

## New Jersey Court of Errors and Appeals.

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BOARD OF HEALTH OF THE TOWN  
OF WEST HOBOKEN, in the  
County of Hudson,

*Plaintiff-Appellant,*  
*vs.*

WARREN J. DUCKETT,

*Defendant-Respondent.*

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On Cont.  
On Appeal.

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### **BRIEF OF PLAINTIFF-APPELLANT.**

This is an appeal from a judgment of the Supreme Court sustaining a judgment of the Hoboken District Court. At the trial all the facts were stipulated and are now contained in the State of the Case. The case was heard before Charles L. Carrick, Esquire, without a jury, who rendered a judgment for the defendant. A copy of the memorandum he filed is also contained in the printed case.

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The whole question in the case turns on the construction of the statutes requiring physicians in Hudson County to report births and other vital facts—that is to say, whether such facts are required to be reported to local Registrars or to the Hudson County Board of Health.

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The suit was brought to recover a penalty incurred by the defendant, a practicing physician, for failure to report a birth according to the provisions of an Act of the Legislature of the State of New Jersey, entitled, "An Act to secure in this

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State the certification of births and deaths and of the vital facts relating thereto, and to provide for the record thereof" (Revision of 1909), being Chapter 109 of the Laws of 1909. The defense was that the defendant had filed his certificate with the Hudson County Board of Health, and that this was a sufficient compliance with the law.

10 The following is a statement of the acts of the Legislature which deal with this subject, and the only question in this case is the proper interpretation of these acts.

1874:—

20 The Hudson County Board of Health was organized pursuant to the Act of the Legislature approved March 27, 1874, entitled, "An Act to provide for a Board of Health and Vital Statistics, and to prevent the spread of disease." By this Act the Hudson County Board of Health was empowered to pass and enforce ordinances relating to vital statistics.

1887:—

30 On March 31, 1887 (Pamphlet Laws of 1887, page 80), the "General Health Act" of the State was adopted, entitled, "An Act to establish in this State, Boards of Health, and a Bureau of Vital Statistics, and to define their respective powers and duties. By this Act the State Board of Health was created and the secretary of said board made superintendent of vital statistics (Section 1). The State Board was also constituted a State Bureau of Vital Statistics (Section 2). The Act also provides for the creation of local boards of health in all cities, boroughs, towns, etc. (Section 9), and authorizes such local boards to pass and amend ordinances, among other things,

40 "VII. To compel the return of all births, deaths and marriages by physicians, midwives, nurses, clergymen, magistrates and

other persons professionally officiating at such birth, death or marriage."

Nothing in this Act seems to require the filing of vital statistics with local boards of health.

1887:—

On April 21, 1887, twenty days after the passage of the General Health Act, the Legislature passed an Act providing, that, "in any and every county of the State wherein there is or may be established by law a County Board of Health, or County Board of Health and Vital Statistics for the protection or preservation of the public health, such board shall be and is hereby empowered to enact and make ordinances in relation to and for the protection of the public health and the registration of vital facts and statistics." 10

"The effect of these two Acts, that is, the General Health Act and the amendment just mentioned, are discussed in *State vs. Hudson County Board of Health*, 85 N. J. L., 13, in which the Court holds that the effect of these two Acts together is not sufficient to abrogate the powers conferred upon the Hudson County Board of Health under the Act of 1874. 'That this later statute was enacted by the Legislature with full knowledge that it had a few weeks before adopted the general statute with relation to the public health, and is by implication a declaration by it that it did not intend by the general Act to wipe out of existence county boards of health which had been theretofore created. To hold otherwise would be to declare that the later enactment was a mere *brutum fulmen*, possessed of no vitality, and operating upon no subject-matter.'" 20 30

1888:—

On February 15, 1888, an Act was passed entitled, "An Act to secure in this State the certification of marriages, births and deaths, and of the vital facts relating thereto, and to provide for 40

the record thereof" (General Statutes of N. J., page 2006).

Section 2 of this Act provides "That it shall be the duty of the physician or midwife present at the birth of any child born in this State \* \* \* to transmit within thirty days after such birth to the officer hereinafter designated, a certificate of such birth, which certificate shall set forth," etc.

\* \* \*

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Section 4 of this Act provides, "That every certificate of marriage or birth required to be made by the first and second sections of this Act shall in any city, borough, town or other local municipal government be transmitted to the Registrar of Vital Statistics, if there be such officer, and if not, then to the Clerk of the city, borough, town, or other municipal government, in which such marriage or birth shall occur; and in any township every such certificate shall be transmitted to the assessor of the township in which such marriage or birth shall occur, or if there be no assessor in office, then to the township clerk."

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(This provision is almost identical with the provisions of Section 3 of the Revision of 1909, hereinafter set forth, under which this suit is brought.)

Section 16 of this Act provides, "That all acts and parts of acts inconsistent with the provisions of this Act, be and the same are hereby repealed and that this Act shall take effect immediately".

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"The Court of Errors and Appeals in the case of *Camden vs. Varney*, 63 N. J. L., 325, held in a unanimous opinion, that this Act of February 15, 1888, supersedes all previous legislation on the subject included in its title."

It seems plain that whatever power the Hudson County Board of Health had under the Act of 1874 was taken away by the Act of 1888 so far

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as the registration of vital facts is concerned and that from 1888 vital facts were required to be certified to local boards only.

1909:—

On April 16, 1909, the Act entitled, "An Act to secure in this State the certification of births and deaths and of the vital facts relating thereto and to provide for the record thereof (Revision of 1909) was passed. It is under this Act the suit was brought.

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Section 1 of the Revision corresponds with Section 2 of the act of 1888, and Section 3 of the Revision corresponds to Section 4 of the Act of 1888.

2 General Statutes 2006-7

1 Compiled Statutes 208.

Section 1 of the Revision provides, "It shall be the duty of the physician or midwife present at the birth of any child born in this state \* \* \* to transmit within five days after such birth, to the officer hereinafter designated, a certificate of such birth \* \* \* Any physician, midwife or parent whose duty it may be to transmit such certificate as aforesaid, and who shall neglect or fail to perform such duty, within the time above limited, shall be liable to a penalty of fifty dollars \* \* \*."

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Section 3 of the Revision provides, "Every certificate of birth required to be made by this act shall, in any city, borough, town or other local municipal government, be transmitted to the local registrar of vital statistics if there be such officer, and if not, then to the clerk of the city, borough, town or other local municipal government in which such birth shall occur; and in any township every such certificate shall be transmitted to the assessor of the township in

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which such birth shall occur, or if there be no assessor in office, then to the township clerk."

Section 9 of the Revision provides, "It shall be the duty of the assessor and clerk of every township and of the registrar of vital statistics and the clerk of the every city, borough, town, and the clerk of every county board of health and vital statistics, or other local municipal government in this state, on or before the tenth day of each calendar month, to transmit by mail, express or messenger, to the state bureau of vital statistics, at Trenton \* \* \* all the certificates of births and deaths received by such officer, which certificates and returns it shall be the duty of every such officer to receive for such transmission \* \* \*."

Section 14 of the Revision, provides, "Any penalty incurred under any of the provisions of this act may be recovered, with costs, in an action of debt in the name of the local board of health of the municipality where the birth or death occurred or in the name of the board of health of the state of New Jersey."

Section 15 of the Revision, provides, "Nothing in this act shall interfere with the reception, recording and transmission of certificates of births and deaths by any board of health now or hereafter established in this state."

Section 18 of the Revision, provides, "All acts and parts of acts inconsistent herewith are hereby repealed and this act shall take effect A. D. October 1st, 1919."

It is urged on behalf of the defendant that the provisions of sections 9 and 15 together permit the Hudson County Board of Health to receive certificates of birth such as the one in question, and that if such certificates are filed with that board then the statute is complied with.

If as the court says in *Camden vs. Varney* (supra) "The act embraces the whole subject included in its title and contains a repealer of all acts and parts of acts inconsistent with its provisions," then it is plain that whatever power the Hudson County Board of Health may have had under the act of 1874 was abrogated by the act of 1888.

We confess we can suggest no reason why the Legislature in Section 9 of the Revision inserted the words "clerk of every county board of health and vital statistics," nor the reason for paragraph fifteen. But whatever the purpose may have been, it clearly was not sufficient to re-confer upon the Hudson county Board of Health the power to receive certificates of vital facts. The most that can be said with regard to these sections is that Section 15 creates an inference that there are or may hereafter be boards of health (other than local boards) which have a right to receive such certificates and that Section 9 raises an inference that a county board of health may be such a board.

Neither of these provisions, however, even if it were permissive for some board other than a local board to receive such certificates, overcomes the clear language of sections 1 and 3 of the Revision which makes it mandatory for such reports to be made by physicians, etc. to the local registrar of vital statistics.

It must also be remembered in connection with this matter that the Hudson County Board of Health is the only county board of health in the state.

That Vital statistics are required to be filed with local Registrars is further shown by Chapter 389 of the laws of 1915, being an amendment to Section 14 of the act of 1909 by which it was fur-

ther provided that in case any local board of health should fail to prosecute for violations of the act of 1909 the State Board of Health shall have power to compel the local board to prosecute such case, and after formal notice and failure to prosecute, each and every member of the local board shall be liable to a penalty of \$25 to be recovered in an action of debt in the name of the State Board.

- 10 It is respectfully submitted that the judgment of the Supreme Court affirming the judgment of the Hoboken District Court is erroneous and should be reversed.

Respectfully submitted,

FRED'K K. HOPKINS,

Attorney of Plaintiff-Appellant.

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## New Jersey Court of Errors and Appeals

BOARD OF HEALTH OF THE TOWN  
OF WEST HOBOKEN, in the  
County of Hudson,

*Plaintiff-Appellant,*

*vs.*

WARREN J. DUCKETT,

*Defendant-Respondent.*

*On Contract.*

### Brief of Defendant-Respondent.

The appeal in this case is taken from a judgment of the Supreme Court affirming a judgment for the defendant in the Hoboken District Court. The case was one to recover from the defendant, a practicing physician, a penalty for failure to report a birth, according to the provisions of an act of the Legislature entitled, "An Act to secure in this State the certification of births and deaths and of the vital facts relating thereto, and to provide for the record thereof," being Chapter 109 of the Laws of 1909.

The defense interposed in the trial court was that the defendant had complied with the law inasmuch as he had filed his certificate with the Hudson County Board of Health.

The question at issue before this Court is: whether the certificate filed by the defendant with the County Board of Health was sufficient compliance with the statute, or whether it is necessary to file such certificate with the West Hoboken Board of Health, in order to fulfill the requirements of the law.

We submit that there is no question but that prior to the Act of 1909, the County Board of Health and vital statistics was a board locally established for the receipt of birth certificates such as the one in question. Such being the fact, there remains but one question to be determined: whether the Act of 1909 abrogated this authority. Section 1, Chapter 109, Laws of 1909, page 168, in providing where certificate of births shall be filed, mentions the persons duly qualified to receive and file the certificate as the

“registrar of vital statistics in any city, borough, town or other local municipal government in this State.”

This must be read in conjunction with Section 9 of the Act, which reads as follows:

“9. It shall be the duty of the assessor and clerk of every township and of the registrar of vital statistics and clerk of every city, borough, town and of the clerk of *every County Board of Health and vital statistics* or other local municipal government in this State on or before the 10th day of each calendar month to transmit by mail, express or messenger to the State Bureau of Vital Statistics at Trenton in an envelope or package marked ‘Vital Statistics,’ all the certificates of births and deaths received by such officer” \* \* \*

It will be seen by Section 9 (*supra*) the clerk of the County Board of Health and Vital Statistics is specifically included as among those who shall transmit reports of births to the State Board at Trenton. The direct classification of the County Board of Health and vital statistics as a local governing board within the meaning of the statute clearly indicates the intention of the Legislature to include this board as a proper place for the filing of such reports. To construe the section otherwise would be to render it

nugatory and to distort the expressed, direct words of the section. The words themselves are clear and must be taken to mean precisely what they say. Any other construction would place a duty on the clerk of the County Board of making returns for certificates which could not under the law be filed with him. It is therefore concluded that the Legislature accorded at least coordinate jurisdiction to the County Board of Health and vital statistics and to the Town Board. That there is no inherent repugnance in such a state of affairs, however anomalous it may be, is clearly indicated by the Supreme Court in *State v. Board of Health and Vital Statistics of Hudson County*, 85 N. J. L., 13 and 89 Atl., 250.

This implies that filing with either board constitutes compliance with the law as it is ridiculous to read into the law a necessity for a duplicate filing.

Reference to Section 15 of the Act of 1909 clearly shows the right of the County Board to receive such certificates.

“Section 15. Nothing in this act shall interfere with the reception, recording and transmission of certificates of births and deaths by any Board of Health now or hereafter established in this state.”

The words are plain and perfectly clear. Either they do continue the right of the County Board or else they are a mere “*brutum fulmen*, possessed of no vitality and operating upon no subject matter,” using the language of Chief Justice Gummere in *State v. Hudson County Board of Health and Vital Statistics (supra)*. It cannot be presumed that the Legislature did not know the effect of its words or that it meant other than it exactly declared.

The general repealer at the end of the act must be construed in connection with the other provisions of the act. There is no inconsistency between the various acts establishing the powers of the County Board of Health and Vital Statistics and this act, particularly since the Act of 1909 (page 168) includes the County Board of Health in its provisions; nor can it be presumed that the repealer can act impliedly. It is well established and is so declared by the Chief Justice in *State v. Hudson County Board of Health and Vital Statistics (supra)* that "repealers by implication are not favored and will not be considered to have taken place unless the legislative intent to abrogate the prior enactment is *entirely clear*." In the above cited case there was a similar repealer which was held not to abrogate the effect of an earlier statute which might by implication have seemed to repeal such earlier statute.

**The act of 1888 does not repeal and abrogate the right of the Hudson County Board of Health to receive and file certificates of births.**

Assuming, for the sake of argument, that it does abrogate the power and right of the Board of Health to receive and file certificates of births, we submit that such power is re-established under the Act of 1909. The Court will see by Section 15 of the act quoted above, that nothing in the act "**shall interfere with the reception, recording and transmission of certificates of births and deaths by any Board of Health now or hereafter established in this state.**" From the language quoted, it was clearly the intention of the Legislature to vest in the County Board of Health of Hudson County the right to receive such certificates of births. The intention of the Legislature could be construed in no other way.

The view herein taken of the effect of this provision of the statute finds support in the Ninth Section of the Act of 1909, which in the clearest language imposes upon the County Board of Health and Vital Statistics the duty to make monthly returns to the State Bureau of Vital Statistics at Trenton.

It therefore seems evident that the Legislature included the County Board of Health and Vital Statistics among the local governing bodies where certificates might be filed; that it expressly reserved such rights to properly constituted boards, such as the County Board.

We therefore contend that filing the certificate with the County Board fulfilled the requirements of the law and it was not necessary to file such certificate with the West Hoboken Board.

It is respectfully submitted that the judgment brought up for review be affirmed.

Respectfully submitted,

THOS. F. MEANEY, JR.,  
*Attorney for Defendant-Respondent.*

J. EMIL WALSCHEID,  
*Of Counsel.*



WILSON

HAMMER MILL

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Notice of Appeal.

New Jersey Supreme Court. 10

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BOARD OF HEALTH OF THE TOWN  
OF WEST HOBOKEN, in the Coun-  
ty of Hudson,

*Plaintiff-Appellant,*  
*vs.*

WARREN J. DUCKETT,

*Defendant-Respondent.*

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On Contract.  
On Appeal.

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TAKE NOTICE that the plaintiff-appellant appeals to the Court of Errors and Appeals from the whole of the judgment in this cause on the following grounds:

1. Because the Supreme Court affirmed the judgment of the Hoboken District Court, which was erroneous.

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2. Because the Supreme Court found in favor of the defendant instead of the plaintiff, which was erroneous.

3. Because the Supreme Court decided that, "in view of the effect of the decision referred to (*State v. Hudson County Board of Health*, 85 Law 13) which in effect fixes the legal status of of the County Board for the purposes of its creation, that the report made to it by the defend-

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ant was in compliance with the requirements of the Act of 1909, and that the judgment below should be affirmed," which was erroneous.

FRED'K K. HOPKINS,  
Attorney of Plaintiff-Appellant.

Dated, May 29th, 1918.

To:

10 FRANK K. RUNYON,  
Attorney of Defendant-Respondent.

**HOBOKEN DISTRICT COURT**

No. 20895.

**State of Case on Appeal Agreed to by  
Parties.**

20 BOARD OF HEALTH OF THE TOWN  
OF WEST HOBOKEN, in the Coun-  
ty of Hudson,

*Plaintiff-Appellant,*  
*vs.*

WARREN J. DUCKETT,

*Defendant-Respondent.*

On Contract  
On Appeal.

30 The parties hereto by their respective attorneys  
submit the following as the state of the case for  
appeal:

This action was to recover a penalty alleged to have been incurred by the defendant, a practicing physician, for failure to report a birth according to an act entitled, "An act to secure in this state the certification of births and deaths and of the vital facts relating thereto, and to provide for the record thereof (Revision of 1909) being chapter 109 of the laws of 1909.

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*State of Case on Appeal.*

The facts were stipulated between counsel for the respective parties as follows:

1. The plaintiff, Board of Health of the Town of West Hoboken, in the County of Hudson, is a local Board of Health, duly organized and existing under the health laws of the State of New Jersey.

2. On and prior to May 11, 1917, Frank A. Frederick was the Registrar of Vital Statistics of the Town of West Hoboken. 10

3. The defendant, Warren J. Duckett on and prior to said date was a practicing physician residing in the City of Jersey City in the County of Hudson in this State.

4. On May 11, 1917, a child named Lily Winifred Searle, whose father's name is Seril Searle, and whose mother's maiden name is Sophia Albrecht, was born at No. 301 Elm Street in the Town of West Hoboken, aforesaid, and the said Warren J. Duckett was the physician present at the birth of such child. 20

5. Said defendant did not within five days after such birth or at any other time transmit to the Registrar of Vital Statistics of the Town of West Hoboken, a certificate of the birth of the said Lily Winifred Searle, setting forth any of the matters and things required by Section 1 of the provisions of an act of the Legislature of the State of New Jersey entitled, "An Act to secure in this state the certification of births and deaths and of the vital facts relating thereto, and to provide for the record thereof (Revision of 1909) being Chapter 109 of the Laws of 1909. 30

6. The said Warren J. Duckett transmitted to the Office of the Hudson County Board of Health, a certificate with regard to said child, setting forth the date of the birth, the town in which the 40

*Opinion of Supreme Court.*

birth occurred, the name of the father, the maiden name of the mother, the birth place, residence, occupation, age and color of each of the parents, the sex and color of the child, the name of the child and the name of the attending physician.

10 7. That by a Special Act of the Legislature approved March 27, 1874, entitled, "An Act to provide for a board of health and vital statistics and to prevent the spread of disease," the Hudson County Board of Health was established by which it became lawful for such board to pass and enforce ordinances relating to vital statistics, which ordinances have been passed, and that the defendant, Duckett, complied with such ordinances in relation to such birth.

20 The Court gave judgment for the defendant, and filed the following memorandum:

30 "In my judgment, the effect of the proviso in the 15th Section of the Act of 1909 (1 *Comp. St.*, p. 212, Title "*Births, Deaths and Vital Statistics*") is to leave wholly unaffected the procedure which was in force at the time when the later legislation was enacted, making it lawful for physicians to report births to the Hudson County Board of Health. The language in question could not reasonably have been intended merely to permit filing with the County Board without recognizing such filing as compliance with the law. So construed, this provision of the statute would be unnecessary and entirely futile. The view here taken of the effect of the proviso finds support in the 9th section (1 *Comp. St.*, p. 211) which makes it the duty of the clerk of every county board of health and vital statistics (inter alia) to make monthly returns to the state

40 bureal at Trenton.

"Let judgment be entered for the defendant."

CHARLES L. CARRICK,  
Acting Judge.

A transcript of said judgment is hereto annexed.

FRED'K K. HOPKINS,  
Attorney for Plaintiff.

THOMAS F. MEANEY, JR.,  
Attorney for Defendant.

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**Specifications of Determinations of the  
District Court with which Appellant  
Is Dissatisfied in Point of Law.**

**NEW JERSEY SUPREME COURT.**

BOARD OF HEALTH OF THE TOWN OF  
WEST HOBOKEN, in the County of  
Hudson,

*Plaintiff-Appellant.*  
*vs.*

WARREN J. DUCKETT,

*Defendant-Respondent.*

On Cont.  
(On Appeal)

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The following is a specification of the determinations of the District Court with which appellant is dissatisfied in point of law:

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1. The memorandum filed by the Court, as follows:

"In my judgment, the effect of the proviso in the 15th Section of the Act of 1909 (1 *Comp. St.*, p. 212, Title 'Births, Deaths and Vital Statistics') is to leave wholly unaffected the procedure which was in force at the time when the later legislation was enacted, making it lawful for physicians to report births to the Hudson County Board of Health. The language in question could not

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reasonably have been intended merely to permit filing with the County Board, without recognizing such filing as compliance with the law. So construed, this provision of the statute would be unnecessary and entirely futile. The view here taken of the effect of the proviso finds support in the 9th section (1 *Comp. St.*, p. 211) which makes it the duty of the clerk of every county board of health and vital statistics (*inter alia*) to make monthly returns to the State Bureau at Trenton.

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"Let judgment be entered for the defendant."

2. The granting of the judgment in favor of the defendant.

FRED'K K. HOPKINS,  
Attorney of Plaintiff.

### Opinion of Supreme Court.

#### NEW JERSEY SUPREME COURT.

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BOARD OF HEALTH OF THE TOWN OF  
WEST HOBOKEN, N. J.,

*vs.*

WARREN J. DUCKETT.

Argued: November Term, 1917.

Decided February Term, 1918.

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Appeal from Hoboken District Court.

FREDERICK K. HOPKINS, For appellant,  
THOMAS F. MEANEY, JR., For respondent.

Argued before Justices Swayze, Trenchard and Minturn.

PER CURIAM:

The defendant a practicing physician in the

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*State of Case on Appeal.*

Town of West Hoboken was sued for the recovery of a penalty for failing to report to the local Board of Health, a birth in that Town, according to the provisions of the act regulating that subject (Chap. 109, L. 1909).

The defendant relied upon the fact that he had made his report to the County Board of Health, which act he insists is a compliance with the requirements of the law. Hudson County is exceptional in the fact that it possesses a County Board of Health and Vital Statistics. **10**

The legal status of that Board has been settled by the Court of Errors and Appeals in *State v. Hudson County Board of Health* 85 L. 13. The District Court held that the filing of the certificates with the County Board was a compliance with the provisions of the act of 1909, and gave judgment for the defendant. **20**

The construction of the legislation upon this subject is not without its difficulty, but we are inclined to think in view of the effect of the decision referred to, which in effect fixes the legal status of the County Board for the purposes of its creation, that the report made to it by the defendant was a compliance with the requirements of the act of 1909, and that the judgment below should be affirmed. **30**

**Rule for Judgment.****NEW JERSEY SUPREME COURT.**


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BOARD OF HEALTH OF THE TOWN OF  
WEST HOBOKEN, in the County of  
Hudson,

*Plaintiff-Appellant.*

*vs.*

WARREN J. DUCKETT,

*Defendant-Appellee.*

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On Appeal.

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This cause having been duly argued at the November Term of this court by Frederick K. Hopkins, of counsel for the plaintiff-appellant, and Frank R. Runyon, of counsel for the defendant-appellee, and the court having considered the same and finding no error in the record or proceedings in the District Court of the City of Hoboken:

It is thereupon ordered, and adjudged that the judgment of the District Court of the City of Hoboken removed by appeal in this court be affirmed with costs and that the record be remitted to the District Court of the City of Hoboken to be proceeded with in accordance with this judgment and the practice of said court.

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On Motion of Frank R. Runyon,  
Attorney of Defendant-Appellee.

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