the demurrer of the defendants herein, and thus affirm the order of the court below.

History of Chap. 211, Laws of 1885.

We append this not as a matter of argument, for this Court has held that it cannot take *judicial notice* of legislative journals, but simply to disabuse the minds of the learned Court in regard to the impressions derived from said legislative journals improperly and prematurely submitted by counsel to the Court, and improperly considered by the Court to the prejudice of respondent. And by reason of which the hearing can hardly be said to have been *a fair and impartial hearing*. Counsel doubtless well knew of the several bills before the legislature on this question, for it was generally talked of at Racine, then why did they not *allude* to them in their printed brief or in the opening argument, and not spring it upon us for the first time after our mouths were closed. Further, the legislative journals were in the possession of counsel at the argument, they knew they intended to introduce them, and quote from them, why did they not submit them at the outset?

What do these journals really show, and what do the filings on the original bills, Memorial 2 S, and Bills 164 S, 208 S, and 277 S, and the various records made by the legislature, show? Let us review them together in tabular form.

Date. 1885	MEM. 2, S.	BILL 164, S.	BILL 208, S.	BILL 277, S.	Jour. page.	REMARKS.
2 | 4	Introduced by Senator James. Read 1 & 2 times. Ref'd to Com.				S. J. 85	Ref'd to joint special Com. on Woman Suffrage.
2–13		Int. by Sen. Ginty. Read 1 & 2 times. Referred to Com.			140	Ref'd to joint special Com. on Woman Suffrage.
2–16			Int. by Sen. Ginty. Read 1 and 2 times. Referred to Com. of one. Ref'd to Com. of one, Sen. Ginty. Ordered not printed.	Int. by Sen. James. Read 1 and 2 times. Ref'd to Com. of one. Ordered not printed.	156 164 275	They were ordered printed later and referred to joint special committee on Woman Suffrage.
3 | 10	Reported back with recommendation that with recommendation to postpone indefinitely. Unanimous.		Reported back with recommendation to pass. Unanimous.	Reported back with recommendation to pass. Sens. *Hurdt* and *O'Neill* dissent.	325	
3 | 11	Made special order for Friday, 10:30 A. M., 3 | 13.	Indefinitely postponed.	Motion to postpone indefinitely lost. Ayes 7, Noes 21.	Made special order for Friday, 10:30 A. M. 3 | 13.	347	
3 | 12			Reported correctly engrossed.		350	
3 | 13	Refused engrossment: Ayes 12, Noes 17.		Read third time and passed. Ayes 20, Noes 10.	Made special order for 3 | 17.	366 367	
3 | 16			In Assembly referred to general file.			
3–17			Reported back without amendment.	Indefinitely postponed: Ayes 17, Noes 10.	383	

From now on the history is that of Bill 208 S. alone, which eventually became the Chap. 211 in question.

Memorial 2 S, was a memorial to congress for a 16th amendment to the Constitution of the U. S. granting suffrage to women.

Bill 164 S. was for general and universal suffrage, in language similar to R. S. §12.

Bill 277, S. was intended to grant partial suffrage to women and reads as follows: "Every female citizen of the age of 21 years or upwards, having the same qualifications as a qualified male elector of this state, living in any town, village, or city of this state, shall have the right to vote in such town, village, or city at all elections affecting only such town, village, or city."

Our impressions now are that there was no provision for submitttng this to the people for their ratification. If this be so what inference *must* follow? Simply an *intention* by the legislature to grant greater privileges by bill 208 S. which became Chap. 211, than by bill 277 S. which was definite in its meaning and application. Why else should the legislature provide for submitting bill 208 S. and not bill 277, S. to a vote of the people and that too under a proviso for the extension of general suffrage? This is inexplicable on any *school district* theory.

This history shows that Mem. 2 S., bill 164 S., and bill 277, S., never passed into the Assembly at all. What then? There is not a particle of aid to *legislative intent* in this comparative history. There might be some aid to the intent of the senate, but this is not *legislative intent*. The senate might have selected No. 208 S. on principle of "survival of the fittest," but how about the assembly? This branch must have interpreted bill 208 S. from the words used. But "election district where she offers to vote," was selected for "city or town in which she claims a right to vote," by unanimous consent in the assembly,

and thereafter concurred in the senate, which body, we supposed, had selected this bill as meaning the least of all.

The same joint special committee, consisting of Sens. Hudd and James, and Assemblymen O'Neill, Vilas, and Johnson were appointed to consider "all questions relating to women suffrage." Senate Journal, p. 59. This committee therefore considered all the bills, and here no doubt the selection took place. The senate acted as the committee recommended. The question of intent must therefore be still further narrowed down to *intent* of this committee. History of these bills show that Senator Hudd opposed Nos 2, S, and 277 S, as did also Assemblyman O'Neill. This committee were unanimous as to bills 164, S, and 208, S., that the former should be postponed indefinitely and the latter passed. So it was done. Mem. 2, S, and bill 277, S, were made a special order because of the division in the committee. But why was a second special order made for 277 S, clearly to hold that until 208, S, was safe out of the Senate and in the Assembly, and referred to the general file there, and then reported back with no amendments to offer, both occurred on March 17, 1885, the same day. So. No. 277, S, was not defeated until No. 208, S, had passed.

We grant, and must of necessity do so, that the position of the learned court is correct, if the legislature or either branch had the bills before them in order following: 1st, General suffrage, bill 164, S, or Mem. to Congress 2, S, and each were defeated, for no suffrage could be broader than contemplated by either of these.

2d, Bill 277, S, for municipal suffrage, and that also defeated, the fair and necessary presumption would be that bill 208, S, meant less than any one of the

others, if the said bill 208, S, passed after each of the others had been defeated. And what could be less than municipal suffrage, except school district suffrage? This might be a fair and a necessary inference. But had the learned Court been advised that bill No. 164, S. was defeated because the women desired it, *why*, we know not; the evidence might show the reason as it would show the fact. This bill 164, S. then was gotten out of the way *really* in committee and that too at the request of the petitioners, who knew what they desired. This bill then argues nothing as to intent of anybody, unless of the petitioners themselves. Bill 208, S. was generally supposed to mean much more than bill 277, S. and was therefore chosen; but bill 277 S. was not defeated until No. 208, S. was quite out of reach of a defeat. A wholly separate reason will apply to Mem. 2, S. as this contemplated a 16th amendment to the Constitution of the U. S. and a further interference by the United States in a purely state matter, and was therefore opposed. Selecting in committee of bill 208, S., a committee very friendly to woman suffrage, was surely a strong indication that the committee understood this bill as giving greater privileges than bill 277, S. would have given.

Senator Cottrill moved in the Senate to postpone indefinitely bill 208, S. on March 11, 1885, and the Senate refused so to do by a vote of 21 to 7. The same senator then on the 17th of March moved the postponement of bill 277, S,; which the Senate did by a vote of 17 to 10. Therefore the Senate had selected bill 208, S. rather than 277, S,; but the committee had made the same selection, a committee composed of friends of the cause of woman suffrage; so had the women, who were petitioners for this privilege selected this same bill as granting greater privileges and confiding in them a more sacred trust, participation in the training of children in whom they were especially interested.

It would certainly be as little creditable to the Senate to frame and pass a law capable of a double construction to-wit: a broad construction, giving universal suffrage; and by the narrowest construction as giving *nothing*; and which, by proper construction, may give any grade of suffrage between these extremes, as, it would be for the senate to defeat "what they wanted to secure, and to adopt what they wanted to defeat."

But no such conclusion should follow as a matter of construction of said Chap. 211. The only proper conclusion is that the legislature selected the words of the act carefully with a view to securing certain results. The legislature was impressed, by the petitions of many hundreds of the women and men of the state, with the justness of the request made and so granted the prayer of such request. Eight petitions signed by many were presented to the Senate, and fourteen to the Asembly at the session of 1885. The petitioners laid claim to equal recognition with men in matters pertaining to good government, as being tax-payers, and bearing many of the burdens of government, they justly supposed themselves entitled to a hearing, and so thought the legislature. And now will the Court deny them that which the legislature and the people have accorded them? We are loath to believe it, and this must be our apology in venturing to ask the learned Court for a rehearing, so we may have an opportunity of replying to the new matter unseasonably and improperly submitted by the learned counsel to the Court, and that legislative journals may be properly submitted as evidence, after an oppor-

tunity has been given of carefully examining the same, with view to accuracy. And we confidently believe the Court will grant this request, as so many of the citizens of our state are deeply interested in the result of the suit.

ROWLANDS & ROWLAND,

Attorneys for Respondent.

STATE OF WISCONSIN

SUPREME COURT.

OLYMPIA BROWN,
Respondent,

vs.

ALBERT L. PHILLIPS,
JAMES W. PALMER, and
ALEXANDER BURCH,
Appellants.

ARGUMENT OF APPELLANTS IN OPPOSITION TO A MOTION FOR RE-HEARING.

The lengthy brief of respondent's Counsel on motion for a re-hearing in this case, is like the effort of a drowning man catching at a straw.

All of the plausible, and perhaps we might say forcible, arguments that could be advanced in support of respondent's position, were well presented in Counsels' original brief.

In their supplemental brief, Counsel finding all of their strongest positions and most specious theories overthrown, undertake, as a last resort, to build up a case to sustain the order of the Circuit Court upon a proposition which is the weakest and most untenable of all.

Nothing can be added to what is said by the Court in the opinion in this case and in the cases cited therein, to show that an allegation which assumes all the necessary facts to make out plaintiff's case in one general allegation, states a conclusion of law; and furthermore, that when a complaint contains a statement of "a conclusion from facts and law," as Counsel is pleased to name it, and also a recital of the facts themselves, that the sufficiency of the complaint is to be determined from such a recital and not from such conclusion.

The only other thing in Counsels' brief of which we desire to take notice, is their criticism of the opinion of this Court in which the Court appears to derive some light in the construction of the statute in question, from the legislative journals.

We do not understand that such journals or their contents were vital or essential to the conclusion arrived at by the Court, as entirely independent of them the Court finds in the reading of the law itself, abundance of evidence that it was not intended thereby to confer such suffrage as was sought to be exercised by plaintiff.

However, as the contents of said journals and the history of attempted legislation in the matter of female suffrage are so convincing and conclusive against Counsels' contention that they do not even attempt to question their effect, we have been pleased to find abundance of authority in this Court and other of the highest Courts in the country, including the Supreme Court of the United States, sustaining the right, propriety and duty of Courts to take judicial notice of legislative journals in determining both as to the

passage of a law and as to the meaning of ambiguous terms or expressions.

Among such authorities, we call the attention of the Court to the following:

Meracle vs. Down, 64 Wis. 327.
Bound vs. R. R. Co., 45 Wis. 558.
People vs. Mahaney, 13 Mich. 481.
Evans vs. Brown, 30 Ind. 514.
Clark vs. People, 26 Wend. 599.
Gardner vs. Collector, 6 Wall. 499.
U. S. vs. R. R. Co., 91 U. S. 72.
See also R. S., Wis. 4135.

The other points raised in Counsels' brief were so fully discussed on the original hearing of the case, and are so fully met and passed on by the Court in the very able opinion filed herein, that we should hardly deem it respectful to the Court to attempt any farther reply to Counsels' argument.

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