



thousand dollars, lawful money, to be paid to the said Board of Chosen Freeholders, or their successors, to which payment well, and truly to be made; we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, dated the tenth day of May, in the year of our Lord, one thousand eight hundred and thirty-seven. The condition of the above obligation is, that whereas the above bounden Aaron Peck has been elected by the Board of Chosen Freeholders, of the said county of Essex, collector of the said county. Now therefore, if the said Aaron Peck shall faithfully perform the duty of the said office, as collector of said county of Essex according to law, the above obligation to be void, otherwise to remain in full force.

SEALED, SIGNED, AND  
 DELIVERED, IN PRESENCE OF  
 JABEZ PIERSON. } *Signed,*  
 AARON PECK, L. S.  
 WM. PECK, L. S.  
 SAMUEL CONDIT, L. S.  
 STEPHEN D. DAY, L. S.  
 WM. PIERSON, JR. L. S.  
 JACOB K. MEAD, L. S.  
 CHAS. R. AKERS, L. S.  
 WM. STEVENS, L. S.  
 LEWIS DODD, L. S.  
 D. SMITH, L. S.  
 CALEB BALDWIN, L. S.  
 WM. WRIGHT, L. S.  
 ROBT. BALDWIN, L. S.

Several objections were made to the proof of said bond, on the ground of insufficiency; and other objections to witnesses for incompetency, which objections were overruled by the court, and the testimony admitted: whereupon bills of exceptions were taken by the said plaintiffs in error, to the opinions of the court therein. A verdict was rendered for the Board of Chosen Freeholders: and a writ of error was brought by the said plaintiffs in error, returnable to the term of November, eighteen hundred and forty-one, of the Supreme court. The cause being called on for argument in the Supreme Court, in the term of May 1845, the Chief Justice was challenged, because he had given an opinion upon the matters in controversy in the Circuit Court, and the challenge overruled by the Court—Upon argument of the errors assigned,

the judgment of the Circuit court was affirmed, and a writ of Error brought to this Court. The causes of error in overruling said challenges, in allowing such controverted testimony, in admitting witnesses, objected to as aforesaid, and other errors appear in the following assignment of errors, as well as the contents of the said challenges, and bills of exceptions.

#### ASSIGNMENT OF ERRORS.

1. Afterwards, that is to say, in the term of Jan. eighteen hundred and forty-six, of the Court of Errors of the State of New Jersey, come the aforesaid plaintiffs in error by Robert Van Arsdale their attorney, and say, that in the record and proceedings aforesaid, and also all the matters referred to, recited and contained in certain bills of exceptions, and also in giving the verdict and judgment aforesaid, there is manifest error in this, to wit, that it appears by the record aforesaid, and the bill of exceptions first taken in said cause, that when the said cause was called on for trial, at the October term, in the year aforesaid, of the circuit court, in and for the county of Essex, before his honor Joseph C. Hornblower, a judge of said court, the said plaintiffs in error who were defendants in said circuit court, challenged in writing, the said Joseph C. Hornblower, because he is an inhabitant of the county of Essex, and owner of lands, tenements, and heraditaments, and other taxable property within said county, and liable to be assessed and taxed for, and bound by law, to contribute toward the expenses of this suit; if costs be awarded and adjudged to the defendants therein, and that the debt demanded by the plaintiffs in their declaration in this cause, of and from the defendants, if recovered and received by the plaintiffs, will be recovered and received to and for the use and benefit of Joseph C. Hornblower, in common with the other owners of taxable property and estate, inhabitants in said county, and that the said Joseph C. Hornblower, was interested in the event of the said cause; to which challenge the said The Board of Chosen Freeholders of the county of Essex by their attorney demurred; and the said plaintiffs in error joined in demurrer; and the said judge sustained the said demurrer, whereas he ought to have overruled the same, and sustained the said challenge.

2. And there is also error in this to wit: that it appears by the record and proceedings aforesaid, that the jurors of the jury, summoned to try the matters in issue in said causes, being impannelled, the said plaintiffs in error challenged in writing, in the said bill of exceptions secondly taken in said cause referred to, the array of the said jury, made by James B. Burnet the sheriff of said county of Essex, who summoned said jurors, and returned said pannel, because the said James B. Burnet is an inhabitant of the said county of Essex, and the owner of lands, tenements, and hereditaments and other taxable property within said county and liable to be assessed and taxed for, and bound by law to contribute towards the expenses of this suit, if costs be awarded and adjudged to the defendants therein, to wit, the said plaintiffs in error, and that the debt demanded by the said The Board of Chosen Freeholders of the county of Essex in their declaration in this cause of and from said plaintiffs in error, if recovered and received by the said Freeholders, will be recovered and received to, and for the use and benefit of the said James B. Burnet in common with the other owners of taxable property and estate, inhabitants in said county, and that the said James B. Burnet was interested in the event of said cause, and the said pannel ought to be quashed; to which last mentioned challenge, the said The Chosen Freeholders of the county of Essex demurred, and the said plaintiffs in error joined in demurrer, and the said circuit court sustained the said demurrer, whereas the said court should have overruled the same, and sustained the last mentioned challenge.

3. And there is error also in this, to wit, that it appears by the said record and the bill of exceptions thirdly taken in said cause, that Aaron Coe the first named juror in the pannel returned by the sheriff of the county of Essex, at the trial of said cause in said circuit court, being called and about to be sworn, the said plaintiffs in error challenged in writing the said Aaron Coe, because he is an inhabitant of the said county of Essex, and the owner of lands, tenements and hereditaments and other taxable property within said county, and liable to be assessed and taxed for and bound by law to contribute towards the expenses of this suit, if costs be awarded and adjudged to the said plaintiffs in error, and

that the debt demanded by the said The Board of Chosen Freeholders of the said county of Essex, in their declaration in this cause of and from the said plaintiffs in error, if recovered and received by the said Freeholders will be recovered and received to and for the use and benefit of the said Aaron Coe, in common with the other owners of taxable property and estate, inhabitants in said county, and that the said Aaron Coe, was interested in the event of said cause, to which last mentioned challenge the said The Board of Chosen Freeholders of the county of Essex demurred, and the said plaintiffs in error joined in demurrer, and the said circuit court sustained the said demurrer, whereas the said court ought to have overruled the same and sustained the said last mentioned challenge.

4. And there is also error in this to wit, that it appears by the said record and proceedings and the bill of exceptions 4thly taken in said cause, that the signing, sealing, and delivery of the bond mentioned in the declaration of the said The Board of Chosen Freeholders of the county of Essex, were not sufficiently proved to admit the same to be given in evidence to a jury. And it appears that when the said cause was ordered to proceed, and the jury sworn, the said defendants in error called Jabez Pierson as a witness, who being sworn, testified that the bond shown to him purporting to be executed by the plaintiffs in error, to the said The Board of Chosen Freeholders of the county of Essex, was brought to him by Aaron Peck; the name of the said Aaron Peck, having been before subscribed thereto, and witness thought the name of William Peck also, that witness signed his name thereto as a witness to the signature of Aaron Peck, at his request, that he knew the hand writing of William Peck, William Pierson, jr. Lewis Dodd, Stephen D. Day, and that their names signed to said bond, he believed to be in their respective hand writings, that none of their names were subscribed to said bond, when brought to him, except as above mentioned, and that he saw none of them sign, or heard any of them acknowledge their signatures.

That Caleb Baldwin, another witness called by the said defendants in error, testified that he is acquainted with the hand-writings of Aaron Peck, William Peck, William Pierson, jr.

Stephen D. Day, and Lewis Dodd, and believed their signatures to said bond to be in their proper handwriting.

That Samuel Searing, another witness called by said defendants in error, testified that he is acquainted with the handwriting of Jacob K. Mead, Robert Baldwin, and David Smith, that he believed the signature Jacob K. Mead, to said bond, is the handwriting of J. K. Mead, and that the signature D. Smith, to said bond is the handwriting of David Smith, and that the signature Robert Baldwin, to said bond, is the proper handwriting of said Robert Baldwin.

That William A. Myer, another witness sworn on the part of the said defendants in error testified that he is acquainted with the handwriting of Aaron Peck, Jacob K. Mead, Charles R. Akers William Stevens, David Smith, and Caleb Baldwin, of West Bloomfield, and that the names of said Aaron Peck, Jacob K. Mead, Charles R. Akers, William Stevens and Caleb Baldwin, subscribed to said bond, are, as he believed, in the handwriting respectively of said persons, and the signature of D. Smith, to said bond, is in the handwriting of said David Smith.

That Frederick H. Smith, a witness sworn on the part of said defendants in error, testified that he is acquainted with the handwriting of William Wright, and that his signature to said bond is in his proper handwriting.

That Philip Kingsley, a witness sworn on the part of said defendants in error, testified that he is acquainted with the handwriting of Samuel Condit, and that the signature Samuel Condit to said bond, is the proper handwriting, as he believed, of the said Samuel Condit. And thereupon the said defendants in error by their counsel offered to read and give the said bond in evidence to the jury; to which the said plaintiffs in error by their counsel objected, upon the ground that the testimony given by the said defendants in error, was insufficient in law to prove the due signing, sealing, and delivery of the said bond, so as to admit the same to be given in evidence to the jury, and also upon the ground of variance between the said bond, and the bond set out in the declaration; and the said circuit court gave an opinion, overruling said objection, and admitting the said bond to be read in evidence to the jury, whereas the said court ought to have sus-

tained said objection, and excluded the said bond from being so read in evidence.

5. And there is also error in this to wit, that it appears by said record and proceedings and bill of exceptions fifthly taken in said cause, that the said defendants in error called as a witness, on the trial of said cause, James W. Wade, then and still being the present county collector of the county of Essex, and was one of the Board of Chosen Freeholders for said county for the year eighteen hundred and thirty-seven, and eighteen hundred and thirty eight, ending in the May of last named year, and thereupon the said plaintiffs in error objected to his admission as a witness, on the ground that he was interested in the event of this suit, but the said circuit court overruled the objection, and ordered the witness sworn: whereas the said court ought to have sustained the said objection, and excluded the testimony of the said James W. Wade.

6. And there is also error in this to wit, that it appears by the said record and proceedings and the bill of exceptions lastly taken in said cause that the said James W. Wade being sworn, the defendants in error by their counsel proposed to him the following question. "Who acted as director of the Board of Chosen Freeholders of the county of Essex, on the twenty-fifth day of March, A. D. 1839?" To which question the said plaintiffs in error by their counsel objected, on the ground that the minutes of the said Board ought to be produced, and given in evidence to prove the fact, and thereupon the said circuit court overruled the said objection and allowed the said question to be put and answered, whereas the said court ought to have sustained the said objection, and disallowed the said question.

7. And there is also error in this, to wit, that when the said cause being removed from the said Circuit Court to the Supreme Court of Judicature, of the State of New-Jersey, by Writ of Error, and the errors therein assigned being called in for argument, in the term of May, in the year of our Lord, 1845, and his Honor, Joseph C. Hornblower Chief Justice of said Supreme Court, being upon the bench, the plaintiff's in error challenged in writing the said Joseph C. Hornblower, Chief Justice as aforesaid, because the said Joseph C.

Hornblower, Esq. as judge of Circuit Court of the county of Essex, (in which Court the cause, the final judgment, and proceedings were originally commenced and finally determined before removal to the said Supreme Court by Writ of Error) presided upon the trial of said cause in said Circuit Court, and upon such trial, formed and delivered his opinion upon the matter in question in this cause, wherefore they prayed judgment that the said Joseph C. Hornblower, Chief Justice as aforesaid might not sit in judgment upon the argument of the said cause. To which challenge the said Board of Chosen Freeholders of the county of Essex, by their attorney, demurred, and the said plaintiffs in Error joined in demurrer, and the Justices of the Supreme Court sustained the said demurrer, whereas they ought to have overruled the same, and allowed the said challenge.

8. And there is also error in this to wit, that it appears by the said record and proceedings that the judgment aforesaid, in form aforesaid, was given for the said The Board of Chosen Freeholders of the county of Essex, against the said plaintiffs in error, and afterwards affirmed by the said Supreme Court, whereas by the law of the land the said judgment, should have been given for the said plaintiffs in error against the said The Board of Chosen Freeholders of the county of Essex, and the judgment so given against the said plaintiffs should have been reversed, and thereupon the said plaintiffs in error, pray that the judgment aforesaid, affirmed as aforesaid, for the errors aforesaid, and others in the record and proceedings aforesaid, may be reversed, annulled, and held for nothing, and that the said plaintiffs in error may be restored to all things they have lost, on occasion of the same.

ROBERT VAN ARSDALE, Attorney,  
for Plaintiffs in Error.

The Defendants filed the common joinder in error.

O. S. HALSTED, Jun. attorney for the defendants in error.