N. J. COURT OF ERRORS & APPEALS

GEORGE H. FARRIER, *Plaintiff in Error,* *vs.* THE STATE, ex rel., HUGH DUGAN, *Defendant in Error.*	*In Error to Supreme Court.*

Brief of GILBERT COLLINS and R. B. SEYMOUR, Counsel for plaintiff in error.

The Board of Chosen Freeholders of Hudson County is created and regulated by the "Act to incorporate the chosen freeholders in the respective counties of the State," approved April 16, 1846 (Rev. p. 127) and a special act passed in 1875 (Laws 1875, p. 374).

The office of Collector of Hudson County exists under the general law of 1846, which declares as follows: "Section 19. That each of the said corporations shall, at their annual stated meetings, elect some fit person, being a freeholder and resident in such county, and not a member of such corporation, to the office of County Collector, who shall before he enters upon the execution of his office, give bond, with two sureties, being freeholders and residents in the county, to the said corpora-

tion, in such penal sum as they shall think proper, conditioned for the faithful performance of the duties of his said office as Collector of such county according to law, and who shall continue in office, and exercise all the rights and discharge all the duties appertaining thereto, until his successor shall be lawfully elected and shall have given bond."

By the Act of 1875 the Board was made to consist of two members from each Assembly District of the County, elected annually in April, and a Director elected biennially in November by the vote of the County at large. This officer was called in the act "Director-at-Large." His term began in the month of his election, but the Board organized annually after the April elections, on the first Tuesday after the first Monday in May. The powers of the Director-at-Large under the Act of 1875 were very great. On nearly all action he had a veto which it required a two-thirds vote to overcome, and to some action his approval was essential. He also had the appointment of all committees. Thus individual members of the Board could have but little power or influence, except through his justice or favor.

In consequence of being vested with these almost unlimited powers, the "Director-at-Large" wielded an influence in the Board far greater than that of any other member, and equal to several votes.

The Legislature of 1885 passed an act which abolished the office of Director-at-Large and required the Board to elect a new presiding officer.

The act is as follows:

An Act concerning the constitution of the Boards of Chosen Freeholders of this State and to make uniform the selection and duties of directors of such boards.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That hereafter only those persons elected by the various townships, or other politi-

cal divisions from which chosen freeholders are authorized to be elected by the laws of this State, shall constitute the Boards of Chosen Freeholders in the respective counties of this State; and no member or director of any Board of Chosen Freeholders shall be elected by the vote of the electors of a county-at-large, any law to the contrary hereof notwithstanding.

2. And be it enacted, That the Boards of Chosen Freeholders in the several counties of this State shall elect their own Director from among their own number in accordance with the provisions of the act entitled "An Act to incorporate the Chosen Freeholders in the respective counties of the State," approved March sixteenth, eighteen hundred and forty-six; and such Director shall have the powers and perform the duties prescribed by said Act and no other powers and duties.

3. And be it enacted, That any office of Director of a Board of Chosen Freeholders created by any law of this State other than said Act shall be and the same hereby is abolished, and in any county where there has hitherto been such an office, the Board of Chosen Freeholders shall immediately elect a director from their own number.

4. And be it enacted, That all acts and parts of acts, general or special, public or private, inconsistent with the provisions of this act, be and the same hereby are repealed.

5. And be it enacted, That this act shall be deemed a public act and take effect immediately.

This Act became a law March 25, 1885, and from that date Mr. Govern, the then Director at Large of the Board of Chosen Freeholders of Hudson County, ceased lawfully to hold that office or be a member of said Board.

The annual stated meeting of said Board that year oc-

curred May 5, 1885, and under the provisions of the second section of said Act of 1885, and of the seventh section of the Act of 1846, it became the first duty of the members elect of the new Board when they assembled, May 5, 1885, to elect one of themselves as Director to preside over their meetings.

The 7th section of the Act of 1846 is as follows:

"7. That it shall and may be lawful for every such corporation to elect, annually, one of their own members to preside at their meetings, who shall be called the Director of the Board; *and in case of his absence* or refusal to act, then such corporation *shall proceed to the election of another.*"

The 8th section of the Act of 1846 requires said corporation to annually elect a clerk, whose duty it is to keep the minutes, etc., and "who shall, *before he enters upon the execution of his office*, take and subscribe an oath or affirmation *before the Director of the Board.*"

On said May 5th the persons who had been elected in April, preceding, as members of said Board for the succeeding year, assembled at the usual meeting place of said Board. Having come into the meeting room, and before any attempt at organization was made, Mr. Govern, the former Director-at-Large, took the chair and called the persons so assembled to order, and called off the names of the persons elected as freeholders for the ensuing year. No attempt was made to elect "one of their own members" to preside, nor was there any election of a presiding officer.

The assembly consisted of the twenty persons who had been elected members of the Hudson County Board of Freeholders for the ensuing year and Mr. Govern.

This unlawfully constituted body of *twenty-one* men, with an intruder in the chair, pretended to elect a County Collector to succeed the plaintiff in error. Plaintiff, notwithstanding this action, refused to surrender his office, claiming that his successor had not been "*lawfully*

elected," and his term by the statute above cited, continues until that event happens. The only question then is: Has Hugh Dugan, the defendant, been "*lawfully elected*" County Collector? He will naturally contend in the support of the affirmative of this proposition:

First. That, inasmuch as the twenty district members elect, did not object to proceeding with a stranger in the chair, and all voted in the pretended election of a County Collector, and he received a majority of the votes, he is lawfully elected, even though the act of 1885 be constitutional and the proceeding an irregular one.

Second. That the Court will not inquire at this time into the constitutionality or even the existence of the Act of 1885, but will recognize his election as valid on the ground that it was made by a *de facto* Board of Chosen Freeholders.

Neither of these contentions can prevail. Let us consider them in order.

I.

The Defendant has not been lawfully elected County Collector.

Assuming therefore, that the act of 1885 is constitutional, has the relator ever been elected County Collector by a lawfully constituted Board of Chosen Freeholders of the County of Hudson? We say, no.

The first essential of corporate action is a parliamentary organization. "The members of a corporation-aggregate cannot separately and individually give their consent in such a manner as to oblige themselves as a collective body; for in such case it is not the body that acts."

Angell and Ames on Corp. sec. 232.

The point in dispute is really a question of parliamentary law.

"Parliamentary law is a branch of the common law and as well settled as any other."

"The law of parliament is part of the common parliamentary law of this country, and belongs to every legislative assembly of English origin, by the mere fact of its creation."

"In all councils and other collective bodies, it is necessary that a certain specified number, called a quorum, of the members, should meet and be present, in order to the transaction of business."

Cushing's Law and Practice of Legislative Assemblies, section 247.

"Every legislative assembly, when duly constituted, has power to compell the attendance of its members; but, until so constituted, it has no such power, *as it has itself no legal existence.*"

Cushing, section 264.

"The three essential parts of an organization are the qualification of the members, and the choice of the presiding and recording officers."

Cushing, section 276.

"When either branch is duly organized to proceed to business, *which takes place* when the members returned have taken the necessary oaths, *and have chosen their presiding officer.*"

Cushing, section 277.

The legislative body "*when duly organized*, may proceed to the transaction of business."

Cushing, section 278.

"The principal officers *necessary* to enable a legislative assembly to perform its various functions are three, namely: A presiding officer, called the speaker, or president," &c.

Cushing, section 284.

The presiding officer is required to be chosen by the

assembly itself, and by an absolute majority of votes. "The rule can hardly be considered as admitting of an exception, even in those legislative bodies, in which for special reasons, the presiding officer is designated by the constitution, instead of being chosen by the members; inasmuch as in these cases, the presiding officer is chosen by the same authority by which the members are chosen."

Cushing, Section 298.

"In every legislative assembly in which it is not otherwise provided, either by some law or by a rule of its own, its ordinary functions are suspended during the *absence* of the presiding officer from sickness or from any other cause.

Idem, 315.

The members must be assembled as a legislative body; but singly or separately they have no legislative power whatever.

Idem 529, 2 Whitelock, 192.
2 Mass., 27.

"Each assembly until it adopts rules and orders for itself, is without any other rules for its government, than those which result from the common parliamentary law."

Cushing, Sections 613, 792.

In the case of Dey *vs.* Jersey City, 4th C. E. Gr., p. 412 (416), Chancellor Zabriskie, speaking of a Common Counsel, says :

"The object and nature of its creation show that the Common Council is a body or board, and must act and can only act as such; that it must act *when* assembled at stated or special meetings, and *organize with a president to conduct* and a clerk to record its proceedings." To the same effect is the opinion of Vice-Chancellor Dodd in Shumm against Seymour, 9th C. E. Gr., 143 (153).

"The words 'organize' and organization' mean the

election of officers, constituting the body complete for the transaction of business."

New Haven, &c. R. R. Co. *v.* Chapman 38, Conn., 56.

"The life of a corporation dates from its organization."

Hanna *v.* International Petroleum Co., 23 Ohio St., 622.

"No business (of a Common Council) can be transacted until organization."

State *v.* Green, 37 Ohio, 227 (229).

See also Dillon on Mun. Corp., sec. 197, on the general subject.

The members of the boards of Chosen Freeholders are elected for one year.

In April of each year certain persons are selected who are entitled to call the corporation into existence.

"The creation of a corporate existence can *never take effect* until the association be formed *and the organization completed*. Under a special charter it is *not until the organization is completed* that existence is given to the artificial being, *and its agency commences;* before this it is not *in esse*. Vitality is given to it by the voluntary association *and organization* of its members. The franchise is not vested until an association is formed."

Falconer *v.* Campbell, 2 McLean, 195.

"It is a general rule that a corporation can only act in the manner prescribed by law. When its agents do not clothe their proceedings with those solemnities which are required by the incorporating act, the informality of the transaction is itself conducive to the opinion that such act was rather considered as manifesting the terms on which they are willing to bind the company, *as negotiations*, than as a contract obligatory on both parties. An

individual has an original capacity to contract and bind himself in such manner as he pleases; but with these bodies which have *only a legal* existence, it is otherwise. The act of incorporation is an enabling act; it gives them all the power they possess; it enables them to contract, and when it prescribes to them a mode of contracting, they must observe that mode, or the instrument no more creates a contract *than if the body had never been* incorporated."

Head *v.* Providence Ins. Co., 2 Cranch, 127.

By the Charter of the Board of Freeholders the members elect are required to hold an annual meeting at a particular time and place and to *elect one of their own number* as presiding officer. Until they meet and elect a presiding officer, as prescribed by law, and until they organize in the manner required by law, the corporation can have no legal existence, and the action of the members is the mere act of individuals, and not of the corporation.

It has been held, that where the charter required an advertisement of the annual meeting of a corporation, that, notwithstanding there was a by-law fixing the time of annual meetings, an annual meeting convened without the prescribed advertisement had not power to elect managers.

United States *v.* McKelden, 8 Repr., 778.

Where the statute of a State prescribes the manner in which a special meeting of the board of supervisors of a county shall be called, a special meeting held without observing these requirements is not legal.

Goedgen *v.* Manitowoc Co., 2 Biss., 328.

Clearly, the new Board of Chosen Freeholders of the County of Hudson, whose duty it was to hold its annual stated meeting on May 5, 1885, has never organized. It could only do so by selecting a presiding office, called a director, from its own number.

(Rev., p. 128, sec. 7.)

The assemblage of *twenty-one* men (instead of twenty, the lawful number), did not select a presiding officer at all, and we submit that the statements of the information show only an informal irregular *consensus* not binding on anyone.

The said assemblage was not the corporation (which alone had the power to act, to remove or appoint), but a mere caucus, made up of members of the corporation and an outsider.

The fact that a majority of those who would be lawful members of the Board of Chosen Freeholders, when duly organized, expressed their preference for the relator as County Collector, and the fact that the *pseudo* director did not vote, are both entirely beside the question in this aspect of the case. The only inquiry for the Court is: Has the lawful Board of Chosen Freeholders of Hudson County ever organized? And it seems to us that the answer must surely be that they have not.

It may be said that there was an organization *in fact*, and if the lawful members permitted a stranger to conduct their deliberations, that is a matter for them and cannot be questioned collaterally. This will not avail. It would be a new doctrine if the deadlocks which have given municipal bodies so much trouble in the matter of organization, could be broken by a stranger's taking the chair, and the members proceeding to action without objection. A presiding officer has many rights and privileges, and it is because of this, that the contests in evenly-divided boards are so protracted and bitter. In Hoboken recently, the Council was evenly divided on factional lines. After hundreds of ineffectual ballotings the deadlock continued and the city's interest suffered. What an easy solution would there have been of the problem if the *Mayor* could have stepped to the chair, picked up the gavel, called the Councilmen to order, and they have been permitted to proceed with the pressing business which the needs of the city demanded, and have resumed their factional quarrel at pleasure. Instead of that, when by some accident a Councilman, who did not wish

to serve, received a majority of votes, the tax-payers had to go to a justice of this Court and begin proceedings by mandamus to compel him to serve.

But there is a deeper objection than mere formality involved in this case. Mr. Govern was not acting as a mere stranger permitted by common consent to conduct the proceedings. The information properly states that in all that he did he professed to act *as Director-at-Large*, and by color of the authority of the act of 1875. To sustain the proceedings of that meeting forces upon Hudson County for an indefinite period the evils which the act of the Legislature was intended to remedy. Morever, a direct injury upon the plaintiff is inflicted. Let it be remembered that the act of 1875 gave immense power to the Director-at-Large; such power as amounted to moral coercion of the district members who would be mere ciphers in the Board if he so willed. He could dispense his favors at pleasure. A majority of the new members, presumably of the same political faith with him, would not deem it politic for reasons of party advantage, to resist his illegal attempt to retain power, and having decided on that course they must conciliate him in order to get recognition in the Board. Who can assume to say that the narrow margin of four votes which the defendant received over the plaintiff, would have been preserved had the members been free to act as the law of 1885 provided. (Ll. 1885, page 137).

Mr. Govern claimed the right to preside at said meeting on the ground that he still held the office of Director-at-Large, notwithstanding the Legislature had abolished said office. As such officer he had the absolute appointment of all committees. No one could obtain a position upon any committee, no one could even obtain the floor to make a motion, or advocate or oppose any measure, except by sanction of the Director. The great powers hitherto vested in said office would certainly give the Director sufficient influence to draw away from the plaintiff the three additional votes which would have retained the plaintiff in his said office without question.

II.

A Mere De Facto Board Could Not Displace a Lawful Officer and Moreover there was no de facto Board.

A. In trying the title to an office, the Court will look behind the mere form of an organization. It will not be sufficient that a *de facto* board has elected. The relator has a right to demand the election of his successor by a *de jure* board. The principle that the law will not permit the validity of the acts of a *de facto* board or officer to be questioned depends upon reasons of public policy. The law does not prefer a *de facto* board. It prefers a *de jure* board. When the reason ceases the rule ceases. The reason for recognizing a *de facto* board is that the interests of the public require that municipal and governmental powers shall be exercised and a *de facto* board is better than none. Furthermore, the law must protect innocent third parties who deal with a *de facto* board. Neither of these reasons applies to the matter of appointments to office by a board whose own title is questionable. The public has no interest in who shall fill a particular office. If a *de facto* board is good enough as to third parties a *de facto* officer is equally good. The Court surely will not oust a man originally lawfully in office and entitled to hold until his successor is lawfully appointed, simply because for reasons of public policy it is forced to recognize as *de facto* the board which, if *de jure*, would have a right to appoint—and that in face of the fact that the officer sought to be ousted can show to the Court that such *de facto* board is not *de jure*. The improperly organized Board of Chosen Freeholders of Hudson county *may be de facto* as to the public and its action valid, and still its pretended election of an officer may be void as to the officer sought to be displaced.

B. But there is no *de facto* Board of Chosen Free-

holders in Hudson County. The presence of the intruding director vitiated all its actions.

Dillon on Mun. Corp., Sec. 211, note 3, and cases cited.

Intendant, &c., *vs.* Sorrell, 1 Jones (N. C. L.) 49.

The principle of the validity of acts of *de facto* officers does not apply to a non-existing *office.*

Dillon on Mun. Corp., Sec. 214.

See Scudding *vs.* Lorant, 5 Eng.L. & E. R., 16 (30), a decision of the House of Lords, as to the reason why acts of *de facto* officers are valid. It is because the public should not be put to the risk of deciding who is the *person* entitled to fill an existing office.

There is no such thing as a *de facto office.*

High on Ext. Leg. Rem., Sec. 694.

Even as to officers *de facto*, where color of authority ceases, their acts are void.

Rochester, &c., R. R. *v.* Clark Nat. Bank, 60 Barb., 234.

Kimball *v.* Alcorn, 45 Miss., 151.

Surely no one is bound by the acts of one who untruly asserts that he is holding an office that does not exist? Applying these principles, what do we find?

Everyone is presumed to know the law. Everyone therefore, knows that there is no longer any such office as Director-at-Large, and that a board professedly consisting of twenty district members *and* a Director-at-Large, is not the lawful corporation known as the "Board of Chosen Freeholders of the County of Hudson." No one can be deceived by dealing with such a body. There is not even a dispute over the interpretation of conflicting statutes. There is no room for doubt. The trouble that exists in Hudson County arises from bold defiance of the law. In nearly all the cases which we have examined wherein this Court has been called on to pass

upon the constitutionality of statutes, the parties interested have obeyed the law in the first instance and then have brought their *quo warranto* or other proceedings to test its validity.

Shall it be said that ignorance of the law excuses no one; but that the law being known, an open defiance and total disregard of it will be excused by the Courts?

All corporate affairs must be transacted at an assembly convened upon due notice.

Willcock's Municipal Corporations, Sections 58, 59.

But if one who is entitled to preside at their meetings be absent, although he have no right to vote, or have only a casting vote, *all their acts are void.*

Willcock's M. C., §78.
R. *v.* Theodorick, 8 East., 543.
R. *v.* Gaborian, 11 East., 86.
R. *v.* Hill, 4 B. C., 441.
Musgrave *v.* Nevinson, 2 Ld. Ray., 1359.
Machell *v.* Nevinson, 2 Ld. Ray., 1357.

On the charter day for the election of the Mayor, the corporation, although by unanimous agreement, cannot proceed to any extraordinary business until they have completed the election.

Willcock's M. C., §84, 85.
R. *v.* Parkyns, 3 B. A., 674.

The legal head officer (the Director elected by the Board) must be present, or the corporate assembly is incomplete.

Willcock's M. C., §94.
R. *v.* Sir Atkyns, 3 Mod., 23.
S. C., 2 Shower, 238.
Tremayne, 233.
1 Rol. Abr., 514. 20.
R. *v.* Corry, 4 East., 380.
R. *v.* Trew, 2 Barnard 370.
Musgrave *v.* Nevinson, 1 Str., 584.

The person who presides must be the *legal officer*. If an officer *de facto* usurp the place, and be afterward ousted in *quo warranto*, all the corporate acts which have been done under the sanction of his office are voidable.

Willcock's M. C., §97.
R. *v.* Hebden Andr., 391.
R. *v.* Dawes, 4 Bur., 2279.
R. *v.* Smith, 5 M. S., 279.
R. *v.* York, 5 T. R., 72.

All the corporate and ministerial acts of the intermediate assemblies (under the presidency of a *de facto* officer) are void.

No assembly is sufficiently constituted unless the legal head officer preside.

Willcock M. C., §98–95.
R. *v.* Thornton, 4 East., 308.
R. *v.* Carter, Cowp., 59.
R. *v.* Smart, 4 Bur., 2243.
R. *v.* Ipswich, 2 Ld. Ray, 1237.
R. *v.* Corry, 5 East, 379.

At common law, if a sole head officer was not legally elected, where there was no power of holding over, the corporation was suspended for want of a legal president.

Willcock's M. C., §101, 102, 103.
R. *v.* Lisle, Andr., 174.
S. C., 1 Smith, 111.
R. *v.* Williams, 2 M. S., 141–144.

Where a Common Council exists, an assembly of them, though a select class, must be considered a corporate assembly, and the presence of the legal president is necessary.

Wilcock's M. C., Sec. 126.

Whenever a particular business is delegated to a select body, if others (an ex-director-at-large) join in the performance of it, the act is void.

Willcock's M. C., Sec. 128–524.

Parry *v.* Berry, Comyns, 269.
R. *v.* Head, 4 Burr., 2521.
R. *v.* Westwood, 4 B. C., 799–818.
Green *v.* Dunham, 1 Bur., 131.
R. *v.* Head, Str., 625.
Cowp., 507.
Austin *v.* Osborn, Comyns, 240, 246.

Again, by Section 12 of the said act of 1875, the Hudson Freeholders are brought under the general act of 1846. Under the law the term of office of the chosen freeholders elected in the spring of 1884 continued *until the organization* of the members elected in 1885.

In re Highway, 1 Harr., 91.

There was no organization of the members elected in 1885, so that at the time of the pretended election of the defendant, the members of 1884 were yet the legal freeholders. The members of 1885, in order to become possessed of the offices to which they were elected, must effect an organization. There could not be two boards of freeholders, or more than twenty members in Hudson County.

It has been held necessary that a quorum should be present.

State, Mason *v.* Mayor, 6 Vr., 190.

An organization is just as necessary as a quorum. The case of the election of Speaker of the House of the Thirty-first Congress cited below by counsel for defendant is against his claim.

21 Cong. Globe, part 1, p. 5.

The case shows that no one thought it possible for a legislative body to transact any business prior to organization. The *first* business before the House was the election of Speaker, and by parliamentary law all motions incident and relavent to *that* business were in order.

From a period beyond which the memory of man doth not run to the contrary legislative assemblies and munici-

pal corporations have dead-locked upon the question of organization. No one hitherto had imagined that organization might be skipped over, and that without any presiding officer or clerk, or even temporary organization, a mob of persons, elected to membership in such body, could assemble together, and with or without outside accessories, place outsiders in positions of the greatest responsibility, and oust those who had previously held these trusts.

Is not this contrary to public policy and public safety?

The door which no one hitherto has ventured to unlatch, the Court has thrown wide open. Whither does it lead?

To Anarchy and Chaos.

GILBERT COLLINS,
R. B. SEYMOUR,
Counsel for Plaintiff in Error.

Court of Errors and Appeals.

GEORGE H. FARRIER, *Plaintiff in Error,* *vs.* THE STATE OF NEW JERSEY, *ex rel.* HUGH DUGAN, *Defendant in Error.*	*Error to* *Supreme Court.*

STATEMENT OF THE CASE.

George H. Farrier was elected County Collector of the County of Hudson, at the first or stated meeting of the Board of Chosen Freeholders, held in Hudson County by the members elected at the spring election of 1884. The Board, as then organized, consisted of twenty members, chosen from the various Assembly Districts of the County, and a member chosen by the vote of the entire County, and known as the Director-at-Large. Members and Director were elected under the provisions of an act entitled "An act to reorganize the Board of Chosen Freeholders of the County of Hudson," approved March 23, 1875 (Laws of

1875, p. 324). The Director was elected at the November election, 1883, and his term expired, under the provisions of that act, in November, 1885.

At the spring election held in Hudson County in April, 1885, a new Board of Chosen Freeholders was elected, with the exception of the Director-at-Large. By section two of the act of 1875, the term of the Director-at-Large continues, "notwithstanding any change in the members of said Board of Chosen Freeholders." On the fifth day of May, 1885, this Board of Chosen Freeholders held its first or stated meeting. Mr. Govern, who was elected as Director-at-Large in November, 1883, presided at this meeting. His right to so do was not questioned by any member of the Board, all of whom were present. The Board proceeded to the election of a Clerk, a County Superintendent, Counsel and Collector. Hugh Dugan, the relator, received thirteen of the twenty votes cast, seven being given for George H. Farrier, the respondent. The Board then unanimously fixed the amount of Mr. Dugan's bonds at $100,000. At the next meeting, held on the seventh of May, 1885, Mr. Dugan filed his bonds, which were duly received and approved. After filing his bonds, Mr. Dugan entered upon the duties of his office, and is now acting as County Collector.

The Board met on the proper days (Laws of 1871, p. 1526, Laws of 1875, p. 324, &c., *Feury* vs. *Roe*, 6 Vr., 123.)

Mr. Dugan was elected at the annual stated meeting of the Board, in accordance with the provisions of section 19 of "An Act to incorporate the Chosen Freeholders in the respective counties of this State (Revision, p. 19.) That section provides "that each of said corporations shall, *at their annual* stated meetings, elect some fit person, being a freeholder and resident in said county, and not a member of such corporation, to the office of County Collector."

In Hudson County this corporation (*i. e.* the Board of Chosen Freeholders), consists of:

Two Chosen Freeholders from each Assembly District in the County and a Director elected by the people of the County at large; or of

Two Chosen Freeholders from each Assembly District.

In either case, all the members of the corporation were present and all who were entitled to vote upon the election of County Collector availed themselves of that right. The Director-at-Large did not vote.

It is contended that the Board was not "organized;" that the office of Director-at-Large having been abolished, it was necessary, under section 7 of the general act, to elect a Director before proceeding to the election of a Collector.

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ARGUMENT FOR DEFENDANT IN ERROR.

The defendant in error, while insisting that the Board was properly organized at the time of his election, further contends that the question of whether there was a presiding officer, properly chosen, cannot affect his title. The corporation is composed of the Chosen Freeholders. If a majority of its members by affirmative voice, declare, at their annual stated meeting, their choice for County Collector, that declaration constitutes an election. It is the vote of the members which elects; not the declaration of the chair. The law provides that "the corporation" shall elect a County Collector, and the question is not "who presided?" but "was the corporation present?" and "did a majority of the corporation act?"

The Constitution of the United States provides that "The House of Representatives shall choose their Speaker and other officers." At the first session of the Thirty-first Congress the House was composed of one hundred and five (105) Whigs, one hundred and twelve (112) Democrats, and thirteen (13) Freesoilers, so that there was not a majority for either of the then prominent parties. The House met on the third of December, 1849, and the minutes record that the members were called to order by the Clerk "agreeably to usage." It is certain that "usage" was his only authority. Sixty-three ballotings were had, and on the last a Speaker was elected. On the twenty-eighth of December, after sixty ballotings had been had, the following resolution was adopted:

> *Resolved*, That the House will proceed immediately to the election of a Speaker *viva voce;* and if, after the roll shall have been called three times, no member shall have received a majority of the whole number of votes, the roll

shall again be called, and the member who shall then receive the largest number of votes, provided it be a majority of a quorum, shall be declared to be chosen Speaker.

The Speaker was elected under this rule and the rule itself was adopted under the constitutional provision that "each House may determine the rules of its proceedings." If the point contended for by the plaintiff in error is well taken, then there could not, until the election of a Speaker, have been a House to determine the rules of its proceedings. If the House could determine the rules of its proceedings before the election of a Speaker, it follows that it could, in the absence of any rules, do any other act within the powers reposed in the House. This question was directly raised on the second day of the session referred to, as will be seen by the following extract from the *Congressional Globe* (*Con. Globe*, Vol. XXI, part 1, page 5), viz:

Mr. Williams, of Tennesse, moved that the House do now adjourn until the hour of twelve to-morrow.

Tellers were called for.

Mr. Bayly, of Virginia, demanded the yeas and nays on the motion to adjourn.

The Clerk decided that the demand for the yeas and nays was not in order.

Mr. Bayly appealed from the decision.

Mr. Meade, of Virginia, was understood to say that the Constitution of the United States gave the right to each House to have the yeas and nays taken on any question. If this was not a House, this thing could not be done. He submitted that this *was* a House.

Mr. Méade read from the Constitution of the United States the following provision; [Article 1, section 5, latter part of the 3d clause]:

"The yeas and nays of the members of either House on any question shall, at the desire of one-fifth of those present, be entered on the Journal."

Mr. Bayly said: "There are two provisions of the Constitution bearing upon this question. The one is in these words: *Each House shall keep a journal of its proceedings*, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; *and the yeas and nays of the members of either House* on any question shall, at the desire of one-fifth of those present, be

entered on the journal." The following is the other: "The House of Representatives shall choose their Speaker and other officers." The Clerk in his decision, goes upon the assumption that we are not the House contemplated until we have elected a Speaker. But it is very clear, from the language of the Constitution, that in this he is mistaken. He has been keeping a journal, and this morning read it as the journal of the House of Representatives. We are now attempting to choose a Speaker. And why? Because we are *the House of Representatives* authorized by the Constitution to do so. The House which is required to keep a journal and choose a Speaker, is the identical body, one-fifth of the members of which may require the yeas and nays of the members to be entered upon that journal. This is the letter of the Constitution. But the spirit of it is as manifest as the letter. The object of the Constitution is to authorize one-fifth of the representatives of the people to require a record to be made of the names of those who participate in any action which they may take in their representative character. We are acting in that character now as emphatically as we will be after the organization; and it is quite as important that the evidence of what we do should be preserved now, as then. The question seems to me to be clear of doubt.

The Clerk said that he might probably have been in error in making the decision. He would now withdraw that decision and would put the question to the House and let the House decide it.

Mr. Bayly said he would withdraw his appeal.

Mr. Meade inquired what the question before the House was?

The Clerk said it was on taking the yeas and nays.

Mr. Meade read from the first article, second section, of the Constitution, the following provision: "The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment."

This clause, *Mr. Meade* remarked, contemplated the House *as* a House before the Speaker was chosen.

Mr. Meade also referred again to the provision authorizing the House to take the yeas and nays, &c.

The Clerk said he had withdrawn his decision; that he would not decide the question of order, but would leave the House to decide it.

The question was therefore declared to be on taking the yeas and nays. And the question having been taken, the Clerk stated that the yeas and nays were ordered.

The Board of Chosen Freeholders is empowered to establish "by-laws, ordinances and regulations." In the case of the present members, at the time of the election of Mr. Dugan, there had not been any rules adopted. The rules of the previous Board did not govern them, and when they decided to proceed to the election of a Collector, they determined their order of procedure. *Greene* vs. *Freeholders of Hudson*, 15 *Vr.* 393.

It is claimed that the Director-at-Large, in presiding at the meeting, was an intruder, and that his intrusion nullified the actions of the Board. Mr. Govern did not vote on the question of the election of the Collector. At a subsequent meeting he approved of the appointment, but this action, if the contention of the defendant in error as to the abolition of the office of Director-at-Large, is correct, cannot avail him, as will be seen by reference to section four (4) of "An Act to establish the powers and duties of the Board of Chosen Freeholders in the respective counties of this State, and to define the powers of the presiding officers of said Boards," passed March 25, 1885 (Laws of 1885, p. 135) viz:

And be it enacted, That each and every board of chosen freeholders of the respective counties in this State shall have power to appoint such officers, agents and employees as may be required to do the business of such county, and fix their compensation and term of service, but no person shall be appointed by such board to any office or position in any county unless he shall have been a citizen of the State of New Jersey for at least one year prior to such appointment, nor unless by the affirmative vote of at least a majority of all the members of said board, at a regular stated meeting of the board; and any appointment made as aforesaid, unless otherwise ordered by resolution of the board, shall be of full force and effect, and the term thereo, shall commence immediately upon such vote being taken, without any approval or other action by the director, acting director, or other presiding officer of such board.

By the words of this act the term of Mr. Dugan commenced immediately upon the taking of the vote, without *the approval or other action* of the Director. The vote of

a majority elected, the term commenced, and when Mr Dugan filed his bonds he was entitled to enter upon the duties of his office. If there was not any action of the Director necessary, it is entirely superfluous to argue the question of whether or not there was a Director.

If the court should determine that the Board could not proceed to the election of a County Collector without the assistance of a presiding officer, the plaintiff in error will not be benefitted. Mr. Govern presided at the meeting. If the office of Director-at-Large was not abolished by the act of 1885, he was entitled to preside. If the office was abolished, then Mr. Govern intruded himself into the office of Director provided by the general law. His presidency was recognized and acquiesced in by all the members of the Board. So that when he declared the vote for the office of County Collector, he was Director-at-Large *de jure*, or Director *de facto*. If the former there cannot be any question. If the latter, it is unnecessary to cite authorities in support of the proposition that the actions of an officer *de facto*, cannot be successfully assailed because of the defects in his title.

ALLAN L. McDERMOTT,
For Deft. in Error.

June Term, 1886.

New Jersey Supreme Court.

The State of New Jersey ex rel. Hugh Dugan, vs. George H. Farrier.	On quo warranto. Information.

John P. Stockton, Attorney General of the State of New Jersey, who sues for the said State on this behalf, comes in his own proper person here into the Supreme Court of Judicature of the said State, before the Justices thereof, at the State House in the City of Trenton, on the fourth day in June, eighteen hundred and eighty-five, for the said State, at the relation of Hugh Dugan, of the County of Hudson and State of New Jersey, desiring to sue and prosecute in this behalf, according to the form of the statute in such case made and provided, and gives the said Court here to be informed and understand that under and by virtue of an act of the Legislature of the State of New Jersey, entitled "An Act to incorporate the Chosen Freeholders in the respective counties of the State," approved April sixteenth, eighteen hundred and forty-six, one George H. Farrier was at the annual stated meeting of the Board of Chosen Freeholders of the County of Hudson, held on the first Tuesday after the first Monday in May, in the year eighteen hundred and eighty-four, to wit: On the sixth day of May in said year, elected by said board to the office of County Collector in and for said County of Hudson;

that after his said election, the said George H. Farrier gave bonds and qualified for said office in the manner provided by statute; that thereupon the said George H. Farrier became entitled and bounden to exercise all the rights and discharge all the duties appertaining to the said office of County Collector until his successor should be lawfully elected, and should have given bond in accordance with the provisions of said act of the Legislature.

That at the annual election held in the County of Hudson for the election of members of the General Assembly, in the month of November, eighteen hundred and eighty-three, Patrick Govern was elected to the office of Director-at-Large of said Board of Chosen Freeholders of the County of Hudson in accordance with the provisions of an act of the Legislature of this State, entitled "An Act to reorganize the Board of Chosen Freeholders of the County of Hudson," approved March twenty-third, eighteen hundred and seventy-five, and he duly qualified and entered upon the duties of his office; that the term of office of said Patrick Govern as Director-at-Large, as aforesaid, commenced on the third Tuesday in November, eighteen hundred and eighty-three, and that he was elected to hold office for two years, to wit: until the third Tuesday in November, eighteen hundred and eighty-five.

That at the annual charter and township elections held in the County of Hudson on the fourteenth day of April, eighteen hundred and eighty-five, there were elected to the Board of Chosen Freeholders of said County twenty members, to wit: two members from each Assembly District in said County, to hold office for one year from the Tuesday next after the first Monday in May next after their election, viz: the fifth day of May, eighteen hundred and eighty-five, and who duly qualified.

That at the time and place for holding the annual stated meeting for the year eighteen hundred and eighty-five, of the Board of Chosen Freeholders of

the County of Hudson, the said Patrick Govern, elected Director-at-Large, as aforesaid and the twenty persons elected to membership in said board on April 14, 1885, as aforesaid, assembled, and said Patrick Govern, elected Director-at-Large, as aforesaid, and claiming to act as such, took the chair, presented and read the statement of the County Clerk of the determination of the Board of County Canvassers of the result of said election of April 14, 1885, and then called the roll of the twenty persons so elected to membership in said board, and all of them answered, and thereupon said assemblage, with said Patrick Govern presiding as Director, took proceedings (among other things) as follows :

Andrew Cullen offered a resolution in the following words, to wit : Resolved, That the amount fixed as the penal sum required of the County Collector for the ensuing year be and the same is hereby fixed at one hundred thousand dollars, and the counsel of this board is hereby instructed to have the proper bond prepared and executed accordingly and submitted for approval." Said resolution was stated to said meeting by said Patrick Govern, elected Director-at-Large as aforesaid, and acting as presiding officer at said meeting, and was adopted.

Charles Birdsall moved to go into the election of County Collector. Patrick Govern, acting as presiding officer as Director-at-Large, stated the question, and said motion was adopted. Charles Birdsall nominated the said Hugh Dugan for said office of County Collector ; William Clarke nominated the said George H. Farrier for said office. A vote was then taken ; upon said vote thirteen of the persons elected to said Board of Chosen Freeholders at the annual spring election, held in the County of Hudson in April, eighteen hundred and eighty-five, as aforesaid, voted for the said Hugh Dugan, and seven of the persons elected to said board as aforesaid voted for the said George H. Farrier; thereupon the said Patrick Govern, as Director-at-Large of the

Board of Chosen Freeholders of the County of Hudson as aforesaid, acting as presiding officer, declared that the said Hugh Dugan had received sufficient votes to elect him to said office of County Collector of said County.

That the said Charles Birdsall, William Clarke and Andrew Cullen were elected members of the said Board of Chosen Freeholders at the election held in April, eighteen hundred and eighty-five, as aforesaid, and duly qualified that the said Hugh Dugan, on the seventh day of May, eighteen hundred and eighty-five, gave a bond in accordance with the resolution hereinbefore recited and in the manner provided by statute.

Whereupon the said Hugh Dugan became and was and still is entitled to hold, use and exercise the said office of County Collector of the County of Hudson as the successor in said office of the said George H. Farrier, yet the said George H. Farrier, for the space of one month past, to wit: since the 7th day of May, eighteen hundred and eighty-five, hath, by virtue of the premises, unlawfully held, used, exercised, and doth unlawfully hold, use and exercise the office of County Collector of the County of Hudson, and its liberties, privileges and franchises, and claims to be County Collector of said County, and to have, hold, use, exercise and enjoy the said office and the liberties, privileges and franchises thereof, without any legal election, appointment, warrant or authority whatever, other than is hereinbefore set forth, which are insufficient in law to enable him to hold the same; while that the said Hugh Dugan, by virtue of his said election and giving bond as aforesaid has ever since been and still is rightly entitled to hold, use and exercise the said office of County Collector of the County of Hudson, which said office the said George H. Farrier during all the time aforesaid upon the State of New Jersey has usurped, intruded into and unlawfully held, used and exercised, and yet doth usurp, intrude into, and unlawfully hold, use

and exercise, to the exclusion of the said Hugh Dugan, to wit: at Hudson County aforesaid in contempt in the State of New Jersey, and to its great damage and prejudice against its sovereignty and dignity.

Whereupon the said Attorney General for the State, at the relation of the said Hugh Dugan, desiring to sue and prosecute in this behalf, prays the advice of the Court here in the premises, and for due process of law against the said George H. Farrier, this behalf to be made to answer to the said State by what warrant he claims to hold, use, execute and enjoy the said office of County Collector of the County of Hudson, and the liberties, privileges and franchises thereof.

JOHN P. STOCKTON,
Attorney General.

ALLAN McDERMOTT,
Attorney of Relator.

NEW JERSEY SUPREME COURT.

GEORGE H. FARRIER adms. THE STATE OF NEW JERSEY (ex rel. HUGH DUGAN.	On information in the nature of a quo warranto demurrer.

And now, as yet of the term of June in the year of our Lord one thousand eight hundred and eighty-five, comes the said George H. Farrier, the defendant, by R. B. Seymour, his attorney, and having heard the said information read to him he says:

That the State of New Jersey ought not to impeach or implead him, the said George H. Farrier, by reason of the premises in the said information above mentioned and specified, because he says that the said information and the matters therein contained are not sufficient in law, and that he need not nor is he obliged by the law of the land to answer thereto. And this he is ready to verify.

Wherefore, and because of the insufficiency of the said information, the said George H. Farrier prays judgment, and that he may be dismissed and discharged by the Court hereof and from the premises above charged upon him in form aforesaid.

R. B. SEYMOUR,
Atty. of Defendant.

[Common joinder in demurrer.]

New Jersey Supreme Court.

NOVEMBER TERM, 1885.

THE STATE, EX REL. HUGH DUGAN, vs. GEORGE H. FARRIER.	On demurrer, &c.

ALLAN L. MCDERMOTT, for relator.
GILBERT COLLINS and R. B. SEYMOUR, for defendant.

The Court at the November Term, 1885, announced that judgment would be given in favor of the relator and against the defendant.

The opinion was delivered by DIXON, *Justice:*

"An Act to Incorporate the Chosen Freeholders in the Respective Counties of the State," Rev. 127, constitutes the freeholders elected in the several precincts of the respective counties a body politic and corporate in law. Section 1. It directs, § 6, that there shall be a stated meeting of every such corporation annually at a time and place designated, and, § 19, at that meeting each corporation shall elect some fit person to the office of county collector. It also declares, § 7, that it shall be lawful for every such corporation to elect annually one of its own members to preside at its meetings, and in case of his absence or refusal to act, directs that the corporation shall proceed to the election of another.

In Hudson county, the chosen freeholders number twenty, and in the present year at the time and place appointed for their annual meeting these persons assembled and by a vote of thirteen to seven chose the relator to the office of county collector. Before proceeding to the election, the corporation had not elected one of its members to preside at its meetings, but on the convening of the freeholders the chair was taken by Patrick Govern, who had been elected by the people director of the board under "An Act to Reorganize the Board of Chosen Freeholders of the County of Hudson," P. L., 1875, 324, and who, by virtue thereof, would have been the lawful president of the Board, if "An Act Concerning the Constitution of the Boards of Chosen Freeholders of this State, and to Make Uniform the Selection and Duties of Directors of such Boards," P. L., 1885, 137, had not abolished the office created by the Act of 1875. The freeholders assembled, acquiesced in his assumption of the chair and proceeded to elect the relator, Mr. Govern taking no part therein other than to state and put the motion to elect and declare the result of the election.

On information filed to oust the prior incumbent, who was entitled to hold the office until his successor should be lawfully appointed, he demurs, insisting that the election of the relator was illegal, because the corporation did not first choose one of members to preside, but permitted a person not a member to act as chairman.

This contention rests on two hypotheses: First, that the organization of the board, including the selection of a presiding officer, is essential to the exercise of its other functions; second, that the illegality in the organization rendered it absolutely void.

No countenance for these claims is found in the statute creating the corporation. Its pertinent provisions have been cited, and they indicate that the same entity, this corporation, which is to choose a president is to elect a collector. As in the former

function it must act without a president, so it would not violate the terms of the statute if it were to do likewise in the latter. As to the effect of illegality in organization, the statute is silent.

The demurrant therefore must seek his supports elsewhere, and he does so.

His first position, that the ordinary powers of a corporation do not vest until the body is organized by the selection of a presiding officer, need not in the pending case be questioned, because the acquiescence of all the members in the presidency of Mr. Govern was tantamount to electing him *pro hac vice*, and so the actual organization was complete.

The second position, that the illegality of the organization rendered it void, alone requires consideration.

The demurrant does not dispute the general principal which validates the acts of *de facto* officers and bodies, but he asserts that there are exceptions to it, whereon his case can stand.

First, he insists that there can be no *de facto* officer unless there is an office *de jure*, and that as the office of Mr. Govern under the Act of 1875 was abolished by the Statute of 1885, he could not hold that office *de facto*, and so was not *de facto* president of the board. But this conclusion would be warranted only on the assumption that the office of president was abolished, as well as the office created by the Act of 1875, and that assumption is false; the presidency remained as an office *de jure*, and, therefore, there could be a president *de facto*.

Secondly, the demurrant contends that color of right is necessary to constitute one an officer *de facto*, and that eligibility to the office is essential to a color of right, and that, therefore, as Mr. Govern was not a member of the board and so was ineligible to its presidency he could not become *de facto* president.

The proposition, that a person cannot acquire the powers of a *de facto* officer if he is ineligible to the office which he actually fills, is opposed to the decis-

ion of this court in *State v. Anderson*, Coxe, 318, where it was held that one who was ineligible to the office of sheriff was, nevertheless, sheriff *de facto* and his acts as such were valid. To the same effect in *State, Corrigan v. Duryea*, 11 Vroom, 266. Said Mr. Justice Daniel in *Wright v. Mattison*, 18 How. 50, 56, 59 [U. S. Law. ed. bk. 15, 280]. "The courts have concurred, it is believed, without an exception, in defining 'color of title' to be that which in appearance is title, but which in reality is no title. They have equally concurred in attaching no exclusive or peculiar character or importance to the ground of the invalidity of an apparent or colorable title." The rule which declares the acts of *de facto* officers valid, springs out of the public inconvenience to which it would lead, if the validity of their acts, when in office, depended upon the propriety of their election, which could not be ascertained at the time by those who were to rely upon or render obedience to such acts. *Scadding v. Lorant*, 3 H. L. Cas. 418. The eligibility of an officer is as difficult of ascertainment as his actual election, and sound policy requires that the public should be no more required to investigate the one than the other, before according respect to his official position. The ineligibility of Mr. Govern would not, therefore, prevent his becoming *de facto* president, if he had color of title.

It is plain that he had the requisite color of right. He had originally entered upon the office of president of the board of chosen freeholders with an absolutely legal title growing out of his election as director under the Act of 1875; his term had not yet expired by lapse of time, and his *bona fide* contention was that his office still lawfully continued, and he had never ceased to exercise its functions. These facts constitute a color of right. One who assumes an office legally and in good faith remains in it after his title has ended is a *de facto* officer. Bac. Abr., *Offices and Officers*, E.; *Clark v. Ennis*, 16 Vroom, 69. On another ground also he had a color of right.

The power of electing a president belonged exclusively to the board of chosen freeholders, and it was for the board also to determine in what mode the power should be exercised. The acquiescence of the board in Mr. Govern's presidency and its proceeding to business with him in the chair, gave him an appearance of title sufficient to render him president *de facto*.

Thirdly, the demurrant insists that a legal title to an office cannot be built up on an organization of the board which was not *de jure;* that though the other acts of the board might be valid, its election of one to an office was illegal. We have not found such a doctrine laid down by authority anywhere, and the decisions in this court are against it. In *State v. Tolan*, 4 Vroom, 195, a majority of the Common Council of New Brunswick had been unlawfully elected, and yet this court announced its opinion that a council illegally constituted was competent to exercise the functions of a lawful body, although among those functions was the power of electing various city officers. In *Bournes v. Meehan*, 16 Vroom, 189, the relator claimed the office of jail keeper, and his title depended on the legal right of the board of chosen freeholders, elected in the spring of 1882, to choose his successor. This right was denied on the ground that none of the members of that board had been lawfully elected. But the court declared that it was unimportant whether the board was constituted *de jure* or not, since it was the board *de facto*, and that as such it could exercise all the powers of a board *de jure*, including the power of appointing to office.

Our conclusion, therefore, is, that the board of chosen freeholders presided over by Mr. Govern had the right to elect and did lawfully elect the relator to the office of county collector.

The demurrer should be overruled and judgment of the ouster be entered.

NEW JERSEY SUPREME COURT.

THE STATE, EX REL., HUGH DUGAN, vs. GEORGE H. FARRIER.	On Quo Warranto. Judgment of ouster.

The information in this cause having been duly filed by leave of the Court, and the relator having demurred to the plea filed by the defendant therein, and the defendant having joined in demurrer, and the Court having heard the argument of the respective counsel thereon, and duly considered the same, and being of opinion that the defendant hath usurped, and unlawfully holds and executes the office of County Collector of the County of Hudson,

It is ordered that judgment of ouster be entered against defendant and in favor of the relator, with costs to be taxed.

Entered 1885.

On motion of,

ALLAN L. McDERMOTT,

Atty.

NEW JERSEY COURT OF ERRORS AND APPEALS.

GEORGE H. FARRIER, Plaintiff in Error, vs. THE STATE OF NEW JERSEY, EX REL, HUGH DUGAN, Defendant in Error.	In Error to Supreme Court. Writ of Error

NEW JERSEY, ss.

The State of New Jersey to our Justice of our Supreme Court. Greeting:

Because in the record and proceedings and also in the giving of judgment in a plaint, which was in our said Supreme Court before you, between the State of New Jersey, Hugh Dugan being the relator, and George H. Farrier being the defendant, on an information issued out of our said Supreme Court, manifest error, as is said, hath intervened to the great damage of the said defendant, as by the complaint of said defendant we are informed, we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you that if judgment be therein given, then you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, on the thirtieth day of November, 1885, and this

writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon what of right and according to law ought to be done.

Witness Theodore Runyon, Esquire, President Judge of our said Court of Errors and Appeals, at Trenton, the tenth day of November, in the year eighteen hundred and eighty-five.

HENRY C. KELSEY,
Clerk.

R. B. SEYMOUR,
Attorney.

NEW JERSEY COURT OF ERRORS AND APPEALS.

GEORGE H. FARRIER,
Plaintiff in Error,

vs.

THE STATE OF NEW JERSEY, EX REL.,
HUGH DUGAN,
Defendant in Error.

Error to Supreme Court.

Assignment of Errors.

Afterwards, that is to say, on the thirtieth day of November, in the year of our Lord one thousand eight hundred and eighty-five, in the Court of Errors and Appeals, in the last resort in all causes of the State of New Jersey, comes the said George H. Farrier, by R. B. Seymour his attorney, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error, to wit:

FIRST. That the Supreme Court decided that the matters, facts and things set forth and shown in and by the said information are sufficient in law for the said the State of New Jersey, at the relation of Hugh Dugan to impeach and implead the said George H. Farrier.

SECOND. Because the Supreme Court upon demurrer to the said information, decided and adjudged that a stranger may lawfully act as the presiding officer at the meetings of the Board of Chosen Freeholders of the County of Hudson.

THIRD. Because the Supreme Court, upon demurrer to the said information, decided and adjudged that the individual members elect of the Board of Chosen Freeholders of Hudson county can assemble, together with a stranger and without choosing a presiding officer, and without legal organization, can remove and appoint public officers with the same force and effect as the lawful and duly organized corporation of the Board of Chosen Freeholders of said county.

FOURTH. Because by the record aforesaid it appears that the judgment aforesaid, was rendered against the plaintiff in error, when it ought to have been given in favor of the plaintiff in error.

And the said plaintiff in error prays that the judgment aforesaid, for the errors aforesaid, and for divers other errors in the records and proceedings, may be reversed, annulled and held for nothing, and that the said plaintiff in error may be restored to all things which he has lost on account of the said judgment, &c.

R. B. SEYMOUR,
Attorney of Plaintiff in Error.

Joinder in error by defendant in error.