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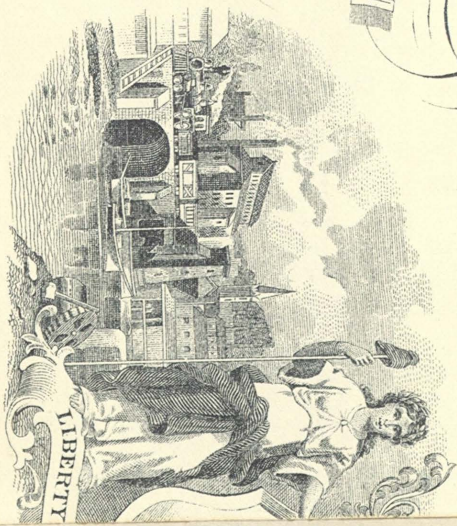
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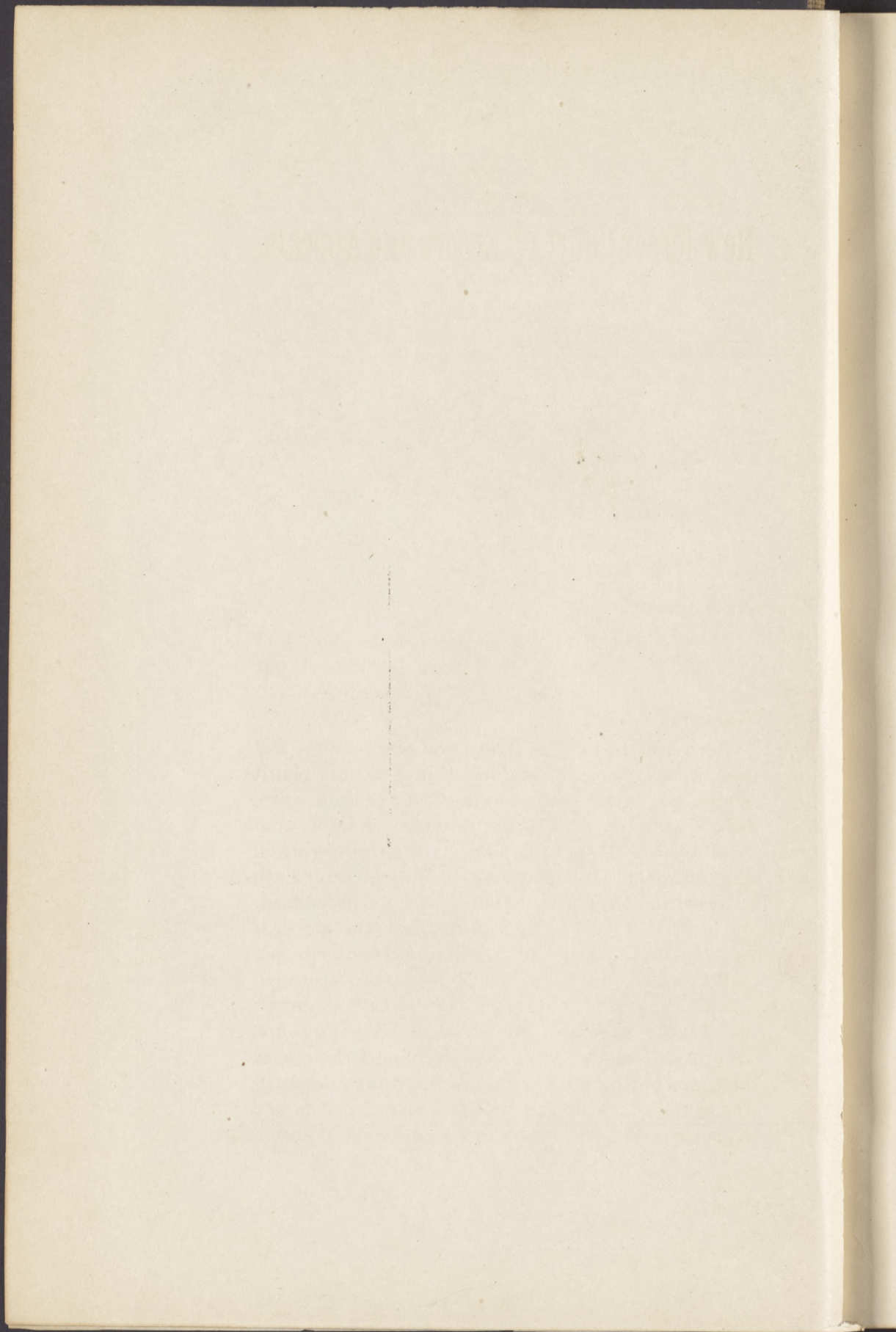
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# Justice



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# New Jersey Court of Errors and Appeals.

JOHN BUMSTED,  
*Defendant in Error,*

*vs*

ARCHIBALD M. HENRY,  
*Plaintiff in Error.*

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*On Information,*  
*&c.*  
*On Error.*

NEW JERSEY, SS.

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The State of New Jersey to the Chief  
[L. S.] Justice and other Justices of our  
Supreme Court of Judicature,

GREETING :

Forasmuch as in the record and proceedings, and also in the giving of judgment in a certain plaint which was in our said Supreme Court of Judicature before you between John Bumsted, relator, and Archibald M. Henry, defendant, in a proceeding in the nature of a *quo warranto*, manifest error hath intervened to the great damage of the defendant, as it is said ; we being willing that the error, if any there be, should, in due manner, be corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you that if judgment be thereupon given and affirmed, then you distinctly and openly send under your seal the record and proceeding aforesaid with all things touching the same, to the Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton,

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on the 17th day of August instant that the record and proceedings aforesaid, being inspected, we may cause to be further done thereupon for correcting that error what of right and according to the law and custom of the State of New Jersey ought to be done.

10 WITNESS, our Chancellor and President Judge  
of our said Court of Errors and Appeals,  
at Trenton aforesaid, the 13th day of  
August, 1906.

S. D. DICKINSON,  
Clerk.

JOHN W. QUEEN,  
Attorney.

The answer of the Chief Justice and other Justices within named.

20 The record and proceedings of the plea whereof  
mention is within named, with all things concern-  
ing the same, to the Court of Errors and Appeals  
in the last resort in all causes within specified, at the  
day and place within contained, I certify in a cer-  
tain schedule to this writ annexed, as we are com-  
manded.

WM. S. GUMMERE,  
Chief Justice.

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## NEW JERSEY SUPREME COURT.

<p>THE STATE OF NEW JERSEY, <i>ex rel.</i>          JOHN BUMSTED,  <i>Relator,</i></p>	}	<p><i>On Quo War- ranto. Information.</i>    10</p>
<p style="text-align: center;"><i>vs.</i></p> <p>ARCHIBALD M. HENRY,  <i>Defendant.</i></p>		

The relator 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 thirtieth day of July, one thousand nine hundred and six, 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 he is a citizen, taxpayer and legal voter of Jersey City, Hudson County, New Jersey, and that he was duly appointed excise commissioner for the City of Jersey City, by Mark M. Fagan, Mayor of the City of Jersey City, for a term not to expire until the twenty-eighth day of April, nineteen hundred and seven; that he duly qualified and exercised the rights and privileges of such office, including the right to enjoy the salary, to wit, the sum of one thousand dollars; that on or about the twenty-fourth day of July, nineteen hundred and six, the Court of Common Pleas, in the County of Hudson, appointed Archibald M. Henry, as an excise commissioner, in the City of Jersey City, to succeed the relator under an act entitled "A supplement to an act entitled 'An act to regulate the sale of spirituous, vinous, malt and brewed liquors and to repeal an act entitled 'An

act to regulate the sale of intoxicating and brewed liquors,' passed March seventh, one thousand eight hundred and eighty-eight, approved March twentieth, one thousand eight hundred and eighty-nine," which said supplement was approved upon the thirteenth day of April, one thousand nine hundred and six; that the said Archibald M. Henry  
 10 has duly qualified as a member of the excise board for Jersey City, and has usurped and intruded upon, and now unlawfully holds and executes the office of excise commissioner in the place and stead of the relator; that the relator says that the said appointment is null and void for the following reasons:

1. There is no foundation in law for the appointment of excise commissioners in the City of Jersey City by the Court of Common Pleas.
- 20 2. That the appointment by the Court of Common Pleas of excise commissioners in Jersey City was unwarranted and illegal.
3. Such appointment as above stated is unwarranted and illegal because the fifth section of an act entitled "A supplement to an act entitled 'An act to regulate the sale of spirituous, vinous, malt and brewed liquors, and to repeal an act entitled 'An act to regulate the sale of intoxicating and brewed  
 30 liquors,' passed March seventh, one thousand eight hundred and eighty-eight,' approved March twentieth, one thousand eight hundred and eighty-nine," and under which section said appointment was made is unconstitutional and null and void because the said section is special legislation, in that it is within the prohibition of paragraph eleven of section seven of article four of the Constitution of the State of New Jersey, it being a private, local and special law to regulate  
 40 internal affairs of towns and counties and appoint-

ing local officers and commissions to regulate municipal affairs.

4. That such appointment is unwarranted and illegal, because the said fifth section of the aforesaid act and the entire act is unconstitutional and null and void, because it is a private and special law within the prohibition of paragraph nine, section seven and article four of the Constitution of the State of New Jersey, in that the said act is a private and special law, and was passed by the Legislature without the conditions of said paragraph being complied with. 10

5. That such appointment is unwarranted and illegal, because the said act above mentioned is unconstitutional and null and void for the following reasons:

- a. The said law embraces more than one object. 20
- b. The object of the act is not stated in its title.
- c. It embraces provisions of private, special or local character. All within the prohibition of paragraph four of section seven of article four of the Constitution of the State of New Jersey.

6. That such appointment is unwarranted and illegal, because the said act and all other and every part thereof is unconstitutional and null and void, because it is contrary to the Constitution of the United States, in that it deprives persons of the equal protection of the law and takes property without due process of law within the meaning of the fourteenth amendment of the Constitution of the United States. 30

7. That such appointment is unwarranted and illegal, because the fifth section of the said act above mentioned is unconstitutional and null and void, in that it seeks to impose upon the judiciary 40

the right and power belonging to the administrative or executive function of the government contrary to the provisions of the Constitution of the State of New Jersey and the prerogative rights of the Court of Common Pleas.

10 And finally and for the above and other reasons, the said appointments and each of them are illegal and null and void.

The said relator shows that the cities of Camden and Trenton in this State have excise boards elected by the voters of said cities, and the City of Elizabeth has an excise board appointed by the Mayor or governing body.

For all the aforesaid the said relator says that he is still rightfully entitled to hold, use and exercise the said office of excise commissioner of Jersey  
 20 City as aforesaid, at Hudson County aforesaid, which said office is a municipal office of said city, and the relator is a citizen of said city and believes himself to be entitled to said office, and which said office the said Archibald M. Henry during all the time aforesaid, upon the State of New Jersey hath usurped, intruded into and lawfully held, used, exercised, and yet doth usurp, intrude into and unlawfully hold and exercise, to the exclusion of the  
 30 said relator, to wit, at Jersey City aforesaid, in contempt of the State of New Jersey, and to its great damage and prejudice against its sovereignty and dignity.

Whereupon, the said relator, desiring to sue and prosecute in this behalf, prays the advice of the Court herein the premises and that the said Archibald M. Henry in this behalf be made to answer to the said State by what warrant he claims to hold, use, execute and enjoy the aforesaid office of excise  
 40 commissioner, in the City of Jersey City, and the

liberties, privileges and franchises thereto.

ZIEGENER & LANE,  
Attorneys for the Relator.

**DEMURRER.**

And now as yet of the June term of the year nineteen hundred and six, comes the said Archibald M. Henry, by John W. Queen, his attorney, and having heard the said information read to him he says, that the said Archibald M. Henry ought not to be called upon to answer the said information because he says that the matters and things therein contained are not sufficient in law, and this he is ready to verify, wherefore and because of the insufficiency of the said information, the said Archibald M. Henry 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.

ARCHIBALD M. HENRY,

JOHN W. QUEEN, Defendant.  
Attorney for Defendant.

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

Archibald M. Henry the above named defendant of full age being duly sworn according to law on his oath says that he is the above named defendant; that he is about to file a demurrer in the above cause and that the said demurrer is not intended for the purpose of delay; but that he verily believes he has a just and legal defence to said action and information on the merits of the case.

ARCHIBALD M. HENRY.

Subscribed and sworn to }  
before me this first day }  
of August A. D. 1906. }

FRANCIS V. DOBBINS,  
Master in Chancery of New Jersey. 40

### JOINDER IN DEMURRER.

And the relator saith that the said information and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient in law to impeach and implead the said Archibald M. Henry, and the said relator is ready to  
 10 verify and prove the same, as the Court here shall direct and award.

Wherefore, inasmuch as the said defendant hath not answered the said information, nor hitherto in any manner denied the same, the said relator prays judgment, that the said Archibald M. Henry was not duly and lawfully appointed to be a member of the Board of Excise Commissioners of Jersey City and that John Bumsted is still entitled to hold office; and that the said Archibald M. Henry during all the  
 20 time since he entered upon the duties of said office, as in the said information stated, hath 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 John Bumsted the office of Excise Commissioner of Jersey City, and the liberties, privileges and franchises thereof; and that the said Archibald M. Henry do not in any manner, intermeddle with, or concern himself in and about the office, liberties  
 30 and franchises aforesaid, but that he be absolutely forejudged and excluded from ever exercising or using the same, or any of them, for the future; and that the said John Bumsted, the relator, above mentioned in this behalf, do recover against the said Archibald M. Henry his costs by him laid out and expended in carrying on this suit in this behalf, according to the statute in such case made and provided.

ZIEGENER & LANE,  
 Attorneys for Relator.

### RULE FOR JUDGMENT.

The information in the above cause having been filed by John Bumsted, a citizen of this State, setting forth that he, the said John Bumsted, believes himself to be lawfully entitled to the office of Excise Commissioner of Jersey City against Archibald M. Henry, the defendant, for usurping, intruding into and unlawfully holding and executing said office of Excise Commissioner of Jersey City, and the defendant having demurred thereto, and the plaintiff having joined in demurrer, and the writ, return and pleadings having been properly framed so that the title of the relator to the office of Excise Commissioner of Jersey City may be determined, and the cause having been regularly set down and noticed for hearing, and having been argued before the Court by Merritt Lane, of counsel for the defendant, and the Court having considered said cause and directed a judgment in favor of the relator and of ouster against the defendant, Archibald M. Henry, from the office of Excise Commissioner of Jersey City, and determining that the said John Bumsted is entitled to the said office of Excise Commissioner of Jersey City, and that the said defendant, Archibald M. Henry, pay costs to the relator.

It is ordered, that judgment in favor of the relator and of ouster with costs to the relator against the defendant, including the costs of printing, and determining that the said relator is entitled to the office of Excise Commissioner of Jersey City, be entered in the above entitled suit.

On motion of  
 ZIEGENER & LANE,  
 Attys, for Relator.

Rule actually entered this 13th day of August, 1906.

**JUDGMENT.**

And now, at this day, to wit, the 13th day of August, in the year of our Lord one thousand nine hundred and six, comes the said relator, John Bumsted, by Ziegener & Lane, his attorneys aforesaid, and the defendant, Archibald M. Henry, by his attorney aforesaid; whereupon all and singular, 10 the premises being seen and fully understood, and mature deliberation being had thereupon by said Supreme Court, it appears to said Court herein that the said information in the nature of a *quo warranto*, and the matters therein contained are sufficient in law for the said State of New Jersey, and the said John Bumsted to have and maintain the aforesaid information and action thereof against the said Archibald M. Henry, wherefore it is considered and adjudged by the Court here that 20 the said Archibald M. Henry was not duly and lawfully appointed as a member of the Board of Excise Commissioners, of Jersey City; and that the said Archibald M. Henry do not in any manner intermeddle with or concern himself in and about the office, liberties, privileges and franchises of a member of the Board of Excise Commissioners of the City of Jersey City aforesaid; and that he be absolutely forejudged and excluded from ever exercising or using the office of Excise Commissioner of 30 the City of Jersey City aforesaid, or all or any of its liberties, privileges or franchises for the future. And it is further considered and adjudged that the said John Bumsted is entitled to the office, liberties and franchises of Excise Commissioner of the City of Jersey City; and that the said Archibald M. Henry, in order to satisfy the said State of New Jersey, for and on account of the usurpation aforesaid be taken and so forth, and that the said John Bumsted, the relator mentioned in this behalf, do 40 recover against the said Archibald M. Henry his

costs of this suit to be taxed, including the costs of printing, according to the form of the statute in such case made and provided.

#### ASSIGNMENT OF ERROR.

Afterwards, to wit, on the fifteenth day of September in this same term, before the Judges of the said Court of Errors and Appeals, in the last resort in all causes, at Trenton, comes the said Archibald M. Henry, by John W. Queen, his attorney, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears that the judgment in form aforesaid was given for the said John Bumsted against the said Archibald M. Henry, whereas by the law of the land the judgment ought to have been given for the said Archibald M. Henry against the said John Bumsted.

There is also error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid was given upon a supposed plea that Section 5th of the Laws of Chapter 114, of the Laws of 1906, was unconstitutional, whereas by the law of the land the said section of said act is constitutional.

There is also error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid in form aforesaid was given on an information in the nature of a *quo warranto* exhibited in the name of the said John Bumsted, whereas by the law of the land the information ought to have been exhibited and the proceedings brought thereunder at the instance of and in the name of the Attorney-General of the State of New Jersey.

There is also error in this, to wit, that by the record aforesaid it appears in the form aforesaid determined that the said John Bumsted was en-

titled to the office of Excise Commissioner of the City of Jersey City, whereas by the law of the land the said Court had no authority to so determine.

And the said Archibald M. Henry prays that the judgment aforesaid may be reversed and annulled and altogether held for nothing, and that he may be restored to all things which he has lost on  
10 occasion of the said judgment, etc.

JOHN W. QUEEN,  
Attorney for and of Counsel with  
Plaintiff in Error.

### JOINDER IN ERROR.

And the said John Bumsted, by Ziegener & Lane, his attorneys, comes into Court protesting that the assignment of errors filed in the above entitled cause  
20 are not sufficient in law, and that each and every of said assignment of errors are improper, and that there is no sufficient assignment of errors on file in this cause, and that the third and fourth assignment of errors are based upon the matters not brought to the attention of the Court below and should be stricken from the record, and reserving to himself all advantage of exception by reason of the premises he says that there is no error either in the record and proceedings aforesaid or  
30 in the judgment aforesaid, and he prays here, that the Court here, may proceed to examine, as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may, in all things, be affirmed, etc.

ZIEGENER & LANE,  
Attys. Deft. in Error.

MERRITT LANE,  
Of Counsel.

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