

N. J. COURT OF ERRORS AND APPEAL.

The State Robert Craig :

Plaintiff in Error :

vs. :

Wm. N. Mackey :

Agent for Christine Mackey:

Defendant in Error:

On Writ of Error

to the Supreme Court.

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BRIEF for plaintiff in error.

First:

The justice had no jurisdiction in this case as the question to be tried before the justice of the Peace involved the title to real estate.

By referring to the act of the legislature under which this suit was brought approved, <sup>L. L. .</sup> March 23rd, 1883, <sup>page 234</sup> entitled "An act to authorise and enable small land owners to drain and improve their lands." It will be seen that the act gives the power only to "owner or owners" of any meadow, swamp or other lands to apply to the chosen freeholders and surveyors of the highway of the township to have certain draining done.

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vs.  
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HOW could this be proved in a Justice's Court?

THE mere fact of being in possession will not warrant a suit being brought the words of the Act are that plaintiff must be "owner".

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CERTAINLY he who is owner ~~of real estate~~ is such an one as is seized in fee of the same, *or has the right of possession*

IN the case of Vannatta vs. Jones, 13, Vr. 561, the question was whether proof of a dedication of land to public use of a highway involved a question of title to lands and hence was not capable of being tried in a court for the trial of small causes.

THE court held that the suit ought to have been dismissed as beyond the jurisdiction of these courts.

Judge Mc Gee in his opinion held that it was the duty of the Common Pleas to have dismissed the case for want of jurisdiction and that the defendant could not have pleaded title under section 25, because his justification depended on a title either in himself or in another but solely on the fact the land in question was a public highway.

THIS justification he could only make by proof and when such proof necessarily involves the question of title to lands, it ought to have ousted the common pleas of its jurisdiction.

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IT seems to be the rule that where the nature of the action is such that in order to maintain it, the plaintiff must necessarily show on his part, whatever may be the defense set up by the defendant, something more than the "pedis possessio" (the mere actual possession) and must give some evidence of title strictly so called; the action is not cognizable in the court for the trial of small causes.

SEE, Gregory vs. Kanous, 6th. Halst. 82.

IT has been held that an action of trespass quare clausam fregit can be brought in a justice court on the ground that the title to lands may not come in question as one who has a mere possession of land such as a tenant can bring such an action.

IN this case no one but the owner, he who is seized of the land in fee *or has the right of possession* can maintain his action hence the justice had no jurisdiction.

SEE also on this point Blackwell vs. Hagerman, Penn. 1032, Blackwell vs. Leslie, Ist., Southard II2.

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"The justice may try the fact of possession. THIS is of his jurisdiction."

SO also Canfield vs. Tolanson, 1, Zab, 85.

*In* THE case of Gregory vs. Kanase, 6th, Halst, 62, the following was laid down.

"THE rule excludes from the court of small causes all such actions of trespass as necessarily require on the part of the plaintiff evidence of title."

IN this case following this ruling it is as necessary for the person bringing the suit to show his ownership to the property *e.e.* his title, as for the plaintiff in a suit for trespass *quare clausam fregit* to show his title in the property damaged.

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ACCORDING to the transcript of the justice it appears that the summons contained only the initials of the plaintiff's christian name.

THIS was not sufficient in law. In the case of Elver-son vs. Richards, 13, Vr. 69, it was held that initials cannot be used for the names of parties to actions except in cases of parties described by initial letters in bills of exchange, promissory notes &c. under section 28 of the statute.

In his opinion Judge Scudder refers to the case of Miller v Hay 3rd, Exch. 14. In that case the defendant was described as W. D. Hay and it was held to be an insufficient designation of a defendant and bad on the face of a declaration.

THE case of Nash vs. Colder, 5C. B. 177 was also referred to. In that case, it was held that the initial letter "W" was an incorrect description of the party and the court say that the declaration is bad.

SEE, Clayton vs. Tonkin, 4, Halst. 252, Seely vs. Schenck, Penn. 75, Wood vs. Fitian, 4, Zab. 838.

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THE assessment could only be laid against " each land owner " , P.L. 1883, page 235, Sec. 2nd.

THE third section says if any owner shall neglect or refuse to pay &c. it shall and may be lawful for the applicant to collect the sum assessed by action of debt in any court where the same may be cognizable.

THE applicant could not sue <sup>in</sup> the court for the trial of small causes, because he would be compelled to prove not only as before stated that he himself was an owner of lands but also that the defendant in the action was such person as was liable to be sued under the act, namely a land owner who had refused or neglected to pay an assessment.

THE word "owner" has been defined to be one of variable meaning as applied to real estate. Crane vs. Elizabeth, 9th. Stew. 339.

IN that case this court held (page 342) that " in the charter now under consideration no cause is found for going beyond the ordinary meaning of the language used."

IT is submitted that in the act in question no cause can be found. ON the contrary the legislature surely never intended that a mere tenant in possession, perhaps for the term of a month, should be assessed for the drain-

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THE concluding words of the 3rd. section " in any court  
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## New Jersey Court of Errors and Appeals.

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CHRISTINE MACKEY, real party, Defendant in Error, and THE STATE, ROBERT CRAIG, Plaintiff in Error.	} On Writ of Certiorari to the Supreme Court
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### *Brief of J. G. Shipman & Son for the Defendant in Error.*

This cause was originally commenced in the Court for the trial of small causes. The first seven pages of the printed book disclose the whole proceeding from its commencement until its close before the Justice. It was tried by jury, and the verdict was for the plaintiff, \$53.02 cents debt, with costs of suit, upon which the Justice gave judgment.

The proceedings and judgment in the case were removed by the defendant, Robert Craig, into the Supreme Court, by certiorari, instead of being removed to the Court of Common Pleas by appeal, and pages 16 and 17 will show the action of the Supreme Court in the matter. Notice was given that application would be made to the Supreme Court to dismiss the writ of certiorari on the ground that a certiorari would not lie, but the remedy was by appeal to

the Court of Common Pleas. That matter was argued before the Supreme Court, and the Court granted the motion, and dismissed the certiorari, and ordered the cause remitted to the Court below to be proceeded in according to law. See page 17. From that judgment of the Supreme Court this writ of error is taken, and the plaintiff in error to sustain this writ has challenged the jurisdiction of the Justice, and has attempted by his brief in the first place to show the want of jurisdiction in the Court below on the ground that by the act of the Legislature, which gave rise to this action, the title to land must necessarily come in question on the trial, and the plaintiff would necessarily be required to prove title to her land by deed in such a way as to divest the Justice of his jurisdiction.

But the Court will perceive that the plaintiff takes for granted the very thing that is to be proven. He simply alleges "that it would be impossible to recover under this act, without first proving the plaintiff or plaintiffs were seized in fee of real estate," and asks how this could be done in a Justice's Court. The only objection before the Justice was to the state of demand, that it appeared by it that the title to land came in question, and therefore the Justice had no jurisdiction. The Justice very properly decided that no such thing appeared by the state of demand, and it nowhere appears that on the trial of the cause before the Justice the title to land came in question in any way, or that any proof of the title was made during the progress of the cause before the Justice. They make the allegation, and without attempting to prove it at all, they cite authority to show what nobody ever disputed, that you cannot try the title to land by offering a deed, etc., in a Justice's Court.

The title to land could not and did not come in question in the cause. The action was brought to recover simply the amount of an assessment fixed by the surveyors and freeholder, and all it was necessary to show was the fact of the assessment, and the amount due, and then the plaintiff was entitled to recover.

The act referred to (laws of 1833, page 234 and 235,) in the first two sections settles all the preliminary matters, and the third section provides the mode of collecting the assessment. The first section provides that the owner or owners of any meadow or swamp lands, etc., lying or being so situate that it cannot be drained sufficiently for the effectual improvement of the same, without clearing out, cutting down, and lowering the bed of creeks, and cutting drains, etc., into the lands *owned by or in possession* of such person or persons who will not sufficiently clear out, cut down, etc., and who will not make, clear out, cut, make and keep open, sufficient ditches or drains in or through the lands so owned or possessed by such person or persons, or will not assist others in such drainage, who may desire the same, may apply to the two surveyors of the highways, and the chosen freeholder of the township, who are directed and required upon proper notice being given to all parties interested, upon which they are to decide, and their decision is to be final and conclusive, and under their oath to proceed to view the land and premises, which it was alleged would be benefited, and should make all the orders about the said drainage, and at the same time apportion to each land owner, who may be in any way benefitted by said proposed drainage, his share of the expense of said drainage, as well as the expense of the application, etc., in proportion to the amount of benefits to be derived therefrom. The second section of the act provides that after the surveyors and freeholder have met and ordered the improvements to be made, they may proceed to have the beds of creeks and natural water courses cleared out, etc., and assess from time to time, as the work progresses, each land owner with his share of the expenses incurred, in accordance with the apportionment made by the surveyors and freeholder.

Well, now, all that had been done in the manner pointed out by the act, and of course the action of the surveyors and freeholder was conclusive upon the party until it was reversed by certiorari. Now, the

third section of the act provides that the applicant or applicants, shall, in person, or by notice in writing, left, etc., demand of, and from each owner, the sum assessed as aforesaid, together with a statement of money expended, etc., and if any of the said owners shall neglect or refuse to pay the sum assessed, it shall be lawful for the applicant or applicants, their agents, etc., to collect the same by action of debt in any Court where the same might be cognizable. Now, all there is to do in the Justice's Court, is to show the assessment and the party against whom it is assessed, is bound to pay. He can't even question the previous proceedings in this suit. He is simply bound to pay.

The title to land in this trial, has not in the remotest way come in question. There is certainly nothing in the point.

The party had a full remedy on appeal. The Revision, page 556, section 97, forbids a certiorari in all cases where the Justice has jurisdiction, but the party aggrieved shall have relief upon the trial, and that, both as to matter of law and matter of fact. The second objection, that the Justice had no jurisdiction because the summons contained only the initials of the plaintiff's christian name, is certainly unsound, and worthy of but little attention. In the first place it is not correct in point of fact.

The summons will be found on the first page of the book. He is to answer, "Wm. M. Mackey, agent for Christine Mackey." Now, Wm. is always understood to be an abbreviation of *William*. The first and last letter of the christian name are given, not the initial letters, and that makes the word *William*.

But in the second place, Christine Mackey is the real plaintiff, and her name is given in full.

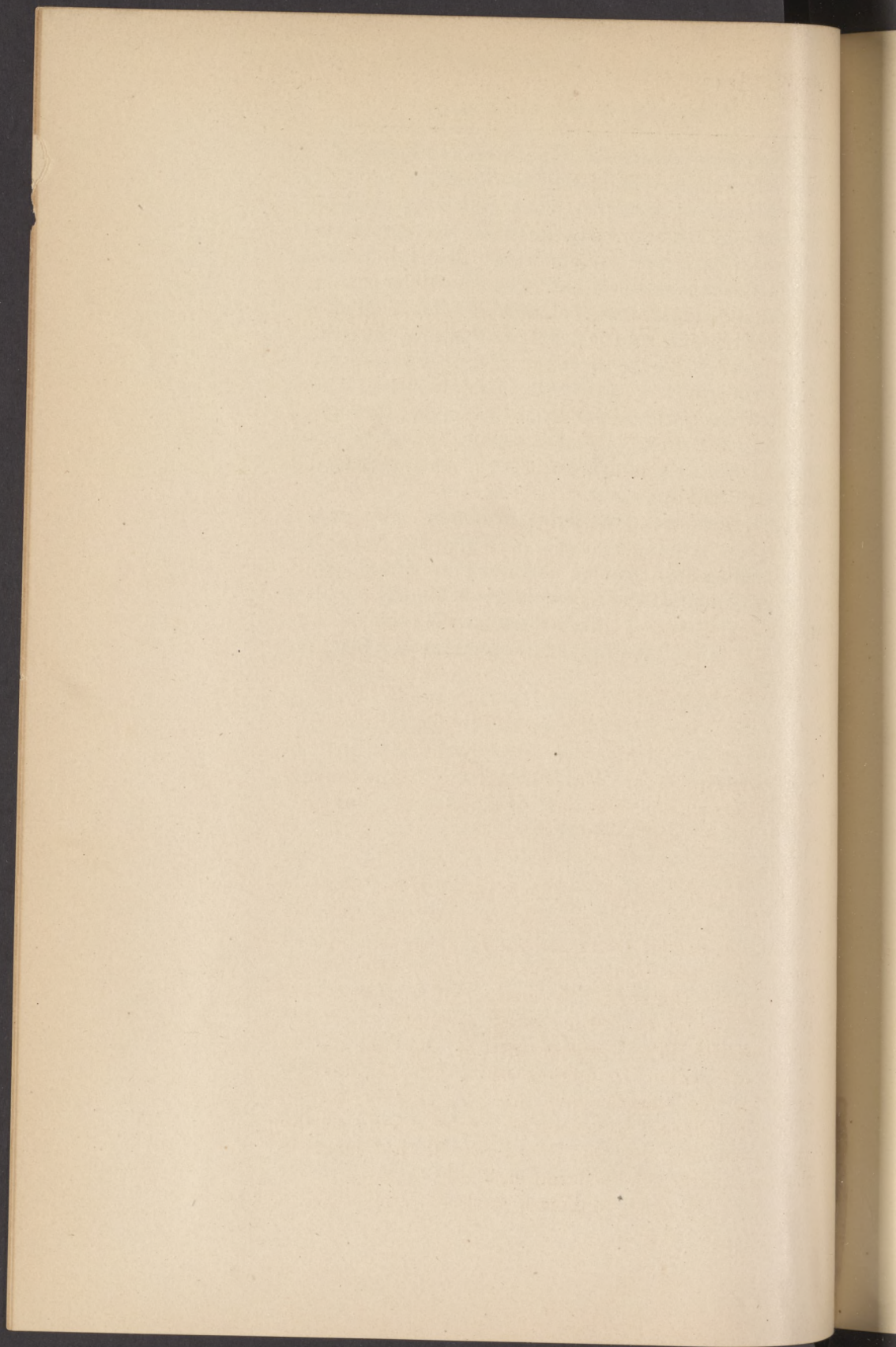
In the third place, the defendant appeared on the return day of the summons, took no objection whatever to the summons, and asked for an adjournment, and by consent of both parties the cause was adjourned to a day agreed upon by both the said parties. It is hardly necessary to cite authorities to show that by

this the defendant waived all objections, and submitted himself to the jurisdiction of the Court.

From the case of Seeley vs. Boos, Cox, 138, down to the present day, the Court by decisions too numerous to be quoted, have held this doctrine. But lastly, the pleadings were amended without any objections on the part of the defendant, and the name of Wm. M. Mackey was stricken out, and Christine Mackey, the real plaintiff, was left on the record. For all I have said above, see transcript on pages 2 and 3 of the book. The case, which the counsel cites from 13 Vroom, does not make it a jurisdictional question, at all, but simply is a defect in pleading, which could have been amended if defendant had appeared.

We shall not pursue the subject further. We submit there is no ground whatever on which the claim of the plaintiff in error can be sustained in this Court, and the judgment of the Supreme Court should be affirmed.

J. G. SHIPMAN & SON,  
Attorneys of Defendant in Error.



# New Jersey Court of Errors and Appeals.

*The State, Robert Craig*  
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*Defendant in Error.*

} *On a Writ*  
*of Error*  
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MARSHALL R. SMITH and HARRIS & BEASLEY,  
*Counsel for Plaintiff in Error,*  
J. G. SHIPMAN & SON, 10  
*Counsel for Defendant in Error.*

Transcript from Wm. M. Maberry, Esq., one of  
the Justices of the Peace of the County of Warren.

## SUMMONS.

WARREN COUNTY, ss. The State of New Jersey,  
To any Constable of said County.

Summon Robert Craig personally to be and appear 20  
before me, the subscriber, one of the Justices of the  
Peace of the County of Warren, at my office, in the  
Town of Belvidere, in the county aforesaid, on Thurs-  
day, the fifth day of March next, at the hour of two  
in the afternoon, to answer unto Wm. M. Mackey,  
agent for Christine Mackey, in a plea of debt, for one  
hundred dollars. Given under my hand and seal, this  
twenty-seventh day of February, in the year one  
thousand eight hundred and eighty-five.

Wm. M. Maberry, Justice of the Peace. 30



March 19, defendant appeared and demanded a trial by jury, whereupon I issued a venire for a jury of twelve men and handed the same to Nelson W. Teeter, constable.

March 19, the parties appeared. Nelson W. Teeter, constable, returned the venire and the following jurors, duly summoned. Counsel for defendant moved to non-suit the plaintiff, for sundry causes, (noted and attached.) I overruled the motion. The plaintiff asked leave to strike out from the state of demand the name of William M. Mackey, agent, wherever it occurs in the state of demand, so that Christine Mackey would be the real plaintiff, to which the defendant made no objections, and I granted the motion to make said amendment. The jurors were then sworn, viz., John H. King, William Silverthorn, Richard T. Drake, Robert Fisher, William Miller, William H. Tinsman, Lewis Davidson, Frederick Widenor, Ira B. Keener, Robert Reimer, John Gardner and James Bair. William M. Mackey was sworn and examined on the part of the plaintiff. Also offered in evidence the proceedings of the Freeholders and Surveyors, marked "exhibit A." The defendant produced as witnesses Robert Craig, James Criger, David Shuler, David Anderson, Theodore Soliday and Joseph Pittenger.

The jury having heard the witnesses and parties retired, Nelson W. Teeter, constable, being sworn to attend them. After some time the jury returned and say that they find for the plaintiff the sum of fifty-three dollars and two cents debt, and so they say all. Whereupon I gave judgment for the plaintiff in the said sum of fifty-three dollars and two cents (\$53.-02) debt, and ten dollars and thirty-seven cents (\$10.-37) costs.

Writ of certiorari, issued out of the Supreme Court of New Jersey, received and noted in docket.

Dated March 24, 1885.

Attest,

M. BEASLEY, C. J.

I do hereby certify that the foregoing is a true and correct copy, taken from my docket. As witness my

hand and seal, this 28th day of May, A. D. 1885.

WM. M. MABERRY, [seal.]  
Justice of the Peace.

*Copy of exceptions and motion, noted and filed by defendant. Court before Wm. M. Maberry, Justice of the Peace.*

WM. M. MACKAY,

Agent of Christine Mackey,  
vs.

} In Debt.

ROBERT CRAIG.

10 Tried March 19, 1885.

The defendant moved, before entering into the merits of the case, on trial day, for a non-suit, for the following reasons, to wit :

1st.—Because the plaintiff has no legal right to bring an action, as agent of his wife, Christine Mackey, in above cause.

2d.—Because it appears by the summons in said action that nothing but the initials of the plaintiff's christian name are in the original or copy of the summons, which is not sufficient in law, and therefore non-suit should be granted.

3rd.—Because it appears by the copy of the summons served upon the defendant, in above cause, that no seal, or scroll, or anything of the kind, has ever been upon said copy of summons ; therefore not a true copy, and incurably defective, and plaintiff should be non-suited.

30 4th.—Because the state of demand does not set forth a legal cause of action in not setting forth the necessary facts to show that the chosen freeholders of the township and surveyors overrun the improvement designed to be made by any applicant, under and by authority of the act of the Legislature referred to in the plaintiff's state of demand. And that the demand does not show that the applicant for the drainage named in said demand ever made any attempt, prior to  
40 calling in the assistance of the chosen freeholders and

surveyors, to secure the mutual consent or will of the land owner or owners to be injured or benefited by said drainage, as required by the said act; and that said applicant does not aver in his demand that either the chosen freeholders, or surveyors, or the party to whom the work was assigned to be done, were disinterested in the injuries or benefits that might be derived from the accomplishment of said drainage, as required by said act.

5th.—It appears by the plaintiff's state of demand<sup>10</sup> that the title to the lands, tenements and hereditaments, necessarily come in question, and therefore the court has no jurisdiction to try the question in controversy between the parties to this suit.

MARSHALL R. SMITH,  
*Attorney of Defendant.*

Filed March 19, 1885.

*State of Demand before Justice.*

*Warren County, ss.*

20

*Court for the trial of Small Causes.*

*Before Wm. M. Maberry, Justice.*

WM. M. MACKAY,

Agent of Christine Mackey,

Plaintiff,

IN DEBT.

*vs.*

ROBERT CRAIG,

30

The plaintiff demands of the defendant the sum of fifty-three dollars and eighty-two cents, the amount due the plaintiff from the said defendant as his share of the expenses in draining the lands lying between Green's pond and the Pequest creek, through which the outlet of Green's pond passes during the months of September and October, A. D. 1884, as assessed against him in pursuance of the following proceedings, order and apportionment, made by George Wildrick, Freeholder William B. Pool and Michael Hilbert, sur-40

veyors of the highways, in pursuance of an act of the Legislature, passed March 23, 1883.

*Copy of Notice to Land Owners.*

To Joseph Pittenger, James Criger, David Anderson, David Shuler, Robert Craig, Morris G. Parks and John N. Parks :—

You are hereby notified that George Wildrick, freeholder, and Wm. B. Pool and Michael Hilbert, the two surveyors of the highways of the township of Oxford, Warren county, New Jersey, will meet at the house of Theodore Soliday, in said township, on Wednesday, the fifth day of September, A. D. 1883, for the purpose of deciding upon the necessity of draining the lands lying between Green's pond and the Pequest creek, through which the outlet of Green's pond passes, and if necessary to order the same to be drained, and to apportion and assess upon each land-owner that may be benefited his share of the expense of said improvement, in accordance with the act of the Legislature, passed March 24, 1883. Dated August 23, 1883.

WM. M. MACKEY,  
Agent for Christine Mackey, Applicant.

*Affidavit of Service of Notice.*

STATE OF NEW JERSEY, }  
30 Warren County, } ss.

William M. Mackey, of full age, being duly sworn, upon his oath saith, that he served a copy of the within notice on the within named persons, as follows:— Upon Joseph Pittenger, for himself and James Criger, and John N. Parks, for himself and Morris G. Parks; personally upon David Anderson, by leaving a copy at his house, attached in the door, no person being home; and upon David Shuler, by leaving a copy with his wife; and upon Robert Craig, by leaving a

copy with his nephew, a person above the age of fourteen years, on the 25th day of August, 1883.

WM. M. MACKEY.

Sworn and subscribed before me, this 3d day of September, 1883.

NICHOLAS HARRIS,

*Master in Chancery of New Jersey.*

*Copy of Oath of Officers.*

10

STATE OF NEW JERSEY, }  
                                   } ss.  
 Warren County,

We, George Wildrick, freeholder, and William B. Pool, and Michael Hilbert, surveyors of the highways of the township of Oxford, do severally swear that we and each of us will faithfully and impartially view and examine the lands and premises mentioned in the above application, and assess and apportion the costs and expense of the said work about to be done, and executed all the duties imposed upon us by the act of the Legislature, passed March 23, 1883.

GEORGE WILDRICK,  
 MICHAEL HILBERT,  
 WM. B. POOL.

Sworn and subscribed before me, this 5th day of September, 1883.

WM. M. MACKEY,

*M. C. C. of New Jersey.*

30

*Copy of Order and Apportionment.*

Whereas, application having been made to us, by William M Mackey and Christine, as follows:

To George Wildrick, freeholder, and William B. Pool and Michael Hilbert, the two surveyors of the highways of the township of Oxford, Warren county, New Jersey,—

Application is hereby made to you, and you are hereby directed and required to meet at the house of Theodore Soliday, in the said township, on Wednes-40

day, the fifth day of September, A. D. 1883, at two o'clock in the afternoon, for the purpose of deciding upon the necessity of draining the lands lying between Green's pond and the Pequest creek, through which the outlet of Green's pond passes, and if necessary to order the same to be drained, and apportion and assess upon each land-owner that may be benefited his share of the expense of said improvement, in accordance with the act of the Legislature of the State of New Jersey, passed March 23, A. D. 1883.

CHRISTINE MACKEY,  
WM. M. MACKEY.

10

Now we, George Wildrick, freeholder, and William B. Pool, and Michael Hilbert, the surveyors of the highways aforesaid, do hereby certify and return and report that we met at the time and place, in the said application specified, and took the oath required by law, and due proof having been made to us that notice had been given to all persons interested, or who would be benefited thereby, according to law, on which we decided, and having viewed the premises we whose  
 20 names are hereto subscribed think and adjudge the application for the said improvement and drainage to be necessary and reasonable, and do order and direct the applicants to drain and improve the same, as follows: To clean out, cut down, and lower the bed of the creek, or natural water course leading from Green's pond to the Pequest creek, and to cut, open and clear out ditches or drains sufficient to drain and improve the land, as follows: And the applicants consenting  
 30 we adjourned until Saturday, September 19th inst., at 2 o'clock in the afternoon, then to meet at the same place. And in pursuance of said adjournment we, George Wildrick, William B. Pool, and Michael Hilbert, met at the place aforesaid, and the time aforesaid, and proceeded with the matters and ordered and directed as follows: First, beginning on the lower place of Mackey's, at the beginning of a row of butternut trees, opposite a rock on the south side of the  
 40 brook, and then following the course of the stream, or

the bed of the stream, and remove all the wood, logs, stones, brush, rubbish and mud therefrom, and lowering the bed and straightening the same where necessary, as far as the line fence dividing the lands of Robert Craig and Mackey; and then from said line fence to remove all the logs, wood, brush and mud, and lower the bed of the stream to a depth varying from one foot to three feet, as may be necessary, and in width the same as the old bed, and not exceed ten feet in width in any one place up to as far as the point on said stream where the old ditch leads out over lands of Shuler and others, a short distance above the Bear dam. And we do further return and order that we have made an apportionment to the respective owners of the lands that are or will be benefited by the said improvement, and do hereby apportion against William M. Mackey and Christine Mackey to pay the sum of thirty nine dollars and twenty-two cents on every one hundred dollars expended, or in that proportion for a greater or less sum; and to Robert Craig the sum of twelve dollars and sixty-eight cents, in the same way, and proportion for every one hundred dollars expended; and to David Anderson and Morris G. Parks and David Shuler each the sum of fourteen dollars and eighty cents of one hundred dollars expended, or in that proportion for a greater or less sum; and to James Criger and Joseph Pittenger the sum of three dollars and seventy cents of one hundred dollars expended, or in that proportion for a greater or less sum.

GEORGE WILDRICK, 30  
 MICHAEL HILBERT,  
 WM. B. POOL.

Dated September 19, 1883.

TO ROBERT CRAIG:—

Below is a statement of labor and expenses incurred in the months of September and October, 1884, in the drainage of the lands lying between Green's pond and the Pequest creek, through which the outlet of Green's pond passes, pursuant to the order and apportionment made by George Wildrick, freeholder, and William 40

B. Pool and Michael Hilbert, surveyors of the highways, bearing date September 19, 1883, in accordance with the act of the Legislature of the State of New Jersey, approved March 23, 1883.

September, 1884.

L. S. Benedict, foreman, 12 1-2 days, at \$1.75,	\$ 21.87
Other men, 109 1-2 days, at \$1.20,	131.60
Team, 1 1-2 days, at \$3.50,	5.25

October, 1884.

L. S. Benedict, foreman, 14 1-2 days, at \$1.75,	24.93
Other men, 177 3-4 days, at \$1.20,	213.30
10 F. S. Widenor, one dozen shovels, \$6.00 ; powder, 47 cents,	6.47
A. Q. Forgus, blacksmith,	3.00
John Cowell,	.20
Zink Mining Company, blasting,	3.20
Wm. M. Mackey, 7 days Sept., 8 days Oct.,	10.00
One lock for tool box,	.20
Six copies of expenses,	3.00
To making out pay roll, serving copies, and 20 collecting money and paying men,	5.00

\$427.82

Cr. By tools sold,	9.68
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\$418.14

Your apportionment, as made in said order above mentioned, is \$12.68 per \$100, making your share of the above expenses the sum of \$53.02.

The above sum of fifty-three dollars and two cents  
30 (\$53.02) is hereby due and demanded of you, Robert  
Craig.

W. M. M. MACKEY,

Agent for Christine Mackey.

David Anderson,	\$61.88	} Endorsed on back.
David Shuler,	61.88	
Morris G. Parks,	61.88	
Wm. Mackey,	163.99	
Pittenger & Criger,	15.47	
Robert Craig,	53.02	}
	<hr/> \$418.12	

Served a copy on Robert Craig, by leaving the same at his house, by handing it to his wife, on the 30th day of January, A. D., 1885.

Making amount due plaintiff from the said defendant, as per order assessment statement, the sum of fifty-three dollars and two cents, which the defendant refuses to pay.

	\$53.02	
Interest, three months,	.80	
	\$53.82	10

For which sum of fifty-three dollars and eighty-two cents plaintiff prays judgment.

WM. M. MACKEY,

Agent of Christine Mackey.

Endorsed—

W. M. Mackey, agent of

C. Mackey, Pltf.,

vs.

Robert Craig,

Deft

Demand.

20

Filed March 5, 1885.

WM. M. MABERRY,

*Justice of the Peace.*

The copy of notice to land owners and affidavit of service thereof; the copy of the oath of officers, and the copy of the order and apportionment, were exhibits, and are set forth in the state of demand, and are therefore not reprinted.

30

I do herewith send to the Supreme Court of the State of New Jersey the plaint judgment and proceedings, as within I am commanded, as by the transcript, under my hand and seal, hereto annexed, more fully appears.

WM. M. MABERRY,

*Justice of the Peace.*

Return to Certiorari.

Wm. M. MACKEY, Agent of Christine Mackey,  vs. ROBERT CRAIG,	Plaintiff,  Defendant.	} Fees, \$7.60.  } Paid.
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### Affidavit to Obtain Certiorari.

STATE OF NEW JERSEY, }  
 10 County of Warren, } ss.

Robert Craig, of Buttsville, said county and State, of full age, maketh oath that Wm. M. Mackey, agent for Christine Mackey, lately obtained a judgment against deponent, in the court for the trial of small causes, before Wm. M. Maberry, Esq., one of the Justices of the Peace, in and for the county of Warren, for the sum of fifty-three dollars and two cents debt, and ten dollars and thirty-seven cents costs of suit; and deponent is about to apply for the allowance of a  
 20 certiorari to remove the proceedings of the said Justice, and the said judgment, into the Supreme Court of Judicature, of the State of New Jersey, deponent being advised by his counsel, and believing that the proceedings of the said Justice, and the said judgments, were and are erroneous and illegal; and this deponent further saith that he doth not justly owe the money for which the said judgment was obtained against him, by  
 30 the said Wm. M. Mackey, agent for Christine Mackey.

ROBERT CRAIG.

Sworn to and subscribed before me this 23d day of March, A. D., 1885.

MARSHALL R. SMITH,  
*Master in Chancery of New Jersey.*

## Reasons for Reversal in Supreme Court.

### New Jersey Supreme Court.

*The State, Robert Craig,*

*Prosecutor,*

*vs.*

*Wm. M. Mackey,*

*Agent for Christine Mackey.*

*On Certiorari to  
Wm. M. Maberry  
Esq., one of the  
Justices of the  
Peace in and for  
the County of  
Warren.*

The said Robert Craig, by Marshall R. Smith, his<sup>10</sup> attorney, prays that the judgment of the said Justice may be reversed for the reasons following, to wit :

1st.—Because the plaintiff below had no legal right to bring an action, as agent of his wife, Christine Mackey, in above case.

2d.—Because it appears by the summons in said action that nothing but the initials or contraction of plaintiff's christian name are in the original or copy of the summons, therefore not sufficient in law.

3rd.—Because it appears by the copy of the summons served upon the defendant, in above cause, that no seal, or scroll, or anything of the kind, has ever been upon said copy of summons ; therefore not a true copy and contrary to law.

4th.—Because the state of demand does not show that the applicant for the drainage, named in said demand, or proceedings, ever attempted ( prior to calling in the assistance of the chosen freeholder and surveyors of the township,) to secure the consent, or will of the land owner, or owners, to be benefited by said drainage, or that the persons through whose lands the proposed drain or ditch was laid out, ever refused to

join in it, or to permit it to be done as required by the act of the Legislature, by authority of which said action was instituted, to wit: "An act to authorize and enable small land owners to drain and improve their lands." Approved March 23d, 1883.

5th.—Because it does not appear by the state of demand in said action that ten days' notice was given to the said Robert Craig of the time and place of meeting of the chosen freeholder and surveyors aforesaid, to  
10 view the premises and order and direct that the drainage was necessary and reasonable as required by said act of the Legislature.

6th.—Because it appeared by the demand and the evidence before the Justice that the order and assessments were not made by the said chosen freeholder and surveyors as required by said act, but by the plaintiff in this action, before the Justice, and the applicant for said drainage, in the absence of and without  
20 notice to the said Robert Craig, or any of the owners to be benefited by said drainage, and therefore bias, partiality and fraud were exercised by said chosen freeholder and surveyors, and the said applicant, in procuring said assessment and order.

7th.—Because the improvement or drainage, which was the basis or original cause of this action, was done after the expiration of one year from the date of the order of said freeholder and surveyors, and after the chosen freeholder and surveyors, who pretended to assist the applicant in making said order and assess-  
30 ment, were out of office; and when the said chosen freeholder was interested in the drainage of said lands because he owned ten acres of lands upon which he paid assessments for said drainage, and said facts were in direct violation of said act of the Legislature.

8th.—Because the state of demand and evidence before the said Justice did not show that the chosen freeholder and surveyors of the township overseen the improvement or drainage designed to be made by the authority of the act of the Legislature aforesaid.

40 9th.—Because it appeared by the state of demand

and evidence adduced before the Justice of the Peace, that the title to lands, tenements and hereditaments came in question, and therefore the Justice of the Peace had no jurisdiction to try the question in controversy between the parties to the suit.

10th.—Because the said judgment and proceedings are in divers other matters erroneous and contrary to law.

MARSHALL R. SMITH,  
*Attorney of Prosecutor.* 10

*Warren County, ss.*

Robert Craig puts in his place Marshall R. Smith his attorney to prosecute the aforesaid certiorari.

NEW JERSEY SUPREME COURT.

*Robert Craig,*  
*vs.*  
*Wm. M. Mackey,*  
*Agent for Christine Mackey.* } On Certiorari.

*Reasons Assigned by the Prosecutor.* 20

MARSHALL R. SMITH,  
*Attorney.*

*New Jersey, ss*

The state of New Jersey to William M. Maberry, one of the Justices of the Peace in and for the county of Warren. Greeting:

We, being willing for certain reasons to be certified of the judgment, order or proceedings, given or made in our court for the trial of small causes before you in<sup>30</sup> a certain action, brought against Robert Craig, at the suit of Wm. M. Mackey, agent for Christine Mackey, in a plea of debt, command you that you send under your seal to our Justice of our Supreme Court of Judicature, at Trenton, on the first Tuesday of June next, the judgment, order and proceedings aforesaid, with all things touching and concerning the same, as fully and entirely as they remain in our court before you, by whatsoever names the parties may be called therein, together with this writ, that we may further<sup>40</sup>

cause to be done thereupon what of right we shall see fit to be done.

Witness Mercer Beasley, Esq., Chief Justice of our Supreme Court, at Trenton aforesaid, this twenty-fourth day of March, in the year of our Lord, one thousand eight hundred and eighty-five.

BENJAMIN F. LEE,

*Clerk.*

MARSHALL R. SMITH,

*Attorney.*

10

NEW JERSEY SUPREME COURT.

ROBERT CRAIG,

*vs.*

WM. M. MACKAY,

Agent for Christine Mackey.

On

Certiorari

Writ.

MARSHALL R. SMITH,

*Attorney.*

Allowed,

M. BEASLEY, *C. J.*

20

March 24, 1885.

New Jersey Supreme Court.

CHRISTINE MACKAY,

*vs.*

ROBERT CRAIG.

In Debt.

*Certiorari to Justice Maberry.*

30 Take notice that I shall apply to the Supreme Court, of the State of New Jersey, to be holden at the State House, in Trenton, on Monday, the eighth day of June instant, at the hour of ten o'clock, in the fore noon, or as soon, etc., to dismiss the writ of certiorari by you taken in the cause, on the ground that a writ of certiorari will not lie in the case, but only on the appeal from the judgment of the Justice who rendered the judgment.

Yours, etc.,

WM. M. MACKAY,

*Attorney of Plaintiff.*

Dated June 5, 1885.

To MARSHALL R. SMITH,

*Attorney of Robert Craig, or whom, etc.*

WILLIAM M. MACKEY,

Agent,

*vs.*

ROBERT CRAIG.

} On Certiorari.

The Court having heard the argument of counsel, 10  
and inspected the proceedings, and judgment removed  
by the writ in the cause, and duly considered the rea-  
sons filed, it is ordered that said writ of certiorari be  
dismissed with costs, and that the cause be remitted  
to the court below to be proceeded in according to law.

On motion of J. G. SHIPMAN,

*Attorney.*

June 8, 1885.

New Jersey to wit: The State of New Jersey, to our<sup>20</sup>  
[L. s.] Justices of our Supreme Court. Greeting:

Because in the record and proceedings, and also in  
the giving of the judgment in a plaint which was in  
our said Supreme Court before you, between the State,  
Robert Craig being the prosecutor, and William M.  
Mackey agent for Christine Mackey, defendants, on a  
certiorari issued out of our said Supreme Court to  
WM. M. MABERRY, Esquire, one of the Justices of  
the Peace of the County of Warren, as is said, mani-  
fest error hath intervened to the great damage of the  
said Robert Craig, prosecutor, as aforesaid, as by his<sup>30</sup>  
complaint we were informed, we being willing that the  
error, if any there be, should in due manner be cor-  
rected, and full and speedy justice be done to the par-  
ties aforesaid, in this behalf do command you that if  
judgment be thereupon given, then you send distinct-  
ly and openly under your seal the record and pro-  
ceedings and plaint aforesaid, with all things touch-  
ing and concerning the same, to our Court of Errors

and Appeals, before the Judges thereof, on the fifth Tuesday of June instant, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon for correcting that error what of right, and according to the law and custom of the State of New Jersey, ought to be done.

Witness our Chancellor and President Judge, of our said Court of Errors and Appeals, at Trenton aforesaid, the sixteenth day of June, in the year of our Lord, one thousand eight hundred and eighty-five

HENRY C. KELSEY,  
*Clerk.*

MARSHALL R. SMITH,  
*Attorney.*

## New Jersey Court of Errors and Appeals.

THE STATE, ROBERT CRAIG,	} In Debt
Appellant,	
<i>vs.</i>	} On Error.
20 WM. M. MACKAY,	
Agent for Christine Macky, Respondent.	

Take notice that I shall apply to the Court of Errors and Appeals, of the State of New Jersey, at the State House, in the city of Trenton, on Wednesday, the twenty-fourth day of June instant, at ten o'clock, in the forenoon of that day, for an order that the respondent, in above cause, show cause why execution should not be stayed on the judgment in the original  
30 action, in above cause, until the writ of error now depending between the parties, in above cause, be determined.

Dated June 20, 1885.

To WM. M. MACKAY,  
Agent, etc., or whom it may concern.

M. R. SMITH,  
*Attorney for Appellant.*

## New Jersey Court of Errors and Appeals.

THE STATE, ROBERT CRAIG, Plaintiff in Error, <i>vs.</i> WM. M. MACKAY, Agent for Christine Mackey, Defendant in Error.	}	In Debt  On Error.
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Motion having been made in above cause, on the 24th day of June, A. D., 1885, for an order that the defendant in error, in said cause, show cause before said Court, on Friday, the third day of July next, why execution should not be stayed on the judgment in the original action, in above cause, until the writ of error now depending between the parties in above cause be determined, and thereupon it is ordered by said court, that the defendant in error do show cause on Friday, the 3d day of July next, before said court, at the State House, in the City of Trenton, at ten o'clock in the forenoon, why said execution should not be stayed, pending the writ of error, in this court, and it is ordered that upon service of a copy of this order upon the constable and defendant in error, that all proceedings on said execution be stayed until the further order of this court, or cause be shown as aforesaid, why proceedings on said execution should not be stayed on said judgment until the writ of error, now depending between the parties in above cause, be determined.

Dated June 24th, A. D., 1885.

Order made in open court on motion of

MARSHALL R. SMITH,  
*Counsel for Plaintiff in Error.*

## New Jersey Court of Errors and Appeals.

<p style="text-align: center;">THE STATE, ROBERT CRAIG, Plaintiff in Error, <i>vs.</i> W. M. MACKEY, Agent for Christine Mackey, Defendant in Error.</p>	}	Assignment of Error.
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And now at this day the plaintiff in Error assigns the following causes of error :

10 First.—Because the Supreme Court decided that before the day appointed for hearing before the Justice of the Peace, the Justice had a right to adjourn the trial of the cause in the absence of the parties, and without their consent, and thereupon the Supreme Court were in error, and should have adjudged that after such adjournment the Justice had no jurisdiction.

20 Second.—Because the said court decided that the initials of the plaintiff's christian name, and the copy of the summons issued by the Justice of the Peace, not having any seal or scroll upon it did not affect the jurisdiction of the Justice of the Peace, and thereupon the Supreme Court were in Error.

30 Third.—Because the said court decided that although the State of demand, in this case, did not contain the necessary averments in point of the law, or act of the Legislature, under which the plaintiff below proceeded, yet the Justice of the Peace had jurisdiction, and thereupon the Supreme Court were in error.

Fourth.—Because the said court decided that the defendant in error had a right to bring his original suit in this cause before a Justice of the Peace ; that a Justice of the Peace had jurisdiction to try a cause accruing under an act of the Legislature, approved March 23d, 1883, to wit: "An act to authorize and

enable small land owners to drain and improve their lands," although said act requires, in express terms, that suit must be brought in the name of "the owner, or owners of any meadow, swamp, or other lands." And the plaintiff in error insists that the statute excludes from the jurisdiction of Justices of the Peace, all cases where, either in support of the action, or in maintenance of the defence, any right, or title to any lands, tenements, or hereditaments, shall, or may, in any wise, come in question. And that in order to maintain any action, by authority of said act of the Legislature, the title to lands and tenements necessarily come in question, and thereupon the Supreme Court were in error in deciding that the Justice of the Peace had jurisdiction in this case. 10

Fifth.—Because said court ordered judgment of dismissal of the writ of certiorari in this case with costs in favor of the defendant in error, and against the plaintiff in error.

MARSHALL R. SMITH, 20

*Attorney of Counsel for Plaintiff in Error.*

July 30, 1885, served a true copy of the within assignment of errors upon Wm. M. Mackey, at his house.

MARSHALL R. SMITH.

## New Jersey Court of Errors and Appeals.

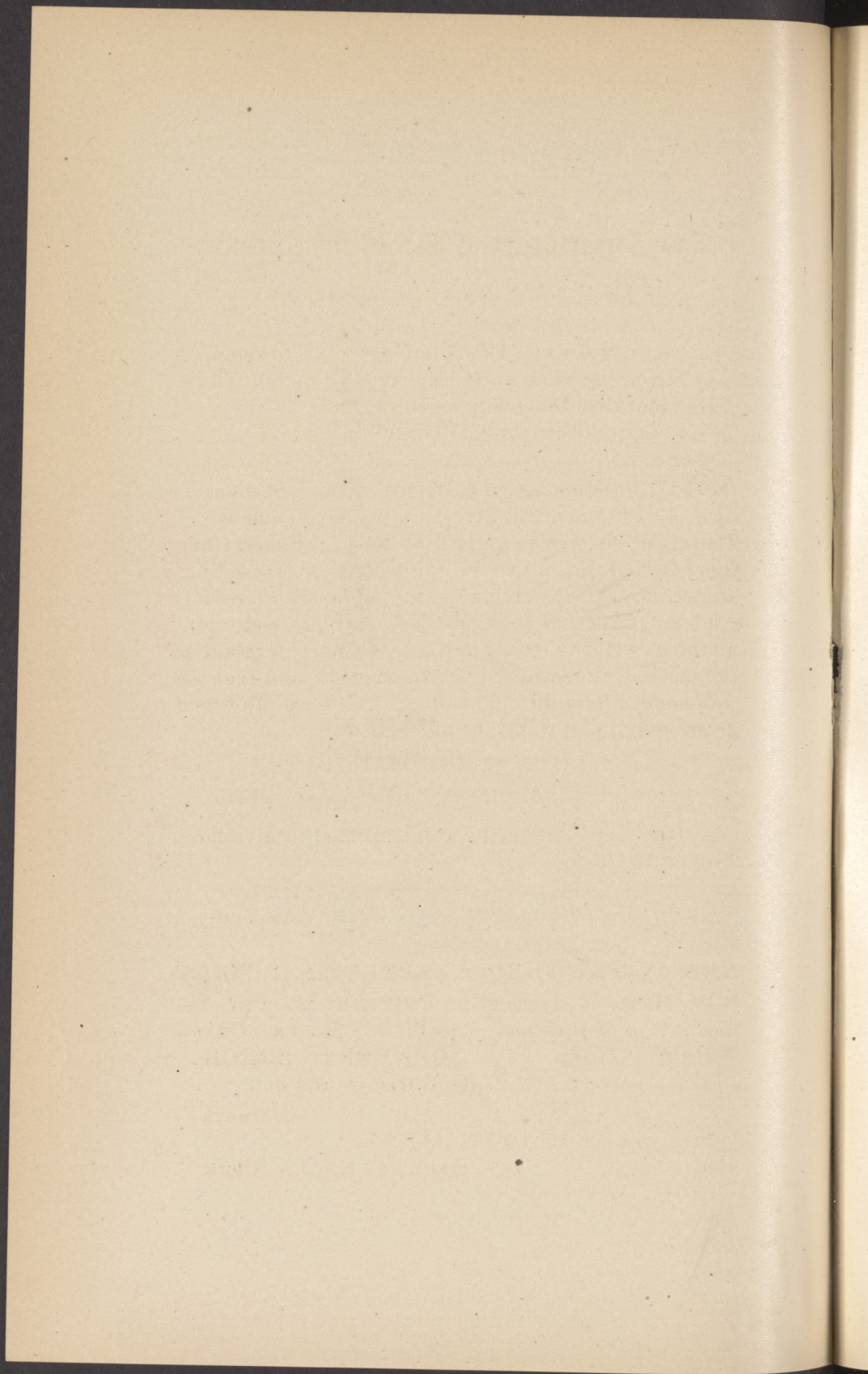
STATE, ROBERT CRAIG,  
*vs.*

WM. M. MACKEY,  
Agent for Christine Mackey.

} Assignment 30  
of Error.

MARSHALL R. SMITH,

*Attorney and Counsel for Plaintiff in Error.*



## New Jersey Court of Errors and Appeals.

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CHRISTINE MACKEY, who is impleaded in Assignment of Errors as William M. Mackey, agent for Christine Mackey, Defendant in Error, and  
THE STATE, Robert Craig, Plaintiff in Error.

And hereupon, afterwards, to wit, on this day comes the said Christine Mackey, the real defendant in error, by J. G. Shipman and Son, her attorneys, and says: That as to the errors assigned by the said Robert Craig there is no error, either in the record or proceedings 10 aforesaid, or in the giving of the judgment aforesaid. And she prays that the Court here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid for error assigned; and that the judgment aforesaid, in manner and form aforesaid given, may in all things be affirmed, &c.

J. G. SHIPMAN and SON,  
Attorneys of Defendant in Error.

A true copy from the original, filed in my office,  
August 15, 1885. 20

HENRY C. KELSEY,  
Secretary of State.

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### NEW JERSEY COURT of ERRORS and APPEALS.

W. M. MACKEY, agent for CHRISTINE MACKEY, Defendant in Error, and The State, ROBERT CRAIG, Plaintiff in Error.

JOINDER IN ERROR.

J. G. SHIPMAN and SON,  
Attorneys.

Filed August 15, 1885. 30

HENRY C. KELSEY, Clerk.

(A true copy.)

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