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NOTICE AND GROUNDS OF APPEAL.

NEW JERSEY SUPREME COURT.

ANNA M. S. LIPPINCOTT, }
devisee of FRANK W. }
LIPPINCOTT, dec'd., }
Plaintiff-Appellant, }
v. }
JAMES E. GODFREY, and }
KATHERINE I. GODFREY, }
Defendant-Appellee. }

In Ejectment.
On Appeal from
Supreme Court.

10

To Charles K. Landis, Jr., Esq., Attorney for De-
fendants-Appellees:

20

Sir:

Take notice that the plaintiff, Anna M. S. Lippincott, devisee of Frank W. Lippincott, deceased, appeals to the New Jersey Court of Errors and Appeals, from the judgment entered in this cause on the 22nd day of January, 1926, in favor of the defendants, and against the plaintiff, upon the following grounds:

The trial Court erred in holding that in the case in which judgment was rendered, the Court had power of jurisdiction to render the particular judgment, and that judgment cannot be attacked collaterally. Therefore, verdict for the defendant.

30

SAMUEL P. HAGERMAN,
Attorney of Appellant.

[ENDORSED]

Due and legal service of the within notice is hereby acknowledged this fifteenth day of July, 1926.

Charles K. Landis, Jr.,
Attorney for Defendants-
Appellees.

SUMMONS.

The State of New Jersey to James E. Godfrey, and Katherine I. Godfrey, you (L. S.) are summoned to answer the annexed complaint of Frank W. Lippincott, in an action at law in the Supreme Court wherein Frank W. Lippincott demands of you the possession of a tract of land with the appurtenances situate in the Township of Upper, County of Cape May, and particularly described in said complaint. And take notice that unless you file your answer to said complaint with the clerk of the Supreme Court, at Trenton, within twenty days after service upon you of this writ and of the annexed complaint, judgment will be entered against you and you will be turned out of possession of said land.

Witness, WILLIAM S. GUMMERE, Chief Justice of the Supreme Court, at Trenton, this fourth day of October, nineteen hundred and twenty-four (1924).

EDWARD J. KELLEHER,

EDWARD J. KELLEHER,

SAMUEL P. HAGERMAN,

*Clerk.**Attorney.*

TRANSCRIPT OF PLEADINGS FOR TRIAL.

SUPREME COURT OF NEW JERSEY.

CAPE MAY COUNTY.

(Summons issued October 5, 1924.)

10

FRANK W. LIPPINCOTT,	} Transcript of Pleadings for Trial.
<i>Plaintiff,</i>	
v.	} Samuel P. Hagerman, Attorney for Plaintiff,
JAMES E. GODFREY, and	
KATHERINE I. GODFREY,	
his wife,	} Charles K. Landis, Jr., Attorney for De-
<i>Defendants.</i>	

Plaintiff residing in the City of Atlantic City, in the County of Atlantic, and State of New Jersey, demands of James E. Godfrey, and Katherine I. Godfrey, his wife, the defendants herein, the possession of a tract of land, with the appurtenances, situated on the Ludlam's Beach, Township of Upper, County of Cape May, and State of New Jersey, and known as lot No. 9, in block No. 6, on map or plan of lots at Corson's Inlet, N. J., duly filed in the office of the county clerk of said County of Cape May, New Jersey, bounded and described as follows, to wit:

BEGINNING at a point in the Northeasterly side

of Windmere Avenue (now called Webster Road) at a distance of about 112' 6" Southeasterly from the Southeasterly line of Landis Avenue (now called Commonwealth Avenue) containing Southeasterly of that point in front or breadth on said Webster Road Forty feet and of that width in depth, between lines at right angles to said Webster Road one hundred and ten feet.

10 BOUNDED on the Northwesterly by Lot No. 510, on the Northeast by Lot No. 10, on the Southeast by Lot No. 11, in Block No. 6, and on the Southwest by Webster Road aforesaid. And the said plaintiff says that his right to the possession of the same accrued on or about the 18th day of December, A. D. 1911, and that the defendants wrongfully deprive him of the possession thereof, to his damage two thousand dollars.

SAMUEL P. HAGERMAN,
Attorney for Plaintiff.

20 Filed October 8, 1924.

Defendants say that:

1. They deny the truth of the matters contained in the complaint.

CHARLES K. LANDIS, JR.,
Attorney for Defendants.

30 Filed October 14, 1924.

I, EDWARD J. KELLEHER, clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true transcript of the pleadings in the above stated cause as the same remain on file in my office.

In testimony whereof, I have set my hand and the seal of said court at Trenton, this twenty-fourth day of December, A. D. nineteen hundred and twenty-four.

EDWARD J. KELLEHER,

Clerk.

(Seal)

POSTEA.

NEW JERSEY SUPREME COURT.

(Filed July 29, 1925.)

FRANK W. LIPPINCOTT,
Plaintiff,)
v.)
JAMES E. GODFREY, and)
KATHERINE I. GODFREY,)
his wife,)
Defendants.)

In Ejectment.
Postea.

The above action in ejectment being moved for trial before Honorable Theodore W. Schimpf, Circuit Court Judge, to whom as same had been referred with a jury at the Cape May County Circuit, on December 10th, 1924, and it being suggested by the Court that the issues be submitted upon agreed state of facts, without a jury, the said plaintiff and defendants by their attorneys respectively, submitted the issues accordingly and the case was tried before Judge Theodore W. Schimpf, without a jury.

After hearing said agreed state of facts and counsel for plaintiff, and counsel for defendants, the Court finds:

Plaintiff's action is in ejectment. His effort is to obtain possession of the lands and premises described in the complaint, upon an allegation that, notwithstanding the defendants are in possession by virtue of a deed made by one, W. A. Parke Thompson, who acquired his title at a sheriff's sale
10 held by virtue of an execution issuing under a judgment entered in the Cape May County Circuit Court, which judgment remains of record in said Court, he is entitled to attack the judgment collaterally by this action.

The case was submitted to the Court without a jury upon an agreed state of facts.

Where the Court has power or jurisdiction to render the particular judgment, though such power is wrongfully exercised, the judgment is only void-
20 able, and can be avoided only by direct appeal.

In the case in which judgment was rendered, the Court had power or jurisdiction to render the particular judgment, and that judgment cannot be attacked collaterally. Therefore, verdict for the defendant.

THEODORE W. SCHIMPF,
Judge.

COPY OF JUDGMENT.

NEW JERSEY SUPREME COURT.

ANNA M. S. LIPPINCOTT, devisee of FRANK W. LIPPINCOTT, dec'd., <i>Plaintiff,</i>	}	Judgment Record. Action at Law.	10
v.		In Ejectment or Postea.	
JAMES E. GODFREY, and KATHERINE I. GODFREY, his wife, <i>Defendants.</i>	}	Judgment for Defen- dants. Charles K. Landis, Jr., Attorney.	

Costs \$39.10

20

Whereupon it is adjudged that the complaint of the plaintiff be dismissed and that the defendants, James E. Godfrey and Katherine I. Godfrey, his wife, do recover of the said plaintiff, Anna M. S. Lippincott, devisee of Frank W. Lippincott, deceased, their costs which have been taxed at the sum of (\$39.00) thirty-nine dollars and ten cents. 30

Judgment entered January 22, 1926.

WM. S. GUMMERE,
C. J.

SUGGESTION OF DEATH.
NEW JERSEY SUPREME COURT.

CAPE MAY COUNTY.

(Filed July 17th, 1926.)

10	FRANK W. LIPPINCOTT, <i>Plaintiff,</i>	}	Suggestion of Death In Ejectment.
	v.		
	JAMES E. GODFREY, and KATHERINE I. GODFREY, his wife,		
	<i>Defendants.</i>		

20 And now, to wit, this sixteenth day of July, nineteen hundred and twenty-six, this matter being opened to the Court by Samuel P. Hagerman, attorney for Frank W. Lippincott, the above named plaintiff, it is suggested, that the said Frank W. Lippincott, plaintiff, departed this life on or about the day of July, nineteen hundred and twenty-five, having first made and published his last will and testament bearing date, October 23rd, 1907, which was duly probated December 14th, 1925, in the office of the surrogate of the County of Atlantic, whereby and wherein he devised all his real estate to his widow, Anna M. S. Lippincott, who is hereby substituted as the plaintiff of record, in his stead, and as his successor, and devisee.

30 SAMUEL P. HAGERMAN,
Attorney for Anna M. S. Lippincott, Plaintiff.

[ENDORSED]

I consent to the same.

Charles K. Landis, Jr.,
Attorney for Defendants.

AGREED STATE OF FACTS.

10

SUPREME COURT OF NEW JERSEY.

CAPE MAY COUNTY.

(Filed June 26, 1925.)

FRANK W. LIPPINCOTT,
Plaintiff,

20

v.

JAMES E. GODFREY, and
KATHERINE I. GODFREY,
his wife,

Defendants.

In Ejectment.
Agreed State of
Facts.

The above action in ejectment being ready for trial December 10, 1924, and a jury having accordingly been sworn, in the presence of Mr. Samuel P. Hagerman, attorney for plaintiff, and of Mr. Charles K. Landis, Jr., attorney for defendants, and it being suggested by the Court that the issues be submitted upon an agreed state of facts without a jury; the

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said plaintiff and defendants, by their attorneys respectively, hereby agree that the following facts are admitted and that the issues raised by the pleadings shall be argued and submitted on said facts, to the determination of the New Jersey Supreme Court before his Honor, Theodore W. Schimpf, Circuit Court Judge, sitting for said New Jersey Supreme Court at such time and place as he may fix for the purpose, reserving to each of said parties the right
10 upon said argument, to object to any admitted facts as evidence in like manner as if proof of said facts had been offered upon trial of said issues and also reserving to each of said parties the right to appeal from the final judgment to be rendered upon said issues as aforesaid and to any equitable relief in the Court of Chancery of New Jersey to which either party might otherwise be entitled.

1. That plaintiff took title to the premises set
20 forth in the complaint by indenture from the Atlantic Seashore Improvement Company, to said Frank W. Lippincott, dated September 29th, 1911, and duly received for record in the office of the clerk of the County of Cape May, on November 22nd, 1911, and recorded in Book No. 269 of Deeds, pages 317, &c., whereby plaintiff acquired title thereto in fee simple and in severalty.

2. That plaintiff then and there took possession
30 thereof, using the same as a summer residence from time to time, until on or about March 13th, 1917.

3. That on or about March 13th, 1917, proceedings in attachment were instituted in the Cape May County Circuit Court entitled, "W. A. Parke Thompson, plaintiff v. Frank W. Lippincott, defendant;"

that the said defendant in the suit in attachment is the plaintiff in the case now before the Court.

4. That a duly certified copy of the entire files of said suit in attachment, is annexed hereto, made a part hereof, and marked Exhibit A.

5. That what purports to be final judgment was actually entered in said action at law in attachment and recorded October 18, 1917, in said Cape May County Circuit Court in Book F of Judgments at pages 239 for damages \$537.73, costs \$39.92, total \$577.65. 10

6. No motion has been at any time made to said Cape May County Circuit Court to quash said writ of attachment or to open or set aside said final judgment, and said writ of attachment has not been quashed nor said final judgment in attachment opened or set aside. 20

7. That a certificate of the Cape May County clerk, certifying that "no appearance was ever entered in the 'clerk's book' of this office in the case of W. A. Parke Thompson v. Frank W. Lippincott," is annexed hereto, made a part hereof, and marked "Exhibit B."

8. That it is the practice and custom in the office of the clerk of Cape May County, to enter in its docket of cases instituted in the Cape May County Circuit Court, to write in black ink an entry of all papers filed by or on behalf of plaintiff, and to write in red ink, those filed by or on behalf of defendant in any case. 30

9. That the following entries, as appearing in "Docket No. 2, Circuit Court," page 140, are all entered in black ink, to wit:

"W. A. Parke Thompson,	}	File 1858.
vs.		In Attachment.
Frank W. Lippincott		Thos. B. Hall, Atty. for Pltff.

- 10 Affidavit filed and writ issued March 13, 1917, Retble. Mar. 30, 1917, Filed Mar. 22, 1917.
 Complaint filed Aug. 1, 1917.
 Damages assessed & judgment entered Oct. 18, 1917.
 Costs taxed Oct. 18, 1917. Execution issued Oct. 18, 1917.
 Filed with statement attached May 29, 1918.
 Alias Ex. issued June 12, 1918. Filed with statement attached June 28, 1918."

20 10. That plaintiff, Frank W. Lippincott, was then and there by reason of said proceedings, ejected and dispossessed on or about March 13, 1917, and so continues to be up to the present time.

30 11. That by virtue of said judgment execution was issued, and a sale of the premises in question was had by the Sheriff of Cape May County, and a deed made by Robert S. Miller, Sheriff of the County of Cape May, to W. A. Parke Thompson, dated May 27th, 1918, and recorded in said clerk's office on June 11th, 1918, in book No. 330 of deeds, pages 16, &c., for a consideration of \$50.00, was delivered.

 12. That the said W. A. Parke Thompson, widow, by indenture bearing date October 1st, 1918, and recorded in the said clerk's office on November

16th, 1918, in book No. 333 of deeds, pages 208, &c., granted and conveyed the premises in question unto "James E. Godfrey and Katherine I. Godfrey, his wife," as tenants by the entirety, for a consideration mentioned therein of \$1850.00.

13. That the said James E. Godfrey and Katherine I. Godfrey, his wife, defendants hereto, and the said grantees, entered into possession of said premises, on or about said October 1st, 1918, and have continued in possession of the said premises until the present time. 10

14. That any right to damages or mesne profits is reserved, to be tried separately before a jury.

15. Counsel for the said parties agreed to submit the above on briefs; counsel for defendants to serve brief upon counsel for plaintiff within twenty (20) days after counsel for plaintiff has served brief upon counsel for defendants. 20

16. In case of appeal from the final judgment to be rendered upon said issues, appellant may, in printing the state of case, print only that part of Exhibit A showing papers filed or proceedings had on or before October 18, 1917, omitting copies at length of taxed bill of costs, executions, inventories, advertisements of sale, and proceedings on execution and sale.

The foregoing agreed state of facts comprised 30 within four pages, each page identified by signature of counsel.

CHARLES K. LANDIS, JR.,
Of Counsel with Defendants.

SAMUEL P. HAGERMAN,
Of Counsel with Plaintiff.

Dated May 6, 1925.

14 *Exhibit A—Certified Copy of Proceedings*

EXHIBIT A.

CERTIFIED COPY OF RECORD OF PROCEED-
INGS IN QUESTION.

1858.

10 CAPE MAY COUNTY CIRCUIT COURT

W. A. Parke Thompson,
Plaintiff,

vs.

Frank W. Lippincott,
Defendant.

On Contract Attachment

20

Affidavit

Filed Mar. 13, 1917.

A. C. Hildreth,
Clerk.
Thomas B. Hall,
Atty. for Plaintiff
415 Market St.,
Camden, N. J.

30

CAPE MAY COUNTY CIRCUIT COURT

W. A. Parke Thompson, Plaintiff vs. Frank W. Lippincott, Defendant	}	On Contract Attachment	10
--	---	---------------------------	----

State of New Jersey County of Cape May	}	ss.
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W. A. Parke Thompson of full age being duly sworn according to law upon his oath says that Frank W. Lippincott is not, to his knowledge or belief a resident in this State, at this time, and that he owes to this deponent a sum of Five Hundred and twenty dollars (\$520.00) with interest thereon from the 8th day of February, 1917, as he, this deponent verily believes upon a judgment obtained February 14, 1917, in the Municipal Court of Philadelphia, in the State of Pennsylvania.

Sworn and Subscribed to before me this 12th day of March, 1917.	}	W. A. P. Thompson. 30
---	---	-----------------------

Earl M. Waddington.

CAPE MAY COUNTY CIRCUIT COURT

	W. A. Parke Thompson,	}	Writ of Attachment
	Plaintiff		
	vs.		
10	Frank W. Lippincott,	}	
	Defendant		

Affidavit for \$520 filed before issuing this writ

A. C. Hildreth, Clerk.

Thomas B. Hall, Attorney for Plaintiff, 415 Market St., Camden, N. J. Sheriff's fees \$5.92.

Filed Mar. 22, 1917,

A. C. Hildreth, Clerk.

20 Cape May County, ss:

The State of New Jersey to the Sheriff of the County of Cape May, Greeting:

WE COMMAND you that you attach the rights and credits; moneys and effects, goods and chattels, lands and tenements of Frank W. Lippincott, where-soever they may be found in your county, so that he be and appear before our Circuit Court, to be holden at Cape May Court House, in and for said county of Cape May, on the thirtieth day of March instant, to answer W. A. Parke Thompson in an

30 action on contract, wherein the said W. A. Parke Thompson demands five hundred and twenty dollars, and have you then and there this writ.

WITNESS, Howard Carrow, Esq., Judge of our Circuit Court, at Cape May Court House, aforesaid, this 13th day of March, 1917.

A. C. Hildreth, Clerk.

Thomas Hall, Attorney

By virtue of the annexed writ of attachment on the Sixteenth day of March A. D., 1917, at 1.30 o'clock P. M., of that day, in the presence of Leslie Champion, a credible person, I, Robert L. Miller, Sheriff of Cape May County, executed the said Writ of Attachment by going to the lands of Frank W. Lippincott, the said defendant, and then and there in the presence of Leslie Champion, I declare that I attached, the rights, credits, moneys and effects, goods and chattels, and lands and tenements of the 10
said defendant.

Robert L. Miller, Sheriff
By Mead Tomlin, Under Sheriff.

Inventory and Appraisement of all the property and estate of Frank W. Lippincott by me attached on the sixteenth day of March A. D. 1917, by virtue of the writ of attachment hereto annexed. 20

Made the day and year aforesaid by Mead Tomlin, Under Sheriff, with the assistance of Leslie Champion, a discreet and impartial freeholder of Cape County.

“ALL that certain lot or piece of land and premises situate at Strathmere, in the County of Cape May and State of New Jersey and numbered Nine (9) in Block Six (6) fronting forty feet on the North East side of Webster Road and more particularly described in deed from the Atlantic Seashore Improvement Company to Frank W. Lippincott of Philadelphia, Pa., as same appears of record in Deed Book No. 269, pages 317, etc. in Cape May, County Clerk's Of- 30

18

Exhibit A—Complaint

place at Cape May Court House, New Jersey.
Value \$1200.00.”

Mead Tomlin,
Under Sheriff,
Leslie Champion,
Appraiser.

1858.

10

CAPE MAY COUNTY CIRCUIT COURT

W. A. Parke Thompson
Plaintiff

vs.

20

Frank W. Lippincott,
Defendant.

Complaint

Thomas B. Hall,
Atty. for Plaintiff,
415 Market St.,
Camden, N. J.

30

Filed Aug. 1, 1917.
A. C. Hildreth, Clerk.

CAPE MAY COUNTY CIRCUIT COURT

W. A. Parke Thompson,
Plaintiff
vs.
Frank W. Lippincott,
Defendant

Action at Law.
Complaint.

10

First Count.

1. Plaintiff sues the defendant for the sum of \$540.05 with interest thereon from the 24th day of May, 1917, to date of judgment, which the defendant owes and from him unjustly detains; for that heretofore on the 14th day of February, 1917, in the Municipal Court of Philadelphia, State of Pennsylvania, before the Honorable Judge thereof, in an action therein pending wherein the said W. A. Parke Thompson was plaintiff and the said Frank W. Lippincott was defendant, the said plaintiff, by the consideration and judgment of the said Court recovered against the said defendant, the sum of \$520 above demanded and for that a new trial having been granted in said cause upon the application of the said defendant, the said plaintiff in said Court before the Judges thereof wherein the said parties were plaintiff and defendant as aforesaid, by the consideration and judgment of the said Court recovered against the said defendant the sum of \$526 entered on the 24th day of May, 1917, above demanded together with Fourteen Dollars and five

20

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cents (\$14.05) costs and charges by him about his suit in that behalf expended, which in and by said Court were adjudged to the said plaintiff for his damages and costs which he had sustained as well by reason of the non-performance by the said defendant of certain promises and undertakings there lately made by the said defendant to the said plaintiff, as for his costs and charges by him in said suit expended, whereof the said defendant was convicted as by the record and proceeding thereof remaining in
10 the said Court more fully appears; which said judgment still remains in full force and effect not reversed, satisfied or otherwise vacated.

Second Count.

Plaintiff sues the defendant for the sum of \$400 with interest thereon from the 19th day of January, 1912, for a like sum of money paid by the plaintiff at the request of the defendant for the account of the defendant to the Atlantic Seashore Improvement
20 Company, a corporation of New Jersey for part of the purchase price of a certain lot of ground with a dwelling thereon erected, situated at Strathmere, New Jersey, which the said defendant purchased from the said Atlantic Seashore Improvement Company for the sum of \$2300. Plaintiff paid said sum of \$400 on the 19th day of January, 1912, at the request and for the account of the defendant for the purpose aforesaid, which sum the defendant has failed and refused to repay to defendant and is still
30 due and owing to the plaintiff with interest as aforesaid.

Third Count.

The Plaintiff sues the defendant for the sum of \$400. with interest thereon from January 19th, 1912, being part of the purchase price for a certain lot with a dwelling thereon erected, situated at Strath-

mere, New Jersey, purchased from the said defendant from the Atlantic Seashore Improvement Company.

Plaintiff avers that he is now the owner by assignment in writing executed and delivered to him by said Atlantic Seashore Improvement Company, assigning the said account and demand unto the Plaintiff the amount due on said judgment on May 24th, 1917, is \$540.05.

Defendant has not paid the sum. 10

Plaintiff demands as damages the sum of \$540.05 with interest thereon from May 24th, 1917.

Thomas B. Hall.

Attorney for plaintiff.

1858.

CAPE MAY COUNTY CIRCUIT COURT. 20

W. A. Parke Thompson
Plaintiff

vs.

Frank W. Lippincott,
Defendant

In Attachment

Assessment of Damages 30

Filed

Oct. 18, 1917

A. C. Hildreth,
Clerk.

State of New Jersey }
County of Cape May } ss.

W. A. Parke Thompson being duly sworn according to law upon his oath, deposes and says that he is the plaintiff in the above entitled cause; that on the 19th day of January, 1912, the said Plaintiff was indebted to the Atlantic Seashore Improvement Company, a corporation, of New Jersey, in the sum of \$400. part of the purchase price of a certain lot of ground with a dwelling thereon erected situated at Strathmere, New Jersey, and that said debt was duly assigned by the said Atlantic Seashore Improvement Company unto this deponent and that the said sum of \$400, together with interest thereon from January 19th, 1912, to date amounting to \$137.73 making the sum of \$537.73 justly due and owing to this deponent from the said defendant. 10

Sworn and subscribed to }
before me this 15th day } W. A. P. Thompson. 20
of October, 1917. }

Earl M. Waddington
Commissioner of Deeds.

State of New Jersey }
County of Cape May } ss.

I, A. C. Hildreth, Clerk of the Cape May County Circuit Court having examined the plaintiff's complaint and being satisfied that the above statement and calculation are correct, do hereby assess the damages of the plaintiff against the defendant in the above stated cause at the sum of \$537.73, besides costs of suit to be taxed. 30

Dated, October 18, 1917.

A. C. Hildreth,
Clerk.

1858.

CAPE MAY COUNTY CIRCUIT COURT

W. A. Parke Thompson

vs.

Frank W. Lippincott.

In Attachment

10

Rule for Judgment.

Filed Oct. 18, 1917.

A. C. Hildreth
Clerk.

CAPE MAY COUNTY CIRCUIT COURT

20 W. A. Parke Thompson,

Plaintiff

vs.

Frank W. Lippincott,

Defendant

} in Attachment.
Rule for Judgment.

30 Writ of Attachment in this cause having been duly served and returned, and the defendant having entered his appearance and the plaintiff having filed his complaint within the time required by law, and the defendant having failed to file an answer thereto within the time required by law, and the clerk of this Court having assessed the damages of the said plaintiff at the sum of \$537.73 pursuant to statute;

IT IS THEREUPON on this 15th day of October, 1917, ORDERED that final judgment be entered in favor of said plaintiff against the said defendant for

the said sum of \$537.73, besides costs of suit, to be taxed.

Rule entered this 15th day of October, 1917.

Motion of

Thomas B. Hall,
Atty. for Plaintiff.

(By virtue of the stipulation set forth in the last paragraph of the Agreed State of Facts, the remainder of the record is omitted from the Paper Book 10 as being immaterial and irrelevant to the issue.)

STATE OF NEW JERSEY
COUNTY OF CAPE MAY

I, A. C. Hildreth, County Clerk, and Clerk of the Courts of Oyer and Terminer, Quarter Sessions, Common Pleas, and Circuit Court, in and for the County of Cape May, DO HEREBY CERTIFY that the foregoing is a true and correct copy of

THE FILES

20

W. A. PARKE THOMPSON,

VS.

FRANK W. LIPPINCOTT

as filed

A. D. _____, in the Clerk's Office of the County of Cape May

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Cape May Court House, this 18th day of December A. D. nineteen hundred and twenty-four. 30

(SEAL)

A. C. Hildreth
Clerk.

EXHIBIT B.

LIPPINCOTT

vs.

GODFREY

SUPREME COURT OF N. J.

10 CAPE MAY COUNTY CLERK'S OFFICE
Cape May Court House
New Jersey

State of New Jersey, }
County of Cape May, } ss.

I, A. C. Hildreth, County Clerk and Clerk of the Court of Common Pleas, in and for said County, do hereby certify that no appearance was ever entered
20 in the "Clerk's Book" of this office in the case of W. A. Parke Thompson vs. Frank W. Lippincott.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the
(SEAL) seal of said Court this Eighteenth day of December A. D. nineteen hundred and twenty-four.

A. C. Hildreth,
Clerk.

NEW JERSEY COURT OF ERRORS AND
APPEALS

ANNA M. LIPPINCOTT, devisee of FRANK W.
LIPPINCOTT, deceased,
Plaintiff-Appellant,

v.

JAMES E. GODFREY and KATHERINE I. GODFREY,
Defendants-Appellees,
Respondents.

IN EJECTMENT.

ON APPEAL FROM NEW JERSEY SUPREME COURT TO THE
COURT OF ERRORS AND APPEALS OF THE STATE
OF NEW JERSEY.

BRIEF FOR DEFENDANTS-APPELLEES,
RESPONDENTS.

STATEMENT.

At the writing of this brief October 5, 1925, plain-
tiff-appellant has not yet served any brief upon the
respondents.

2 *Brief for Defendants-Appellees, Respondents*

The issues were submitted and argued upon an agreed state of facts. *State of Case*, pages 9 to 13 inclusive.

Paragraph 5 of the agreed state of facts (*State of Case*, page 11, lines 8 to 13, inclusive) admits that what purports to be final judgment was actually entered in an action at law in attachment and recorded October 18, 1917, in the Cape May County Circuit Court in Book F of Judgments at page 239. The files of said action in attachment, to which paragraph 4 refers as Exhibit A, show that the premises were attached March 16, 1917, by the Cape May County Sheriff (*State of Case*, page 17, lines 1 to 11, inclusive). Paragraphs 11, 12 and 13 admit that the defendants hold the premises as grantees of the purchaser at execution sale under said judgment. (*State of Case*, page 12, lines 25 to 36, inclusive, and page 13, lines 1 to 13, inclusive).

Plaintiff claims the right to eject defendants by collateral attack upon this judgment, asserting that some portions of the attachment proceedings or the clerk's entries do not disclose any personal appearance by the defendant in attachment, who is the plaintiff here, or personal service of process upon him.

POINT I.

FINAL JUDGMENT OF A COURT OF GENERAL JURISDICTION IS CONCLUSIVE AGAINST COLLATERAL ATTACK; ITS JURISDICTION BEING PART OF THE DETERMINATION OF ITS FINAL JUDGMENT. THE QUESTION OF JURISDICTION OF A COURT OF GENERAL JURISDICTION CAN BE RAISED ONLY BY DIRECT APPEAL.

As stated by Chief Justice Beasley in *Plume v. Howard Savings Institution*, 46 N. J. Law 211, see page 229, "Courts of general jurisdiction need not set forth in their records the facts upon which their right to adjudicate depends, but such facts will be presumed, and no evidence can be received to contradict them, as such intendments are *presumptiones juris et de jure*. It is, indeed, this quality that constitutes the principal distinction between courts of superior and general jurisdiction, and those of limited and special jurisdiction. This doctrine is unquestionable, and is too rudimentary to justify discussion." Chief Justice Beasley, *Id.* page 229 cites *Hess v. Cole*, 23 N. J. Law 116. An able discussion of the principle at length with numerous citations and quotations will be found in *Crawford v. Lees*, 84 N. J. Equity 324, 93 Atl. Rep. 201 and *Ex Parte Hall*, 94 N. J. Equity 108-118 Atl. Rep. 347. In the early case of *Diehl v. Page* 3 N. J. Equity 143, it was held that, the Court of Common Pleas having jurisdiction of the whole subject of attachment, its judgment could not be collaterally impeached though the proceedings were erroneous on the face of them; that though it acted under the requisitions of a particular statute, it was not thereby degraded into a court of inferior and limited jurisdiction. In *Hoey v. Aspell & Co.*, 62 N. J. Law 200-40 Atl. Rep. 776, the action was against joint debtors, only one of whom had been served; but judgment was entered against all, including those not served. The Court held, "A mere rule in the minutes entered by a plaintiff or his attorney under color of the statute, if unlawfully entered, is utterly void. 2 Gen. St. p. 2557 paragraph 144. But this judgment was recorded and signed by the Judge. Such a judgment, though irregular or premature, stands until re-

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versed or set aside." The case of *Elmendorf v. Elmendorf*, 58 N. J. Equity 113-44 Atl. Rep. 164, cited by defendant's counsel was an action strictly in *personam* in which the Court held itself bound by the decision in *Pennoyer v. Neff*, 95 U. S. 714. The reasoning or the decision in that case does not apply to an action in *rem* or *quasi in rem* as explained at length in *Amparo Mining Co. v. Fidelity Trust Co.*, 74 N. J. Equity 197-71 Atl. Rep. 605—affirmed 75 N. J. Equity 555. In *Crawford v. Lees*, 84 N. J. Equity 324, 93 Atl. Rep. 201, the Court held, "in proceedings in *rem* there are no adversary parties, and the only question of jurisdiction in such proceedings is the power of the Court over the thing—over the subject-matter before the Court—without regard to the persons who may have an interest in it. "All the world are parties." Lessees of *Grignon v. Astor*, *supra*.

The agreed state of facts admit that the defendant in attachment was in possession of the premises, using the same as a summer residence from time to time until he was dispossessed by the attachment proceedings (paragraph 2 of the agreed state of facts). He thus had actual knowledge of the proceedings and, as admitted by paragraph 6, made no motion to open or set aside the final judgment.

Most respectfully submitted,
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NEW JERSEY COURT OF ERRORS
AND APPEALS.

ANNA M. S. LIPPINCOTT, devisee of FRANK W.
LIPPINCOTT, deceased,
Plaintiff-Appellant,

v.

JAMES E. GODFREY and KATHERINE I. GODFREY,
Defendants-Appellees.

ON APPEAL FROM THE SUPREME COURT.

POINTS AND BRIEF OF PLAINTIFF-
APPELLANT.

Frank W. Lippincott, the plaintiff-appellant was the defendant in a suit in attachment in the Cape May County Circuit Court, of which a certified copy of the files is attached to the agreed state of facts. This shows that what purports to be a judgment *in personam* was entered on October 15th, 1917. By virtue of this alleged judgment an execution was issued and the premises of the defendant sold to the plaintiff Thompson in said suit, who subsequently conveyed the same to the defendants-appellees.

Rule for judgment was entered by filing a motion signed by the plaintiff, and was not signed by the Court. The rule recites, *inter alia* "and the defendant having entered his appearance," whereas this was a bald and palpable mis-statement, being untrue as a matter of record and of fact; the defendant Lippincott never entered his appearance of record, nor appeared in court at any time, either personally or by attorney, or otherwise, nor was he ever served by process, personally or by publication.

Suit in ejectment was instituted in the Supreme Court, and the case submitted on an agreed state of facts, wherein Lippincott asked that the said judgment be declared as of no effect as to him, as he was not in court in said suit.

The grounds of appeal relied on, is that part of the *postea* (see State of the Case, pp. 5 and 6), reading as follows, to wit:

"Where the Court has power or jurisdiction to render the particular judgment, though such power is wrongfully exercised, the judgment is only voidable, and can be avoided only by direct appeal. In the case in which judgment was rendered, the Court had power or jurisdiction to render the particular judgment, and that judgment cannot be attacked collaterally. Therefore, verdict for the defendant."

The issue is whether the omission of the record to state any manner whereby jurisdiction was acquired over the defendant Lippincott is merely an irregularity, the judgment *in personam* voidable, and consequently not the subject of collateral attack; or whether the judgment *in personam* entered up without there being any record of actual or construc-

tive notice, or appearance of a non-resident defendant, is void *ab initio* and subject therefore to collateral attack.

POINT I.

“WHERE THE COURT UNDERTAKING TO TRY AN ACTION AND RENDER JUDGMENT NEVER ACQUIRED JURISDICTION OF THE PERSON OF DEFENDANT, THE JUDGMENT IS ENTIRELY VOID AND MAY BE SO HELD IN A COLLATERAL PROCEEDING, UNLESS THE DEFENDANT BY APPEARANCE IN THE ACTION HAS WAIVED THE ORIGINAL WANT OF JURISDICTION.”

See Title “Judgments,” 28 *Cyc.* p. 1074.

The said suit appears to be brought under the act entitled, “An Act for the relief of creditors, against absent, fraudulent and absconding debtors,” P. L. 1901, p. 158, of which Section 16 provides in part as follows, to wit:

“Any defendant in attachment, or, in case of his death, his executor, administrator, heir, or devisee, may at any time, before final judgment, *enter in the clerk's book, his appearance to the suit of the plaintiff*, and of any applying creditor, and within twenty days thereafter, *give notice to the plaintiff, and to such creditor or their attorneys, of such appearance, and of the defendant's willingness to accept a declaration, at their suit; and thereupon the suits of such plaintiff and creditor shall proceed in all respects, as if commenced by summons, and no*

further claims shall be put in under the attachment, after such entry of appearance, and the costs which shall have accrued, on such attachment, shall abide the event of the plaintiff's suit; unless discharged as hereinafter provided, the lien of the attachment shall continue, notwithstanding the appearance."

This act contemplates *ex parte* proceedings and provides for the issuance of attachment, application for rule, publication, judgment, appointment of auditor, etc. The record shows the issuance and return of a writ, and then abandonment of all the other requirements for *ex parte* procedure above mentioned.

The only other procedure provided for in said act relates to the defendant entering his appearance in the clerk's book, and giving notice to the plaintiff of his appearance, and willingness to accept a declaration whereupon the suit proceeds as if commenced by summons. As stated above the rule for judgment recites that defendant entered his appearance, but Exhibit B of the agreed state of facts (page 26), and an examination of the entire record shows that he did not ever appear at any time, either personally or by attorney.

This case is to be distinguished from the line of cases wherein judgments have been declared voidable, by reason of irregularities, defects, or informalities, in service, or in pleadings, or are based on improper, insufficient, incomplete or illegal grounds. The case at bar differs from all of these in the elementary fact that there was no service whatever, no appearance of any kind, at any time, hence an entire want of jurisdiction, either under the statute

or even at common law. Had there been an attempted but incomplete service, or even an informal appearance, there might then have been declared that such service was a basis to ripen into a good service, but where there is nothing at all, to consider, or not a scintilla of evidence or of record on which to base an appearance, it can not be presumed that there was an appearance. The defendant was never given any notice whereby he was brought into court and was not a party therefor to the proceedings; hence the purported judgment was of necessity, void *ab initio*.

The basis of the distinction of these cases rests upon the assumption that first of all, the defendant is subject to the jurisdiction of the Court, and the proceedings then being irregular and defective, are curable and voidable, only if attacked directly. But in all these cases, the defendant must be in court; where he is not in court, no presumption can put him there, to subject him to a valid judgment *in personam*. A plea of want of jurisdiction is properly raised in any court, at any time, by any person affected, and it is respectfully submitted that the failure or want of any record of appearance of the defendant is not merely an irregularity but an incurable omission.

The rule for judgment is so utterly lacking and indefinite that it does not appear, whether (1) the defendant appeared personally or by attorney; or, (2) if, by attorney, he is un-named. The record shows defendant to be an absent debtor, and he certainly did not appear personally to the suit. Are we to conjecture, or presume who the attorney was? Further, are we to presume as to the extent of his authority? These facts are essential, are the basis and foundation of the whole suit, and hence are to

be clearly distinguished from mere procedural irregularities or defects. There can be no presumptions where there are not sufficient facts on which they can be based.

Names in pleading are never presumed, but must be expressly stated; the mere allegation of entry of appearance is so general, uncertain and indefinite, that it is not good pleading, for it is not in such form that it can be admitted or denied, without presuming facts.

That it is not merely incidental to state the name of the attorney by whom an entry of appearance is made on which judgment is entered up, but a necessary fact, *sine qua non*, is shown by the doctrine of the courts in allowing the authority of the attorney to be questioned in collateral proceedings, even when his name is a part of the record.

In *Hess v. Cole*, 23 N. J. L. 16, it was held:

“The judgment of any court, given without having jurisdiction of the parties, either by actual monition or notice, such constructive monition or notice as is provided by law, is a nullity, and will be treated as such, even when brought in question collaterally. If it appear by the record that the defendant appeared by attorney, he may disprove the authority of the attorney.”

See *Price v. Ward*, 25 N. J. L. 225, 230, which holds, to the same effect, to wit:

“The record is *prima facie* evidence that the attorney who appears to the suit or confesses the judgment is duly authorized for that pur-

pose, and, in the absence of contradictory evidence, will be held conclusive. But THE AUTHORITY OF THE ATTORNEY may be drawn in question in pleading, and may be disproved by evidence.”

From this, it certainly would appear that if one can question the authority of a named attorney, by greater right, can one question the authority of an unnamed and unknown attorney in collateral proceedings?

In the case of *Hoey v. Aspell & Co.*, 62 N. J. L. 200, at page 201, the Court states:

“A mere rule in the minutes, entered by the plaintiff or his attorney, under color of the statute, if unlawfully entered, is utterly void (Gen. Stat. p. 2557, Sec. 144), but this judgment was recorded and signed by the judge. Such a judgment, though irregular or premature, stands until reversed or set aside.”

However, in the case at bar, the judgment was not signed by the Judge, but was merely entered up by the attorney; it is to be distinguished as lacking in any sanction or dignity of the court, as in that case. Hence the case now before the Court, is not in the class of those which must be reversed or set aside, but being void, can be collaterally attacked.

Attention is further called to the fact, that although a writ of attachment was served, judgment *in rem* under the act was not obtained, or claimed, but judgment was entered on the theory of a personal appearance, and hence, a judgment *in personam*, on which not only real estate which had been attached was sold, but also personal property not attached, was also sold. Hence, this case is to be

determined not on the basis of a judgment *in rem* but *in personam*.

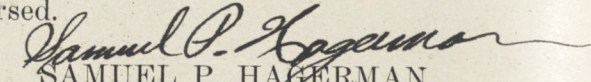
The following authorities are the basis of the above points, to wit:

Hess, et al. v. Cole, 23 N. J. L. 116, at p. 124;

Bray v. Neill's Executrix, 21 N. J. E. 343, at p. 351;

Elmendorf v. Id. 58 N. J. E. 113, at p. 115.

And it is respectfully submitted that the judgment be reversed.


SAMUEL P. HAGERMAN,
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Of Counsel

