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Notice of Appeal.

(Filed July 27, 1916.)

New Jersey Supreme Court.

ESSEX COUNTY.

VINNIE VAN HOOGENSTYN, *Plaintiff,* *vs.* THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, *Defendant-Petitioner.*	In Re Petition for Writ of Habeas Corpus Cum Causa.

William L. Brunyate, Esq.,
Attorney of Plaintiff.

SIR:

YOU WILL PLEASE TO TAKE NOTICE that The Delaware, Lackawanna & Western Railroad Company, the above defendant-petitioner, hereby appeals to the Court of Errors and Appeals of the State of New Jersey, from the final order made and entered in the above matter in the New Jersey Supreme Court refusing and denying to the above defendant-petitioner a writ of habeas corpus cum causa removing the action of the above plaintiff against the above defendant recently instituted in the Court of Common Pleas in and for the County of Essex, to the Supreme Court of the State of New Jersey.

And this said defendant-petitioner herewith writes and sets down its grounds of appeal to be as follows:

Notice of Appeal.

1. That the New Jersey Supreme Court erred in refusing said writ upon the circumstances and facts set forth in this defendant's petition.

2. That under the facts and circumstances set forth in this defendant's petition, this defendant was entitled to said writ as a matter of right.

3. That this defendant's petition set forth all the essential and necessary facts entitling it to said writ of habeas corpus cum causa as a matter of right.

4. That the refusal of said writ was contrary to the statutes in such case made and provided.

5. That the refusal of said writ was contrary both to the law and the ancient and universal practice respecting said writ.

Yours truly,

FREDERIC B. SCOTT,
Attorney.

Notice of Application for Writ of Habeas Corpus.

(Filed June 24th, 1916.)

ESSEX COUNTY COURT OF COMMON PLEAS.

VINNIE VAN HOOGENSTYN, *Plaintiff,* *vs.* THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, *Defendant.*	Action at Law.

Wm. L. Brunyate, Esq.,
Essex Building,
Newark, N. J.

SIR:

YOU WILL PLEASE TO TAKE NOTICE that on Saturday, June the 24th, at 10 o'clock in the forenoon of that day, or as soon thereafter as I can be heard thereon, I shall make an application to his Honor, William S. Gummere, Chief Justice of the Supreme Court, at the Court House in Newark, for the issuance of a writ of habeas corpus cum causa, directed to the Essex County Court of Common Pleas, removing the cause of Vinnie Van Hogenstyn, plaintiff vs. The Delaware, Lackawanna and Western Railroad Company, defendant, recently instituted against The Delaware, Lackawanna and Western Railroad Company by Vinnie Van Hogenstyn, from the Essex County Court of Common Pleas into the Supreme Court of the State of New Jersey so that the said cause may be there heard, tried and determined.

AND YOU WILL FURTHER TAKE NOTICE that at said time I shall present to the Chief Justice of

the New Jersey Supreme Court a bond in double the amount of the damages and costs claimed by the said Vinnie Van Hogenstyn in her aforesaid action against The Delaware, Lackawanna and Western Railroad Company, so that you may be present at said time to object to the form and sufficiency of said bond.

AND YOU WILL FURTHER TAKE NOTICE that attached hereto and made to form a part of this notice is a true copy of the petition which I will present to the said Chief Justice of the New Jersey Supreme Court.

Yours truly,

FREDERIC B. SCOTT,
Attorney of Defendant.

Petition for Writ.

TO THE HONORABLE SUPREME COURT OF THE STATE OF NEW JERSEY:

The petition of The Delaware, Lackawanna and Western Railroad Company respectfully shows:

1. That on the 9th day of June, 1916, a summons issued out of the Essex County Court of Common Pleas in and for the State of New Jersey, to which was attached and annexed a complaint, was served upon your petitioner, a true copy of which summons and complaint is herewith attached to this petition and made to form a part hereof.

2. That in and by the said complaint it appears that one Vinnie Van Hogenstyn is plaintiff and your petitioner, The Delaware, Lackawanna and Western Railroad Company, is defendant, and that her action against your petitioner is for personal injuries which she claims were received on account of certain alleged negligent acts of the servants and agents of your petitioner, and that the damages sought and claimed in the said ac-

tion or matter in controversy between the said Vinnie Van Hogenstyn, plaintiff, and your petitioner, defendant, exceed the sum of $200.00, to wit, $10,000.00.

3. Your petitioner further shows that the said cause mentioned and set forth in the said Vinnie Van Hogenstyn's complaint will not be at issue according to law and the practice in such cases made and provided until the 30th day of June, 1916.

4. Your petitioner therefore prays in consideration of the premises according to the statutes in such cases made and provided, that this Honorable Court will allow and grant to your petitioner a writ of habeas corpus cum causa, removing the aforementioned case of Vinnie Van Hogenstyn, plaintiff vs. The Delaware, Lackawanna and Western Railroad Company, defendant, in the Common Pleas Court for the County of Essex to this Honorable, the Supreme Court of the State of New Jersey, there to be heard, tried and determined.

5. Your petitioner further shows to this Honorable Court that no other or previous application has previously been made to this Honorable Court for the removal of the aforesaid case.

6. Your petitioner further shows that it has entered into a bond to the plaintiff in said cause in more than double the sum demanded by her in the aforesaid action against your petitioner, conditioned for the payment of the damages and costs in case judgment thereon be against it, and that it hereby presents the same to this Honorable Court for its approval.

And your petitioner will ever pray.

A. D. CHAMBERS,
Secretary.

FREDERIC B. SCOTT,
Attorney of Petitioner.

STATE OF NEW YORK,
County of New York. } ss.:

A. D. CHAMBERS, of full age, being duly sworn, on his oath says that he is the Secretary and Treasurer of The Delaware, Lackawanna and Western Railroad Company, the petitioner in the foregoing petition; that he has read the foregoing petition, and that the facts and things therein set forth are true to the best of his knowledge, information and belief.

A. D. CHAMBERS,

Subscribed and sworn to before me
this 15th day of June, 1916.
Joseph Full,
A foreign commissioner of deeds for the
State of New Jersey and New York.

Summons.

WRIT OF SUMMONS.

THE STATE OF NEW JERSEY, TO THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY:

YOU ARE SUMMONED to answer the annexed complaint of Vinnie Van Hogenstyn, in an action at law in the Essex County Common Pleas Court, and take notice, that unless you file your answer to said complaint with the Clerk of Essex County, at Newark, New Jersey, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

WITNESS, WILLIAM P. MARTIN, Judge of the said Essex County Common Pleas Court, at Newark, New Jersey, this 6th day of June, Nineteen Hundred and Sixteen.

JOSEPH McDONOUGH,
Clerk.

WM. L. BRUNYATE,
Attorney.

Complaint.

ESSEX COUNTY COURT OF COMMON PLEAS.

VINNIE VAN HOOGENSTYN, *Plaintiff,* *vs.* THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, *Defendant.*	Action at Law.

The plaintiff, Vinnie Van Hogenstyn, residing at 35 North Seventeenth Street, in the City of East Orange, County of Essex and State of New Jersey, says that:

(1) On or about the 22nd day of November, 1915, the defendant company owned, operated and maintained a railway for the carriage of passengers between East Orange Station, City of East Orange and Grove Street Station, City of East Orange.

(2) That on the 22nd day of November, 1915, the plaintiff at the East Orange Station, City of East Orange, of the said defendant company, purchased and paid for a ticket from East Orange Station, City of East Orange to the Grove Street Station, City of East Orange.

(3) That after the purchase of the said ticket, the said plaintiff boarded the eastbound train of the said defendant company leaving the said East Orange Station on or about five-fifty in the afternoon of the said 22nd day of November, 1915.

(4) That as said train of the said defendant company was approaching the said Grove Street Station, City of East Orange, the conductor or brakeman, the agent of the said defendant com-

pany, passed through the said car in which the plaintiff was sitting and announced the station, Grove Street and invited the said plaintiff to alight.

(5) That immediately before reaching the said Grove Street Station, the said plaintiff in response to the said defendant's invitation to alight, arose from her seat in said car and proceeded to the front door of the said car awaiting the stopping of the said train.

(6) That the said train upon which said plaintiff was riding as passenger was so managed, constructed and operated by the said defendant company, or its agents, that while the said plaintiff was so standing within the said car awaiting opportunity to alight, the said plaintiff, by a sudden, violent and unusual jerk or lurch of the said train, was violently ejected from within the said car out upon the platform; that the door of the said car closed upon her fingers of her right hand, crushing three fingers of the same; that as a result thereof, the said plaintiff received serious bodily injuries resulting in hysteria, nervous disturbances, cardiac and arterial injuries and underwent great pain and suffering and still is undergoing great pain and suffering and was deprived for a long time from attending to her usual occupation and earning a livelihood.

WHEREFORE, the plaintiff demands the sum of $10,000 damages to the said Vinnie Van Hogenstyn, plaintiff, against the said defendant, The Delaware, Lackawanna & Western Railroad Company, together with costs of suit.

WM. L. BRUNYATE,
Attorney for the Plaintiff.

Order.

(Filed July 26, 1916.)

NEW JERSEY SUPREME COURT.
ESSEX COUNTY.

VINNIE VAN HOOGENSTYN, *Plaintiff,* *vs.* THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, *Defendant.*	Action at Law. On Petition for Habeas Corpus.

Application having been made by the above defendant, The Delaware, Lackawanna & Western Railroad Company, upon due notice to the above plaintiff, for a writ of habeas corpus cum causa, to remove an action at law recently brought by the above plaintiff against the above defendant, on the 9th day of June, 1916, in the Essex County Court of Common Pleas to the New Jersey Supreme Court;

And this Court having duly inspected and considered the petition of the above defendant for said writ of habeas corpus cum causa,

It is on this 21st day of July, 1916, ORDERED, that the said defendant's application for said writ of habeas corpus cum causa be denied because no good or sufficient reason for the allowance of said writ having been shown.

And it is further ORDERED that said defendant do file its answer in the Essex County Court of Common Pleas to the plaintiff's complaint therein filed within four days from the date of this Order.

WM. S. GUMMERE,
C. J.

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

VINNIE VAN HOOGENSTYN, *Plaintiff-Respondent,* *vs.* THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, *Defendant-Appellant.*	*Action at Law* *On Appeal from Order.*

Brief of Plaintiff-Respondent.

Facts.

The facts in the case at bar are very simple. The plaintiff-respondent brings an action at law in tort in the Common Pleas of Essex County. The defendant-appellant petitions for a writ of *habeas corpus cum causa* under the statute 3 C S., p. 4112, assigning no cause, resting his petition on the theory that the statute is mandatory. The Chief Justice denied the writ, because no cause was shown, holding the statute is discretionary. Defendant appeals.

Law.

The appeal should be dismissed on the following grounds:

1. The use of the word "may" in 198th Section of the Practice Act, Compiled Statutes, Volume 3, page 4112, the statute upon which the appellant based his application for *habeas corpus cum causa,* is discretionary not mandatory.

2. The discretion created is the discretion of the Justice to whom the application was made and not the discretion of the litigant.

3. The Order objected to, being discretionary, neither appeal nor writ of error lies, the remedy, if any, is certiorari.

4. The Order objected to, not being a final Order, no appeal lies.

Considering the above points in the same order:

1. Whether or not the word "may" when used in a statute should be construed as discretionary or mandatory has long been settled in this and other jurisdictions.

The cardinal rule of construction was first laid down by Chancellor Kent in the case of *Newburgh Turnpike Co.* v. *Miller,* 5 Johns, Ch. Rep., page 112. He held:

> "That the true rule of construction applicable to statutes in such cases, is, that the word 'may' means 'must' or 'shall,' only in cases where the public interests and rights are concerned, and it is only where the public or third persons have a claim *de jure* that the rights shall be exercised." Otherwise "may" is permissible only.

Chancellor Kent's rule was adopted in this State in the case of *Seiple* v. *Mayor, et als, of the Borough of Elizabeth,* 27 N. J. L., 407, and has been consistently followed.

> See *Shepard's Citations to Seiple case, supra.*

It cannot be successfully contended that any public interest or rights are concerned, or that any public or third person has a claim *de jure* in the case at bar. The use of the word "may" in this statute is, therefore, discretionary.

2. Is the discretion that of the litigant or of the Justice to whom application for the *habeas*

corpus is made? In a note, 5 L. R. A. (N. S.), page 340 at 342, in discussing whether or not "may" is permissible or mandatory, the editor says:

> "The question has generally turned very largely upon the terms of the particular statute under construction, and even more upon the nature of the subject to which it related."

It is submitted that the question in whom the discretion lies, must also be determined "very largely upon the terms of the particular statute under construction, and even more upon the nature of the subject to which it related." The nature of the subject matter of this statute is the removal of a cause from a lower court to a higher, and alteration of jurisdiction, the jurisdiction which Chief Justice Kirkpatrick, in *Ludlow* v. *Ludlow,* 1 South., 387, calls "a very high and transcendent jurisdiction."

In the case last cited, a very similar statute concerning a very similar question was at issue, and the opinion of Chief Justice Kirkpatrick and the concurring opinion of Justice Southard seems absolutely dispository of the question at bar.

In that case, the statute under construction was as follows:

> "All final sentences or decrees of the Orphans' Court where no appeal is given to the Prerogative Court, *shall be subject to removal by certiorari* into the Supreme Court."

And the question at issue was, whether or not the words "shall be subject to removal" were imperative or discretionary, and if discretionary,

in whom the discretion lay. Chief Justice Kirkpatrick held:

> "The very issuing of such writ, therefore, is exercise of a higher judicial power and must, in its nature be discretionary. To allow every man in the waywardness of his own mind, to sue out a writ of certiorari, in every stage of a suit, and thereby to impede the administration of public justice and the execution of public powers and authorities, would be an evil which could not be borne."

Justice Scudder said, page 394:

> "This then is one of those extraordinary cases in which the writ does not issue as a matter of course, *unless so directed and prescribed by the statute; and if the statute do not provide this remedy, in such a way as to take from the court, all power of refusal, we ought to require a proper case and exercise a legal discretion before it is issued. . . . I apprehend that too strong a construction has been given to the words 'shall be subject to removal' found in this section. They have been considered by the counsel as imperative; leaving no exception; permitting no discretion. Had the Legislature intended this, it would have said, that the court shall, on application in all cases grant the writ; but it could not have intended it.* There are many cases, where the granting of the writ, would operate manifest injustice and oppression; and where no possible purpose could be effected to either party, but the delay and the gratification of malevolence. *The makers of the law did not design such gratification; they must have meant to leave a just and legal*

discretion in the court, that the writ might be granted, only where law and justice would be promoted by it. And the words to my mind convey this idea: 'shall be subject to removal' is nothing more than declaring, that the court may grant when it sees proper."

Paraphrasing the words of Justice Scudder to conform to the statute now under construction, the words "may be removed" is nothing more than declaring that the court may grant when it sees proper.

It is abundantly clear, therefore, that the discretion is that of the Justice and not of the litigant.

3. The Order objected to, being a matter of discretion, neither appeal nor a writ of error (now appeal) lies. The cases so holding are so abundant and well respected that citation is scarcely necessary. However, the doctrine laid down by Chief Justice Greene, (Court of Errors and Appeals) in *State* v. *Wood,* 23 N. J. L., 560, and by Chief Justice Ewig, 8 N. J. L., page 80 at 82, to the above effect has never been disputed in this state, but has been repeatedly affirmed.

See *Shepard's Citations* to above cases, Vol. 1, Parker's N. J. Digest, Appeal and Error, Section 38, Vol. 8.

It is clear, therefore, that neither an appeal nor a writ of error (now appeal) will lie to review a discretionary order.

4. Neither an appeal nor a writ of error (now appeal) will lie except upon a final order.

The above law is likewise too well settled to dispute. Chancellor Pitney in the case of *Allegair* v. *Hickman,* 82 N. J. L., 369, reaffirmed this doctrine in the Court of Errors. The ear-

lier cases since continuously followed are *Den ex Dem. Rutherford* v. *Fen.,* 21 N. J. L., 700, (Court of Errors and Appeals) and *State* v. *Wood,* 23 N. J. L., 560.

In the latter case, Chief Justice Greene, p. 561, elaborately defines what is and what is not a final judgment, in terms essentially applicable to the case at bar.

It is therefore, abundantly clear that the appeal should be dismissed with costs to plaintiff-respondent.

Respectfully submitted,

WILLIAM L. BRUNYATE,
Attorney of Plaintiff-Respondent.

New Jersey Court of Errors and Appeals.

VINNIE VAN HOOGENSTYN,
Plaintiff-Appellee,
against
THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY,
Defendant-Appellant.

Action at Law.

BRIEF OF APPELLANT.

Statement.

This is an appeal from an order of the Supreme Court denying the appellant's application for a writ *habeas corpus cum causa* to remove an action from the Essex County Court of Common Pleas to the New Jersey Supreme Court.

From the State of Case it appears that the plaintiff-appellee began an action in Essex County Court of Common Pleas for personal injuries incurred by her while a passenger on one of defendant-appellant's train (pp. 4, 5, 7, 8); that appellee suffered severe personal injuries from such accident, and that she demanded judgment in the sum of $10,000 (p. 8). This application, after consideration by the Court, was denied,

> "because no good or sufficient reason for the allowance of said writ"

had been shown (p. 9, lines 30-32); and from the order refusing said writ this appellant appeals to this Court.

Argument.

In view of the fact that the essential particulars appearing in the petition of the appellant for the allowance of the writ of *habeas corpus cum causa,* are uncontradicted, the appellant claims it was entitled, as a matter of right, to said writ.

Section 198 of the Practice Code of 1903, page 598, says:

> "Any action commenced in any Circuit Court or Court of Common Pleas, where the debt, damages or matter in controversy shall exceed two hundred dollars ($200) may be removed into the Supreme Court at any time before issue joined upon matter of fact or law by writ of habeas corpus duly allowed by one of the Justices of the Supreme Court; provided, the defendant shall at or before the allowance of said writ, enter into a bond to the plaintiff with sufficient sureties approved by the Justice in double the sum demanded conditioned for the payment of the condemnation money and costs, in case judgment shall pass against him; which bond shall be filed with said writ and returned with the same to the Supreme Court, and in default thereof said action shall not be removed nor said writ returned."

It appears in the appellant's petition that an action had been brought against it by the appellee in the Essex County Court of Common Pleas for damages, wherein the matter in controversy exceeded $200, to wit, $10,000 (pp. 4, 5).

In *Chandler v. Monmouth County Bank,* 9 N. J. L., 101, we have considered from a historical standpoint the statutes and enactments with respect to the writ of *habeas corpus cum causa,* and at page 104 the Chief Justice, who delivered the opinion of the Supreme Court, says:

> "The removal itself was the object of legislation in all these particulars and the examination of the same serves to show a legislative declaration that such was the writ whereby such removal was obtained."

The writ itself and the practice thereon have been declared to be a common law and not a statutory writ.

Dickinson v. State Bank of Morris, 16 N. J. L., 354.

According to *Chandler v. Monmouth County Bank, supra,* the earliest ordinance with respect to the writ in question was that of August, 1751, entitled "An Ordinance Respecting the Supreme Court" (Book AAA of Commissions, etc., 313, Secretary's Office. 1 Halstead Appendix, 6), which remained in force on the 2nd day of October, 1776, when an act was passed, entitled "An Act to con firm and establish the several courts of justice within the State". Patterson, 39. The Act or ordinance of 1751, as shown in 1 Halstead Appendix, 6, dealt with the power of the Supreme Court to have cognizance of and to hear, try and determine all pleas, civil, criminal and mixed, and enacts that the Supreme Court shall have as full and ample power as all or any of our courts of Kings Bench, Common Pleas or Exchequer, and that they may by habeas corpus, certiorari or any other legal writ remove any action, writ or plaint out of the respective county courts.

That the amount involved in the proceeding is the basis upon which the writ to remove is determined, we believe is apparent from an examination of the English statutes. By the statute of 21 Jac., 1, c. 23, it was provided that

> "If any cause, not concerning freehold or inheritance or title of land lease or rent, commenced or depending in any such inferior court of record, it shall appear or be laid in the declaration that the debt, damage or things demanded do not amount to or exceed the sum of five pounds, then such case shall not be stayed or removed by any writ or writs whatsoever other than writs of error or attaint";

Referring to said statute it is said in Tidds Practice, Section 406, that soon after the passage of it a method was contrived for removing causes for sums not exceeding five pounds, and a subsequent statute was enacted to circumvent the contrivance of defeating the purposes of this act when the removable amount fixed by the statute was not actually involved.

An examination of that section of the Practice Act under which the petition for the writ was presented, lays down these jurisdictional facts upon which the Justice of the Supreme Court is called upon to act, to wit, (1) that the action sought to be removed was commenced in a Circuit court or Common Pleas Court; (2) that the damages or matter in controversy exceed $200; (3) that the removal be sought before issue joined, and (4) the presentation of a bond with sufficient sureties; and further that the default in the presentation of the bond shall be the only reason for the non-removal of the cause. We take it that the expression used in the statute "may be removed into the Supreme court at any time" has reference to the exercisable option on the part of the defendant in any action commenced against it in a Circuit Court or Common Pleas Court wherein the damages or matter in controversy shall exceed $200, and that the word "may" as used in the quoted section, which at times has been held to be permissive rather than mandatory, has no bearing with respect to the granting to the Justice of the Supreme Court, to whom the application is made, a discretion as to the allowance of the writ.

In *Cruser v. Duryea,* 9 N. J. L., 15, it appears that a judgment was rendered before a justice of the peace for the sum of $1.49, together with the costs of the suit; that the defendant demanded an appeal to the Court of Common Pleas, which Court refused to entertain said appeal on the ground and for the sole reason that the debt or demand in dispute between the plaintiff and defendant did not

exceed $3. By a statute in force at that time it appeared that it had been enacted that any judgment obtained before any justice of the peace in any courts for the trial of small causes, upon a verdict of a jury, either party might appeal to the Court of Common Pleas of the County within the same time and in the same manner and upon the same terms as any other causes where an appeal was granted. It further appeared that by the 36th section of an Act of 1818 appeals were excepted from judgments founded upon verdicts where the complaint or demand or matter in dispute did not exceed $3; but on construing the act of 1820 which gave an appeal from *any judgment founded upon a verdict* the Court held that the Act of 1820 repealed all acts and parts of acts inconsistent with its provisions and that in view of the fact that the jurisdictional amount of $3 mentioned in the Act of 1818 was not referred to in the Act of 1820 that the Act of 1820 repealed all acts and parts of acts inconsistent with its provisions, and the question as to whether the sum in controversy was the criteria upon the Court should base its decision was a matter of legislative and not judicial consideration.

We take it, therefore, that where the Legislature has enacted that

> "any action commenced in any Circuit Court or Court of Common Pleas, where the debt, damages or matter in controversy shall exceed $200 may be removed into the Supreme Court at any time before issue joined",

it was the express subject of legislative enactment, and that the facts being uncontradicted and undisputed with respect to the amount in question, the right of the appellant to remove the case at bar from the Essex County Court of Common Pleas to the Supreme Court was a matter of right.

A case which appears to us analogous in the construction we feel that applies to the section

of the Practice Act here involved, appears with respect to Chapter 519, Laws of 1869, p. 1238, which was an act for the better securing of titles to lands sold by sheriffs and other officers, and which enacted that

> "the proceeds upon which such deeds, declarations or conveyance of sales are founded are not subject to be questioned collaterally, but *may be at any time reviewed by certiorari or other proper proceedings in the Supreme Court or Circuit Courts.*"

The Court, in passing upon the language of which act in question said, in *State, Graham, v. Patterson,* 37 N. J. L., 380, at page 384:

> "The language used by the framer of the act that the proceedings *may be reviewed by certiorari,* etc., indicates an intention not to deprive the citizen in any case of a remedy of writ to remove from his way a conveyance which obstructs him in the enjoyment of his property."

While it is not contended by this appellant that its petition did show any particular reason for the allowance of the writ in question, it is, nevertheless, urged that the benefit to be derived from a trial of an action in a Supreme Court circuit, with the right to have the Supreme Court review the verdict of a jury on a rule to show cause, is sufficient reason in itself why the writ should have been allowed.

That the order denying the appellant's right to the writ in question is an appealable order, we contend is established by the case of *Defiance Fruit Company v. Fox,* 76 N. J. L., 482.

It is respectfully submitted that error was committed in refusing the appellant's application for the writ of *habeas corpus cum causa* and that the Supreme Court should have allowed the writ petitioned for.

Respectfully submitted,

FREDERIC B. SCOTT,
Attorney of Appellant.