

THE MILITARY SUFFRAGE ACT OF MICHIGAN—ITS
CONSTRUCTION AND CONSTITUTIONALITY—THE
RESPONSIBILITIES OF THE JUDICIARY IN FREE
STATES.

We have been furnished the opinions of the judges of the Supreme Court of this state, in regard to the constitutionality of this act, the majority of whom held it so far in conflict with the express provisions of the constitution, that its validity could not be maintained. Our space will not allow us to publish these opinions at length, which in their character are very creditable to the judges. The main question involved is so nearly identical with that which has been many times decided in the other states, that the decision itself affords little that is new. The constitution of this state requires that all electors shall have "resided in the state three months, and in the township or ward, *in which he offers to vote*, ten days next preceding such election." This is so nearly the same with the provisions in the other state constitutions, to which we have had occasion to allude before, that any attempt to distinguish between them would savor of unjust refinement. The only variation in phraseology turns upon the difference between the terms, "offers to vote" and "claims his vote." In some of the states one, and in some the other form of expression being used.

It is true that both these forms of expression are used, *diverso intuitu*, for the purpose of defining the qualifications of the electors, and not with any specific intent to define the place of voting. But no fair-minded man, whose opinions are not warped by the exigency of the case, could doubt that both these forms of expression do require that the vote shall be *claimed* or *offered* in the particular *district defined*. Any other construction would do equal violence to the language of the provision, and the practical construction which it has uniformly received for half a century. The idea never entered the brain, we venture to affirm, of any the most imaginative speculator upon the elective franchises in the different states, that it was competent for any one of the numerous class of persons temporarily abroad, either in the public service or in the merchant marine, or in accidental journeyings, to claim the right of exercising his privilege of voting abroad, at the elections, in the place of his domicil. But there

is no reason why the right of voting by letter, or by telegram, might not have been claimed and exercised, unless there was something in the constitution or the legislation requiring the vote of each elector to be "offered," "given," or "claimed," at the place of holding the election. But the fact is that no man ever dreamed of any such thing until the present emergency threw such *immense numbers* into a position where they could not exercise the elective franchise in the ordinary mode; and the only mode provided by law. And in this emergency no one, we presume, would have attempted to ride over and break down the express provisions of so many written constitutions, but for the magnitude of the emergency, and the impracticability of bringing about an alteration of these constitutions in season to answer the desired end.

The effort then to give these constitutions a perverted construction, and to bind them, so to speak, to answer present purposes, springs altogether from an unexpected concurrence of circumstances. A *casus omīssus* had arisen, and bold men, and unscrupulous men, as well as simple-hearted and good men, felt that the written law ought not to be allowed to stand in the way of a good cause. They desired, or they believed, that it thus became the duty of the judiciary to lend themselves to the demands of the hour, and to make the written law echo, not the purposes, or the intent, of the framers; but such intents and purposes as the framers ought to have had, and such as they would have had, if they had anticipated the present crisis.

But we are gratified to be able to say, that to a wonderful extent, considering the outward pressure, and the momentous interests involved in the present crisis, and the unlimited anxieties of all classes in regard to the question, to a most astonishing extent, have the judiciary of the several states met the embarrassments thrown around the subject, and unflinchingly adhered to the old and well-settled rules of construction, that the law must be declared, not made; that the import of statutes and constitutions must be gathered from the words in which they are expressed, construed with reference to the time, place, and manner in which they were used, and not from any speculation or conjecture of what would have been the will of the framers, had they been placed in other circumstances, or had they anticipated the complications of after times.

And it is not the less gratifying that this result should be