

mark their ballot. Upon making and filing with the judges such affidavit the voter shall retire to one of said booths with the two clerks, and then and there one of said clerks, in the presence of the other, shall mark the ballot as such voter shall direct, the voter himself naming one by one the candidates for whom he desires his ballot to be marked and not indicating the candidates by a general designation as the candidates of any one political party. The ballots shall not be read to such voter, nor shall any suggestion of any kind be made by either of said two clerks to show him as to how his ballot is to be marked, but the only assistance which it shall be lawful for the clerks to give him is to mark the ballot as he, without prompting or suggestion from them, or either of them shall direct, but no ballot shall be marked under this section until a majority of the judges of election shall be satisfied of the truth of the fact stated in such affidavit. Voters who are not disabled by blindness or physical injury from marking their ballots shall not be entitled to receive assistance in marking them. And with the exception in favor of persons blind or incapable from physical injury of marking their ballots without assistance, no distinction or discrimination in the matter of assistance in marking ballots shall be made for or against any duly registered voter for any other cause whatever.

The court declines to pass on the constitutionality of the act of 1901, ch. 2, (denying aid to illiterates), but even if that act had not been passed so as to leave the act of 1896, ch. 202, as to illiterates being entitled to assistance, in force, a mandamus could not issue directing the judges of election to give such assistance, since the act provided that it was to be given by the clerks. A mandamus directing such assistance will not be issued after the election is over, nor will mandamus be issued where the defendants are only authorized to act under conditions which do not exist in the case. *Summerson v. Schilling*, 94 Md. 605. And see *Summerson v. Schilling* 94 Md. 589.

1904, art. 33, sec. 68. 1896, ch. 202, sec. 63.

70. Any voter who shall, by accident or mistake, spoil his ballot so that he cannot conveniently vote the same way, on returning said spoiled ballot to the judge holding the ballots, receive another in place of it, with his name and the same number written on the coupon thereof, as on the ballot so returned, but no voter shall receive more than three ballots from said judge for the reason aforesaid. The ballots thus returned shall be immediately cancelled by endorsing thereon the word "spoiled," and, together with those not distributed to the voters, shall be preserved and returned to the supervisors of elections, as hereinafter provided. Every voter who does not vote any ballot delivered to him shall, before leaving the polling place, return such ballot to the judge from whom he received it, and said returned ballot shall be retained as if said ballot had been spoiled. When anyone claiming to be a person whose name appears upon the registers shall make application for a ballot, his right to vote at that election may be challenged, but shall not be determined until after he has marked his ballot and delivered it to the judge at the ballot box. The person challenging shall assign his reason therefor, and one of the judges shall thereupon administer to the person offering to vote an oath to make true answers to questions,