

**KILBURN  
vs.  
JACOBS, County Clerk**

No. 4531

SUPREME COURT OF NEW MEXICO

1940-NMSC-024, 44 N.M. 239, 101 P.2d 189

March 25, 1940

Appeal from District Court, Union County; Livingston N. Taylor, Judge.

Proceeding by F. P. Kilburn against Garland Jacobs, County Clerk of Union County, New Mexico, for a declaratory judgment construing the constitutionality and validity of Laws 1939, c. 112. From a final judgment of dismissal, plaintiff appeals.

**COUNSEL**

D. A. Paddock, of Clayton, for appellant.

Filo M. Sedillo, Atty. Gen., A. M. Farnandez, Asst. Atty. Gen., and Richard E. Manson, of Santa Fe, for appellee.

**JUDGES**

Bickley, C. J., and Brice, Mabry, and Sadler, JJ., and Bryan G. Johnson, District Judge, concur.

**OPINION**

{\*240} {1} Appellant filed a complaint in the District Court of Union County, New Mexico, naming appellee, as County Clerk of said County, the party defendant. The complaint prayed for a declaratory judgment construing the constitutionality and validity of Chapter 112, New Mexico Session Laws of 1939, and further prayed that the Court declare said Chapter 112 in contravention of Section 16, Article 4 of the Constitution of the State of New Mexico, and of certain other provisions of the Constitution. The Appellee filed a demurrer to this complaint and the District Court sustained the demurrer. Appellant declined to plead further, and elected to stand upon his complaint; and, accordingly, the District Court entered final judgment of dismissal.

**{2}** This case is controlled by Johnson v. Greiner, 44 N.M. 230, 101 P.2d 183, wherein this Court held that said Chapter 112 of the New Mexico Session Laws of 1939 is in contravention of Section 16 of Article 4 of the Constitution of the State of New Mexico.

**{3}** The judgment of the District Court is reversed, and the cause remanded for further proceedings in accordance with this opinion, and it is so ordered.