

# New Jersey Court of Errors & Appeals

Albert Steel, Plaintiff-Respondent, vs. The Board of Chosen Free- holders of the County of Passaic, Defendant-Appellant, and Amos H. Radcliffe.	}	<i>Action at Law. On Appeal from Supreme Court. Brief of Defend- ant-Appellant.</i>
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## THE FACTS.

This is an appeal from a judgement for Three hundred sixty-two dollars and forty-eight cents (\$362.48) and costs rendered in favor of the plaintiff-respondent and against The Board of Chosen Freeholders of the County of Passaic, defendant-appellant, by the New Jersey Supreme Court in the Passaic County Circuit, Hon. George S. Silzer, J., on the fifteenth day of February, nineteen hundred and sixteen, on an agreed state of facts (S of C page 9, et sec.) which briefly stated are as follows:

Prior to December 16th, 1912 the plaintiff-respondent was head-keeper in the County jail, and on December 16th 1912 was removed as such head-keeper by the defendant, Amos H. Radcliffe, then Sheriff of the County of Passaic; one Christian Van Olst, a keeper in the County jail, was installed in the position made vacant by the removal of the plaintiff-respondent and received the salary which otherwise would have been paid to the plaintiff-respondent, and one Robert Lammey, who had not previously been employed in the jail, was appointed keeper to fill the position made vac-

ant by the advancement of Christian Van Olst; and received the salary which went with that position; the above changes were communicated by the defendant, Amos H. Radcliffe, to the defendant-appellant, The Board of Chosen Freeholders of the County of Passaic, and the necessary changes were made on the county payroll; the plaintiff-respondent never in any way intimated to either of the defendants that he objected to changes and the county collector of the County of Passaic thereafter paid the salaries of their respective offices to Christian Van Olst and Robert Lammey.

From that day the plaintiff respondent, Albert Steel, rendered no service to the County of Passaic until he was reinstated by the defendant, Amos H. Radcliffe, as keeper in the county jail on March 29th, 1913. Such reinstatement was communicated by the defendant, Amos H. Radcliffe, to the defendant-appellant, The Board of Chosen Freeholders of the County of Passaic, and the necessary change was made on the county pay-roll and thereafter the plaintiff-respondent received his salary as keeper in the county jail from March 28th, 1913.

On the fifth day of November, nineteen hundred and twelve, (the general election of 1912), the Civil Service Act of 1908 was adopted by the legal voters of the County of Passaic.

The plaintiff-respondent seeks to recover his salary from December 16th, 1912, the day of his dismissal, to March 28th, 1913, the day of his reinstatement, at the rate of ninety dollars per month.

#### THE QUESTIONS.

There are two questions of law involved in this appeal:

1. Was the Civil Service Act of 1908 in force in the county of Passaic when the plaintiff-respond-

ent was dismissed as head-keeper of the county jail?

2. If the dismissal of the plaintiff-respondent were illegal and void under the Civil Service Act of 1908 can he recover as against the defendant-appellant, The Board of Chosen Freeholders of the County of Passaic, the salary of the position having been paid by the Board to one actually performing the duties of the position?

### THE ARGUMENT

#### 1. THE DISMISSAL OF THE PLAINTIFF-RESPONDENT WAS NOT IN VIOLATION OF THE CIVIL SERVICE ACT OF 1908.

Although the Civil Service Act of 1908 was adopted by the legal voters of the County of Passaic on the fifth day of November, 1912, (State of Case pg. 9, l. 36), it did not become operative in the County of Passaic until forty-five days thereafter, that is until December twentieth, nineteen hundred and twelve.

“Time of taking effect of act; appointments, promotions, transfers, etc.; how governed.—Sec. 1. \* \* \* \* \* After the expiration of forty-five days from the time of its adoption by any municipality of this state as hereinafter provided, appointments to and promotions in the civil service of such municipality, shall be made only according to merit and fitness, to be ascertained, as far as practicable, by examinations, which as far as practicable shall be competitive; *and after the expiration of said \* \* \* forty-five days \* \* \* no person shall be appointed, transferred, reinstated, promoted, reduced or dismissed as an officer, clerk, employee, or laborer in the civil service under the government of \* \* \* such*

municipality thereof as shall adopt the provisions of this act as hereinafter provided, in any manner or by any means other than those prescribed in this act. (P. L. 1908, p. 235.)

C. S. of N. J., 3795, Sec. 57.

“In the case before us, it appears that the Civil Service Act was adopted by the City of Trenton at the general election held November 7, 1911; consequently it became operative in the city of Trenton 45 days thereafter (section 1); that is, on the 22nd day of December of that year.”

Zeigler vs. Burke et al.,  
83 Atl. 977.

The Civil Service Act of 1908 not becoming operative in the County of Passaic until the 20th day of December, nineteen hundred and twelve, the Sheriff of the County of Passaic had full power and authority to discharge the plaintiff-respondent at any time before that date with or without cause; and having such authority such discharge was not unlawful and the plaintiff-respondent can have no suit against the defendant, Amos H. Radcliffe, or against the defendant-appellant, The Board of Chosen Freeholders of the County of Passaic.

In deciding this case the Court below, following the contention of the plaintiff-respondent, erroneously held that section 2 of the Civil Service Act (C. S. 3795, Sec. 58) controlled the time of the taking effect of the act to exclusion of the specific provisions of section 1 above cited. It relied for its finding upon an opinion of the attorney general made July first, nineteen hundred and eight, about four years before the case of Zeigler vs. Burke et als., (83 Atl. 976), above cited, was decided (S. C. p. 16, 1. 15.).

Section 2 of the act provides that

“All officers, clerks and employees now in the employment of \* \* \* any municipality adopting this act \* \* \* shall continue to hold their offices or employments and shall not be removed therefrom except in accordance with the provisions of section 24 hereof, &c. &c.”

If the opinion of the attorney general, that the word “now” in section 2 refers to the time of the adoption of the act by any municipality, is correct, then the provisions of section 1 that

“After the expiration of \* \* \* forty-five days \* \* \* no person shall be employed \* \* \* reduced or dismissed as an officer, clerk, employee or laborer \* \* \* in any other manner or by any other means other than those prescribed in this act,”

is rendered valueless and without meaning.

This view, however, is clearly in violation of the well settled rule for the construction of statutes in this state.

“The statute ought upon the whole to be so constructed that if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant. (6 Bac. Abr. tit. Stat. 1 page 380, Sec. 2).”

James vs. DuBois, 16 N. J. L. 293.

“The cardinal principle for the construction of statutes (is) that they are to be so constructed that if possible full effect shall be given to all parts of the statute.”

State, Morris and Essex R. R. Co. vs. Comm'r of Railroad Taxation, 37 N. J. L. 233.

To give the word "now" in section 2 its generally accepted meaning which is "immediately" or "at the time of the approval of the act by the governor," would be repugnant to the whole intent of the act, which is to make the act applicable only after its adoption by a municipality; so that the word "now" cannot be used in its generally accepted sense and we must look for some other meaning to the word which will, if possible, give full force and effect to every other provision of the act.

Section 31 of the act (P. L. 1912, 497) provides that after the act has been submitted to the voters of any municipality and the vote had thereon

"a canvass and return of the votes upon the question of the acceptance of this act shall be made by the election officers in the same way and manner as for officers voted at such election, and if a majority of the votes cast for and against the acceptance of this act shall be found to be in favor of its acceptance, it shall then, but not otherwise, become operative in such municipality."

This provision brings us to the operation of the election machinery of this state, which provides that at the close of the election the members of the district boards of registry and election shall count the votes (C. S. of N. J. 2107, Sec. 89) and shall make a statement of the result (P. L. 1912, pg. 637), and shall file such statement with the county clerk within *two days* after the election (P. L. 1911, pg. 723); that the county board of elections, as the county board of canvassers, shall meet *on Monday following the election*, at twelve o'clock noon, (C. S. of N. J. 2111, Sec. 103), but that it may *adjourn to the following day* and may then *adjourn for a period not exceeding three*

days, (C. S. of N. J. 2111, Sec. 105); that from the statements filed by the district boards of registry and election with the county clerk the county board of canvassers shall proceed to make a statement of the votes cast at the election (C. S. of N. J. 2112, Sec. 108); and shall certify to the election and file a certificate of election together with the statement with the county clerk (C. S. of N. J. 2113, Sec. 111); that the county clerk shall then make out a certificate of election and send the same without delay to each person elected (C. S. of N. J. 2114, Sec. 114).

From this it will appear that an official determination of the result of the election in a county could not be had until six (and it might be ten) days after the day on which the election is held, and it is upon this official determination that the operation of the act, in a municipality adopting it depends; Section 31 of the act (C. S. 3807, Sec. 87) providing that if upon such canvass a majority of the votes cast "shall be found to be in favor of its acceptance *it shall then, but not otherwise,* become operative in such municipality."

Briefly put, the word "now" in section 2 of the act cannot mean the day the act was approved because by its own provisions the act must first be adopted by a municipality before it becomes effective therein: neither can the word "now" be construed to mean the day the election at which the act was adopted by a municipality was held, because of the provisions of section 31 of the act; it therefore necessarily follows that the word "now" refers to the time fixed by section 1 of the act which is 45 days after the day on which the election was held.

This being so, and the Civil Service Act not being in force in Passaic County at the time of the dismissal of the plaintiff-respondent, his dismissal was legal and the defendant-appellant is not liable.

2. EVEN THOUGH THE DISCHARGE OF THE PLAINTIFF-RESPONDENT HAD BEEN ILLEGAL AND VOID, HE CANNOT RECOVER FROM THE DEFENDANT-APPELLANT THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF PASSAIC, HIS SALARY AS HEAD-KEEPER IN THE COUNTY JAIL FOR THE TIME DURING WHICH HE WAS REMOVED, HE HAVING PERFORMED NO SERVICES TO THE COUNTY AND THE SALARY OF THE POSITION HAVING BEEN PAID TO ANOTHER PERSON HOLDING SAID POSITION AND PERFORMING THE DUTIES UNDER A COLOR OF TITLE.

The courts of New Jersey make no distinction between officers and mere employees in cases involving the right to recover from a municipal corporation compensation already paid to one actually performing the duties of an office or employment under color of title. The principle laid down is the broad one of public policy and the protection of the public from paying twice for the same service.

It follows that it is immaterial in this case what right the plaintiff-respondent had to the position in question or, in the absence of fraud or force, why he was removed, or whether he was an officer or employee.

The cases are clear and leave no doubt that, as against the defendant-appellant, the plaintiff cannot recover.

“The case of *Dolan vs. Mayor*, 68 N. Y. 274, is authority only for two propositions:

First: That disbursing officers, charged with the duty of paying official salaries, have, in the exercise of that duty, a right to rely upon the apparent title of an officer *defacto*, and to treat him as an officer *de*

jure, without inquiring whether another has the better right.

Second: That the de jure officer, when he recovers possession of the office by quo warranto, is entitled to receive from such disbursing officer so much of the salary as at that time *has not been paid to the intruder.*

In New York, as in Michigan, the statute law provides that in proceedings in the nature of quo warranto, if judgment be had in favor of the person claiming title, he may recover of the intruder the damages he shall have sustained by reason of the usurpation."

Stuhr v. Curran, 44 N. J. L. p. 187.

"In this country they (offices) *are not held by grant or contract*, nor has any individual a property or vested right in them beyond the constitutional tenure and compensation. They are mere agencies of a political nature, created by appointment or election for the discharge of public functions. The incumbent cannot sell his office or encumber it, nor will it pass by an assignment of his property. The right to the fees or compensation *does not grow out of any contract between the government and the officer, but arises from the rendition of the services.* 5 Wait's Act. and Def. 1; Connor v. Mayor, 5 N. Y. 285; Smith v. Mayor, 37 N. Y. 518; City of Hoboken, v. Gear, 3 Dutcher, 279.

\* \* \* \*

If in a legal sense he (the plaintiff) had a right to the emoluments of the office as incident to his title, payment of them to another could not discharge the obligation of the government to pay him. Such right in the de jure officer was denied in the

Dolan case, where the New York Court of Appeals, in conformity with public policy and the weight of authority, held that *payment to the incumbent was an acquittance to the municipal corporation.*"

Stuhr v. Curran, 44 N. J. L. p. 188.

"The reasons which protect one who has performed the services belonging to a public office, under an appointment apparently regular and legal, in ignorance of, and without the means of ascertaining defects in his title, and where his refusal to serve would leave a vacancy in office, whether such reasons be weak or strong, have no application to a case like this. In such a case we cannot doubt that in some form the officer de jure would be entitled in law to demand and have compensation for the injury done him by such an intruder. If payment be made to the officer de facto *the public will be protected from further claim*, as the disbursing officer is not bound to know the title by which an actual incumbent holds, and the rival claims to the fund must be litigated between the individual claimants;

Meehan v. Freeholders of Hudson,  
46 N. J. L. p. 279.

In the case of Mayor, &c. of the City of Newark, vs. MacDonald, 58 N. J. L. p. 12, 32 Atl. p. 384, *upon which in the court below the plaintiff-respondent relied* to show that the relation between the plaintiff and this defendant was one of contract; that it was also a relation of master and servant; and that the plaintiff, as an employee, might recover damages for his discharge; the court recognizes the status of the relator as an *employee* of the city and says:

“It is conceded in the pleadings that, during the interval of his discharge, the salary was paid to a de facto incumbent of the office. Now, although the case of *Stuhr v. Curran*, 44 N. J. L. 181, involved the right of a de jure officer, to recover a salary from a de facto officer, yet the ground of decision in that case leads necessarily to the denial of any right in such de jure officer to recover from a municipality salary which has been paid to a de facto officer for services rendered in the office. In New York, where the right of the de jure officer is regarded with more favor than in this state, *it is nevertheless entirely settled that the salary of an office, having been once paid to a de facto officer, cannot be recovered from the municipality by the de jure officer.* *Dolan v. Mayor*, 68 N. Y. 278; *Terhune v. Mayor, etc.*, of New York, 88 N. Y. 247. Indeed, this point was so decided by this court at last term in the case of *State v. Board of Fire Commissioner of Newark.*”

*Mayor, &c. v. MacDonald*, 32 Atl. p. 385.

In the case of *Hansen vs. Mayor, &c.*, of Jersey City, 71 Atl. 1116, a detective sergeant of police was reduced to the rank of patrolman at a lower salary, but afterward by virtue of an order of the Supreme Court was reinstated as detective sergeant, and brought suit for his salary as detective sergeant for the time he acted as patrolman, a period of about four months.

The plaintiff in that case was surely not such an officer as the plaintiff in this case had in mind in trying to distinguish between an officer and an employee in the court below.

In deciding the case of *Hansen vs. Mayor, &c.* of Jersey City, above referred to, the court in part said:

“If it had appeared in this case that there was a de facto officer filling the plaintiff’s position as detective sergeant who had been paid the compensation incident to that office during the period of such services, or which he might recover from the city under the rule established by the Court of Errors and Appeals in *Erwin vs. Jersey City*, 60 N. J. L. 141; 37 Atl. 732, 64 Am. St. Rep. 584, it would be a debatable question whether the plaintiff would be entitled to recover anything from the city unless the intruder came into office by fraud or without color of title.”

\* \* \* \*

“The claim of the plaintiff, the appellant here, is that the right of an officer to the salary of his office does not rest upon a contract between himself and the city, but is an incident of that office which he is entitled to recover, without deduction, notwithstanding, during the period he seeks to recover for, he served as a member of the police department in another capacity and was paid for such services by the city. The doctrine that the right to compensation is an incident of and follows the legal title to a public office to the extent that under all circumstances a de jure officer may recover whether he performs the duties of the office or not is not always recognized. In *Dolan vs. Mayor*, 68 N. Y. 274, 23 Am. Rep. 168, suit was brought by a de jure officer against the city to recover the salary incident to the office from which he had been excluded by one who entered under color of title, and to whom a part of the consideration had been paid by the authorized disbursing officer of the city. Under these circumstances, it was held

that the de jure officer could only recover from the city so much of the compensation incident to the office as had not been paid the de facto officer; that the city had a right to rely, in the payment of salaries, upon the apparent title, and to treat one clothed with it as a de jure, although it afterwards appears he is only a de facto, officer. *The decision was largely rested upon the ground of public policy*, which requires that public offices should always be filled so that at all times persons may be found ready and competent to exercise official powers and duties, because, if the public authorities could not pay the salary of the office to the de facto officer except at the peril of paying it a second time, the public service would be embarrassed and its efficiency impaired. Thus, according to the case just referred to, the right to recover from a municipality compensation incident to an office does not in every case follow the legal title to the office."

Hansen v. Mayor &c., 71 Atl. p. 1117.

In the case of the State ex. rel. Browning vs. O'Donnoll, City Clerk, 37 Atl. 613, the relator was appointed clerk in the office of the defendant and the defendant refused to assign him to duty in his office. The relator applied for a peremptory mandamus commanding the defendant to assign him to duty in his office and also asked for a mandamus requiring the defendant to draw and sign a warrant for his past and future salary. As to the latter the court said:

"It is at best doubtful whether the relator is entitled to salary for the time past during which he has not performed duty (Stuhr v. Curran, 44 N. J. L., 181), and we cannot assume that the defendant will refuse to sign proper warrants for the fu-

ture time, while the relator is performing his official duties. The prayer for this direction should therefore be refused."

Is a clerk in the office of the City Clerk such an officer as the plaintiff refers to in making his distinction between officer and employee?

From the foregoing cases it will be seen that the decisions of other states in similar cases are not followed by the courts of New Jersey; that the courts of this state have made a distinction between the employment by a municipal corporation and employment by an individual; that the relation between a municipal corporation and its employee is not one of contract or one of right so far as the salary is concerned but the salary is for the services rendered, whether they be rendered by a de facto employee or one de jure; that where an intruder into an office or employment enters and holds the office or employment peaceably and with color of title, the payment of the salary of the office or employment to him by the municipal corporation, discharges the municipality from all other claims against it for the same services; that it is immaterial in this connection whether or not the discharge of the plaintiff-respondent from his employment was illegal or not in the absence of fraud or force, and neither fraud nor force is charged against the defendant-appellant in the complaint.

This defendant-appellant therefore submits that the plaintiff-respondent cannot recover against it and respectfully asks that the judgment rendered in the court below be reversed with costs.

Respectfully submitted,

FREDERICK W. VAN BLARCOM,  
*Attorney of the defendant-appellant,  
The Board of Chosen Freeholders  
of the County of Passaic.*

# New Jersey Court of Errors and Appeals

ALBERT STEEL,  
Plaintiff-Respondent,

vs.

THE BOARD OF CHOSEN FREE-  
HOLDERS OF THE COUNTY OF  
PASSAIC,  
Defendant-Appellant.

On Appeal  
from Su-  
preme Court.

## BRIEF OF PLAINTIFF-RESPONDENT.

This is an appeal from a judgment of the Supreme Court in favor of the plaintiff-respondent against appellant, the Board of Chosen Freeholders of the County of Passaic, in an action at law. There was a non-suit in favor of Amos H. Radcliffe, the other defendant.

The facts involved in the controversy appear in a stipulation between the parties and are set forth on pages 9 to 14, inclusive, of the state of the case.

It appears by the stipulation (Par. 1) that some time before January 1, 1908, the plaintiff was employed by the defendant-appellant as a keeper in the county jail of Passaic County and had continued in said employment since that time. His wages or salary were \$1,080 per year, payable in monthly installments of \$90 on the last day of each month.

On December 16, 1912, he was known as "Head-Keeper".

On November 5, 1912, the "Civil Service" Act, Chapter 156, P. L., 1908, was adopted for the County of Passaic by the legal voters of said county. On the same day Amos H. Radcliffe, the other defendant below, was elected Sheriff of the County of Passaic (Stipulation, Pars. 2 and 3).

On December 3, 1912, the Sheriff dismissed the plaintiff-respondent from his position for political reasons, and on December 18, 1912, the appellant struck his name from the county payroll and substituted that of another keeper, one Van Olst, as head-keeper; and one Lammey was added to the payroll as a keeper and has since been employed as such. On December 15, 1912, plaintiff wrote a letter to the Sheriff protesting against his dismissal, and on December 16, 1912, pursuant to the notice of dismissal, stopped work. He made no actual offer thereafter to perform the duties of the employment, and, had he done so, such offer would have been unavailing (Stipulation, Pars. 4, 5, 6, 7).

On March 29, 1913, in compliance with an order of the Civil Service Commission of New Jersey, the Sheriff reinstated the plaintiff as a keeper in the county jail, and the appellant restored his name on the payroll (Stipulation, Pars. 8 and 10).

The action was brought by plaintiff to recover damages for his wrongful dismissal, which resulted in the loss of his wages for the period during which he was excluded from his employment, to-wit, December 16, 1912, to March 28, 1913, at the rate of \$90 per month.

Judgment was entered in favor of the plaintiff and against the Board of Chosen Freeholders of the County of Passaic for \$362.48, which is an amount equal to the wages lost with lawful interest (Postea, p. 22).

The Court below made certain findings numbered 1 to 10 (Case, pp. 18, 19, 20), to all of which defendant-respondent takes exception (Case, p. 21).

The questions raised by the grounds specified, which are discussed in appellant's brief, may be summarized as follows:

(1) Was the plaintiff protected from dismissal except as provided by the "Civil Service" Act.

(2) Does the fact that another performed the services connected with the plaintiff's employment and was paid the wages relieve the appellant of liability to the plaintiff for the wages he would have received except for his dismissal.

## I.

**The relation between the plaintiff-respondent and appellant was one of contract and created the relation of master and servant.**

It is stipulated by the parties that the plaintiff was an *employee* of the Board of Chosen Freeholders of the County of Passaic, the appellant.

The plaintiff was the incumbent of a position and was not an officer.

That a keeper or guard in the county jail was an employee was expressly held in the case of *Cavanaugh v. Essex*, 58 N. J. L., p. 531. See also *Fredricks v. Board of Health*, 82 N. J. L., 200; *McDonald v. Newark*, 58 N. J. L., on page 15.

In the case of *Sullivan v. McOsker*, 84 N. J. L., page 383, it was said:

"The fact that the county pays the warden for such services out of the county funds

makes him an employe in the service of the county and therefore with the protection of the civil service law."

The relation of employer and employe, master and servant, implies a contract of employment. In the present case it does not appear what, under the contract, the duration of the employment was. The only provision of the contract which appears is that the compensation was \$1,080 per annum, payable in monthly installments.

But whatever the terms of the contract were as to its duration, and assuming, as most favorable to the appellant, that it was an employment at will of either party, when the "Civil Service Law" was adopted in Passaic County, its provisions were by force of law incorporated in the contract of employment of those who are within its terms. The respondent by the force of that legislation became entitled as of right to continue in his employment until he was removed therefrom for cause, after charges made and opportunity given to answer them.

*Dolan v. Orange*, 70 N. J. L., 106.

*Ransom v. City of Boston*, 192 Mass., 299.

## II.

### **The discharge of plaintiff from his employment was illegal and void.**

The Civil Service Act (Chap. 156, P. L., 1908) was adopted by the voters of Passaic County on November 5, 1912. From that date it operated to protect from removal any employe coming within the competitive or non-competitive class of the Civil Service of the county, except in accordance with that act. Section 2, C. S., p. 3795, reads:

"All officers, clerks and employees now in the employ of the state or any municipality adopting this act, coming within the competitive or non-competitive class of the civil service shall continue to hold their offices or employments, and shall not be removed therefrom except in accordance with the provisions of section twenty-four hereof, it being the intention hereby to include any and all such officers, clerks, employees and laborers within the classified service of the state or municipality, as the case may be, and to be subject in all respects to the provisions of this act."

There is no dispute but that the plaintiff-respondent comes within the protected class, if the act was in force in Passaic County at the time of his dismissal.

In order to give any force or effect to the section above quoted the word "now" must be deemed to refer to the time of the adoption of the act by any municipality. This is the construction contained in an opinion by the Attorney-General to the Civil Service Commission, dated November 7, 1910. See 5th Annual Report of Civil Service Commission of New Jersey, on page 196.

"The word 'now' as used in such a statute ordinarily refers to conditions existing at the time of the passage of the act, and indicates that the act is to have no retrospective or retroactive effect. In the present case, however, 'now' must be read in connection with the phrase 'any municipality adopting this act' and section two, therefore, becomes applicable in such municipality from the time of the adoption of the act at any election in which that question is presented."

There is no pretense that there was any valid reason for the plaintiff's discharge from his employment. It is agreed by the state of the case that he was discharged solely for political reasons (Par. 4 of Case).

No charges or complaints were preferred against him. By the acceptance of the action of the Sheriff the Board of Chosen Freeholders adopted it as their own, and they must be deemed to participate in the breach of the terms of employment.

### III.

#### **An action lies for the breach of the contract of employment.**

For the breach of such a contract of employment the party injured may have an action of damages, and the measure of damages is the wages which would have been earned by him in his employment.

*MacDonald v. Newark*, 58 *N. J. L.*, on page 16.

*Ransom v. City of Boston*, 192 *Mass.*, p. 299; 78 *N. E. Rep.*, p. 481.

*U. S. v. Wickersham*, 50 *U. S. L. Ed.*, 798.

See also *State v. New Orleans*, 107 *La.*, 632, and 32 *So. Rep.*, 22

The defendants in this case in their answers set up as a defense that they should not be held liable to plaintiff because another was placed in his position upon his discharge and the salary of the position paid to the new incumbent. This defense is based upon the principle laid down in that line of cases in this state following *Stuhr v. Curran*, 44 *N. J. L.*, 189. We believe this principle is inapplicable to the case under discussion, and the distinction

is that that line of cases relates to *officers* whose right to salary is not based upon contract.

The distinction is pointed out in the case of *Ransom v. Boston*, 192 *Mass.*, 299, above cited. The same defense had been interposed in that case and the Court overruled it on the ground that the plaintiff was not a public officer and that such a defense could not prevail against one whose right of action was based on contract.

See also the case of *U. S. v. Wickersham*, above cited.

That was also a case where an employee under the protection of the Civil Service regulations had been unlawfully discharged. In holding that the plaintiff was entitled to the wages or salary of his position during the time he was excluded from employment, the Court, by Justice DAY, says:

“Where an officer is wrongfully suspended by one having no authority to make such an order, he ought to be and is entitled to the compensation provided by law during such suspension.”

Citing *Thropp Public Off.*, Sec. 407, *Emmitt v. N. Y.*, 117; 28 *N. E. Rep.*, p. 19.

It is agreed between the parties (Par. 6 of Case) that no formal tender by the plaintiff to perform the duties of his employment was made to either defendant after his discharge, but, that if such tender would have been made it would have been unavailing. The plaintiff is not obliged to do something which would have been without result, to go through the mere formality.

We submit, therefore, that the plaintiff being in the employ of the Board of Chosen Freeholders, entitled to continue in his position until removed for cause, having been dismissed and excluded from the

performance of his duties without fault on his part, illegally, that he is entitled to recover the damage suffered by him through such illegal action on the part of the defendants and that the measure of his damages is the wages he would have received had he not been prevented from performing his duties.

Respectfully submitted,

HUNZIKER & RANDALL,  
Attorneys and of Counsel for  
Plaintiff-Respondent.

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**Notice of Appeal.**

(Filed March 7, 1916.)

**Supreme Court of New Jersey** 10

PASSAIC COUNTY.

ALBERT STEEL,  
Plaintiff,

vs.

THE BOARD OF CHOSEN FREE-  
HOLDERS OF THE COUNTY OF  
PASSAIC and AMOS H. RAD-  
CLIFFE,  
Defendants.

Action at Law. 20

To:  
HUNZIKER & RANDALL,  
Attorneys of Plaintiff.

TAKE NOTICE that the defendant The Board of Chosen Freeholders of the County of Passaic appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause on the following grounds: 30

1. The Court found that the plaintiff some time before January 1, 1908, was employed by the Board of Chosen Freeholders of Passaic County as a keeper in the County Jail.

2. The Court found that on November 5, 1912, the voters of the County of Passaic adopted the 40

*Notice of Appeal.*

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Civil Service Act of 1908 (3 C. S., 3795), and at the same time elected the defendant Amos H. Radcliffe, Sheriff of Passaic County.

10 3. The Court found that upon assuming the duties of the office on December 14, 1912, the Sheriff, for political reasons, dismissed the plaintiff, and after December 16, 1912, and until March 29, 1913, when he was reinstated by the Civil Service Commission, the plaintiff was prevented from performing his duties of said employment.

20 4. The Court found that by striking the plaintiff's name from the County payroll at the request of the Sheriff the Board of Chosen Freeholders of the County of Passaic concurred in the dismissal of the plaintiff.

5. The Court found that the plaintiff was not an officer, but an employee of the Board of Chosen Freeholders of the County of Passaic, and the fact that another was appointed in his place and performed the services and received the compensation of the position does not preclude a recovery by the plaintiff.

30 6. The Court found that as to the plaintiff the Civil Service Act became effective on the 5th day of November, 1912, the date of its adoption, and from that day the plaintiff was protected by the act and could not be removed except upon charges in accordance with the provisions of Section 24.

7. The Court found that the dismissal of the plaintiff was illegal and in violation of the provisions of the Civil Service Act.

40 8. The Court found that the plaintiff is entitled to recover for the time during which he was ousted

*Notice of Appeal.*

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as he was at all times ready and willing to perform his duties, but was prevented from doing so by the defendants.

9. The Court found that there can be no recovery against the defendant Amos H. Radcliffe, and judgment of nonsuit should be entered in his favor and against the plaintiff.

10

10. The Court found that the plaintiff is entitled to recover his wages from December 16, 1912, to March 28, 1913, that is to say, the sum of \$309, and interest from the last mentioned date, from the Board of Chosen Freeholders of the County of Passaic and judgment may be entered against said defendant for that sum.

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FRED VAN BLARCOM,  
Attorney of Appellant,  
The Board of Chosen Freeholders  
of the County of Passaic.

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### Judgment Record.

The Board of Chosen Freeholders of the County of Passaic and Amos H. Radcliffe, the defendants in this cause, were summoned to answer unto Albert Steel, the plaintiff therein, in an action at law upon the following complaint:

10 Plaintiff, Albert Steel, of the City of Paterson, County of Passaic and State of New Jersey, says:

(1) That on and before the first day of January, 1906, plaintiff was employed by and in the service of the defendant The Board of Chosen Freeholders of the County of Passaic as a keeper in the County Jail of the County of Passaic at a salary of \$1,080 per annum, payable in monthly installments of \$90 on the last day of each month.

20 (2) That on the 5th day of November, 1912, the legal voters of the County of Passaic adopted for said County the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act regulating the employment, tenure and discharge of certain officers and employees of this state, and of the various counties and municipalities thereof, and providing for a civil service commission, and defining its power and duties."

30 (3) That by the adoption of the said statute by the County of Passaic plaintiff became and was entitled to continue in his said position and employment during good behavior and not to be removed therefrom except upon charges duly preferred against him in writing, and opportunity to answer the same.

40 (4) That the defendant Amos H. Radcliffe on the dates hereinbefore mentioned was the sheriff of the County of Passaic and the officer of said County, who was the head of the administrative department of said County, in which was and is

*Judgment Record.*

included the administration of the County Jail of said County.

(5) On December 16, 1912, the defendants, without having made or preferred any charges against plaintiff and without according him any hearing or assigning any cause whatsoever, unlawfully removed plaintiff from his said employment, and from thence until the 28th day of March then next when he was reinstated, wilfully and unlawfully excluded him from performing the duties of said employment, although plaintiff protested against his said removal, and tendered himself to the defendants as ready and willing to perform said duties. 10

(6) That because of the said unlawful removal from his said employment by said defendants, the said defendant The Board of Chosen Freeholders of the County of Passaic has refused to pay to plaintiff his wages or salary from the 16th day of December, 1912, to the 28th day of March, 1913, during which period he was excluded from and prevented by the defendants from performing the duties of said employment. 20

(7) Plaintiff demands from the defendants \$500 damages. 30

HUNZIKER & RANDALL,  
Attorneys of Plaintiff.

The defendant the Board of Chosen Freeholders of the County of Passaic answered as follows:

The defendant the Board of Chosen Freeholders of the County of Passaic, a *quasi*-municipal corporation of the State of New Jersey, separately answering says:

1. The defendant will object that the complaint discloses no cause of action: it fails to show 40

*Judgment Record.*

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(a) That the right to bring this action is given by statute.

(b) That the actions complained of were the actions of an agent or servant of this defendant.

10 2. It admits the truth of the matters contained in the first and second paragraphs of the complaint.

3. It neither admits nor denies the truth of the matters contained in paragraph three of the complaint, and asks that the plaintiff be put to his proof in regard thereto.

20 4. It admits the truth of the matters contained in paragraph four of the complaint, with the exception that the defendant Amos H. Radcliffe did not take office as Sheriff of the County of Passaic until the 14th day of November, 1912.

5. It denies the truth of the matters contained in paragraphs five and six of the complaint.

**FIRST DEFENSE:**

30 1. That about the 18th day of December, 1912, this defendant was notified by the defendant Amos H. Radcliffe, that he had dispensed with the services of the plaintiff to date from December 16th, 1912, and had placed another person in the position at the same salary, and in pursuance of said notification this defendant paid to the new appointee the salary which would have been paid to the plaintiff had he not been removed.

**SECOND DEFENSE:**

40 1. That the plaintiff at no time protested against his said removal to this defendant and never tendered himself to this defendant as ready and will-

*Judgment Record.*

ing to perform said duties and never demanded the salary which in this suit he claims he is entitled to receive.

## THIRD DEFENSE:

1. That about the 16th day of April, 1913, this defendant received notice from the defendant Amos H. Radcliffe, stating that he had reinstated the plaintiff in his former position to date from March 29th, 1913, and in pursuance of such notification this defendant has paid to the plaintiff since March 29th, 1913, his salary to which he has been entitled since that date. 10

FREDERICK W. VAN BLARCOM,  
Attorney for Defendant 20  
The Board of Chosen Freeholders  
of the County of Passaic.

The defendant Amos H. Radcliffe answered as follows:

The defendant Amos H. Radcliffe is a resident of the City of Paterson, County of Passaic and State of New Jersey. 30

1. Defendant admits the first and second paragraphs of said complaint.

2. As to the statement in the third paragraph of the plaintiff's complaint filed herein, defendant has not any knowledge or information thereof sufficient to form a belief.

3. Defendant admits the truth of the matters contained in paragraph four of the complaint, with the exception that the defendant Amos H. Radcliffe 40

*Judgment Record.*

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did not take office as Sheriff of the County of Passaic until the 14th day of November, 1912.

4. Defendant denies the last two paragraphs of said complaint numbered fifth and sixth.

10 FIRST DEFENSE: The defendant was the Sheriff of the County of Passaic on the 14th day of November, 1912, and assumed charge of the jail of said county and all persons employed therein, such persons becoming employees of said Sheriff, giving him the right of removal at will.

20 SECOND DEFENSE: The defendant upon the removal of said plaintiff from the office which he then occupied immediately appointed another person to fill the same, and said person was paid the salary and performed all the services required to be done and performed in said position up to the date of the reinstatement of the said plaintiff.

30 THIRD DEFENSE: The plaintiff at no time protested against his said removal to this defendant, and never tendered himself to this defendant as ready and willing to perform said duties and never demanded the salary which in this suit he claims he is entitled to receive.

WILLIAM H. YOUNG,  
Attorney for Defendant  
Amos H. Radcliffe.

**Stipulation.**

SUPREME COURT OF NEW JERSEY,  
PASSAIC COUNTY.

ALBERT STEEL,  
Plaintiff,

vs.

THE BOARD OF CHOSEN FREE-  
HOLDERS OF THE COUNTY OF  
PASSAIC and AMOS H. RAD-  
CLIFFE,  
Defendants.

10

Action at Law.

The parties plaintiff and defendants in this cause do hereby stipulate and agree that the following is a true statement of the facts in said cause relating to the controversy between them. That the same shall be filed as the state of the case:

20

1. Some time before January 1st, 1908, plaintiff was employed by and in the service of the Board of Chosen Freeholders of the County of Passaic as a keeper in the County Jail of the County of Passaic. He continued in said employment from that time to the present. His wages or salary were \$1,080 per annum, payable in monthly installments of \$90 on the last day of each month. On December 16th, 1912, he was known as "Head-keeper."

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2. On the 5th day of November, 1912, the legal voters of the County of Passaic adopted for said county the provisions of an act of the Legislature of New Jersey, entitled "An Act regulating the employment, tenure and discharge of certain officers

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*Stipulation.*


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and employees of this state, and of the various counties and municipalities thereof, and providing for a civil service commission and defining its powers and duties." Approved April 10, 1908.

10 3. Defendant Amos H. Radcliffe was elected Sheriff of the County of Passaic on November 5th, 1912, and was sworn in and assumed the duties of that office, including the administration of the County Jail of the County of Passaic on the 14th day of November, 1912.

20 4. On December 13th, 1912, Amos H. Radcliffe, Sheriff, notified the plaintiff in writing that his services as keeper in the County Jail would be dispensed with after December 16th, 1912. Following is a copy of the said writing:

"Passaic County Sheriff's Office,  
Paterson, N. J.  
Amos H. Radcliffe, Sheriff.

Dec. 13/12.

Mr. Albert Steel,  
County Jail Paterson N. J.

30 Dear Sir:—

This is to notify you that your services at the jail will be no longer required after December 16th, 1912.

Yours respectfully

AMOS H. RADCLIFFE  
Sheriff."

40 On the 14th day of December, 1912, plaintiff had a conversation with the Sheriff, in which he asked whether his dismissal was because of anything

*Stipulation.*

wrong he had done or for anything he had failed to do in the performance of his duties, to which the Sheriff replied in substance that he had no complaints concerning the plaintiff and that he was discharged because of political reasons.

5. On December 15th, 1912, plaintiff wrote and mailed at the Post Office, at Paterson, a letter addressed to Amos H. Radcliffe, Sheriff, in which he protested against being dismissed from his employment. Said letter and copy thereof have become lost. 10

6. Plaintiff performed the duties of his employment to, and including December 16th, <sup>1912</sup>~~1915~~, when, pursuant to the order of the Sheriff dismissing him from his employment, he discontinued the same until he was reinstated on March 29, 1913. During the period between December 16, 1912, and March 29th, 1913, plaintiff made no actual offer to perform the duties of his employment, and if he had done so, such offer would have been unavailing. 20

7. At the meeting of the Board of Chosen Freeholders of the County of Passaic, held December 18th, 1912, the following communications were received from the Sheriff: 30

“Board of Freeholders, Passaic County.

Gentlemen: —I hereby inform your Honorable body that I, as Sheriff of the County of Passaic, have appointed William B. Burpe, as Under-Sheriff, Louis C. Gollmer, as Bookkeeper; Frederick C. Barnes, Process Server; Frank Davenport, Jail Keeper; Thomas Harmon, Jail Keeper; William Smink, Jail Keeper; Thomas H. Driscoll, Jail Keeper; Joseph Nolan, Jail Keeper; John Quinlan, Jail Keeper; Martin Caslan- 40

*Stipulation.*

10 der, Jail Keeper; Joseph Werger, Jail Keeper, appointments to date from November 13th, 1912. I also appoint Christian Van Olst as Head Jail Keeper; Robert Lammey, as Jail Keeper, and Mrs. Grace E. Headifen, as Matron of the County Jail, their appointments to date from December 16th, 1912, and I hereby request your Honorable body to place the names of such appointee on the County pay roll.

Yours very respectfully,

AMOS H. RADCLIFFE,  
Sheriff."

20 "Board of Freeholders, County of Passaic.

Gentlemen:—I hereby inform your Honorable body that I, as Sheriff of the County of Passaic, have dispensed with the services of Head Keeper Albert Steel and Matron Mrs. Mary E. Whitney to take effect December 16th, 1912, and that I have placed Mr. Christian Van Olst in the position left vacant by Mr. Steel at the salary of \$90.00 per month, and have placed Mrs. Grace E. Headifen to fill the place made vacant by Mrs. Whitney's retirement.

30

I also wish to inform you that I have appointed Robert Lammey as a keeper in the County Jail to date from December 16th, 1912, and would ask you to place them on the County pay roll.

Yours very respectfully,

40 AMOS H. RADCLIFFE,  
Sheriff."

*Stipulation.*

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The Board thereupon directed its clerk to make the requested change upon its payroll. The name of plaintiff was thereupon struck off the payroll of the County of Passaic as of December 16th, 1912, and the name of Christian Van Olst substituted therefor as head keeper. And the name of Robert Lamme as keeper of the County Jail was added to the County payroll to date from December 16th, 1912, and he has since been employed as such.

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8. On April 16th, 1913, a communication was received by the defendant the Board of Chosen Freeholders of Passaic County, from the defendant Amos H. Radcliffe, then Sheriff of the County of Passaic, stating that pursuant to an order received from the Civil Service Commission he, the said Amos H. Radcliffe, had placed the plaintiff, Albert C. Steel, as keeper in the County Jail, to date from March 29th, 1913, which communication was received and the Clerk directed to place the name of the plaintiff upon the County payroll, which was accordingly done.

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9. At no time did the plaintiff, Albert C. Steel, make any claim upon the defendant the Board of Chosen Freeholders of the County of Passaic to be reinstated to his former position, nor until after the 29th day of March, 1913, for his salary during the time for which he was removed; nor did he ever claim to the defendant the Board of Chosen Freeholders of the County of Passaic, that he was ready and willing to perform the services of his former position during the time for which he was removed.

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10. After his dismissal on December 16, 1912, plaintiff appealed to the Civil Service Commission of New Jersey, and pursuant to the direction of that body, the Sheriff on the 29th day of March,

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*Stipulation.*

1913, reinstated the plaintiff as a keeper of the Passaic County Jail.

10 11. For the period between December 16th, 1912, to and including March 28th, 1913, plaintiff received no salary from the County of Passaic, and that body has refused to comply with plaintiff's request that such wages or salary be paid to him.

HUNZIKER & RANDALL,

Attorneys of Plaintiff.

FREDERICK W. VAN BLARCOM,

Attorney of Defendant

The Board of Chosen Freeholders  
of the County of Passaic.

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WM. H. YOUNG,

Attorney of Defendant

Amos H. Radcliffe.

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**Memorandum.**

(Filed March 2, 1916.)

NEW JERSEY SUPREME COURT,

PASSAIC CIRCUIT.

ALBERT STEEL

vs.

BOARD OF FREEHOLDERS, &c.,  
AMOS RADCLIFFE.On Agreed  
State of Case.

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The plaintiff, some time before January 1, 1908,  
was employed by the Board of Freeholders of Pas-  
saic County, as a keeper in the County Jail.

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On November 5, 1912, the voters of the County  
adopted the Civil Service Act of 1908 (3 C. S.,  
3795), and at the same time elected the defendant  
Amos H. Radcliffe Sheriff.

Upon assuming the duties of the office, on De-  
cember 14, 1912, the Sheriff, for political reasons,  
dismissed the plaintiff; and after December 16,  
1912, and until March 29, 1913, when he was rein-  
stated, by the Civil Service Commission, the plain-  
tiff was prevented from performing his duties.  
He now sues to recover his wages for the time dur-  
ing which he was ousted.

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The first contention of the defendants is, that  
because the plaintiff was an "officer," he cannot  
succeed, the salary having already been paid to the  
person who was the encumbent, while plaintiff was  
excluded from his place.

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*Memorandum.*

I think it clear, that the plaintiff was not an officer, but an employee.

*Fredericks v. Board of Health* 82 Law, 200.

*Cavanaugh v. Essex*, 58 Law, 532.

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*Sullivan v. McOsker*, 84 Law, 380.

As such employee, plaintiff is protected by the Civil Service Act, if it was effective at the time of his removal.

The second contention is, that the Civil Service Act did not go into effect until forty-five days from and after November 5, 1912.

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This contention disregards completely the intent and meaning of the act, and especially of Section 2.

Section 2 provides that "all officers, clerks and employees *now* in the employ of \* \* \* any municipality adopting this act \* \* \* shall continue to hold their offices or employments, and shall not be removed except in accordance with Sec. 24, &c."

30

If the word "now" means the time of the approval of the act, it applies to the plaintiff, for he was an employee of the municipality at the time the act was approved.

The Attorney-General, in an opinion of July 1, 1908, holds "In order to give this word its proper effect, 'now' must necessarily refer to the time of the adoption of the act, by any municipality. To hold that the word must refer to the time of the passage of the act, is to make the section nugatory."

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Under either construction, the plaintiff is protected by the Civil Service Act, and could not be removed by the Sheriff except upon charges, under Section 24.

*Memorandum.*

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The plaintiff is, therefore, entitled to recover, for the time during which he was ousted, as he was at all times ready and willing to perform his duties, but was prevented from doing so.

I do not think there can be any recovery against the defendant Radcliffe. While it is stipulated that the dismissal was for political reasons, it was nevertheless done in good faith, and under the belief that the plaintiff was not protected by the Civil Service Act. I know of no authority for holding the Sheriff, under these circumstances; and the authorities cited by the plaintiff do not so hold. 10

Judgment will be entered for the plaintiff, against the defendant Board of Freeholders, for the amount claimed.

GEO. S. SILZER, 20  
*Judge.*

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**Findings.**

(Filed March 2, 1916.)

## SUPREME COURT OF NEW JERSEY,

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PASSAIC COUNTY.

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 ALBERT STEEL,  
 Plaintiff,

vs.

 THE BOARD OF CHOSEN FREE-  
 HOLDERS OF THE COUNTY OF  
 PASSAIC and AMOS H. RAD-  
 CLIFFE,  
 Defendants.
 

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} Action at Law.

This case was tried before Judge GEORGE S. SILZER, without a jury, at the Passaic County Circuit, upon an agreed state of facts, at the September Term, 1915.

30 After hearing the evidence and counsel for plaintiff and for defendants, the Court, on the 15th day of February, 1916, finds:

(1) The plaintiff some time before January 1, 1908, was employed by the Board of Chosen Freeholders of Passaic County as a keeper in the County Jail.

40 (2) On November 5, 1912, the voters of the County of Passaic adopted the Civil Service Act of 1908 (3 C. S., 3795), and at the same time elected the defendant Amos H. Radcliffe Sheriff of Passaic County.

*Findings.*

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(3) Upon assuming the duties of the office on December 14, 1912, the Sheriff, for political reasons, dismissed the plaintiff and after December 16, 1912, and until March 29, 1913, when he was reinstated by the Civil Service Commission, the plaintiff was prevented from performing his duties of said employment. 10

(4) By striking the plaintiff's name from the County payroll at the request of the Sheriff, the Board of Chosen Freeholders of the County of Passaic concurred in the dismissal of the plaintiff.

(5) The plaintiff was not an officer, but an employee of the Board of Chosen Freeholders of the County of Passaic, and the fact that another was appointed in his place and performed the services and received the compensation of the position does not preclude a recovery by the plaintiff. 20

(6) As to the plaintiff the Civil Service Act became effective on the 5th day of November, 1912, the date of its adoption, and from that day the plaintiff was protected by the act and could not be removed except upon charges in accordance with the provisions of Section 24. 30

(7) That the dismissal of the plaintiff was illegal and in violation of the provisions of the Civil Service Act.

(8) The plaintiff is entitled to recover for the time during which he was ousted as he was at all times ready and willing to perform his duties, but was prevented from doing so by the defendants.

(9) There can be no recovery against the defendant Amos H. Radcliffe, and judgment of non- 40

*Findings.*

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suit should be entered in his favor and against the plaintiff.

10 (10) The plaintiff is entitled to recover his wages from December 16, 1912, to March 28, 1913, that is to say, the sum of \$309 and interest from the last mentioned date, from the Board of Chosen Freeholders of the County of Passaic and judgment may be entered against said defendant for that sum.

GEO. S. SILZER,  
*Judge.*

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**Exceptions.**

(Filed March 2, 1916.)

## NEW JERSEY SUPREME COURT.

<p style="text-align: center;">ALBERT STEEL, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">THE BOARD OF CHOSEN FREE- HOLDERS OF THE COUNTY OF PASSAIC and AMOS H. RAD- CLIFFE, Defendants.</p>	}	<p>10</p> <p style="text-align: center;">Action at Law.</p>
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The matter coming up this first day of March, 1916, before the Court, parties being present in open court, 20

The findings of the Court being presented to Hon. GEORGE S. SILZER, *J.*, for his signature, Mr. Frederick W. Van Blarcom, for the defendant the Board of Chosen Freeholders of the County of Passaic, excepts to the rulings of the Court on all findings, both as to law and fact; and an exception is allowed; objection to be entered and findings signed. 30

And Gustave A. Hunziker, of the firm of Hunziker & Randall, for the plaintiff, excepts to the ninth finding of the Court; and the exception is allowed; objection to be entered and findings signed.

GEO. S. SILZER,  
*Judge.*

**Postea.**

(Filed March 2, 1916.)

10 This cause was tried before Judge GEORGE S. SILZER, without a jury, at the Passaic Circuit, in the September Term, 1915, the same having been referred to the Circuit Court for trial by the Justice of the Supreme Court presiding in said Circuit. The said Judge of said Circuit Court rendered a verdict of nonsuit against the plaintiff and in favor of the defendant Amos H. Radcliffe and a general verdict in favor of the plaintiff and against the defendant the Board of Chosen Freeholders of the County of Passaic, for the sum of Three hundred sixty-two dollars and forty-eight cents (\$362.48).

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GEO. S. SILZER,  
*Judge.*

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