

New Jersey Court of Errors and Appeals

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EDMUND C. GASKILL, JR.,	}	ACTION AT LAW.
<i>Plaintiff and Appellant,</i>		
vs.		
ATLANTIC CITY,		
<i>Defendant and</i>	}	
<i>Respondent.</i>		

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BRIEF OF BOURGEOIS & COULOMB,
Attorneys for Plaintiff and Appellant.

The appeal in this case brings up for review a judgment in favor of the defendant entered on a verdict directed by the trial judge at the Atlantic County Circuit of the Supreme Court.

The plaintiff sued to recover from Atlantic City \$1402.73, being the salary of Recorder from January 1, 1915, to July 23, 1915, he having performed the duties of that office as a de facto encumbent. The city resisted payment on the theory that Martin E. Keffer, had been declared the de jure officer upon proceedings in quo warranto; that the plaintiff had obtained and retained his office by force and fraud and upon the further circumstance that a few days before the trial of the case, the city had paid the salary for the same period to Mr. Keffer.

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STATEMENT OF FACTS.

The facts are briefly as follows:

The City of Atlantic City in 1902 adopted as its charter a form of government prescribed by the Legislature, namely, the Act of 1902, page 284.

This Act provided that there should be elected in said city one Recorder for the term of 3 years.

10 Martin E. Keffer was elected Recorder of the City of Atlantic City under the provisions of the Charter at the November election, 1911, his term beginning January 1st, 1912, and would have expired on January 1st, 1915, had it not been that the City of Atlantic City in May of 1912 adopted the so-called "WALSH ACT".

20 Upon the adoption of the Walsh Act, commissioners were elected who organized on or about July 23, 1912. Upon their organization they adopted a resolution, which is Exhibit D6, printed at page 152, wherein it was provided that certain offices were to be filled by the Board of Commissioners, including the office of Recorder.

On the same day Martin E. Keffer was elected as Recorder of the City of Atlantic City, as appears from the minutes, Exhibit D5, page 152. Neither in the resolution nor in the proceeding to elect Mr. Keffer was any term fixed for the office of Recorder.

30 In August of 1914 a question arose as to whether or not the office of Recorder of Atlantic City was elected by the people under the Charter or by the commissioners under the Walsh Act. If the office was an elective office, then the term of Mr. Keffer would expire on the 1st day of January, 1915, and his successor would have to be elected at the November election of 1914. In this posture of affairs the City Clerk addressed a letter to the City Solicitor, asking his opinion on the subject. The letter is Exhibit P1 and is printed on Page 19. In response thereto City Solicitor Schimpf addressed a lengthy opinion to the City Clerk, advising him that the office of Recorder and certain other offices were elec-

tive and should be filled at the election to be held in November of 1914. This letter is Exhibit P2, printed at pages 20-28.

In pursuance of the opinion of the City Solicitor, the City Clerk proceeded to call a primary and general election as appears from the Exhibits P3 and P4, printed at page 133 and admitted in evidence on page 30.

At the primary election which was held on Tuesday, September 22, 1914, a number of candidates offered themselves for the office of City Recorder as appears from a report of the election made by the City Clerk to the County Clerk, received in evidence as Exhibit R5, page 32. From this report it will appear that Edmund C. Gaskill, Clarence L. Goldenberg, Joseph B. Perskie, John S. Westcoat, and Harry Wootton, all lawyers, were candidates. Mr. Gaskill received the highest number of votes, namely, 1870, and was declared to be the Republican candidate for the office of Recorder. 10

At the general election Mr. Gaskill was elected Recorder as appears from the statement of the determination by the Board of County Canvassers, admitted in evidence as Exhibit P8 and printed at page 38. 20

At the meeting of the commissioners of the City of Atlantic City held on the 31st day of December a resolution was adopted wherein Mr. Gaskill was recognized as having been legally and duly elected to the office of Recorder of the City of Atlantic City, and the salary was directed to be paid to him and all officials of the city who had business with the Recorder were directed to present the same to him and all citizens were advised to act accordingly. Mr. Gaskill took possession of the office and such of the paraphernalia of the office as had been left by Mr. Keffer and on the 1st day of January assumed the duties of the office of Recorder and performed the same until July 23rd, 1915. 30

On the 11th day of November, 1915, he filed with the City Comptroller a claim for his salary for services of Recorder, amounting to \$1402.73. This was not paid and suit was thereupon brought.

10 The trial court conceived that there was nothing for the jury to determine in the suit and in directing a verdict found as a matter of law that the plaintiff had forcibly and fraudulently entered in the office of Recorder and was for that reason not entitled to the salary and further found that the salary had been paid to Martin E. Keffer by the city.

20 GROUND OF APPEAL RELIED UPON.

The plaintiff relies for reversal upon the following grounds of appeal:

1. That the trial court erred in refusing to direct a verdict in favor of the plaintiff. Exception noted page 132, line 30.
2. Because the trial court erred in directing a verdict in favor of the defendant. Exception noted page 132, line 15.
3. Because the trial court erred in deciding as a matter of law that the appellant was guilty of fraud in entering upon the office of Recorder of the City of Atlantic City and performing the duties thereof. Exception noted page 132, line 28, and also arguable under grounds of appeal 1 and 2.
- 30 4. The trial court erred in finding as a matter of law that the appellant was guilty of force in entering upon the office of Recorder of the City of Atlantic City and performing the duties thereof. This point is arguable under the same exception as point 3.
5. The trial court erred in admitting evidence of the alleged payment of salary for the office of Recorder of Atlantic City for the period sued for to Martin E. Keffer. Exception noted 69, line 18.

6. The trial court erred in admitting gevidence of the passage of an act of the State of New Jersey known as the "VALIDATING ACT". Exception noted page 78, line 34, page 80, line 14.

6½. Because if there were any inferences raised of force or fraud in the case, those inferences should have been drawn by the jury and not by the court. Exception noted page 130, line 31, page 132, line 28.

7. The trial court erred in finding as a matter of law that the alleged payment to Martin E. Keffer of the salary attached to the office of Recorder prevented plaintiff from recovering the salary for the time during which he performed the services of City Recorder. Exception noted page 132, line 15, line 28 and line 34. 10

8. The trial court erred in finding as a matter of law that the facts concerning the payment of the salary to Martin E. Keffer constituted a payment to Martin E. Keffer of the salary of the office of Recorder. Same exception as point 7.

ARGUMENT. 20

IF THERE WAS ANY EVIDENCE AT ALL FROM WHICH FORCE OR FRAUD SHOULD HAVE BEEN INFERRED, IT WAS THE FUNCTION OF THE JURY TO HAVE DRAWN SUCH INFERENCE.

It was contended that Mr. Gaskill was guilty of fraud because as a counsellor-at-law he should have known of the force and effect of the decision of Salter vs. Burk, 83 N. J. L. 152. It will be observed that in Mr. Schimpf's opinion to the City Clerk he relies on the case of Salter vs. Burk in support of his contention that the office of Recorder of the City of Atlantic City was elective, page 21, line 25, page 25, line 23 and page 27, line 15. 30

It was argued that the Supreme Court itself relied upon the opinion in *Salter vs. Burk* in determining that the office was appointed by commissioners under the Walsh Act, in *Keffer vs. Gaskill*, 95 Atl. Rep. 629. We fail to see wherein *Salter vs. Burk* was relied upon for the purpose of arriving at the conclusion. In the *Keffer vs. Gaskill* case an effort was made to show that there had been an attempt to revive the office of Recorder and the court cited the case of *Salter vs. Burk* in that connection and said, page 630:

10 "In *Salter vs. Burk*, 83 N. J. Law, 152, 156, it was held that the Walsh Act did not alter general laws or charter provisions relating to the government of the city, except when inconsistent with its provisions, but imposed on the commissioners the duty of filling existing charter offices made vacant by the adoption of the act."

20 The question in the *Keffer* case was whether by the adoption of the Walsh Act the office of Recorder was to be filled by the Commissioners. One may search the *Salter vs. Burk* case very carefully and fail to find any language from which it could be determined which if any offices were to be so filled.

 The *Keffer vs. Gaskill* case on quo warranto was argued in February of 1915 and re-argued again in June, 1915, and was not decided until October, 1915, after Mr. Keffer's term had expired.

30 If the opinion in *Salter vs. Burk* was so completely dispositive of the question as to the right of Mr. Keffer or Mr. Gaskill to hold office as to charge Mr. Gaskill with fraud in failing to recognize it, certainly it is not impertinent to suggest that it should have been equally plain to the distinguished members of the Supreme Court who sat in the *Keffer vs. Gaskill* case.

 Knowledge of the law as evidence of fraud must not be merely a presumptive knowledge of the law but an actual knowledge of the law.

 Had the case of *Salter vs. Burk* determined that

the office of City Recorder was abolished under the Walsh Act, then there might be some grounds for finding as a matter of law that Mr. Gaskill was guilty of fraud in refusing to recognize its binding force.

The second ground of fraud was that Mr. Gaskill had attempted to have passed an act of the Legislature ratifying or confirming his election.

This act is the so-called "VALIDATING ACT", Pamphlet Laws, 1915, page 659.

It will be observed that this act applies not only to the Recorder, but City Treasurer, Collector of Taxes, Constable or Chosen Freeholder, all of which offices are charter offices and all of which had been elected at the November election in 1914. 10

For the purpose of showing Mr. Gaskill's connection with this bill, Mr. Cole produced as witnesses Mr. Bertram E. Whitman and Mr. Carlton Godfrey, assemblymen.

Mr. Whitman testified that Mr. Gaskill, together with the other two officials interested, had handed the bill to him. Page 78, line 13. He further testified that Mr. Schimpf, the City Solicitor, also advocated the passage of the bill. Page 83, line 30. He further testified that Mr. Cole and Mr. Keffer opposed the passage of the bill, but that Mr. Keffer was agreeable to the passage of the bill provided the office of Recorder was eliminated. Page 84, line 30; page 85, line 10. 20

Mr. Carlton Godfrey, who was the Speaker of the House during that year, testified that the only reason suggested for the passage of the bill was to validate the sale of bonds which had been questioned by reason of the doubt as to the validity of the election of the City Treasurer and that the City Solicitor had advocated the passage of the bill. Page 90, line 20. 30

Nowhere does it appear that Mr. Gaskill made any effort to procure the passage of this bill, nor that he was particularly active in procuring its pass-

age. In fact neither Mr. Whitman nor Mr. Godfrey could recall very much as to Mr. Gaskill's actions concerning the bill. The bill was vetoed by the Governor and passed over his veto. It is a little too much to suppose that a measure which was purely personal, if we are to value the reasoning of the trial court, should have been passed at all, much less after the Governor of the State had vetoed it.

10 Our Legislature has passed many validating acts to clear up doubt as to the validity of elections, as to the validity of bonds and other municipal activities.

Surely it cannot be considered an act of fraud to have validated or to attempt to have validated an election to an office even though there may be some doubt as to the validity of that election. Indeed, validating acts are usually passed in order to dispel doubt as to the validity of an election or the validity of an appointment to an office, not for the purpose of affirming or strengthening the incumbent's title thereto, but for the purpose of assuaging any doubt in the public mind as to the right of the officer to act.

20 The "Validating Act" was vetoed by the Governor and passed by the Legislature over his veto, requiring a majority vote, page 84, line 6, and was one of four or five bills passed over the Governor's veto.

We claim that this circumstance negatives any inference of fraud, but even if it does not, surely it was for the jury and not the court to consider this circumstance in determining whether the act was passed for a fraudulent purpose.

30 The testimony in the case showed that Mr. Gaskill did not take as much interest in the passage of this bill as did the other officers interested therein. He does not deny that he was interested in having the bill passed, but his interest was far more consistent with his desire to have any doubt which may have existed as to the validity of his incumbency in the office and the validity of his acts thereunder set at rest as it was to make valid something which he knew was invalid.

Before fraud can be imputed to Mr. Gaskill for any interest which he might have had in the passage of this act or for any fraud which might be imputed to him by reason of his advocating the act, there should at least be evidence from which the jury could infer that he, knowing his election to have been invalid, procured the act to be passed not for the purpose of dispelling doubt but for the purpose of rendering valid that which was invalid.

The fact that the City Solicitor was interested in the passage of the act, that the City Solicitor had rendered an opinion holding that Mr. Gaskill was properly in office and the fact that a number of lawyers of Atlantic City had so considered it by reason of their having been candidates for the office, clearly warranted the jury in inferring that Mr. Gaskill was honest in his belief that his election was valid. 10

We contend that there was no evidence of fraud whatsoever, nor was there any evidence from which the jury could have inferred fraud, and, therefore, the court instead of directing a verdict in favor of the defendant on the ground of fraud, should have directed a verdict in favor of the plaintiff upon the question of fraud. 20

The function of inferring fraud from the admitted facts is properly the province of the jury and not the court. *Cowley vs. Smyth*, 46 N. J. Law 280, 20 Cyc., page 124, pa. 2.

2.

THERE WAS NO EVIDENCE FROM WHICH THE JURY COULD HAVE INFERRED THAT THE PLAINTIFF WAS GUILTY OF FORCE IN OBTAINING HIS OFFICE OR IN RETAINING IT. 30

The testimony shows that Mr. Keffer had removed from his office in the City Hall everything pertaining to the office of Recorder which was necessary for him to use in the conduct of that office. Page 50, lines 10-35 and testimony of Mr. Keffer, page

102, lines 10-20 and line 28.

The testimony of Mr. Woodruff shows that Mr. Keffer was present. Page 61, line 15. Mr. Keffer himself testified that he was there from time to time. Page 102, line 3.

10 There is no evidence in the case nor is it contended that Mr. Keffer was forcibly prevented from performing the duties of his office. While it is true that the locks were changed on the office furniture and the combination was changed on the safe, yet this circumstance did not affect him as he already had all of the paraphernalia of his office.

Mr. Woodruff, the Chief of Police, testified that he brought his complaints before Mr. Gaskill because he had been advised by the City Solicitor that that was the proper thing to do. Page 58, line 30. Page 60, line 31.

20 From the very nature of the case Mr. Gaskill could not possibly have used any force to have prevented Mr. Keffer from exercising the duties of the office. Nothing that Mr. Gaskill did in assuming his office prevented Mr. Keffer from so doing. Mr. Keffer had all the paraphernalia of his office. He had all the necessary books. He had the seals. The changing of the locks and combination did not prevent him from utilizing these books because he already had them, nor was he interfered with in occupying the court-room. In other words, Mr. Gaskill did not use any force whatsoever in either obtaining or retaining the office of Recorder, nor was there any evidence from which the jury could have inferred force, much less from which the court could presume force to have been used. No act of Mr. Gaskill prevented Mr. Keffer from exercising the duties of his office. It was the act of the city through its officials acting under the advice of its solicitor that gave to Mr. Gaskill the character of a de facto officer in bringing cases before him for trial. At any time during the whole period for which the salary is claimed, the city could have re-

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fused to recognize Mr. Gaskill and recognized Mr. Keffer, and had it chosen to have done so, nothing that Mr. Gaskill did could have prevented Mr. Keffer from receiving complaints and from acting on them.

Force could not be inferred merely from the fact that Mr. Gaskill resisted Mr. Keffer's claim of office because in the case of *Stuhr vs. Curran*, 44 N. J. Law 181, within a few days after Mr. Curran had taken office, the plaintiff, Mr. Stuhr, began quo warranto proceedings against him. Nor is the case of *Blore vs. Freeholders*, 64 N. J. Law 264 in point because in that case it was found that the alleged de facto encumbent not only was chargeable with knowledge but actually did know that he was not entitled to the office. Nor is the case of *Meehan vs. Freeholders of Hudson*, 46 N. J. Law 276, in point because in that case it appeared that the alleged de facto encumbent solicited the act of the Board of Chosen Freeholders and knew that it was illegal and furthermore, that he was not invited or permitted to assume the duties of office, but by trespass gained admission to the office. There are no facts from which such unlawful conduct could have been imputed to Mr. Gaskill.

3.

THE COURT ERRED IN FINDING AS A MATTER OF LAW THAT THERE WAS A PAYMENT TO MR. KEFFER.

The evidence in this suit shows that after suit had been brought by the plaintiff and a suit had also been brought by Mr. Keffer and after the plaintiff's suit was at issue, and after a notice had been given for a judgment over the defendant's answer, an attempt was made to pay Mr. Keffer for the period claimed by Mr. Gaskill. This payment was made on January 6, 1916, by virtue of a resolution, Exhibit P16, page 140. While this is plaintiff's exhibit, it was introduced for the purpose of showing the

transaction in connection with the payment of the money. At the same time a bond was also given which is Exhibit P17, page 141. The original warrant is also printed at page 143, Exhibit P18. It will be noticed that Mr. Keffer's claim for salary, which is Exhibit P15, was not sworn to until January 7, 1916, although the resolution requiring its payment was made January 6, 1916. Page 73, line 16 and line 28.

10 The testimony of Miss Townsend, who is the City Comptroller, shows that the payment was made under the resolution and bond referred to in the resolution. Page 72, line 13.

20 The plaintiff contends that this transaction is not a payment. It will be observed that the bond recites the fact that there is a suit pending by the plaintiff and the condition of the bond is that if the plaintiff be successful in the suit, that the money be returned. The bond is signed by Mr. Keffer and Mr. Cole, who was the attorney for Mr. Keffer and who defended this suit for the city. It will be observed further that the money was deposited to the credit of Mr. Cole and there is no testimony that the money has ever been turned over to Mr. Keffer. So far as the testimony shows, the money is still held by Mr. Cole awaiting the final determination of this suit. The money was paid after the plaintiff's suit was brought. We contend, therefore, that this is not a bona fide payment but that it is a mere sham and pretense and that it is conditional. It certainly cannot be urged as a defense upon the theory that the city would be twice mulcted because the bond provides that if Mr. Gaskill is successful, Mr. Keffer will have to return to the City Treasurer the money which he or rather Mr. Cole has received.

30 The plaintiff, of course, contends that no payment to Mr. Keffer could be a defense to this action, but if a payment is to be considered as a defense, it must certainly be a bona fide unconditional payment and the above payment is certainly neither bona fide nor unconditional.

We fail to see how, after the plaintiff has a suit pending to recover moneys which he claims to be due to him and which he would be entitled to receive if the city had not made a payment, that the city could, pending such suit, make a payment and thus deprive the plaintiff of his just rights.

Stuhr vs. Curran, 44 N. J. Law, 181-189.

4.

NO EVIDENCE SHOULD HAVE BEEN RECEIVED SHOWING OR TENDING TO SHOW A PAYMENT TO MR. KEFFER. 10

The case of Stuhr vs. Curran, 44 N. J. Law 181 is authority for the proposition that a de jure officer who does not perform the services attached to the office is not entitled to the compensation therefor.

The opinion was written by Justice Van Syckel and after reviewing the case the Court held, page 188:

“The right to the fees or compensation does not grow out of any contract between the government and the officer, but arises from the rendition of the services.” 20

And again, page 191:

“No countenance should be given to the notion that public offices are created for the benefit of office-holders. In this country, where the cases almost uniformly discard the idea of proprietary interest in such offices, the logical sequence is that the right to emolument must be regarded as having no legal existence except as arising out of the rendition of services for which they are compensatory.” 30

In the case of Browning vs. O'Donnell, 60 N. J. Law 365, an officer who had been wrongfully ousted from his office and prevented from performing

the duties thereof, petitioned for a writ of mandamus for the payment of his salary for the time he was prevented from performing the duties attached to the office. Justice Dixon refused a mandamus to compel such payments and says, page 357:

"It is, at best, doubtful whether the relator is entitled to salary for the time past, during which he has not performed duty." Citing *Stuhr vs. Curran*.

See also *Hoboken vs. Gear*, 27 N. J. L., 265-279

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5.

A DE FACTO OFFICER WHO, WITHOUT FORCE OR FRAUD, ENTERS UPON AN OFFICE AND PERFORMS THE DUTIES THEREOF, IS ENTITLED TO THE COMPENSATION FOR THAT OFFICE.

20 The proof in this case which has been above discussed and referred to, shows that Mr. Gaskill had nothing whatsoever to do with the calling of either the primary or general elections; that he offered himself, along with other lawyers and laymen, as a candidate for the office of Recorder; that the vote was a close vote, Mr. Wootton, an attorney of Atlantic City, receiving 1807 votes, Edmund C. Gaskill, Jr., the plaintiff, 1870 votes, Clarence L. Goldenberg, former prosecutor, 817 votes, Joseph Perskie, a member of the Bar, 633 votes, and John S. Westcott, a member of the Bar having offices with Mr. Keffer, 223 votes. Page 32, line 10, Exhibit P5.

30 Mr. Gaskill was duly nominated upon the Republican ticket for the office of Recorder of Atlantic City and at the general election was elected to that office, receiving over 6000 votes. Exhibit P8, page 38.

On December 31st, the City Commission adopted a resolution recognizing Mr. Gaskill as Recorder of the City of Atlantic City, directing all officials to do business with him and providing that he be paid the salary of that office. Exhibit P6, page 34.

Albert Beyer, William H. Bartlett and Harry Bacharach, Commissioners, were called by the defendant and were asked whether Mr. Gaskill had taken any part in procuring the passage of that resolution and they all testified that he had not.

After the passage of the resolution Mr. Gaskill took his seat and upon Mr. Keffer procuring a writ of certiorari to review the resolution, Mr. Woodruff, the Chief of Police, being in doubt as to whom he should recognize, refused to acknowledge anyone until he had received an opinion from Mr. Schimpf, City Solicitor. Page 58, line 31. Thereafter all complaints from the Police Department were brought before Mr. Gaskill. 10

There can certainly be no doubt under this phase of the case that Mr. Gaskill entered upon the office of Recorder and retained the same without force or fraud, having been duly elected by a large number of the voters of Atlantic City, upon the advice of the City Solicitor and having been received in office by a resolution of the City Commission.

In the case of *Stuhr vs. Curran*, 44 N. J. Law 181, it was held that a de facto officer, who, without force or fraud, performs the duties of the office, is entitled to the emoluments thereof. 20

In the case of *Erwin vs. Jersey City*, 60 N. J. Law 141, it was held:

“One who becomes a public officer de facto, without dishonesty or fraud on his part, and who renders the services required of such public officer, may recover the compensation provided by law for such services during the period of their rendition.” 30

It was declared in this case that Erwin was the de facto officer.

In the case of *Brinkerhoff vs. Jersey City*, 64 N. J. Law 225, it was held in the Court of Errors and

Appeals by Chief Justice Magie that upon the evidence contained in the bills of exception, Brinkerhoff was at least an officer de facto and entitled to the emoluments of that office under the doctrine of *Erwin vs. Jersey City*, 60 N. J. Law 141.

10 In the case of *McDonald vs. Newark*, 58 N. J. Law 12 it was held by the Supreme Court that the ground of decision in the case of *Stuhr vs. Curran* leads necessarily to the denial of any right of such de jure officer to recover from a municipality salary which has been paid to a de facto officer for services rendered in the office.

20 It will be observed in reading the opinion in *Stuhr vs. Curran* that the right of a municipal officer to recover compensation is not based upon whether or not he held legal title to the office, but is clearly based upon the fact as to whether or not he performed the duties. As we have above quoted from that opinion, the right to the emolument of the office depends upon the performance of the services attached thereto and not upon the title to the office.

At the trial the defendant relied upon the case of *Meehan vs. Freeholders of Hudson*, 46 N. J. Law 276. The Court in this case said, page 278:

“The salary attached to the office was not promised to him, nor was it his due. He bargained for the chances of being voluntarily paid by defendant.”

30 It is scarcely necessary to call the attention of the Court to the distinction between this case and the case at hand. In the present case, the Commissioners of Atlantic City, the defendant in this suit, not only through its City Solicitor and City Clerk, had an election called to fill the office, but by its resolution recognized Mr. Gaskill as Recorder and directed that he be paid his salary.

THERE SHOULD HAVE BEEN A VERDICT DIRECTED TO THE PLAINTIFF FOR THE FULL AMOUNT OF THE SALARY.

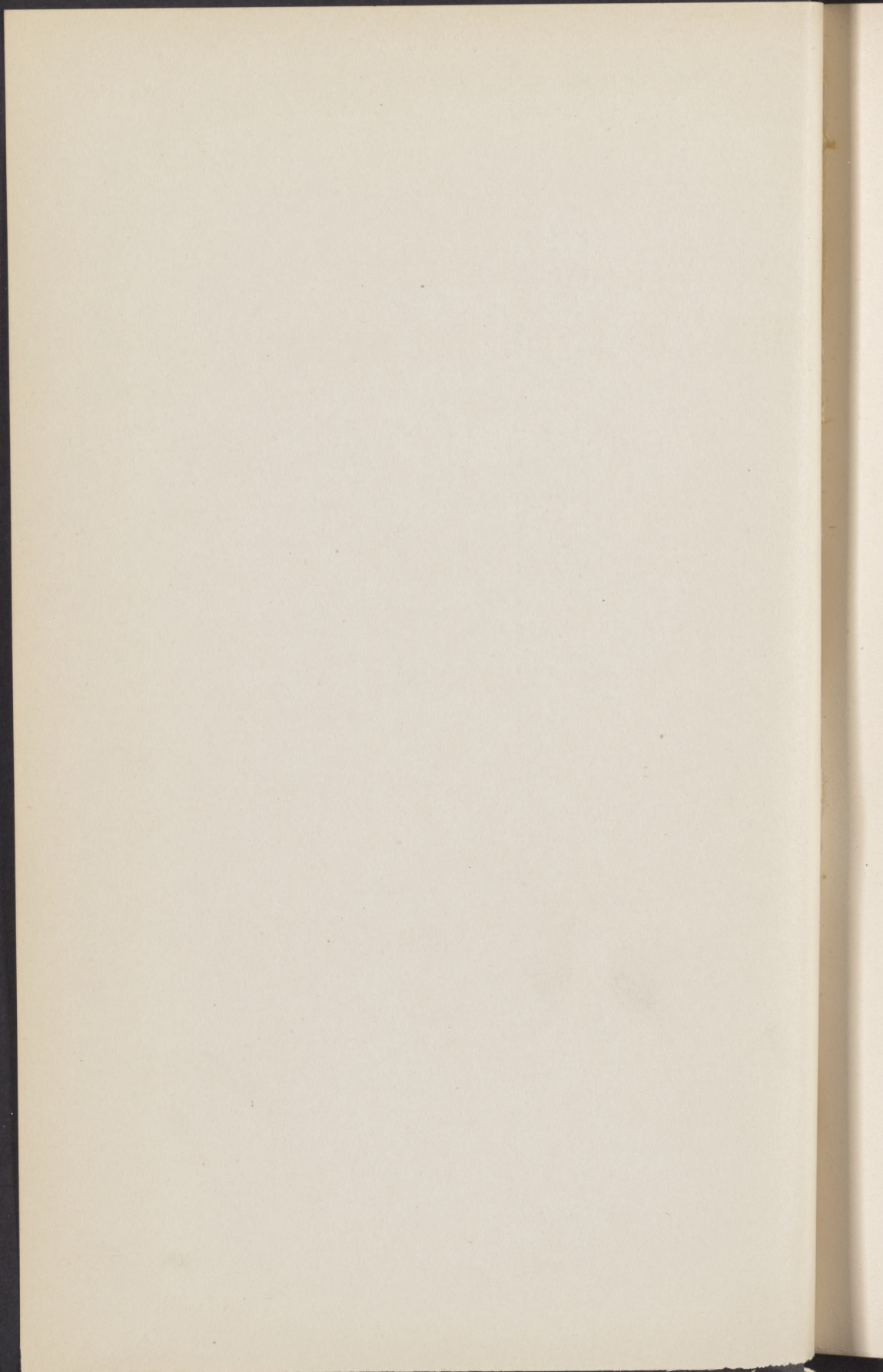
The plaintiff having without force or fraud entered upon the office of Recorder of Atlantic City and having without force or fraud performed the duties of that office for the period for which his salary is claimed, is entitled under the law of this state to receive the compensation therefor. 10

There was no testimony in the case from which either the court or the jury could have inferred either force or fraud on Mr. Gaskill's part, nor was the alleged payment to Mr. Keffer sufficient either in law or in fact to relieve the city from its obligation to Mr. Gaskill.

We respectfully submit that the judgment be set aside and either a new trial awarded or a judgment be entered for the plaintiff for the full amount of his claim.

BOURGEOIS & COULOMB, 20
Attorneys of Plaintiff-Appellant.

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NEW JERSEY
Court of Errors and Appeals

EDMUND C. GASKILL, JR.,
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 vs.
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 Defendant-Respondent.

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Brief for Respondent.

FACTS.

Up to the time of the dictation of this brief we have not been furnished with a copy of the State of the Case or the brief for the appellant, so we are required to anticipate the manner in which the brief will deal with the facts and the law.

The facts are not in any substantial sense in dispute, and they may be briefly summarized as follows:

In 1912 Atlantic City adopted the Walsh Act, elected Commissioners thereunder who organized and elected Martin E. Keffer to the position of Recorder of Atlantic City for the term prescribed by law. This election took place in July of 1912, and Keffer promptly qualified and entered upon the discharge of the duties of the office and continued to act as Recorder and was

filling the position until the morning of January 1st, 1915, when he was ousted by the appellant. From that time and until July 23d, 1915, Keffer reported almost, if not, daily at City Hall and tendered himself to discharge the duties of Recorder, but was prevented by reason of the presence and conduct of the appellant.

By the terms of the charter of Atlantic City (Act of 1902, page 284), the term of office of Recorder is three years. In the fall of 1914 the appellant, with others, submitted himself to the Republican primary election, with the result that the appellant was nominated, and later he received practically all the votes cast at the general election, as he was without substantial opposition. Conceiving himself to be entitled to the office before January 1st, 1915, he sent a communication to Keffer requesting that he, Keffer, surrender the office, to which letter Keffer replied refusing to surrender and stating in substance that he was entitled to hold the office for the full term of three years from the time of his election by the Commissioners. (See *Exhibits D 3 and 4*, pages 148, 149.)

In October of 1915 the Commissioners adopted a resolution recognizing the validity of the election of Keffer for the full term of three years, of which the appellant was cognizant. (*Exhibit*, page 45.) Thus the matter stood until December 31st, 1914, when the Commissioners adopted another resolution recognizing the validity of the election of the appellant with the necessary implication that they considered the term of Keffer as ended. (*Exhibit P 6*, page 34.) On the afternoon of December 31st, 1914, the appellant in the absence of Keffer entered the office of Recorder and gave instructions for the changing of the combination on the safe and the locks on the drawers of the desks so that on the morning of January 1st, 1915, everything was closed to Keffer, but he, Keffer, had, in anticipation of improper conduct on the part of the ap-

pellant, taken possession of the seal of his office and of the current docket.

Within a few days after the passage of the last-named resolution Keffer applied to His Honor, Justice Black, for a writ of certiorari to review the said resolution, which certiorari was granted and the application for and the writ allowed in the presence of appellant and his counsel.

At about the same time Keffer began proceedings in *quo warranto* calling upon the appellant to say by what right he claimed to hold the office of Recorder. Both cases were argued February term of 1915, and shortly thereafter the Legislature passed an act, the purpose of which was to validate the election of Gaskill. (See Chapter 353 of the Laws of 1915.) The appellant was quite instrumental in securing the passage of this act, he having handed the original to a member of the House of Assembly from Atlantic county. Counsel for Keffer brought this act to the attention of the Supreme Court and its constitutionality was argued before a decision was rendered in the *quo warranto* case, with the result that when the opinion of Mr. Justice Parker was filed it dealt not only with the question of the respective standing of Keffer and Gaskill, but with the constitutionality of the said act. The opinion held that the appointment of Keffer was for the term of three years, and that the validating act was unconstitutional. A judgment of ouster was entered and a certified copy of the proceedings offered in evidence at the trial of this cause (*Exhibit D 2*, page 148).

Promptly after the entry of the judgment Keffer instituted suit against Atlantic City to recover his salary from January 1st to July 23d, the date of the expiration of his term, and thereafter Gaskill instituted the suit as herein entitled. An answer was filed by the city to both claims, and thereafter the Commissioners resolved to pay Keffer, which was done,

and this payment among other things was pleaded in defense of appellant's claim. The learned trial court directed a verdict in favor of the respondent for reasons stated, and from the judgment entered thereon this appeal was taken.

It will be seen that the fundamental question is, can one who ousts a *de jure* officer from the office which he is actually filling, and who, from the time of such ouster contests the right of the usurper and who daily tenders himself to discharge the duties of the office and who is paid by the municipality thereafter recover from the municipality?

LAW.

Upon the argument before the trial Court counsel for the appellant contended that the fact that appellant discharged the duties of the office of Recorder was of itself sufficient to entitle him to judgment, and he relied upon *Stuhr v. Curran*, 44 *Law*, page 181. No case has been found by us involving the right of a *de jure* or *de facto* officer to recover from a municipality where the facts are similar to the facts of this case. In the case of *Stuhr v. Curran* there was an office to be filled, and both *Stuhr* and *Curran* submitted themselves to the voters and the Board of Canvassers declared *Curran* elected. In *Erwin* against *Jersey City*, 60 *Law*, page 141, this Court found as a fact that *Weart* who, it was claimed was a *de jure* officer, had abandoned the office, so that there was a vacancy to be filled. To use the language of the Court at page 147—"From these acts it is obvious that *Weart*, if he had any claim to the office of corporation attorney *de jure* by reason of any defect in *Erwin's* title, abandoned to *Erwin* the position *de facto*." No case in this State, or elsewhere, as far as our research has disclosed, has yet decided that a *de facto* officer can recover from the municipality in a case where the office was actually being filled by a *de*

jure officer at the time of the unlawful intrusion and ouster, and where the municipality has paid the salary to the *de jure* officer. Such are the facts of this case. There is no authority which supports the claim made by the appellant, and our insistence is that it would be establishing a bad precedent and creating an indefensible public policy to allow a recovery in this case. The reasoning in the majority opinion in the Stuhr-Curran case has no application here. In that case there was a vacancy to be filled, and the error made in determining which of the two men, who had opposed one another at the polls, was entitled to the office was made by a legally constituted board of canvassers, for whose acts neither candidate was responsible. And, as was pointed out in the opinion, the public was entitled to have the office filled and it was the plain legal duty of Curran to accept the office to which he had been declared elected. Having discharged the duties of the office under legal compulsion, it would have been highly immoral to have required him to reimburse Stuhr.

In *Erwin* against *Jersey City*, Weart surrendered whatever rights he had, did not tender himself to perform any of the duties of the office and made no claim upon the city for compensation. The city accepted the service of Erwin, and there being no other claimant to pay and the city not having paid any other person for such service, was properly denied the right to successfully defend against Erwin's claim. The appellant knew from the beginning that the question of the validity of his election was in doubt and that the office of Recorder was being filled by Keffer. As a counsellor of this court he knew, or should have known, that the very question which he sought to raise, to wit, whether or not the Commissioners of Atlantic City had the power of appointment of all officers, and if so, for what term, had been decided by the Supreme Court in the case of *Salter v. Burk*, 83 *Law*, page 152.

Blow v Freedman 64 L262

It is perhaps too late to criticise *Stuhr v. Curran* or to suggest that other States have ruled adversely. In the comparatively recent case of *Coughlin v. McElroy*, ~~the~~ ^{Supreme Court of Connecticut, Atlantic Reporter, page 397,} an opposite conclusion was reached, and it was held in accordance with the view announced in the minority in *Stuhr v. Curran* that the *de jure* officer was entitled to recover from the *de facto* officer. But, as already urged, we think *Stuhr v. Curran* is without application, and that this Court in that case did not intend to go to the extent of holding that the municipality may not pay the *de jure* officer and successfully defend against the claim of the *de facto* officer, even though no fraud can be charged to such officer. Eliminating for the present the question of the fraud of the appellant, the case is one where he mistook the law and, as we contend, having mistaken it, cannot hope to profit by his mistake at the expense of the *de jure* officer, which will follow if the present judgment is not affirmed—unless this Court will say that under the circumstances of this case both the appellant and Keffer may recover. There are expressions in *Stuhr v. Curran* which point to the view that the case is grounded upon the fact that there was an office to be filled which the law required Curran to fill under penalty if he refused; the theory being that the public was entitled to the services of an officer for the position and there was no other person than he who could legally fill it. In quoting from *Dolan v. Mayor*, 68 N. Y. 274, Mr. Justice Van Syckel said that that case was authority for two propositions—First, that disbursing officers charged with the duty of paying official salaries, have, in the exercise of their duty, a right to rely upon the apparent title of an officer *de facto* and to treat him as an officer *de jure* without inquiring whether another has a better right. Second, that the *de jure* officer, when he recovers possession of the office by *quo warranto* is entitled to receive from such disbursing officer

so much of the salary as at that time has not been paid to the intruder.”

This Court seems to have conceded the force of the two propositions but held them inapplicable to the facts under consideration. The first proposition seems to go to protect the public treasury from paying twice for the same service, and the second proposition to the point of allowing compensation to the *de jure* officer where the salary has not been paid to the intruder. The case *sub judice* is one where the municipality had not paid to the *de facto* officer and had recognized the validity of the claim of the *de jure* officer and paid it. The principle enunciated in *Dolan v. Mayor* would defeat the appellant. Mr. Justice Van Syckel says further, at page 189: “It would, however, be far more just and accordant with legal principles that the public treasury should respond to the plaintiff here, than that the loss should fall upon the defendant, for it was through the mistake of the officers of the law, and not by defendant’s fault, that the plaintiff has been subjected to the deprivation of his office. If fraud was imputable to the defendant the case would present a different aspect, but there is no pretense of bad faith on his part upon which to found a recovery. The unquestioned rule that mistake of the law excuses no one, and that the appropriation of another’s property under the honest belief by the wrongdoer that it is his own, furnishes no defense, has not the slightest application here. The distinction is too obvious to escape even casual observation. In what respect did Curran mistake either law or fact? He took possession of the office upon the assumption that he was declared duly elected by the board legally constituted to decide that question. In this he was not in error, for the fact is conceded to be so. He acted, not upon the fact of his election, but simply upon the fact that he was declared to be elected.”

This language and the reasoning thereof does not assist the appellant. He did make a mistake of law

for which he cannot be excused. The office of Recorder was being filled by Keffer, whose appointment by the Commissioners was a legal appointment for the term of three years. This had been so declared by the Supreme Court in *Salter v. Burk*. He was either ignorant of this case or assumed that it did not so decide, and that Keffer's term would expire on January 1st, 1915, if not sooner. This was an erroneous conclusion. He volunteered himself as a candidate for an office when there was no vacancy. No legally constituted authority said there was a vacancy or that his election was valid. The canvassing board simply declared that he received the highest vote, but that action injected no legal vitality into his unlawful election. Nothing that anybody could do could ground a right in the appellant to an office that was actually filled and the duties of which were being discharged by a *de jure* officer. He made a mistake and at every step of the way proclaimed a right in himself as against the *de jure* officer and defended every action of such officer challenging his, appellant's, right to discharge the duties of the office of Recorder. The further language of Mr. Justice Van Syckel at the bottom of page 189, exhibits the dissimilarity between the Stuhr-Curran case and the case at bar—"As to the law he made no mistake, for it will not be denied that, as matters then stood, it was his imperative duty to accept the fact to be as found by the board and to occupy the place. A refusal on his part at that juncture would have been attended with the risk of an indictment or the enforcement of a penalty against him."

No such calamity could have befallen the appellant. Indeed, the natural, logical and just thing for the appellant to have done, if he honestly believed that his election was valid, was to permit Keffer to fill the office and challenge his right by *quo warranto* rather than to eject Keffer and compel him to challenge the

appellant's right. The concluding language of the opinion in *Stuhr v. Curran* is not without significance: "The imputation cannot be cast upon the law that it is so hard and unconscionable a taskmaster that it exacts the service and withholds the wages, under the facts disclosed in this case, an action will not lie against the *de facto* officer. He yielded obedience to the law when he performed the service, and on principles of natural justice he may retain the reward he has received."

No services were exacted of the appellant, he yielded no obedience to law when he performed the service. On the contrary, he defied the law as declared by the Supreme Court of this State, and insisted upon filling an office, even though *quo warranto* had been begun and the Supreme Court had allowed a writ of certiorari to review the very resolution which he now claims gave colorable right to him.

As already suggested, *Erwin v. Jersey City* decides that Weart had surrendered the office of corporation attorney, and in consequence there was an office to be filled, which was filled by Erwin, which made him a *de facto* officer and entitled to pay. At page 148 this Court said: "From these acts it is obvious that the mayor, being of the opinion that his approval was essential to Erwin's appointment, was desirous that Weart should continue to act as if Erwin's title had not been perfected. He made no pretence of any power to appoint Weart to that office. On the other hand, it is equally obvious that Weart did not recognize any claim to exercise the office as corporation attorney *de jure*. He had, in fact, laid down the work, and he justly characterizes his action when he discloses his reluctance to 'take it up.' Under these circumstances he did not acquire the position of an officer *de facto* by doing some work for the city. He had no new appointment to the office, and his work, which consisted in the approval of a few contracts, must be considered as the work of a mere volunteer.

"As the uncontradicted evidence established the fact that Erwin rendered services to the city as corporation attorney *de facto* for the period named in the declaration, and that no other person was acting in that office, it only remains to determine whether Erwin can recover from the city the compensation attached to the office for that period."

As this Court said, the Mayor made no pretence of any power to appoint Weart and Weart did not claim any right to exercise the office. In the case in hand there can be no pretences that there was any right or power in the people to elect the appellant to the office of Recorder, and it is established that Keffer was constantly and persistently claiming the right to exercise the office. This made the appellant a mere volunteer, and moreover it cannot be said, in the language of *Erwin v. Jersey City*, "And that no other person was acting in that office," for Keffer was acting in a legal sense, in that he reported daily for service, he holding the current docket and seal of office and failed to actually hear complaints and dispose of them because of the physical presence of the appellant, who effectively prevented him, Keffer, from acting.

But aside from the foregoing, the defendant should not be required to pay the appellant, having already paid Keffer. If there be any force or justice in the suggestion that the City should not be required to pay twice, it should have application to this case. The appellant invited the conditions, and it is plain that he was at least doubtful as to the correctness of his position for, among other things, he made no claim upon the City for his salary until after Keffer's term had expired and Keffer had instituted suit against the City to recover the salary. It may be suggested that the payment to Keffer was not such a payment as the law contemplates, because a bond was given indemnifying the City against loss in the event of it being decided that payment must be made to the appellant. We sub-

mit this is untenable. The City should not be required to look to the bond or to institute proceedings thereunder in the event of a refusal on the part of the principal or surety or both to reimburse the amount paid. It was suggested at the argument that the City could not successfully plead the payment because it was made after the suit brought by the appellant. But His Honor, Justice Black, allowed the answer to be filed, setting up the payment as a defense, and no exception was taken to the order of allowance, so that the appellant is in no position to contend against the legality of the order of allowance.

APPELLANT'S FRAUD.

Our insistence is that appellant was guilty of fraud within the meaning of the cases and that this defense was open to the City and was pleaded and proved. In *Stuhr v. Curran* this Court was careful to say, "If fraud was imputable to the defendant, the case would present a different aspect." And in *Erwin v. Jersey City* this Court, in referring to *Stuhr v. Curran*, said: "It was carefully pointed out that, upon grounds of public policy, a limitation to the doctrine stated must be applied, so that one who obtained office dishonestly and fraudulently could not demand the emoluments of the office. The result was that a majority of the Court held that the intruder into office, who had become such under a certificate of election regular on its face and without fraud on his part, could retain the salary he had received while he performed the duties of the office, as against him who had, during the performance of such service, the *de jure* title to the office.

In *Meehan v. Freeholders*, 46 *Law*, page 278, the Supreme Court said: "It is sufficient to say that the case in hand has features essentially different from those characterizing the case of *Stuhr v. Curran*, and such as, under views there clearly recognized, would,

as we think, if present in that case, have met with the application of a different rule. No case was cited in either of the able opinions there delivered, nor any view hinted at which countenanced the right of a fraudulent intruder upon or ouster of another from office which rightfully was in the possession and enjoyment of such other, to demand or retain the pay of the office." And further, at page 279: "In this case the referee finds that the plaintiff, with full knowledge that the office to which he was nominally elected was already filled, and that no vacancy existed at the time of his appointment, and that the incumbent held the office by a term which ran beyond the time when the board of chosen freeholders, as then constituted, had power to choose a successor, that with this knowledge he solicited and procured a resolution for his own appointment to the office already filled, and then gained its possession by forcibly ejecting the lawful incumbent and putting himself in it by a trespass. Under such a state of facts we have no hesitation in declaring that if the official fees, during the time the plaintiff was so in occupancy, are due to any one, the plaintiff is not that person. It was not the design of the judgment in the Court of Errors, nor is it its legitimate effect, to give countenance or encouragement to those who are willing by force or fraud to obtrude in places lawfully assigned to others nor to permit such person to profit by the emoluments belonging thereto. The reasons which protect one who has performed the services belonging to a public office, under an appointment apparently regular and legal, in ignorance of, and without the means of ascertaining defects in his title, and where his refusal to serve would leave a vacancy in office, whether such reasons be weak or strong, have no application to a case like this. In such a case we cannot doubt that in some form the officer *de jure* would be entitled in law to demand and have compensation for the injury done him by such an intruder.

If payment be made to the officer *de facto*, the public will be protected from further claim, as the disbursing officer is not bound to know the title by which an actual incumbent holds, and the rival claims to the fund must be litigated between the individual claimants; *but upon suit brought by the incumbent against the public for pay, his title will be inquired into.*" This case was cited approvingly in *Erwin v. Jersey City*: "In *Hanson v. Jersey City*, 77 *Law*, at page 395, the Supreme Court said: 'It would be a debatable question whether the plaintiff would be entitled to recover anything from the city unless the intruder came into office by fraud or *without color of title.*'" The undisputed facts of this case are as strongly against the appellant as were the facts in *Meehan v. Freeholders*. He had no color of title and his entry was an unlawful intrusion and a fraud.

Summarized, the pertinent facts are, the Supreme Court had decided that the Commissioners were charged with the duty of appointing all city officers for the term prescribed by charter, and that Keffer had been so appointed; that he was actually filling the office and discharging his duties at the time of Gaskill's pretended election and at the time of his intrusion; that the Commissioners had been given an opinion that Keffer's appointment was for a period of three years; that the Commissioners had adopted a resolution sustaining Keffer's tenure; that the day before Gaskill's term began he entered the office of Recorder and changed the locks and combination; that on the morning of January 1st, Keffer appeared, protested against Gaskill's intrusion, and tendered himself to discharge the duties of the office; that Keffer promptly began *quo warranto* and promptly applied for and secured a writ of certiorari to review the resolution of the Commissioners recognizing the validity of Gaskill's election; that Gaskill prepared, or had prepared, an act, the object of which was to validate his election, and personally

handed the same to a member of the House of Assembly from Atlantic county; that he appeared personally and by counsel before the Governor upon the argument of the question of the constitutionality of the validating act; and throughout the whole proceeding was active and aggressive in preventing Keffer from filling the office and securing the salary. He must have known of the contemplated action of the Commissioners in passing the resolution of December 31st, 1914, for he was present at the time and went immediately from the Commissioners' meeting to the office of the Recorder. These are admitted facts, and there are others more or less of pertinence and force. From them we insist that it is a necessary conclusion that he had no color of title, and that his entry into the office and his retention of the same was both a force and a fraud. In no just sense does he bring himself within the case of *Stuhr v. Curran* or *Erwin v. Jersey City*, and he is plainly within *Meehan v. Freeholders*, which precludes recovery by him.

The following language in *Meehan v. Freeholders* (bottom of page 279) has forceful application to the appellant, "and he must establish his right to be paid as between the plaintiff and the public represented by the defendant. The plaintiff should not recover in this action on the ground that the services performed by him, under the circumstances here presented, were purely voluntary. The board of chosen freeholders that went through the form of appointing the plaintiff (the election of the appellant was a mere form) had power, and it was their duty to fill the office of warden of the penitentiary whenever it should fall vacant, but the act of that body in the attempt to put the plaintiff in that position when it was already filled (the office of Recorder was already filled by Keffer), was a mere nullity, which, as the referee finds, he and they well knew, or were chargeable with that knowledge. He solicited their action and knew it was illegal; he was

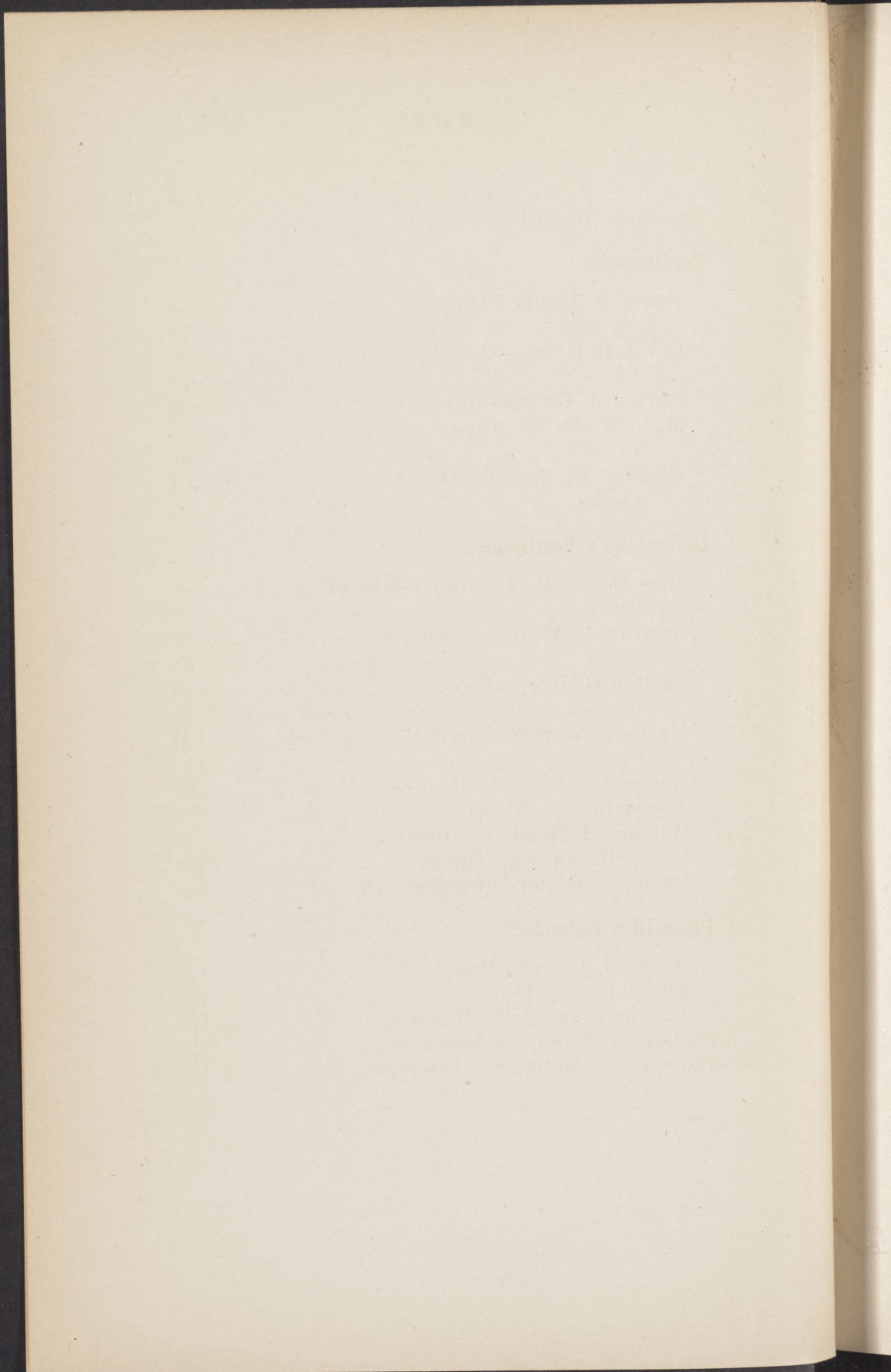
not invited or permitted to assume the duties of that office, but by a trespass gained admission to the place he knew was lawfully filled by another, turned that other out and kept him out until, by legal judgment, he was himself removed. He was there without legal pretext. We are at a loss to see how this can be regarded as an employment, or he considered other than the veriest volunteer in rendering services in the position. For services thus performed there is no legal promise or obligation to pay, either express or implied. The salary attached to the office was not promised to him nor was it his due. He bargained for the chances of being voluntarily paid by defendant."

Upon the question of the obligation of a municipality to pay more than once for a single service see *McVeny v. Mayor*, 80 N. Y. 185; *McDonald v. Newark*, 58 N. J. Law, page 12; *Hensen v. Jersey City*, *supra*, and *Dolan v. Mayor*, *supra*.

The judgment should be affirmed.

Respectfully submitted,

C. L. COLE,
Of Counsel with the Respondent.



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JUDGMENT RECORD.

NEW JERSEY SUPREME COURT,
ATLANTIC COUNTY.

EDMUND C. GASKILL, JR.,	}	JUDGMENT RECORD.	10
vs.		ON POSTEA.	
ATLANTIC CITY.		JUDGMENT FOR DEFENDANT.	
		THEO. W. SCHIMPF, ATTORNEY.	

Atlantic City, the defendant in this cause, was 20
summoned to answer unto Edmund C. Gaskill, Jr.,
the plaintiff therein, in an action at law upon the
following complaint:

(Summons issued November 19, 1915.)

The plaintiff, Edmund C. Gaskill, Jr., of the City
of Atlantic City, County of Atlantic and State of
New Jersey, says that:

30
1. At an election, duly and legally called, the
voters of Atlantic City in 1902 adopted an Act en-
titled, "An Act relating to, regulating and provid-
ing for the government of cities," Pamphlet Laws of
1902, page 284, approved April 3, 1902.

2. That in and by Section 2 of said Act it was provided among other things that,

“At the general election to be held annually on the second Tuesday of November, or on such other date as may be provided by law, there shall be elected in and for such city one Recorder.”

And it was further provided in said Act that the term of office for said Recorder shall be three years.

10 3. That under and by virtue of Section 110 of said Act it was provided that,

“There shall be in every such city a court to be called ‘Recorder’s Court of _____,’ (inserting the name of such city), to be held by the Recorder which shall have power, authority and jurisdiction as follows:”

which section proceeds to prescribe the jurisdiction and authority of said Recorder.

20 4. That at an election, duly and legally called, the voters of Atlantic City in 1912 adopted an Act entitled, “An Act relating to and regulating and providing for the government of cities, towns, boroughs and other municipalities within this State,” approved April 25, 1911, and popularly known as the “Walsh Act.”

30 5. That on the thirtieth day of August, 1914, a call was issued for a primary election to be held on the twenty-second day of September, 1914, which call set forth that there would be chosen at such primary election candidates for the office of Recorder of the City of Atlantic City. That in pursuance of said call, a petition was filed with the Clerk of Atlantic City, requesting that the name of Edmund

C. Gaskill, Jr., the plaintiff herein, be placed upon the primary ballot as one of the candidates for the office of Recorder upon the Republican ticket, to be voted for at the said primary election. That in pursuance of said petition, the name of the plaintiff, Edmund C. Gaskill, Jr., was placed upon said primary ticket to be voted at the said primary election, as a candidate for the office of Recorder of the City of Atlantic City on the Republican ticket. That said primary election was duly held on the twenty-second day of September, A. D. 1914, in pursuance of said call so as aforesaid duly issued by the Clerk of the City of Atlantic City. That there were six other candidates for the office of Recorder of the City of Atlantic City voted for at said primary election. That the said Edmund C. Gaskill, Jr., received a majority of votes cast for the Recorder candidate on the Republican primary ticket at said primary election and was duly declared to be the Republican candidate for the office of Recorder of the City of Atlantic City, to be voted for at the November election, 1914. That at the November election, 1914, held on the third day of November, 1914, duly and legally called, and which call expressly stated that the office of Recorder would be one of the offices chosen at said election, the plaintiff, Edmund C. Gaskill, Jr., received a majority of the votes cast for Recorder of Atlantic City and was duly and legally declared elected to the office of Recorder of the City of Atlantic City. That at said election there was one other candidate for the office of Recorder of the City of Atlantic City. That at said election there were eight thousand forty-four (8044) votes cast, of which six thousand twenty-eight (6028) votes were cast for the plaintiff, Edmund C. Gaskill, Jr. That subsequent to said election, the Board of Canvas-

sers of the County of Atlantic met and canvassed the vote and issued their certificate of election that Edmund C. Gaskill, Jr., had received the majority of the votes cast for Recorder of the City of Atlantic City at the November election, 1914, and duly declared Edmund C. Gaskill, Jr., elected to said office of Recorder of the City of Atlantic City, which said certificate was filed with the Board of Commissioners of Atlantic City. That on the thirty-first day of December, 1914, the Board of Commissioners, 10 by a resolution duly adopted on that day, directed that Martin E. Keffer turn over to Edmund C. Gaskill, Jr., all the books and other indicia in his office, including the seal of the Recorder's Court of Atlantic City, and therein and thereby installed Edmund C. Gaskill, Jr., in the office of Recorder of the City of Atlantic City. That on the first day of January, A. D. 1915, the plaintiff, Edmund C. Gaskill, Jr., in pursuance of said election and resolution, duly entered and assumed the office of Recorder of the 20 City of Atlantic City and proceeded to fulfil the duties of that office and from the first day of January, A. D. 1915, to the twenty-second day of July, A. D. 1915, both inclusive, has performed all the duties and functions of said office of Recorder of the City of Atlantic City. That no other person or persons has performed the duties of said office.

6. That the salary of said office of Recorder of Atlantic City is two thousand five hundred (\$2500.- 30 00) dollars a year, no part of which has been paid by said city to the said plaintiff, or to anyone else for the term from January first, A. D. 1915, to July twenty-second, A. D. 1915, inclusive. Plaintiff demanded of the defendant payment of the sum due for the said period, which payment was refused.

7. Plaintiff filed a claim, duly sworn to, with the Comptroller and Treasurer of the City of Atlantic City for said amount as aforesaid due and owing to him for services as Recorder of the City of Atlantic City for the period beginning January 1, 1915, and extending to July 22, 1915, inclusive, which said sum was and is the sum of one thousand four hundred two dollars and seventy-three cents (\$1402.73).

8. Plaintiff demands one thousand four hundred two dollars and seventy-three cents (\$1402.73) 10 damages.

BOURGEOIS & COULOMB,
Attorneys for Plaintiff.

(Filed Nov. 22, 1915.)

Atlantic City, a municipal corporation of the State of New Jersey, answering the complaint says:

1. It admits the statements in paragraph 1 of the complaint. 20
2. It admits the statements in paragraph 2 of the complaint.
3. It admits the statements in paragraph 3 of the complaint.
4. It admits the statements in paragraph 4 of the complaint. 30
5. It admits the statements in paragraph 5 of the complaint except so much as alleges that the plaintiff was duly and legally declared elected to the of-

10 fice of Recorder; that the Board of Canvassers met and issued their certificate of election; that plaintiff had received a majority of the votes cast for Recorder and duly declared him elected to the office of Recorder; that the Board of Commissioners duly adopted a resolution directing Martin E. Keffer to turn over the books and other indicia of the office of Recorder; that plaintiff was installed in the office of Recorder; that in pursuance of said election and resolution the plaintiff duly entered and assumed
10 the office of Recorder and proceeded to fulfil the duties thereof, and that no other person or persons has performed the duties of said office; all of which allegations are denied.

6. It admits so much of paragraph 6 as alleges that the salary of the Recorder is twenty-five hundred dollars but denies that the salary due from the first day of January, 1915, to the twenty-second day of July, 1915, has not been paid to anyone.

20

Defenses.

1. Before the institution of this action by plaintiff one Martin E. Keffer, the duly and legally appointed Recorder of Atlantic City, who had a legal title to the office covering the period from the first day of January, 1915, to the twenty-second day of July, 1915, the period for which the plaintiff sues,
30 instituted suit in the Supreme Court of New Jersey against defendant to recover the salary of Recorder for said period, and the summons in the case was served on the defendant on the eleventh day of November, 1915, and thereafter the Board of Commissioners of Atlantic City at a meeting duly and legally held on the sixth day of January, 1916, duly and legally adopted a resolution as follows:

“Be it resolved by the Board of Commissioners that the salary due to Martin E. Keffer as City Recorder from Jan. 1, '15, to July 22, '15, inclusive, be paid to him by the City Comptroller upon the filing with the City Clerk of a bond in double the amount signed by Martin E. Keffer and C. L. Cole, to be approved as to form by the City Solicitor.”

and that thereafter such bond as provided in said resolution was given and approved and the Comptroller on the seventh day of January, 1916, paid 10 said salary to said Martin E. Keffer.

2. On the twenty-third day of July, 1912, the Board of Commissioners of Atlantic City, having been duly elected and organized, adopted a resolution appointing Martin E. Keffer as Recorder for a period of three years from the twenty-third day of July, 1912, and that said Keffer qualified and entered upon the discharge of the duties of said office and was in the discharge thereof on the first day of 20 January, 1915, when the plaintiff usurped the office and ejected the said Martin E. Keffer by force.

3. Thereafter in the month of January, 1915, he instituted *quo warranto* proceedings in the Supreme Court of the State of New Jersey against said plaintiff inquiring by what right he held the office of Recorder, and such proceedings were had thereon that the plaintiff pleaded to the information filed by 30 said Keffer, with the result that judgment was entered in the Supreme Court declaring that said plaintiff had usurped the office of Recorder and ousting him therefrom.

4. That the primary election and the general elec-

tion held in 1914 and referred to in the complaint were illegal and invalid insofar as the office of Recorder was concerned because there was no such office to be filled, said Martin E. Keffer being the legal incumbent whose term did not expire until July 23rd, 1915, and because said office was appointive by the Commissioners and not elective by the people.

10 5. That plaintiff knew at the time of the primary election in 1914, at the general election of 1914, at the time he usurped the office on January 1st, 1915, and from that time until July 23rd, 1915, that he was without right to hold the office, and that Martin E. Keffer was the lawful incumbent thereof and that his, plaintiff's, occupancy of the office was without authority in law.

20 6. That plaintiff fraudulently usurped the office of Recorder on the first day of January, nineteen hundred and fifteen, and forcibly ejected the said Martin E. Keffer, who was the lawful incumbent of the office of Recorder and continued to hold the office by force during the whole of the period from January 1st, 1915, to July twenty-third, 1915, when the legal title to said office was in said Keffer, to the full knowledge of the plaintiff.

THEO. W. SCHIMPF,
Atty. for Deft.

30 (Filed Jan. 11, 1916.)

1. The plaintiff joins issue on so much of the answer as denies the allegations in the plaintiff's complaint.

2. Plaintiff answering paragraph 1 of the defen-

ses as set forth in said answer, admits that one Martin E. Keffer instituted a suit prior to the institution of the plaintiff's suit, but has no knowledge or information sufficient to form a belief as to when such suit was instituted or at what time summons was served upon the defendant.

Further answering said paragraph that a resolution was passed as in said paragraph set forth, he denies that said resolution was duly and legally passed and says that the said Martin E. Keffer was not entitled to the salary of Recorder for the period 10 for which he served for the reason that Martin E. Keffer performed none of the duties of the said Recorder for said period; that therefore said City of Atlantic City was without power to pay said salary to the said Martin E. Keffer.

The plaintiff further answering said paragraph, says that said resolution was not passed in good faith and was a fraudulent and corrupt act by reason of the fact that at the time said resolution was passed, there were actions pending in the New Jersey 20 Supreme Court and ready for trial at the January term of said court in the County of Atlantic, in which actions Martin E. Keffer and Edmund C. Gaskill, Jr., were respectively the plaintiffs, and at the time of the passing of said resolution, the City of Atlantic City had been served with a notice by Edmund C. Gaskill, Jr., that he would apply for a rule for judgment and to strike out the answer of the City of Atlantic City upon the grounds that said answer was insufficient, notice of which motion was 30 given on Tuesday, the fourth day of January, 1916, and was well known to the members of the City Commission of said city and to the City Solicitor thereof who was present at the time said City Commission passed said alleged resolution.

Plaintiff will contend at the trial of said issue that the matters and things set forth in paragraph 1 are not sufficient to bar the plaintiff from recovering against the City of Atlantic City for the reason that said resolution was passed after the institution of the plaintiff's suit and also after the institution of the suit by Martin E. Keffer; and for the further reason that Martin E. Keffer is not entitled to any of the salary for the reason that he performed none of the duties of said Recorder; and for the
10 further reason that said payment is not an unconditional payment, but was made upon the condition that Martin E. Keffer enter into a bond with the City of Atlantic City, with a good and sufficient surety, conditioned for the repayment of the money to the City of Atlantic City in the event that the said City of Atlantic City be required to pay said money to the said Edmund C. Gaskill, Jr.

3. Plaintiff answering paragraph 2 of said defenses, admits the matters and things therein contained
20 to be true excepting that part which alleges that plaintiff usurped the office and ejected the said Martin E. Keffer by force.

4. Plaintiff answering paragraph 3 of said defenses, admits the matters and things therein contained excepting that part which alleges that the plaintiff had usurped the office of City Recorder and ousted the said Martin E. Keffer therefrom.

30

5. Plaintiff answering paragraph 4 of said defenses, denies that the primary election and general election held in 1914 and referred to in the complaint, were illegal and invalid in so far as the office of Recorder was concerned, but avers and shows the

truth to be that both of said elections were valid and legal in so far as they conferred upon the plaintiff color of office of City Recorder of the City of Atlantic City.

6. Plaintiff answering paragraph 5 of said defenses, denies each and every of the allegations therein contained.

7. Plaintiff answering paragraph 6 of said defenses, denies each and every of the allegations therein contained. 10

Plaintiff will contend that paragraphs 2, 3, 4, 5, and 6 are insufficient in law and that nothing therein contained should debar the plaintiff from having and maintaining his action against the City of Atlantic City to recover the salary sued for; that paragraph 5 is insufficient because no facts are alleged from which it could be inferred that the plaintiff knew that Martin E. Keffer was a legal incumbent of said office and further because such knowledge would not be sufficient to bar the plaintiff from maintaining his said action; that paragraph 6 is insufficient in law because there are no facts alleged that Edmund C. Gaskill, Jr., either fraudulently or forcibly usurped the office of Recorder or ejected the said Martin E. Keffer therefrom. 20

BOURGEOIS & COULOMB,
Attorneys for Plaintiff.

(Filed Jan. 25, 1916.)

30

This case was tried before Judge Howard Carrow with a jury at the Atlantic Circuit on January twenty-first and twenty-fourth, nineteen hundred and sixteen, and on motion of C. L. Cole, attorney

for the defendant, Judge Carrow directed the jury to find a verdict in favor of the defendant.

Whereupon it is adjudged that the complaint of the plaintiff be dismissed and that the defendant recover of the Costs \$43.08 plaintiff, its costs, which are taxed at forty-three dollars and eight cents.

Judgment entered January 28, 1916.

10

WM. S. GUMMERE,
C. J.

I, WILLIAM C. GEBHARDT, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above-stated cause as the same remains of record in my office.

20

In testimony whereof I have set my hand and the seal of said Court at Trenton, this seventeenth day of February, A. D. nineteen hundred and sixteen.

[SEAL]

WILLIAM C. GEBHARDT,
Clerk.

30

TESTIMONY.

NEW JERSEY SUPREME COURT,
ATLANTIC COUNTY.

EDMUND C. GASKILL, JR.,	}	ACTION AT LAW.	10
<i>Plaintiff,</i>			
vs.			
ATLANTIC CITY,	}		
<i>Defendant.</i>			

—————
Mays Landing, N. J., January 21st, 1916.

—————
TESTIMONY. 20

Before HON. HOWARD CARROW, Judge, and jury.

—————
APPEARANCES:
BOURGEOIS AND COULOMB, ESQS., for plaintiff;
C. L. COLE, ESQ., for defendant.

—————
30

Mr. Coulomb: If your Honor please, we sent for the transcript in this case sometime ago. I don't know whether the reason they didn't send it was be-

cause I hadn't filed my answer, but I have it here, to their amended plea, and I will file it now, but Judge Cole and I agreed you can proceed without the pleadings.

(Mr. Coulomb for the plaintiff and Mr. Cole for the defendant then opened the case to the jury.)

10 DAVID H. PORTER, JR., SWORN.

Direct examination.

By Mr. Coulomb:

Q. Mr. Porter, you are the Assistant City Clerk of the City of Atlantic City?

A. I am, sir.

Q. And Mr. Bell, Daniel Bell is the Clerk, is he
20 not?

A. Yes, sir.

Q. And am I right in understanding Mr. Bell is too ill to appear today?

A. Yes, sir.

Q. Have you in your possession a copy of a letter addressed to the City Solicitor by Mr. Bell asking for an opinion as to the calling of the primary election, letter written sometime in the summer of 1914?

A. I have, sir.

30 Q. Will you let me see that letter?

(Letter produced.)

Q. This letter which you hand me is taken from the records of the City of Atlantic City?

A. Yes, sir.

Mr. Cole: I haven't any objection to the use of the copy, but I object to the introduction of the paper itself as being irrelevant and immaterial.

Mr. Coulomb: If your Honor please, we offer in evidence a letter dated July twenty-seventh, 1914, addressed to the City Solicitor from the City Clerk asking for an opinion.

The Court: All right, touches the question of bona fides and I think it is admissible. The defense 10
in the case is that Judge Gaskill was an intruder.

Mr. Cole: No, I say that may be in the case. Our fundamental defense is that the city has paid Mr. Keffer and that is an absolute bar to Mr. Gaskill.

The Court: That is the first time you have said it, isn't it?

Mr. Cole: No, I said that to the jury. 20

The Court: I am inclined to receive that evidence.

Mr. Cole: In the next place, the gentleman who wrote that letter is not here for my cross-examination and I have a right to know all that there was back of this. The theory is bona fides, which yet is not in the case from the plaintiff's standpoint. Then I have a right to know what inspired that letter and I can't cross-examine this assistant about 30
that letter.

Mr. Coulomb: If that is true, we will have to ask for a continuance of this case because Mr. Bell is ill and it is important that we have before this jury

that Mr. Gaskill was elected bona fide, believing that there was a vacancy, upon not only his volition, but the opinion of the City Solicitor which was invoked by this letter of July twenty-third. Now, I can't see how cross-examination can help or aid the letter in any way.

The Court: Of course he is entitled, he would be entitled ordinarily to inquire into the circumstances how the letter came to be written and all the circumstances. I have told you that, from the view-
10 point of the Court, the letter would be evidential, would be admissible for what it is worth.

Mr. Coulomb: If your Honor please, before I proceed with this letter, so that the effect of it need not be challenged by the fact Mr. Bell is not here, I want to call the attention of the Court and also the jury to the very significant fact that Mr. Schimpf, the City Solicitor, who was properly the defendant
20 of the city in this suit, representing the city, does not appear here. The city makes no defense, apparently, to this action. Now, Mr. Schimpf knows, just as well as Mr. Bell knows, what was back of this letter, whether there was any significance. He is not here. They were seeking to have an election, not only, if your Honor please, for City Recorder, but for other elective offices in the City of Atlantic City, and it seems to me it comes with extremely bad faith under those circumstances, when Mr.
30 Schimpf himself who is the City Solicitor and who appears as attorney of record in this suit, does not appear, but Mr. Keffer stands here really as the defendant in this suit.

The Court: Let me ask you this question, Mr. Coulomb, how ill is the Clerk?

Mr. Coulomb: I don't really know. I was told that he was ill and could not be here and that Mr. Porter, who was the assistant, would produce the records which we had called for under our subpoena duces decum.

Mr. Cole: Before your Honor deals with that, counsel for the plaintiff in this case has made a statement in the presence of the jury the substance of which is that the city does not appear to be defending this suit, and what I ask your Honor is to tell the jury that that is not so. I do not want this jury, from any statement of counsel, to get the impression that the city is not defending this suit, and I think that that is unwarranted and it seems to me that I have a right now to have your Honor tell the jury that that is not so. The city is defending this suit and I represent the city. 10

Mr. Coulomb: If your Honor please, I think the jury have a right to draw an inference from the circumstances which appear here, those circumstances. 20

The Court: That you might argue, but as a matter of law, of course, the city is being defended. The city is contesting this claim. Judge Cole says he is representing the city. The jury I know are made up of intelligent men and it is unnecessary for the Court to make any further comment.

The question now before the Court is whether this cause shall be postponed under the circumstances. 30

Q. Do you know how ill Mr. Bell is, Mr. Porter?

A. Mr. Bell was in bed all day yesterday and I went down to see him last night, still in bed.

Q. Is he under the doctor's care, do you know?

A. Yes, lumbago.

Mr. Coulomb: If your Honor please, so far as we are concerned we think that this correspondence speaks for itself and the rest of the correspondence speaks for itself. If Judge Cole, however, insists on his right to cross-examine this man; if he wants to show what led to that letter, it is not a question of cross-examination, it is a question of his own defense and it is up to him to say whether or not he
10 wants Mr. Bell here. I believe the letter speaks for itself. It is a letter written by one city official to another and if there is anything which impugns the good faith of that letter it is a matter of defense and not the subject of cross-examination.

The Court: What is the motion, Mr. Coulomb?

Mr. Coulomb: My motion is that this letter go in.

20 The Court: I understood your motion was more than that, that you moved to continue the cause?

Mr. Coulomb: If your Honor please, the objection to the introduction of this letter was that the person who wrote it was not here for cross-examination and I have said to your Honor that if it was necessary for this letter to be admitted that he be here, then I would have to ask for a continuance. I say now to your Honor it is not necessary.

30 The Court: Ordinarily under these circumstances the defendant would have the right to inquire into all the circumstances surrounding the writing of that letter, and Mr. Bell, the City Clerk, is ill and unable to attend. The only question now is whether

the trial shall be held up. This is an important trial and the business of the Court is such that it is doubtful whether a day in the future during this term could be given to the trial of this case. Under those circumstances the Court will admit the letter.

(Exception noted for defendant.)

Mr. Coulomb: (Reading) "July twenty-seventh, 1914." Addressed to "Theodore W. Schimpf, Esq., City Solicitor, Atlantic City, New Jersey, Dear Sir: 10 Please give me at your earliest convenience your legal opinion as to whether or not the following offices are to be filled at the coming general election to be held November third, 1914: Recorder, City Treasurer, Overseer of the Poor.

Thanking you in advance, I am,

Yours truly,
City Clerk."

(Letter received in evidence and marked Exhibit 20 P1.)

Q. Mr. Porter, have you in your records an opinion from Mr. Schimpf in response to that letter?

A. I have, sir.

Q. Will you produce that, please?

(Letter produced.)

Mr. Coulomb: I desire to offer an opinion written 30 on the letterhead of Theodore W. Schimpf, Esq., City Solicitor, under date of July thirtieth, 1914, and addressed to Daniel V. Bell, City Clerk.

Mr. Cole: Of course, your Honor understands our

defense. I don't see how it is relevant. Your Honor understands I want to object that it is not relevant and is not material to this issue.

The Court: I haven't read the letter but I take it from what you said that the City Solicitor said the office was elective?

Mr. Coulomb: Precisely, and should be filled at the November election, 1914.

10

The Court: The letter will be admitted.

(Exception noted for defendant.)

Mr. Coulomb: (Reading) "July 30th, 1914. Daniel H. V. Bell, City Clerk, Atlantic City, New Jersey.

"Dear Sir:

"In response to your request under date of July 27th, as to whether or not the offices of

20

RECORDER

CITY TREASURER and
OVERSEER OF THE POOR

are to be filled at the general election to be held November 3d, 1914, I beg to advise:

"First: WITH REGARD TO THE OVERSEER OF THE POOR.

30

"By an act of 1911 entitled 'An Act for the settlement and relief of the poor,' found in P. L. of the Session of 1911, at page 390, section 8—'Overseers of the Poor shall be appointed by the Municipal governing body at the first annual meeting after the passage of this act, and shall hold office for five years,' etc., and by Section 48 of said act, to wit, 'All acts and parts of acts, general, special or local, inconsistent with the provisions of this act be and the same are hereby repealed, etc.'

“The Legislature has in my judgment repealed so much of Section 2 of the Act of 1902, page 284, as relates to the election by the people of Atlantic City of an Overseer of the Poor, which last mentioned act provides, inter alia, for the election of one Overseer of the Poor who shall hold office for the term of three years.

“By virtue of the act of 1911 above quoted, I am of the opinion that the appointment of the Overseer of the Poor is within the jurisdiction of the Board of Commissioners, and that his term should be five years from date of his appointment. I have examined the resolution of the Board of Commissioners of the City of Atlantic City, adopted upon the organization of the Board of Commissioners, which may be properly termed an Omnibus Resolution concerning the retention of their several positions without term of all of the officers and employes of the city, and find among the enumerated offices the office of Overseer of the Poor and the following— ‘Said officers shall hold office for terms now fixed by law or ordinance, etc.’

“I am of the opinion that the terms of the resolution above quoted are sufficient to fix the term of the Overseer of the Poor so definitely that it is within the ruling of the Supreme Court of New Jersey in the case of *Salter vs. Burk*, 83 N. J. Law 152, the direct language of the court in that respect being found upon page 156 of the said report as follows:

“ ‘But the terms of the act (referring to the Commission Government act) disclose that it was not intended in any sense to be a charter or grant of municipal power except in a most general way. The management of municipal affairs is entrusted to a Board of Commissioners, but it largely leaves the mechanism of the city’s government and the pro-

visions of the charter untouched. It does not alter general laws or charter provisions relating to the government of such city, except when inconsistent with its provisions. Its effect is to impose upon the Board of Commissioners the duty to fill existing offices made vacant by the adoption of the act and the organization of the Board UNDER THE LAWS AND ORDINANCES THEN IN EXISTENCE.'

"In discussing the resolution under consideration on page 157 of said report, the court said——

10 " 'Neither of these resolutions was a legal appointment, and each attempts to fix a term less than that provided by law, which was beyond the power of the Board, nor could they fix an indefinite term.'

"An examination of the resolution appointing the Overseer of the Poor will disclose that the appointment is for the term now fixed by law or ordinance, which seems to be in the exact language of the adjudication of the court in *Salter vs. Burk*, supra.

20 "Second: WITH REGARD TO THE OFFICES OF RECORDER AND CITY TREASURER. Permit me to suggest in this connection that Section 2 of an act relating to regulating and providing for the government of cities, P. L. 1902, page 234, C. S. 1125, commonly known as the Charter of Atlantic City, by virtue of which act this city is now governed, provides——

30 " 'That at the general election to be held annually on the 2nd day of November, * * * there shall also be elected in and for said city at said election, one Recorder * * * one City Treasurer and one Collector of Taxes.'

"You will therefore note that the opinion hereafter rendered concerning these offices affects one more office than those inquired of by you in your letter of the 27th inst., to wit, the office of Tax Collector.

“By the terms of the Charter of Atlantic City, it is necessary to elect by the people of the city the incumbents of the offices above enumerated, which officers, shall, by the provisions of the said section, hold office for the term of three years.

“By the terms of Section 5 of said act, which so far as they are pertinent to the inquiry are quoted as follows—

“ ‘In case of a vacancy by death, resignation, disability, disqualification, removal from office, neglect or refusal to act, removal out of the city, or **FROM ANY OTHER CAUSE * * *** in any elective city or ward office, the City Council shall fill the same by appointment * * * .’

“ ‘Such appointments shall be made until the next city election and until the election and qualification of successors, and at the next city election such vacancy shall be filled by election for the remainder of the term.’ etc.

“The exact terms of this statute were construed by our Supreme Court in the case of Kirby vs. Lee, 20 which will be found reported in 77 N. J. Law page 68, wherein the question to be adjudicated by the Court was presented by the following statement of facts—

“ ‘The Constitution of the State of New Jersey provides that County Clerks shall be elected at an annual election for members of the General Assembly and hold office for five years; that when any vacancy occurs, the Governor shall fill it until a successor is elected, and the act of April 4th, 1898, provided that a County Clerk shall be elected at a general election once every five years and that any vacancy in the office shall be supplied at the general election, etc. A vacancy was created by the death of a County Clerk and the Governor had appointed one

to fill the vacancy. Edward S. Lee was appointed by Governor Stokes on December 6th, 1907, to fill the vacancy created by the death of Mr. Scott, and at the next general election Samuel Kirby was elected as the County Clerk, and qualified as such. Mr. Lee refused to surrender the office to Mr. Kirby, and a writ of quo warranto was sued on to inquire by what right Mr. Lee still retained the office, he contending that his appointment was for the unexpired term of Mr. Scott, whose term would have expired in November, 1910, had he lived to that period.'

10 "The Court said—

" 'When, however, an incumbent dies, there is a vacancy, and another elected at any general election thereafter, so far as the language of the constitution controls, is the *de jure* clerk. The exercise by the Governor of his constitutional power to fill this vacancy in no way impairs the right to elect at the ensuing general election, for the constitution itself provides that the appointment shall expire when a successor is elected and qualified.'

20 "It will be seen that the right to appoint to a vacancy may accrue when a vacancy occurs from any legal cause.

"A vacancy did occur in all of the offices mentioned in the second part of this opinion by the adoption by the citizens of Atlantic City of an act relating to regulating and providing for the government of cities, towns, boroughs, and other municipalities within this State, commonly known as the Commission Government Act, and the consequent election and organization of the Board of Commissioners, for in Section 2 of said act, which is found in P. L. 1911, page 462, it is provided—

30 " 'Upon the organizing of the Commissioners in any such city elected under this act, the City Coun-

cil and other governing body or bodies theretofore acting as governing body or bodies in said city, and having any other functions, shall be ipso facto abolished and the terms of all Councilmen and Aldermen and all other offices, whether *elective or appointed*, shall immediately cease and determine.'

"Prior to the adoption by Atlantic City of the terms of the Commission Government Act, the said act was adopted by the inhabitants of the City of Trenton, and by virtue of said adoption the term of Harry B. Salter as City Clerk of the City of Trenton did cease and determine. The Board of Commissioners of the City of Trenton then passed an Omnibus resolution, continuing indefinitely in office the persons who had held the various offices in the City of Trenton prior to the organization of the Board of Commissioners, and did thereafter, by a subsequent resolution, appoint the said Salter as City Clerk of the City of Trenton for the term of one year, which appointment was in violation of the terms of the charter of Trenton, which provided that the City Clerk should hold office for three years. 10 20

"The Court, in *Salter vs. Burk*, supra, decided four general propositions, as follows:

" 'Its provisions very clearly indicate the new form of government in such municipalities as may adopt it to take the place of the then existing form, and as well in the place of the then existing form, and as well in express terms depose those in office at the time of its adoption. The second section says that upon the organizing of the Commissioners, the City Council or other governing body or bodies therefor acting * * * shall be ipso facto abolished, and the terms of all Councilmen and Aldermen and other officers, whether elective or appointed, shall immediately cease and determine.' 30

“The fourth section gives to the Commissioners all administrative, judicial and Legislative powers and duties now and had vested in and exercised by the Mayor, the City Council and all other executive or legislative bodies in said city, and have complete control over the affairs of the city.

10 “Moreover, the 18th section contains a repealer of all inconsistent legislation, and the 8th section vests an adopting city with all powers necessary for its government not in conflict with the laws applicable to all cities of this state, or the provisions of the constitution. More appropriate language to describe a complete obliteration of the former government and a comprehensive constitution of a new government in its stead could not have been chosen.

20 “The right of the Legislature to abolish its agency created by it, in the form of a municipal corporation, whereby it may the more readily administer local affairs, if not conceded, is not contested, and it is admitted that in the present case the term of the prosecutor as city clerk came to an end when the city began its government by commission.’

“By the determination in the above quoted case that the term of the City Clerk came to an end when the City began its government by Commission, it must be reasoned by analogy that the terms of the Recorder, the Tax Collector and the City Treasurer came as well to an end by the organizing of the Commission in the City of Atlantic City.

30 “The governing body of the City of Atlantic City did not see fit to elect a City Treasurer, but imposed the duties of that office upon the Director of Revenue and Finance, and under administration of the present Director of Revenue and Finance it has undoubtedly found the imposition of such duties to be a matter of convenience and economy, but it is my

opinion nevertheless that the language of Section 2 of the Act of 1902, to wit, 'There SHALL be elected * * * in such cities * * * one City Treasurer,' can only be properly construed as a mandate of the Legislature that under that form of charter, there must be elected in such City a City Treasurer, regardless of the will of the Board of Commissioners. It must be remembered in this connection that the law is made by the Legislature and that a municipal government is a mere agency created by the Legislature to put into effect and to administer the laws 10 made by the Legislature, and not to create or abolish, except as it is specifically authorized by Legislature, to make to abolish any offices in said city.

"The paragraph of the opinion of the Supreme Court in *Salter vs. Burk*, supra, the latter part of which paragraph is again quoted—

" 'Its effect is to impose upon the Board of Commissioners the duty to fill existing offices made vacant by the adoption of the act and the organization of the BOARD UNDER THE LAWS AND ORDINANCES THEN IN EXISTENCE,' made it 20 mandatory upon the Board of Commissioners to appoint to the offices of Recorder and Tax Collector and City Treasurer an incumbent to fill each of those offices until the next election and until the successor of those incumbents qualifies.

"The construction of the language of the constitution in the case of *Kirby vs. Lee* above cited, which language is almost identical with the language of the City Charter of the City of Atlantic City, is 30 a sufficient authority to determine the length of time to which the present incumbents could have been appointed by the Board of Commissioners of the City of Atlantic City, and I therefore draw the conclusion that—

“First: The Overseer of the Poor need not be elected.

“Second: That a City Treasurer and Recorder, and a Collector of Taxes should be certified by you to the County Clerk of Atlantic County as City officers to be elected at the next general election.

Respectfully submitted,
Theodore Schimpf,
City Solicitor.”

10 (Letter admitted in evidence and marked Exhibit P2.)

Q. Mr. Porter, in pursuance of that opinion have you any letter which shows any action was taken by the City Clerk in respect to calling a primary election to be held in September of 1914?

A. I have a certificate of publication of the call for the election.

Q. Will you produce that?

20

(Certificate produced.)

A. Published in two newspapers, the Review and the Sunday Gazette, ten times in each paper.

Q. Is that an official record of your office?

A. Yes, sir.

Q. These two papers?

A. Yes, sir.

30 Q. One of these is from one paper and one from the other?

A. One from the Review and the other from the Gazette.

Mr. Coulomb: I offer in evidence the advertisement and proof of advertisement of the notice con-

tained in the Atlantic City Review calling for a primary and general election which says, among other things, "For the purpose of making the nomination of candidates"——

Mr. Cole: I want to object to the offer upon the ground that it is immaterial and irrelevant, and upon the further ground that the Supreme Court of this State has adjudicated that election void.

The Court: What is that?

10

Mr. Cole: He is now offering proof of publication of a notice of the call for the primary election in September, 1914, and I am objecting on the ground that it is immaterial and irrelevant to this issue and that the Supreme Court of this State has declared that election to have been void.

The Court: Yes, the Court well understands that there is no contention about the legality of Mr. Keffer's title during the period of time for which this salary is claimed. This proof is received, not for the purpose of impeaching Mr. Keffer's title and validating Mr. Gaskill's title, but solely for the purpose of throwing light, if possible, upon the bonafides of Mr. Gaskill's conduct. 20

(Exception noted for defendant.)

Mr. Coulomb: I offer in evidence the advertisement, the proof of the advertisement in the Atlantic City Review of notice of registry and election for primary and general election, primary election to be held on Tuesday, September 22nd, 1914, and general election, stating the number of officers to be chosen 30

at each of those elections, and including among others for City of Atlantic City, "one City Treasurer, one City Recorder and one Tax Collector."

(Paper admitted in evidence and marked Exhibit P3.)

Mr. Coulomb: Also an advertisement from the Sunday Gazette of a public notice of registry and election of the primary election held on Tuesday
 10 September 22nd, and the general election on November third, the officers to be chosen as set forth in the advertisement being, for the City of Atlantic City, among others, "one City Treasurer, one Recorder, and one Tax Collector."

(Paper admitted in evidence and marked Exhibit P4.)

20 Q. Do you know whether or not in pursuance of that notice a primary election was held on September twenty-second?

A. There was.

Q. Have you any letters showing who was chosen and who were the candidates in that election?

A. I have a copy of the returns made to the County Clerk.

Q. Will you produce that copy?

(Copy produced.)

30

Q. Is this copy on file in your office?

A. Yes, it is registered to the County Clerk, and the receipt.

Q. And this copy which you produce is a copy of the paper which you sent to the County Clerk?

A. Yes, sir.

Q. And shows what?

A. The officers nominated for the various offices.

Q. Was this sent by the City Clerk to the County Clerk?

A. Yes, sir.

Q. And can you tell me the date it was sent?

A. September twenty-ninth, 1914.

Mr. Coulomb: I offer this in evidence.

Mr. Cole: May it please your Honor, may I have a general objection to all this proof so I won't have to be repeating it? 10

The Court: What is that?

Mr. Cole: Simply following up the election.

Mr. Coulomb: The return.

Mr. Cole: In other words he is perfecting the fact of the election and I do not want to be objecting to each bit of proof, and I would like a general objection now. 20

The Court: It is admitted upon the same ground as the other testimony was admitted.

Mr. Cole: The point I want to make is I want to be relieved of making an objection at the time, simply a general objection to all this character of proof for the reasons stated. 30

The Court: You mean all this proof incident to his taking office?

Mr. Cole: Exactly.

The Court: Well, is there any doubt about these things that he is trying to prove?

Mr. Cole: No, I don't think so.

(Exception noted for defendant.)

Mr. Coulomb: I offer in evidence a report made
10 by the City Clerk to the County Clerk showing the
result of the primary election held in the City of
Atlantic City September twenty-second, 1914, which
contains, among other things, the following state-
ment: "For candidates for the Republican Party
for Recorder, City of Atlantic City, one to be
elected: Joseph F. Donnelly received 223 votes, Ed-
mund C. Gaskill, Jr., received 1870 votes; Clarence
L. Goldenberg received 817 votes; Joseph B. Perskie
received 633 votes; John S. Westcott received 223
20 votes; Henry Williams received 64 votes;
Harry Wootton received 1807 votes, with a star,
which indicates nominated, and the star is placed
opposite the name of Edmund C. Gaskill, Jr."

(Paper received in evidence and marked Exhibit
P5.)

Q. Mr. Porter, do you know whether, in further
pursuance of the advertisement there was a general
30 election held in November of 1914?

A. There was.

Q. Did you furnish to the County Clerk a record
showing who was elected to the office, nominated for
the office of Recorder in the City of Atlantic City, or
is that done in some other way?

A. That is shown on the returns made to the County Clerk's office, from the election officers.

Q. And you have nothing at all to do with that?

A. No.

Q. Have you in your possession as part of the records of Atlantic City a resolution of the Board of Commissioners of the City of Atlantic City passed on the thirty-first day of December, 1914?

A. I have two resolutions. Which one does it pertain to?

Q. The one pertaining to recognizing Edmund C. Gaskill, Jr., and other officers as having been elected at the November election? 10

A. I have, sir.

Mr. Coulomb: I offer in evidence a resolution passed by the City Commissioners on the thirty-first day of December, 1914.

Mr. Cole: I object to that on the ground that it is immaterial, irrelevant and on the further ground that that resolution was certioraried in the Supreme Court and is now there undetermined. 20

The Court: What is the resolution?

Mr. Coulomb: The resolution is a resolution recognizing, under the opinion of the City Solicitor, Louis L. Mathis, Edmund C. Gaskill and Alfred M. Heston as having been duly chosen for the offices respectively, of Tax Collector, Recorder and City Treasurer. 30

The Court: What is the date of the resolution?

Mr. Coulomb: December thirty-first, 1914.

The Court: Before he took office?

Mr. Coulomb: Before he took office. I desire to read it.

Mr. Cole: There is not any direct proof of the fact that the resolution was certiorated and is in the Supreme Court undetermined except the opening of counsel for the plaintiff, and if there is any question about the fact of a writ of certiorari, then
10 I would like the opportunity of proving that, if your Honor feels that that fact makes a difference in your ruling.

The Court: Well, I think it can be assumed, from what counsel has said, that the resolution which is now offered in evidence is before the Supreme Court upon a writ of certiorari, which court will determine its legality. The Court is assuming, for the purposes of this offer, that the resolution was illegal, but even
20 so it might be of some value upon the question of bona fides on the part of the plaintiff. Therefore it is admitted.

(Exception noted for defendant.)

Mr. Coulomb: (Reading)

“WHEREAS, at the General Election held in this city on the third day of November, 1914, Louis L. Mathis was duly elected as Tax Collector, Edmund
30 C. Gaskill, Jr., was duly elected as Recorder and Alfred M. Heston was duly elected as City Treasurer, and,

“WHEREAS, the City Solicitor has stated as his opinion that the offices of Tax Collector, Recorder and City Treasurer are elective offices under the

charter of the City of Atlantic City and have been duly filled by such election, and,

“WHEREAS, Louis L. Mathis has duly qualified as Tax Collector, Edmund C. Gaskill, Jr., has duly qualified as Recorder and Alfred M. Heston has duly qualified as City Treasurer, and,

“WHEREAS, the City Solicitor has further stated as his opinion that the terms of office of each one of the officers hereinabove enumerated properly began upon the date of his qualification for such office,

“NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners of the City of Atlantic City does hereby recognize the officers selected at the general election last held as the duly qualified persons to fill these respective offices in the City of Atlantic City for the terms now fixed by law, to wit, Louis L. Mathis, Tax Collector, term three years; Edmund C. Gaskill, Jr., Recorder, term three years; and Alfred M. Heston, City Treasurer, term three years, and until their successors are duly elected and qualify.

“AND BE IT FURTHER RESOLVED, that the public notice be given of such recognition by the Board of Commissioners of the incumbents of these offices, and that the public be and is hereby advised that all business concerning the City of Atlantic City, which is properly within the jurisdiction of the offices so mentioned, be and the same shall be transacted with the above named gentlemen in the above named offices as the duly accredited representatives of the City of Atlantic City.

“AND BE IT FURTHER RESOLVED, that the Clerk of the Recorder's Court be and he is hereby authorized and directed to place himself at the disposal of Edmund C. Gaskill, Jr., Recorder; to issue

all subpoenas, warrants, summonses and other matters coming under his control, in the name of Edmund C. Gaskill, Jr., Recorder, and to turn over to Edmund C. Gaskill, Jr., Recorder, all books, papers, records and the seal of the Recorder's Court of Atlantic City, forthwith. And Martin E. Keffer is hereby authorized and directed to turn over to Edmund C. Gaskill, Jr., Recorder, the seal and all books, papers or records in any wise appertaining to the Recorder's Court of Atlantic City, which may now be
10 in his possession, forthwith.

"AND BE IT FURTHER RESOLVED, that Albert Beyer, Director of Revenue and Finance, be and he is hereby authorized and directed to turn over to Alfred M. Heston, City Treasurer, all books and papers now in his possession belonging to and in any wise appertaining to the office of City Treasurer, on the first day of January, 1915.

"AND BE IT FURTHER RESOLVED, that the
20 Comptroller be and she is hereby authorized and directed to pay to the officers so enumerated, to wit, Edmund C. Gaskill, Jr., Recorder, Louis L. Mathis, Tax Collector and Alfred M. Heston, City Treasurer, the salaries now provided by law or ordinance attaching to the respective offices to the gentlemen hereinabove enumerated, from and after the date of this resolution.

"Approved 12-31-14.

"Daniel H. V. Bell,
City Clerk."

30

(Resolution admitted in evidence and marked Exhibit P6.)

Q. Mr. Porter, have you any other opinion, between the opinion which you have just produced and the passing of this resolution from Mr. Schimpf?

A. No other opinion, no, sir.

Q. Do you know whether or not copies of that resolution were furnished to the various officers affected by it?

A. Yes, sir.

Q. Was a copy furnished to Mr. Gaskill, do you know?

A. Yes, sir.

Q. Have you a letter addressed to Mr. Gaskill concerning it?

A. I haven't the copy with me. I know there was 10 one because I—I don't know whether I wrote it or not, but I was there the night it was written.

Q. I show you a letter addressed—dated December thirty-first, addressed to Honorable Edmund C. Gaskill, Jr., Atlantic City, N. J., and ask you whether that is the letter enclosing to Mr. Gaskill the copy of the resolution which has just been offered in evidence and Marked Exhibit P6?

A. Yes, sir, that is the letter.

20

Mr. Coulomb: I offer this in evidence.

(Letter admitted in evidence and marked Exhibit P7.)

Q. Mr. Porter, have you a certificate from the Board of Canvassers of election showing the result of the general election?

A. County Board of Canvassers?

Q. Yes.

A. Yes, sir.

30

Q. Will you produce it, please?

(Certificate produced.)

A. This statement inside shows the return.

Q. Inside shows the return?

A. Yes.

Q. And this on the inside of the folder shows the statement?

A. That is the statement.

Q. The paper which you produce, Mr. Porter, is what?

A. It is a report from the County Board of Canvassers of the election returns from the general election, 1914.

10 Q. And is on file in your office and is part of the records of your office?

A. Part of the records of the office.

Mr. Cole: Objected to for the reasons already assigned.

Mr. Coulomb: I just want to read part of this for the benefit of the jury. It is on the inside folder——

20 The Court: The Court overrules the objection, not that the evidence concerns or in any wise affects the legal title to the office, but it may throw some light on the question of bona fides.

(Exception noted for defendant.)

30 Mr. Coulomb: The part which I desire to read is the statement on the inside: "A statement of the determination of the Board of County Canvassers, relative to an election held in the City of Atlantic City, on the third day of November in the year of our Lord one thousand nine hundred and fourteen, for the election of Recorder," and other officers. "The said board do determine that, at the said election, Edmund C. Gaskill, Jr., was elected for Recorder,"

and a statement of other officers. "I do hereby certify that the foregoing is a true, full and correct statement of the determination of the Board of Canvassers therein mentioned. In Witness Whereof, I have hereunto set my hand this ninth day of November, in the year of our Lord one thousand nine hundred and fourteen. Louis J. Langham, Chairman of the Board of County Canvassers. Attest. Edwin A. Parker, Clerk."

(Statement admitted in evidence and marked Exhibit P8.) 10

Cross-examination.

By Mr. Cole:

Q. At the primary election held in Atlantic City in 1914, did any other political party submit itself, so far as the office of Recorder was concerned, other than the Republican party? 20

Mr. Coulomb: Objected to as being immaterial and irrelevant.

The Court: I am inclined to receive it.

(Exception noted for plaintiff.)

A. There was various candidates that ran. Now as to their party, I am not sure of. I can't say. I know there was a number of Republicans, Socialists. 30

Q. Haven't you there something to show what political parties submitted themselves to that primary?

A. For which office, City Treasurer or Recorder?

Q. Recorder.

A. John Flett, Clarence Pettit, George Gries, Louis Repetto. They received votes.

Q. Now, Mr. Porter, what I want to learn from you is this, was any petition filed with the City Clerk by any person other than those who named themselves as Republicans for election at the primary election in 1914?

A. As I said, various petitions. I haven't got the petitions with me, but I don't recollect—

10 Q. Don't you know it to be true that the only primary ballot that went out of the Clerk's office in 1914, so far as the office of Recorder was concerned, was a Republican primary ballot?

Mr. Coulomb: Objected to as being immaterial and irrelevant.

Q. You say you don't know that?

20 A. There was two. There was a Democratic ballot and Republican ballot, but for the office of Recorder I couldn't tell you whether there was—

Q. Haven't you a copy of the primary ballot for 1914 in your files?

A. No, sir. In the ballot box, I believe.

Q. Now, I notice that on this data that you furnished—just what do you call that, please?

A. That is—I would call that a copy of the return of those nominated at the primary election on September twenty-second, 1914.

30 Q. Now, I notice that on these papers there are some instances where they are printed and some instances where they are typewritten. Now, do you know why the difference?

A. Yes, sir.

Mr. Coulomb: Objected to as being immaterial and irrelevant.

(Objection overruled.)

(Exception noted for plaintiff.)

Q. Now, tell us the difference.

A. The idea of that was to help the election officers and to quicken their work instead of having them write the names in the Clerk had, them 10 printed.

Q. Now, Mr. Porter, isn't it a fact that in these cases where the names are printed on this paper that they are the cases where they were formally nominated on the ticket by petition filed?

A. Yes, sir.

Q. What?

A. Yes, sir.

Mr. Coulomb: Objected to, if your Honor please, 20 it is not only immaterial but improper to prove it that way. If the petitions are on file they should have been brought here, or the ones that are should have been brought here.

(Objection overruled.)

(Exception noted for plaintiff.)

Q. Did you answer that yes? 30

A. As far as I know the ones that are printed on there are the petitions that are filed.

Q. You certainly know, do you not? Take the case, for example, of Isaac Bacharach, Emerson.

Richards, Blanchard H. White, in typewriting, candidates for the Democratic party for members of the House of Representatives. You know they did not run on the Democratic ticket, don't you?

A. Their names were placed on.

Q. By voters, you mean?

A. By voters.

Q. But not printed on the primary ballot that went out to the voters?

A. No.

10 Q. And that is equally true, is it not, for the office of Recorder on the Democratic party?

A. Those are the same.

Q. They are all typewritten, aren't they?

A. Yes, sir.

Q. And that indicates that there were no names printed on the Democratic primary ballot for the office of Recorder, doesn't it?

A. Yes, sir.

Q. We could have got that a great deal faster.

20

Mr. Coulomb: I object to that.

Mr. Cole: Strike it out.

Mr. Coulomb: I don't want it struck out, but I would like to have Mr. Cole instructed by the Court not to make those remarks.

30 Mr. Cole: I am entirely willing to be instructed and I hope it will be mutual.

Q. Have you in your file an opinion given to the Commissioners whether these offices were elective or appointive than the opinion given by the City Solicitor?

A. There is an opinion on file in the office but I didn't bring it with me.

Q. There was such an opinion given?

A. Yes.

Q. Do you remember about the date of it? Will your minutes show?

A. It was previous to, I believe it was sometime in October.

Q. Of 1914?

A. Fourteen.

Q. And that opinion was received and filed, was 10 it not?

A. That opinion was received and filed.

The Court: You say that was an opinion from some lawyer?

A. From Judge Cole.

Mr. Cole: Now will you admit that opinion says the office is appointive?

20

Mr. Coulomb: Certainly.

Mr. Cole: It is admitted the opinion to which he last speaks held the office was appointive.

Q. Now, Mr. Porter, have you a resolution of the City Commissioners of October fourteenth, 1914?

A. What does it pertain to, Judge?

Q. The one recognizing Mr. Keffer.

30

The Court: Let's understand, was it your opinion that Keffer had title to the office?

Mr. Cole: Yes.

The Court: For three years?

Mr. Cole: Yes.

The Court: And his term would not expire until July twenty-second, 1915?

Mr. Cole: That was given in October before the general election and before this resolution of December thirty-first.

10

Q. Now, have you a certified copy of the resolution of October fourteenth there, or the minutes showing it?

Mr. Coulomb: If your Honor please, I don't want to prolong this trial unduly, but it does seem to me the production of such a resolution is part of their affirmative defense and not part of the cross-examination. He has to make this witness his own witness
20 if he wants to establish that, it seems to me.

The Court: I don't know, Mr. Coulomb. The Court has permitted the plaintiff to offer in evidence things touching the bona fides. Now, don't you think it is proper cross-examination, while this witness is here, to develop any information that he has touching that matter?

Mr. Coulomb: If your Honor please, I have no
30 doubt that it is proper to show it, but I say it is a matter of defense. I don't know that it hurts us a bit to have it out on cross-examination either from a legal point of view, or any other point of view, but I simply want to be sure it don't, and for that reason I object to it as part of the cross-examination,

to do anything further than cross-examine on these instruments which we have produced.

The Court: Well, is it at all material to you, Judge Cole, whether he is your witness or what? He will tell the truth.

Mr. Cole: No, I submit, of course, to put this testimony in, and I quite agree with counsel that this would not have been admissible at this time, but your Honor, having allowed this testimony to go in upon the theory of bona fides, you see, we may not put in any defense, and we, therefore, have a right to off-set that resolution by another which was passed precedently. 10

The Court: You may show what steps you made?

Mr. Cole: Exactly.

A. Judge, I thought I had that resolution, but I have got the wording of it in another resolution. 20

Q. Let's see it.

A. This one rescinding it.

Mr. Cole: Copy of the resolution to which I refer had been presented and counsel for the plaintiff says he does not object to the proof by a copy, simply objects to the relevancy of it at all, and the resolution is dated, was passed October twenty-ninth, 1914, and reads: 30

1. "RESOLVED, that the Commissioners of Atlantic City, recognize the present Recorder and Tax Collector as duly and legally appointed officers, and the acts of the Director of Revenue and Finance, as due and legal, and that said Comptroller pay said

Recorder and Tax Collector the salary provided by law and ordinance, until such time as the proper judicial tribunal of the State declare otherwise.

2. This resolution shall take effect immediately.”

By Mr. Coulomb:

Q. Mr. Porter, subsequently to the passage of the resolution of October twenty-ninth, 1914, a further resolution was passed, was it not, on December
10 thirty-first, 1914?

A. There was, sir.

Q. Is that a copy of it?

A. That is the original resolution.

Q. That is the original resolution?

A. Yes.

Mr. Coulomb: I offer in evidence this original resolution which reads as follows:

20 “BE IT RESOLVED, that the resolution heretofore adopted by the Board of Commissioners, at a meeting of the Board of Commissioners held on October, 29, 1914, to wit:” and then follows the resolution which Mr. Cole has just read to you—“be and the same is hereby rescinded.”

(Resolution admitted in evidence and marked Exhibit P9.)

Q. The date of the passage of that last resolution
30 was December thirty-first, 1914?

A. 1914.

PHILIP B. GROVE, SWORN.

Direct examination.

By Mr. Coulomb:

Q. Mr. Grove, during the year 1914, were you the Clerk of the Recorder's Court of the City of Atlantic City? 10

A. Yes, sir.

Q. And were you such a Clerk on December thirty-first, 1914?

A. Yes, sir.

Q. How long did you continue to be Clerk of the Recorder's Court after the thirty-first of December, 1914?

A. June fifteenth, 1915.

Q. June fifteenth, 1915? 20

A. Yes, sir.

Q. Do you recall the passage of the resolution of December thirty-first, 1914?

A. Yes, sir.

Q. Did you see the copy—I show you resolution marked Exhibit P6, and ask you to look at it and see whether you are familiar with that resolution.

The Court: Is that the first resolution predicated upon Mr. Schimpf's opinion? 30

Mr. Coulomb: That is predicated upon Mr. Schimpf's opinion, and states it is predicated on the Solicitor's opinion, but the resolution of December thirty-first after the election was held.

A. Yes, if that is the one, I remember it.

Q. From whom did you receive, did you get a copy of that resolution from anyone?

A. Yes, sir.

Q. From whom?

A. Mr. Porter.

Q. Do you remember the date that you got it?

A. December thirty-first.

Q. Where did you get it, if you recall?

A. Recorder's Court.

10 Q. Was Mr. Gaskill present at that time, do you remember?

A. I think he was.

Q. Had you been in the Commission chamber at the time of the passage of it also?

A. Yes, sir.

Q. And you knew that such a resolution had been passed?

A. I had.

20 Q. Did you know of the passage of the resolution before you actually received a copy of it from the City Clerk?

A. Well, I heard it read in the Commission meeting.

Q. Did you, in pursuance to that resolution, hand over to Mr. Gaskill any of the papers and books of the office of Recorder?

A. I handed him over the keys to the desk and what was in the office. Yes, sir, I handed him everything that was there.

30

Cross-examination.

By Mr. Cole:

Q. That was on December thirty-first?

A. Yes, sir.

Q. Mr. Porter handed you a copy of this resolution as I understand in the Recorder's office?

A. Yes, sir.

Q. And Mr. Gaskill was there?

A. I believe he was, yes, sir.

Q. And at that time you handed Mr. Gaskill the keys?

A. Yes, sir.

Q. How came you to do that?

A. Why, the resolution read over in the Commission meeting, and knowing the resolution would be served on me.

Q. Did Mr. Gaskill ask you for the keys?

A. Yes, sir, I think he did.

Q. Were the locks changed that day?

A. Yes, sir.

Q. And the combination on the safe?

A. Yes, sir.

Q. By whose direction, if you know?

A. By Mr. Gaskill's.

20

Q. That was December thirty-first?

A. Yes, sir.

Q. And when you were in the Commissioners' meeting was Mr. Gaskill there?

A. I couldn't say.

Q. Don't remember that?

A. No, sir.

Q. But when you came downstairs from the Commissioners' meeting and you found Mr. Gaskill there in the office of the Recorder?

30

A. No, I am wrong there. I think Mr. Gaskill was there, because Dr. Guion handed him a complaint.

Q. You mean he was where?

A. In the Commission meeting.

Q. At the Commissioners' meeting?

A. Yes.

Q. Who changed the combination on the safe, that is who actually did it?

A. Mr. Leigh.

Q. And who sent word to Mr. Leigh to make that change?

A. I think I did.

Q. By whose direction?

A. By Mr. Gaskill's.

10 Q. Did he tell you why he wanted the combination on the safe changed and the locks changed?

A. No, sir.

Q. Now, you said you turned over some papers to Mr. Gaskill. Did you turn over to Mr. Gaskill all of the paraphernalia, books and everything in that office?

A. I turned, the office was there, and I did turn everything to him.

20 Q. Well, what about the seal of office that Mr. Keffer had been using? Didn't Mr. Keffer take that away with him?

A. Yes, sir.

Q. And didn't Mr. Keffer also take away with him one of the books that he had been using as Recorder?

A. Yes, sir.

Q. Two of them as a matter of fact, didn't he?

A. Yes, sir, two.

Q. Those that he had been actually using from time to time?

A. Current books.

30 Q. Yes, current books, and the seal of the office?

A. Yes, sir.

Q. Was Mr. Keffer in the office of Recorder at the time these locks were being changed?

A. No, sir.

Q. He found that condition when he got around the next morning?

A. Yes, sir.

Q. Were you there the next morning when Mr. Keffer came?

A. Yes, sir.

Q. Mr. Gaskill was there?

A. Yes, sir.

Q. You had heard, had you not, of the likelihood of a resolution being passed putting Mr. Gaskill in office and putting Mr. Keffer out?

Mr. Coulomb: Objected to as not being cross-ex- 10
amination.

Mr. Cole: I think that is right.

By Mr. Coulomb:

Q. Mr. Grove, there were no books in the office upon which the lock was changed, were there?

A. No, no books.

Q. So that even changing all the locks on the safe Mr. Keffer was not deprived of anything which might have permitted him to operate as Recorder of Atlantic City?

A. No.

Q. He had the seal and the current dockets, as I understand?

A. Yes, sir.

By Mr. Cole:

Q. Except that the combination had been changed and except Mr. Keffer would have to know the combination to get in, wouldn't he?

A. Yes, sir.

20

30

By Mr. Coulomb:

Q. Nothing in there after he got in; he had the books?

A. Not a thing.

By Mr. Cole:

Q. Did you tell Mr. Keffer what the new combination was?

10 A. No.

By Mr. Coulomb:

Q. Did Mr. Keffer ask you for the combination of the safe?

A. No, sir.

20 BURTON A. GASKILL, SWORN.

Direct examination.

By Mr. Coulomb:

Q. Mr. Gaskill, you are the Deputy County Clerk?

A. Yes, sir.

Q. Of the County of Atlantic?

A. Yes, sir.

30 Q. And your office has custody of certain election records, has it not?

A. It has.

Q. Have you in your possession a certain certificate from Daniel H. V. Bell, the City Clerk in Atlantic City, directing who shall be placed upon the primary ballot?

A. I have.

Q. Will you produce that, please?

(Certificate produced.)

Q. Is that the result of the vote cast?

A. Yes, sir, result of the vote cast.

Q. Have you a certificate from Mr. Bell, showing who shall be placed on the primary ticket?

A. No, the City Clerk makes up the primary ticket. 10

Q. The City Clerk makes up the primary ticket?

A. Yes.

Q. The instrument which I show you is a record or report of the total votes cast at the primary election?

A. Primary election, yes.

Q. And this was mailed to you by the City Clerk?

A. Yes, sir.

Mr. Coulomb: The instrument referred to by the County Clerk is a copy of the one already admitted in evidence and marked Exhibit P5. 20

Q. What is the next record you have in the general course?

A. The first record we have is a certificate from the City Clerk of Atlantic City, which is sent to our office I think forty-five days before the general election, showing the offices in his municipality to be filled.

Q. Have you that certificate with you? 30

A. I have.

Q. Will you produce it, please?

(Certificate produced.)

Q. Is the certificate which you have produced

dated August 26th, 1914, the certificate referred to by you?

A. Yes, sir.

(Certificate offered and admitted in evidence and marked Exhibit P10.)

Mr. Coulomb: Certificate addressed to Edwin A. Parker, Esquire, County Clerk, dated August 26th, 1914, reads as follows: "In accordance with Chapter 234 of the Election Laws P. L. 1906, 497, which is a supplement to an Act entitled, 'An Act to Regulate Elections,' (Revision of 1896) approved April fourth one thousand eight hundred and ninety-eight. I herewith notify you that the following offices are to be filled in Atlantic City at the General Election to be held November 3, 1914.

CITY OF ATLANTIC CITY.

(1) Treasurer

(1) Recorder

20

(1) Tax Collector"

and certain other officers, signed by "Daniel H. V. Bell," sealed with the seal of Atlantic City.

Q. Now, Mr. Gaskill, what is the next record you have in your office concerning this election of 1914, with respect to the officers chosen in the City of Atlantic City?

A. I have a certificate of Daniel H. V. Bell, City Clerk of Atlantic City, certifying those candidates who had been nominated who had complied with the law in filing a campaign statement, committees and so forth.

30

Q. That is the certificate which you have just handed counsel under date of September twenty-ninth, 1914?

A. Yes, sir.

(Certificate admitted in evidence and marked Exhibit P11.)

Q. What is the next record you have in your office, Mr. Gaskill, concerning that election?

A. The next record is the statement or determination of the County Board of Canvassers as the result of the election in Atlantic City, in November, 1914.

10

Q. That is a copy.

Mr. Coulomb: Will you admit, Judge Cole, that is a copy of the one, or similar to the one which has been offered in evidence marked Exhibit P8?

Mr. Cole: Yes. I want to read into the record, Mr. Coulomb, the returns showing the vote for Recorder. Under the Caption "For candidates of the Republican Party for Recorder, City of Atlantic City, one to be elected," the following names are all printed: "Joseph F. Donnelly received 223 votes; Edmund C. Gaskill, received 1870 votes; Clarence L. Goldenberg received 817 votes; Joseph B. Perskie received 633 votes; John S. Westcott received 233 votes; Henry Williams received 64 votes; Harry Wootton received 1807 votes," and then there is a star nominated, which refers to Edmund C. Gaskill, Jr. Now, under the caption printed, "For candidates of the Democratic party for Recorder," now the names and votes are typewritten and not printed. "Joseph F. Donnelly received one vote; Harry Wootton received 12 votes; Clarence L. Goldenberg received 11 votes; Joseph B. Perskie received 11 votes; Edmund C. Gaskill, Jr., received 8 votes; John S.

20

30

Westcott received 4 votes; Martin Keffer received one vote; John Flett received one vote; Edward C. Gaskill, Jr., received one vote; Clarence Pettit received two votes; George Gries received one vote; Ed. Gaskill received one vote; Louis Repetto received two votes." Star nominated refers to Harry Wootton.

10 Mr. Coulomb: I would like to read to the jury something further: "For candidates of the Progressive (Roosevelt) Party for recorder; "Edmund C. Gaskill, Jr., received one vote; Clarence L. Goldenberg received one vote; Joseph B. Perskie received two votes; Harry Wootton received two votes; John S. Westcott received one vote; Edward C. Gaskill, Jr., received three votes."

Mr. Cole: Who was nominated on that?

Mr. Coulomb: Edward C. Gaskill, Jr.

20

M. B. WOODRUFF, SWORN.

Direct examination.

By Mr. Coulomb:

30 Q. Mr. Woodruff, you are the Chief of Police of Atlantic City, are you not?

A. Yes, sir.

Q. And were such on the thirty-first of December, 1914?

A. Yes, sir.

Q. And for how long prior to that time?

A. About nine years.

Q. And you are still and have been since that date Chief of Police of Atlantic City?

A. Yes, sir.

Q. Do you remember the bringing of reports before the Recorder of Atlantic City on the first day of January, 1915?

A. Yes, sir.

Q. Before whom did you bring those complaints?

A. Brought them before Recorder Keffer.

Q. On the first of January?

10

A. I believe so, yes.

Q. Are you sure of that, Chief?

A. Well, up until the thirty-first of December, and then I think we brought them before Recorder Gaskill, after the first of January.

Q. So on the first of January, you brought your complaints before Recorder Gaskill?

A. I think so, yes, sir.

Q. Why did you bring your complaints before Recorder Gaskill on and after the first of January?

20

A. Because I believe at that time the City Commission had recognized him as the legal Recorder by some resolution or proceedings.

Q. Do you recall whether on the first of January that Mr. Keffer was there in the office of Recorder when you brought the complaints before Mr. Gaskill?

A. Yes, he was there.

Q. Was there any time after the first of January that you did not bring complaints before either Mr. Keffer or Mr. Gaskill?

30

A. Yes, sir.

Q. Can you recall that date?

A. About the fourth or fifth, probably the morning of the sixth.

Q. And do you recall why you did not bring your complaints before either Mr. Keffer or Mr. Gaskill?

A. Why, I believe the higher court had been appealed to and they had granted Mr. Keffer some —

Mr. Cole: Certiorari we call it.

A. Yes, certiorari, anyhow granted some proceedings that I didn't know just who was Recorder then.

10 Q. And what did you do in order to determine before whom you should bring your complaints?

A. That morning I would not take any complaints before either one of them. They were both there demanding the office and I didn't know, so I didn't bring any, and I didn't know what else to do, and I appealed to the City Solicitor later in the day to get his opinion who the police should recognize and take their cases before.

Q. Did you get such an opinion?

20 A. I did.

Q. Have you it with you?

A. I have.

Q. Will you produce it, please?

(Paper produced.)

Q. Is this the opinion which you hand me under date of January sixth, 1915?

A. Yes, sir.

30

Mr. Coulomb: I offer in evidence letter on the letterhead of "Theodore W. Schimpf, 1512 Atlantic Avenue, Atlantic City, N. J.," under date of, "January sixth, 1915," addressed to "M. B. Woodruff, Chief of Police, Dear Sir: In my judgment Mr. E. C.

Gaskill is the Recorder of Atlantic City by virtue of his election at the election held in November and that he has properly qualified as such Recorder, and is unqualifiedly entitled to preside over the Recorder's Court in such city, and that it would be proper for you to produce before him such prisoners as may be in your charge. Yours truly. Theodore W. Schimpf, City Solicitor."

Q. Now, I notice attached to this a statement, which is presumably in your handwriting. Will you 10 just tell what that is?

A. That is instructions to the members of the Police Department what to do based on Mr. Schimpf's opinion.

Q. And that is in your handwriting?

A. Yes, sir.

Mr. Coulomb: I offer this in evidence.

Q. How did your instructions reach the police, 20 by verbal message or by written message to the sergeant or how?

A. By written message to the sergeant.

Q. And this is the written message to them?

A. Yes.

Mr. Coulomb: I want to offer this in evidence.

A. The reason that is not dated, there was another order preceding that, there is two scratched 30 off on one piece of paper, dated the same day.

Mr. Coulomb: "Attached find opinion of the City Solicitor"—

Mr. Cole: That is objected to as irrelevant and immaterial and improper.

Mr. Coulomb: —“commencing at eight A. M., you will have all police cases taken before Recorder Gaskill and no one else. Respectfully, M. B. Woodruff, Chief.”

The Court: Would that be legal evidence, Mr. Coulomb, what this Chief of Police said to his subordinate?

Mr. Coulomb: I think it would. You must re-
10 member, if Your Honor please——

The Court: Your theory is it created a situation which justified Mr. Gaskill in taking this office?

Mr. Coulomb: Assuming the duties of that office. The duties of the office required, before he performed any duties, and anybody else came before him,—and this was the direction of the Chief of Police upon the City Solicitor’s opinion.

20 The Court: Upon that theory the proof is admitted.

(Exception noted for defendant.)

(Opinion of City Solicitor admitted in evidence and marked Exhibit P12 and notice of the Chief of Police to his subordinates admitted in evidence and marked Exhibit P13.)

30 Q. Have you, since that time, up to and including July twenty-second, 1915, brought all your complaints before Mr. Gaskill as Recorder of the City of Atlantic City?

A. Yes, sir.

Q. And your action was based upon the opinion of the City Solicitor that that was the proper course to pursue?

A. And the actions of the Commissioners on the last day of the year, I think, and then this opinion of the City Solicitor.

Q. When you speak of the action of the Commissioners, do you speak of the resolution they passed on the thirty-first day of December, 1914?

A. Yes.

10

Cross-examination.

By Mr. Cole:

Q. You say Mr. Keffer was there in the office on the first of January, 1915?

A. Yes, sir.

Q. What was he doing there?

A. I guess he came to hold court.

Q. He had been holding the—discharging the 20 duties of Recorder for some two years or more before that, hadn't he?

A. Yes, sir.

Q. Regularly?

A. Yes, sir.

Q. Was he there at eight o'clock that morning as usual?

A. Yes, sir.

Q. And were complaints made that day before someone? 30

A. Is that the first of January?

Q. Yes.

A. I am not sure. I think there is complaints made every morning.

Q. Are you sure that there were complaints actually made on the first of January?

A. I wouldn't be positive about that first day.

Q. But at all events you made it clear in the presence of Mr. Keffer, did you not, and in the presence of Mr. Gaskill, that you did not intend that, so far as the Police Department was concerned, that any complaints would be lodged with Mr. Keffer, that you intended to recognize Mr. Gaskill?

A. On the passing of that resolution by the City Commissioners, recognizing Mr. Gaskill, why, I intended that the police should follow out the Commission's orders.

Q. And you made it plain, didn't you, to Mr. Keffer that you did not intend, so far as you were concerned, that the Police Department should recognize him as Recorder?

A. I don't think I went to any extreme about it.

Q. I am not asking you that.

A. I don't recall what I did say, but I possibly told him, as the Commission had recognized Mr. Gaskill, I would also have to recognize him, too.

20 Q. And in point of fact from that time on you did recognize Mr. Gaskill?

A. Up until the sixth day of January.

Q. And when the certiorari came along that raised a doubt, did it?

A. I got confused as to where I stood. I didn't want to proceed on my own judgment and I didn't know where to appeal except the City Solicitor.

Q. Knowing of this writ of certiorari, which was to review the resolution of the Commissioners under which you had acted, you were then in doubt

30 A. On the sixth day of January, both Recorders being there for trial, and there were police cases, and I instructed the police not to bring any before either one until I could find out where I stood.

Q. And Mr. Gaskill and Mr. Keffer were both there on that occasion?

A. Both there.

Q. And Mr. Gaskill, of course, knew, as you knew, about this certiorari reviewing that resolution, didn't he?

Mr. Coulomb: That is objected to. I don't see how he can speak for Mr. Gaskill.

A. I assume he did, yes.

10

Q. Nothing was done that day?

A. No.

Q. When did you take up again recognizing Mr. Gaskill?

A. The following morning, morning of the seventh.

Q. Having in the meanwhile received the opinion of the City Solicitor?

A. On the sixth, evening of the sixth, yes.

Q. Now had you given any—while you were there on these occasions, first or the sixth, did you hear Mr. Keffer protest against these complaints going to Mr. Gaskill?

20

A. Yes, I heard him at least once while I was there.

Q. He insisted he was Recorder, didn't he?

A. Yes.

Q. In the presence of Mr. Gaskill?

A. He was talking to him.

Q. In fact he was protesting to Mr. Gaskill all the time when these protests were made?

30

A. I believe it was directed to him, yes.

EDMUND C. GASKILL, JR., SWORN.

Direct examination.

By Mr. Coulomb:

Q. Mr. Gaskill, you are the plaintiff, of course, in
10 this suit?

A. I am.

Q. You took the, assumed the duties of the office
of Recorder on January first, 1915?

A. I did.

Q. And performed those duties until when?

A. Up to and including July twenty-second, 1915.

Q. By whom were the various complaints brought
before you?

A. By whom?

20 Q. By whom?

A. By the members of the Police Department
from time to time, and by private individuals who
would have complaints to make in that court, and
automobile violations, of course.

Q. And they were brought by whom?

A. Well, some were brought by the Police De-
partment of Atlantic City and some were brought by
the State Department through its agent.

Q. And you continued to hear complaints from
30 the first of January, 1915, till the twenty-second
of July, 1915, inclusive?

A. I did.

Q. How much is the salary for that period?

A. \$1402.73.

Q. Have you been paid any part of it?

A. Nothing whatever.

Q. Did you file with the Comptroller of Atlantic City and with the Treasurer of Atlantic City your bill duly verified?

A. I did.

Mr. Cole: I want to see the bill, Mr. Coulomb, please.

A. Mr. Coulomb has it.

Q. I show you copy of a bill with an affidavit attached and ask you whether that is the copy of your bill and the affidavit which you filed with the city? 10

A. That is the copy that I filed with the Comptroller on November eleventh, 1915.

Mr. Coulomb: I offer that in evidence.

(Bill admitted in evidence and marked Exhibit P14.)

Q. Has any part of the sum been paid? 20

A. It has not.

Q. And it is all due at the present time?

A. It is.

Cross-examination.

By Mr. Cole:

Q. Did you personally hand the bill to the Comptroller? 30

A. I think I did.

Q. On or about that date?

A. Yes, sir.

Q. And at that time you knew of the adjudication

of the Supreme Court in the case of Keffer against yourself, did you not?

A. Oh, yes.

Q. Did you file a bill with any other person than the Comptroller?

A. I think not.

Q. Did you seek the approval of the Mayor or the Commission of this bill?

A. The Mayor told me, before I presented that bill, that I ought to be paid, and that he would see—

10 Q. Pardon me.

Mr. Cole: I ask that be stricken out.

Mr. Coulomb: I object to all these questions anyway.

Mr. Cole: I ask presently his answer be stricken out as not being responsive.

20 The Court: Strike it out.

(Question repeated.)

Q. I am speaking now of the approval of this bill, not whether you were promised to be paid or not, but did you seek the Mayor to have him approve this particular bill which you filed with the Commission?

30 Mr. Coulomb: That is objected to, if your Honor please, as being immaterial, irrelevant and improper.

A. I never presented this bill—

The Court: Just wait.

A. Pardon me, Judge.

Mr. Coulomb: Can't make a particle of difference.

The Court: How can that be important, Judge Cole, whether he did or did not?

Mr. Cole: Might be quite important, I don't know just at this moment. There is a provision of the law that requires, before a suit can be brought against a municipality to recover, that bills must be approved by the Mayor. Now, whether this is such a bill as that or not is another matter, and I want the benefit of this question and ruling on it, and I will call your Honor's attention to the statute and to decisions thereunder during the recess. 10

Mr. Coulomb: If your Honor please, there is no issue framed in this case at all which would permit the City of Atlantic City to raise any such defense. The case is barren of it absolutely.

Mr. Cole: It may well be, but when he produces this bill I have a right then to follow it. 20

Mr. Coulomb: If your Honor please, there is no such right at all to follow anything as that and counsel, I think, well knows it. I object to the question.

The Court: The Court is inclined to receive the proof. The opinion of the Court was that it could not be a matter of any very great consequence, unless the law makes it so, what effort he made to collect his money is a matter of no consequence. It is conceded that he did not get his pay and was not paid during the time. The city held up payment to him because of the dispute over the title to his office. However, the Court is inclined to receive the evidence, proceed. 30

(Exception noted for plaintiff.)

(Question repeated.)

A. No, I never presented this bill to the Mayor.

PLAINTIFF RESTS.

Recess taken until 1.15 o'clock P. M.

10

Afternoon session, hearing resumed at 1.58 P. M.

DEFENDANT'S TESTIMONY.

MISS BESSIE M. TOWNSEND, SWORN.

Direct examination.

20 By Mr. Cole:

Q. You are the Comptroller of Atlantic City, are you not?

A. Yes.

Q. And have been for several years?

A. Yes.

30 Q. Can you tell me whether or not a warrant of Atlantic City has been passed to Mr. Martin E. Keffer in payment of the salary of Recorder of Atlantic City, from the first day of January, 1915, to and including the twenty-second day of July, 1915?

A. There has.

Q. And Mr. Keffer has been paid for that period?

A. Yes, sir.

Mr. Coulomb: I object to that. That is a con-

clusion of law whether he has been paid. She can testify to the fact whether a warrant was issued, but whether that was a payment—

The Court: The latter will be stricken out, the fact he was paid will stand.

Q. Now, is there any appropriation —

The Court: Is she Comptroller of the city?

10

Mr. Cole: She is Comptroller.

The Court: I will reverse that ruling. The testimony will stand.

(Exception noted for plaintiff.)

Q. Is there any appropriation remaining in the appropriation of the salary of Recorder for the period from the first day of January, 1915, to and including the twenty-second of July, 1915? 20

Mr. Coulomb: That is objected to on the ground it is immaterial and irrelevant. This suit was started against the City of Atlantic City before the payment was made. Now, if they choose to pay in the face of that suit, it is up to the city, if they have, even assuming that the exhaustion of the appropriation might have such effect, no legal effect at all upon this case, it certainly can't have any effect when the payment is made after suit has been brought. I object to any testimony as to whether there is any moneys remaining in that particular appropriation. 30

The Court: That question is challenged, Judge Cole.

Mr. Cole: Yes, sir, and I think it is entirely competent. Your Honor will understand, on the opening day of this term, we appeared before his Honor, Judge Black, with a motion to be relieved of the then answer and to have filed the present answer. After a very lengthy argument he allowed this present answer to be filed, and we are, therefore, trying
10 this case under this answer.

The Court: What is this answer?

Mr. Cole: That answer sets up, among other things, payment, and as I understand, we have a right to show there is no present appropriation. In other words, that payment exhausted the appropriation of Recorder. In other words, this suit is against
20 Atlantic City—

Mr. Coulomb: If your Honor please, when this suit was brought there was admittedly a fund sufficient to pay this claim. Now, the City of Atlantic City cannot, by a payment after suit is brought, deprive us of our right to obtain that money which we are suing for. Our right to that money goes back and is as of that date. Now, if the payment is a defense, that is another proposition, but the exhaustion of the funds there is no defense whatsoever to
30 this suit. This money was paid out, and if the City of Atlantic City depleted its funds with notice of this suit pending, it cannot now be heard to take advantage of it, and furthermore, there is no such issue in this case as a depletion in funds. It is not pleaded here as a defense to this suit, that Atlan-

tic City has no funds with which to pay this claim, either in this appropriation or some other appropriation.

The Court: The objection will stand.

(Exception noted for defendant.)

Cross-examination.

By Mr. Coulomb: 10

Q. Did you countersign the warrant which was drawn in favor of Mr. Keffer?

A. I signed it.

Q. You signed it?

A. Yes.

Q. And every warrant for the disbursement of city funds, as I understand it, has got to be signed by you?

A. Yes. 20

Q. Before it is available?

A. Yes.

Q. How did you come to sign the warrant for Mr. Keffer's salary?

Mr. Cole: That is objected to as not being responsive. I proved the fact by her. The reason why is not cross-examination, and besides it is irrelevant and immaterial.

Mr. Coulomb: There is proof here of payment of a certain fund which it is claimed was payment of Mr. Keffer's salary. We have a right to show by cross-examination the entire transaction so that your Honor can tell and the jury may tell, if it is a 30

question for the jury, whether or not that transaction is payment, and the only way it can be done is by going into the transaction itself.

The Court: I think you are right.

A. Shall I answer now?

Q. Yes.

(Exception noted for defendant.)

10

(Question repeated.)

A. A proper claim had been filed, resolution of the Commissioners had been passed and filed with me, or at least a copy of it, and Mr. Schimpf's opinion, and a bond had been filed in accordance therewith.

Q. Then as I understand it, there was a claim filed with you first?

20

A. Yes.

Q. Have you that claim with you?

A. I think so.

Q. Will you produce that, please?

(Paper produced.)

Q. The claim appears to have been dated November ninth, 1915, and was for the sum of \$1402.76. Will you look at the—is that the affidavit attached

30 to it that I now show you?

A. Yes, sir.

Q. When was that affidavit taken?

A. The seventh day of January, 1916.

Q. And before whom?

A. C. L. Cole.

Q. And when was the affidavit and the claim of \$1402.76 filed with you?

A. Claim for \$1402.76 was filed on the seventh of January, 1916.

Q. Have you a copy of the resolution?

A. Yes.

Q. Will you produce it?

(Paper produced.)

Q. Attached to this?

10

A. Attached to the claim.

Q. Is this the resolution?

A. That is the resolution.

The Court: What is the date of the resolution?

Mr. Coulomb: Date of the resolution is January sixth, 1916. I want to read it into—I offer this in evidence together with the receipt.

Mr. Cole: Objected to for the reason it is not cross-examination. 20

(Paper admitted in evidence and marked Exhibit P15.)

(Exception noted for defendant.)

Mr. Coulomb: Dated January sixth, 1916. Addressed to "B. M. Townsend, City Comptroller. 30 Dear Sir:

The following is a copy of the Minutes of a regular meeting of the Board of Commissioners, held on January 6, 1916, relating to your department, viz:

City Comptroller Authorized to Pay Salary of Martin E. Keffer Upon Filing Bond in Double the Amount Signed by Martin E. Keffer and C. L. Cole and being Approved as to Form by City Solicitor.

Resolution by President Riddle.

BE IT RESOLVED by the Board of Commissioners that the salary due to Martin E. Keffer as City Recorder from Jan. 1, '15, to July 22, '15 inclusive, to be paid to him by the City Comptroller upon the filing with the City Clerk of a bond in double the amount signed by Martin E. Keffer and C. L. Cole to be approved as to form by the City Solicitor.

Upon motion this resolution was adopted as read.
Attest. Daniel H. V. Bell,
City Clerk."

Q. Miss Townsend, at the bottom of this resolution, Exhibit P15, there is a memoranda; is that your handwriting?

20 A. That is my handwriting, yes.

Q. And how did that memoranda come to be placed upon that resolution?

A. When I first got the bill, I thought the bond was to be filed with me, but the resolution reads it was filed with the City Clerk, so I made a memorandum on the bill, the bond of Keffer and Cole, \$3,000, was filed with the City Clerk.

Q. And that is the memoranda on the bottom of P15?

30 A. Yes.

Q. Would you have paid to Mr. Keffer, or delivered to him, the warrant for his salary in the absence of the resolution of January sixth, and in the absence of the bond referred to in this resolution?

Mr. Cole: I object as not cross-examination and

irrelevant and immaterial as to what she might have done.

Mr. Coulomb: If your Honor please, Miss Townsend is the City Comptroller. It is her duty to pay out moneys when the proper formalities are performed.

The Court: She says she paid the money, if I understand it, in pursuance of the action of the Commission, or resolution. Now, what possibly might have affected her mind under some other circumstances is not important. 10

Mr. Coulomb: If your Honor please, I think it is. I think it is a question whether Miss Townsend would have made any payment at all, had it not been for the filing of this bond, and I think that is a perfectly proper question. The whole defense revolves around—

The Court: Can't that be assumed from the fact she is carrying out the directions of the Commission? I think the objection should stand. 20

(Exception noted for plaintiff.)

Q. Would you have signed the warrant for Mr. Keffer's salary and delivered it to him had not there been delivery to you of the bond referred to in the resolution? 30

Mr. Cole: Objected to for the reasons stated a moment ago as not cross-examination, irrelevant and incompetent, as to what may have been in her mind, or what she may have done under another set of circumstances.

(Objection sustained.)

(Exception noted for plaintiff.)

Q. You received the bond, as I understand it, when you signed the warrant and delivered it?

A. The bond was filed with me in the morning.

Q. And then afterwards what did you do with the bond?

A. Filed it with the City Clerk.

10 Q. And made the memoranda which you have testified to?

A. Yes.

The Court: When did you sign that check, January seventh?

A. Yes.

Q. Have you the warrant, Miss Townsend?

A. No, Mr. Beyer would have that, City Treasurer.

20 Q. I want to, before you leave the stand, to ask you as to another sheet which is attached to Exhibit P15, namely a claim under date of October 27th, 1915, which is apparently crossed out, and I ask you whether, when that claim was filed there was any affidavit attached to it?

A. No, there was not.

Q. And the amount is for how much?

A. \$1606.15.

30 Q. That was more than was due for the salary of Recorder from January first, 1915, to July twenty-second inclusive, was it not?

A. Yes, it is more.

By Mr. Cole:

Q. Miss Townsend, you wanted Mr. Keffer, didn't

you, to make an affidavit that he had actually rendered the services or something like that in the matter?

A. I called his attention to the fact that there was no affidavit attached to it at the time he filed it.

Q. I mean afterward Mr. Keffer recognized or told you, didn't he, that he made a mistake of the amount?

A. Yes.

Q. Now, was the Mayor's approval put to that bill of Mr. Keffer's before the warrant was passed out? 10

A. Yes, Mr. Cole.

Q. His approval appears on that bill, does it not?

A. Yes. I can't pay any money otherwise.

Q. Under your regulation or system there you pay no bills, pass no warrants, without first receiving the approval of the Mayor?

A. No.

By Mr. Coulomb:

Q. That approval of Mayor Riddle was put on there as of January seventh, was it not, that is the date? 20

A. Yes, that is the date.

BERTRAM E. WHITMAN, SWORN.

Direct examination.

30

By Mr. Cole:

Q. Mr. Whitman, you are a member of the Legislature, are you not?

A. Yes, sir.

Q. And you were last year?

A. Yes, sir.

Q. Do you remember an Act that has been referred to as validating Act of Atlantic City?

A. I do, sir.

Q. You introduced that Act, didn't you, in the Assembly?

A. Yes, sir.

Q. At whose request?

10 A. Well, primarily upon the request of the three officials whose interests were involved.

Q. Their names, please.

A. Mr. Gaskill, Mr. Heston and Mr. Mathis.

Q. Do you remember from whose hands you actually received the original bill?

A. I received it from Mr. Gaskill.

Q. Where?

A. I believe it was in the State House at Trenton.

20 Q. And were the other two gentlemen with you at the time?

A. I think they were.

Q. What did Mr. Gaskill say to you at that time?

A. I don't recall just what he said. The Act was handed to me for introduction.

Q. Well, was no explanation made?

A. I don't know that there was at that time.

Q. Later?

A. I don't know that there was at that time.

Q. I say was there later an explanation?

30 A. No, I don't know that there was.

Q. Did you understand the purport of the bill?

A. Yes, sir.

Q. And where did you get your understanding?

Mr. Coulomb: Objected to. If your Honor please

I think it is not at all pertinent as to what his understanding of the bill was, and certainly not where he got his understanding from. This is an Act of the Legislature.

The Court: The Court will permit testimony showing anything that Gaskill did in promoting and bringing about this legislation.

(Question repeated.)

A. One of the rules of the last House of Assembly was that every bill that was presented must have on the bottom a statement telling what the bill proposed to do. I first read the statement, which naturally is much shorter than the bill itself, and then I read the bill itself to see exactly what it did. I don't know that I received any further information at all from Mr. Gaskill.

10

The Court: In whose handwriting was the statement?

A. It was typewritten on the bill presented by Mr. Gaskill to me for introduction.

Q. At that point let me ask you, this particular bill that Mr. Gaskill handed you afterwards had the substituted bill in its place, did it not?

A. Yes, sir.

Q. From whom did you get the substituted bill?

A. From Mr. Gaskill.

30

Q. Now, that bill did not have appended to it, did it, an explanation of the purpose of the Act?

A. Yes, sir.

Q. The original bill?

A. Both bills, as I recall it.

Q. In whose handwriting was the substituted bill?

A. If I am not mistaken they were both typewritten.

Q. Both typewritten?

A. Yes, sir.

Q. How long was it after you got the first bill from Mr. Gaskill's hands, you got the second?

A. About two or three weeks.

Mr. Coulomb: Your Honor understands I object
10 to the whole course of this testimony?

The Court: Yes.

(Exception noted for plaintiff.)

Q. Did Mr. Gaskill explain to you why he needed the substituted bill?

A. Nothing further than that they had decided that the second bill was more perfect than the first.

20 The first was not exactly perfect.

Q. Who had decided?

A. I suppose the three men involved. He didn't say.

Q. Did the same three men come to you?

A. I can't say whether the same three came at the time the second bill was presented or not, but the same three were at Trenton a number of times while the bill was being presented by the Legislature.

30 Q. How many times would you say, Mr. Whitman, that Mr. Gaskill had spoken to you touching the passage of this bill?

A. Before its introduction?

Q. Yes.

A. Not more than once or twice.

Q. How many times after?

A. He had not spoken to me afterwards any more than any of the others. He was up there along with the others; naturally when we got together we would talk about this bill, same as we would with anybody else interested in any other bill, but he did not talk to me any more about this bill, any more than anybody else interested in another bill talked with me about their bill.

Q. Were you present at any committee to which this bill had been referred when this bill was considered?

10

A. Yes, sir.

Q. Was Mr. Gaskill there?

A. Yes, sir.

Q. Was his attorney there?

A. Yes, sir.

Q. Were you a member of the committee?

A. No, sir.

Q. And was that hearing on the first or the second bill?

A. On the second bill. The first bill did not get very far before the second bill was introduced.

Q. And do you recall about when it was the first bill was handed to you?

A. Well, I think the first bill was introduced either the first or second week of the Legislature, and I introduced it just as soon as I got it. I didn't hold it in my hands any time before I introduced it.

Q. Well, would that be in January?

A. Yes, twelfth or nineteenth, somewheres along there.

30

Q. Along between the twelfth and nineteenth?

A. Well, twelfth was the opening day and it was not introduced that day I don't think; probably the nineteenth.

Q. Would it refresh your recollection if I handed

you copy of bill 159, which was the substituted bill, as to whether that had a statement of the object of the bill?

A. Well, according to this printed sheet that you show me, why, I don't see any statement on it, but it was a rule of the house. I can't imagine how in the world it could have gone through without a printed statement.

Q. You don't recall—you hadn't observed that before?

10 A. No, sir, I don't know whether there was another sheet attached to it, or whether that was the whole thing or not. The rule was most positive that there must be a statement along with each bill.

Q. This appears to be a copy of number two, this is January twenty-second. Do you suppose that was the correct date?

A. I suppose it was, that was the Monday following the opening day.

20 Q. Do you recall who appeared before the committee to which this bill had been referred as the attorney for Mr. Gaskill?

A. Yes, sir.

Q. Or speaking for this bill?

A. Yes, sir.

Q. Who?

A. Mr. Schimpf.

30 Q. Now, did you have any conversation at all, Mr. Whitman, with Mr. Gaskill or with either of the other gentlemen in his presence about this bill when it was first handed to you?

A. Why, all of them together asked me to introduce this bill.

Q. Well, was any reason given for it?

A. No further reason than what was stated on the statement, namely, to validate and confirm these

elections and to straighten up the bond issues that were then pending and which could not be straightened on account of not knowing who the proper officers were.

Q. Did Mr. Gaskill at any time ask you to vote for that bill?

A. He asked me to introduce it, and naturally expected me to vote for it.

Q. That was your understanding, wasn't it?

A. Certainly. I don't know that he ever asked me to vote for it. 10

Q. Did anybody in Mr. Gaskill's presence urge you to vote for the bill?

A. No, sir.

Q. Do you remember that on the occasion when Mr. Gaskill was before this committee that the constitutionality of this Act was challenged?

A. Yes, sir.

Q. And this bill was finally passed over the Governor's veto, was it not?

A. Yes, sir. 20

Q. Vetoed by him on the ground it was unconstitutional?

A. I don't know what grounds he vetoed it on. I know he vetoed it.

Cross-examination.

By Mr. Coulomb:

Q. Mr. Schimpf was at that time City Solicitor, 30 was he not?

A. Yes, sir.

Q. And was he advocating the passage of this bill?

A. Yes, sir.

Q. And who were the other gentlemen that you spoke of?

A. Mr. Heston and Mr. Mathis.

Q. How many bills were passed over the Governor's veto last year?

A. About four, I think, four or five.

Q. This is one of them?

A. This was one of them, yes.

Q. How much of a vote does it take to pass a bill over the Governor's veto?

10 A. Just a majority vote.

Q. Mr. Schimpf, as I understood you to say, advocated this bill?

A. Yes, sir.

Q. And spoke about it to you?

A. And spoke about it to me, and before the committee when the hearing was being held and I was present.

By Mr. Cole:

20

Q. And do you recall that at that meeting before the committee, when Mr. Gaskill was there, that it was said to the committee that we, who were objecting to the bill, were contending that the bill might be passed provided the Recorder was eliminated therefrom?

A. Yes, sir, I remember that.

By Mr. Coulomb:

30

Q. Who said that, that they would consent to the bill passing if the Recorder was eliminated therefrom?

A. Judge Cole.

Q. Judge Cole was there, was he?

A. Yes, sir.

Q. He was opposing the passage of the bill?

A. He was opposing the passage of the bill.

Q. Was Mr. Keffer there?

A. Mr. Keffer I think was there too.

Q. And he also opposed the passage of the bill?

A. I don't remember whether Mr. Keffer had anything to say on the subject or not, but he was opposing the passage of the bill.

Q. Mr. Cole said he was willing the bill should be passed if the Recorder was eliminated? 10

A. Yes, sir.

By Mr. Cole:

Q. It appeared before that committee, did it not, that I was representing Mr. Keffer who was to be affected if this bill went through; is that right?

A. Yes, sir, that is right.

Q. That this was challenging his right to hold that office and I was there representing him? 20

A. Exactly.

Q. And did I not tell that committee that that Act was unconstitutional?

Mr. Coulomb: One moment.

A. Yes, sir.

Q. Mr. Gaskill was there?

A. Yes, sir.

CARLTON GODFREY, SWORN.

Direct examination.

By Mr. Cole:

Q. Mr. Godfrey, you are a member of the Legisla-
10 ture and were last year?

A. I was.

Q. Do you remember this Act we have referred to
as the validating Act?

A. I remember the Act.

Q. Can you recall when you first saw that Act?

A. I don't think that I saw the Act until after it
was printed.

Q. Had you been asked to introduce that Act?

A. No, I had not been asked to introduce it be-
20 cause I was Speaker and introduced very few Acts.

Q. Aside from the because, I am asking you
whether you were in point of fact asked to intro-
duce that Act?

A. I was not.

Q. Did Mr. Gaskill ever speak to you about that
Act?

A. I don't remember whether he did or not. It is
possible that he might. It is possible that he might,
but I am not sure that he did.

30 Q. Anybody speak to you urging the passage of
that Act?

A. Mr. Heston saw me several times concerning
it, and Mr. Mathis and the City Solicitor saw me
more concerning it than anyone else. The fact is
when Mr. Heston spoke to me about the Act I told

him I didn't want to even discuss it until I knew the position of the City Solicitor took and the City Commissioners, being a bill which affected the city's business.

Q. You have no present recollection of ever having met or talked with Mr. Gaskill concerning this bill?

A. It might be that he spoke to me about it. I am not sure whether he did or not. Mr. Whitman had charge of the bill and it might be that he was, and I think he was—I know Mr. Heston was—and he might have been present during one of the interviews with the City Solicitor. 10

Q. Did you ask Mr. Whitman where he got the bill?

A. No.

Q. Did you ever know how it came into his hands?

A. That is from whom it came you mean?

Q. Yes.

A. No. I supposed——

Q. Don't you remember on several occasions in Trenton that Mr. Heston and Mr. Mathis and Mr. Gaskill were there in conference with you and Mr. Whitman regarding the passage of this bill? 20

A. Yes, Mr. Heston and Mr. Mathis, and also the City Solicitor was there twice, I think.

Q. But was not Mr. Gaskill with him?

A. I think he was at times.

Q. At times where you were being urged to have this bill passed?

A. No, I was no being urged to have the bill passed. 30

Q. What was being said to you about it?

A. The bill was discussed the same as other bills and I took no part in the passage of the bill.

Q. I am not asking you about that. I am asking

you what was the errand of Mr. Gaskill and Mr. Mathis and Mr. Heston and the City Solicitor when they came to see you about this bill?

Mr. Coulomb: Objected to, if your Honor please. The witness has distinctly stated several times he don't recall Mr. Gaskill being there. He might have been there.

10 Mr. Cole: He has now said Mr. Gaskill was there. He started out by saying he could not remember, but he has now said he was there.

The Court: Well, is there any doubt about the fact Mr. Gaskill was there?

Mr. Cole: I don't know. If the jury understands Mr. Gaskill was seeking to have this Act passed, well and good, but I want that fact to appear to the jury well and good.

20 Mr. Coulomb: If your Honor please, the fact has been related here a number of times.

The Court: Well, is there enough in it to take up so much time?

Mr. Coulomb: I don't think there is anything in it.

30 Mr. Cole: I think it is quite an important fact for the jury to know whether this man really believed he had a title to this office, and what it meant if he is going and trying to have a validating Act passed, I think it is quite important.

The Court: Do you think there is any question

about the fact Mr. Gaskill was interested in this legislation?

Mr. Cole: Not so far as I am concerned, but these gentlemen are the ones who are going to pass on that fact.

Mr. Coulomb: If your Honor please, I hate to be objecting all the time, but it does seem to me it is a proposition that ought not to be discussed the way it is being discussed with reference to Mr. Gaskill's connection with the Act when the proof is just the contrary. Your Honor makes use of the language "Is there any doubt of him being interested in the passage of the Act?" Naturally he is interested in the passage of the Act. No doubt about it. The only question is did he use any undue means in passing it? 10

The Court: Mr. Coulomb, do you deny that he went to Trenton and put the Act in the hands of Mr. Whitman? 20

Mr. Coulomb: I deny that he acted on his own volition, acted in any other way towards this Act than these other men acted towards it. The testimony here is, so far as I see the testimony, at least Mr. Schimpf—Mr. Whitman told us what the Act was about.

The Court: Mr. Godfrey, Speaker Godfrey said, 30 if I understood his testimony correctly, that he had no definite recollection of seeing Mr. Gaskill or of Mr. Gaskill seeing him individually in regard to this legislation, that such a thing might have happened. Now, what do you want?

Mr. Cole: Your Honor, he has subsequently said that Mr. Gaskill was there before him in company with these other men.

(Question repeated.)

(Objection overruled.)

(Exception noted for plaintiff.)

10 A. There undoubtedly came to see me concerning this particular bill. I insisted upon the City Solicitor being present so that I might know the position the city was taking, represented by its proper officials as it seemed to me. The City Solicitor was sent for and he started to explain the objects of the bill.

Q. Very well, were they all there, Mr. Gaskill and these people at that time?

A. I am not sure they were all there. I am rather
20 inclined to think they were.

Q. Very well.

A. I said that I would not be responsible in any way for the contents of the bill. The bill that I would favor, the passage of, or at least that I would not favor the passage of any bill unless I knew it was approved by the City Solicitor and by the Commission, and the City Solicitor assured me that he did approve this bill and that the City Commission did, and that was the substance of the conversation, and
30 the City Solicitor explained as to the objects of the bill, one of the objects of the bill that the sale of bonds was pending in addition to the matters that has been recited here.

Q. Well, now, in that talk at any time was there any suggestion that there was any question as to

the validity of the election of Mr. Gaskill as Recorder?

Mr. Coulomb: That is objected to, if your Honor please, objected to on the ground, first, that it is leading and, second, how can it bind Mr. Gaskill unless Mr. Gaskill was present?

Mr. Cole: He says he was present.

A. I said he might have been. 10

Mr. Coulomb: I don't understand him to say he was present.

The Court: Are you certain he was present?

A. No, I say he might have been.

The Court: That is a little indefinite. What was said in Mr. Gaskill's absence of course could not impute bad faith to him in this matter. You have got to make it appear that he was there when this talk went on. 20

Mr. Cole: Your Honor, I know that I have. I know I can't bind a man when he is absent, but the witness, as it seemed to me, has had him present and had him absent, and I am trying to find out. You see I subpoenaed the gentlemen. I don't know anything about what happened. I am trying to find out, just as I want the jury to try and find out, and I had to do it by this method. 30

(Question repeated.)

The Court: When Mr. Gaskill was present?

A. I am not sure of that. I can't remember conversations and who was present at interviews which occurred so long ago with that degree of certainty, sure.

Q. Did you read this Act before you voted for it?

Mr. Coulomb: I object to that. I can't possibly see the object of such a question as that.

10 Mr. Cole: I want to lead up and see, from this witness, may it please your Honor, whether he saw that the question of the validity of the office of Recorder was in the bill, and if it was, if he inquired why it was there and of whom he inquired for the purpose of seeing whether Mr. Gaskill was connected with it and in any way sought the support of the Speaker for that bill. Now, that is the object of this examination.

20 The Court: You are asking him whether he read the bill. What a constitutional officer like a member of the Legislature does in respect to legislation can't, as a rule, be inquired into, Judge Cole.

Mr. Cole: I am not, may it please your Honor, trying to inquire into that. What I am trying to do in this examination is to get the conscience and recollection of this witness as to his connection with that bill so far as his relation with Mr. Gaskill was concerned.

30 The Court: Well, why don't you ask him that direct question?

Mr. Cole: May it please your Honor, there are other ways to get at a witness, and other ways to get at a fact besides a direct question.

The Court: The Court will permit you to show, and the Court has ruled several times, any conduct upon the part of Mr. Gaskill with reference to bringing about this legislation that you can show.

Mr. Cole: Very well. Now, suppose I ask this witness whether he read the bill and he says that he did not. That would be one thing. Suppose he says he read it and he saw the effort was to confirm the election of Recorder. That would be another thing. Then to lead up and ask him whether he then inquired why it was necessary to validate this election and he says that he did, and I ask him of whom he inquired. 10

The Court: Proceed.

(Question repeated.)

A. I think I did. I try to read every Act before I vote for them. 20

Q. Have you any doubt about whether you read it or not?

A. I read it carefully enough to know in a general way what it was, in addition to the information the City Solicitor did give me.

Q. And you knew, did you not, that the effort was to validate the election of Recorder in Atlantic City?

Mr. Coulomb: That is objected to, if your Honor please. It is leading. 30

Q. Did you know that the object of the Act, among other things, was to validate the election of Mr. Gaskill as Recorder in Atlantic City?

A. That was one of the objects of the Act, as I understand it, was to validate the election of Recorder, City Treasurer and Tax Collector, in addition to other purposes.

Q. Very well, at any time according to your recollection did Mr. Gaskill ever talk with you about the passage of this Act?

A. I would think he did. I would think so.

Q. Why do you think so?

A. Because he was there at the State House three
10 or four times, I would say, and so was the others, and I have no doubt that all of them spoke to me about it at times, sometime or other.

Q. Can you tell us what Mr. Gaskill ever said to you at any time when he spoke to you about this bill?

A. No, I can't tell you what he said except this, that he would inquire the condition, or where the bill was and all of that.

Q. Did he ever say to you in words or in substance that there was some doubt about the validity
20 of his election?

Mr. Coulomb: I object to that, if your Honor please. I don't see why Mr. Cole should be permitted to inquire from this witness by leading questions.

Mr. Cole: That is not a leading question.

A. I am going to answer it but I want to answer
30 it right.

The Court: I think that is a proper question.

A. I am not sure that he did, and I am not sure

that he didn't either. The discussion of the law, as applied to the bill, was with the City Solicitor and wholly, I think practically altogether, as to the necessity for the bill, because I depended upon the City Solicitor's advice concerning that part of it.

Q. Then I am coming back to my other question—at any time concerning the discussion of this legal aspect, as to the question of the election being valid, or not, was Mr. Gaskill present?

A. He might have been present, as I said before, 10 on the occasion when the City Solicitor came to my office to discuss the bill. That is what I said before. He may have been. I haven't taken both sides of the same question. I say he might have been.

Q. Anybody else besides the City Solicitor present in your office when this legal discussion was going on?

A. My recollection is that both Mr. Heston and Mr. Mathis was also present. I am sure one or the other of them was, in addition to the City Solicitor. 20

Cross-examination.

By Mr. Coulomb:

Q. Mr. Godfrey, do you know when this bill was advocated before you, whether anything was said about the attempt to clear up the situation with respect to bonds?

A. That was stated as being one of the objects of 30 the bill, passage of the bill.

Q. You have a distinct recollection of Mr. Heston and Mr. Mathis talking to you about this matter, have you?

A. Yes, sir.

Mr. Cole: But haven't a distinct recollection about Mr. Gaskill?

A. He might have spoke to me also about it.

Q. Did Judge Cole ever speak to you about this bill?

A. He might also.

By Mr. Cole:

Q. You mean to ask you to pass it?

10 A. No, not to ask me to pass it.

Q. Between the time that the Act passed and was vetoed by the Governor and it came back to the House to be passed over his veto, as it finally was, did Mr. Gaskill ever confer with you or did you ever confer with him about the bill?

A. You mean about the passage of the bill?

Q. Yes, over the Governor's veto.

A. Someone must have spoken about it, might have been Mr. Whitman, I don't know, or might
20 have been the others.

Q. Who do you think it was?

A. I couldn't tell you at this time because the bill came back from the Governor vetoed.

Q. And was kept there how long?

A. I don't remember, until Mr. Whitman moved the passage of it over the Governor's veto.

Q. About the last day of the Legislature, wasn't it?

A. What is the date of the passage?

30 Q. Don't you remember it was the last day?

A. No, I don't. Won't you look and see; let's have it right.

Q. We won't press that.

A. What is the date of the approval of the bill?

Q. The bill was passed April the twentieth, never was approved, it was passed April twentieth.

A. That was certainly within a few days of the closing of the Legislature.

Q. Now, will you say that Mr. Gaskill did not, nor did any one in his presence, confer with you about passing this bill over the Governor's veto after the Governor had vetoed it?

A. No, I wouldn't say that.

Q. You don't say that?

A. No.

By Mr. Coulomb:

10

Q. Will you say he was there?

A. No, I wouldn't say that either. I can't remember about the consultations when I am consulted a hundred times a day by different people.

Q. You were Speaker of the House last session, the session of 1915?

A. I was.

Q. Do you remember going to Judge Cole or speaking to him in anywise at all about this bill, 20 Mr. Godfrey?

A. My recollection is that I took a copy of the bill to Judge Cole with the idea of ascertaining whether the bill affected his client.

Q. Do you remember what was said by him?

A. My recollection is that he said that he considered the bill unconstitutional and therefore, for that reason, it did not seriously affect his client.

By Mr. Cole:

30

Q. Mr. Godfrey, you came to my office, didn't you?

A. Yes, I came to your office.

Q. What was the object of your coming?

A. I brought a copy of the bill, I think.

- Q. Why did you bring it to me?
A. To see what your view was as to the bill.
Q. Why?
A. Because the City Solicitor had been to my office with the bill just before that and I wanted to know the other side of it.
Q. Why did you come to me?
A. Because you represented your client.
Q. Who?
A. Mr. Keffer.
- 10 Q. Then you had some doubt, did you, as to whether the bill did affect Mr. Keffer?
A. I came to you to ask you whether in your opinion it did or not.
Q. How?
A. I came to you to find out.
Q. What did you say to me?
A. I don't remember. We discussed that one question. I remember, that is you explained to me your view of it, briefly.
- 20 Q. Do you remember my telling you on that occasion that you could not find in the law of New Jersey anywhere, that there never had been passed by any Legislature any such a bill as this?
A. You might have said that.
Q. Well, didn't I tell you that?
A. You might. I can't say.
Q. Mr. Godfrey, will you say did or didn't I?
A. No, I can't tell you all the conversations at all.
Q. Don't you remember my saying to you on that
- 30 occasion, challenging you to produce anywhere in the books another such Act, and if you could I would consent that bill be passed?

Mr. Coulomb: If your Honor please, I object to that.

Mr. Cole: Yes, he has brought the conversation out.

Mr. Coulomb: If your Honor please, whether I did or not, it is his witness.

The Court: What occurred, Judge Cole, between you and this witness is not relevant.

Mr. Cole: May it please your Honor, I agree to that, but my friend on the other side started, brought him in my office and proceeded to relate a conversation. Now, it seems to me that I ought not to be tied up to a part of the conversation. 10

Mr. Coulomb: You are not tied up, Mr. Cole.

The Court: The objection will stand.

Mr. Cole: I want to offer in evidence at this time a certified copy of transcript of the pleadings in the case of Martin E. Keffer against Atlantic City. 20

Mr. Coulomb: I object to that on the ground it is immaterial and irrelevant. I don't see what effect the pendency of that suit could have.

Mr. Cole: Part of the pleadings, in our answer, set up the subject of the payments.

The Court: I will take them. I will pass on that evidence. You can make your offer. 30

(Transcript admitted in evidence and marked Exhibit DL.)

Mr. Cole: I also offer a certified copy of the pro-

ceedings in quo warranto, Keffer, relator, against Gaskill, respondent.

Mr. Coulomb: I object on the same ground it is immaterial.

The Court: The quo warranto proceedings?

Mr. Cole: Quo warranto proceedings.

10 (Certified copy of proceedings in quo warranto admitted in evidence and marked Exhibit D2.)

MARTIN E. KEFFER, SWORN.

Direct examination.

By Mr. Cole:

20

Q. You remember the fact that the Commissioners passed a resolution appointing you Recorder in 1912?

A. I do.

Q. After that appointment, did you qualify and proceed to serve?

A. I did.

Q. And did you serve from that time until January 1st, 1915?

30 A. I did.

Q. What occurred on January 1st, 1915, so far as your office is concerned, your office was concerned?

A. Well, I went there in the morning and I think Mr. Grove, in fact, I know Mr. Grove was there first and suddenly Mr. Gaskill came in. Chief of Police

was there and handed me a copy of the resolution of December 31st, but I have just forgotten whether or not there was any cases tried. My impression at this time is there was no cases tried that morning. I protested against Mr. Gaskill entertaining any complaints, claiming my term had not yet expired, and he replied by saying he had been elected by the people and mentioned this resolution.

By the Court:

10

Q. How long were you appointed for by the Commission?

A. Three years, the term prescribed by law.

Q. When did your term begin?

A. July 23rd, 1912, and would have ended July 23rd, 1915, had I been permitted to serve.

Q. And you served during that time under that appointment?

A. Yes, sir.

20

By Mr. Cole:

Q. And you were serving under that appointment on the thirty-first of December, 1914, at the time of the passage of this resolution that has been offered?

A. I was.

Q. And you were there on the morning of the first of January, 1915, were you, for the same purpose?

A. Yes, sir.

Q. To discharge the duties of the office?

30

A. Yes, sir.

Q. Then what happened as near as you can recall?

A. Well, nothing else happened. I don't think either one of us tried any cases. Next morning I repeated the same ceremony. I was there and Mr. Gaskill was there.

Q. Did you from that time report to discharge the duties of your office?

A. I reported almost every morning from January 1st to July 23rd, 1915, except some few mornings I was not there.

Q. When you left on the first of January did you take anything with you?

A. I took them on December 31st.

Q. December 31st; by the way, did you learn of that resolution on December 31st?

10 A. Well, it was generally in the air that they were going to pass one. I didn't see the resolution.

Q. What did you take with you?

A. I took the two current dockets, the two seals, two cash books, check books, bank book, and some few other little things. I have just forgotten what they were.

Q. And how long did you keep them?

A. I kept those, I returned those, I think, right after the decision of the quo warranto case. I re-
20 turned them then.

Q. Do you remember the time and place when application was made for writ of certiorari to review the resolution of December 31st, 1914?

A. I do.

Q. Where was it at?

The Court: Do you mean to say that you kept the seal of your office during the period of time between December 31st, 1914, and July 23rd, 1915?

30 A. Yes, sir.

The Court: You kept the seal of your office?

A. Yes, sir.

Q. Where was the argument had for the writ of certiorari?

A. Before Justice Black at Chambers in Jersey City.

Q. Do you recall the date?

A. January 5th.

Q. Was Mr. Gaskill present?

A. He was.

The Court: Twenty-fifth when?

10

A. January 5th, 1916—no, January 5th, 1915. That is right. We had inquired for an earlier date, but owing to—

Q. I will get to that in a moment, but this was the fifth of January, at any event, in Jersey City?

A. Fifth of January.

Q. And you say Mr. Gaskill was there?

A. Mr. Gaskill was there.

Q. Was counsel there representing him?

A. Yes, sir.

20

Q. And was the writ allowed at that time?

A. Yes, sir.

Q. Do you remember the date of the argument of writ of certiorari and the quo warranto in the Supreme Court?

A. Yes, sir.

Q. Was Mr. Gaskill present?

A. Yes, he was there.

Q. Do you remember the argument before the Governor challenging the constitutionality of the Vali-
dating Act? 30

A. I do.

Q. Was Mr. Gaskill there?

A. He was there.

Q. Was counsel there representing him?

A. Mr. Schimpf.

Q. Or urging the approval of this Act?

A. Theodore W. Schimpf was there on behalf of the bill.

Q. Do you remember the argument before the Supreme Court on the validating Act?

A. Yes, sir.

Q. Was Mr. Gaskill there?

A. He was there.

Q. Was counsel there representing him?

10 A. Yes, sir.

Q. Now, were all these arguments we are talking about before July 23rd, 1915, when your time had expired?

A. Every argument preceded the date of the expiration of my term. I think the last argument was on the validating bill sometime in June.

Q. Were you before the, or at Trenton in the House of Assembly or the Senate from time to time as this validating Act was finding its way through?

20 A. Yes, sir.

Q. How many times were you there approximately?

A. Oh, I don't know, Judge. I was there, must have been four or five times anyhow.

Q. Did you see Mr. Gaskill there?

A. Yes, he was there.

Q. Have you been paid the salary of Recorder from January 1st, 1915, to July 22nd, 1915?

A. Yes, sir.

30 Q. By the city?

A. By the city, yes, sir.

By the Court:

Q. You were paid by the warrant Miss Townsend testified to?

A. Yes, by the warrant.

Q. Recently?

A. I got the warrant on January 7th, I think it was, wasn't it? Where is the resolution?

Q. There is no doubt about the time.

A. Day after the meeting, I got it. I think it was the seventh of January.

Cross-examination.

By Mr. Coulomb:

10

Q. Mr. Keffer, when you spoke of counsel being present on these various arguments you spoke of, you referred to Theodore W. Schimpf, the City Solicitor, did you not?

A. Yes, sir.

Q. You spoke of the resolution passed by the Board of City Commissioners in July, 1912. Do you recall whether that resolution referred to any length of time that you were to serve?

20

A. For the term—there was a general resolution mentioning the Recorder among others and said "For the term now prescribed by law" and that was three years.

Q. I mean did the resolution mention any term?

A. Didn't say three years, as I recall it.

Q. You entered into a bond, did you not, to the City of Atlantic City, together with Judge Cole when you obtained your warrant?

30

Mr. Cole: Objected to as not proper cross-examination, irrelevant and immaterial.

Mr. Coulomb: If your Honor please, he has testified he did receive a warrant and I think I have a

right to show under what circumstances it was received.

The Court: It appears in the case how the money was paid.

EDMUND C. GASKILL, recalled.

10 Direct examination.

By Mr. Cole:

Q. You are a member of the bar, are you not?

A. I am an attorney at law, yes, sir.

Q. How long have you been a member of the bar?

A. I was admitted in 1903.

Q. 1903?

A. Yes. I think it was November.

20 Q. And you have been active in the practice of law ever since, have you not?

A. More or less so, yes, sir.

Q. Do you remember the quo warranto proceedings in Keffer against yourself?

A. Yes, I remember them.

By the Court:

Q. When were you admitted to the bar?

30 A. November, 1903.

Q. Are you a counsellor at law?

A. Yes, I became a counsellor in February, 1911.

Q. Counsellor when?

A. February, 1911, that is February term, 1911. I think I was sworn in on St. Patrick's Day, if I am not mistaken.

By Mr. Cole:

Q. Who was your attorney in the quo warranto proceedings?

A. Theodore W. Schimpf.

Q. When did you hear the question first presented as to the legality of Mr. Keffer's appointment as Recorder by the Commissioners?

A. When did I hear of—just repeat that question.

(Question repeated.)

10

A. You mean when I first heard an argument?

Q. When did you first hear that there was a question as to the legality of Mr. Keffer's appointment, that is the appointment that was made by the Commissioners?

A. Why, I read something in the newspapers about an opinion that had been requested by Mr. Bell from Hr. Schimpf.

Q. And when was that?

20

A. I think it was along about the latter part of July.

Q. 1914?

A. 1914, yes.

Q. Had you ever before that time had it suggested to you that there was doubt as to whether Mr. Keffer had been lawfully appointed for the full term of three years?

A. Mr. Schimpf, I heard Mr. Schimpf say at one time that he had told Mr. Keffer that in his judgment the office of Recorder remained elective in Atlantic City and that if the Commission or if the City Clerk ever asked him for an opinion that he would so report.

30

Q. Now, when was that?

A. I don't know when that was. In fact, I had forgotten all about that conversation or that anything had ever been said about it until I read in the newspapers where the City Clerk had requested the opinion from the City Solicitor.

Q. Now, was that the first time—I am now speaking of the conversation which you say Mr. Schimpf had with Mr. Keffer, was that the first time you heard a question raised as to the legality of his appointment, Mr. Keffer's, for the full term of three
10 years?

A. I think so. I can't recall anything else.

Q. How long would you say that was before Mr. Bell asked for this opinion?

A. Oh, that was months before.

Q. How many months?

A. Well, I wouldn't be certain. I imagine say six or eight months before. It was a long time before.

Q. Did you ever confer with Mr. Bell touching that question?

20 A. No, I don't think I ever said anything to Mr. Bell until after he had gotten his opinion from Mr. Schimpf and I don't know even then I ever said anything to Mr. Bell about it, but if I did it was after he had gotten his opinion.

Q. Did you know—when did you first know that Mr. Keffer was challenging the right to elect the Recorder?

A. Why, I expected all along that he would be a candidate.

30 Q. Well, Mr. Gaskill, do you notice you didn't answer my question?

A. I notice, Judge; you will pardon me, please. Ask that question, please.

(Question repeated.)

A. Well, there were rumors that he, acting under the advice of Judge Cole, was going to hang on to the office.

Q. Now, when was that?

A. Oh, after the primary election, you know, all of the Commissioners were against me.

Q. Now, Mr. Gaskill, if you don't mind, answer my question and we will get along. I don't care anything about the Commissioners.

A. Everything was all right until after I was nominated.

10

(Question and answer repeated.)

A. Just as soon as I was nominated rumors began to come up.

Q. That you were nominated on the primary ticket?

A. Yes, the primary ticket.

Q. And on November 30th, 1914, you caused that letter to be sent to Mr. Keffer, didn't you?

20

A. Yes.

Mr. Cole: I want to offer that in evidence.

(Letter received in evidence and marked Exhibit D3.)

Q. And you received from Mr. Keffer a reply of which this I hand you is a copy, did you not?

A. I have the original here if you want it.

30

Q. Produce the original, yes, and I will put that in.

A. I think it will be better.

Mr. Cole: Witness presents original reply of Mr. Keffer and I offer that in evidence.

(Letter received in evidence and marked Exhibit D4.)

Q. Now, who dictated your letter of November 30th, 1914, to Mr. Keffer?

A. Well, it is on my stationery and was dictated in my office and I suppose I dictated it.

Q. Can you remember whether you did or not?

A. Well, I am sure I never took any stationery to anyone else's office and dictated a letter, and that is
10 the only reason why I say that it was dictated in my office.

Q. Do you recall having heard Mr. Schimpf dictate that letter?

A. Mr. Schimpf did not dictate the letter that is on this piece of paper here. Mr. Schimpf may have given some advice as to what to put in the letter, but Mr. Schimpf did not dictate this letter, because that was written in my office by my stenographer.

Q. I understand that written, but I am speaking
20 now of the dictation of the letter.

A. I say, Mr. Cole, that Mr. Schimpf may have suggested some things to go in that letter.

Q. Was Mr. Schimpf at that time your attorney in this matter?

A. No, Mr. Schimpf was acting as City Solicitor absolutely and not my attorney.

Q. Now, when did you first see or have your attention called to the case of Salter against Burk, in 83 Law, page 152?

30

Mr. Coulomb: Objected to, if your Honor please, on the ground it is irrelevant and immaterial as to when he may have had his attention directed to the law. The question of knowledge in a case like this, as to legal knowledge, the legal knowledge of the law

which everyone is presumed to have, has no application in a case of this character.

The Court: The objection is overruled.

(Exception noted for plaintiff.)

A. I don't know when my attention was first called to that case, but I think both the opinion that you gave the Commission and the opinion that Mr. Schimpf gave the City Clerk, I think that case is 10 cited in it.

Q. Did you read those opinions?

A. I think they were in the Municipal Journal and I read them.

Q. They may have been, and they may have been plastered on the Rock of Gibraltar, but the question is, did you read them?

A. Yes, I did.

Q. Yes, I thought so. And when did you read them? 20

A. Well, the opinion of Mr. Schimpf was published in the newspapers and I read that then.

Q. About that time?

A. Yes.

Q. Did you read the other opinion at or about the time of filing of it?

A. Schimpf's opinion?

Q. No, the other opinion, Mr. Cole's opinion.

A. That was sometime in October after the primary election, after I had been nominated. 30

Q. Before the general election?

A. Before the general election, yes.

Q. So that you knew of this case of Salter against Burk before the general election, didn't you?

A. Oh, yes.

Q. Did you read it?

A. Yes, I read it.

Q. When did you first read it?

A. Oh, I couldn't tell you that.

Q. Before the general election or after?

A. Why, I am pretty sure it was before the general election. And there is one section in that opinion —

Q. There is no question.

A. I know, Judge.

10 Q. Mr. Coulomb will probably ask you that.

A. All right, sir.

Q. Now, who drew the validating Act?

A. Theodore W. Schimpf, City Solicitor.

Q. Did you ask him to draw it?

A. No, sir.

Q. Did you hear anybody ask him to draw it?

A. No, I can't say that I did.

Q. Who handed it to you to be handed to the member of the Legislature?

20 A. If I recall correctly—I was a little surprised that Mr. Whitman testified the way he did, but that may be the case—I know I went to Trenton and that was the first time I ever saw the Legislature in session.

Q. And you were very anxious to have this Act passed, were you not?

A. Well, I didn't put anything in the way of it.

Q. You notice that don't answer my question. Of course you didn't put anything in the way of it. Did

30 you do anything to have it passed?

A. I couldn't do anything to have it passed.

Q. Did you ask anyone to vote for it?

A. The only man that ever discussed with me—

Q. Pardon me, my question is did you ever ask anybody to vote for that Act?

A. I did not.

Q. You were present before the committee to which this bill was referred during the discussion about its constitutionality?

A. Well, there were two meetings.

Q. Were you at both?

A. Yes, sir.

Q. Then you were there?

A. Yes.

Q. And you were before the Governor when the question of his vetoing it or approving it? 10

A. I was there, yes, sir.

Q. And you were up in the Legislature after the Governor had vetoed it, were you not?

A. No, Judge, I don't think I was there afterwards.

Q. What did you say to Mr. Whitman when you handed him the bill?

A. I couldn't—I might have said, "Here is the bill, Schimpf's bill," or something like that.

Q. Just like that, eh? 20

A. That was all I can remember. I can't remember anything else that I would say.

Q. Now, are you able to say, Mr. Gaskill, when Mr. Schimpf appeared before the Governor and appeared before the committee touching this validating Act, whether he was representing you or the city?

A. He was representing the City of Atlantic City, and not me.

Q. And the only time he represented you was in the quo warranto proceedings, is that correct? 30

A. And that was after his opinion as City Solicitor.

Q. Pardon me, I say the only time he represented you was in the quo warranto proceedings?

A. I didn't even ask him to represent me there.

That was the only time he ever appeared for me in anything so far as I know.

Q. What I want to know is—you have admitted he did represent you in this case, is that correct?

A. He appeared as my attorney, yes, sir. He didn't receive any fee for appearing for me.

Q. You knew, of course, that the Governor had vetoed this act?

A. Oh, yes, by the newspapers.

10 Q. And you also knew that this resolution of the Commissioners on December 31st, 1914, had been certioraried, writ had been allowed on the fifth of January, 1915, by Justice Black?

A. Yes, sir.

Q. You were present during that argument?

A. Yes, sir.

Q. Now, you were down in the office of Recorder on the thirty-first of December, 1914, were you not?

A. Yes, sir.

Q. What did you do there that day?

20 A. Well, I went down to look over what was in the office. That was after the resolution had been passed, the resolution instructed the clerk to turn over all the paraphernalia to me forthwith, and I went down and I found that there were two or three books missing, and seal, and I understood that Mr. Keffer had them, so I had or instructed Mr. Grove to change the combination on the safe and there was a new padlock put on the wardrobe door that is used to keep some of the dockets in, and there was a new
30 lock put on the desk for the Recorder's private papers.

Q. Now, this was on the thirty-first of December?

A. Yes; late, on that day.

Q. Why didn't you wait until the first day of January?

A. Well, I didn't think it was necessary. The resolution directed all this stuff to be turned over to me forthwith.

Q. Are you sure about that?

A. I am quite sure of it. I don't think I have forgot that. This is the resolution, Judge. (Indicating Exhibit P6.)

Q. Yes, it uses the word "Forthwith." And you knew, did you, of the passage of the resolution of October 19th, 1914, by the Commissioners, in which they ordered the salary to be paid to Mr. Keffer until the proper tribunal of the State held to the contrary? 10

A. As a matter of general information, yes.

Q. You also knew that Mr. Keffer had been acting as Recorder from the time of his appointment in 1912 continuously including the thirty-first of December, 1914, up to the time that you went in pursuant to that resolution?

A. Yes.

Q. Did you ever ask any member of the Board of Commissioners to vote for the resolution of December 31st, 1914? 20

A. I don't think I did, Judge.

Q. Did you ask anybody to ask them?

A. Well, now, that is a hard question. I don't recall of asking any one person to ask another to vote for me.

Q. Not vote for you. I am speaking of this resolution December 31st, 1914.

A. That is what I mean, this resolution December thirty-first. I can't recall a person I asked to intercede for me. 30

Q. And you never spoke to any member of the Board of Commissioners directly to ask them to rescind the resolution of October, 1914?

A. No, and I didn't know it was rescinded until just right recently.

Q. When did you first know of the intention to pass the resolution on December 31st, 1914?

A. Well, it was a matter, don't you know. There was kind of an under-current all over around the City Hall that that was going to be done.

Q. You were there, weren't you, when it was done?

A. I was in the Commission chamber, yes.

Q. And had you any information at that time that
10 it was going to be done?

A. Well, I was pretty sure it was going to be done, yes.

Q. Why were you pretty sure it was going to be done?

A. Well, I don't know just from whom I got the information. I suppose probably Mr. Schimpf might have told me. He generally draws the resolutions, and I think he drew that resolution.

Q. At all events, from some source you were pretty
20 well informed and believed that that resolution of December 31st was going to be passed at that afternoon session of the Commission?

A. I imagined it would come up, yes, sir.

Q. Well, didn't you know it was going to be passed?

A. You know those Commissioners; you can't always tell what they are going to do.

Q. I don't want you to pass any criticism on the Commissioners. I want to know whether you knew
30 the fact or not?

A. If I hadn't talked to any of the Commissioners as to how they were going to vote, I certainly did not know what they were going to do with the resolution.

Q. Did you have a copy of that resolution yourself?

A. I think there was, the copy or draft that I had was changed.

Q. Where did you get it?

A. I think I got it from Mr. Schimpf.

Q. How long before it was passed by the Commissioners?

A. Well, now, I don't know.

Q. Was it some days before it was finally passed?

A. I don't think so.

Q. Same day?

A. I couldn't tell you, Judge.

10

Q. Do you know how it came to be handed to you?

A. No, I don't know.

Q. But it was handed to you?

A. I think I had a copy of it. That is not the exact duplicate of the one that was passed.

Q. No, but one something like it?

A. One something like that.

Q. What I am anxious to know is, and would like to have the jury know, how it happened that you were being furnished with a copy of this resolution or something like it before it was passed?

20

A. I always try to keep copies of papers in which I have any interest at all, and I imagine, if I did have a copy of it that I got in that way.

Q. You had an interest in it, did you, the passage of this resolution?

A. It affected my office and I certainly had some slight interest in it.

Q. Having that slight interest, did you try to do something to have it passed?

30

A. No, I felt this way, Judge, that——

Q. I don't——

A. All right, then.

Q. I don't want to know about how you felt. I want to know what you did. What was said to you when you were handed a copy of this resolution?

A. I don't know, Judge.

Q. Was it typewritten?

A. I think it was, yes.

Q. Did you show it to anybody?

A. I don't know whether I did or not. I don't think I showed it to Mr. Keffer.

No cross-examination.

10

ALBERT BEYER, SWORN.

Direct examination.

By Mr. Cole:

Q. Mr. Beyer, you are one of the Commissioners of Atlantic City?

A. Yes, sir.

20 Q. And I think you voted for the, did you not, for the resolution of December 31st?

A. Yes, sir.

Q. When did you first know of that resolution, that is, I mean with relation to December 31st, the day it was passed?

A. When did I first know?

Q. When did you first know there was such a resolution to be introduced?

30 A. That afternoon when we went into the Commission room.

Q. That was your first information?

A. Yes.

Q. Had you been approached before that by anybody to ask you to vote for that resolution?

A. No, sir.

Q. Had Mr. Gaskill talked with you about it at all?

A. No, sir.

Q. Anyone in his behalf?

A. No, sir.

Q. By whom was the resolution introduced?

A. I think by Mr. Bartlett.

No cross-examination.

10

WILLIAM H. BARTLETT, SWORN.

Direct examination.

By Mr. Cole:

Q. Mr. Bartlett, you are one of the Commissioners also?

A. I am.

Q. And you introduced this resolution of December 31st, 1914, I believe? 20

A. That was my recollection.

Q. Do you recall who handed you the resolution?

A. Why, I think it came from Mr. Schimpf.

Q. You had voted for the resolution of October 29th, as I remember?

A. October 24th.

Q. Whatever the date was, recognizing Mr. Keffer?

A. I think so, yes. 30

Q. And then you voted to rescind that resolution on December 31st?

A. Yes.

Q. Had Mr. Gaskill seen you between the passage of the resolution of October and that of December to urge you in any way to change your position?

A. No. He had seen me before that.

Q. Before October, you mean?

A. Yes.

Q. When was that?

A. I think sometime the preceding summer.

Q. What did he see you about?

A. He wanted me to be willing to pay him his salary.

Q. Well, which summer are you talking about?

A. Well, the summer of 1914, I think, sometime.

10 Q. You knew he didn't go into office until January, 1915?

A. Exactly, but he was, wasn't he, a de facto officer at that time?

A. No, he didn't go in at all until January 1st, 1915. You see, the resolution that I am talking about, two resolutions, one of October 24th, 1914, in which, while Mr. Keffer was still holding office, the Commissioners directed the Comptroller to pay the salary to Mr. Keffer. Now, on December 31st, 1914, 20 the day before Mr. Gaskill went into office, the Commissioners passed a resolution rescinding the resolution of October. Now, you had voted for Mr. Keffer in October and you voted against him in December?

A. I am a little off. It was a year later.

Q. I thought you were mistaken.

A. Yes, 1915.

Q. Well, what time was it in 1915 he spoke to you about the salary?

A. I think sometime in the summer.

30 Q. Was that before or after Mr. Keffer's time had expired?

A. Why, I couldn't tell that positively, just about.

Q. Well, had Mr. Gaskill at all talked with you about this matter between October, 1914, and December, 1914?

A. No.

Q. Anybody in his behalf?

A. No.

Q. Well, do you mind my asking how it came about that you changed your position, whether it was due to anything Mr. Gaskill said or anybody representing him? That is what I want to know.

A. No, it wasn't due to anything of that sort.

No cross-examination.

10

HARRY BACHARACH, SWORN.

Direct examination.

By Mr. Cole:

Q. Now, Mr. Bacharach, you are one of the Commissioners also?

20

A. Yes.

Q. You were present at the meeting in October, 1914, and also December 31st, 1914, when these resolutions were passed concerning this office?

A. I was in December. I imagine I was in October. I don't recall.

Q. At any time from the time of the primary election in 1914 until December 31st, 1914, when this resolution in question was passed, had you been approached by Mr. Gaskill concerning his right to hold the office, or the question of the validity of that election?

30

A. Not by Mr. Gaskill.

Q. Had you, had it been talked about in his presence?

A. Not to my knowledge.

Q. That is, I mean, had the question of the validity of that election been talked about in Mr. Gaskill's presence?

A. No, I have no recollection of that, Judge.

Q. Did anyone on behalf of Mr. Gaskill approach you concerning the payment of his salary or recognizing him as a de facto officer?

A. You are talking up until January 1st, 1915, now?

10 Q. Yes.

A. Mr. Schimpf.

Q. He was representing Mr. Gaskill; he was representing the city, wasn't he?

A. No. He was City Solicitor.

Q. Exactly. Now, then, from January 1st and between that time and July 22nd, did Mr. Gaskill approach you about his salary?

A. I think sometime during that period and the summer, that he did approach me about his salary.

20 Q. Was the question of the validity of his election then discussed at any time in your presence?

Mr. Coulomb: What has this got to do with it, after the salary has been earned, if it has been earned?

The Court: Was this after?

Mr. Coulomb: This was during last summer.

30

Mr. Cole: No, Mr. Coulomb, my time is fixed between January 1st and last summer, but I don't know I want to press the question.

(Question withdrawn.)

No cross-examination.

DAVID H. PORTER, recalled.

Direct examination.

By Mr. Cole:

Q. Have you the resolution appointing Mr. Keffer?

A. Yes, sir, certified copy. 10

(Certified copy produced.)

Mr. Coulomb: I object to the admission of it on the ground that it is irrelevant and immaterial, not on the ground it is improper because it is all right so far as that is concerned, in reference to Mr. Keffer's title.

The Court: What resolution? 20

Mr. Cole: Appointing Mr. Keffer.

Mr. Coulomb: Resolution of 1912 appointing Mr. Keffer Recorder.

Q. This meeting was held July 16th, 1912, and the resolution reads: "Mr. Bartlett nominated Mr. Martin E. Keffer for the office of Recorder," and that resolution was passed, was it? 30

A. That is the resolution.

Q. And this is a certified copy of the record?

A. Yes, sir.

(Paper received in evidence and marked Exhibit D5.)

Q. Now, the one creating the different offices, have you that here?

A. I haven't that, Judge. You have certified copies of that.

Mr. Cole: I offer certified copy of the resolution passed July 23rd, 1912.

Mr. Coulomb: I object to it, if your Honor please, on the ground that it is irrelevant and immaterial.

10

Mr. Cole: Creating the offices for the full term prescribed by charter.

Mr. Coulomb: I object to it, on the ground, in the opinion of the Supreme Court declaring that Martin Keffer was the lawful candidate, they said that the office was not abolished, whereas this resolution assumes to abolish and recreate the office.

20

The Court: Well, I understand, but this is—this goes to the question whether Keffer had the legal title and Gaskill not the legal title.

Mr. Coulomb: If your Honor please, that question we claim is irrelevant because it has already been decided.

(Certified copy received in evidence and marked Exhibit D6.)

30

DEFENDANT RESTS.

PLAINTIFF'S REBUTTAL.

DAVID H. PORTER, recalled.

Direct examination.

By Mr. Coulomb:

Q. Mr. Porter, have you with you the bond given
by Mr. Keffer and Judge Cole in connection with the
payment of the warrant to Mr. Keffer?

10

A. I have.

Q. Will you produce it, please?

A. The resolution?

Q. The resolution and the bond.

A. That is the resolution and that is the bond.

(Two papers produced.)

20

Q. This is the original resolution?

A. Yes, sir.

Mr. Coulomb: I offer the original resolution.

Mr. Cole: I object to both on the ground it is not
cross-examination and wholly irrelevant and imma-
terial to this issue.

Mr. Coulomb: You rested and I recalled Mr. Por-
ter as my witness.

30

Mr. Cole: I object to it on the ground it is not
relevant.

The Court: What is it?

Mr. Coulomb: It is the bond accompanying this payment to Mr. Keffer and I claim that is relevant because, from our point of view, it makes this payment no payment at all.

The Court: I see, you take the course the city has not lost?

10 Mr. Coulomb: The city has not lost.

The Court: Let it be admitted.

(Exception noted for defendant.)

(Resolution admitted in evidence and marked Exhibit P16 and bond marked Exhibit P17.)

20

ALBERT BEYER, recalled.

Direct examination.

By Mr. Coulomb:

Q. Mr. Beyer, on the seventh of January did you draw a warrant in favor of Martin E. Keffer?

A. No, Miss Townsend did.

30 Q. And what connection did you have with that warrant in order to make it negotiable?

A. Why, Miss Townsend draws it and gives it to the one it is drawn to and I take it from the bank as City Treasurer.

Q. Did you sign it?

A. No, I don't sign it at all, I just take it up from the bank.

Q. You got the warrant back from the bank?

A. Yes, sir.

Q. Will you produce it, please?

(Original warrant produced.)

Mr. Coulomb: I want to offer this warrant in evidence, if your Honor please.

Mr. Cole: I object. It is not competent. It is not relevant and it is not re-direct proof. 10

Mr. Coulomb: If your Honor please, it is re-direct proof. From their defense they attempted to show payment and the means of payment was this warrant, and I say this warrant is part of the *res gestae*.

The Court: What did you want to prove by that?

Mr. Coulomb: I want to prove by this warrant this money was deposited to the credit of Clarence L. Cole, by the endorsements on the back of the check, and the money has not yet passed out of the control of counsel. 20

Mr. Cole: I renew the objection it is incompetent, and I ask now that the statement by counsel be drawn to the attention of the jury and the jury be told not to consider it. 30

Mr. Coulomb: If your Honor please, the check speaks for itself.

Mr. Cole: I know, but the check is not in evidence yet.

Mr. Coulomb: I was asked why that check was offered in evidence, and that is the reason.

Mr. Cole: I understand.

The Court: The check will be admitted.

(Warrant received in evidence and marked Exhibit P18.)

10 (Exception noted for defendant.)

EDMUND C. GASKILL, recalled.

Direct examination.

By Mr. Coulomb:

20 Q. Mr. Gaskill, when you took your office or went into office on the first of January, 1915, or the thirty-first of December, 1914, you found that the seal of the office had been taken by Mr. Keffer or by someone?

A. Yes, sir.

Q. Was—were you authorized to purchase a new seal?

A. The city purchased one.

Q. The city purchased one?

A. Provided a new seal.

30 Q. And you used that seal?

A. Yes, using it now.

PLAINTIFF RESTS.

PLAINTIFF'S MOTION FOR DIRECTION.

Mr. Coulomb: If your Honor please, I want to, at this time, make a motion that a verdict in this case be directed in favor of the plaintiff upon the ground that there is no evidence to go to the jury and by which the jury can infer that Mr. Gaskill, either by force or by fraud, conducted the office as Recorder during the period for which he now claims his salary. I want to make that motion, unless your Honor cares I should go into any extensive argument, my argument is that there is no proof whatsoever that Mr. Gaskill had anything whatsoever to do with the passage of either the resolution or any of the steps which led up to the taking of the office, either the first call for the opinion by Mr. Bell, the advertising for the primary election, his running at the primary election, the advertising for the general election, his running at the general election, his election at that election by quite a large number of votes, the passage of the resolution of December 31st, 1914, rescinding the former resolution and recognizing Mr. Gaskill, that there is no proof from which fraud can be inferred or which in any wise connects fraud, either in the passage of those resolutions, so far as Mr. Gaskill is concerned, or in the passage of this Act.

The Court: I will hear you, Judge Cole.

30

DEFENDANT'S MOTION FOR DIRECTION.

Mr. Cole: I not only challenge this motion on the ground, that if this case is to turn upon the question of fraud or force, or lack of color of title, that they are all jury questions, and I make a motion that your Honor direct a verdict in this case in favor of the
10 defendant and if your Honor permits me I will point out why I think that motion should prevail, and base it upon the cases in New Jersey which have dealt with this question.

(Mr. Cole and Mr. Coulomb then argued the legal points to the Court, and the jury was dismissed until Monday morning, January 24th, 1916, at 9.30 A. M.)

20

Monday Morning, January 24th, 1916.

Hearing resumed at 9.30 A. M.

(Mr. Cole and Mr. Coulomb then continued with their argument of the legal points to the Court.)

The Court: There are no disputed facts, are there?

30

Mr. Coulomb: Only the question of inference. There are no disputed facts in this case, simply the question of inference as to whether from these inferential facts, force or fraud may be drawn. If your Honor please, I say in this case that we are entitled

to recover because we bona fidely performed the services and we entered upon the office with color of title.

The Court: The Court is prepared to deal with this question, gentlemen. There can be no doubt that in a proper case, a bona fide de facto officer would be entitled to recover compensation from the public for his services, but where the office is already filled, as here, and the legal incumbent is in the regular discharge of his official duties, the burden of proof is 10 upon one who claims to be the de facto officer to show a manifest case of probable cause justifying his conduct before the Court will even consider a claim for services growing out of a so-called de facto relationship with the public.

Now, has the plaintiff done that? The answer of the undisputed facts in the case is no. Plaintiff is a counsellor at law and, therefore, presumed to be learned in the law. The law was too plain to admit of any doubt about its meaning, besides plaintiff knew 20 that his claim to said office was seriously challenged by the incumbent, even before the municipal election. Now, would it be right for the law to allow the usurper to profit by his wrongdoing in ousting the legal incumbent under the undisputed facts of this case? There was no vacancy, hence the public could not have been harmed by a non-performance of the duties of the office by plaintiff, therefore it was plaintiff's duty to invoke the aid of the law if he believed in his title, and not take the law in his own hands by 30 gaining forcible possession of the office, thus ousting the legal incumbent and taking a chance of having his seat validated by an Act of the Legislature. Keffer was compelled to prosecute quo warranto proceedings upon which he obtained a judgment of

ouster. Afterwards the defendant paid him his salary for the period of time in question. The plea of puis darrein continuance, which the Supreme Court allowed after argument, is sustained by the proof, but, even if it were not, plaintiff in the opinion of the Court had no contract with the defendant, either expressed or implied. He was only a volunteer taking a chance of being paid. It is conceded that there is no disputed question of fact here. The effect of the facts, or the inferences to be drawn therefrom, in the
10 judgment of the Court are not such as would be likely to create any difference of opinion among fair-minded men. Gentlemen of the jury, the Court takes the responsibility of directing you to return a verdict for the defendant. Clerk, you may take the verdict.

(Exception noted for plaintiff.)

Mr. Coulomb: I want to except to the suggestion of the Court that we conceded that there was payment. We conceded that there was no dispute as to
20 the fact surrounding or from which the jury might have inferred the question of payment, but it was for the jury to infer whether or not there was payment from the fact, or it was for the jury to have inferred whether or not there was force or fraud from the facts, or whether or not the plaintiff was chargeable with knowledge of the law from the facts appearing in the case.

(Which exception is hereby allowed.)

30 Mr. Coulomb: I also wish an exception to the refusal of the Court to direct a verdict in favor of the plaintiff.

(Which exception is hereby allowed.)

(Exhibits P1, 2, 5, 6, 8, 9, 10, 11, 12, 13, 14 and part of 15 printed in the testimony.)

EXHIBITS P3 AND P4.

(Advertisements published in Atlantic City Press and Sunday Gazette.)

PUBLIC NOTICE

Notice of
REGISTRY
and
ELECTION

10

Pursuant to the provisions of the Legislature of the State of New Jersey, entitled "An Act to Regulate Elections (revision of 1898)" approved April 4th, one thousand eight hundred and ninety-eight, and the several supplements and amendments thereto.

Notice is hereby given that the Board of Registry and Election in and for each election district in the City of Atlantic City will meet for the purpose of making a registration of voters on

Tuesday, September 8th, 1914

and

Tuesday, October 20th, 1914,

between the hours of 1.00 o'clock P. M. and 9.00 o'clock P. M., of said day, and on

Tuesday, September 22, 1914,

for the Registration of voters for the General Election only, between the hours of 7 o'clock A. M. and 9 o'clock P. M. of said day.

And that a Primary Election for all political parties will be held in each election district of Atlantic City on

Tuesday, September 22, 1914,

between the hours of 7 o'clock A. M. and 9 o'clock P.

M. for the purpose of making nominations of candidates for the following offices:

- (1) Member of the House of Representatives of the United States.
 - (2) Assemblymen.
 - (1) Sheriff.
 - (2) Coroners.
- City of Atlantic City.
- (1) City Treasurer.
 - (1) City Recorder.
- 10 (1) City Tax Collector.
- First Ward.
- (1) Chosen Freeholder.
 - (3) Constables.
- Second Ward.
- (1) Chosen Freeholder.
- Third Ward.
- (1) Chosen Freeholder.
 - (1) Justice of the Peace (Unexpired term—Henry E. Gruber.)
- 20 (1) Constable (Unexpired term—John Rhodes.)
- Fourth Ward.
- (1) Chosen Freeholder.
 - (2) Justices of the Peace.
 - (1) Constable.

- Also for the election of two (2) Republican Members to the Republican Executive Committee; Two (2) Progressive (Roosevelt) Members to the Progressive (Roosevelt) Executive Committee, from each ward and two (2) members to the Democratic
- 30 County Committee from each Precinct.

The General Election will be held on
 Tuesday, November 3, 1914,
 between the hours of six o'clock A. M. and seven
 o'clock P. M. for the purpose of electing candidates
 to fill the following offices:

- (1) Member of the House of Representatives of the United States.
- (2) Assemblymen.
- (1) Sheriff.
- (2) Coroners.

City of Atlantic City.

- (1) City Treasurer.
- (1) City Recorder.
- (1) City Tax Collector.

First Ward.

- (1) Chosen Freeholder. 10
- (3) Constables.

Second Ward.

- (1) Chosen Freeholder.

Third Ward.

- (1) Chosen Freeholder.
- (1) Justice of the Peace (Unexpired term—Henry E. Gruber.)
- (1) Constable (Unexpired term—John Rhodes.)

Fourth Ward.

- (1) Chosen Freeholder. 20
- (2) Justices of the Peace.
- (1) Constable.

The Board of Registry and Election will sit to register voters, to conduct the Primary Election and the General Election, on the days and between the hours mentioned in this notice at the following places:

(Polling places named.)

Dated August 30th, 1914.

DANIEL H. V. BELL,

Clerk of the City of Atlantic City. 30

Proof of publication in Atlantic City Review and Sunday Gazette.

EXHIBIT P7.

1/21/16 L.

City Clerk's Office
Atlantic City, N. J.

December
Thirty-first,
1914.

10

Hon. Edmund C. Gaskill, Jr.,
Atlantic City,
New Jersey.

Dear Sir:—

Herewith attached please find certified copies of
two resolutions passed at a regular meeting of the
Board of Commissioners of the City of Atlantic City,
held December 31, 1914, relating to the Office of City
Recorder of the City of Atlantic City.

20

Yours truly,

Daniel H. V. Bell,
City Clerk.

30

EXHIBIT P14.

EDMUND C. GASKILL, JR.
Counsellor at Law
Bartlett Building
Atlantic City, N. J.

November 11, 1915.

City of Atlantic City
To Edmund C. Gaskill, Jr., Dr. 10
To services rendered as
Recorder of Atlantic City
from January first, 1915,
to July twenty-second, 1915,
both inclusive, at \$2500
per year \$1402.73

City Solr.

City Comp.

Filed Nov. 11, 1915.
11.15 A. M.

STATE OF NEW JERSEY, COUNTY OF ATLANTIC, ss.

EDMUND C. GASKILL, JR., being duly sworn, 20
deposeth and saith that the several items in
the annexed account are correct and true, that the
services therein stated were actually and faithfully
performed, that no part thereof has been paid or
satisfied, other than stated, and that no bonus
has been given or received by any person or persons
with the knowledge of the deponent in connection
therewith.

Sworn and subscribed to before me this 30
16th day of November, 1915.

EDMUND C. GASKILL, JR.

The person making the affidavit
will sign on the above line.

Winfield S. Kirk
Notary Public.

The items specified in the above account were necessary for the purposes of this department and were authorized by the undersigned, in conformity with the ordinances of Atlantic City, for the use and benefit of said city. Each item has been received and its quality is as ordered. The work specified has been properly done and each price charged is correct. No price is higher than the prevailing market price as far as we can ascertain, or more than the contract price.

10 Approved for audit by the Comptroller.

Mayor of Atlantic City.

Approved.

Date _____

19 _____

Commissioner.

20

PART OF EXHIBIT P15.

MARTIN E. KEFFER

Counsellor at Law.

Guarantee Trust Building

Telephone

Atlantic City, N. J. Nov. 9, 1915.

City of Atlantic City

To Martin E. Keffer, Dr.

To salary as City Recorder

from January 1st, 1915 to

30 July 22, 1915, inclusive

6 months 22 days at \$2500 per year \$1402.76

1/7/6

Received payment

Salaries.

Martin E. Keffer.

MARTIN E. KEFFER
Counsellor at Law.
Guarantee Trust Building.

Telephone Atlantic City, N. J. Nov. 9, 1915.
City of Atlantic City

To Martin E. Keffer, Dr.

To salary as City Recorder from
January 1st, 1916, to July 22, 1915,
both inclusive, seven months
twenty-two days, at \$2500 per year \$1606.15
Received Oct. 27, 1915, 3.00 P. M.

10

Salaries.

STATE OF NEW JERSEY, COUNTY OF ATLANTIC, ss.

MARTIN E. KEFFER, being duly sworn deposeseth
and saith that the several items in the an-
nexed account are correct and true, that the services
therein stated were really to be performed, that no
part thereof has been paid or satisfied, other than
stated, and that no bonus has been given or re-
ceived by any person with the knowledge of the
deponent in connection therewith.

20

Sworn and subscribed to before me this
7th day of Jany. 1916.

MARTIN E. KEFFER.

The person making the affi-
davit will sign on the above
line.

C. L. Cole

M. C. C. of N. J. Notary Public.

The items specified in the above account were 30
necessary for the purposes of this department and
were authorized by the undersigned, in conformity
with the ordinances of Atlantic City, for the use and
benefit of said city. Each item has been received and
its quality is as ordered. The work specified has

been properly done and each price charged is correct. No price is higher than the prevailing market price as far as we can ascertain, or more than the contract price.

Approved for audit by the Comptroller.

WM. RIDDLE,

Mayor of Atlantic City

Approved
ALBERT BEYER,
Commissioner.

Date Jan. 7, 1916.

10

EXHIBIT P16.

City Comptroller Authorized to Pay
Salary of Martin E. Keffer Upon Filing Bond in
Double the Amount Signed By Martin E.
Keffer and C. L. Cole and Being
Approved as to Form By
City Solicitor.

20

Resolution by President Riddle.

BE IT RESOLVED by the Board of Commissioners that the salary due to Martin E. Keffer as City Recorder from Jan. 1, 15 to July 22, 15 inclusive to be paid to him by the City Comptroller upon the filing with the City Clerk of a bond in double the amount signed by Martin E. Keffer & C. L. Cole to be approved as to form by the City Solicitor.

30 Upon motion this resolution was adopted as read.

Attest:

Daniel H. V. Bell,
City Clerk.

EXHIBIT P17.

KNOW ALL MEN BY THESE PRESENTS THAT MARTIN E. KEFFER as principal and Clarence L. Cole as surety (both of Atlantic City, New Jersey), are held and firmly bound unto Atlantic City, a municipal corporation of the State of New Jersey, or its successor, in the sum of three thousand 10 (\$3000.00) dollars, good and lawful money of the United States to be paid to the said Atlantic City or its successor for which payment well and truly to be made we bind our and each of ourselves, our and each of our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

SEALED with our seals and dated this sixth day of January, nineteen hundred and sixteen.

WHEREAS there is pending in the Supreme 20 Court of the State of New Jersey, an action brought by Martin E. Keffer against Atlantic City to recover the salary of Recorder from the first day of January, nineteen hundred and fifteen to the twenty-third day of July, nineteen hundred and fifteen, and WHEREAS there is also pending in the same Court a suit brought by Edmund C. Gaskill, Jr., against said City to recover the same salary, and WHEREAS the Board of Commissioners of Atlantic City did on the day of the date hereof adopt a resolution authorizing 30 the Comptroller of Atlantic City to pay said salary to the said Martin E. Keffer, and whereas it may be finally determined that said salary should be paid only to Edmund C. Gaskill, Jr.

NOW THE CONDITION OF THIS OBLIGA-

TION IS SUCH that if the above bounden Martin E. Keffer shall well and truly indemnify said City and save it harmless from any and all costs and expenses incident to the pending action of said Edmund C. Gaskill, Jr., in case he should be successful in said action, and reimburse said City for the amount so paid to him, Keffer, (upon condition, nevertheless, that the said Keffer shall have the right to control the litigation of said Gaskill,) then this obligation to be void, otherwise to remain in full force and virtue.

10 Signed, sealed and delivered

in the presence of

MARTIN E. KEFFER

[Seal]

THERESA M. WOOLBERT

CLARENCE COLE

[Seal]

20

[ENDORSED]

BOND
MARTIN E. KEFFER
TO
ATLANTIC CITY.

The within Bond approved this 6th
day of January 1916.

30

THEO. W. SCHIMPF
City Solicitor

To Bessie M. Townsend
City Comptroller

The resolution of this date and the
filing of the within bond entitles M. E.

Keffer to the Recorder's salary from
Jan. 1, 15 to July 22, 15 inclusive

THEO. W. SCHIMPF
City Solicitor

C. L. Cole
Counsellor at Law
Guarantee Trust Building
Atlantic City, N. J.

Filed Jan. 7, 1916 9. 15 A. M.

Approved as to surety

B. M. TOWNSEND 10
City Comptroller

1/7/16

EXHIBIT P18

No. 672 T14 Comptroller's Warrant \$1402.76
City of Atlantic City Jan 7 1916
State of New Jersey. 20

Treasurer of Atlantic City

Pay to MARTIN E. KEFFER or order

One thousand four hundred two Dollars Seventy-six cents Dollars amount of claim against this city which I have examined and approved and hereby certify to you for payment. Payable at Atlantic City National Bank. Charge to the account of appropriation for Salaries.

B. M. TOWNSEND
Comptroller. 30

Endorsement.

Pay to the order of C. L. Cole
Martin E. Keffer
credit
C. L. Cole.

Pay to the order of any Bank or
Trust Co. Prior endorsements
Guaranteed.
Jan 10 1916
Atlantic Safe Deposit & Trust Co.
55-140 Atlantic City, N. J. 55-140
Silas Shoemaker, Treasurer.

10

EXHIBIT D1.

1/21/16 L.

SUPREME COURT OF NEW JERSEY.
ATLANTIC COUNTY.

20	MARTIN E. KEFFER, Plaintiff,	}	Transcript of Plead- ings for Trial.
vs.	C. L. Cole, Atty. for Plaintiff.		C. L. Cole, Atty. for Plaintiff.
ATLANTIC CITY, Defendant.	Theo. W. Schimpf, Atty. for Defendant.		Theo. W. Schimpf, Atty. for Defendant.

(Summons Issued November 15th, 1915)

The plaintiff Martin E. Keffer of the City of Atlantic City County of Atlantic and State of New Jersey says that:

30 At an election duly and legally called the voters of Atlantic City in nineteen hundred and twelve adopted an act entitled "An Act, relating to and regulating and providing for the government of Cities, towns, boroughs and other municipalities within this State" approved April 25th 1911 and popularly known as the "Walsh Act."

(2) That thereafter Commissioners were duly elected, who legally organized and at a regular meeting held July 23rd 1912 appointed plaintiff as Recorder of Atlantic City for the term of three years from said date,

(3) That said City had theretofore adopted the Act of 1902 known as Chapter 107 page 284 P L 1902.

(4) That plaintiff duly qualified as Recorder and immediately took upon himself the duties of said office and continued therein until January 1st, 1915. 10

(5) That on January 1st, 1915 one Edmund C. Gaskill Jr. usurped and fraudulently entered upon said office and unlawfully ousted plaintiff, who since said day and until July 24th 1915 retained the seal and books of said office and daily tendered himself ready able and willing to discharge the duties of said office but was prevented by reason of the actions of said Gaskill.

(6) That plaintiff instituted proceedings in Quo Warranto in the Supreme Court of New Jersey 20 against said Gaskill and obtained a judgment of ouster against him in September, 1915.

(7) That the salary of said office is \$2500 a year no part of which has been paid by said City to said Gaskill or to plaintiff for the term from January 1st 1915 to July 23rd 1915, plaintiff demanded of defendant payment of the sum due for said period and was refused.

Plaintiff demands Eighteen hundred and seventy-two dollars damages. 30

C. L. Cole,

(Filed Nov 18 1915) Attorney for Plaintiff.

The Defendant a municipal corporation of the county of Atlantic and state of New Jersey, says:—

1. That it admits paragraphs one, two, three, four, six and seven of the plaintiff's complaint.

2. That it admits paragraph five of plaintiff's complaint except the allegation that Edmund C. Gaskill, Jr. "fraudulently" entered upon said office which it neither admits nor denies because it has no knowledge thereof sufficient to form a belief.

DEFENSES.

3. On August 30, 1914 a call was issued for and on September 22, 1914 a primary election was held for the selection of candidates for the office of Recorder of Atlantic City; That on November 3, 1914
10 at the general election Edmund C. Gaskill, Jr., one of the candidates selected at said primary election was chosen and elected Recorder of Atlantic City for a term of three years beginning January 1, 1915. That afterwards the Board of canvassers of the County of Atlantic met, canvassed the vote and issued a certificate of election that Edmund C. Gaskill, Jr., was elected Recorder of Atlantic City That afterwards and in the time limited by and in the manner provided by law the said Edmund C. Gaskill, Jr., qualified as Recorder of Atlantic City; and
20 that On January 1, 1915 the said Edmund C. Gaskill, Jr., assumed the duties of the office of Recorder of Atlantic City since which time and until July 22, 1915 he has acted as such Recorder to the exclusion of the said Martin E. Keffer. That by virtue of such call, election and canvas, qualification and assumption of the duties of the office of Recorder of Atlantic City, the said Edmund C. Gaskill, Jr., claims and alleges that he became and was during
30 the time aforesaid the de facto Recorder of the city of Atlantic City and having performed the duties of said office is entitled to the salary therefor and that the said Martin E. Keffer not having performed the duties of said office is not entitled to the salary sued for.

4. That there is now pending and undetermined an action in the Supreme Court of New Jersey by the said Edmund C. Gaskill, Jr. against this defendant for the same amount and salary as is involved in this suit.

Theo. W. Schimpf,
(Filed Dec 30 1915) Attorney of Atlantic City.

Plaintiff replying to defendant's defenses denies that Edmund C. Gaskill, Jr., was elected Recorder as alleged; that the Board of Canvassers of Atlantic County issued a certificate of his election; that said Gaskill qualified as Recorder; that he acted as such to the exclusion of the plaintiff; and that said Gaskill was de facto recorder as alleged. 10

C. L. Cole,
(Filed Jan 5 1916) Attorney for Plaintiff.

I, WILLIAM C. GEBHARDT, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true transcript of the pleadings in the above stated cause as the same remain on file in my office. 20

[SEAL]

In testimony whereof I have set my hand and the seal of said Court at Trenton, this fifth . . . day of January, A. D. nineteen hundred and sixteen.

Wm. C. Gebhardt
Clerk.

EXHIBIT D2.

NEW JERSEY SUPREME COURT.

10	The State of New Jersey, Ex Rel. Martin E. Keffer, Relator,	}	On Quo Warranto. Judgment for Relator.
	vs.		On Demurrer to Plea.
	Edmund C. Gaskill, Jr. Respondent.	}	C. L. Cole, Attorney.

Information. (Filed January 13, 1915).

Plea. (Filed January 25, 1915).

Demurrer. (Filed January 28, 1915).

This cause was heard before our Supreme Court at the February Term, 1915, and judgment of ouster
20 was ordered entered in favor of the relator and against the respondent from the office of recorder in the City of Atlantic City and County of Atlantic.

Whereupon it is adjudged that the relator, Martin E. Keffer, is entitled to the office of recorder in the City of
Costs \$64.00 Atlantic City and County of Atlantic and that the relator, recover of Edmund C. Gaskill, Jr., the respondent, the sum of Sixty Four Dollars costs.

30

Judgment entered October 7, 1915.

Wm. S. Gummere, C. J.

I, WILLIAM C. GEBHARDT, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment

entered in the above stated cause as the same remains of record in my office.

[SEAL]

In testimony whereof I have set my hand and the seal of said Court at Trenton, this fifth day of January, A. D. nineteen hundred and sixteen.

Wm. C. Gebhardt
Clerk.

10

EXHIBIT D3.

November 30th, 1914.

Martin E. Keffer, Esq.,
Recorder of Atlantic City,
Atlantic City, N. J.

Dear Sir:—

I was duly elected by the people of Atlantic City at the general election held November 3, 1914, to the office of Recorder of the City of Atlantic City. The election for this office was held by virtue of the provisions of Section 2 of the Act of 1902, page 284, commonly known as the City Charter of Atlantic City, which provides, inter alia, "for the election of one Recorder * * * the term of office of such officer shall be for three years." 20

By the provisions of Section 5 of the same act, it is provided that in case of a vacancy "in any elective city or ward office * * * the City Council shall fill the same by appointment * * * Such appointment shall be made until the next city election and until the election and qualification of successors." 30

I duly qualified for the office of City Recorder by taking and filing in the office of the City Clerk the

oath required by the same act on the 14th day of November, 1914, and executing with sufficient surety and filing with the City Clerk a bond in the sum fixed by the governing body of Atlantic City, on the 20th day of November, 1914. Therefore, in accordance with Section 5 of said act, my right to the office accrued on the 20th day of November, 1914. I am not neglecting in this statement to observe the provisions of Section 3, which briefly provides that the term of office of the officers hereafter elected in 10 such city shall, *except as hereinafter provided*, commence on the first day of January next.

It is specifically thereafter provided in Section 5 that the term of office of an elective official succeeding one appointed to fill a vacancy shall begin upon his election and qualification. I shall, therefore, present myself to you on the first day of December, 1914, at the Recorder's Court Room in the City Hall, Atlantic City, at 7.45 A. M. on that date, to assume the duties of City Recorder, and shall there, 20 and at that time, demand of you possession of the seal and records of the Court, and will be prepared to assume the duties of that position in your place and stead.

Yours very truly,
Edmund C. Gaskill, Jr.

EXHIBIT D4.

1/21/16 L.

Atlantic City, N. J.
November 30th, 1914.

Edmund C. Gaskill, Jr., Esq.,
Bartlett Building,
Atlantic City, N. J.

10

Dear Sir:—

I acknowledge receipt of your letter of the 30th inst. in which you say that you will present yourself to me on the 1st day of December, 1914, at the Recorder's Court Room in the City Hall, Atlantic City, at 7.45 A. M. to assume the duties of City Recorder, and also that you will at that time demand of me possession of the seal and records of the Court and will be prepared to assume the duties of that position. Permit me to advise you that at the election at which you were elected there was no legal authority in law for said election and that I will refuse to recognize you as City Recorder. I am maintaining that the office is appointive and that I am now acting as Recorder by virtue of an appointment which has not expired.

20

Very truly yours,

Martin E. Keffer.

30

EXHIBIT D5.

Minutes of the Board of Commissioners of Atlantic City, meeting of the twenty-third day of July, A. D. nineteen hundred and twelve:

Mr. Bartlett nominated Mr. Martin E. Keffer for the office of Recorder. There being no other nominations, Mr. Keffer was elected by the following vote:
 10 Ayes: Messrs. Bartlett, Beyer and Riddle (3);
 passed: Bacharach and Thompson (2).

Attest:

Daniel H. V. Bell.
 City Clerk.

EXHIBIT D6.

20

Regular Meeting of the Board of Commissioners held on July 23, 1912.

President Riddle presiding.

Present: Messrs. Bacharach, Bartlett, Beyer, Thompson and Riddle (5). Absent (0).

RESOLUTION TO
 FILL CERTAIN OFFICES.

30 "BE IT RESOLVED by the Board of Commissioners of Atlantic City, that for the proper and efficient conduct of affairs of the city there be in said city, the following offices to be filled by this Board:

City Comptroller

Bookkeeper—Comptroller's Office

Auditor " "

Warrant Clerk	“	“	
City Solicitor			
Tax Collector			
1st Ass't Tax Collector			
2nd	“	“	“
Recorder			
Merchantile Appraiser			
Cashier Treasurer's Department			
Health Officer			
Health Inspector			
Chief Clerk of Health Office			10
and Registrar of Vital Statistics			
Plumbing Inspector			
3 Health Inspectors			
Food Inspector			
Superintendent of Streets			
City Electrician			
1st Ass't Electrician			
2nd Ass't Electrician			
Chief Building Inspector			
2 Ass't Building Inspectors			20
Gas & Gasoline Inspectors			
City Engineer			
Ass't City Engineer			
Superintendent of Boardwalk			
Ass't Sup't of Boardwalk			
Custodian of City Hall			
Overseer of Poor			
2 Physicians to Poor			
2 Clerks to Police & Detective Department			
Said officers shall hold office for terms now fixed			30
by law or ordinance and any of said officers may be			
removed from office at any time for cause after pub-			
lic hearing and each officer shall be paid the compen-			
sation provided by this Board, payable monthly.			
Each of said officers shall continue to perform the			

same duties performed prior to the passing of this resolution except as they may be modified, enlarged or changed by this Board or by the Director of the particular department having supervision of such office.

Upon motion of Mr. Beyer this resolution was amended as follows: Employees who have been paid semi-monthly are to continue to be paid semi-monthly and those who have been paid monthly are to continue to be paid monthly. Ayes, Messrs. Bartlett, Beyer and Riddle (3). Passed, Messrs. Bacharach and Thompson (2).

Upon motion the resolution as amended was then adopted by the following votes: Ayes, Messrs. Bartlett, Beyer and Riddle (3). Passes, Messrs. Bacharach and Thompson (2).

Wm. H. Bartlett
Albert Beyer
Wm. Riddle.

Attest:

20 Daniel H. V. Bell.
City Clerk.

NOTICE OF APPEAL.

(Served February 5, 1916)

(Filed February 8, 1916)

NEW JERSEY SUPREME COURT.

EDMUND C. GASKILL, JR.,
Plaintiff,

vs.

CITY OF ATLANTIC CITY,
Defendant.

NOTICE OF APPEAL.

10

To Theodore W. Schimpf, Esq., Attorney of De-
fendant:

20

TAKE NOTICE that the plaintiff appeals to the Court of Errors and Appeals from the whole of the judgment entered in this case upon the verdict of the jury directed by the Circuit Court Judge before whom the above cause was tried.

BOURGEOIS & COULOMB,
Attorneys of Plaintiff.

30

GROUND OF APPEAL.

(Served February 17, 1916)
 (Filed February 18, 1916)

NEW JERSEY COURT OF ERRORS AND
 APPEALS.

10

EDMUND C. GASKILL, JR.,
Plaintiff and Appellant,

vs.

ATLANTIC CITY,
Defendant and Respondent.

ACTION AT LAW.
 ON APPEAL.
 GROUNDS OF APPEAL.

20

The appellant states the following grounds of appeal:

1. The trial Court erred in refusing to direct a verdict in favor of the plaintiff.

2. The trial Court erred in directing a verdict in favor of the defendant.

30

3. The trial Court erred in deciding as a matter of law that the appellant was guilty of fraud in entering upon the office of Recorder of the City of Atlantic City and performing the duties thereof.

4. The trial Court erred in finding as a matter of

law that the appellant was guilty of force in entering upon the office of Recorder of the City of Atlantic City and performing the duties thereof.

5. The trial Court erred in admitting evidence of the alleged payment of the salary of the office of Recorder for the period sued for to Martin E. Keffer.

6. The trial Court erred in admitting evidence of the passage of an Act of the Legislature of New Jersey, commonly known as the "Validating Act,"
62 Because if there were any inferences of force or fraud raised by the evidence in the case, those inferences should have been drawn by the jury and not by the Court. 10

7. The trial Court erred in finding as a matter of law that the alleged payment to Martin E. Keffer of the salary attached to the office of City Recorder prevented the plaintiff from recovering the salary for the time during which he performed the services of City Recorder. 20

8. The trial Court erred in finding as a matter of law that the facts concerning the payment of the salary to Martin E. Keffer constituted a payment to Martin E. Keffer of the salary of the office of City Recorder.

BOURGEOIS & COULOMB, 30
Attorneys for Plaintiff and Appellant.

