

NEW JERSEY
COURT OF ERRORS AND APEALS.

Carlos P. Houghton,
vs.
Ellis Potter and Edward E. Potter. } On Error to the Supreme Court,

This was an action of unlawful detainer, brought by Francis M. Potter since deceased, Ellis Potter, and Edward E. Potter, against the said Carlos P. Houghton, before Peter P. Runyon, Esq, Justice of the Peace of the county of Middlesex, as follows :

STATE OF NEW JERSEY, } Court for the trial of Small Causes,
MIDDLESEX COUNTY. ss. } before PETER P. RUNYON, Justice.

Francis M. Potter,
Ellis Potter, and
Edward E. Potter,
vs.
Carlos P. Houghton. } On complaint of unlawful detainer. 10

June 2d, 1851.—Francis M. Potter, Ellis Potter and Edward E. Potter exhibited before me a complaint against Carlos P. Houghton, as follows : “ Francis M. Potter, Ellis Potter and Edward E. Potter, complain to Peter P. Runyon, one of the Justices of the Peace in and for the County of Middlesex, against Carlos P. Houghton, of the township of Woodbridge, in the said County of Middlesex, for this, to wit : that whereas by a certain Indenture or Lease between the said Francis M. Potter, Ellis Potter and Edward E. Potter, and Abijah O. Houghton, the father of the said Carlos P. Houghton, bearing date the fifteenth day of March, in the year eighteen hundred and forty-nine—the said Francis M. Potter, Ellis Potter and Edward E. Potter demised, granted and leased unto the said Abijah O. Houghton a certain messuage, tenement and farm, situate, lying and being in the township of Woodbridge, in the County of Middlesex, known as the Homestead Farm, whereof the said Francis M. Potter, Ellis Potter and Edward E. Potter then were and now are seized, of an estate of inheritance in fee simple, to have and to hold the said messuage, tenement, farm and premises, with the appurtenances, unto the said Abijah O. Houghton for the term of one year from the first day of April then next ensuing, which said term expired on the first day of April, in the year eighteen hundred and fifty ; and the said Abijah O. Houghton having delivered up, or pretended to deliver up, the possession of said premises to the said Francis M. Potter, as one of the joint owners of said farm and premises, and as the agent and attorney of the said Ellis Potter and Edward E. Potter, the other joint owners of said farm and premises, on the third day of April, in the year eighteen hundred and fifty, the said Carlos P. Houghton, by collusion with the said Abijah O. Houghton, hath wilfully and without force held over and unlawfully detained the possession of the said premises from the expiration of the said term until the day of exhibiting this complaint, and still doth wilfully and without force hold over and unlawfully detain the same from the said Francis M. Potter, Ellis Potter and

Edward E. Potter, although demand of the possession of the said premises, and notice in writing for the delivery thereof to the said Francis M. Potter, Ellis Potter and Edward E. Potter was made and given by the said Francis M. Potter to the said Carlos P. Houghton on the third day of April, A. D. 1850, and also on the 21st of May, 1851, and so the said Francis M. Potter, Ellis Potter and Edward E. Potter say that the said Carlos P. Houghton is guilty of an unlawful detainer of said premises.”

FRANCIS M. POTTER,
ELLIS POTTER,
EDWARD E. POTTER.

Dated, June 2d, 1851.

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Whereupon, I issued a Summons against him of the tenor following :

STATE OF NEW JERSEY, }
MIDDLESEX COUNTY, to wit : }

The State of New Jersey, to our Sheriff of our County of Middlesex, *Greeting* : We command you that you summon Carlos P. Houghton, of the township of Woodbridge, County aforesaid, to appear before Peter P. Runyon, one of our Justices of the Peace in and for our said county, at the Court House in the township of North Brunswick, in the County aforesaid, at the hour of ten o'clock in the forenoon of the ninth day of July instant, to answer and make defence against the complaint of Francis M. Potter, Ellis Potter and Edward E. Potter, in the County aforesaid, of an unlawful detainer, made by the said Carlos P. Houghton into and upon a certain messuage, tenement and farm of the said Francis M. Potter, Ellis Potter and Edward E. Potter, in the County aforesaid and have you then and there this precept with a return of your proceeding therein.

Given under the hand and seal of the said Peter P. Runyon, this first day of July, one thousand eight hundred and fifty-one.

PETER P. RUNYON.

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And on the same day I issued a precept to the Sheriff to summon a Jury, as follows :

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

The State of New Jersey, to our Sheriff of our County of Middlesex, *Greeting* :

Whereas, complaint in writing is made to the subscriber, Peter P. Runyon, one of the Justices of the Peace in and for our said County, of a certain unlawful detainer made by Carlos P. Houghton into the messuage, tenement and farm of Francis M. Potter, Ellis Potter and Edward E. Potter, in the County aforesaid :

We therefore command you that you cause to come before the said Peter P. Runyon, at the Court House in the township of North Brunswick, in the County aforesaid, at the hour of ten o'clock in the forenoon of the ninth day of July instant, twelve good and lawful men of the body of your County, being citizens of this State, and residents within the said County, above the age of twenty-one and under the age of sixty-five years, and who have a freehold in lands, messuages and tenements in said County, and are in no wise of kin to the said Francis M. Potter, Ellis Potter and Edward E. Potter, or to the said Carlos P. Houghton, to make a Jury of the County, to enquire of and try the said unlawful detainer. Given under the hand and seal of the said Peter P. Runyon, the first day of July, one thousand eight hundred and fifty-one.

PETER P. RUNYON.

July 9th, 1851.—The Sheriff returns the Summons, with his return thereon endorsed, as follows : “ I do hereby authorize and depute John L. Page to serve the within writ.—“ July 3, 1851.

GARRET VOORHEES, Sheriff. J. S.

Served, John L. Page, Deputy Sheriff.”

At the time and place appointed, parties appeared. The defendant filed his plea as follows :

MIDDLESEX, ss.

Francis M. Potter,
Ellis Potter, and
Edward E. Potter,
Plaintiffs,
vs.
Carlos P. Houghton,
Defendant.

On Unlawful Detainer.

Carlos P. Houghton, the above named defendant, according to the form of the Statute in such case made and provided, comes and pleads that he is not guilty of the said unlawful detainer in the said complaint charged against him.

And for a further plea in this behalf he saith that he hath been in the quiet possession of the said messuage, tenement, farm and premises in the said complaint mentioned for the space of three whole years together, immediately preceding such complaint and his estate therein is not ended or determined.

Dated July 9th, 1851.

CARLOS P. HOUGHTON.

The said Carlos P. Houghton by his counsel made and filed an affidavit, and moved for a postponement of the trial of this cause to a future day. The complainant's counsel made and filed an affidavit, and opposed the motion for an adjournment. I overruled the motion to adjourn.

The sheriff returned the precept for a jury with the following return:

"By virtue of the within writ, I have duly summoned the following named lawful jurors to appear at this time: Ira C. Voorhees, Henry Richmond, Stephen Moore, Cornelius Powelson, John D. Martin, Henry Vroom, Peter Van Sickle, Lewis Applegate, Van Cleef Voorhees, Peter Van Deventer, Jacob Blakeney and Ralph Voorhees.

July 9th, 1851.

GARRET VOORHEES, Sheriff.

Charles Huff and Thomas H. Shafer sworn for complainants, two notices marked "Exhibit A., Exhibit B." offered in evidence.

The jury being called Ira C. Voorhees, Henry Richmond, Stephen Moore, Cornelius Powelson, John D. Martin, Henry Vroom, Peter Van Sickle, Lewis Applegate, and Van Cleef Voorhees, were duly sworn that they would severally well and truly try the issue joined between the said Francis M. Potter, Ellis Potter, and Edward E. Potter, and the said Carlos P. Houghton, and a true verdict give according to evidence, when defendants' counsel objected to the service of the summons, that it was not served according to law, I overruled the objection, Peter Van Deventer, Jacob Blakeney and Ralph Voorhees, the remaining jurors were duly sworn, in like manner as the jurors who were sworn as above stated.

The complaint was read to the jury as well as the defendants' plea, and the complainants called upon to support their complaint.

For said complaint the following witnesses were severally sworn, viz: Joseph E. Palmer, John J. Chetwood, Charles C. Huff, Edward Martindale and Thomas H. Shafer. The complainants offered a power of attorney marked, exhibit C and a lease marked exhibit D. in evidence, which were objected to by defendants' counsel, I overruled the objection and permitted them to be read to the jury. The complainants also offered in evidence two notices marked Exhibit A. and Exhibit B.. The jury having heard the parties and their evidence, retired to a private apartment with John L. Page, a constable, who alleged himself scrupulous of taking an oath was duly affirmed to attend them.

After some time the jury returned, and say they have agreed upon their verdict, and that they find the defendant guilty of the unlawful detainer, whereof the complainants hath charged him. Whereupon I give judgment for the said complainants, with treble costs.

Therefore it is considered that the said Carlos P. Houghton, is convicted of the unlawful detainer, whereof the said Francis M. Potter, Ellis Potter, and Edward E. Potter, hath complained against him, and that the said Francis M. Potter, Ellis Potter and Edward E. Potter, be restored to the possession of their

message, tenement and farm, in said complaint specified; and that they recover the sum of sixty dollars, seventy-two cents, being treble costs and charges, by them about their suit, in this behalf expended, according to the form of the Statute in such case, made and provided.

July 12th 1851, Defendant presented to me a certiorari which I allowed.

I do hereby certify that the foregoing is a true transcript of the proceedings in the above cause as recorded in my docket.

Witness my hand and seal this tenth day of November, one thousand, eight hundred and fifty-two,

PETER P. RUNYON, *Justice of the Peace.*

The judgment and proceedings rendered and had before the said Justice, were removed into the Supreme Court by the said Carlos P. Houghton by writ of certiorari. On the return of the writ of certiorari, the following rule was taken :

NEW JERSEY SUPREME COURT

November Term, 1851.

20 Carlos P. Houghton, }
vs. } *Certiorari to Peter P. Runyon, Esq.,*
Francis M. Potter, Ellis Potter and } *Justice, &c.*
Edward E. Potter. }

Diminution in the return of the Justice being suggested on the part of the plaintiff in certiorari. It is ordered that the said Peter P. Runyon, Esq., do certify to the Justices of this Court on the first day of the next term of this court whether on the trial of the said cause before the said Justice, the defendant below by his counsel objected to the admission of the two notices, marked, exhibits A and B, mentioned in the Justices return, and which were offered in evidence on the trial on the part of the defendants in certiorari, and
30 whether the said Justice admitted the said notices in evidence.

On motion of HENRY V. SPEER, Attorney of Plaintiff in certiorari.

To this rule the Justice returned as follows :

In obedience to the order of the Supreme Court of the term of November last a copy of which is hereto annexed, I do hereby certify and make known to the Justices of the said Supreme Court that the defendant below on the trial of the cause before me, did by his counsel object to the admission of the two notices marked, exhibits A and B which are hereto annexed and mentioned in my return to the certiorari, and which were offered in evidence on the trial on the part of defendants in certiorari, and that the said notices were admitted by me
40 in evidence. Witness my hand and seal this first day of December, one thousand eight hundred and fifty one.

PETER P. RUNYON.

Copy of notices, Exhibits A. and B.

To Carlos P. Houghton:—You are hereby required forthwith to deliver up possession of the premises owned by Francis M. Potter, Ellis Potter and Edward E. Potter, situate in the township of Woodbridge in the county of Middlesex and state of New Jersey, which you hold and detain unlawfully without the consent and against the will of the said owners.

50 Endorsed, THOMAS H. SHAFER, *Attorney for*
FRANCIS M. POTTER,
ELLIS POTTER, and
EDWARD E. POTTER,

Served May 21st, 1851.

T. H. SHAFER,

To CARLOS P. HOUGHTON:—You are hereby required forthwith to deliver up possession of the premises owned by Francis M. Potter, Ellis Potter and Edward E. Potter, situate in the township of Woodbridge, in the county of Middlesex and state of New Jersey, which you unlawfully hold and detain without the consent, and against the wishes of said owners.

FRANCIS M. POTTER, for himself, and as agent
Rahway, April 3d, 1850. for Ellis Potter and Edward E. Potter.

The following reasons were assigned before the Justices of the Supreme Court for the reversal of the judgment and proceedings of the said Justice :

NEW JERSEY SUPREME COURT.

November Term, 1851.

Carlos P. Houghton, vs. Francis M. Potter, Ellis Potter and Edward E. Potter. } Reasons.

The said Carlos P. Houghton, by H. V. Speer his Attorney, assigns the 10 following reasons for reversal of the judgment in this case.

- 1st. The summons issued by the Justice, was not served according to law.
2d. Because there is no legal return made to the said summons by the sheriff.
3d. The Justice has not entered in his docket the time when the venire facias was issued by him.
4th. Because the venire facias issued by the Justice commanded the sheriff to summon twelve jurors for the trial of said cause, who had a freehold in lands.
5th. Because the complaint exhibited by the plaintiffs below in the said cause 20 is insufficient in the law to maintain the said action of the plaintiffs below.
6th. Because the said Justice has not entered in his docket that the defendant below objected to the admission of the two notices marked exhibits A and B offered in evidence by the plaintiffs below, nor whether the said Justice admitted the same in evidence.
7th. Because there is no judgment for restitution of all the premises mentioned in the said complaint and of the unlawful detainer of which the said plaintiff in certiorari is charged in the said complaint, and found guilty by the verdict rendered in the cause.
8th. Because the said judgment and proceedings in the said action are in 30 divers other respects erroneous, irregular and unlawful.

H. V. SPEER, Atty of Plaintiff.

Middlesex ss :—Carlos P. Houghton puts in his plea Henry V. Speer, his attorney, to prosecute the above stated certiorari against Francis M. Potter, Ellis Potter and Edward E. Potter.

The cause came on to be argued upon the aforesaid reasons before the Justices of the Supreme Court at the term of February last when the said Justices of the Supreme Court considered that there was not any error in the judgment and proceedings of the said Justice ; and the said Justices of the Supreme Court affirmed the judgment below with costs. 40

Thereupon a writ of error was brought returnable to this court at the term of June last, when the following rule was made :

Carlos P. Houghton, vs. Francis M. Potter, Ellis Potter, and Edward E. Potter. }

It appearing to the Court that since the issuing of the writ of error in this case, Francis M. Potter, one of the defendants, hath departed this life, it is ordered that the said suit proceed against the survivors. 50

On motion of H. V. SPEER, Atty. for Plaintiff.

And thereupon the following errors were assigned :

Afterwards, that is to say on the third Tuesday in June in the year eighteen hundred and fifty-two, before the Judges of the Court or Errors and Appeals, holden at Trenton, comes the said Carlos P. Houghton by Henry V. Speer his attorney, and also the said Ellis Potter and Edward E. Potter by their attorney Thomas H. Shafer, and the said Francis M. Potter comes not and the said Carlos P. Houghton hereupon gives the court to understand and be informed

that since the issuing of the said writ of error, and before the return thereof, to wit : on the first day of March, in the year eighteen hundred and fifty-two, at New Brunswick, in the county of Middlesex, the said Francis M. Potter departed this life, and the said Ellis Potter and Edward E. Potter survived him, which allegation the said Ellis Potter and Edward E. Potter do not deny but admit the same to be true. Therefore let there be no further proceedings in this cause against the said Francis M. Potter. And the said Carlos P. Houghton says that in the record and proceedings aforesaid, and in giving the judgment aforesaid, there is manifest error in this; that the summons aforesaid issued in this cause by the Justice below, was not lawfully served, and also in this that there is no legal return made to the summons by the sheriff, to whom it is directed, and also in this, that the said complaint exhibited by the defendants in error, in the court below, is not sufficient in law for them to have or maintain their aforesaid action thereof against the said Carlos P. Houghton, and also in this that the said Justice has not entered in his docket that the said Carlos P. Houghton objected to the admission of the two notices, marked exhibits A. and B. offered in evidence by the defendants in error, nor whether the said Justice admitted the same in evidence, and also in this that there is no judgment for restitution, of all the premises mentioned in the said complaint, and of the unlawful detainer of which the said Carlos P. Houghton is charged in the said complaint; and also in this; that the judgment aforesaid, by the record aforesaid, appears to have been given for the said Francis M. Potter, Ellis Potter, and Edward E. Potter, whereas by the law of the land the said judgment ought to have been given for the said Carlos P. Houghton, against them the said Francis M. Potter, Ellis Potter, and Edward E. Potter.

H. V. SPEER, Atty and Counsel

with the Plaintiff in error.

New Jersey, ss : Carlos P. Houghton, puts in his place Henry V. Speer, his attorney, to prosecute this writ of error against Ellis Potter and Edward E. Potter who have survived the said Francis M. Potter deceased.