

COURT OF ERRORS AND APPEALS.

JOHN V. HENRY AND MICHAEL

LYONS, Plaintiffs in Error,

vs.

WILLIAM B. MERRITT,

Defendant in Error.

Error to
Middlesex
Circuit Court.

HERBERT STOUT, *Attorney for Plaintiffs in Error.*

CHARLES MORGAN HERBERT, *Attorney for Defendant in Error.*

NEW JERSEY, to wit:—*The State of New Jersey to the Judge of our Circuit Court in and for the County of Middlesex, greeting:*

Because in the record and proceedings, and also in the giving of judgment in a certain writ which was in our said Court before you, between William B. Merritt, plaintiff, and John V. Henry and Michael Lyons, defendants, in a plea of trespass on the case, manifest error hath intervened, to the great damage of the said John V. Henry and Michael Lyons, as by their complaint we are informed, we being willing that the error, if any there be, shall in due manner be corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, that you send to the Court of Errors and Appeals in the last resort in all causes, at Trenton, on the third Tuesday of No-15

vember next, under your seal, the record and proceedings aforesaid, with all things concerning the same, and this writ, that we may cause to be done thereupon for correcting that error what of right and according to the law of this State ought to be done.

Witness, Henry W. Green, Chancellor of the State of New Jersey, at Trenton, the eighteenth day of October, in the year of our Lord one thousand eight hundred and sixty-four.

W. S. JOHNSON, *Clerk.*

10 HERBERT STOUT, *Att'y.*

I return the record and proceedings within mentioned as within commanded, with all things concerning the same, as by the transcript hereto annexed will appear.

Witness my hand and seal the eighteenth day of October, A. D. 1864.

P. VREDENBURGH, [L. S.]

DECLARATION IN THE COURT BELOW.

WILLIAM B. MERRITT

vs.

20 JOHN V. HENRY AND MICHAEL
LYONS.

} Declaration
In Case.

CHAS. MORGAN HERBERT, *Attorney of Plaintiff.*

Middlesex Circuit Court of the fifteenth day of February, A. D. eighteen hundred and sixty-four.

25 Middlesex County, to wit:—John V. Henry and Michael Lyons were summoned to answer unto William B. Merritt in a plea of trespass on the case, and thereupon the said plaintiff, by Charles M. Herbert, his Attorney, complains, for,

that, whereas, heretofore, to wit, on the Tuesday next after the first Monday in November in the year of our Lord one thousand eight hundred and sixty-three, being the time by law appointed for that purpose, an election was held in this State for members of the Legislature of this State for the several counties thereof, and for Sheriffs and Coroners of said counties; and the said John V. Henry and Michael Lyons and Charles S. Williams, of the third election district of the city of New Brunswick, county and State aforesaid, then being judges of election in said district, did, on the said Tues-¹⁰ day next after the first Monday in November in the year aforesaid, meet at the place in said city appointed by the common council thereof for holding the annual charter election of said city, to wit, at the Court House of the said county, in the said third election district of said city, to open the poll in said district for said election, and then and there to receive the votes of the lawful voters of said third district for members of the General Assembly of this State, to represent the said county of Middlesex, and for Sheriff and Coroners of said county; and the said John V. Henry, Michael Lyons and²⁰ Charles S. Williams, judges of election as aforesaid, then and there caused the poll for said election district to be opened, and public proclamation to be made thereof; and every person by law entitled to vote in said district at said election had full right then and there to vote by ballot for one person to represent the county of Middlesex aforesaid in the General Assembly of this State, for one person as Sheriff of said county, and for three persons as Coroners thereof; and it was the duty of the said John V. Henry, Michael Lyons and Charles S. Williams, judges of election as aforesaid, and they³⁰ were required by law and the obligations of their respective offices, to receive from every person so entitled to vote in said election district, and who then and there offered to vote according to law, the ballot of such person, and to deposit the same in the election box; and the said plaintiff in fact saith,³⁵ that he was then and there, to wit, on the day and year last aforesaid, at the third district in the city and township of New Brunswick, in the county aforesaid, an actual resident of

the said third district, and by law qualified to vote in said district at said election, and was entitled then and there to give his vote for persons to fill the offices aforesaid, and that he then and there, during the said time the said poll was open for the reception of voters, desired and offered to vote, and tendered his ballot, containing the names of the persons for whom he desired to vote for the offices aforesaid, to the said John V. Henry, Michael Lyons and Charles S. Williams, judges of election as aforesaid, and requested them to deposit
 10 the same in the election box, as they were required by law to do; but the said John V. Henry and Michael Lyons, two of the judges of election as aforesaid, being a majority of the said judges of election so conducting said poll in said district, well knowing the premises, but contriving and fraudulently and maliciously intending to damnify him, the said plaintiff, in that behalf, and wholly to deprive him of his right and privilege of and in the premises, did not and would not permit him, the said plaintiff, then and there to vote for the officers aforesaid then and there to be voted for, and did not and
 20 would not receive the said ballot of the said plaintiff and put the same in the election box aforesaid, but did altogether and absolutely refuse and neglect so to do, to wit, on the day and year aforesaid, at the third election district of the city and township of New Brunswick, in the county aforesaid, in violation of their duties as judges of election as aforesaid, and to the great injury of the said plaintiff, as a good and lawful citizen of this State, and a legal voter of said district in said city, township and county; wherefore the said plaintiff saith that he is injured and hath sustained damage to the amount
 30 of five hundred dollars, and thereupon he brings his suit, &c.

CHAS. MORGAN HERBERT,
Attorney of Plaintiff.

To which a plea of general issue was filed.

On the trial of the cause before His Honor Justice Vre-
 35 denburgh, on the 11th of October, 1864, the following evidence was adduced:

PLAINTIFF'S EVIDENCE.

WILLIAM B. MERRITT sworn—Am plaintiff in this action ; there was an election held in this city on the 3d day of November last ; the election for the third district was held in the basement of this house ; Messrs. John V. Henry, Michael Lyons and Charles Williams were the judges of said election ; the election was held for officers, sheriff, member of assembly for the first district, and three coroners ; I offered to vote at half-past twelve o'clock on that day ; I tendered my vote to the judges and they refused to receive it ; Mr. Henry challenged me first ; he said, "I challenge your vote ;" I asked him on what grounds ; he answered non-residence ; I then gave a statement showing that I was a resident, that I had voted here before, and that I would make affidavit that I was a resident, which affidavit they refused, Mr. Henry and Mr. Lyons ; Mr. Williams said he would accept it ; Mr. Henry gave as a reason for refusing, "that I was a student, and therefore non-resident ;" they did not take my evidence ; I offered to furnish it by several gentlemen being present ; they were willing to testify that I was a resident of the third election district of New Brunswick ; I then went to my dinner and returned at half-past two o'clock ; I offered to vote again ; being refused, I offered a protest, which they refused to sign ; I then asked the following questions : First, Do you deny me the right of suffrage ? Second, Do you refuse to take my affidavit, thereby becoming the judges of my conscience ? Mr. Henry answered we do—don't trouble us any longer ; this is the ballot I offered. (Ballot produced and offered in evidence.) I did not vote that day ; I did not return again to vote ; I offered to vote for sheriff, member of assembly, and three coroners ; I was over twenty-seven years of age, and was a citizen of the United States of America ; was born at Kingston, Ulster County, New York ; I was a resident of the third district, New Brunswick, New Jersey ; had been a resident of this county since September, 1860 ; had been a resident of the State since September, 1858 ; resided in the third district during the whole time since September, 1860 ; had

not voted at any other poll on that day; have voted in New Jersey before; voted in this city after being a resident of this county six months; have voted also at New Durham—twice at New Durham; I first went to New Durham after coming into the State; voted at each election after I was entitled to a vote before this time; I voted in the spring after the fall I came here—spring of 1861; voted at each election till I was refused; never voted any where else during the time I resided here, neither when in New Durham; I voted in the spring
 10 preceding this election; Mr. Henry was a candidate for alderman; I did vote for Mr. Henry at his solicitation; Mr. Henry tendered me the ballot; I voted the same ballot he tendered me.

Question.—What was the amount of damage you received on account of your ballot being rejected?

(Question objected to, allowed, and exceptions taken.)

Answer.—I would not have had it for two hundred dollars; I could not state any definite sum.

Cross-examined.—My parents are living; am a single man
 20 and always have been; my parents lived at Kingston at the time of my birth; always lived there till the present time; live there now; I went to New Durham to prepare for college, this Rutgers College, for the junior class; while there I was with the Rev. W. B. Mabon; remained with him two years; when I went I intended to remain two years; boarded with Mrs. Mabon; it was my intention when I went there, after remaining two years, to come to New Brunswick to college, pass through college, enter the theological seminary, and remain here till I received a call to the ministry; I intended
 80 then to go when I got a call that suited my views; never changed this purpose; I boarded in Somerset street, No. 59, with Mrs. Dewitt, when I first came; lodged there; boarded with her from September till next spring—latter part of April or first of May; then took lodging at Hertzog hall, but took
 35 meals at Mrs. Dewitt's; took meals at Mrs. Dewitt's till January, 1863; went then to 78 Bayard street, to Mrs. Forman; remained with her till September, 1863; went then with Mrs. Post, in Somerset street; am now boarding at the City Hotel;

came to New Brunswick in September, 1860; college commenced in September; the first vacation was in December; was six or seven days; went to New York City for five days and two days at Kingston; stayed with my brother, James O. Merritt, at Kingston; next vacation was in the spring of 1861, about two weeks; went to Bedminster, New Jersey; next vacation was in the latter part of June, three months; I went to New York City and New Durham, New Jersey; rest of the summer was travelling about, had no stationary place; went to Kingston two or three weeks; remained there; 10
 next vacation was in December, 1861; spent it in New York City; I cannot recall whether I was in Kingston; I spent the spring vacation in Hurley, Ulster County, New York, some four miles from Kingston; stopped then in Kingston one night; I don't think I was there over one night during the spring vacation of 1862; I feel quite positive; the next vacation I graduated; went to New York City from New Brunswick; stayed there, engaged in taking care of sick and wounded soldiers, the whole time, with the exception of two or three days I spent at Kingston, and five or six days I was 20
 camping out on the Catskill Mountains, and I was at New Brunswick several times, as my baggage was there; entered the seminary in the fall of 1862; the first vacation after that was in December; spent it in New York City and two days at Kingston; there is no vacation in the seminary in the spring; spent the summer vacation in taking care of a sick brother—the first few days in New York City, and the rest of the time at Kingston; spent the December vacation of 1863 here, in New York City, and two or three days at Kings-
 ton; last vacation I have spent in different places, and have 30
 been employed by several churches to preach; was employed at Kingston four Sabbaths; I never paid tax in New Brunswick; I am enrolled here under the draft; I do not know where I was enrolled; I was told I was when I went to ask the question; have no personal knowledge that I was enrolled 35
 previous to offering my vote; I had never been satisfied that I was enrolled previous to offering my vote; I went to see Mr. Jeremiah Dunham about the matter.

Re-examined in chief.—I resided with my parents at Kingston thirteen years; then went from the country to the village of Kingston, in a store; I boarded with Mrs. Lower; my parents live two miles from the village; was nearly four years in the store; supported myself; did not receive any support from my father or mother; then went to New York City from there; when I left my father's house I did not intend to return; went with Wagstaff & Co., No. 78 Courtlandt street, as assistant book-keeper; was there two years; was nearly seven-
 10 teen when I went to New York; supported myself; went next to 36 Warren street, Allis & Brother, as book-keeper; remained there a little over three years, nine months as book-keeper and the rest of the time as salesman; supported myself; had my washing done in the City of New York; own no real estate; my personal property was all in New York at this time; I voted in New York City after I became of age; I paid taxes in New York, military and poll; paid military tax after I was eighteen; I never expected to return to Kingston when I left and went to New York; visited Kingston
 20 once a year; remained from three to ten days; went from New York to New Durham, New Jersey; studied six months in New York before I went to New Jersey; I was not supported by my parents during my residence at New Durham, but by own means and funds in New York; during my stay at New Durham I did not expect or intend to return to Kingston or New York; during my stay here I did not expect or intend to return to Kingston or New York, but to remain here till I received a call; since I have been here I have not been supported by my father or mother; I was about thirteen years
 30 old when I received my last support from my parents; I have never voted anywhere but in New York, New Durham and New Brunswick; never paid taxes anywhere else; Hertzog Hall is in the third election district of New Brunswick; Mrs. Dewitt, Mrs. Forman and Mrs. Post all live in the third elec-
 35 tion district; staid at my brother's and father's during my first stay in Kingston; my stay at Kingston was divided between five different places—my father's, two brothers and two sisters at Hurley; when I went to Kingston I went to visit

my friends; I did not pay taxes here because I was never asked; never was called upon by assessor or collector of taxes while here; I always claimed New Brunswick as my place of residence when talking with my friends.

Cross-examined.—When I went to New York City I expected to settle there; I expect to pay the expenses of this suit through my funds in New York, New Brunswick and my own resources; there is no subscription to defray the expenses of this suit; took some furniture to Hertzog Hall in 1861; it is there now; some bedding, a chair, book case and books; I always left this furniture and property there when I went away vacations.

Plaintiff rests.

Mr. Speer, defendants' counsel, moved a non pros. on the grounds

First—That there was no proof that Henry and Lyons were legally elected judges of election.

Second—That all three of the judges were not sued in this action. 20

Overruled.

EVIDENCE OF DEFENDANTS.

G. D. W. VROOM sworn.—I reside in Trenton, New Jersey; I graduated in the summer of 1862; I was in the same class with Mr. Merritt; the catalogues are generally published about the first of December; a committee of one from each class in college is elected by his class, and in 1860 the faculty also appointed a committee of one to act with the students; I was one of the committee in that year; was elected the latter part of November; it was our duty to get the names of each member in our class, also their homes or residences, 30 and the place where they boarded in New Brunswick; one of the committee generally acted as chairman; they put together the list of the different classes, list of trustees, and other matter, which was sent in to the printer to be printed,

published and delivered to the students who subscribed. I applied to Mr. Merritt to obtain his name, residence, and place of boarding; he gave me his name as William B. Merritt, residence at Kingston, New York, boarding place at No. 59 Somerset street, I think. This is a catalogue for 1860 and 1861. (Catalogue offered in evidence. The catalogue for 1861 and 1862 also produced and offered in evidence, containing the name of plaintiff, and residence Kingston, New York.)

10 *Cross-examined.*—The catalogues were delivered 1st of December, 1860, to the printer, to be printed; I obtained the information from the students in November, 1860; I asked the gentlemen for their residences; nothing was said about their parents; cannot say that I ever asked Mr. Merritt anything about his residence at any other time; the residences of the students are very often changed; I have made many changes; I was told to go to the students; was very particular; I received instructions from the professors.

SAMUEL M. WOODBRIDGE sworn—Am one of the Professors
20 of the Theological Seminary of this place; have been since October, 1857; during the course of the year it is the practice to issue catalogues; they are gotten up by a committee of the students appointed by themselves; these are the catalogues of the Theological Seminary for 1862-3 and 1863-4. (Offered in evidence.) Members of the faculty take some and the rest are distributed among the students as they subscribe; they are published under the supervision of the faculty; if we observe anything wrong we correct it; the matter is brought to us before it goes to the printer, to be corrected if wrong.
30 (Catalogues contained the name and residence of the plaintiff, same as the college catalogues.)

Cross-examined.—The catalogues are produced before us for supervision and revision; we revise the course of instruction, the residences and names we leave for the students.

35 JOSEPH H. DOREMUS sworn—Am a member of the Theological Seminary of New Brunswick; this is my third year;

am a classmate of Merritt; it is usual to get up catalogues each year; a committee of one from each class is appointed; the committee calls on each student and gets his name, residence and room; the catalogues are distributed according to the subscriptions among the students; I was called upon by the committeeman of my class each year for my name, residence and room; I considered it the duty of the committee to do so; these catalogues are like the ones I received. (Theological catalogues for 1862-3 and 1863-4 produced.)

Cross-examined.—*Question.* Have you ever voted here? ¹⁰
(Overruled.) I supposed I had a residence in Parsippany; I paid tax there; in directing my name to be put down as from Parsippany I considered it as telling where my home was.

DAVID MURRAY sworn—Am a Professor in Rutgers College; I have the matriculation book of the college here; contains name, parent or guardian, residence, and school or academy of the student. (Book offered in evidence. Contains the name of William B. Merritt; under the head of parent or guardian, Caleb M. Merritt; under the head of residence, Kingston, Ulster County, New York; under the head ²⁰ of school or academy, Rev. Wm. V. V. Mabon, in the handwriting of William B. Merritt.)

JOHN VAN DEVENTER sworn—I was assessor last year for the third district, New Brunswick; did not assess Mr. Merritt.

GEORGE NEVIUS sworn—Was assessor for 1864 of the third district, New Brunswick; assessed Mrs. Post; did not assess Mr. Merritt; the students were all away.

J. H. DOREMUS re-called.—Am in the seminary; do not board there; the rooms in the seminary are furnished by the ³⁰ churches; it is voluntary with the students to board in the hall; everything is furnished in the rooms but sheets and pillow-cases; a student loses his right to lodge in the hall if he quits the seminary; never take the sheets and pillow

cases, book-case, books, chairs, &c., home when we go for vacation; it is not usual for any of the students to do so.

Cross-examined.—I know that the furniture in Mr. Merritt's room was all there when he went in it; the carpet, chair, bureau, bedstead, bedding and table is the same as furnished by the church; I came here to this institution seven years ago the first of this month; my residence in the catalogue is at Parsippany; I do not recollect whether I voted in Parsippany since I left there seven years ago—possibly once; I
10 have voted twice in this city since I came here.

Military enrollment of the names of all persons liable to draft offered in evidence. Not allowed.

JOHN V. HENRY sworn—Mr. Merritt's statement about my soliciting his vote is simply a lie; I never solicited Mr. Merritt's vote at the spring election he refers to or at any other time; the polls were held in the room below this; I was standing near the steps; Mr. Merritt approached me and asked me to step one side; stepped aside eight or ten feet; he wished to consult me in reference to scratching the name off
20 a ticket for constable and inserting Mr. Van Vleet's name; had a ticket in his hand; on the ground that Mr. Van Vleet was sexton of the Second Dutch Church; I told him I did not care which he scratched or whether he scratched either off; he then stepped to the door to scratch off a name; Mr. Merritt did not take a ticket from me; my tickets had Mr. Van Vleet's name on; the voting was going on; it was about noon. I was one of the judges of election last fall; Mr. Merritt offered to vote; it was between twelve and one o'clock; some fifteen or twenty voices challenged him on the ground
30 that he was not a resident; Mr. Merritt said, "why you know I am resident, because I voted here before;" the challenging still continued; Mr. Merritt demanded to swear his vote in; I told Mr. Merritt the judges had no objection to take his affidavit that he was a citizen of New Brunswick, but they
35 considered they had a right to say whether that affidavit forced the judges to put the vote in the box; he insisted a number

of times to swear his vote in and I refused to allow his vote in on the affidavit; did not refuse his affidavit; Mr. Merritt returned in the afternoon about three or four clock, presented the judges with a folded paper, which he asked them to sign; the judges declined to have anything to do with it; said they were there to receive votes and not to sign papers; Mr. Merritt read the paper; I did conscientiously believe Mr. Merritt was not entitled to a vote for the reasons I had known Mr. Merritt personally between two and three years; met him often in the rooms of the students, and had heard him speak of his home at Kingston, and of going home to Kingston; have always been furnished with catalogues and seen Mr. Merritt's name in the same as from Kingston; the decision of the supreme court in the Cadwalader case was laid before the judges.

Cross-examined.—Have known Mr. Merritt two or three years; became acquainted with him during the winter of 1860; I always considered him a resident of Kingston and no other place; at the spring election, when our conversation was about scratching the ticket, I did not tell Mr. Merritt that he was not entitled to vote and could not legally vote here; all the judges declined at first to receive his vote at the election of November 3, 1863; afterwards Mr. Williams dissented, when Mr. Merritt offered to swear, on the ground that when a person offered to swear his vote in the judges were bound to put it in.

CHARLES COWENHOVEN sworn—Am a graduate of Rutgers College; graduated in 1862, same class with Merritt; this is Mr. Merritt's photograph and his signature and residence; this was done in 1862; at a meeting of the class it was determined to have our photographs taken for exchange; they were taken and distributed a month or two before graduation; they were taken and exchanged at different times; to each picture it was customary to affix the signature of each student and his residence; this is the picture Mr. Merritt gave me; the signature and residence is in his handwriting; the signature and residence in the matriculation book is in Mr. Merritt's handwriting. (Matriculation book shown to the witness.)

(Photographs offered in evidence, containing the name of Wm. B. Merritt, Residence, Kingston, N. Y., in his own handwriting.)

Defendants rest.

WILLIAM B. MERRITT re-called—With the exception of the clothes I took with me I always left my clothes here in vacation; am not enrolled in Kingston; have no personal property anywhere but here; have of my own property at my lodgings four hundred or five hundred dollars worth of books, 10 a chair, mattress, book-case, sheets, blankets, pillow-cases, all bedding, except iron bedstead, mattress and spread; during vacations, while away from here, returned here to exchange clothes; my papers and letters were always sent here; always had washing done here; got my clothes here in New Brunswick; rooms are always furnished out of the hall; the first interview I had with the catalogue committee Mr. Vroom called upon me; he asked me as to my residence; I stated to him that I had not lived at Kingston for eight years, and I 20 hardly knew where to put my residence, but as I originally came from Kingston, and my parents lived there, I gave him my residence as at Kingston, New York, thinking in my own mind that it was right that my parents should thus have their son's name down in the catalogue, and to distinguish this William B. Merritt from any other William B. Merritt that ever came to college, and to show that I originally came from Kingston; I did not mean it as my legal residence; I never went there to offer a vote; it is the custom for students to put the place from which they first come as their residence; they 30 never afterwards asked me for my residence, but my room only; since the election I ordered my name changed to New Brunswick; it was not done; considered myself a resident of New Brunswick because I had voted here; when I put my name and residence on the photograph I did it to show where I came from; in the matriculation book I gave my parents' 35 residence for the same reasons and that the faculty might send their reports there. Mr. Henry *did* solicit my vote for

himself; he met me some eight or ten feet from the door and handed me a ballot and wanted me to vote for him; I got some students to vote for him at his request and voted for him myself the ballot he gave me; it was some other time that Mr. Henry referred to when we talked about scratching a ticket; I offered to make affidavit of residence, &c.; the judges did not offer to receive my affidavit at any time and decide afterwards whether or not to receive my vote; they positively and unconditionally refused at all times to receive my vote and my affidavit; the jailor challenged me, and some 10 others; Mr. Henry challenged me first; the judges objected to receive my affidavit and to accept it; refused to accept it with a view to vote; Mr. Vale and Mr. Cook went with me to the poll in the afternoon; offered to swear my vote; the judges did not offer to receive my affidavit and refuse afterwards to accept my vote; they said you are a student and a resident of Kingston.

Cross-examined.—I was always furnished with catalogues subsequent to 1860; I went from New York to New Durham; I concluded in August to leave New York and go to 20 New Durham.

OLIVER GORDON sworn—I am a graduate of Rutgers College; my name is down in the catalogue as from Key West, Florida; my legal residence is here.

Cross-examined.—My parents lived here; neither they nor I had lived at Key West for some years previous to putting my name in the catalogue.

DAVID MURRAY sworn—The post-office address of the father is what I seek to obtain from the students when they sign the matriculation book under the head of "residence." 30
(Overruled.)

ELIHU COOK sworn—Was present at the time Mr. Merritt offered to vote in the afternoon; he offered to vote and the judges refused it; Mr. Merritt offered an affidavit to prove his residence; the judges did not offer to swear Mr. Merritt; 35

Merritt came up and offered his vote and two of the judges refused it; he then offered his affidavit and they refused to swear him on any terms; they did not at any time offer to receive his oath on any conditions. I was close by the judges and heard all their talk; they repeatedly positively refused to swear Mr. Merritt.

JAMES RYNO sworn—Was at the polls; saw Mr. Merritt offer his vote in the morning; the judges refused to take it; he offered to swear he was a resident of New Brunswick; 10 don't think the judges offered to take his affidavit on any terms; the judges were very decided not to take his oath; was present in the afternoon when he offered his protest and read it.

CHARLES S. WILLIAMS sworn—Was one of the judges; was present when Merritt offered his vote; his vote was challenged; asked Mr. Merritt if he was willing to swear his vote in, and offered to swear him; the other judges objected to his being sworn; he claimed his residence here and nowhere else; was present in the afternoon; am not positive whether he of- 20 fered to swear his vote in then; I offered him the book to be sworn and the other judges refused to have him sworn; Merritt was willing to be sworn; the other judges did not consent to have him sworn conditionally or otherwise at any time; the oath was not at any time tendered to him.

DANIEL VALE sworn—Was present when Merritt offered his vote; his vote was challenged; the judges refused to accept it; he offered to swear his vote in and they objected to it; the judges did not qualify their refusal; I was present in the afternoon; the same thing occurred; Merritt wanted to 30 give an explanation and they would not receive it; after they refused I asked them if they absolutely refused to take Merritt's vote; they said they did; the judges refused positively to swear him at all and to receive his vote; they did not tender him the oath either in the forenoon or afternoon; I saw 35 and heard all that took place at both times.

DEWITT REILEY sworn—Am Professor of Rutgers College ; was secretary when Merritt came here first ; as such I used and understood the residences given in the matriculation book as indicating the residences of parents and guardians.

ELBERT N. SEBRING sworn—Am in the Theological Seminary ; am a resident of New Brunswick. (Evidence in regard to his evidence and catalogues overruled.)

A. R. SPEER sworn—Was present when Mr. Merritt offered to vote ; offered to swear his vote in ; he and his friends insisted that if the judges took that oath they could not refuse his vote ; the judges took the position that his oath would make no difference—that they were the judges of the vote ; the judges did not at any time tender the oath to Mr. Merritt.

BILL OF EXCEPTIONS.

MIDDLESEX CIRCUIT, September Term, 1864.

WILLIAM B. MERRITT

vs.

} In Case.

JOHN V. HENRY AND MICHAEL LYONS. }

The evidence in the case being adduced, and the cause summed up before the jury by the counsel of the parties, the Judge charged the jury as follows:—That the said plaintiff, on the third day of November, A. D. eighteen hundred and sixty-three, when he offered his vote to the judges of election of the third district in New Brunswick, was a legal resident of the State of New Jersey, and had been such for one year, and of the County of Middlesex for five months.

To which charge of the said Judge the defendants, by their counsel, excepted, and prayed that their bill of exceptions might be sealed by the Court, and it is sealed accordingly.

The said Judge also charged the jury, that in the opinion of the Court the defendants, in rejecting the plaintiff's said vote, acted honestly and to the best of their judgment and understanding; but that the plaintiff has a right to maintain this action against the defendants although they acted honestly and in good faith and without malice in refusing the
10 plaintiff's said vote, and although they merely made a mistake.

To which said charge the said defendants, so far as the said charge relates to the plaintiff's right to maintain his said action, by their counsel, except, and pray that this their bill of exceptions may be sealed, and it is sealed accordingly.

The defendants, by their counsel, then requested the said Court to charge and instruct the jury that if the said plaintiff always, from September 1860 to the fall of 1863, constantly claimed Kingston, in the State of New York, as his residence,
20 then he acquired no legal residence in the State of New Jersey.

Which charge and instruction the said Court refused to make.

To which ruling and decision by the Court the defendants do except, and pray that this their bill of exceptions may be sealed, and it is sealed accordingly.

The defendants, by their counsel, further requested the Court to charge and instruct the jury, that if from the evidence the jury were of opinion that the defendants, in reject-
30 ing the plaintiff's said vote, acted honestly and in good faith and without malice, they are not liable to this action, even though the plaintiff was a legal voter.

Which said charge and instruction the said Court refused to make.

35 To which ruling and decision of the Court the defendants do except, and pray that this their bill of exceptions may be sealed, and it is sealed accordingly.

The defendants also requested the Court to charge and in-

struct the jury that if the defendants believed that plaintiff was not entitled to vote when he offered his said vote, they are not liable to this action for refusing said vote, even if the plaintiff was legally qualified to vote.

Which charge and instruction the Court refused to make, and to which refusal the defendants excepted, and pray that this their bill of exceptions may be sealed, and it is sealed accordingly.

In witness whereof the said Judge hath hereto set his hand and seal the seventeenth day of October, A. D. eighteen hundred and sixty-four.

P. VREDENBURGH, [L. S.]

Whereupon the jury found a verdict of six cents damages for the plaintiff.

ASSIGNMENT OF ERRORS.

Court of Errors and Appeals in the last resort in all causes, of the Term of November, in the year of our Lord one thousand eight hundred and sixty-four.

JOHN V. HENRY AND MICHAEL LYONS }
 vs. } In Error. 20
 WILLIAM B. MERRITT. }

Afterward, that is to say, on the first day of November, in the year eighteen hundred and sixty-four, before the said Court come the said John V. Henry and Michael Lyons, by Herbert Stout, their attorney, and say that in the record and proceedings aforesaid, and in giving judgment aforesaid, there is manifest error in this, that the declaration aforesaid and the matter therein contained are not sufficient in law to main-

tain the said action ; and also there is error in this, the said Judge of the said Circuit Court, on the trial of the said issue, charged the jury that upon the evidence adduced on the said trial the residence of the said defendant in error at the said time when he offered his vote, for the rejection of which the said action was brought, was in the City of New Brunswick, and had been for a year past.

There is also error in this, that the said Judge charged the jury on the trial of the said issue that the said action could
10 be maintained against the plaintiffs in error although the said plaintiffs in error, as judges of election, in refusing to receive the said vote of the said defendant in error, acted honestly and in good faith and without malice, and merely committed a mistake and error of judgment.

There is also error in this, that the said Judge refused to charge the jury (though requested so to do by the counsel of the plaintiffs in error,) that, if the plaintiffs in error, as judges of election, believed that the defendant was not entitled to vote, they are not liable to an action for refusing to receive
20 the vote, even if the defendant in error was legally qualified to vote.

There is also error in this, that the said Judge refused to charge the jury (though requested by the counsel of the plaintiffs in error so to do,) that in order to find a verdict against the plaintiffs in error the jury must be satisfied not only that the defendant in error was a legal voter, but that the said plaintiffs in error, in rejecting his vote, were influenced by improper and dishonest motives.

There is also error in this, that the said Judge refused to
30 charge the jury (though requested by the counsel of the plaintiffs in error so to do,) that if the defendant in error, while living in New Brunswick up to the fall of eighteen hundred and sixty-three, constantly claimed Kingston, in the State of New York, as his residence, he acquired no legal residence in
35 New Brunswick.

There is also error in this, that the said Judge refused to charge the jury (though requested so to do by the counsel of
40 the plaintiffs in error,) that the jury, to find a verdict against

them, must be satisfied that the said plaintiffs in error, in rejecting the said vote of the said defendant in error, were influenced by malice.

There is also error in this, that it appears by the record and proceedings aforesaid, that the said judgment was rendered for the said defendant in error against the said plaintiffs in error, whereas the said judgment ought to have been rendered in favor of the said plaintiffs in error against the said defendant in error.

And the said John V. Henry and Michael Lyons pray, that ¹⁰ the judgment aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings being, may be reversed, annulled and altogether for nothing holden, and that they may be restored to all things which they have lost by occasion of the said judgment.

HERBERT STOUT, *Attorney,*
HENRY V. SPEER, *of Counsel*
of the said John V. Henry and Michael Lyons,
Plaintiffs in Error.

JOINDER IN ERROR.

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*New Jersey Court of Errors and Appeals in the last resort,
&c., of the Term of November, A. D. eighteen hundred and
sixty-four.*

WILLIAM B. MERRITT

als.

JOHN V. HENRY AND MICHAEL LYONS.

} Joinder

} in Error.

And thereupon the said William B. Merritt, by Charles M. Herbert, his attorney, comes and saith, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, or in the charge of the said Judge as ³⁰

aforesaid, and he prays that the said 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 name aforesaid given, may in all things be affirmed, &c.

But because the said Court here are not yet advised what judgment to give of and upon the premises, a day is given to the parties aforesaid here, until the second Tuesday in March next, to have their judgment thereon, for that the said Court
10 here are not yet advised thereof, &c.

CHAS. M. HERBERT, *Attorney*
for the said William B. Merritt, Defendant in Error.

