

IN CHANCERY OF NEW JERSEY.

*To the Honorable Mahlon Pitney, Chancellor of the
State of New Jersey:*

Complaining shows unto your Honor, your orator, 10
Township of Franklin, in the County of Gloucester and
State of New Jersey, a municipal corporation of this
State.

1. That one Mathias F. Crane, from the first day of
January, eighteen hundred and ninety-three, or there-
abouts, to the thirty-first day of December, nineteen hun-
dred and six, or thereabouts, continuously held the office
of Collector of Taxes of the Township of Franklin, in 20
the County of Gloucester, and discharged the duties and
exercised the powers of said office during and through-
out the period of time aforesaid mentioned, he having
been duly elected to said office and re-elected thereto,
from time to time thereafter, during the period of time
aforesaid.

2. That the following is a statement prepared and
taken from the books of said township, as kept by the
proper authorities of said township, during the period of
time aforesaid, of the sums of money which the said
Mathias F. Crane, as Collector of Taxes as aforesaid, 30
received during each and every year while he held office
as Collector of Taxes as aforesaid:

1893	\$8,669.62
1894	8,652.25

	1895	11,100.20
	1896	10,437.02
	1897	10,601.53
	1898	11,194.54
	1899	10,592.47
	1900	11,269.33
	1901	11,262.02
	1902	11,840.91
10	1903	11,641.92
	1904	11,554.82
	1905	12,816.66
	1906	11,780.35
		<hr/>
		\$153,413.64

3. That on or about the eighth day of May, nineteen hundred and eleven, the Township Committee of the Township of Franklin, in the County of Gloucester, directed Thomas McArthur, then treasurer of said township, to direct, by registered mail to the said Mathias F. Crane, and pursuant to said direction there was sent by registered mail to the said Mathias F. Crane by the said Thomas McArthur, a letter of which the following is a copy:

"Tona, N. J., May 8, 1911.

Mathias F. Crane, Esq.,

30 Dear Sir:—

In accordance with a resolution passed by the Township Committee of the Township of Franklin, on May 1, 1911, I hereby demand that you forthwith deliver to me as treasurer of said township, all vouchers or warrants for the payment of the funds of the said township

now in your possession or under your control, for the purpose of enabling the accountants who are now examining the books and accounts of the township to make and complete an audit of said books and accounts.

Yours truly,

Thos. McArthur,

Treasurer of Franklin Township."

4. That the said Mathias F. Crane has ignored said letter and has declined, neglected, omitted and refused to deliver to the said Thomas McArthur, treasurer as aforesaid, such vouchers or warrants for the payment of the funds of the said township, now in his possession or under his control. 10

5. That the said Mathias F. Crane pretends that he has paid out and disbursed, from time to time, as Collector of Taxes as aforesaid, the moneys so as aforesaid by him received, but your orator charges and avers the fact to be, that many of the payments and disbursements by him pretended to have been made, were made by him without proper or lawful warrant or authority, and to divers persons unknown to your orator but who, your orator charges, were not lawfully entitled thereto, and that such unwarranted and unauthorized payments and disbursements represented and were an improper and unlawful use and disbursement of your orator's funds. 20

6. That your orator is and has been unable to ascertain and determine to what persons, and for what purposes, and upon what warrant and by whose authority, the said Mathias F. Crane, as Collector of Taxes as aforesaid, paid out and disbursed the moneys and funds of your orator, as aforesaid, from time to time, and 30

whether the various persons to whom such payments were made, were lawfully entitled thereto.

7. That your orator, or some other person for your orator, has frequently and in a friendly manner applied to the said Mathias F. Crane and requested him to disclose and discover to your orator, to what persons, and for what purposes, and upon what warrant and by whose authority the said Mathias F. Crane, as Collector
10 of Taxes as aforesaid, paid out and disbursed the funds of your orator, from time to time, as aforesaid, and to disclose and discover to your orator whether the persons to whom such moneys were paid were lawfully entitled thereto, and to discover and exhibit to your orator all vouchers or warrants for the payment of funds of your orator, now in the possession or under the control of the said Mathias F. Crane, and your orator well hoped that the said Mathias F. Crane would have complied with
20 such reasonable request, as in justice and equity he ought to have done.

IN CONSIDERATION WHEREOF and forasmuch as your orator has not a complete remedy in the premises at the common law, and cannot compel a discovery and accounting from the said Mathias F. Crane, without the aid of this Honorable Court where matters of this nature are particularly cognizable and relievable.

To the end, therefore, that the said defendant, Mathias
30 F. Crane, may without oath, full, true and perfect answer make to all and singular the premises, as fully as if the same were here repeated and he thereunto particularly interrogated, and that the said Mathias F. Crane may set forth and discover to what persons, and for what purposes, and upon what warrant and by

whose authority he paid out and disbursed the funds of your orator, from time to time, as aforesaid, and whether or not the persons to whom such payments were made were lawfully entitled to receive the same; that he may set forth and discover all vouchers or warrants for the payment of the funds of your orator, now in his possession or under his control, and that he may be decreed to account to your orator for the moneys by him received and disbursed as aforesaid, and that he may be decreed further to pay over and refund to your orator, 10
all moneys paid out and disbursed by him, as aforesaid, for the payment and disbursement of which there was no lawful or proper warrant or authority, and that your orator may have such other or further relief in the premises as shall be agreeable to equity and as the nature and circumstances of the case shall require.

May it please your Honor, the premises considered to grant unto your orator the State's writ of subpœna, issuing out of and under the seal of this Honorable Court, 20
to be directed to the said Mathias F. Crane, commanding him on a certain day and under the penalty which may fall thereon, in manner and form required by law, to be and appear before your Honor, in this honorable court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order or decree as to your Honor shall seem meet and as shall be agreeable to equity and good conscience.

HARVEY F. CARR, 30
Solicitor for and of Counsel with
Complainant.

IN CHANCERY OF NEW JERSEY.

Between
 THE TOWNSHIP OF
 FRANKLIN, IN THE
 10 COUNTY OF GLOUCESTER,
 Complainant,
 AND
 MATHIAS F. CRANE,
 Defendant.

ON BILL, &C.
 DEMURRER.

The demurrer of Mathias F. Crane, defendant, to the
 bill of complaint of the Township of Franklin, in the
 20 County of Gloucester, complainant.

The defendant by protestation, not confessing all or
 any of the matters and things in the complainant's bill
 of complaint, to be true in such manner and form as the
 same are therein set forth and alleged, doth demur
 thereto and for cause of demurrer shows:

- 30 1. That the complainant hath not in and by its said
 bill made or stated such a case as entitles it in a Court
 of Equity to any discovery from this defendant, or any
 relief against him as to the matters contained in the bill
 or any of such matters.
2. The facts stated in said bill do not bring the cause
 under any head of equity jurisdiction.
3. That the complainant has an adequate remedy at
 law.

4. That the complainant has been guilty of such laches that it has disintitiled itself to relief in a Court of Equity.

5. That the complainant has no standing in this court to demand a discovery of the warrants and vouchers, upon which defendant paid out the funds of the township on the order of the agents of said complainant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demur thereto, and humbly prays the judgment of this Honorable Court whether he should be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained. 10

A. H. SWACKHAMER.

20

STATE OF NEW JERSEY, }
GLOUCESTER COUNTY, } ss.:

MATHIAS F. CRANE, of full age, being duly sworn according to law, saith, that the foregoing demurrer is not interposed for delay, but in good faith for the causes therein set forth.

MATHIAS F. CRANE.

Sworn and subscribed before me this 21st day of September, A. D. 1911. 30

ALEXANDER L. ROGERS,
M. C. C. of N. J.

IN CHANCERY OF NEW JERSEY.

33-753

Between

10 THE TOWNSHIP OF
FRANKLIN, IN THE
COUNTY OF GLOUCES-
TER,
Complainant,
AND
MATHIAS F. CRANE,
Defendant.

DEMURRER TO BILL
FOR ACCOUNTING.
CONCLUSIONS.

20 HARVEY F. CARR, for Complainant.
A. H. SWACKHAMER, for Defendant.

LEAMING, V. C.

I am convinced that the demurrer cannot be sustained.

30 It may be conceded that the bill cannot be entertained as a bill for an accounting upon the sole ground that it seeks a discovery. *Daab vs. N. Y. Cent. Ry.*, 70 N. J. Eq. (4 Robbins) 489. But it is well settled that where independent grounds of equitable jurisdiction exist an accounting may be ordered.

In this case the defendant was an officer of the complainant municipality entrusted with duties of a fiduciary nature; the relation between such an officer and the municipality which he serves is essentially the relation of trustee and *cestui que trust*, and this relation affords

grounds for equity jurisdiction. Bills for an accounting against officers of private corporations are frequently exhibited and uniformly sustained upon the theory stated. Few cases of similar bills against public officers are found; but I am unable to distinguish between the two classes of cases. In the case of *The Borough of Rutherford vs. Alyea*, 9 Dick. 411, the demurrer was sustained, but no suggestion was made of want of jurisdiction of this Court to require an accounting from an officer of a municipal corporation. In that case the objection was that the bill disclosed on its face a statement or account containing all the items involved as well as the balance due the borough. I think the true relation between public officials and the municipality they serve is properly stated in the language of Justice Winslow in *Frederick vs. Douglass County (Wis.)*, 71 N. W. Rep. 798, 801, as follows: "The public officials are not dealing with their own. They are trustees for the taxpayers, and, in dealing with public funds, they are dealing with trust funds."

The suggestion was made at the hearing that the annual audits of the Township Committee, required by statute, should be operative as a bar to the relief here sought. But the principles defined in *Demarest vs. Inhabitants of New Barbadoes*, 40 N. J. Law (11 Vroom), 604, 607, are adverse to this view. The annual audits are there defined as non-judicial. These annual settlements, if unaffected by illegality or fraud, may be found operative to protect the officers whose accounts have been settled in good faith from liability arising from an inability to reproduce accounts and vouchers which have been thus passed upon and found correct; but the annual au-

dits cannot serve to destroy the right of the township to call for an accounting where, as here, it is averred in the bill as a fact that many payments and disbursements made by the officer from money in his hands belonging to the township were made by him without lawful warrant or authority and to divers persons unknown to the township who were not lawfully entitled to the money. Should these averments of the bill be found to be without
10 foundation at final hearing, I am unable to presently discern any theory upon which the bill can be supported if the annual settlements contemplated by our statute have been regularly made.

The statute of limitations is not, in my judgment, a bar to the bill. Aside from the existence of a trust relationship against which it may be said to be doubtful whether the statute will run, it will be observed that it is less than six years since the official relation between
20 defendant, as collector, and the township terminated. The continuing active trust prior to that time would clearly prevent the operation of the statute.

I think costs should abide the event at final hearing.

IN CHANCERY OF NEW JERSEY.

Between

THE TOWNSHIP OF
FRANKLIN, IN THE
COUNTY OF GLOUCES-
TER,

Complainant,

AND

MATHIAS F. CRANE,

Defendant.

ON BILL, &c. 10

ON DEMURRER TO
BILL.ORDER OVERRULING
DEMURRER.

20

This matter coming on to be heard in the presence of Harvey F. Carr, of counsel with and solicitor for the complainant, and A. H. Swackhamer, of counsel with and solicitor for the defendant, and the Court having heard and considered the arguments of counsel of the respective parties on the demurrer filed in the above stated cause, and it appearing to the Court that said demurrer ought to be overruled:

It is, thereupon, on this nineteenth day of February, nineteen hundred and twelve, on motion of Harvey F. Carr, of counsel with and solicitor for the complainant, ORDERED that the demurrer to the bill of complaint heretofore filed by the defendant in the above stated cause be and the same is hereby overruled, and that the said defendant have twenty days from the date of service

30

of a copy hereof to answer the complainant's bill, and that in default thereof, said bill be taken as confessed against the said defendant.

Costs to abide the result of the suit.

MAHLON PITNEY,

C.

Respectfully advised.

E. B. LEAMING,

V. C.

10

IN CHANCERY OF NEW JERSEY.

20

Between

THE TOWNSHIP OF
FRANKLIN, IN THE
COUNTY OF GLOUCESTER,

Complainant,

AND

MATHIAS F. CRANE,

Defendant.

ON BILL, &C.
NOTICE OF APPEAL.

30

The defendant hereby appeals from the order made in this court, in the above stated cause, wherein the demurrer to the bill of complaint filed by the defendant is

overruled, to the Court of Errors and Appeals in the last resort in all causes.

Dated March 7, 1912.

A. H. SWACKHAMER,
Solicitor for and of Counsel with
Defendant.

I conceive there is good cause for appeal in the above stated cause.

A. H. SWACKHAMER,
Of Counsel with Defendant. 10

NEW JERSEY COURT OF ERRORS AND AP-
PEALS, IN THE LAST RESORT IN ALL
CAUSES.

Between		20
THE TOWNSHIP OF	}	
FRANKLIN, IN THE		
COUNTY OF GLOUCES-		
TER,		
(Complainant)		ON BILL, &C.
Appellee,		PETITION OF APPEAL.
AND		
MATHIAS F. CRANE,		
(Defendant)		
Appellant.		30

The petition of Mathias F. Crane, the appellant in the above stated cause, respectfully shows that your peti-

tioner finds himself aggrieved by an order made in the Court of Chancery, by his Honor, Mahlon Pitney, Chancellor of New Jersey, bearing date the nineteenth day of February, nineteen hundred and twelve, wherein the said the Township of Franklin, in the County of Gloucester, was complainant and the said Mathias F. Crane was defendant, in this respect, to wit: that the said order adjudges that the demurrer to the bill of complaint filed by the defendant be overruled. And your petitioner humbly appeals from the said order upon the ground that the same is erroneous, for that the said order should have sustained the demurrer of your petitioner.

Your petitioner therefore prays that the said order of the said Chancellor may be reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

A. H. SWACKHAMER,
Solicitor for and of Counsel with
Appellant.

NEW JERSEY
COURT OF ERRORS AND APPEALS.

THE TOWNSHIP OF FRANK-
LIN, IN THE COUNTY OF
GLOUCESTER,

(Complainant)

Respondent,

vs.

MATHIAS F. CRANE,

(Defendant)

Appellant.

ON BILL, &c.

ANSWER TO PETI- 10
TION OF APPEAL.

The answer of the above named respondent to the petition of appeal of the above named appellant:

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that an order was, on the nineteenth day of February, last past, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced; and this respondent is advised and believes that the said order is agreeable to equity; and it prays that the same may be affirmed, 30
with costs to be adjudged to this respondent.

HARVEY F. CARR,
Solicitor for and of Counsel
with Respondent.

STIPULATION.

Whereas, the pleadings in the four suits brought by appellee against Mathias F. Crane, Thomas S. Downs, Samuel Lowder and Charles Trammell, are essentially the same, were argued together in the Court of Chancery and dealt with by the Vice-Chancellor in his conclusions as one case; it is hereby agreed that the foregoing State of the Case shall be used for each of the
10 above causes, and that they shall be argued together.

Dated June 5, 1912.

HARVEY F. CARR,
Solicitor for Appellee.

A. H. SWACKHAMER,
Solicitor for Appellant.

20

30

New Jersey Court of Errors and Appeals

Between

TOWNSHIP OF FRANKLIN,
IN THE COUNTY OF
GLOUCESTER,

(Complainant) Respondent,

AND

MATHIAS F. CRANE,
(Defendant) Appellant.

SAME,
(Complainant) Respondent,

AND

THOMAS S. DOWNS,
(Defendant) Appellant.

SAME,
(Complainant) Respondent,
AND

CHARLES TRIMNEL,
(Defendant) Appellant.

SAME,
(Complainant) Respondent,

AND

SAMUEL LOUDER,
(Defendant) Appellant.

SAME,
(Complainant) Respondent,

AND

WILSON T. JONES,
(Defendant) Appellant.

ON BILL, &C.

ON DEMURRER.

BRIEF FOR (COM-
PLAINANTS), AP-
PELLANT.

The defendants are all former officials of the complainant, a municipal corporation of this State. The defendant, Mathias F. Crane, formerly held the position of collector of taxes. The defendants, Thomas S. Downs, Charles Trimmell and Samuel Louder, were formerly the township treasurers, and the defendant, Wilson T. Jones, for a long time past has been and at the time of the filing of the bill was township clerk. While the bills vary in the details of their respective averments and charges, they are sufficiently alike in substance to be grouped together for the purpose of the argument of the demurrers which have been filed by the respective defendants. The bills charge that the defendants, as officers of Franklin Township, received, by virtue of their respective offices, from time to time, various sums of money belonging to the township, which they disbursed without proper warrant or authority, and that all of the defendants have been requested by the present township committee to exhibit the vouchers and warrants, upon the authority of which they disbursed the township funds in their custody, but that the defendants have neglected and refused to comply with this request, and the bill prays that the various defendants may show upon what warrant and by what authority the township funds in their custody were disbursed, and that they may be decreed to account for the township funds which came into their hands and to pay over to the township such portions of such funds as they cannot account for, or which they cannot show were disbursed under lawful warrant and authority.

All of the defendants have demurred to the bills exhibited respectively against them, and for the purposes of the demurrer, the allegations of fact contained in the bills must be taken to be true.

All the defendants insist by their demurrers that the complainant has no standing in this court to compel the discovery and accounting, or to obtain the relief prayed for, and that the cases made by the bills do not present a proper subject for equity jurisdiction, and that the complainants have an adequate remedy at law.

It is the established rule, recognized by a long line of decisions in this and other states, and by all the text book writers, that courts of equity will assume jurisdiction of suits for an accounting where a fiduciary relation exists between the parties, and a duty rests upon the defendant to render an account to the complainant, although the account is neither mutual or complicated.

6 Pomeroy, p. 1517, Sec. 930, et seq.

6 Pomeroy, p. 1523, Sec. 934, et seq.

1 Cyc. p. 416.

1 Cyc. p. 421.

1 Cyc. p. 425.

1 Cyc. p. 427.

Seymour vs. Long Dock Co., 20 N. J. E. 396.

Ely vs. Crane, 37 N. J. E. 157, and (on Appeal)
564.

Jewett vs. Bowman, 29 N. J. E. p. 176.

Wooley vs. Osborne, 39 N. J. E. p. 54.

Bellingham vs. Palmer, 54 N. J. E. p. 136.

Daab vs. N. Y. C. etc. R. R. Co., 70 N. J. E.
489.

Casperson vs. Casperson, 65 N. J. L. p. 402.

Lilliendahl vs. Stegmair, 45 N. J. E. p. 648.

Cranford vs. Watters, 61 N. J. E. p. 284.

Kimberley vs. Dick, L. R. 13, Eq. 1.

Taff Vale Rwy. Co. vs. Nixon, 1 H. L. p. 111.

Where the complainant has an interest in the use of funds or property in the hands of the defendant, or an

interest in the fund itself, or the defendant has the fund for the use or benefit of the complainant, a mere refusal on the defendant's part to account will entitle the complainant to the aid of a court of equity in compelling an accounting. Thus where the complainant, under his agreement with the defendant, his employer, was to receive a percentage of the profits in addition to a stated salary; and the defendant refused an accounting for the profits, Beasley, C. J., delivering the opinion of the Court of Errors, said: "It follows therefore, that the account thus owing being refused, the respondent's right to the assistance of a court of equity is, in that respect, *indisputable*. Indeed, *so clear was the existence of such a right* that the respondent was entitled to an account and a reference to a master on the mere face of the bill and answer."

Alpaugh vs. Wood, 45 N. J. E. p. 153.

Dilliendahl vs. Stegmair, 45 N. J. E. p. 648.

Scrdder vs. Budd, 52 N. J. E. p. 320.

It is not necessary to allege that the defendant from whom an accounting is sought has acted fraudulently or dishonestly; or to aver that there is an unexpended balance in the defendant's hands, belonging to the complainant. Where the defendant has held funds for the use and benefit of the complainant, there is a clear right to an accounting merely upon averring such facts. The complainant always has the right to know what use has been made of such funds by the defendant.

Thomas vs. Hartshorne, 45 N. J. E. 215.

In the case of the Borough of Rutherford vs. Alyea, 54 N. J. E. p. 411, the defendant was collector of taxes in the borough and a suit was brought against him by

the borough for an accounting. The borough alleged that as collector of taxes, he owed to the borough a balance of seventeen hundred and eighteen dollars and thirty cents, but the items on both sides of the account producing that balance were precisely set forth in the bill, so that no discovery was required and no decree whatever was prayed for with respect to the balance. The court held that an ordinary action for money had and received would seem to afford the complainant an ample remedy and the bill was dismissed partly upon this ground and partly upon other grounds raised by the demurrer, but no suggestion was made of want of jurisdiction of a court of equity to entertain a bill for an accounting from an officer of a municipal corporation.

In the present cases, however, the bills do not show a specific balance due from each defendant but charge each defendant, as a public officer, with the receipt of township funds and a refusal to account to the township for such funds, and pray a discovery as to how and upon what warrant, such funds were disbursed by the several defendants, and an accounting for such funds, and a decree directing the several defendants to pay over to the complainant such portions of said funds as they cannot legally account for.

How can it be maintained that the complainant in the present cases is not entitled to the aid of the court in compelling an accounting? A group of the inhabitants of this State, constituting a local community, formed by the Legislature of this State into a local municipal corporation, comes into this Court as citizens, as taxpayers, speaking as a corporate entity merely because they cannot legally speak in any other way, and ask that their public servants and officers disclose how they have handled the public funds of that community.

Upon what principle of law can it be maintained that the people have not the right to know what use and disposition have been made of their funds by the public officer charged under the law with the duty of receiving and disbursing such funds? If a court of equity will, as it has repeatedly done, compel an accounting at the suit of a private party having an interest in the profits of a private business or who has funds to his use in the hands of the defendant, certainly it will not refuse an accounting when the members of a public community seek one from their public officers with respect to the handling by those officers of the public funds. It is submitted, therefore, that the fiduciary relation existing between the parties to these suits, is sufficient, standing by itself, to bring these suits within the jurisdiction of a court of equity.

The objection of laches raised by the defendants is untenable. It was not pressed at the argument. The statute of limitations does not run against an express trust; and that statute cannot be pleaded against the State or public. See *Jones vs. Haines*, 80 Atl. 942; *Hedges vs. Norris*, 32 N. J. Eq., 192.

Upon the argument, the court raised the question that since the statute provided for an audit of the accounts of the township officials, the defendants are entitled to the benefit of a presumption that such audits had in fact been made. At best, such presumption is a rebuttable one, which could be overcome by proof that the fact was otherwise. It is, of course, the rule that a demurrer must address itself to the case made by the bill, and that new matter, which the complainant must overcome by proof, cannot be presented by a demurrer, since thereby an issue of fact would result. If, as a matter of fact, the accounts of these defendants

had been audited, and such audits operated ipso facto to preclude all further or subsequent inquiry into the accounts audited, then it is conceded that these defendants could properly set up the fact of such audits, by way of plea or answer; but it is difficult to see how such facts, constituting matter of defense, and which the complainant is entitled to answer in its replication, can be raised on these demurrers. Attention is called to the fact that the question raised by the court is entirely outside the reasons assigned by the defendants as their grounds of demurrer.

Passing by the rules of pleading above referred to, let us, however, examine the question that since the act provides for an audit of their accounts these demurrants are entitled to the benefit of the presumption that such audit was in fact made. By the Act of 1899, P. L. p. 372, the Township Committee (Section 11); the Township Treasurer (Section 15); and the Collector of Taxes (Section 17) must publish annual statements of all moneys by them respectively received and disbursed; and Section 34 provides for the annual examination and inspection of the accounts and vouchers of all township officers, by the Township Committee.

It is undoubtedly the rule that the law presumes that a public body or officer has done its or his duty; but this presumption, like the presumption of innocence in criminal cases, is not in any way conclusive. So where a statute provides for auditing the accounts of public officers, the presumption is reasonable that such audit has been made. But the presumption must stop at that point. We cannot go on, and, acting on the presumption that an audit was made, presume that it was properly or correctly made, or that the accounts audited were found correct in all particulars. Surely these defendants cannot be heard to say to the public they rep-

resented: The law presumes that our books have been audited, and therefore, what we did with your money is none of your concern.

But giving these defendants the full benefit of the presumption that their books have been audited, it cannot then be presumed that the accounts audited were found correct and properly kept. No rule is better established than the rule which holds that *presumption cannot be based on presumption.*

22 A. & E. Enc. of Law, 1236.

United States vs. Ross, 92 U. S. 281.

Manning vs. Ins. Co., 100 U. S. 693.

People vs. Hessing, 28 Ill. 410.

Upon proof of the *fact* that an audit had been made by the Township Committee, the presumption of regularity of the committee's action would apply. The presumption can only apply to a fact already proved.

To presume that the accounts of these defendants have been audited merely because the statute provides for such audit may be reasonable, but to go further, piling conjecture on conjecture and presumption on presumption, and to presume that therefore the accounts of these defendants are, beyond question, in absolutely proper shape, and that all their official acts were regular and in strict accordance with the law, is to do violence to the well established rules and principles of evidence, bearing on this point.

In the case of *Diel vs. Missouri Pacific Railway Company*, 37 Mo. App. 454, the Court in upholding the rule that a presumption cannot be based on a presumption, said:

"To hold that the fact presumed becomes an established fact for the purpose of serving as a base for a further presumption would be to spin

out the chain of presumptions into regions of the barest conjecture."

In the case of the United States vs. Ross, 92 U. S. 281, the Supreme Court of the United States, in reversing the judgment of the court of claims and criticising the mode of reasoning pursued by the lower court in reaching its conclusion, said:

"Because property was captured by a military officer and sent forward by him, and because there is an unclaimed fund in the treasury derived from the same kind of property as that captured, and because officers are presumed to have done their duty, it is not the law that a court can conclude that the property was delivered by a military officer to a treasury agent, that it was sold by him and that the proceeds were covered into the treasury. The presumption that public officers have done their duty, like the presumption of innocence, is undoubtedly a legal presumption, but it does not supply proof of a substantive fact. Nowhere is a presumption held to be a substitute for proof of an independent and material fact."

And criticising the decision of the court below, the Supreme Court of the United States said further:

"These seem to us to be nothing more than conjectures. They are not legitimate inferences even to establish a fact; much less are they presumptions of law. They are inferences from inferences; presumptions resting on the basis of another presumption. Such a mode of arriving at a conclusion of fact is generally, if not universally inadmissible. No inference of fact or of law is reliable drawn from premises which are

uncertain. Wherever circumstantial evidence is relied upon to prove a fact, the circumstances must themselves be proved and not themselves presumed."

On the other hand, if it be proper to presume that every public body has done its duty prescribed by law, and since the statute provides for an annual audit by the Township Committee, it must then be presumed that such annual audit has been made by such committee. But since no presumption can stand when overcome by a fact which absolutely negatives the presumption, it follows that the presumption that an audit was made is overcome merely by the filing of the bills in these suits, for the violent presumption cannot be indulged that the present Township Committee would have authorized these suits, in the name of and on behalf of the inhabitants of the township, if the accounts of these defendants had been audited and found correct. Therefore, it must be presumed, from the mere filing of these bills, that no audit was made, or that if made, the accounts were found incorrect, and this presumption is equally as strong as the presumption that an audit was made. The rule is that where presumptions are of equal weight, they neutralize each other.

22 A. & E. Ency. of Law, 1237.

The annual audits required by the Township Act are declared in *Demarest vs. New Barbadoes*, 40 N. J. L. 604, to be non-judicial in character, and hence not a bar to further inquiry.

And as a matter of fact, it was the refusal of these defendants to produce, upon request, the warrants and vouchers on which they had disbursed moneys as expressly charged in the bills that precipitated these suits. The auditing of all township accounts, neglect-

ed by all their predecessors in office, was precisely what the present Township Committee was endeavoring to accomplish; and for which purpose they had employed expert accountants, whose labors were blocked by the refusal of these defendants to submit the vouchers and warrants on the authority of which they had disbursed the township funds, for inspection and examination.

WITH PARTICULAR REFERENCE TO THE
CASE OF THE TOWNSHIP AGAINST WIL-
SON T. JONES.

The bill in the Jones case differs from that filed against the other defendants, in that Jones was township clerk while the others were either the tax collector or treasurers of the township. No difference in principle, however, is apparent, and the opinion of the court below was based almost entirely upon that filed in the case against Mathias F. Crane. It has been suggested, however, by counsel for the appellant that he proposes discussing the question of the effect of the allegations in the Jones bill that the Township Committee had no power or authority to fix the compensation of the clerk by resolution. A salary of two hundred dollars a year was paid for the years nineteen hundred and two to nineteen hundred and nine, both inclusive, while the account runs from the year eighteen hundred and ninety-three.

It is immediately apparent that even though the complainant's position with regard to the necessity for the passage of an ordinance to fix the salary of the clerk is untenable, that it would not be a bar to complete relief. The demurrer is addressed to the whole bill, and even if it were shown that the complainant was not entitled to the entire relief prayed for, the demurrer could not be sustained if the complainant were entitled to any relief.

POWERS OF THE TOWNSHIP COMMITTEE.

"The Township Committee shall have power to make, amend or repeal ordinances for the following purposes:

To fix the annual salary or compensation to be paid to each person elected or appointed to any township office, except members of the Township Committee, and the time and manner of payment of the salary or compensation when so fixed by ordinance, and shall be in lieu of the fees or compensation otherwise provided by law, and said fees or compensation shall be thereafter collected and paid into the treasury of the township for its use."

P. L. 1898, p. 385, Sec. 32.

In *Eckerson vs. City of Englewood*, 81 Atl. Rep. p. 1070, it was held that where an engineer was appointed by the city by resolution, the charter requiring the appointment to be made by ordinance, that such appointment was void and that the engineer was a mere intruder.

"A municipal charter conferring on the council power 'to make, establish, publish, modify, amend or repeal ordinances, rules, regulations and by-laws' for certain specified purposes gives no power to council to act in that regard by resolution, but only by ordinance."

Levy vs. City of Elizabeth, 80 Atl. Rep. 498.

The attempt to fix the salary of the clerk by resolution is therefore ineffective.

Respectfully submitted,

HARVEY F. CARR,

Solicitor for and of Counsel with Franklin Township in the County of Gloucester (Complainant), Respondent.

New Jersey Court of Errors and Appeals.

Between
TOWNSHIP OF FRANKLIN,
IN THE COUNTY OF
GLOUCESTER,
Complainant,
AND
MATHIAS F. CRANE,
Defendant.
SAME,
Complainant,
AND
THOMAS S. DOWNS,
Defendant.
SAME,
Complainant, } ON APPEAL, ETC.
AND
CHARLES TRIMNELL,
Defendant.
SAME,
Complainant,
AND
SAMUEL LOWDER,
Defendant.
SAME,
Complainant,
AND
WILSON T. JONES,
Defendant. }

BRIEF OF A. H. SWACKHAMER,
of Counsel with Appellants.

The Township Committee of the Township of Franklin, in the County of Gloucester has brought suits against five ex-officials of said township; Downs, Trimmell and Lowder, each held the office of Township Treasurer for a term of years covered by the several bills of complaint, and Mathias F. Crane held the office of Township Collector from 1893 to 1906, while Wilson T. Jones held the office of Township Clerk from 1893 to 1910, inclusive.

- 10 It is agreed that these five cases shall be argued on one brief, but inasmuch as the case against Jones presents some features not common to the other cases, it is proposed to deal with the issues presented in that case separately, so far as they are different from the issues in the other suits.

- The decision of the Vice-Chancellor sustains the bill in each case solely upon the theory that the defendant township officials are intrusted with duties of a fiduciary nature and that the relation of such officials to the municipality is in the nature of trustee and *cestui que* trust; but assuming this to be so, it does not follow that because that relation exists the trustee can be haled into Court on a bill that presents no grounds of equitable relief. The doctrine that
- 20 equity will compel an accounting by the trustee to his *cestui que* trust is based upon some right withheld or wrong committed and an examination of the bill will show that there is no charge that the defendants, as township officials, have violated their trust in any way; there is no charge of fraud or intentional wrong doing, nor does it appear that the township has lost a penny; the only charge made is that many of the payments made by the collector were made without lawful warrant, because complainant cannot find vouchers for such payments which aggregate more than one hundred and fifty thousand dollars and cover a period of
- 30 thirteen years. There is a vague statement in the bill that unauthorized payments were made to persons unknown to the complainant, but such statements in a pleading will not aid complainant.

Williams vs. Hilliard II Stew. 382-387.

The soul object of the bill is to obtain the aid of the Court to make out a case against defendant without pointing

to a single act of the defendant which could in any way render him liable to the township.

The statement of the bill must be certain and show that the complainant is entitled to relief before the Court will order a discovery. In other words, the Court will not compel discovery except as incidental relief, or in aid of an action of law, in which case it must appear from the bill that an action at law is about to be commenced.

Williams vs. McKay, 13 *Stew.*, 189-204.

10

Dillon Municipal Corporation, *Sec.* 237.

United States R. R. Co. vs. Hoppoch, 1 *Stew.* 265.

In the case of *Courtier vs. Crescent Sewing Machine Company*, 15 *Dick.* 413, Justice Collins in the Court of Errors, on page 417, says:

"In the bill before us, the complainant does not seek injunction. He prays with incidental discovery for an account and damages for loss of profits. For such relief there is no precedent and no equitable support. The bill, of course, cannot be maintained for discovery alone, no case for relief having been made."

20

Crawford vs. Walters, 16 *Dick.*, 284.

Daab vs. N. Y. Central R. R. Co., 4 *Rob.* 389.

The only distinguishing feature between the last named case and the one under consideration, as pointed out by the Vice-Chancellor, is that the trust relationship is here present, while in the other case no such relation existed. He cites the case of *Borough of Rutherford vs. Alyea*, 9 *Dick.*, 411, as sanctioning a bill in equity to compel an accounting by a collector with a municipality, but an examination of the case will show that the bill in that case alleged that the collector at the time of his death owed the Borough a large sum of money, and the action was brought in the Court of Chancery to recover this sum as well as to set aside a deed as fraudulent; but the demurrer was sustained in that case, and the fact that the point was not made, that the Court had not jurisdiction to require an accounting by the collector to the corporation is not significant, as the demurrant had sufficient grounds without it; furthermore, as above pointed out, the bill in that case specifically charged that there was money

30

due the Borough from the collector, whereas, in this case, there is no such allegation; the most that the bill implies is that if a discovery were ordered it might be shown that something is due to the complainant.

10 It is further maintained that a township collector or treasurer is not a trustee for the municipality in any sense. He is paid a certain compensation for his services, and although the township moneys are paid to him it is only disbursed on the order of the Township Committee, so that no trust arises. He performs no discretionary acts with relation to the public fund, but is a mere instrument through which the Township disburses the public funds by specific orders signed by he committee. *Township Act, 1899, page 377, Sec. 15.*

If these township officers can be held to be trustees for the Township and accountable for their official acts, ten years after their terms of office have expired no man could be found to serve the public in such capacity.

The following additional reasons are presented for sustaining the demurer in the Jones case.

20 Here it cannot be pretended that any fiduciary relation existed between the official and the Township. Defendant was Clerk of the Township and his compensation was fixed by law; during part of this time he was paid a per diem compensation, and later, by a stated salary of two hundred dollars per year, and he did not handle a dollar of the public money, nor had he authority to transact any business for the Township other than that prescribed by statute. *Laws, 1889, page 376, Sec. 14.* This section requires the Clerk to publish the annual report of the Township Committee, which must contain every item of expense, whether it be the salary of the officials of the Township or other expenditures, and the complainant could readily ascertain by referring to these reports what the annual payments mentioned in the bill of complaint were for and whether they were lawful payments. These payments to the Clerk cover a period of twenty years and are a part of the records of the Township in the possession of the complainant.

30 The learned Vice-Chancellor says that these annual audits

are non-judicial and therefore not a bar to relief, citing, *Demarest vs. Inhabitants of New Barbadoes*, 40 *Vr.* 604. That was a suit at law by the Township to recover back over-charges by the collector for collecting his duplicate. The case is authority for the proposition that where the collector is paid more than his legal fees for collecting the taxes, such over-charges may be recovered back in an action at law, but it is not authority for the proposition that when the Township has audited the accounts of these officials and passed upon them as correct, a succeeding Committee can invoke the aid of a Court of Equity to compel discovery where there is no charge of illegality, fraud or mistake, and it is not shown on the face of the bill that anything is due the Township. 10

The Vice-Chancellor, in his opinion in the Jones case, says, that the memorandum opinion filed by him in the case of Township *vs.* Mathias F. Crane is applicable to the Jones case and then points out that in this case there is also the allegation that the defendant has been paid for his services upon an unlawful basis and to an unlawful amount, referring to the allegation that he was paid since 1903, a salary of two hundred dollars per year under an unlawful resolution of the Township Committee. 20

As already pointed out the reasoning applied to the case of Township of Franklin *vs.* Mathias F. Crane does not apply to the case against Wilson T. Jones, because there was not and could not be any trust relationship between the Township and its Clerk, a mere clerical officer who was paid a salary for his services. As to the argument that the method of payment of the salary was unlawful in the absence of an ordinance, the answer is that this affords no grounds for equitable cognizance; on the contrary it has been repeatedly decided by the Courts of this State that the remedy at law is simple in such cases. If the payment of two hundred dollars per year was illegal for want of an ordinance, the remedy is to set aside the resolution under which the salary was fixed and then proceed by action in Assumpsit to recover the same, as was done in *Demarest vs. New Barbadoes*, *supra*. 30

It is respectfully submitted that the orders over-ruling the demurrers in these cases should be set aside and the demurrers sustained.

A. H. SWACKHAMER,
Solicitor for and of Counsel with Appellants.

IN CHANCERY OF NEW JERSEY.

*To the Honorable Mahlon Pitney, Chancellor of the
State of New Jersey:*

Complaining shows unto your Honor, your orator, 10
Township of Franklin, in the County of Gloucester and
State of New Jersey, a municipal corporation of this
State.

1. That one Mathias F. Crane, from the first day of
January, eighteen hundred and ninety-three, or there-
abouts, to the thirty-first day of December, nineteen hun-
dred and six, or thereabouts, continuously held the office
of Collector of Taxes of the Township of Franklin, in 20
the County of Gloucester, and discharged the duties and
exercised the powers of said office during and through-
out the period of time aforesaid mentioned, he having
been duly elected to said office and re-elected thereto,
from time to time thereafter, during the period of time
aforesaid.

2. That the following is a statement prepared and
taken from the books of said township, as kept by the
proper authorities of said township, during the period of
time aforesaid, of the sums of money which the said
Mathias F. Crane, as Collector of Taxes as aforesaid, 30
received during each and every year while he held office
as Collector of Taxes as aforesaid:

1893	\$8,669.62
1894	8,652.25

	1895	11,100.20
	1896	10,437.02
	1897	10,601.53
	1898	11,194.54
	1899	10,592.47
	1900	11,269.33
	1901	11,262.02
	1902	11,840.91
10	1903	11,641.92
	1904	11,554.82
	1905	12,816.66
	1906	11,780.35

\$153,413.64

3. That on or about the eighth day of May, nineteen hundred and eleven, the Township Committee of the Township of Franklin, in the County of Gloucester, directed Thomas McArthur, then treasurer of said township, to direct, by registered mail to the said Mathias F. Crane, and pursuant to said direction there was sent by registered mail to the said Mathias F. Crane by the said Thomas McArthur, a letter of which the following is a copy:

"Tona, N. J., May 8, 1911.

Mathias F. Crane, Esq.,

30 Dear Sir:—

In accordance with a resolution passed by the Township Committee of the Township of Franklin, on May 1, 1911, I hereby demand that you forthwith deliver to me as treasurer of said township, all vouchers or warrants for the payment of the funds of the said township

now in your possession or under your control, for the purpose of enabling the accountants who are now examining the books and accounts of the township to make and complete an audit of said books and accounts.

Yours truly,

Thos. McArthur,

Treasurer of Franklin Township."

4. That the said Mathias F. Crane has ignored said letter and has declined, neglected, omitted and refused to deliver to the said Thomas McArthur, treasurer as aforesaid, such vouchers or warrants for the payment of the funds of the said township, now in his possession or under his control. 10

5. That the said Mathias F. Crane pretends that he has paid out and disbursed, from time to time, as Collector of Taxes as aforesaid, the moneys so as aforesaid by him received, but your orator charges and avers the fact to be, that many of the payments and disbursements by him pretended to have been made, were made by him without proper or lawful warrant or authority, and to divers persons unknown to your orator but who, your orator charges, were not lawfully entitled thereto, and that such unwarranted and unauthorized payments and disbursements represented and were an improper and unlawful use and disbursement of your orator's funds. 20

6. That your orator is and has been unable to ascertain and determine to what persons, and for what purposes, and upon what warrant and by whose authority, the said Mathias F. Crane, as Collector of Taxes as aforesaid, paid out and disbursed the moneys and funds of your orator, as aforesaid, from time to time, and 30

whether the various persons to whom such payments were made, were lawfully entitled thereto.

7. That your orator, or some other person for your orator, has frequently and in a friendly manner applied to the said Mathias F. Crane and requested him to disclose and discover to your orator, to what persons, and for what purposes, and upon what warrant and by whose authority the said Mathias F. Crane, as Collector
10 of Taxes as aforesaid, paid out and disbursed the funds of your orator, from time to time, as aforesaid, and to disclose and discover to your orator whether the persons to whom such moneys were paid were lawfully entitled thereto, and to discover and exhibit to your orator all vouchers or warrants for the payment of funds of your orator, now in the possession or under the control of the said Mathias F. Crane, and your orator well hoped that the said Mathias F. Crane would have complied with
20 such reasonable request, as in justice and equity he ought to have done.

IN CONSIDERATION WHEREOF and forasmuch as your orator has not a complete remedy in the premises at the common law, and cannot compel a discovery and accounting from the said Mathias F. Crane, without the aid of this Honorable Court where matters of this nature are particularly cognizable and relievable.

To the end, therefore, that the said defendant, Mathias
30 F. Crane, may without oath, full, true and perfect answer make to all and singular the premises, as fully as if the same were here repeated and he thereunto particularly interrogated, and that the said Mathias F. Crane may set forth and discover to what persons, and for what purposes, and upon what warrant and by

whose authority he paid out and disbursed the funds of your orator, from time to time, as aforesaid, and whether or not the persons to whom such payments were made were lawfully entitled to receive the same; that he may set forth and discover all vouchers or warrants for the payment of the funds of your orator, now in his possession or under his control, and that he may be decreed to account to your orator for the moneys by him received and disbursed as aforesaid, and that he may be decreed further to pay over and refund to your orator, all moneys paid out and disbursed by him, as aforesaid, for the payment and disbursement of which there was no lawful or proper warrant or authority, and that your orator may have such other or further relief in the premises as shall be agreeable to equity and as the nature and circumstances of the case shall require. 10

May it please your Honor, the premises considered to grant unto your orator the State's writ of subpœna, issuing out of and under the seal of this Honorable Court, to be directed to the said Mathias F. Crane, commanding him on a certain day and under the penalty which may fall thereon, in manner and form required by law, to be and appear before your Honor, in this honorable court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order or decree as to your Honor shall seem meet and as shall be agreeable to equity and good conscience. 20

HARVEY F. CARR, 30
Solicitor for and of Counsel with
Complainant.

IN CHANCERY OF NEW JERSEY.

	Between	
	THE TOWNSHIP OF	} ON BILL, &c. DEMURRER.
	FRANKLIN, IN THE	
10	COUNTY OF GLOUCESTER,	
	Complainant,	
	AND	
	MATHIAS F. CRANE,	
	Defendant.	

The demurrer of Mathias F. Crane, defendant, to the bill of complaint of the Township of Franklin, in the County of Gloucester, complainant.

The defendant by protestation, not confessing all or any of the matters and things in the complainant's bill of complaint, to be true in such manner and form as the same are therein set forth and alleged, doth demur thereto and for cause of demurrer shows:

1. That the complainant hath not in and by its said bill made or stated such a case as entitles it in a Court of Equity to any discovery from this defendant, or any relief against him as to the matters contained in the bill or any of such matters.
2. The facts stated in said bill do not bring the cause under any head of equity jurisdiction.
3. That the complainant has an adequate remedy at law.

4. That the complainant has been guilty of such laches that it has disentitled itself to relief in a Court of Equity.

5. That the complainant has no standing in this court to demand a discovery of the warrants and vouchers, upon which defendant paid out the funds of the township on the order of the agents of said complainant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demur thereto, and humbly prays the judgment of this Honorable Court whether he should be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained. 10

A. H. SWACKHAMER.

20

STATE OF NEW JERSEY, }
GLOUCESTER COUNTY, } ss.:

MATHIAS F. CRANE, of full age, being duly sworn according to law, saith, that the foregoing demurrer is not interposed for delay, but in good faith for the causes therein set forth.

MATHIAS F. CRANE.

Sworn and subscribed before me this 21st day of September, A. D. 1911. 30

ALEXANDER L. ROGERS,
M. C. C. of N. J.

IN CHANCERY OF NEW JERSEY.

33-753

Between

10 THE TOWNSHIP OF
FRANKLIN, IN THE
COUNTY OF GLOUCESTER,
Complainant,
AND
MATHIAS F. CRANE,
Defendant.

DEMURRER TO BILL
FOR ACCOUNTING.
CONCLUSIONS.

20

HARVEY F. CARR, for Complainant.
A. H. SWACKHAMER, for Defendant.

LEAMING, V. C.

I am convinced that the demurrer cannot be sustained.

It may be conceded that the bill cannot be entertained as a bill for an accounting upon the sole ground that it seeks a discovery. *Daab vs. N. Y. Cent. Ry.*, 70 N. J. Eq. (4 Robbins) 489. But it is well settled that where independent grounds of equitable jurisdiction exist an accounting may be ordered.

30

In this case the defendant was an officer of the complainant municipality entrusted with duties of a fiduciary nature; the relation between such an officer and the municipality which he serves is essentially the relation of trustee and *cestui que trust*, and this relation affords

grounds for equity jurisdiction. Bills for an accounting against officers of private corporations are frequently exhibited and uniformly sustained upon the theory stated. Few cases of similar bills against public officers are found; but I am unable to distinguish between the two classes of cases. In the case of *The Borough of Rutherford vs. Alyea*, 9 Dick. 411, the demurrer was sustained, but no suggestion was made of want of jurisdiction of this Court to require an accounting from an officer of a municipal corporation. In that case the objection was that the bill disclosed on its face a statement or account containing all the items involved as well as the balance due the borough. I think the true relation between public officials and the municipality they serve is properly stated in the language of Justice Winslow in *Frederick vs. Douglass County (Wis.)*, 71 N. W. Rep. 798, 801, as follows: "The public officials are not dealing with their own. They are trustees for the taxpayers, and, in dealing with public funds, they are dealing with trust funds."

The suggestion was made at the hearing that the annual audits of the Township Committee, required by statute, should be operative as a bar to the relief here sought. But the principles defined in *Demarest vs. Inhabitants of New Barbadoes*, 40 N. J. Law (11 Vroom), 604, 607, are adverse to this view. The annual audits are there defined as non-judicial. These annual settlements, if unaffected by illegality or fraud, may be found operative to protect the officers whose accounts have been settled in good faith from liability arising from an inability to reproduce accounts and vouchers which have been thus passed upon and found correct; but the annual au-

10 dits cannot serve to destroy the right of the township to call for an accounting where, as here, it is averred in the bill as a fact that many payments and disbursements made by the officer from money in his hands belonging to the township were made by him without lawful warrant or authority and to divers persons unknown to the township who were not lawfully entitled to the money. Should these averments of the bill be found to be without foundation at final hearing, I am unable to presently discern any theory upon which the bill can be supported if the annual settlements contemplated by our statute have been regularly made.

20 The statute of limitations is not, in my judgment, a bar to the bill. Aside from the existence of a trust relationship against which it may be said to be doubtful whether the statute will run, it will be observed that it is less than six years since the official relation between defendant, as collector, and the township terminated. The continuing active trust prior to that time would clearly prevent the operation of the statute.

I think costs should abide the event at final hearing.

IN CHANCERY OF NEW JERSEY.

Between

THE TOWNSHIP OF
FRANKLIN, IN THE
COUNTY OF GLOUCES-
TER,

Complainant,

AND

MATHIAS F. CRANE,

Defendant.

ON BILL, &c. 10

ON DEMURRER TO
BILL.ORDER OVERRULING
DEMURRER.

20

This matter coming on to be heard in the presence of Harvey F. Carr, of counsel with and solicitor for the complainant, and A. H. Swackhamer, of counsel with and solicitor for the defendant, and the Court having heard and considered the arguments of counsel of the respective parties on the demurrer filed in the above stated cause, and it appearing to the Court that said demurrer ought to be overruled:

IT IS, thereupon, on this nineteenth day of February, nineteen hundred and twelve, on motion of Harvey F. Carr, of counsel with and solicitor for the complainant, ORDERED that the demurrer to the bill of complaint heretofore filed by the defendant in the above stated cause be and the same is hereby overruled, and that the said defendant have twenty days from the date of service

30

of a copy hereof to answer the complainant's bill, and that in default thereof; said bill be taken as confessed against the said defendant.

Costs to abide the result of the suit.

MAHLON PITNEY,
C.

Respectfully advised.

10

E. B. LEAMING,
V. C.

IN CHANCERY OF NEW JERSEY.

20

Between

THE TOWNSHIP OF
FRANKLIN, IN THE
COUNTY OF GLOUCESTER,

Complainant,

AND

MATHIAS F. CRANE,

Defendant.

ON BILL, &C.
NOTICE OF APPEAL.

30

The defendant hereby appeals from the order made in this court, in the above stated cause, wherein the demurrer to the bill of complaint filed by the defendant is

overruled, to the Court of Errors and Appeals in the last resort in all causes.

Dated March 7, 1912.

A. H. SWACKHAMER,
Solicitor for and of Counsel with
Defendant.

I conceive there is good cause for appeal in the above stated cause.

A. H. SWACKHAMER, 10
Of Counsel with Defendant.

NEW JERSEY COURT OF ERRORS AND AP-
PEALS, IN THE LAST RESORT IN ALL
CAUSES.

Between		20
THE TOWNSHIP OF	}	ON BILL, &C. PETITION OF APPEAL.
FRANKLIN, IN THE		
COUNTY OF GLOUCES-		
TER,		
(Complainant)	}	30
Appellee,		
AND		
MATHIAS F. CRANE,	}	
(Defendant)		
Appellant.		

The petition of Mathias F. Crane, the appellant in the above stated cause, respectfully shows that your peti-

tioner finds himself aggrieved by an order made in the Court of Chancery, by his Honor, Mahlon Pitney, Chancellor of New Jersey, bearing date the nineteenth day of February, nineteen hundred and twelve, wherein the said the Township of Franklin, in the County of Gloucester, was complainant and the said Mathias F. Crane was defendant, in this respect, to wit: that the said order adjudges that the demurrer to the bill of complaint filed by the defendant be overruled. And your petitioner humbly appeals from the said order upon the ground that the same is erroneous, for that the said order should have sustained the demurrer of your petitioner.

10 Your petitioner therefore prays that the said order of the said Chancellor may be reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

20

A. H. SWACKHAMER,
Solicitor for and of Counsel with
Appellant.

30

NEW JERSEY
COURT OF ERRORS AND APPEALS.

THE TOWNSHIP OF FRANK-
LIN, IN THE COUNTY OF
GLOUCESTER,

(Complainant)

Respondent,

vs.

MATHIAS F. CRANE,

(Defendant)

Appellant.

ON BILL, &c.

ANSWER TO PETI- 10
TION OF APPEAL.

The answer of the above named respondent to the pe-
tition of appeal of the above named appellant:

This respondent, not acknowledging all or any of the
matters which in the said petition of appeal are con- 20
tained to be true, for answer thereto, nevertheless, says
and admits that an order was, on the nineteenth day of
February, last past, made and entered in the Court of
Chancery in the cause for that purpose mentioned in the
said petition, as is therein stated; but as to the substance
and form thereof, this respondent prays to refer thereto
when the same shall be produced; and this respondent
is advised and believes that the said order is agreeable 30
to equity; and it prays that the same may be affirmed,
with costs to be adjudged to this respondent.

HARVEY F. CARR,
Solicitor for and of Counsel
with Respondent.

STIPULATION.

Whereas, the pleadings in the four suits brought by appellee against Mathias F. Crane, Thomas S. Downs, Samuel Lowder and Charles Trammell, are essentially the same, were argued together in the Court of Chancery and dealt with by the Vice-Chancellor in his conclusions as one case; it is hereby agreed that the foregoing State of the Case shall be used for each of the
10 above causes, and that they shall be argued together.

Dated June 5, 1912.

HARVEY F. CARR,
Solicitor for Appellee.

A. H. SWACKHAMER,
Solicitor for Appellant.

20

30

Southern Bond

Brook & Co. Boston