

INDEX

	PAGE
Notice of Appeal.....	1
Grounds of Appeal.....	2
Joinder in Error.....	5
Information	6
Plea	19
Demurrer	30
Opinion of Supreme Court.....	31
Rule for Judgment.....	42
Judgment	44

THE
LIBRARY
OF THE
MUSEUM OF
COMPARATIVE ZOOLOGY
AND ANATOMY
HARVARD UNIVERSITY
CAMBRIDGE, MASS.

NOTICE OF APPEAL.

Dated June 14, 1930.

New Jersey Supreme Court

THE STATE OF NEW JERSEY, *ex*
rel., WILLIAM M. BEARD,
Relator,

vs.

ROGER C. ALDRICH,
Respondent.

On Quo
Warranto.

Notice of
Appeal.

10

To J. Edward Ashmead, Esquire and Martin
P. O'Connor, Esquire, attorneys for Relator.

20

SIRS:

TAKE NOTICE that the respondent hereby ap-
peals from the whole of the judgment entered
in this cause to the Court of Errors and Appeals
in the last resort in all causes.

McCARTER & ENGLISH,
Attorneys of Respondent.

Dated June 14, 1930.

30

Service of the within notice is hereby ac-
knowledged this 14th day of June, 1930.

J. EDWARD ASHMEAD,
MARTIN P. O'CONNOR,
Attorneys for Relator.

40

GROUNDS OF APPEAL.

New Jersey Court of Errors and Appeals

10	THE STATE OF NEW JERSEY, <i>ex</i> <i>rel.</i> , WILLIAM M. BEARD, <i>Relator-Appellee,</i> <i>vs.</i> ROGER C. ALDRICH, <i>Respondent-Appellant.</i>	}	<i>On Quo</i> <i>Warranto.</i> <i>On Appeal.</i> <i>Grounds</i> <i>of Appeal.</i>
----	--	---	---

Now comes the respondent-appellant, Roger C. Aldrich, and states the following grounds of appeal upon his appeal from the whole of the judgment entered in this cause:

1. The judgment of the said Supreme Court erroneously adjudged that the respondent, Roger C. Aldrich, is guilty of usurping, intruding into and unlawfully holding and exercising the office of permanent chairman of the Joint Meeting of the City of Rahway, Borough of Garwood, Borough of Roselle Park, Borough of Kenilworth, Township of Cranford, Town of Westfield, Township of Springfield, Township of Clark and the Township of Woodbridge, municipalities acting under and by virtue of an act of the Legislature of the State of New Jersey, entitled, "An Act to authorize two or more municipalities in this State to jointly construct and maintain outlet or trunk sewers," approved March 15, 1899, and of the acts amendatory thereof and supplemental thereto.

2. The judgment of the said Supreme Court erroneously adjudged that the said respondent,

Grounds of Appeal.

Roger C. Aldrich, be ousted and excluded from the said office of permanent chairman of the said Joint Meeting and be forejudged and excluded from exercising the liberties, privileges and franchises thereof.

3. The judgment of the said Supreme Court erroneously adjudged that the said William M. Beard, the relator, recover against the said Roger C. Aldrich his costs in said suit. 10

4. The said Supreme Court, in making its said judgment, erroneously construed the said statute entitled "An Act to authorize two or more municipalities in this state to jointly construct and maintain outlet or trunk sewers," approved March 15, 1899, and the acts amendatory thereof and supplemental thereto, to mean that the person elected "permanent chairman" at the time of the organization of the "Joint Meeting" is entitled to continue as permanent chairman until the completion of the work, irrespective of the fact that subsequent to his election as permanent chairman he ceased to be a member of the governing body of one of the municipalities composing the Joint Meeting. 20

5. The said Supreme Court, in making its said judgment, should have construed the said act to mean that Edward S. F. Randolph, having ceased to be a member of the governing body of the Town of Westfield, thereupon, as a matter of law, became disqualified to continue in the office of permanent chairman, and, hence, that a vacancy had occurred which the said statute required the said Joint Meeting to fill, and which vacancy it did fill by the election of the respondent, Roger C. Aldrich. 30

Grounds of Appeal.

6. The said judgment of the said Supreme Court is in divers other respects illegal and improper.

McCARTER & ENGLISH,
Attorneys for Respondent-Appellant.

10

Service of the within grounds of appeal is acknowledged for the relator-appellee this 11th day of July, 1930.

MARTIN P. O'CONNOR,
J. EDWARD ASHMEAD,
Attorneys for Relator-Appellee.

20

30

40

JOINDER IN ERROR.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

THE STATE OF NEW JERSEY, <i>ex</i> <i>rel.</i> , WILLIAM M. BEARD, <i>Relator-Appellee,</i> <i>vs.</i> ROGER C. ALDRICH, <i>Respondent-Appellant.</i>	}	<i>On Quo</i> <i>Warranto.</i> <i>On Appeal.</i> <i>Joinder</i> <i>in Error.</i>	10 20 30
--	---	--	--

And, hereupon on this 14th day of July, 1930, the said relator-appellee by his attorney, comes into court and says that there is no error either in the record of proceedings aforesaid, or in giving the judgment aforesaid, and prays here that the Court here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error (grounds of appeal) and that the judgment aforesaid in manner aforesaid given, may in all things be affirmed, etc.

MARTIN P. O'CONNOR,
 J. EDWARD ASHMEAD,
 Attorneys for and of Counsel
 with Relator-Appellee.

INFORMATION.

Filed December 14, 1929.

NEW JERSEY SUPREME COURT.

10	THE STATE OF NEW JERSEY, <i>ex</i> <i>rel.</i> , WILLIAM M. BEARD, <div style="text-align: right;"><i>Relator,</i></div>	}	<i>On Quo</i>
	<i>vs.</i>		<i>Warranto.</i>
	ROGER C. ALDRICH, <div style="text-align: right;"><i>Respondent.</i></div>		<i>Information.</i>

20 William A. Stevens, Esquire, Attorney-General of the State of New Jersey, who sues in behalf of this State, comes in his own person into the Supreme Court of the State of New Jersey, before the Justices thereof, at the State House at Trenton on the fifth day of December, 1929, at the relation of William M. Beard of the Town of Westfield, Union County, N. J., desiring to prosecute in this behalf, by leave of the Court first had and obtained, according to the statutes in such case made and provided, and gives the said Court here to be informed and understand:

30 (1) That he, the said William M. Beard, is a resident, elector, citizen, taxpayer and freeholder of the Town of Westfield, one of the municipalities hereinafter named, in the County of Union and State of New Jersey.

40 (2) That the City of Rahway, Borough of Garwood, Borough of Roselle Park, Borough of Kenilworth, Township of Cranford, Town of Westfield, Township of Springfield and the Township of Clark, municipalities in the County of

Information.

Union and State of New Jersey, and the Township of Woodbridge, a municipality in the County of Middlesex in said State, through and by their respective governing boards and bodies (such boards and bodies being charged by law with the duty of constructing sewers and drains in such municipalities respectively) did, prior to November 9, 1928, by virtue of the power and authority of an act of the Legislature of the State of New Jersey, entitled, "An act to authorize two or more municipalities in this state to jointly construct and maintain outlet or trunk sewers," approved March 15, 1899, and of the acts amendatory thereof and supplemental thereto, unite and jointly cause to be made at their joint expense surveys, maps, plans, reports and estimates as provided by said act of a proposed trunk sewer and disposal works known and designated as the "Rahway Valley Trunk Sewer and Disposal Works."

(3) That the said surveys, maps, plans, reports and estimates were delivered by the persons making the same to the Clerk of each of the said municipalities joining in the expense of making the same together with a statement or estimate of the cost and expense of such proposed trunk sewer and disposal works and the percentage of such cost and expense proposed to be apportioned to and paid by each of said municipalities, and also an estimate of the annual cost of maintenance, repair, operation and supervision of such trunk sewer and disposal works to be annually paid by each of said municipalities after the completion of said trunk sewer and disposal works; that the said Clerks of the respective municipalities aforesaid immediately submitted to the governing bodies and boards of said

Information.

10 municipalities (having charge of the construction
 of sewers and drains in said municipalities) all
 the surveys, maps, plans, reports, estimates and
 statements delivered as aforesaid to the Clerks
 of said respective municipalities; that the said
 governing bodies and boards of the said munici-
 20 palities did immediately thereafter proceed to
 consider the same and after duly considering the
 same, the said governing bodies and boards of the
 said municipalities by resolution duly adopted,
 approved of the said surveys, maps, plans, re-
 ports, estimates and statements so submitted to
 them as aforesaid and caused such surveys, maps,
 plans, reports, estimates and statements to be
 filed with the Clerk of the respective municipali-
 20 ties aforesaid there to remain of record and a
 copy of the said resolution of approval certified
 by the municipal clerk of each of said municipali-
 ties, was by him served on the Clerk of each of
 the other of said municipalities interested in the
 making of the surveys, maps, plans, reports, esti-
 mates and statements so submitted and approved
 as aforesaid.

30 (4) That the said City of Rahway, Borough
 of Garwood, Borough of Roselle Park, Borough
 of Kenilworth, Township of Cranford, Town of
 Westfield, Township of Springfield, Township of
 Clark and the Township of Woodbridge, munici-
 palities aforesaid so adopting the said resolution
 of approval as aforesaid, thereupon and by virtue
 of the statute aforesaid and of the acts amendat-
 ory thereof and supplemental thereto, and in
 pursuance thereof, duly adopted and passed by
 their said respective governing bodies and
 boards, an ordinance in the manner prescribed by
 law authorized the making and entering into by
 40 and on behalf of such municipalities respectively

Information.

of a joint contract in writing with each other for the joint building and construction, operation and maintenance of the "Rahway Valley Trunk Sewer and Disposal Works" aforesaid and providing for the payment thereof.

(5) That in pursuance of the said statute and of the acts amendatory thereof and supplemental thereto and of the ordinance aforesaid and in accordance therewith, the said municipalities did enter into and make a joint written contract in accordance with and as authorized by law for the construction of said "Rahway Valley Trunk Sewer and Disposal Works" as reference to the said contract filed and recorded as required by law in the office of the Clerk of the County of Union aforesaid and of the Clerk of the County of Middlesex aforesaid (the counties in which said contracting municipalities are situate) will more fully appear.

(6) That following the making and execution, filing and recording of said joint written contract as aforesaid, the respective governing bodies and boards of the said municipalities so jointly contracting as aforesaid (having authority to construct sewers and drains therein) did, on November 9, 1928, meet in Joint Meeting as required by law, being the time fixed and designated in writing for such purpose by a majority of the presiding officers of said governing bodies and boards of said municipalities, and at such Joint Meeting it then and there became and was the duty of the said governing bodies and boards of said municipalities meeting in Joint Meeting as aforesaid to proceed at once to organize as a Joint Meeting under and by virtue of the statute aforesaid and of the acts amendatory thereof and supplemental

Information.

thereto, and of the said ordinance and of said joint written contract by electing by ballot a member of one of the said governing bodies and boards of the municipalities aforesaid composing such Joint Meeting, a "permanent chairman" of such Joint Meeting and also immediately after selecting a "permanent chairman" proceed at the same meeting to elect a Secretary and Treasurer and such other officers, servants and agents and fix their compensation as a majority of the said governing bodies and boards of the municipalities aforesaid present and voting in such Joint Meeting, should deem proper and advisable.

(7) That at the organization meeting aforesaid of the Joint Meeting of all the municipalities aforesaid duly and legally called for and held on the said 9th day of November, 1928, the governing bodies and boards of all said municipalities (having authority to construct sewers and drains therein) were present attending such Joint Meeting, and the said Edward S. F. Randolph then and there being and has since been and still is a resident, elector, citizen, tax payer and freeholder of the Town of Westfield aforesaid, and then and thereto also being a duly elected and qualified member of the Town Council of the Town of Westfield aforesaid (the governing body thereof having authority to construct sewers and drains therein) was present attending such organization meeting as the duly elected and qualified member of the said governing body of said Town of Westfield, and as a legal representative of said governing body of said Town of Westfield, and by reason thereof was eligible and legally qualified and competent to be elected and chosen for and to accept the office of permanent chairman of the said Joint Meeting of said municipalities; that

Information.

said governing bodies and boards of the said contracting municipalities composing and constituting said Joint Meeting under the statutes aforesaid, then and there unanimously and duly elected by ballot according to law the said Edward S. F. Randolph (a duly elected and qualified member of the said governing body of the said Town of Westfield) to the office of Permanent Chairman of said Joint Meeting of the said municipalities acting under and by virtue of an act of the Legislature of the State of New Jersey, entitled "An act to authorize two or more municipalities in this state to jointly construct and maintain outlet or trunk sewers," approved March 15, 1899, and of the acts amendatory thereof and supplemental thereto and of said ordinance and of said joint written contract, for the term prescribed by law, to wit, from the time of his said election to and qualification for said office until the final completion of the work, to wit, the construction of the "Rahway Valley Trunk Sewer and Disposal Works" contracted to be performed by the said municipalities jointly contracting as aforesaid pursuant to the provisions of the said act of the Legislature of the State of New Jersey and of the acts amendatory thereof and supplemental thereto.

(8) That the said Edward S. F. Randolph, upon his election to said office of permanent chairman as aforesaid, immediately and duly qualified for said office of permanent chairman and thereupon entered upon and undertook to administer and discharge the duties of said office in manner prescribed by law and the rules, regulations and directions of the Joint Meeting aforesaid and continued in said office up to the time hereinafter stated.

Information.

(9) That at a meeting of the said Joint Meeting composed of the municipalities aforesaid held next subsequent to the meeting in the next preceding paragraph mentioned, the said Joint Meeting of the municipalities aforesaid fixed the salary of its said officers and amongst them the salary of the office of "permanent chairman" aforesaid which was fixed and determined at the sum of seventy-five hundred dollars per annum and which amount has continued to be the salary attached to the said office and paid to the said Edward S. F. Randolph up to the time hereinafter stated.

(10) That on December 31, 1928, the term of the said Edward S. F. Randolph as a member of the Town Council, being the governing body of the Town of Westfield aforesaid, expired; but the said Edward S. F. Randolph continued in office as the Permanent Chairman of the Joint Meeting aforesaid, performing and discharging the duties thereof as required and entitled to do by virtue of his said election and of the said statute and of the acts amendatory thereof and supplemental thereto and without interruption or hindrance until on the 10th day of October, 1929, at a meeting of the Joint Meeting aforesaid, James T. Park, a member of the governing body of the said City of Rahway, submitted a motion at such meeting as follows:

"I move that Mr. Randolph's (meaning the said Edward S. F. Randolph) occupancy of the office as permanent chairman of the Rahway Valley Joint Meeting be declared vacant,"

which said motion was then and there laid on the table until the meeting of the said Joint Meeting to be held on October 24, 1929.

Information.

(11) That at a meeting held on October 24, 1929, by the said governing bodies and boards of the said municipalities acting in Joint Meeting under the statute aforesaid and of the acts amendatory thereof and supplemental thereto, the motion aforesaid was taken up for consideration and action, and a vote thereon then and there being taken, the governing boards and bodies aforesaid of the said municipalities of the Township of Cranford, City of Rahway, Township of Woodbridge, Borough of Garwood and Township of Springfield voted in the affirmative, and the Borough of Kenilworth, Township of Clark, Borough of Roselle Park and the Town of Westfield voted in the negative whereby and as a result thereof the governing boards and bodies aforesaid of the said municipalities in Joint Meeting aforesaid on adopting and passing said motion, declared vacant the office of permanent chairman of the said Joint Meeting duly and legally held, occupied and possessed by the said Edward S. F. Randolph.

10

20

(12) That at the meeting last aforesaid of the said Joint Meeting of the governing bodies and boards of said municipalities and immediately following the passage and adoption of the motion, action and proceeding aforesaid declared vacant the office of permanent chairman of the said Joint Meeting lawfully held, occupied and possessed by the said Edward S. F. Randolph, the said governing bodies and boards of the municipalities aforesaid proceeded in Joint Meeting aforesaid to the election by ballot of a new permanent chairman of the Joint Meeting aforesaid in which proceeding Roger C. Aldrich, a member of the governing body of the Township of Cranford, aforesaid, received five votes and Burr A. Towl, a

30

40

Information.

member of the governing body of the Town of Westfield received four votes of the said governing bodies and boards of the said municipalities in Joint Meeting aforesaid, whereupon the said Joint Meeting announced and declared the said Roger C. Aldrich elected to the office of permanent chairman of the Joint Meeting aforesaid in the place and stead of the said Edward S. F. Randolph, whose occupancy and possession of the said office of permanent chairman of the Joint Meeting aforesaid was declared vacant as aforesaid.

(13) That at the Joint Meeting last aforesaid the said Edward S. F. Randolph protested against the action and proceeding of the said governing bodies and boards of the municipalities aforesaid in Joint Meeting aforesaid in declaring or attempting to declare vacant the office of permanent chairman and of electing or attempting to elect the said Roger C. Aldrich in his place and stead as permanent chairman of the Joint Meeting aforesaid and then and there refused to acknowledge or approve of the action or proceeding aforesaid of the said Joint Meeting in declaring vacant the office of permanent chairman duly and legally held, occupied and possessed by him, and then and there also refused to acknowledge the election of the said Roger C. Aldrich as permanent chairman of the said Joint Meeting on the grounds and for the reasons that the said Edward S. F. Randolph was eligible and legally qualified for the said office of permanent chairman at the time of his election thereto as aforesaid; that he was duly and lawfully elected to said office of permanent chairman as aforesaid and duly qualified as such and lawfully held, occupied and possessed said office of permanent

Information.

chairman and entitled thereto and to administer and discharge the duties thereof from the time of his election and qualification aforesaid for the full and complete term thereof aforesaid.

(14) That on the said election of the said Roger C. Aldrich to the said office of permanent chairman, the said Edward S. F. Randolph refused and still does refuse to acknowledge and recognize the said election of said Roger C. Aldrich to said office; that he refused to yield and surrender the chair of the permanent chairman to the said Roger C. Aldrich and has regularly attended the meetings of the said governing bodies and boards of said municipalities acting as the Joint Meeting aforesaid for the purpose of acting as the permanent chairman of said Joint Meeting and to administer and discharge the duties of the office of permanent chairman as by law he is entitled; nevertheless the said governing bodies and boards of said municipalities acting in Joint Meeting as aforesaid have refused and still do refuse to recognize the said Edward S. F. Randolph or to allow him to hold, occupy and possess the said office of permanent chairman or to perform the duties of such office and refused and still do refuse to pay him the salary attaching to said office as fixed and determined as aforesaid.

(15) That the said governing bodies and boards of the said municipalities composing and constituting the Joint Meeting aforesaid by their passage and adoption of the motion, action and proceeding aforesaid in declaring vacant the office of permanent chairman, held, occupied and possessed by the said Edward S. F. Randolph and by their refusal to recognize him as the per-

Information.

manent chairman of said Joint Meeting and to allow him to perform and discharge the duties and exercise the functions of said office of permanent chairman and by their said election of Roger C. Aldrich to the alleged vacancy in said office of permanent chairman and in recognizing
10 him as the permanent chairman of said Joint Meeting and in permitting and allowing him to take possession of said office of permanent chairman and in exercising and discharging the duties thereof and paying him the salary attaching to said office, have ousted and ejected the said Edward S. F. Randolph from his said office of permanent chairman of the Joint Meeting aforesaid and in his place and stead the said Roger C. Aldrich has taken possession of said office and has,
20 since the 24th day of October, 1929, unlawfully occupied, enjoyed and exercised and still does unlawfully occupy, enjoy and exercise the office of permanent chairman of said Joint Meeting and its liberties, privileges and franchises and without any legal election, appointment, warrant or authority whatsoever and in violation of the statutes and laws of this state and particularly in violation of an act of the Legislature of the State of New Jersey, entitled, "An act to authorize two or more municipalities in this state to jointly construct and maintain outlet or trunk
30 sewers," approved March 15, 1899, and of the acts amendatory thereof and supplemental thereto.

(16) That the said "Rahway Valley Trunk Sewer and Disposal Works" is designed to handle a capacity of about forty-three million gallons of sewage matter per day and to carry all the sewage or the greater part thereof of said
40 municipalities to a disposal plant to be con-

Information.

structed in the Township of Woodbridge aforesaid; that the estimated cost of said sewer and disposal works is the sum of Two million dollars as appears by the Joint written contract hereinabove referred to; that the contracts for certain sections of said sewer have been awarded and are now under construction; that certain other sections of said sewer and disposal works are still to be contracted for and constructed; that parts of private right of way have been acquired and that certain other necessary private rights of way are still to be acquired for the construction of said trunk sewer and disposal works. 10

(17) That by the acts and proceedings so as aforesaid taken and had on the 9th day of November, 1928, by the said governing bodies and boards of the said municipalities in Joint Meeting under an act of the Legislature of the State of New Jersey, entitled, "An act to authorize two or more municipalities in this state to jointly construct and maintain outlet or trunk sewers," approved March 15, 1899, and of the acts amendatory thereof and supplemental thereto, and of the said ordinance and of the Joint written contract aforesaid, the said Edward S. F. Randolph was duly elected to and duly qualified for the office of permanent chairman aforesaid. 20 30

(18) That by virtue of the said election and qualification of the said Edward S. F. Randolph was and is rightfully entitled to have, hold, use, exercise and enjoy the said office of permanent chairman of the Joint Meeting aforesaid and the liberties, privileges and franchises thereof, but the said Roger C. Aldrich has usurped, intruded and unlawfully held, used and exercised and yet doth usurp, intrude and unlawfully holds, uses, 40

Information.

exercises and enjoys to the exclusion of the said Edward S. F. Randolph the said office of permanent chairman of the Joint Meeting aforesaid in contempt of the State of New Jersey and to its great damage and prejudices, to its sovereignty and dignity.

10 WHEREFORE, the said William M. Beard, Relator, prays that due process of law against the said Roger C. Aldrich in this behalf to be made to answer to the said State and to this Relator by what warrant he, the said Roger C. Aldrich claims to hold, use, exercise and enjoy the aforesaid office of permanent chairman of the said Joint Meeting and the liberties, privileges and franchises thereof, and that the said Edward S. F. Randolph may be declared and adjudged to hold
20 the title to said office of permanent chairman of the Joint Meeting aforesaid and to hold, use, execute and enjoy the said office and the liberties, privileges and franchises thereof, and that the said Roger C. Aldrich may be ousted from the said office.

Dated December 5, 1929.

30 J. EDWARD ASHMEAD,
 MARTIN P. O'CONNOR,
 Attorneys and of Counsel with Relator.

Plea.

man of the said Joint Meeting. Yet for plea thereto, he says that he ought not to be impeached or impleaded by reason of the premises in the said information contained, because he says that at the time of exhibiting the information, the said City of Rahway, Borough of Garwood, Borough of Roselle Park, Borough of Kenilworth, Township of Cranford, Town of Westfield, Township of Springfield and the Township of Clark, municipalities in the County of Union and State of New Jersey, and the Township of Woodbridge, a municipality in the County of Middlesex in said State under and by virtue of the act of the Legislature of the State of New Jersey entitled "An act to authorize two or more municipalities in this State to jointly construct and maintain outlet and trunk sewers," approved 20 March 15, 1899, and of the acts amendatory thereof and supplemental thereto, duly adopted and passed by their respective governing bodies and boards, an ordinance authorizing the making and entering into by and on behalf of such municipalities of a contract for the building, construction, operation and maintenance of an outlet or trunk sewer and disposal works known as "Rahway Valley Trunk Sewer and Disposal Works," and providing for the financing thereof and the levying of special assessments in certain cases by some of said municipalities.

In pursuance of the said statute and the acts amendatory thereof and supplemental thereto and of the ordinances aforesaid and in accordance therewith, the said municipalities did enter into and make a joint written contract for the construction of said "Rahway Valley Trunk Sewer and Disposal Works" as reference to the said contract filed as required by law in the

Plea.

office of the Clerk of the County of Union and of the Clerk of the County of Middlesex (the localities in which said municipalities are located) will more fully appear.

That following the making and filing of said contracts the respective governing bodies and boards of the municipalities aforesaid having authority to construct sewers and drains, did, on the 9th day of November, 1928, meet as fixed in writing by a majority of the presiding officers of said boards and bodies of said municipalities and proceed at once to organize as a Joint Meeting as provided by law, and at such meeting it then and there became and was the duty of the Joint Meeting of said municipalities to elect by ballot a member of one of the bodies or boards of said municipalities composing such Joint Meeting as a "permanent chairman" of such Joint Meeting, and also immediately after selecting a "permanent chairman" proceed to elect a secretary and a treasurer and such other officers, servants and agents and fix their compensation as a majority of the said municipalities or boards present and voting in such meeting should deem proper and advisable.

That at the organization meeting of said Joint Meeting of the municipalities aforesaid duly held on November 9, 1928, representatives of the governing bodies or boards of all said municipalities were present, and that Edward S. F. Randolph attended such meeting as a member of the governing body of the said Town of Westfield; that at such meeting the said Edward S. F. Randolph, a member of one of the governing bodies of the municipalities composing such Joint Meeting, to wit, a member of the Town Council of the Town of Westfield aforesaid, was elected by ballot by

Plea.

such Joint Meeting, its permanent chairman; that the said Edward S. F. Randolph duly qualified as such and thereupon entered upon and undertook to administer and discharge the duties of said office in the manner prescribed by law and the rules, regulations and directions of said Joint Meeting and continued in said office up to the time hereinafter stated; and this respondent traverses the allegation set forth in paragraph 7 of the said information that the term prescribed by law of the said Edward S. F. Randolph, as permanent chairman of the said Joint Meeting, was from the time of his said election to and qualification for said office until the final completion of the work, to wit, the construction of the "Rahway Valley Trunk Sewer and Disposal Works."

That on December 31, 1928, the term of said Edward S. F. Randolph as a member of the Town Council of the Town of Westfield expired; that the said Edward S. F. Randolph continued as *de facto* chairman of said Joint Meeting until October 24, 1929, when at a regular meeting of the said Joint Meeting held on October 3, 1929, a letter was received from one Edward Maxson, a lawyer, claiming to represent certain unnamed taxpayers, protesting against the claim of Edward S. F. Randolph to hold the chairmanship of said Joint Meeting on the ground that he was not at such time a member of one of the governing bodies composing such Joint Meeting.

That at a regular meeting of the Joint Meeting held on October 10, 1929, one James T. Park, a member of the governing body of the City of Rahway, submitted a motion at such meeting as follows:

"I move that Mr. Randolph's occupancy of the office as chairman of the Rahway Valley Joint Meeting be declared vacant."

Plea.

The motion being seconded, and after discussion thereon, was laid on the table until October 24, 1929.

That the said respondent, Roger C. Aldrich, was duly elected Township Committeeman of the Township of Cranford on the 6th day of November, 1928, for a period of three years and thereafter duly qualified as said Township Committeeman by taking and filing his oath of office as such; that he continued from the 1st day of January, 1929, down to the present time as Township Committeeman of the Township of Cranford and as such is duly qualified to be permanent chairman of the Joint Meeting. 10

That at a regular meeting of the Joint Meeting held on October 24, 1929, at which all municipalities composing said Joint Meeting were present, the motion aforesaid was taken up for consideration and action of the Joint Meeting, and by vote of five to four the said Joint Meeting declared the office of "permanent chairman" of the said Joint Meeting, theretofore occupied *de facto* by the said Edward S. F. Randolph, vacant, and immediately proceeded to the election of a permanent chairman of the Joint Meeting in which proceeding Roger C. Aldrich, the respondent, a member of the governing body of the Township of Cranford, and Burr A. Towl, a member of the governing body of the Town of Westfield, were nominated, and the ballots being cast, Roger C. Aldrich aforesaid received five votes and the said Burr A. Towl received four votes; whereupon the secretary of the Joint Meeting announced the election of said Roger C. Aldrich as permanent chairman thereof as reference to the minutes of said Meeting will more fully appear, which said minutes the said Roger C. Aldrich brings here into Court for the inspection of the Court. 20 30 40

Plea.

And this respondent traverses the allegation set forth in paragraph 10 of the said information, that the said Edward S. F. Randolph continued in office as permanent chairman of the Joint Meeting aforesaid, performing and discharging the duties thereof as required and entitled to do
 10 by virtue of his said election and of the said statute and of the acts amendatory thereof and supplemental thereto; and said respondent further traverses the allegations set forth in paragraphs 11 and 12 of the said information, that the said Edward S. F. Randolph, prior to October 24, 1929, had duly and legally held, occupied and possessed the office of permanent chairman of the said Joint Meeting.

And the said respondent further says that,
 20 therefore, he accepted said appointment and afterwards, to wit, on the 24th day of October, in the year nineteen hundred and twenty-nine, and before he entered upon the duties of his office, he took and subscribed on oath before Francis V. Dobbins, one of the Masters in Chancery of the State of New Jersey, that he would faithfully and impartially, to the best of his skill and understanding, discharge the duties of his office as permanent chairman of said meeting according to the form of the statute made
 30 and provided.

That the act aforesaid authorizing two or more municipalities in this State to jointly construct and maintain outlet or trunk sewers, is known as Chapter 36 of the pamphlet laws of the State of New Jersey, Session of 1899, as amended and supplemented.

Section "Two" thereof provides as follows:

40 "After the execution by two or more municipalities in this state of a contract pur-

Plea.

suant to the provisions of the first section of this act, and the same is duly recorded in the office of the clerk of the county or counties wherein such contracting municipalities are situate, it shall be lawful for the respective governing bodies or boards of the municipalities so contracting having authority to construct sewers and drains therein, and it shall be their duty to meet in joint meeting, at such time and place as may be fixed in writing by a majority of the presiding officers of such bodies or boards; and such bodies or boards of said contracting municipalities shall meet at the time and place so to be designated as aforesaid, and shall proceed at once to organize as a joint meeting, by electing, by ballot, a member of one of the bodies or boards of the municipalities composing such joint meeting, a permanent chairman of such joint meeting; said joint meeting shall, immediately after selecting a permanent chairman, and at the same meeting proceed to select a secretary and a treasurer and such other officers, servants and agents, and fix their compensation as a majority of the municipal bodies or boards present and voting in such joint meeting shall deem proper and advisable; such joint meeting shall continue to exist until the full completion of the work or improvement mentioned and referred to in the contract between the several municipalities as aforesaid," * * *

10

20

30

"the secretary and treasurer and other officers of such joint meeting, except the chairman, need not be members of any municipal board represented therein."

That while up to and including December 31, 1928, the said Edward S. F. Randolph, then the chairman of the board, was continuously and up to that date a member of one of the governing boards of one of the municipalities constituting the Joint Meeting, namely, the Town Council of

40

Plea.

the Town of Westfield, on December 31, 1928, he wholly ceased to be such member and thereby, by operation of law, he became wholly disqualified from holding the office of such permanent chairman, and after said December 31, 1928, he ceased to hold said office *de jure*, whereby a vacancy
10 occurred in the office of permanent chairman on January 1, 1929.

Pursuant to the said act of the legislature being Chapter 36 of the Laws of 1899, such vacancy was duly filled in the manner prescribed by said act, a regular election for permanent chairman having been held on the 24th day of October, 1929, such election being duly and legally conducted according to law, at which election the
20 said respondent above named, Roger C. Aldrich, was duly elected permanent chairman in the place and stead of the said Edward S. F. Randolph.

And this respondent traverses the allegations set forth in paragraph 13 of the said information, that the said Edward S. F. Randolph protested against the action and proceeding of the said governing bodies and boards of the municipalities aforesaid in Joint Meeting aforesaid, in declaring
30 vacant the office of permanent chairman and in electing the said respondent as permanent chairman of the said Joint Meeting; and traverses the allegation that the said Edward S. F. Randolph refused to acknowledge or approve of the action and proceeding aforesaid of the said Joint Meeting, and refused to acknowledge the election of the said respondent as permanent chairman of the said Joint Meeting, on the grounds and for the reasons that the said Edward S. F. Randolph was eligible and legally qualified for the said office
40 of permanent chairman at the time of his elec-

Plea.

tion thereto, as aforesaid; and traverses the allegation that the said Edward S. F. Randolph lawfully held, occupied and possessed the said office of permanent chairman and was entitled thereto, and to administer and discharge the duties thereof from the time of his election and qualification for the full and complete term thereof, as alleged in the said information. And this respondent traverses the allegations set forth in paragraph 14 of the said information, that on the said election of the said respondent to the said office of permanent chairman the said Edward S. F. Randolph refused, and still does refuse, to acknowledge and recognize the said election of the said respondent to said office, and that he refused to yield and surrender the chair of the permanent chairman to the said respondent, and that he has regularly attended the meetings of the said governing bodies and boards of the said municipalities acting as the Joint Meeting aforesaid, for the purpose of acting as the permanent chairman of said Joint Meeting, and to administer and discharge the duties of the office of chairman, and traverses the allegation that he is by law entitled so to do.

And thereafter the said Roger C. Aldrich, and on the 24th day of October, 1929, assumed the office of permanent chairman of said Joint Meeting and has presided and is presiding as permanent chairman of said Joint Meeting by virtue of his said election, and is recognized by the said Joint Meeting as the permanent chairman thereof.

And this respondent traverses the allegations set forth in paragraph 15 of the said information, that he unlawfully occupied, enjoyed and exercised, and still does unlawfully occupy, enjoy and exercise the office of permanent chairman of said

10

20

30

40

Plea.

Joint Meeting and its liberties, privileges and franchises; and traverses the allegation in said paragraph 15 of said information, that his occupation, enjoyment and exercise of the said office is without any legal election, appointment, warrant or authority and in violation of the statutes
 10 and laws of this State, and particularly of an act entitled "An act to authorize two or more municipalities in this state to jointly construct and maintain outlet or trunk sewers," approved March 15, 1899, and of the acts amendatory thereof and supplemental thereto.

And this respondent traverses the allegations set forth in paragraph 18 of said information, that by virtue of the said election and qualification of the said Edward S. F. Randolph on November 9, 1928, he was and is rightfully entitled
 20 to have, hold, use, exercise and enjoy the said office of permanent chairman of the Joint Meeting aforesaid, and the liberties, privileges and franchises thereof, and traverses the allegation of said paragraph 18 that he, the respondent, the said Roger C. Aldrich, has usurped, intruded and unlawfully held, used and exercised, and doth usurp, intrude and unlawfully hold, use, exercise and enjoy to the exclusion of the said Edward
 30 S. F. Randolph, the said office of permanent chairman of the Joint Meeting aforesaid.

And respondent further says that he is discharging the duties of said office and has taken possession of said office as permanent chairman of said Joint Meeting and is being paid the salary of said office; that the said Roger C. Aldrich, respondent aforesaid, has taken possession of said office of permanent chairman and has, since the 24th day of October, 1929, occupied, enjoyed and
 40 exercised and still does occupy, enjoy and exer-

Plea.

cise the office of permanent chairman of said Joint Meeting, and its liberties, privileges and franchises, and by virtue of the aforesaid election, appointment, warrant and authority, without this that the said respondent, the said office, its liberties, privileges and franchises in the said information above mentioned, or any of them has usurped, or did usurp, in manner and form as by the said information is above alleged against him all and singular which matters and things this respondent is ready to verify and prove, as the Court shall award; 10

Wherefore, he prays judgment, and that the said office, its liberties, privileges and franchises, by him claimed, in manner aforesaid, may be allowed and adjudged to him, and he may be discharged by the Court hereof, and from the premises above charged against him. 20

FRANCIS V. DOBBINS,
Attorney for Defendant.

30

40

DEMURRER.

Filed January 11, 1930.

(Sent to Clerk January 9, 1930.)

NEW JERSEY SUPREME COURT.

10

 THE STATE OF NEW JERSEY, *ex*
rel., WILLIAM M. BEARD,
*Relator,**vs.*

ROGER C. ALDRICH,

Respondent.
 } *On Quo*
 } *Warranto.*
 } *Demurrer.*

20

And now, comes the said William M. Beard, re-
 lator, by J. Edward Ashmead and Martin P.
 O'Connor, his attorneys, and says that the said
 plea of the said Roger C. Aldrich, respondent, by
 him above pleaded, and the matters therein con-
 tained, in manner and form as the same are above
 pleaded and set forth, are not sufficient in law to
 bar the said William M. Beard, relator, from hav-
 ing and maintaining his aforesaid action thereof
 against him, the said Roger C. Aldrich, and that
 30 he, the said William M. Beard, relator aforesaid,
 is not bound by the law of the land to answer the
 same which he is ready to verify; wherefore, for
 want and because of the insufficiency of said plea
 in this behalf he prays judgment, and that the
 said Roger C. Aldrich with the liberties, privi-
 leges and franchises may in no way intermeddle
 but may be altogether excluded from the same.

 J. EDWARD ASHMEAD,
 MARTIN P. O'CONNOR,

Attorneys of Relator.

40

OPINION OF SUPREME COURT.

Filed February 13, 1930.

NEW JERSEY SUPREME COURT.

No. 66, January Term, 1930.

<p>THE STATE OF NEW JERSEY, <i>ex</i> <i>rel.</i>, WILLIAM M. BEARD, <i>Relator,</i> <i>vs.</i> ROGER C. ALDRICH, <i>Respondent.</i></p>	}	10
---	---	----

Argued January 23, 1930; decided February 13, 1930. 20

Syllabus.

1. Courts will adopt that construction of a statute which reconciles and gives reasonable meaning to all the provisions thereof, rather than one that leaves them in irreconcilable conflict.

2. Under the Act of 1899 (P. L., p. 48) and its supplements (P. L. 1903, p. 36; P. L. 1905, p. 268) the person elected "permanent chairman" at the time of the organization of the "Joint Meeting" is entitled to continue as permanent chairman until the completion of the work, irrespective of the fact that subsequent to his election as permanent chairman he ceased to be a member of the governing body of one of the municipalities composing the Joint Meeting. 30

3. A contention set forth in the respondent's plea, that the relator, in applying, as citizen and taxpayer, for leave to file the information in the nature of a writ of *quo warranto*, did not act "in good faith for the vindication of his rights and those of the public, but 40

Opinion of Supreme Court.

to prevent respondent from calling in question the title of another claimant to the office," was a matter for consideration upon the application of the relator for leave to file the information, and is by implication determined by the Supreme Court or a Justice thereof adversely to the respondent by the granting of such leave; and such contention is ineffectual to prevent a judgment of ouster where the pleadings disclose that the respondent has no valid title to the office of which he is the incumbent.

In matter of *quo warranto*, etc.

Before Justices Trenchard, Lloyd and Case.

For the relator, Martin P. O'Connor and J. Edward Ashmead.

For the respondent, Francis V. Dobbins and Conover English.

The opinion of the court was delivered by
TRENCHARD, J.

This matter is before the Court on a demurrer to the plea of the respondent to the information filed by the relator by leave of Court.

The pleadings exhibit the following matters of fact:

The information was filed by relator, a citizen and taxpayer of the Town of Westfield, to test the validity of the election of the respondent, Roger C. Aldrich, to the office of Permanent Chairman of the "Joint Meeting" consisting of the municipalities of the City of Rahway, Borough of Garwood, Borough of Roselle Park, Borough of Kenilworth, Township of Cranford, Town of Westfield, Township of Springfield, Township of Clark and the Township of Woodbridge, organized under an act of the Legislature of the State of New Jersey, entitled "An Act to authorize two or more municipalities in this

Opinion of Supreme Court.

state to jointly construct and maintain outlet or trunk sewers," approved March 15, 1899, and the acts amendatory thereof and supplemental thereto. At the time of the organization of the Joint Meeting in November, 1928, Edward S. F. Randolph was a member of the Town Council of Westfield and was elected "Permanent Chairman" of the Joint Meeting, and qualified as such. His term of office as a member of the Town Council of Westfield expired December 31, 1928. No question was raised as to his eligibility to continue to act as chairman of the Joint Meeting until shortly before October 24, 1929, when a resolution declaring the office of chairman vacant was passed, and an election was held and Roger C. Aldrich, a member of the governing body of Cranford was attempted to be chosen as permanent chairman to fill the alleged vacancy.

Counsel for Mr. Aldrich, the respondent, correctly state the issue. They say in their brief: "The main question to be determined is whether, having ceased to be a member of the Town of Westfield Council, he (Randolph) thereupon, *as a matter of law*, became disqualified to continue in the office of permanent chairman, and hence that a vacancy occurred which the statute required the Joint Meeting to fill and which it did fill by the election of Aldrich."

Of course, the solution of that question involves an examination and construction of the Act of 1899 (P. L. p. 48, C. S. p. 3588) and its supplements (P. L. 1903 p. 36; P. L. 1905 p. 268).

We think that the action of the Joint Meeting in attempting to remove Mr. Randolph and elect another in his place as permanent chairman is illegal and void.

Opinion of Supreme Court.

Under the Act of 1899, and its supplements, the person elected permanent chairman at the time of the organization of the Joint Meeting is entitled to continue as permanent chairman until the completion of the work, irrespective of the fact that subsequent to his election as permanent chairman he ceased to be a member of the governing body of one of the municipalities composing the Joint Meeting. While it is clear that the act contemplates that any newly elected permanent chairman shall at the time of his election be a member of one of the governing bodies composing the Joint Meeting, it is equally clear that it contemplates that when once elected, there shall be no change in the personnel of the office of permanent chairman until the completion of the work and the reorganization of the Joint Meeting for the purpose of operation.

Section 2 of the Act of 1899, p. 51, provides that at the organization meeting the members "shall proceed at once to organize as a joint meeting, by electing, by ballot, a member of one of the bodies or boards of the municipalities composing such joint meeting, *a permanent chairman* of such joint meeting; * * * such joint meeting shall continue to exist until the full completion of the work or improvement * * *; such joint meeting may meet and adjourn from time to time, as it may deem advisable, during the progress and continuance of the work of such public improvements and until the completion thereof," etc.

In this provision of the statute there are several things most significant as to the legislative intent. (1) It is provided that the Joint Meeting shall continue to exist until the full completion of the work. (2) It may meet and adjourn

Opinion of Supreme Court.

from time to time, as it may deem advisable, during the progress and continuance of the work of such public improvements and until the completion thereof. Obviously the Legislature contemplated the Joint Meeting to continue through the full period of construction; and, most significant of all—(3) the Chairman elected upon the organization of the Joint Meeting is a *permanent* chairman. 10

Turning to Webster's New International Dictionary the word "permanent" is stated to be derived from the Latin verb *permanere*—"to stay or remain to the end, to last." To elect a "permanent chairman" obviously is to elect one to stay and remain to the end, or in this case in the express words of the statute, "until the full completion of the work or improvement" (P. L. 1899, p. 51, section 2); "until the final completion of the work contracted to be performed by the municipalities" (P. L. 1903, p. 36, Section 1). 20

There seems to be nothing in the Act that would signify any other than this most clearly expressed intention, unless it be the last provision of Section 2 of P. L. 1899, p. 53, that "the secretary and treasurer and other officers of such joint meeting except the chairman, need not be members of any municipal board represented therein." From its juxtaposition to the clause concerning vacancies, the indication seems to be that it was intended to apply to vacancies only; but if considered to be applicable both to original election and the filling of vacancies in the offices mentioned, when considered in connection with the other provisions of the Act it is evident that it was intended to pertain only to the qualification of the time of selection and not to the 30 40

Opinion of Supreme Court.

tenure of office of the person selected. The exception as to the Chairman was obviously inserted only to make this provision consistent with the earlier provision providing that at the time of the organization of the Joint Meeting a member of one of the bodies or boards of the municipalities composing such Joint Meeting should be elected a permanent chairman of such meeting. To make clear, when newly elected—whether originally or to fill a vacancy—the Chairman must be a member of one of the governing bodies or boards of the municipalities composing the Joint Meeting. If this provision should be construed or considered to qualify the tenure of office of the person selected chairman, it would be irreconcilably inconsistent with the phrase “permanent Chairman” and the other provisions of the Act. Whereas, if applied as a necessary qualification at the time of the selection for the office, it is entirely consistent with all of the provisions; and it is fundamental that the Courts will adopt that construction of a statute which reconciles and gives reasonable meaning to all of the provisions thereof, rather than one which leaves them in irreconcilable conflict. *Steel v. Freeholders of Passaic*, 89 N. J. L. 609; *Bogart v. Hackensack Water Co.*, 101 N. J. L. 518.

That such is the correct interpretation of the Legislation is made quite plain when we examine the supplement of 1903 (P. L. p. 36). Section 1 thereof reads:

“1. The permanent chairman, the secretary, the treasurer and the other officers of the Joint Meeting appointed or elected pursuant to the provisions of the act to which this is a supplement shall hold their several offices until the

Opinion of Supreme Court.

final completion of the work contracted to be performed by the municipalities jointly contracting, pursuant to the provisions of the act to which this is a supplement, and shall be entitled to receive the compensation fixed for their said offices until the completion of the work, and each of said officers shall be entitled to receive such compensation at the rates fixed by the joint meeting of the governing bodies or boards of the municipalities jointly contracting for such public improvement from the beginning of their terms until the completion of such public improvement so contracted for; upon the completion of such public improvement the joint meeting of the governing bodies or boards of the municipalities jointly contracting therefor, shall reorganize for the purpose of maintaining and operating a joint outlet or trunk sewer so completed by them, by the election of a chairman of such joint meeting and a secretary and a treasurer and such other officers, servant and agents as may be needed for the purpose of the maintenance and operation of such joint outlet or trunk sewer, and shall fix the compensation to be paid all said officers, servants and agents for the services to be performed by them in the future operation and maintenance of said sewer.”

10

20

30

Obviously, this Act is of controlling significance upon the legal issue presented in this case, since it expressly repeals all inconsistent provisions. The act no doubt means what it expressly states, namely, that the officers originally elected, including the permanent Chairman, shall hold their office until the final completion of the work. The phrase “each of the said officers shall be entitled to receive such compensation at the rate fixed by the Joint Meeting of the governing

40

Opinion of Supreme Court.

bodies or boards of the municipalities jointly contracting for such public improvement *from the beginning of their terms until the completion of such public improvement so contracted for*" cannot possibly mean anything other than that the person elected permanent chairman at the organization meeting shall receive compensation from the time of his election "until the completion of such public improvement so contracted for" and no one would contend that it was the purpose of the Legislature to pay compensation to a permanent chairman unless it was intended that he should hold the office during the full period for which it is provided he shall receive compensation, namely, from the beginning of his term until the completion of the public improvement contracted for.

Also, a consideration of the subject and objects of the Act supports this conclusion. The Joint Meeting is organized to carry out the construction of a particular public improvement of importance affecting two or more municipalities and likely to include an area and involve problems with which the members of the governing body of any one municipality would not be fully acquainted. During the period of construction, the personnel of the several governing bodies composing the Joint Meeting would likely greatly, and possibly completely, change. The Legislature undoubtedly considered that it should be assured that someone with knowledge of the details of the project from beginning to end should remain and continue in the Joint Meeting at least until the improvement had been fully constructed, and to accomplish this purpose they selected the Chairman.

Opinion of Supreme Court.

In passing, it may be observed that although the supplement of 1903 provides that upon completion of the public improvement the Joint Meeting "shall reorganize for the purpose of maintaining and operating" the improvement, it very carefully eliminated the word "permanent" before the word "chairman" and provided only for a chairman, and this distinction made by the Legislature emphasizes the intention of the Legislature to have the Chairman originally elected continue as Chairman until the completion of the improvement, irrespective of whether he should continue to be a member of one of the governing bodies composing the Joint Meeting. 10

By a later supplement the Legislature, however, further provided (P. L. 1905, p. 268):

"1. The chairman of the Joint Meeting elected upon completion of the joint outlet or trunk sewer upon the reorganization of such Joint Meeting, for the purpose of maintaining and operating the same, shall continue to occupy his said office and to perform the duties thereof until his successor shall be duly elected and qualify notwithstanding the fact that he shall have ceased to be a member of any of the governing bodies or boards of the municipalities jointly contracting for such public improvement." 20 30

By this statute the Legislature again showed that it was not intended to be an essential part of the structure of the Joint Meeting that the Chairman should continue to be a member of any one of the governing bodies composing the Joint Meeting.

The supplement of 1903 provides that upon completion of the public improvement, the Joint Meeting "shall reorganize for the purpose of 40

Opinion of Supreme Court.

maintaining and operating" the improvement. This is the only reorganization mentioned or contemplated by the Act. The 1903 supplement, together with the 1905 supplement leads to the imperative conclusion that the antecedent organization, namely the body organized for construction only, is not to be reorganized by the
 10 election of new officers until the final completion of the work contracted for. The Act of 1903 expressly so declares.

In fine, we think that the intention of the Legislature, as definitely and positively expressed, was that the person elected at the time of the organization of the Joint Meeting as permanent chairman shall continue to hold that office until the final completion of the work contracted for
 20 irrespective of the fact that he ceases to be a member of the governing body of one of the municipalities composing the Joint Meeting.

The contention set forth ~~to~~ the plea, that the relator, in applying for leave to file the information did not act in "good faith for the vindication of his rights and those of the public, but to prevent respondent from calling in question the title of the said Edward S. F. Randolph to the office" was a matter for consideration upon the
 30 application determined by the Supreme Court or a Justice thereof adversely to the respondent by the granting of such leave; and such contention is ineffectual to prevent a judgment of ouster, where, as here, the pleadings disclose that the respondent has no valid title to the office of which he is the incumbent. *Reihl v. Wynne*, 146 Atl. 204; *Bonyng v. Frank*, 89 N. J. L. 239; *State ex rel. Mitchell v. Tolan*, 33 N. J. L. 194. In this connection it is to be noted that no motion to
 40 quash the information or the order granting leave

the relator
 leave to file
 information
 was by
 application

Opinion of Supreme Court.

to file the same was ever made or suggested so far as the record discloses.

Since the plea exhibits no valid title on the part of the respondent to the office, judgment of ouster should be entered, *Wagner v. Yore*, 75 N. J. L. 198; *Bonyng v. Frank*, 89 N. J. L. 239; *Reihl v. Wynne*, 146 Atl. 204; See also *Davis v. Davis*, 57 N. J. L. 203. 10

Accordingly judgment of ouster will be entered against the respondent with costs.

20

30

40

RULE FOR JUDGMENT.

NEW JERSEY SUPREME COURT.

10	THE STATE OF NEW JERSEY, <i>ex</i> <i>rel.</i> , WILLIAM M. BEARD, <div style="text-align: right;"><i>Relator,</i></div>	}	<i>On Quo</i> <i>Warranto.</i>
	<i>vs.</i>		
	ROGER C. ALDRICH, <div style="text-align: right;"><i>Respondent.</i></div>		<i>Rule for</i> <i>Judgment.</i>

20 The information in the above cause, by leave of the Court, having been duly filed, and the respondent having filed a plea thereto and the relator having filed a demurrer to said plea, and the cause having been regularly set down and notice for hearing having been argued before the Court by Martin P. O'Connor and J. Edward Ashmead, counsel for relator and by Francis V. Dobbins and Conover English, for the respondent, and the Court having considered said cause, and directed a judgment in favor of the relator and of ouster against the respondent from the office of permanent chairman of the Joint Meeting of the City of Rahway, Borough of Garwood, Borough of Roselle Park, Borough of Kenilworth, Township of Cranford, Town of Westfield, Township of Springfield, Township of Clark and the Township of Woodbridge, municipalities acting under and by virtue of an act of Legislature of the State of New Jersey entitled, "An Act to authorize two or more municipalities in this state to jointly construct and maintain outlet or trunk sewers," approved March 15, 1899, and of the Acts amendatory thereof and

30

40

Rule for Judgment.

supplemental thereto, and that he pay cost to the relator;

It is ordered that judgment in favor of the relator and of ouster with cost to the relator against the respondent, be entered in the above-entitled suit.

10

Entered February 20, 1930.

On motion of

J. EDWARD ASHMEAD,
MARTIN P. O'CONNOR,
Attorneys.

Costs \$144.70.

20

30

40

JUDGMENT.

NEW JERSEY SUPREME COURT.

10	THE STATE OF NEW JERSEY, <i>ex</i> <i>rel.</i> , WILLIAM M. BEARD, <div style="text-align: right;"><i>Relator,</i></div>	}	<i>On Quo</i>
	<i>vs.</i>		<i>Warranto.</i>
	ROGER C. ALDRICH, <div style="text-align: right;"><i>Respondent.</i></div>		<i>Judgment.</i>

20 And now on the 20th day of February, in the year of our Lord one thousand nine hundred and thirty, before the Supreme Court of New Jersey, at Trenton, comes the said State by its Attorney-General and the relator, William M. Beard, by his attorney, and the respondent, Roger C. Aldrich, by his attorney; whereupon all and singular the premises being fully known and understood and deliberation had thereon by said Court it appears to said Court that the said information in the nature of *quo warranto* and the matters therein contained are sufficient in law for the said State to have and maintain its information and action thereon against Roger C. Aldrich; wherefore, it is considered and adjudged by the said Court that the respondent, Roger C. Aldrich is guilty of usurping, intruding into and unlawfully holding and exercising the office of permanent chairman of the Joint Meeting of the City of Rahway, Borough of Garwood, Borough of Roselle Park, Borough of Kenilworth, Township of Cranford, Town of Westfield, Township of Springfield, Township of Clark, and the Township of Woodbridge, municipalities acting

30

40

Judgment.

under and by virtue of an act of the Legislature of the State of New Jersey, entitled, "An act to authorize two or more municipalities in this state to jointly construct and maintain outlet or trunk sewers," approved March 15, 1899, and of the acts amendatory thereof and supplemental thereto, and that he be and hereby is ousted and excluded from said office and that the said Roger C. Aldrich nowise intermeddle with nor in the said place, office, liberties, privileges and franchises nor any of them, but that he be from henceforth wholly forejudged and excluded from exercising and using the same. 10

And it is further considered and adjudged that the said William M. Beard the relator above-mentioned in this behalf do recover against the said Roger C. Aldrich the sum of for 20 his costs by him laid out and expended in carrying on this suit in his behalf according to the form of the statutes in such case made and approved.

Judgment entered February 20, 1930.

Wm. S. Gummere
C. J. 30

179

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, <i>ex</i> <i>rel.</i> , WILLIAM M. BEARD, <i>Relator-Appellee,</i>	} <i>On Quo</i> <i>Warranto.</i>
<i>vs.</i>	
ROGER C. ALDRICH, <i>Respondent-Appellant.</i>	} <i>On Appeal</i> <i>from</i> <i>Supreme</i> <i>Court.</i>

BRIEF FOR RESPONDENT-APPELLANT.

Statement of Facts.

This case comes up on appeal from a judgment of the Supreme Court, which overruled the plea of the respondent-appellant to an information in the nature of a *Quo Warranto* and gave judgment of ouster against him.

The information was filed to contest the right of the respondent-appellant Roger C. Aldrich to the office of permanent chairman of the Joint Meeting consisting of the municipalities of the City of Rahway, Borough of Garwood, Borough of Roselle Park, Borough of Kenilworth, Township of Cranford, Town of Westfield, Township of Springfield, Township of Clark and the Township of Woodbridge, organized under an act of the Legislature of the State of New Jersey, entitled "An Act to authorize two or more municipalities in this state to jointly construct and maintain outlet or trunk sewers," approved March 15, 1899, and of the acts amendatory thereof and supplemental thereto (Pamph. L. 1899, p. 48, its amendments and supplements), Comp. Stats. Vol. III, p. 3588; Cum. Supp. Vol. I, p. 2035, Secs. 136, 488.

At the time of the organization of the Joint Meeting in November, 1928, the relator-appellee, Edward S. F. Randolph, was a member of the City Council of Westfield and was elected permanent chairman of the Joint Meeting. His term for office as a member of the City Council of Westfield expired December 31, 1928. He continued to act as chairman of the Joint Meeting until October 4, 1929, when (1) a resolution declaring the office of chairman vacant was passed, and (2) an election was held and Roger C. Aldrich, a member of the governing body of Cranford, was chosen as permanent chairman to fill the vacancy.

The plea sets up that on October 24, 1929, the office of permanent chairman, theretofore occupied *de facto* by Randolph, was declared vacant (p. 18, line 20), and that Aldrich was elected permanent chairman by a vote of 5 to 4, the other candidate for the office being one Towl (p. 18, line 35), and that thereupon Aldrich accepted the appointment and took the prescribed oath of office (p. 19, lines 20 to 30). The plea further alleges that Aldrich is discharging the duties of the said office of permanent chairman and has taken possession of the same and is being paid the salary and is occupying, enjoying and exercising the liberties, privileges and franchises of the office (p. 23, line 31).

The information sets up that the Joint Meeting have refused and still do refuse to recognize Randolph as permanent chairman or to allow him to hold, occupy and possess the said office (p. 10, line 27), and further sets up that the Joint Meeting does recognize Aldrich as the permanent chairman and has permitted and allowed him to take possession of the office and to exercise and discharge the duties thereof, and has

paid him the salary attaching to the office and has ousted and ejected Randolph from said office (p. 11, lines 1 to 20).

The information further sets up that Randolph protested against the said action of the Joint Meeting and refused to acknowledge or approve the action of the Joint Meeting in declaring vacant the office, and refused to acknowledge the election of Aldrich as permanent chairman (p. 9, lines 18 to 35).

The plea traverses the allegation that Randolph protested and traverses the allegation that Randolph refused to acknowledge or approve the action and proceeding of the Joint Meeting, and traverses the allegation that he refused to acknowledge the election of Aldrich as permanent chairman (p. 21, lines 25 to 40). The plea also traverses the allegations of the information (paragraph 14, p. 10) that Randolph refused to acknowledge and recognize the election of Aldrich (p. 22, line 15).

The plea alleges (p. 22, line 35), as does the information (p. 11, line 10), that the Joint Meeting recognizes Aldrich as permanent chairman.

ARGUMENT.

The fundamental question of law in this case is: Did the fact that Randolph ceased to be a member of the Town Council after December 31, 1928, operate to disqualify him to continue *de jure* as permanent chairman of the Joint Meeting? We say that it did.

We refer in passing to two minor points raised in the brief of counsel for Randolph in the Court below, if, perchance, they should be raised again, although the Court below passed over

those points and addressed itself in its opinion to the fundamental question of the construction of the Act:

1. Counsel for Randolph in their brief in the Court below stressed the fact that the plea admits that Randolph, at the time of his election to the office of permanent chairman, was then a member of the Town Council of Westfield and was elected by ballot and duly qualified as permanent chairman.

That admission has no bearing whatever on the issue in this case.

The information here is filed under section 1 of the *Quo Warranto* Act, the relator being a taxpayer, and, hence, having a right to bring the writ.

Maguire v. DeMuro, 98 N. J. Law 684, p. 686.

In *Davis v. Davis*, 57 N. J. Law 203, Chief Justice Beasley, in discussing the effect of the statute which is now section 1 of the present *Quo Warranto* Act, said, page 205:

“The title of the relator is in no wise pertinent to such an investigation.”

If the writ had been brought by Randolph under section 4 of the *Quo Warranto* Act, then, under section 12 of that Act the pleadings could have been properly framed so as to enable the Court by its judgment to determine, not only the title of the respondent, but also the title of the relator to the office.

Since, however, the title of the relator is not in issue on this proceeding, the admission that he was originally qualified and duly elected to the office of permanent chairman is utterly immaterial.

The main question to be determined is, whether, having ceased to be a member of the Town Council of Westfield, he thereupon, as a matter of law, became disqualified to continue in the office of permanent chairman, and hence, that a vacancy occurred which the statute required the Joint Meeting to fill and which it did fill by the election of Aldrich.

2. So, also, counsel for Randolph in their brief in the Court below argued that the plea is bad in substance. Whether or not that point is well taken depends entirely on the determination of the same fundamental question of whether or not Randolph became disqualified to continue in the office of permanent chairman when on December 31, 1928, he ceased to be a member of the governing board of the Town of Westfield.

The plea, after quoting from section 2 of Chapter 36, P. L. 1899 (p. 19, line 40), alleges as follows (p. 20, line 35):

“That while up to and including December 31st, 1928 the said Edward S. F. Randolph, then the chairman of the board, was continuously and up to that date a member of one of the governing boards of one of the municipalities constituting the joint meeting, namely, the Town Council of the Town of Westfield, on December 31, 1928 he wholly ceased to be such member and thereby, by operation of law, he became wholly disqualified from holding the office of such permanent chairman, and after said December 31, 1928 he ceased to hold said office *de jure*, whereby a vacancy occurred in the office of permanent chairman on January 1st, 1929.”

The plea then goes on to allege that the vacancy was filled by the election of Aldrich.

The plea shows that Aldrich is duly qualified for election to the office inasmuch as he is a

member of the governing board of the Township of Cranford (p. 18, line 10).

If, therefore, the proper construction of the acts governing the creation and operation of the Joint Meeting is, that the vacancy occurred in the office of permanent chairmen when the then permanent chairman, Randolph, ceased to continue to be a member of the governing board of the Town of Westfield, which was one of the municipalities participating in the Joint Meeting, then the plea is good for it fully sets forth the facts showing the title of Aldrich to the office of permanent chairman.

See

Short on Informations, page 201, *178;
Spelling on Injunctions and Other Extraordinary Remedies, Volume II, p. 1602, section 1857;

Davis v. Davis, 57 N. J. Law 80.

The true and proper construction of the statutes must result in overruling the demurrer and sustaining the plea.

In construing these statutes it must be fundamentally kept in mind that the Joint Meeting created by the statute is a Joint Meeting of municipalities.

This conception of the act is essential as bearing on the question of the permanency of the title of any individual to an office in the Joint Meeting.

The membership of the Joint Meeting is made up of municipalities. Municipalities being bodies corporate, must necessarily act through agents, and their agents, for the purpose of representing them in the Joint Meeting, are their governing bodies or boards. These representatives

constitute the personnel of the Joint Meeting, but the Joint Meeting itself is made up of the municipalities participating therein, and while the personnel of the representatives of the municipalities can and may change, the membership of the municipality in the Joint Meeting continues.

An analysis of the act will demonstrate that this is the situation.

Section 1, Chapter 36, P. L. 1899, page 48, makes it lawful for any two or more municipalities to jointly provide for and cause to be constructed an outlet or trunk sewer, and the governing bodies may unite and jointly cause to be made a survey by competent engineers. The surveys, when made, are to be submitted to the municipalities for approval or disapproval, and if the municipality, through its governing board, approves, the statute makes it lawful for such municipalities so approving to unite in the construction of the public improvement and by ordinance to enter into a joint contract or contracts to that end, and after the passage of such ordinance it is lawful for the proper officers of the municipality to execute the joint contract.

Section 2 provides that after the execution of the contract it shall be the duty of the contracting municipalities to meet in Joint Meeting, and such municipalities (P. L. 1899 at p. 51):

“shall proceed at once to organize as a joint meeting, by electing, by ballot, a member of one of the bodies or boards of the municipalities composing such joint meeting a permanent chairman of such joint meeting; said joint meeting shall, immediately after selecting a permanent chairman, and at the same meeting, proceed to elect a secretary and a treasurer and such other officers, servants and agents, and fix their compensation, as a majority of the municipal bodies or boards

present and voting in such joint meeting shall deem proper and advisable; such joint meeting shall continue to exist until the full completion of the work or improvement mentioned and referred to in the contract between the several municipalities as aforesaid, and for such further time as may be provided in said contract; such joint meeting may meet and adjourn from time to time, as it may deem advisable, during the progress and continuance of the work of such public improvements and until the completion thereof, as a majority of the municipal boards thereof may determine; each municipality, through its body or board represented in such joint meeting, shall be entitled to one vote therein on all motions, resolutions, appointments and all other proceedings taken in or by such joint meeting, and such vote shall be cast and announced as directed by the members of such municipal body or board present in such joint meeting; a majority of the municipal bodies or boards so contracting and entitled to be represented in such joint meeting, when present, shall constitute a quorum for the transaction of business, and such majority shall be and are authorized to adopt and make rules of order governing the proceedings of such joint meeting, and rules for the government of the officers, agents and servants employed or appointed by the same, and the majority vote aforesaid shall be necessary to pass or adopt any motion or resolution by such joint meeting;" * * *

(P. L. 1899 at p. 53)

"the said joint meeting may fill vacancies occurring at any time in the offices or positions under its control; the secretary and treasurer and other officers of such joint meeting, except the chairman, need not be members of any municipal board represented therein."

Note that it is "such joint meeting" all through the statute.

The original act limited the term of the Joint Meeting until the completion of the work, and for such further time as *may* be provided in the contract. The Supplement of 1903 provided for a re-organization of the Joint Meeting at the time the work was completed continuing it for an indefinite period, to maintain and operate the sewer. So, in the original Act, nothing was said as to the length of the terms of the several "officers, agents and servants," the only provision being for the filling of a vacancy, should any occur. The Supplement of 1903, limited the terms of all the officers to the completion of the work of construction. The purpose of the Act of 1903 was thus to fix the term of the Permanent Chairman, which the original act had failed to do; but this supplement in no way modified or affected the qualification for the office. The effect of the Act of 1903, was to provide for a situation that might arise (in the absence of a provision in the contract) with reference to a continuation of the Joint Meeting to operate the sewer and provide for a situation that would inevitably arise with reference to the terms of the "officers, agents and servants"—a contingency that was overlooked in the original act. It would seem, therefore, that no emphasis was meant to be placed upon the "Permanent Chairman" mentioned in the act, but the term was only descriptive of the name of the presiding officer, similar to the terms "Secretary" and "Treasurer" immediately following. It applied to the term of office, but not to the tenure of the incumbent.

Then came the Supplement of 1905. Its first section provides that the term of the chairman of the re-organized Joint Meeting shall continue until the election and qualification of his successor, notwithstanding the fact that he shall

have ceased to be a member of any one of the governing bodies. To suppose that the Act and its supplements meant that the "Permanent Chairman" should continue to perform the duties and enjoy the prerequisites of the office, notwithstanding his illness or becoming *non compos*, or his removal from the State, is absurd. The choice of a Chairman (made at the very threshold of the existence of the Joint Meeting) could well be limited to one of their number. For obvious reasons, while he is an incumbent, he should be actively interested. Hence, his membership is both a preliminary and continuing qualification.

There should, however, properly be some string upon the continuance of his service, should the development of the work manifest his incapacity, and so properly enough, his being and continuing a member of the Board provided for that contingency.

It is the Joint Meeting which has the continuity of existence: not the members of the governing boards of the various municipalities which compose the Joint Meeting.

The statute does not say that the individuals who represented their respective municipalities are the Joint Meeting, nor does it say that they continue to exist as a Joint Meeting. The words "*such* joint meeting" can only refer to the Joint Meeting composed of the different municipalities which unite in a contract for the making of a public improvement and that is the Joint Meeting which continues to exist.

Now, the municipality which is a member of the Joint Meeting is represented in the Joint Meeting by "its body or board." That means its governing body or board. The whole concept of Section 2, Chapter 36, P. L. 1899, p. 48, is that the members of the "governing bodies or boards of the municipalities" composing the Joint Meeting shall represent such municipalities in the Joint Meeting.

Necessarily, when any individual, who was a member of a governing body or board of a participating municipality, ceases to be such member, he no longer participates in the affairs of the Joint Meeting.

The statute provided that the Joint Meeting shall have officers, and these officers of the Joint Meeting are chosen by the bodies or boards of the municipalities composing the Joint Meeting.

The statute leaves the municipalities participating in the Joint Meeting free to select such persons as they choose for Secretary, Treasurer and the like, but when it comes to the selection of a permanent chairman, then the statute (Sec-

tion 2, Chapter 36, Act 1899) makes an exception. That exception applies to the individual who, under the statute shall be chosen chairman of the Joint Meeting.

The statute contemplates that the Joint Meeting shall be finally organized with a permanent chairman, secretary and treasurer, and such other officers, servants and agents as may be required. It provides early in section 2 that the permanent chairman shall be

“a member of one of the bodies or boards of municipalities composing such joint meeting.”

Section 2 later on provides:

“The said joint meeting may fill vacancies occurring at any time in the offices or positions under its control; the secretary and treasurer and other officers of such joint meeting, except the chairman, need not be members of any municipal board represented therein.”

We note, therefore, a policy in the statute. It is,

(1) that the representatives of the municipalities composing the Joint Meeting shall be members of the governing bodies or boards of those municipalities;

(2) that when such representative ceases to be a member of the governing body or board he can no longer participate in the affairs of the Joint Meeting; and

(3) that while the Joint Meeting shall be free to choose such officers and agents as it desires regardless of whether they are members of a governing body or board, yet in the case of the permanent chairman, he *must* be a member of a governing body or board of a municipality participating in the Joint Meeting.

The Court below conceded that when newly elected—whether originally, or to fill a vacancy—the Chairman must be a member of one of the governing bodies or boards of the municipalities composing the Joint meeting (p. 36, lines 12-16).

The Court below, however, fell into error, when it held that the requirement of the Act that the Chairman must be a member of a governing body or board was intended to pertain only to the qualification at the time of selection, and not to the tenure of office of the person selected (p. 35, line 39, to p. 36, line 1).

The Court below was led into this construction of the Act by what we believe to be an erroneous conception of the word "permanent" in the statute, as applied to the Chairman, and further, by a failure to so construe the entire Act with its amendments and supplements as to give effect to the underlying scheme of the Act, that the individuals participating in the deliberations of the Joint Meeting should be members of the governing boards of the municipalities composing the Joint Meeting.

Apparently the scheme of the Joint Meeting Act was roughly patterned after the Corporation Act: there is an analogy between the two.

The members of the governing boards of the municipalities are the directors of the Joint Meeting. To qualify as such they must be members of the governing board, just as the directors of a corporation must be stockholders.

The Chairman of the Joint Meeting must be a member of a governing board of a participant municipality, just as the President of the Corporation must be a member of the Board of Directors.

Ministerial officers, such as Secretary, Treasurer, etc., need not be members of the governing board of a participant municipality, just as the Secretary and Treasurer of a corporation need not be members of the Board of Directors.

Would anyone say that the requirement of the Corporation Act, that the President of the Company must be a member of the Board of Directors (Corporation Act, Sec. 13) relates only to his selection and not to his tenure of office!

On the contrary, the moment he ceases to qualify as a Director, that moment he ceases to qualify as President. It is essential to his selection as President of the Company that he be a Director. It is equally essential to his tenure of that office that he continue to be a Director.

Section 12 of the Corporation Act provides that

“the business of every corporation shall be managed by its directors who shall respectively be shareholders therein.”

Section 13 provides that

“the president shall be chosen from among the directors.”

Very evidently, therefore, for one to qualify for election as President *de jure* of the company, he must be a stockholder and a director, and he must continue to be such stockholder and director to be qualified to retain the office of President.

See *In Re St. Lawrence Steamboat Co.*, 44 N. J. Law, 529; *Kuser v. Wright*, 52 N. J. Eq. (E. & A.) 825.

This rule applies to a situation *intra* the corporation. A different rule may apply as to inno-

cent third persons, but that is not this case. The rights of creditors or other third persons are not involved here. In the case at bar the Joint Meeting declared the office of "permanent chairman" vacant and elected a successor.

It is well settled that the corporation may be estopped from taking advantage, as against innocent third persons, of the disqualification of a director where he has been held out to the world as a director and no action has been taken by the company to declare his office vacant. So held in *Kuser v. Wright, supra*, where the Court said (p. 828):

"Bell's original title to the office of director was good; it is not denied that he was legally elected. The corporation held him out to the public as one of its duly authorized agents by failing to declare his office vacant and electing his successor.

In *Doremus v. The Dutch Reformed Church*, 2 Gr. Ch. 349, Chancellor Vroom said 'that where the original title of an officer is sufficient though good cause of a motion be shown, even in a case where the charter declares that for such cause of amotion the officer shall vacate his office, the office is not determined until there be an amotion.'

He also said 'that where persons are officers *de facto* they are *in colore officii*, and their acts will be valid until they are lawfully ousted, and more especially as they respect third persons they are binding on the corporation.'

The authorities are cited in the opinion.

This rule has never been departed from in this state."

See also to the same effect: *Savage v. Ball*, 17 N. J. Eq. 142, p. 145; *Newark Mechanics National*

Bank v. H. C. Burnet Mfg. Co., 32 N. J. Eq. 236, p. 238; 14A Corpus Juris, p. 77, Section 1838-(8).

The contrast between the facts in the *Kuser* case and those in the case at bar emphasizes the point which we make. In the case at bar the Joint Meeting did declare the office of "permanent chairman," held by Randolph, to be vacant, and did elect his successor, Aldrich, so that when Randolph ceased to qualify for the office of "permanent chairman" he ceased to be such both *de jure* and *de facto*.

The Court below concedes, as it must under the statute, that it is essential to the selection of the Chairman, that he be a member of the governing board of a participant municipality. On what sound theory can a distinction be made between his selection to, and his tenure of, the office, any more than such a distinction can be made in the case of the President of a Corporation!

The Court below thought the word "permanent" in the Act, as applied to the Chairman, had the dictionary meaning of that word regardless of the weightier provisions of the Act (p. 35, line 13-24).

On the contrary the adjective "permanent" as used to modify the noun "chairman"—permanent chairman—was very evidently used in contradistinction to the temporary chairman of the organization meeting. Section 2, Chapter 36, Act of 1899, provides that after the contract for the public work is signed,

"it shall be lawful for the respective governing bodies or boards of the municipalities so contracting having authority to construct sewers and drains therein, and it shall be their duty, to meet in joint meeting, at such time and place as may be fixed in writing by

a majority of the presiding officers of such bodies or boards; and such bodies or boards of said contracting municipalities shall meet at the time and place so to be designated as aforesaid, and shall proceed at once to organize as a joint meeting, by electing by ballot, a member of one of the bodies or boards of the municipalities composing such joint meeting, a permanent chairman of such joint meeting; said joint meeting shall, immediately after selecting a permanent chairman, and at the same meeting, proceed to elect a secretary and a treasurer and such other officers, servants and agents, and fix their compensation, * * *

Necessarily, the carrying out of the procedure there prescribed required the selecting of a temporary chairman to preside over the Joint Meeting up to the point where the permanent (in contrast with the temporary) chairman was selected.

Some individual present had to call the meeting to order and act as temporary chairman, but when it came to the selection of the permanent chairman, only such person could be selected as had the statutory qualifications.

The Court below so concedes (p. 36, line 13). But, it does not follow, as the Court below held, that the qualification of permanent chairman, that he be a member of one of the municipal boards, was intended to pertain only to the selection and not to the tenure of office of the person selected. The obvious intent of the Legislature, as expressed in section 2, of the statute, is that the chairman, to qualify for election, must be a member of a municipal board represented in the Joint Meeting, and that to continue his qualification he must continue to be a member of such municipal board.

If that were not so the provision in the statute, that the Joint Meeting might fill any vacancy occurring in any of the offices in the Joint Meeting, and that in filling such vacancies the new officers chosen need not be members of any municipal board therein, except the chairman, would be meaningless.

That language is in the statute. It cannot be ignored. It was intended to have some meaning and its meaning, under well settled rules of construction, is that meaning which its language, in its ordinary and well understood use, imports; and the plain meaning of the language is that for one to qualify as chairman, he must be a member of one of the municipal boards represented in the Joint Meeting, and that when he so ceases to be a member of the municipal board he automatically becomes disqualified for the office of chairman and a vacancy occurs in that office; just as when the president of a corporation ceases to retain the necessary qualification of being a director, he automatically becomes disqualified from continuing as president.

See cases cited *supra*.

The Supplements do not change the meaning of the original Act; on the contrary they fortify it.

The Court below felt itself influenced by the supplement of 1903 to the Act (P. L. 1903, Ch. 19, p. 36). Section 1 provides:

“The permanent chairman, the secretary, the treasurer and the other officers of the joint meeting appointed or elected pursuant to the provisions of the act to which this is a supplement, shall hold their several offices until the final completion of the work contracted to be performed by the municipalities jointly contracting pursuant to the provi-

sions of the act to which this is a supplement, and shall be entitled to receive the compensation fixed for their said offices until the completion of the work, and each of said officers shall be entitled to receive such compensation at the rate fixed by the joint meeting of the governing bodies or boards of the municipalities jointly contracting for such public improvement from the beginning of their terms until the completion of such public improvement so contracted for; upon the completion of such public improvement, the joint meeting of the governing bodies or boards of the municipalities jointly contracting therefor, shall reorganize for the purpose of maintaining and operating a joint outlet or trunk sewer so completed by them, by the election of a chairman of such joint meeting and a secretary and a treasurer and such other officers, servants and agents as may be needed for the purpose of the maintenance and operation of such joint outlet or trunk sewer, and shall fix the compensation to be paid all said officers, servants and agents for the services to be performed by them in the future operation and maintenance of said sewer."

The Court below construed this language to mean that the permanent chairman originally elected from the membership of one of the governing boards should hold his office until the final completion of the work, regardless of whether or not he continued to qualify as a member of municipal board represented in the Joint Meeting (p. 37, line 35, etc.).

It is true that a repealer of inconsistent acts is included in the 1903 supplement; but it is neither necessary, nor consistent to construe this as repealing the requirement that the permanent chairman must be a member of one of the governing boards, particularly when the 1905 supplement (Chapter 146, P. L. 1905) is considered.

And this, for three reasons:

1. The words "permanent chairman" are coupled with the words "appointed or elected pursuant to the provisions of the act to which this is a supplement."

That means a member of a governing board of a participant municipality (p. 36, line 13).

A sound construction, based on an analogy to the Corporation Act, as well as on the context of the Act and its supplements and amendments, equally requires that the chairman must be one who continues to possess the qualification laid down in the main act, namely, that he be a member of one of the municipal boards.

Except as he is a member of one of the municipal boards he cannot qualify for the office of permanent chairman and cannot continue as such after his qualification ceased.

The supplement of 1903 providing that the permanent chairman shall hold his office until the final completion of the work, and shall receive his compensation from the beginning of his term until the completion of the work, must necessarily refer to such person who, as such permanent chairman, possesses the qualifications which the original Act required him to possess, and that the proper construction of the language of the supplement is that he should, all the time he holds the office, continue to possess those qualifications. It is impossible to believe that it was the intent of the Legislature, in passing the supplement of 1903, to undo the important provision of the original Act that the permanent chairman alone, of all the officers designated or provided for, should be a member of one of municipal boards. That qualification was and is too significant to justify the view that the Legis-

lature by the supplement of 1903 intended to repeal it.

2. The supplement of 1905 (Chapter 146, P. L. 1905, p. 268) fortifies the construction contended for.

Section 1 of the supplement of 1905 reads as follows:

“The chairman of the joint meeting elected upon completion of the joint outlet or trunk sewer upon the reorganization of such joint meeting for the purpose of maintaining and operating the same, shall continue to occupy his said office and to perform the duties thereof until his successor shall be duly elected and qualified, notwithstanding the fact that he shall have ceased to be a member of any one of the governing bodies or boards of the municipalities jointly contracting for such public improvement.”

The Act contemplates an organized Joint Meeting to construct the public work, and then by the supplement of 1903, a reorganized Joint Meeting to maintain it after its construction.

It is plain from a reading of the two supplements of 1903 and 1905 that the Legislature intended a somewhat differently organized Joint Meeting to *maintain* the improvement, from the Joint Meeting created to *construct* it.

Section 1 of the supplement of 1903 provides for the reorganization of the Joint Meeting after the public improvement has been completed. The language is as follows:

“upon the completion of such public improvement, the joint meeting of the governing bodies or boards of the municipalities jointly contracting therefor, shall reorganize for the purpose of maintaining and operating a joint outlet or trunk sewer so completed by them, by the election of a chairman

of such joint meeting and a secretary and a treasurer and such other officers, servants and agents as may be needed for the purpose of the maintenance and operation of such joint outlet or trunk sewer,"

The Court below thought that the omission of the word "permanent" from before the word "chairman" in the 1903 supplement was significant, and that (p. 39, line 11)

"this distinction made by the Legislature emphasizes the intention of the Legislature to have the Chairman originally elected continue as Chairman until the completion of the improvement, irrespective of whether he should continue to be a member of one of the governing bodies composing the joint meeting."

Quite the contrary. The distinction emphasizes the very construction of the words "permanent chairman" for which we contend: namely, a permanent chairman as contrasted with the temporary chairman who calls the assembly to order at the time of the first meeting as provided for in Section 2 of the main Act (P. L. 1899, at p. 51).

Furthermore, the word "permanent" before the word "chairman" is not the important word in the Act of 1899. The important words in Section 2 of that act, as relating to chairman, are, that he must be

"a member of one of the bodies or boards of the municipalities composing such Joint Meeting."

It is that qualification which must inhere in the person, who is made permanent chairman. The exact language is that the municipalities

"shall proceed at once to organize as a Joint Meeting by electing by ballot a member of one of the bodies or boards of the municipali-

ties composing such Joint Meeting as permanent chairman of such Joint Meeting."

The term "permanent chairman" means nothing, except as to the one who is made "permanent chairman" is qualified for the office by being a member of one of the bodies or boards of the municipalities composing such Joint Meeting, and who continues to qualify by continuing to be a member of one of the bodies or boards of the municipalities composing the Joint Meeting.

Sec. 1 of the supplement of 1905 like section 2 of the act of 1899, contemplated that the individual occupying the office of chairman might fail to continue to be a member of the governing board of his municipality.

But, right there the Legislature made a very significant provision:

The supplement provided that upon such disqualification he should not automatically become disqualified for the office of chairman of the reorganized Joint Meeting, but might continue to function until his successor was elected and qualified. The successor evidently would be an individual who was a member of the governing board.

Why should the Legislature take the trouble to say that the chairman of the reorganized Joint Meeting

"shall continue to occupy his said office and to perform the duties thereof until his successor shall be duly elected and qualified, notwithstanding the fact that he shall have ceased to be a member of any one of the governing bodies or boards of the municipalities jointly contracting for such public improvement,"

unless it was the more strongly to contrast his functions and authority with that of the perma-

nent chairman of the original Joint Meeting as organized pursuant to Section 2, P. L. 1899 (p. 51).

The language of the supplement of 1905 must be read in *pari materia* with the language of the original Act.

Very evidently, the Legislature considered it of the greatest importance that the chairman of the Joint Meeting, while the work was in progress and the municipalities were spending large sums of money of the taxpayers, should be a member of one of the governing boards at all times.

After the work was completed and the Joint Meeting had reorganized, it did not become so vitally important, and the Legislature, therefore, provided that when the chairman of the reorganized Joint Meeting, who, presumably when elected, was a member of one of the governing boards, ceased to qualify as such, he could, nevertheless, continue to function, until his duly qualified successor was elected, instead of being automatically cut off.

Not so the permanent chairman of the Joint Meeting during the period of construction of the public improvement. The situation as to him is quite different. He is required at all times to be a member of a governing board of one of the municipalities participating in the Joint Meeting, and failing that, he has no standing or qualification to hold or continue in the office of permanent chairman.

3. The supplement of 1903 was principally designed to protect the permanent chairman in the receipt of his compensation, as long as he remained, and was qualified to remain permanent chairman. It provided that he should hold his office (of course he had to hold his job to draw

his pay), and also receive the compensation fixed, until the completion of the work.

It is quite conceivable that the Legislature feared that in a political body of this character an effort might be made unfairly to deprive any officer of either his office or his salary. Hence the statute of 1903.

But it is a strained construction to say that by this enactment the Legislature intended to change the requirements of the 1899 Act that the chairman at all times must be a member of one of the governing boards.

If this construction should prevail, it would lead to absurd results. The chairman, having failed to continue to qualify as a member of one of the governing boards, might elect to go abroad to live. Under such circumstances would it be reasonable to continue to pay him his salary? The Court below thought (p. 38, lines 29-40) that during the period of construction the personnel of the governing bodies composing the Joint Meeting would likely greatly change, and that (p. 38, line 32):

“The legislature undoubtedly considered that it should be assured that someone with knowledge of the details of the project from the beginning to end should remain and continue in the joint meeting at least until the improvement had been fully constructed.”

The really important person with knowledge of the details, whose continuous employment is essential, is the Chief Engineer, not the Chairman.

This argument, however, works both ways. It may equally be said that the Legislature undoubtedly considered that the individual named as permanent chairman might prove to be a failure in that important office, so much so that his constit-

uents in the municipality in which he lived would not care to return him to office in the governing board of the municipality, and so continue him in the office of permanent chairman. By providing that the permanent chairman must be a member of one of the governing boards of the municipalities composing the Joint Meeting, the Legislature very wisely created a check on the situation which would enable taxpayers and voters to, in a measure, control the personnel of the permanent chairman. If, for any reason, it was desired to retire the permanent chairman from his office, all that the voters had to do was to fail to re-elect him to their governing board at the expiration of his term, and that would automatically disqualify him from continuing in the office of permanent chairman, and would leave the way open for the selection by the municipalities of some better qualified person out of the membership of the governing boards for election to that office.

The Acts must be so construed as to give effect to the intent of the Legislature. Reading them together (the Act of 1899 and the supplements of 1903 and 1905) the evident intent of this series of legislation is that (1) the permanent chairman to qualify for that office must be a member of the governing board of a municipality composing the Joint Meeting; and that (2) to be entitled to continue to occupy the office he must continue to qualify by continuing to be a member of one of the governing boards.

We respectfully submit that the Court below erred in construing the statute as it did, so as to hold valid the title of Randolph to the office of Permanent Chairman after he had concededly ceased to be a member of a municipal board represented in the Joint Meeting, and that the

judgment of ouster against Aldrich should be reversed.

Respectfully submitted,

FRANCIS V. DOBBINS,
Attorney for Respondent-Appellant.

CONOVER ENGLISH,
Of Counsel.

October Term, 1930.

THE UNIVERSITY OF CHICAGO PRESS

CHICAGO, ILLINOIS

1911

PRINTED IN GREAT BRITAIN

BY RICHARD CLAY AND COMPANY

BUNGAY, SUFFOLK

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, *ex rel.*,
WILLIAM M. BEARD,
Relator-Appellee,
vs.
ROGER C. ALDRICH,
Respondent-Appellant.

On
Quo Warranto.
On Appeal from
Supreme Court.

BRIEF ON BEHALF OF RELATOR-APPELLEE.

This is an appeal from a judgment of the Supreme Court ousting Roger C. Aldrich, respondent-appellant, as permanent chairman of the Joint Meeting consisting of the municipalities of the City of Rahway, Borough of Garwood, Borough of Roselle Park, Borough of Kenilworth, Township of Cranford, Town of Westfield, Township of Springfield, Township of Clark and the Township of Woodbridge, organized under an act of the Legislature of the State of New Jersey, entitled "An Act to authorize two or more municipalities in this state to jointly construct and maintain outlet or trunk sewers", approved March 15, 1899, and of the acts amendatory thereof and supplemental thereto (Pamph. L. 1899, p. 48, its amendments and supplements), Comp. Stats. Vol. III, p. 3588; Cum. Supp. Vol. I, p. 2035, Secs. 136, 488.

With leave of Court, an information in the nature of a *quo warranto* was filed by William M. Beard, relator-appellee (State of Case, pp. 6-18). A plea was filed by said Roger C. Aldrich, respondent-appellant (State of Case, pp. 19-29).

To this plea the relator-appellee demurred (State of Case, p. 30). After due consideration, the Supreme Court entered a judgment in favor of the relator-appellee and an ouster against the respondent-appellant and adjudged that he pay costs to the relator-appellee (State of Case, pp. 42, 43).

The Pertinent Provisions of the Statutes.

The pertinent provisions of the Act of 1899, its amendments and supplements, are as follows:

Section I of the act authorizes the joint action by the municipalities.

Section II of the act provides for the organization of the Joint Meeting, election of officers, conduct of meetings, filling of vacancies, etc. It provides that after the contract between the municipalities has been duly authorized, executed and filed in the Clerk's Office, it shall be the duty of the contracting municipalities to meet in Joint Meeting and thereupon they

“shall proceed at once to organize as a joint meeting, by electing, by ballot, a member of one of the bodies or boards of the municipalities composing such joint meeting, a permanent chairman of such joint meeting; said joint meeting shall, immediately after selecting a permanent chairman, and at the same meeting, proceed to elect a secretary and a treasurer and such other officers, servants and agents, and fix their compensation, as a majority of the municipal bodies or boards present and voting in such joint meeting shall deem proper and advisable; such joint meeting shall continue to exist until the full completion of the work or improvement mentioned and referred to in the contract between the several municipalities as aforesaid, and for such further time as may be provided in

said contract; such joint meeting may meet and adjourn from time to time, as it may deem advisable, during the progress and continuance of the work of such public improvements and until the completion thereof, as a majority of the municipal boards thereof may determine; * * * the said joint meeting may fill vacancies occurring at any time in the offices or positions under its control; the secretary and treasurer and other officers of such joint meeting, except the chairman, need not be members of any municipal board represented therein" (P. L. 1899, pp. 51, 53). Comp. Stat. Vol. III, pp. 3590, 3591.

In 1903, the Legislature passed a supplement expressly providing the term for which the permanent chairman, the secretary and treasurer should hold their offices and be entitled to compensation; namely, from the beginning of their terms until the completion of the public improvement so contracted for. The pertinent provision of this supplement is as follows:

"The permanent chairman, the secretary, the treasurer and the other officers of the joint meeting appointed or elected pursuant to the provisions of the act to which this is a supplement, shall hold their several offices until the final completion of the work contracted to be performed by the municipalities jointly contracting pursuant to the provisions of the act to which this is a supplement, and shall be entitled to receive the compensation fixed for their said offices until the completion of the work, and each of the said officers shall be entitled to receive such compensation at the rate fixed by the joint meeting of the governing bodies or boards of the municipalities jointly contracting for such public improvement from the beginning of their terms until the completion of such public improvement so contracted for; upon the completion of such public improvement, the joint meeting of the governing bodies or boards of the municipali-

ties jointly contracting therefor, shall reorganize for the purpose of maintaining and operating a joint outlet or trunk sewer so completed by them, by the election of a chairman of such joint meeting and a secretary and a treasurer and such other officers, servants and agents as may be needed for the purpose of the maintenance and operation of such joint outlet or trunk sewer and shall fix the compensation to be paid all said officers, servants and agents for the services to be performed by them in the future operation and maintenance of said sewer" (P. L. 1903, p. 36). Comp. Stat. Vol. III, pp. 3591, 3592.

In 1905 another supplement was passed expressly declaring that the chairman elected on the reorganization of the Joint Meeting, required to be made upon the completion of the work contracted for, should continue to hold office until his successor should be elected and qualify notwithstanding the fact that he should have ceased to be a member of any one of the governing bodies or boards of the municipalities constituting the Joint Meeting. The exact provision of this supplement is as follows:

"The chairman of the joint meeting elected upon completion of the joint outlet or trunk sewer upon the reorganization of such joint meeting for the purpose of maintaining and operating the same, shall continue to occupy his said office and to perform the duties thereof until his successor shall be duly elected and qualified, notwithstanding the fact that he shall have ceased to be a member of any one of the governing bodies or boards of the municipalities jointly contracting for such public improvement" (P. L. 1905, p. 268). Comp. Stat. Vol. III, pp. 3592, 3593.

Statement of the Facts and Issue.

At the time of the organization of the Joint Meeting in November, 1928, Edward S. F. Randolph was a member of the Town Council of Westfield and was elected permanent chairman of the Joint Meeting (Case, p. 21, ll. 28-40, p. 22, ll. 1-11). He did not run for re-election in 1928 and consequently his term for office as a member of the Town Council of Westfield expired December 31, 1928 (Case, p. 22, ll. 19-21). No question was raised as to his eligibility to continue to act as chairman of the Joint Meeting until October 24th, 1929, when (1) a resolution declaring the office of chairman vacant was passed, and (2) an election was held and Roger C. Aldrich, a member of the governing body of Cranford, was attempted to be chosen as permanent chairman to fill the alleged vacancy (Case, p. 22, ll. 22-25, p. 23, ll. 18-40).

The only question involved is the legality of the action of the Joint Meeting in attempting to remove Mr. Randolph from an office in violation of its own organic law expressly providing that the permanent chairman shall hold his office until the final completion of the work contracted to be performed by the municipalities and shall be entitled to receive compensation from the beginning of his term until the completion of such public improvement so contracted for.

I.

The judgment of the Supreme Court should be affirmed.

The brief submitted to this Court on behalf of the respondent-appellant presents the same argument presented to the Supreme Court. In only

one particular does it vary therefrom. It attempts to apply certain decisions concerning private corporations by analogy to the situation presented in this case. It is obvious, however, that none of these cases are in point or need be considered. The issue here presented concerns only the interpretation of the statutes authorizing the creation of the Joint Meeting and providing for its organization, and the amendments and supplements to such statutes. The statutes in question are so specific in their provision and declare the legislative intent so clearly that there is no room for any argument by analogy based upon decisions pertaining to the general law of private corporations or upon other statutes, the provisions of which are radically different.

In the interpretation of the provisions of the particular statutes in question, the Supreme Court adopted the construction contended for by the relator-appellee and for the reasons urged by him, which we submit are undeniably sound, we feel that we need but repeat here our argument made in the court below.

We submit that there can be no doubt that the person elected permanent chairman at the time of the organization of the Joint Meeting is entitled to continue as permanent chairman until the completion of the work, irrespective of the fact that subsequent to his election as permanent chairman he may cease to be a member of the governing body of one of the municipalities composing the Joint Meeting. While it is clear that the act contemplates that any newly elected permanent chairman shall at the time of his election be a member of one of the governing bodies composing the Joint Meeting, it is equally clear that it contemplates that when once elected, there shall be no change in the personnel of the office of permanent chairman until the completion of the work

and reorganization of the Joint Meeting for the purpose of operation.

Section 2 of the Act provides that at the organization meeting the members "shall proceed at once to organize as a joint meeting, by electing, by ballot, a member of one of the bodies or boards of the municipalities composing such joint meeting, a *permanent chairman* of such joint meeting; * * * such joint meeting shall continue to exist until the full completion of the work or improvement * * * such joint meeting may meet and adjourn from time to time, as it may deem advisable, during the progress and continuance of the work of such public improvements and until the completion thereof."

In this provision of the statute there are several things most significant as to the legislative intent. (1) It is provided that the Joint Meeting shall continue to exist until the full completion of the work. (2) It shall meet and adjourn from time to time, as it may deem advisable, during the progress and continuance of the work of such public improvements and until the completion thereof. Obviously the Legislature contemplated the Joint Meeting to continue through the full period of construction and the various sessions thereof together to constitute one meeting; and, most significant of all—(3) the Chairman elected upon the organization of the Joint Meeting is a permanent Chairman.

Turning to Webster's New International Dictionary the word "permanent" is stated to be derived from the Latin verb *permanere*—"to stay or remain to the end, to last". The definition given is "continuing in the same state, or without any change that destroys form or character; remaining unaltered or *unremoved*; abiding; durable; fixed; stable; lasting". To elect a "permanent Chairman" obviously is to elect one to stay and

remain to the end, or in this case in the express words of the statutes, "until the full completion of the work or improvement". Section 2, P. L. 1899, p. 51, Comp. St. Vol. III, p. 3590; "until the final completion of the work contracted to be performed by the municipalities". P. L. 1903, p. 36, Section 1, Comp St. Vol. III, pp. 3591-2.

There is nothing in the Act that we can find that would signify any other than this most clearly expressed intention, unless it be the last provision of Section 2 that "the secretary and treasurer and other officers of such joint meeting, except the chairman, need not be members of any municipal board represented therein". From its juxtaposition to the clause concerning vacancies, it would seem to indicate that it was intended to apply to vacancies only, but if considered to be applicable both to original election to and the filling of vacancies in the offices mentioned when considered in connection with the other provisions of the Act, it is evident that it was intended to pertain only to qualification at the time of selection and not to the tenure of office of the person selected. The exception as to the Chairman was obviously inserted only to make this provision consistent with the earlier provision providing that at the time of the organization of the Joint Meeting a member of one of the bodies or boards of the municipalities composing such Joint Meeting should be elected a permanent Chairman of such meeting. To make clear, when newly elected—whether originally or to fill a vacancy—the Chairman must be a member of one of the governing bodies or boards of the municipalities composing the Joint Meeting. If this provision should be construed or considered to qualify the tenure of office of the person selected Chairman, it would be irreconcilably inconsistent with the phrase "permanent Chairman" and the other provisions

of the Act above referred to. Whereas, if applied as a necessary qualification at the time of selection for the office, it is entirely consistent with all of the provisions, and it is fundamental that the Courts will adopt that construction of the statute which reconciles and gives reasonable meaning to all of the provisions thereof, rather than one that leaves them in irreconcilable conflict.

In *Steel v. Freeholders of Passaic* (Ct. of E. & A. 1916), 89 N. J. L. 609, 611, the Court said:

“The cardinal principle for the construction of statutes is that they are to be so construed that if possible full effect shall be given to all parts of the statute. *State, Morris and Essex Railroad Co. v. Commissioners of Railroad Taxation*, 37 N. J. L. 228.

The statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant. *James v. DuBois*, 16 N. J. L. 286.”

See also *Bogart v. Hackensack Water Company* (Ct. of E. & A. 1925), 101 N. J. L. 518, 520.

In *Montclair v. Ramsdell* (U. S. Sup. Ct. 1882), 107 U. S. 147, 152, the Court said:

“It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed.”

It would be a sad commentary on the State of New Jersey if our Courts should hold that the Legislature did not know the derivation and most common meaning of the word “permanent”. On the contrary, an analysis of the original act as passed indicates most clearly that the chairman elected at the organization of the Joint Meeting should remain the chairman during the full period

of the meeting, or until the full completion of the work or improvement (P. L. 1899, p. 51), Comp. Stat. Vol. III, p. 3592.

That such is the correct interpretation of the original Act is indisputably confirmed by all the subsequent legislation pertaining to the subject under discussion. In 1903 the Act was supplemented so as to provide as follows:

"1. The permanent chairman, the secretary, the treasurer and the other officers of the joint meeting appointed or elected pursuant to the provisions of the act to which this is a supplement, shall hold their several offices until the final completion of the work contracted to be performed by the municipalities jointly contracting pursuant to the provisions of the act to which this is a supplement, and shall be entitled to receive the compensation fixed for their said offices until the completion of the work, and each of the said officers shall be entitled to receive such compensation at the rate fixed by the joint meeting of the governing bodies or boards of the municipalities jointly contracting for such public improvement from the beginning of their terms until the completion of such public improvement so contracted for; upon the completion of such public improvement the joint meeting of the governing bodies or boards of the municipalities jointly contracting therefor, shall reorganize for the purpose of maintaining and operating a joint outlet or trunk sewer so completed by them, by the election of a chairman of such joint meeting and a secretary and a treasurer and such other officers, servants and agents as may be needed for the purpose of the maintenance and operation of such joint outlet or trunk sewer, and shall fix the compensation to be paid all said officers, servants and agents for the services to be performed by them in the future operation and maintenance of said sewer." * * *

“All acts and parts of acts inconsistent with the provisions of this act shall be repealed, and this act shall take effect immediately.”

In the first place, it will be noted that all acts and parts of acts inconsistent with the provision of this act are expressly repealed so that this act is the controlling law upon the legal issue presented in this case.

And we do not see how it can possibly be construed to mean anything else than what it expressly states, namely, that the officers originally elected, including the permanent Chairman, shall hold their office until the final completion of the work. The phraseology of the whole Act makes it applicable solely to the person holding the office. The phrase “permanent Chairman” cannot possibly refer to any other than the person originally elected, as he is the only permanent Chairman elected pursuant to the provisions of the Act. The words “shall hold their several offices until the final completion of the work” cannot possibly refer to any other than the person holding the office. The phrase “shall be entitled to receive the compensation fixed for their said offices until the completion of the work” cannot possibly refer to anything other than the incumbents. The phrase “each of said officers shall be entitled to receive such compensation at the rate fixed by the joint meeting of the governing bodies or boards of the municipalities jointly contracting for such public improvement *from the beginning of their terms until the completion of such public improvement so contracted for*” cannot possibly mean anything other than that the person elected permanent chairman at the organization meeting shall receive compensation from the time of his election “until the completion of such public improvement so contracted for” and no one would contend that

it was the purpose of an intelligent legislature to pay compensation to a permanent chairman unless it was intended that he should hold the office during the full period for which it is provided he shall receive compensation, namely, from the beginning of his term until the completion of the public improvement contracted for.

Also, a consideration of the subject and objects of the Act supports the reasonableness of this conclusion. The Joint Meeting is organized to carry out the construction of a particular public improvement of importance affecting one or more municipalities and liable to include an area and involve problems with which the members of the governing body of any one municipality would not be acquainted. During the period of construction, the personnel of the several governing bodies composing the Joint Meeting would greatly and in many instances completely change. As a matter of experience joint municipal improvements are never undertaken unless agitated for a considerable length of time by a leader deeply interested in and fully acquainted with the details of the project as it will affect each of the several municipalities. In the preliminary investigation he becomes acquainted with both the engineering and practical problems and by virtue of his familiarity is almost invariably, as in this case, the selection as original Chairman of the Joint Meeting. The Legislature undoubtedly considered that it should be assured that some one with knowledge of the details of the project from beginning to end should remain and continue in the Joint Meeting at least until the improvement had been fully constructed, and it goes without saying that to accomplish this purpose they very wisely selected the Chairman.

In passing, it may be observed that although the Act of 1903 provides that upon completion of the

public improvement the Joint Meeting "shall reorganize for the purpose of maintaining and operating" the improvement, it very carefully eliminated the word "permanent" before the word "chairman" and provided only for a Chairman, leaving his tenure indefinite or to be fixed by the Joint Meeting. The matter of maintenance and operation, though a continuing thing, does not require the same continuity of organization as does the work of construction. The difference between the two situations and the distinction made by the Legislature only emphasizes the fixed intention of the Legislature to have the Chairman originally elected continue as Chairman until the completion of the improvement, irrespective of the fact whether he should continue to be a member of one of the governing bodies composing the Joint Meeting.

By a later supplement the Legislature, however, further provided (P. L. 1905, p. 268):

"1. The chairman of the joint meeting elected upon completion of the joint outlet or trunk sewer upon the reorganization of such joint meeting for the purpose of maintaining and operating the same, shall continue to occupy his said office and to perform the duties thereof until his successor shall be duly elected and qualified, notwithstanding the fact that he shall have ceased to be a member of any one of the governing bodies or boards of the municipalities jointly contracting for such public improvement."

By this statute the Legislature again showed a very definite determination that it was not intended to be an essential part of the structure of the Joint Meeting that the Chairman should be a member of any one of the governing bodies composing the Joint Meeting.

The supplement of 1903 provides that upon completion of the public improvement, the Joint Meet-

ing "shall reorganize for the purpose of maintaining and operating the improvement". This is the only reorganization mentioned or contemplated by the Act. The 1903 supplement, together with the 1905 supplement, leads to the imperative conclusion that the antecedent organization, namely, the body organized for construction only, is not to be reorganized by the election of new officers until the final completion of the work contracted for. The act of 1903 expressly so declares.

In fine, we respectfully submit that the intent of the Legislature has definitely and positively expressed in language not open to any objection of the slightest ambiguity that the person selected at the time of the organization of the Joint Meeting as permanent Chairman shall continue to hold that office and receive the compensation incident thereto until the final completion of the work contracted for irrespective of the fact that he may cease to be a member of the governing body of one of the municipalities composing the Joint Meeting and that the Court below correctly so construed the act.

II.

The plea filed by the respondent-appellant is bad in substance.

The plea in its essential and pertinent parts sets out the due organization of the Joint Meeting. It then avers (p. 21, l. 29):

"That at the organization meeting of said Joint Meeting of the municipalities aforesaid duly held on November 9, 1928, representatives of the governing bodies or boards of all said municipalities were present, and that Edward S. F. Randolph attended such meeting as a member of the governing body of the

said Town of Westfield; that at such meeting the said Edward S. F. Randolph, a member of one of the governing bodies of the municipalities composing such Joint Meeting, to wit, a member of the Town Council of the Town of Westfield aforesaid, was elected by ballot by such Joint Meeting, its permanent chairman; that the said Edward S. F. Randolph duly qualified as such and thereupon entered upon and undertook to administer and discharge the duties of said office in the manner prescribed by law and the rules, regulations and directions of said Joint Meeting and continued in said office up to the time hereinafter stated; and this respondent traverses the allegations set forth in paragraph 7 of the said information that the term prescribed by law of the said Edward S. F. Randolph, as permanent chairman of the said Joint Meeting was from the time of his said election to and qualification for said office until the final completion of the work, to wit, the construction of the 'Rahway Valley Trunk Sewer and Disposal Works'."

It then sets out what purports to be the title of the respondent to the office (Case, pp. 22 and 23). It first sets forth a resolution that Mr. Randolph's occupancy of the office as Chairman of the Rahway Valley Joint Meeting be declared vacant (Case, p. 22, l. 38), which resolution was carried by a vote of five to four (Case, p. 23, l. 23), and that thereupon the Joint Meeting immediately proceeded to the election of a permanent Chairman of the Joint Meeting, in which proceeding Roger C. Aldrich, the respondent, a member of the governing body of the Township of Cranford, and Burr A. Towl, a member of the governing body of the Town of Westfield, were nominated, and the ballots being cast, Roger C. Aldrich, aforesaid, received five votes and the said Burr A. Towl received four votes, whereupon the Secre-

tary of the Joint Meeting announced the election of said Roger C. Aldrich as permanent Chairman thereof (Case, p. 23, ll. 27-40).

In support of said title, it then sets forth a part of Section II of the Act of 1899 (Case, p. 24, l. 38). It makes no mention of the Supplement of 1903, which contains the provision—"All acts and parts of acts inconsistent with the provisions of this act shall be repealed, and this act shall take effect immediately". (P. L. 1903, p. 36; Comp. Stat. Vol. III, pp. 3591, 3592.)

It then avers that Mr. Randolph ceased to be a member of the Town Council of the Town of Westfield, another member of the Joint Meeting, on December 31, 1928, and "thereby, by operation of law, he became wholly disqualified from holding the office of such permanent chairman, and after December 31, 1928, he ceased to hold said office *de jure*, whereby a vacancy occurred in the office of permanent chairman on January 1st, 1929" (Case, p. 26, ll. 2-11).

It then avers:

"Pursuant to the said act of the legislature being Chapter 36 of the Laws of 1899, such vacancy was duly filled in the manner prescribed by said act, a regular election for permanent chairman having been held on the 24th day of October, 1929, such election being duly and legally conducted according to law, at which election the said respondent above named, Roger C. Aldrich, was duly elected permanent chairman in the place and stead of the said Edward S. F. Randolph (Case, p. 26, ll. 12--25).

* * * * *

"And respondent further says that he is discharging the duties of said office and has taken possession of said office as permanent chairman of said joint meeting and is being paid the salary of said office; that the said Roger C. Aldrich, respondent aforesaid, has

taken possession of said office of permanent chairman and has, since the 24th day of October, 1929, occupied, enjoyed and exercised and still does occupy, enjoy and exercise the office of permanent chairman of said joint meeting, and its liberties, privileges and franchises, and by virtue of the aforesaid election, appointment, warrant and authority, without this that the said respondent, the said office, its liberties, privileges and franchises in the said information above mentioned, or any of them, has usurped, or did usurp, in manner and form as by the said information is above alleged against him and all and singular which matters and things this respondent is ready to verify and prove, as the court shall award" (Case, p. 28, ll. 32-40; p. 29, ll. 1-15).

It is well settled in this State that in his plea to an information in the nature of a *quo warranto*, a respondent must show a valid title.

In *Davis v. Davis* (Sup. Ct., 1894), 57 N. J. L. 80, an information, in the nature of a *quo warranto*, was filed by certain persons who claimed to be the legally appointed chosen freeholders of the County of Camden, to test the legal right of certain other persons to exercise the functions of a board of chosen freeholders of such county. To this information a plea was filed. On motion to strike out the plea the Court said:

"The plea is that the respondents, or members of the old board, were elected under the act of 1892, and that their term has not expired; that they are, and the relators are not, entitled to hold the said offices.

The plea sets out no title in the respondents, for the act of 1894 in explicit terms not only repeals the act of 1892, but further provides that the terms of office of all persons elected or appointed under the provisions of the act of 1892 are terminated.

So, conceding the constitutionality of the act of 1894—and it is not questioned in this case—the terms of the members of the old

board were extinguished when the act of 1894 went into effect. *City of Hoboken v. Gear*, 3 Dutcher 265; *Love v. Jersey City*, 11 Vroom 456.

The plea fails to show any title in the respondents, and the ordinary rule is that such title must be exhibited or the plea is bad. *High Extr. Rem.*, §712; *Com. Dig., Quo War.*, tit. 'Plea'; *State v. Utter*, 2 Gr. 84.

In instances where the information is filed by the attorney-general, or by leave of this court, this failure to set out a title in the respondent would be conclusive against the plea."

From respondent-appellant's plea it is apparent that his sole title to the office is dependent upon the resolution set forth purporting to vacate Mr. Randolph's occupancy of the office as Chairman and the subsequent election of Mr. Aldrich to that office, the validity of both of which actions in turn is dependent solely upon the provisions of the Joint Meeting Act, hereinbefore quoted (Chapter 36 of the Pamphlet Laws of the State of New Jersey, 1899, p. 48, its Amendments and Supplements, *Comp. Stats. Vol. III*, p. 3688; *Cum. Supp. Vol. I*, p. 2035, Sections 136, 488).

In the plea it is admitted that at the organization meeting held on November 9, 1928, the "said Edward S. F. Randolph, a member of one of the governing bodies of the municipalities composing such Joint Meeting, to wit, a member of the Town Council of the Town of Westfield aforesaid, was elected by ballot by such Joint Meeting, its permanent chairman; that the said Edward S. F. Randolph duly qualified as such and thereupon entered upon and undertook to administer and discharge the duties of said office in the manner prescribed by law and the rules, regulations and directions of said Joint Meeting and continued in said office up to the time hereinafter stated;" (Case p. 21, ll. 36-40; p. 22, ll. 1-11) to-wit, the

time of the passage of the resolution purporting to vacate his occupancy and the election of Mr. Aldrich as Chairman.

The Act of 1903 expressly provides that the Chairman elected at the organization meeting, pursuant to the provisions of the Act under which the Joint Meeting was organized, shall hold his office until the completion of the work (completion of the trunk sewer and disposal plant). He shall be entitled to receive the compensation fixed for said office until the completion of the work and "shall be entitled to receive such compensation at the rate fixed by the Joint Meeting of the governing bodies or boards of the municipalities jointly contracting for such public improvement from the beginning of their terms until the completion of such public improvement so contracted for."

As demonstrated in Point I of this brief, the action of the Joint Meeting in attempting to vacate Mr. Randolph's occupancy of the office and the election of Mr. Aldrich as Chairman of the Joint Meeting was in palpable violation of the provisions of the organic law.

The plea exhibiting no valid title on the part of the respondent-appellant to the office, the court below correctly entered judgment of ouster with costs against the respondent-appellant. *Magner v. Yore* (Sup. Ct. 1907), 75 N. J. L. 198; *Bonyngge v. Frank* (Ct. of E. & A. 1916), 89 N. J. L. 239; *Reihl v. Wynne* (Sup. Ct. 1929), 146 Atl. 204, 206.

For the reasons above set forth, we submit that the judgment of the Supreme Court should be affirmed with costs.

MARTIN P. O'CONNOR,
J. EDWARD ASHMEAD,
Attorneys for and of Counsel
with Relator-Appellee.





