Clerk's Table

STARBUCK & DUNHAM, Law Printers, 165 Market Street, Newark, N. J.

# NEW JERSEY

# Court of Errors and Appeals.

WILLIAM A. HAMMER,

*vs.*

THE STATE, *ex rel*,

MARCUS S. RICHARDS.

In Error to the Supreme Court.

## RELATOR'S POINTS.

The Act of 1866 creates the office and makes it elective. Pamph. 1866, p. 446.

Under that act relator, Richards, was elected in 1877, and duly qualified, and entered upon the duties of the office.

He was ousted in 1878, and his office given to respondent.

Relator was re-elected in 1879 and now seeks this writ to establish his title to his office.

Respondent claims office under the appointment of the Mayor and the act of 1878, entitled "An Act relating to the assessment and revision of taxes in Cities of this State," approved April 5th, 1878. Pamph. 1878, p. 329.

We insist that this act of 1878 is unconstitutional, in this—

That it is a special act for regulating the affairs of Cities.

Pell vs. Newark, 11 Vr., 123.

That only applies, at most, to two Cities in the State—"where boards of assessment, &c., now exist."

That it seeks to amend the charter of Newark, without inserting the section amended

See Sec. vii, § 4, amended constitution.

That it seeks to legislate incumbent out of his office, held under two elections, and repeal a statute under which his right to the office had vested.

Cotton vs. Ellis, 7 Jones, (N. C.,) L. 545.

That it, in terms, applied only to Cities of 100,000 inhabitants, and was thereby *void.*

That its defects have not been cured by any subsequent legislation.

WARD & TICHENOR, Law Case Printers, 832 and 834 Broad Street, Newark, N. J.

# N. J. Court of Errors and Appeals.

WM. A. HAMMER
*vs.*
THE STATE, (*ex rel.* MARCUS S. RICHARDS.)
} *On Error.*

The question involved in this controversy is the title of Hammer to the office of member of the Board of Assessment and Revision of Taxes in the city of Newark.

He claims under the act of April 5, 1878, (Pamp. Laws, 329,) as amended by the act of March 14, 1879, (Pamp. Laws, 207.)

The act in question was applicable to Newark.

This is apparent from an examination of the several laws enacted by the legislature with reference to assessing taxes in that city.

The amended charter of Newark went into operation March 7, 1857, (Pamp. Laws, 116.)

Section 7 of this charter provides that one Assessor shall be chosen from each ward. His duties are prescribed in section 71.

The Assessors of the several wards, when met together, constituted a Board of Assessment, (section 73.)

The object of the creation of this board was to equalize taxation in the city.

Besides these, there was elected each year a Board of Commissioners of Appeal in Cases of Taxation, whose duties are indicated by their title, (sections 7 and 75.)

This system was continued in force till 1866. In that year an act was passed, entitled "An act relating to the assessment and revision of taxes in the city of Newark," (Pamp. Laws, 446.)

This act provided in its first section that, for the purpose of assessing taxes in the city of Newark and revising the same, a board should be constituted, to be known as the Board of Assessment and Revision of Taxes in the city of Newark, which should consist of five persons, four of whom should be elected at the annual charter elections to be held in the city, and the fifth appointed by the Common Council of the city, upon the nomination of the Mayor. This board was charged with the duties formerly imposed upon the assessors of the several wards, the board of assessors, and the commissioners of appeals in cases of taxation, and these several offices were abolished by the act, (section 2.)

The sixth section of this act designated by name four individuals, who, with a person to be appointed by the Mayor, should constitute the first board. Two of these persons, the act declared, should remain in office for one year, and two of them for two years, from the first Tuesday after the first day of January, 1867. And the following section, (the seventh,) enacted that at the charter election to be held in 1867, and every year thereafter, there should be elected two members of this board, each of whom should hold his office for the term of two years and no more, from the first Tuesday after the first day of January, succeeding his election.

Under this act the relator claims to have been elected. (See information.)

This law continued in force until April 5th, 1878, when the act under which plaintiff in error claims title, was proved. Its provisions have been already referred to. They are that "In any city of this State where boards of assessment and revision of taxes now exist, such boards shall hereafter consist of four members, resident electors of the city, the members of which board shall be nominated by the Mayor, and confirmed by the Common Council, and hold their office for the term of four years from the date of their appointment." Further, that "In all such cities where boards of assessment and revision of taxes now exist, the terms of the office of

the members of said boards should terminate upon the appointment of their successors, *who should be immediately appointed* after the passage of the act." The act further provides that its provisions should not apply to cities having a population of less than 100,000; that it should be a public act, go into effect immediately, and all acts general or special, inconsistent, should be repealed. This act was subsequently amended by striking out the restrictive clause.

This, then, is the act with the execution of which the municipal government of Newark was charged by the legislature. The act was applicable to Newark. That city had such a board as designated. It had a population exceeding 100,000. The act was imperative in its terms. It imposed a positive duty; a duty, too, which the law said should be performed *immediately*. Whatever doubt might have existed with reference to the act as originally passed, still, it *existed as law* until expunged by competent authority. Under these circumstances, the Mayor and Common Council of the city properly carried out the command of the act, especially as the acts of a board constituted under it would be valid, so far, at least, as the public was concerned. This, then, was the result. The Mayor, obeying the law, nominated four persons, of whom respondent was one, for the office. They were all resident electors of the city, as the act required. They were chosen from different political parties. They were confirmed by the Council, as the act says. They were duly qualified, and entered on the discharge of their duties. This was in September, 1878. All these allegations of the plea are admitted by the demurrer.

Thus the existing board was constituted. And it must be apparent to the Court, that the municipal government of Newark, having thus obeyed this law, and carried it into effect, as they were bound to do, would not afterwards take steps towards procuring the election of another board, under the prior act of 1866, (as claimed by the relator,) while the act of 1878 continued in force. The law of 1866, which authorized the *election* of these

officers, was declared to be repealed. These offices, as *elective*, were abolished. And it would be, indeed, a paradox, if the Council, having put itself under the terms of this law, should still order the election of such officers. For, observe, it is the Common Council, under our charter, that alone has power to order elections, to appoint the places of holding them, designate by public advertisement the officers to be elected, and to canvass the votes cast, and declare who are elected. (Sections 7 and 11 of charter.) Hence, the statement in the plea *induced* by the contrary allegations of the information, that no *election* for such officer, *i. e.* no election such as the statute requires, has been held in Newark, since this act of 1878 was put in operation, and that no notice thereof was given, and that no certificate of such election was made, is at least the statement of a logical result; and, if properly pleaded in answer to relator's information, must be assumed as admitted by the demurrer in this case.

It is to be expected, then, and is true as a matter of fact, that the last legal election in Newark, under the act of 1866, whose aid relator invokes, took place on the second Tuesday of October, 1877. (All annual elections take place on the second Tuesday of October, in each year. Section 7 of charter.) The act of 1878, under which respondent claims, had been put in operation in September, 1878, before the charter election of that year. Hence, no election was held that year. And the terms of office of the members of the board *elected* under the law of 1866, in the previous year, *i. e.*, in 1877, being for the precise term of two years, long ago expired, and no legal officer can succeed the present board at once, if the Court should oust it from office.

I speak of these things, although they are not strictly pertinent to this inquiry, because I assume that the Court will recognize the *public necessity of maintaining* in the city of Newark a board that may assess taxes, and will hesitate to oust the present board if it be apparent that no other legal board can be admitted to the vacant offices.

I proceed now to consider the validity of the law of 1878. I shall not speak of the objection that its title is defective. That objection is entirely controlled by the opinion delivered in this case. But the real objection alleged against it is that it is a special act. By its terms it was originally limited in its application (as already stated,) to cities having a population of more than 100,000.

Subsequently, in 1879, (Pamp. Laws, 207,) this restrictive clause upon the operation of the act was repealed, and it was declared that the act should go into effect immediately.

It has been suggested that if the original act of 1878 were unconstitutional, the act of 1879 was of no validity, being an amendment to the unconstitutional act; and the question is thus raised whether such amendment was permissible. Little need be said on this subject. Certainly, an amendment to the original act, if it be unconstitutional, which leaves intact the unconstitutional provision, would not avail. But that is not the question here. It is, whether the legislature can amend an act by expunging the unconstitutional part, leaving the remaining legislation constitutional. Observe that the act of 1878 was then in full operation. It had not been questioned in the Courts. If it had been, and expunged, it could not, of course, be amended. Nothing would be left to amend. But before such action was taken, the act would properly be treated by the legislature as an existing law, capable of amendment or repeal. And it was thus that the legislature treated it. It repealed the restrictive section, which was easily separable from the rest, and the effect was to leave a body of legislation in all respects identical with that which would have existed if the legislature had in the first instance adopted the law in that form. There can be no doubt, of course, that the legislature could, in the first instance, have passed the act which we are considering, in the amended form. Can it not, then, so amend it that it may be the same act, in effect, as if originally passed in that form?

If one proposition is true, the other would seem logically to follow. See the case of Rutgers *vs.* New Brunswick, 13 Vroom, 51.

It was not necessary that the original act should be recited at length in the repealer. The constitution does not require it. Article 4, Section 7, and paragraph 4.

In Van Riper *vs.* Parsons, 11 Vr., 125, this Court held that the provisions of the constitution to which I refer, did not apply to repealing acts such as this.

On the general question as to amending unconstitutional laws, see State, (Trenton Iron Co., pros.) *vs.* Yard, 13 Vr., 357; and Rader *vs.* Township of Union, 10 Vr., 510.

What, then, was the effect of this amendment? It made the act applicable to all cities of the State in which the power both to assess and revise taxes had been lodged by the legislature in a single body. It says this, (and no more,) that the members of all boards, wherever they may be located, or however they may be designated, which have the power to *assess* and *revise* taxes, in any city of the State, shall hereafter be *appointed* by the Mayor of such city, and confirmed by its Council. It is as though the legislature had said all persons or boards having power under any law of this State to *assess* and revise taxes, shall be hereafter appointed instead of elected, as heretofore. Now, such boards, it is evident, have well marked characteristics, as distinct and clearly defined as those possessed by any board or corporation in the State. They have peculiar powers, and such as are possessed by no others. They are essentially distinct from those bodies which have authority to *assess* or *equalize* taxes only. They are distinct from those bodies which sit as courts of appeal in cases of taxation merely. Their powers are different, and the legislation relating to them would naturally be, so far, peculiar and restricted. They are a class by themselves, possessing definite and exclusive rights, and if this constitutional amendment is to receive a construction which will make it practicable, should from time to time be rendered more effective by such legislation as

the legislature in its wisdom, legislating for *all these* boards, shall deem expedient. Is such legislation general? Judged by judicial decisions, there can be no fair doubt of it, and it is the duty of the Court to sustain this act if possible. Such legislation will be general if it relates naturally and appropriately to all the boards thus classified. The universality of the operation of such an act, is not the sole test of its generality in the constitutional sense. If it apply to but one city having a peculiar method of government, (in any of its departments,) it is still a general law. See the language of the Chief Justice, in Van Riper *vs.* Parsons, 11 Vr., 8; same case, 11 Vr., 123; Rutgers *vs.* New Brunswick, 13 Vr., 51; State, (Trenton Iron Co., pros.) *vs.* Yard, 13 Vr., 362; Skinner *vs.* Collector, 13 Vr., 407.

If these citations correctly interpret the constitutional provision, it is difficult to see how this act under which respondent claims can be successfully controverted. It embraces all cities wherein there are boards or commissions having certain precise, well-defined and distinguishable characteristics. If these boards or commissions are outside of legislative aid, it may be truly said of them, as in the Jersey City case, the imperfection inherent in the legislation under which they act, must remain forever unalterable and irremediable. On this point see Van Riper *vs.* Parsons, 11 Vr., 8.

Standing, then, upon the foundation that the classification attempted in this act is fairly made, because it embraces all such commissions in the State having well defined and peculiar characteristics, the question remains whether the legislation based on this classification is appropriate or merely formal. Most certainly the legislation is appropriate to the classification. It says how such boards—*all* such boards having these distinguishing marks—*shall* be constituted. The legislation is the *logical* and natural result of the classification. What legislation more appropriate to this classification, more intimately associated with it, *can* you conceive than this which relates to *nothing else* but the *organization and*

*creation* of all the boards which are thus classified! The relationship between the two things is most intimate. One flows directly from the other. The case is easily distinguishable from that instance of illusive legislation referred to in the opinion, viz., that in cities having ten churches there shall be boards of water commissioners. The parallel case would be a law which provided that water commissioners in cities should be thereafter appointed instead of elected. Would not such a law be general? There is, of course, no reason, logical or legal, why cities having ten churches should have such a board, and others, differently situated, should have no such board. Such an act would be nothing more than a description of one or two cities having those marks which have no connection or possible relationship with the subject matter of the legislation. You might as well say that the city of Elizabeth, or Orange, shall have such a board; while in the nature of things there is no reason, perhaps, why other cities should not be similarly governed. The illustration is a conspicuous instance of *original* legislation, where one or two cities, differing in no material respects from others with respect to the necessities of their government, are attempted to be classified by some common and immaterial characteristic, and new legislation for them provided which has no logical association with such false classification, and which might, with equal propriety, be applied to other cities. But suppose, on the other hand, these two cities alone had already a particular method of local government in any of its branches—government by commissions appointed by the legislature, for instance—established *long before* the constitutional provision went into effect; and the legislature thought that these methods, *peculiar to them alone*, had inherent defects which should be remedied. Can it not legislate with reference to these objects exisiting only in these cities? It seems clear that it should have such power, because these methods *already exist* under legislative sanction. *They are existing things to be dealt with.* If the legislature cannot legislate as to them, then

is its power abridged by this constitutional amendment. It is powerless. The imperfection inherent in these methods must remain. Yet this is not the ruling of this Court in Van Riper *vs.* Parsons. Such legislation is as general as is possible in the nature of things, for it embraces all the objects to which it can relate.

Suppose the legislature of the State passed a law declaring that all Courts of Common Pleas in the different counties of the State, now presided over by a president law judge and one or more lay judges, should hereafter be conducted by a law judge alone, would not such a law, (without reference to its constitutionality,) be a general law, applying as it would to all Courts thus peculiarly situated; and would not the legislation enacted be appropriate to the classification of such Courts? There can be no doubt of it. See Skinner *vs.* Collector of Bergen, 13 Vr., 408. But how does this law differ in principle from that in hand? These boards have characteristics quite as well marked, and the legislation founded on their classification is quite as appropriate. The use of the word "now," in the act, (see it,) does not deprive it of its general character. Such legislation could properly contain no other provision. Certainly a *new* board having the same powers could not constitutionally be created in any *one* or *two* cities. If legislation providing for the *creation* of such boards were enacted, it should apply to all cities, and be in form like this, "All taxes in cities shall hereafter be assessed by a Board of Assessment and Revision of Taxes, who shall be appointed in the manner designated." The limitation of the act to *existing* boards, then, is not objectionable. It applies to all such boards as can properly, in conformity with the constitutional standard, as construed by this Court, receive the benefit of such laws. Skinner *vs.* Collector.

I very respectfully submit that this law as amended, is a general law, embracing as it does all of a group of objects, having marks sufficiently characteristic to make

them a class by themselves, and that the legislation founded upon this classification, flows naturally and logically therefrom. If a doubt exist as to its constitutionality, it should be resolved in favor of the law. That a law *seems* to be unconstitutional, is not enough. The Court will be *fully convinced*, before it will expunge it.

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# New Jersey Supreme Court.

*NOVEMBER TERM, 1881.*

THE STATE, (*ex rel.* MARCUS S. RICHARDS,)
*vs.*
WILLIAM A. HAMMER.

*On Demurrer, &c.*

BENJAMIN C. POTTS, for relator.
HENRY YOUNG, for defendant.

The Court, at the November term, 1881, announced that judgment would be given in favor of the relator and against the defendant, for the reasons stated in the opinion on the rule to show cause, rendered at the November term, 1880.

The said opinion was delivered by

BEASLEY, Chief Justice:

The relators in these cases claim that they respectively are members of the Board of Assessment and Revision of Taxes, in the city of Newark, and that such offices have been usurped by the defendants. The claim of each of these actors rests on similar grounds, and the defence to each application is the same, so that both proceedings can conveniently be considered and disposed of at the same time.

The title which the relators rely on, is through an alleged election held by virtue of the act passed in the year 1866, (Pamph. L., p. 445,) and it is shown by the testimony taken, and is an admitted fact, that the defend-

ants are now in office under the force of the act of the year 1878, (Pamph. L., p. 329.)

The right thus asserted on the part of the relators has been challenged by the counsel of the defendants, on the ground that it is not sufficiently manifested and substantiated by the proofs. But I shall pause but little on this head, for the subject does not seem of any importance on this inquiry, because, whether these relators are or are not strictly entitled to fill, at present, the offices in question, they plainly are entitled to a standing, as relators, in a procedure of this nature. The objects here in litigation are public offices, and are, therefore, things of public concern, in which every resident of the city of Newark has an interest, and I know not how the suit of a tax-payer of that locality is to be repulsed, when the ground of complaint is, (for such is the allegation,) that the assessment and revision of taxation, which affects his property, is in unauthorized hands. All that the Court requires in such instances is, to be satisfied that the relator is of sufficient responsibility, is acting in good faith, and not vexatiously, and has not become disqualified by his own conduct with respect to the election that he is seeking to impeach. The authorities are numerous to this purpose. It is indeed intimated in the briefs of counsel in the present case, that the titles of the relators to these offices will be presented for judgment by the requisite allegations in the informations sought to be filed, but whether such is the purpose or not, the subject is now unessential, the only question being whether the parties have a right to a *status* enabling them to make their present application, and, as has been said, that *status* is not dependent upon official right. It is proper, however, as a precaution against misconception, to say that it is far from clear that the titles of these relators, can be put in issue or adjudged upon the contemplated informations, for although in the Courts of some of the States such a course appears to have prevailed, it would seem not improbable that such practice has originated in a statute on some local usage, for, so far as has been observed, it does not appear to have had, at any time, a

footing in the English courts, or at the common law. The point, however, is not intended to be decided, for, as it is deemed irrelevant, it has not been fully examined.

Passing, then, from the position of the relators, we come to a consideration of that of the defendants. That position is assailed on the single ground that the beforementioned act of 1878, by force of which the defendants have been invested with office, is unconstitutional, and therefore, void. For this arraignment of this law two causes are assigned, the first of such objections being that the object of the statute is not expressed in its title. This objection must be overruled. The title of this statute is this: "An act relating to the assessment and revision of taxes in cities of this State" The purpose accomplished by this law is single, that is, a modification of the mode of appointing the members of the board of assessment and revision, and such an object is sufficiently expressed in this title. This law, in its title, expresses a specific subject to which it relates, and the purpose effectuated is fairly embraced in such subject. In the case cited of *Rader* vs. *Union Township*, 10 Vroom, 509, the subject stated in the title was so wide a one that the reference to it was calculated to convey no useful information as to the legislative intent embodied in the enactment. In that instance the object was to organize and establish a public body of a peculiar and unusual character, and such an object could not be indicated by the expression of a general purpose that was usually effected by well-known agencies. The case was an extreme one, and was so dealt with by the Court; and I may here say, that it is only in perfectly plain cases that it is proper for the Courts to vacate statutes on the ground now in question. And in this connection it is ever to be remembered that the language employed in the titles to legislative acts is to be interpreted according to its accepted signification, and, tested by this rule, an act described as "An act relating to the assessment and revision of taxes," would be understood to relate as much to the machinery by which such assessment and revision

were to be effected, as to any other part of the affair. This exception cannot prevail.

The second exception taken to this act is that it contravenes, in its spirit, that provision of the constitution that prohibits the enactment of any local or special law which regulates the internal affairs of towns and counties. *Cons.*, Sec. VII. p. 11.

As the act thus challenged provides a new method for the selection of the members of the board for the assessment and revision of taxes in the city of Newark, there can be no doubt that, within the meaning of this clause of the constitution, such act is one regulating the internal affairs of that municipality. This law has not only the effect to regulate such affairs, but to regulate them in an important particular, for it has the force of substituting, with respect to these considerable offices, an appointment by the Mayor and Common Council, in the place of an election by the citizens at large. This change is radical and of moment, affecting, as it does, in an eminent degree, the entire property of the inhabitants of the city. Therefore, such an innovation, as I have said, must be regarded as a municipal regulation in the constitutional sense of the term, and the consequence is, the object aimed at cannot be compassed by a law that is special and local.

The question, therefore, arises, is this law of that character? It does not profess to be such, for its title is, "An act relating to the assessment and revision of taxes in cities in this State." But this descriptive generality is immediately dwarfed and curtailed by the initial words of the body of the enactment, for it at once proceeds to declare, " that in any city of this State where a board of assessment and revision of taxes now exists, such board," &c.; the effect being to restrict the operation of the law to those certain localities that were possessed, at the time of the passage of the enactment, of the body of officers so designated. The evidence now before us shows that there were only two localities so circumstanced, the one being the city of Elizabeth, and the other the city of Newark. The result, therefore, is, that the act was intended to apply, and that it does and

must ever apply, to these two cities alone, and that the legal effect of this law, as now constituted, is the same as though it had, in express terms, declared that it was not to be operative through the State at large, but in the cities of Elizabeth and Newark only. Can a law thus designed and framed, stand the constitutional test?

But a single argument has been presented in its support, which is, that this act is general in its terms, and embraces "all of a group of objects having characteristics sufficiently marked and distinguished to make them a class by themselves." And these qualities, it is contended, bring this case within the requirements of the constitution, as the same is expounded in the case of *Van Riper* vs. *Parsons*, 11 Vroom, 125. But I do not understand that the decision thus invoked will bear the construction thus put upon it. It does not undertake, as I understand it, to lay down any abstract rule on this subject; but the expressions quoted are employed in reference to the facts thus under adjudication. Plainly, a law may be general in its provisions, and may apply to the whole of a group of objects having characteristics sufficiently marked and important to make them a class by themselves, and yet such law may be in contravention of this constitutional prohibition. Thus, a law enacting that in every city in this State in which there are ten churches, there should be three commissioners of the water department, with certain prescribed duties, would present a specimen of such a law, for it would sufficiently designate a class of cities, and would embrace the whole of such class, and yet it does not seem to me that it could be sustained by the Courts. If it could be so sanctioned, then the constitutional restriction would be of no avail, as there are few objects that cannot be arbitrarily associated, if all that is requisite for the purpose of legislation is, to designate them by some quality, no matter what that may be, which will so distinguish them as to mark them as a distinct class. But the true principle requires something more than a mere designation by such characteristics as will serve to classify, for the characteristics which thus serve as the basis of classi-

fication must be of such a nature as to mark the objects so designated as peculiarly requiring exclusive legislation. There must be substantial distinction, having a reference to the subject matter of the proposed legislation, between the objects or places embraced in such legislation, and the objects or places excluded. The marks of distinction on which the classification is founded must be such, in the nature of things, as will, in some reasonable degree, at least, account for or justify the restriction of the legislation. Principles of this sort can be best elucidated by examples.

I have already given a sample of a merely arbitrary classification, founded on no causal relation between the subject matter of such legislation and the things so classified. A sample of the other, or legitimate kind, would be signified in a law that should give to all cities in the State, situated on tide-water, the privilege of using such waters in connection with their sewers. In such an enactment, but a part of the cities of the State would be embraced, but the classification would be lawful and proper, inasmuch as the places embraced would be possessed of a characteristic distinct from those possessed by the excluded places, such characteristic being of such a nature as to afford a reasonable ground for such special legislation. In the two classes of instances thus exemplified, the basis of the classification of the one would be by a reference to marks of distinction having no connection with the substance of the supposed statute; in the other, the opposite of this would obtain; so that in the former, the classification would be formal and arbitrary; in the latter, substantial and springing out of the nature of the subject of this legislation. The present law is seemingly of the former kind. The class to which it is made applicable, is designated and selected by the mark of each of its members being possessed of a certain kind of board of officers, a circumstance having no connection but a formal one with the subject matter of this law, and in no way indicating a reasonable ground for making these particular places the objects of such special legislation. In all but mere form, as I have said, these

places might as well have been designated by name, as by a reference to these organic bodies possessed by them, and the effect of this law would have been precisely the same. It seems to me difficult to find any stable ground for sustaining such an act, and therefore these writs should be issued so that the question can be brought before the Courts in a formal manner.

With respect to the argument which was pressed upon the attention of the Court, and which was founded on the supposed public inconvenience that will have to be encountered, in case these defendants should be ousted, it is sufficient to say that the force of this appeal is entirely dissipated, if we take into the account a consideration which this reasoning ignores. It is not pretended that the illegality which the relator here attacks is of a temporary or evanescent nature, and which will pass away with even the official term of these defendants; for it is clear that it is a radical and inherent defect, if it is a defect, in the municipal system into which it has become incorporated; nor is it alleged that the present time is peculiary unpropitious for the removal of such defect; so that the consequence is that if, as an exercise of discretion, from the fear of a possible derangement of the finances of the city, we are to refuse the relief asked, the same motive would be equally prevalent in the future; the result being that the citizens of Newark would be obliged to submit, in perpetuity, to have their taxes assessed and revised by a body of men, who, there is some reason to think, have no legal right to perform such functions. In short, the Court, in the exercise of its discretionery power, is asked to perpetuate what is not improbably an unconstitutional exercise of power.

# New Jersey Supreme Court.

NOVEMBER TERM, 1881.

THE STATE, (*ex rel.* MARCUS S. RICHARDS,) *vs.* WILLIAM A. HAMMER.

*On Quo Warranto*

*Judgment of Ouster.*

The information in this cause having been duly filed by leave of the Court, and the relator having demurred to the plea filed by the defendant therein, and the defendant having joined in demurrer, and the Court having heard the argument of the respective counsel thereon, and duly considered the same, and being of opinion that the defendant hath usurped, and unlawfully holds and executes the office of Commissioner of the board of assessment and revision of taxes in the city of Newark,

It is ordered that judgment of ouster be entered against defendant and in favor of the relator, with costs to be taxed.

Entered Nov. 3d, 1881.

On motion of

BENJ. C. POTTS,

*Att'y.*

WRIT OF ERROR.

# N. J. Court of Errors and Appeals.

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|---|---|
| WILLIAM A. HAMMER, *Plaintiff in Error,* vs. THE STATE, (*ex rel.* MARCUS S. RICHARDS, *Relator,*) *Defendant in Error.* | *In Error to the Supreme Court.* |

NEW JERSEY, to wit:

[L S.] The State of New Jersey to our 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 of New Jersey, (Marcus S. Richards being the relator,) and William A. Hammer, defendant, on an information in the nature of a *quo warranto*, manifest error hath intervened, to the great damage of the said William A. Hammer, defendant, as aforesaid, as by his complaint we are informed; we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice be done to the parties aforesaid, in this behalf, do command you that if judgment be thereupon given, then you send distinctly and openly under your seal the record and proceedings and plaint aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals in the last resort in all causes, before the judges thereof, at Trenton, on the eighth day of December next, and this writ; and 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 laws and customs 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 eighteenth day of November, in the year of our Lord one thousand eight hundred and eighty-one.

HENRY C. KELSEY, *Clerk.*

10 HENRY YOUNG, *Attorney.*

# N. J. Court of Errors and Appeals.

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| WILLIAM A. HAMMER, *Plaintiff in Error,* *vs.* THE STATE, (*ex rel.* MARCUS S. RICHARDS, *Relator,*) *Defendant in Error.* | *In Error to the Supreme Court.* / *Assignment of Error.* |

Afterwards, that is to say, on the eighth day of December, in the year eighteen hundred and eighty-one, before the Court of Errors and Appeals of the State of New Jersey, comes the said William A. Hammer, by Henry Young, his attorney, and says that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, to wit, that by the record aforesaid, the judgment aforesaid appears to have been given for the State of New Jersey against the said William A. Hammer, whereas, by the law of the land, the said judgment ought to have been given for the said William A. Hammer against the State of New Jersey. And the said William A. Hammer prays that the judgment aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings being, may be reversed, annulled, and altogether held for naught, and that he may be restored to all things which he has lost by occasion of the said judgment, &c.

HENRY YOUNG,
*Att'y for Pl'ff in Error.*

# N. J. Court of Errors and Appeals.

THE STATE, (*ex rel.* MARCUS S. RICHARDS,) *adsm.* WILLIAM A. HAMMER. } *Joinder in Error.*

And hereupon afterwards, to wit, on the first Tuesday of March, A.D. eighteen hundred and eighty-two, John P. Stockton, Esquire, Attorney General, in behalf of said State, and the said Marcus S. Richards, relator, by Benj. C. Potts, his attorney, come into Court and say, that there is no error, either in the record and proceedings aforesaid or in giving the judgment aforesaid, and pray here, that the Court here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment in manner aforesaid given, may in all things be affirmed, &c.

JOHN P. STOCKTON,
*Attorney General.*

BENJ. C. POTTS,
*Attorney for Relator.*

# New Jersey Supreme Court.

NOVEMBER TERM, 1880.

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| THE STATE OF NEW JERSEY, (*ex rel.* MARCUS S. RICHARDS, *Relator*,) | *On information in nature of Quo Warranto.* |
| *vs.* | |
| WILLIAM A. HAMMER, | *Rule to Appear, plead, &c.* |

On motion, in behalf of the Attorney General, upon affidavits read and filed, it having been ordered that leave be granted to file information in this cause, and that process do issue against the defendant; and thereupon an information being filed setting forth, among other things, that the defendant for the space of more than two years last past hath unlawfully held, used and executed, and still doth unlawfully hold, use and execute, without any legal authority, warrant or right whatsoever, the office of Commissioner of the board of assessment and revision of taxes in the city of Newark, and its liberties, privileges and franchises, and praying that he, said defendant, may be made to answer the said State by what warrant he claims to hold, use, execute and enjoy the aforesaid office of Commissioner of the board of assessment and revision of taxes in the city of Newark, and the liberties, privileges and franchises thereof, and why, if adjudged guilty of usurpation in the premises, a fine should not be imposed for the use of the State, besides costs of these proceedings to be taxed;

It is thereupon further ordered, that the said defendant appear and plead or demur to the information filed in

this cause, within twenty days after service upon him of a copy of this rule and of the information, and that the defendant take short notice of argument at the next the term of the Supreme Court.

Let the above rule be entered in the minutes.

M. BEASLEY, *C. J.*

Entered January 7, 1881, on motion of

BENJ. C. POTTS,
*Atty for Relator.*

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A true copy,
BENJ. F. LEE,
*Clerk.*

# New Jersey Supreme Court.

THE STATE OF NEW JERSEY, (*ex rel.* MARCUS S. RICHARDS,) *vs.* WILLIAM A. HAMMER. } *On Quo Warranto. Information*

John P. Stockton, Esq., Attorney General of the State of New Jersey, who sues for the said State in this behalf, comes in his own proper person here into the Supreme Court of Judicature of the said State, before the justices thereof, at the State House in the city of Trenton, on the second day of November, in the year one thousand eight hundred and eighty, for the said State of New Jersey, at the relation of Marcus S Richards of the city of Newark, county of Essex and State of New Jersey, desiring to sue and prosecute in this behalf, according to the form of the statute in such case made and provided, gives the said Court here to be informed and understand, that under and by virtue of an act of the legislature of the State of New Jersey, entitled an "An act relating to the assessment and revision of taxes in the city of Newark," approved March 15, 1866, at the charter election held in the city of Newark on the ninth day of October, eighteen hundred and seventy-seven, the said Marcus S. Richards was duly and regularly elected by the electors of said city of Newark, a Commissioner of the said the board of assessment and revision of taxes in the city of Newark for the term of two years, from the first Tuesday after the first day of January, eighteen hundred and seventy-eight; that the said Marcus S. Richards duly qualified and took upon himself the performance of the duties of said office and continued to perform and execute the same until on or about the sixth day of September,

eighteen hundred and seventy-eight, when the Mayor and Common Council of said city, claiming authority under and by virtue of a pretended act of the legislature of New Jersey, entitled "An act relating to the assessment and revision of taxes in cities of this State," approved April 5, 1878, unlawfully appointed one William A. Hammer to be a member of said board in the stead and place of the said Marcus S. Richards for the term of four years from the date of such appointment; that the said William A. Hammer thereupon, by virtue of said pretended appointment, illegally and unlawfully intruded himself into and without other warrant or authority than said pretended appointment, ousted the said Marcus S. Richards from and out said office of Commissioner aforesaid.

That under and by virtue of the first above-mentioned act, at the charter election held in the city of Newark, on the fourteenth day of October, eighteen hundred and seventy-nine, there were chosen by the electors of said city two commissioners of the said board of assessment and revision of taxes in the city of Newark; that said last mentioned election was in all things conducted according to law, and that said Marcus S. Richards received 8,745 votes, Francis Quin 11,687 votes, George Randal 142 votes, and Harris G. Avery 1 vote; that the Common Council of said city canvassed the votes, and declared the number of votes cast for Commissioners of the said the board of assessment and revision of taxes to be as above stated, whereupon the said Marcus S. Richards applied to and obtained from the clerk of said city the following cirtificate, viz:

"Office of the City Clerk,
Newark, N. J.

"I hereby certify that the election returns of the charter election held October 14, 1879, and on file in my office, show that the following votes were cast at that election for commissioners of assessment and revision of taxes, viz: eight thousand seven hundred and forty-five

for Marcus S. Richards, eleven thousand six hundred and eighty-seven for Francis Quin, one hundred and forty-two for George Randal, one vote for Harris G. Avery.

J. L. SUTPHEN,

[SEAL.] *City Clerk.*"

That under and by virtue of section seven of said first above mentioned act, which provides that "the two persons receiving the highest number of votes shall be declared members of said board," &c., the said Marcus S. Richards, being an elector and resident of said city, and being one of the two receiving the highest number of votes, was duly and regularly elected Commissioner of the said the board of assessment and revision of taxes in the city of Newark, for the further term of two years from the first Tuesday after the first day of January, 1880.

That the said William A. Hammer, for the space of more than two years last past, by virtue of the premises, hath unlawfully held and executed, and still doth unlawfully hold, use and execute the office of member of the board of assessment and revision of taxes in the city of Newark, and its liberties, privileges and franchises, and claims to be one of the members of said board, and to hold, use, exercise and enjoy the said office and the liberties, privileges, franchises and emoluments thereof without any legal appointment, warrant or authority whatsoever, other than that hereinbefore set forth, which was null and void and contrary to the law of the land, and wholly insufficient to enable him to hold the same for the reason that the said act of April 5, 1878, is contrary to the constitution of New Jersey, and gives no power or authority to the Mayor and Common Council of said city to make said pretended appointment, because the said the Attorney General gives the Court here further to be informed and understand that said act is a special and local act for the governing of cities, in this, that at the time of the passage of said act there were but two cities in New Jersey, to wit, the cities of Elizabeth and Newark, in which boards of assessment and revision

of taxes existed, and but one city, to wit, the city of Newark, having one hundred thousand inhabitants at the time of the passage of said act, and to which the provisions of said act could apply. That the said Marcus S. Richards, by virtue of his last aforesaid election, was, under the act first hereinbefore referred to, duly elected and chosen one of the Commissioners of the said the board of assessment and revision of taxes in the city of Newark, and that said Marcus S. Richards hath ever since been and still is rightfully entitled to hold, use and exercise the said office of Commissioner of said board, as aforesaid, at the city of Newark, as aforesaid, which said office the said William A. Hammer, during all the time aforesaid, upon the State of New Jersey, without any legal appointment, hath usurped, intruded into and unlawfully held, used, exercised and enjoyed, and yet doth usurp, intrude into and unlawfully hold, exercise and enjoy, to the exclusion of the said Marcus S. Richards, to wit, at the city of Newark, county and State aforesaid, in contempt of the State of New Jersey, and to its great damage and prejudice against its sovereignty and dignity.

Whereupon the said Attorney General, for the said State, at the relation of Marcus S. Richards, desiring to sue and prosecute in this behalf, prays the advice of the Court here as to the relator's rights in the premises, and for due process of law against the said William A. Hammer, in this behalf, to be made to answer to the State by what warrant he claims to hold, use, execute and enjoy the aforesaid office of member of the board of assessment and revision of taxes, in the city of Newark, and the liberties, privileges and franchises thereof, and why, if adjudged guilty of usurpation in the premises, a fine should not be imposed upon him for the use of the State, besides costs of these proceedings to be taxed.

JOHN P. STOCKTON,
*Attorney General.*

BENJ. C. POTTS,
*Attorney for Relator.*

# New Jersey Supreme Court.

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| WILLIAM A. HAMMER, *ads.* THE STATE OF NEW JERSEY, (*ex rel.* MARCUS S. RICHARDS, *Relator.*) | *On information in the nature of Quo Warranto.* *Plea.* |

And now comes the said William A. Hammer, by Henry Young, his attorney, and having heard the information read he complains, and under color of the premises in the said information contained he is greatly vexed and disquieted, and that by no means justly, because protesting that the said information and the matters therein contained are by no means sufficient in the law, and that he need not, nor is subject by law to answer thereto; and further, protesting that it is not true and denying it to be true as alleged in the said information, that the said relator, at the charter election held in the city of Newark, on the fourteenth day of October, eighteen hundred and seventy-nine, was elected by the electors of said city of Newark, a Commissioner of the board of assessment and revision of taxes of said city for the term of two years, or any other term, from the first Tuesday after the first day of January, eighteen hundred and eighty, or that any valid certificate was made showing that he was so elected, or that any declaration has been made by the canvassing board of said city of any such election. Yet, for plea thereto, he says, that he ought not to be impeached or impleaded, by reason of the premises in the said information contained, because, he says, that by an act of the legislature of New Jersey, approved March 15, 1866, entitled "An act relating to the assessment and revision of taxes in the city of Newark," it was provided that for the purpose of

assessing taxes required by law to be levied in the city of Newark, and revising the same, a board should be constituted to be designated as "The Board of Assessment and Revision of Taxes in the city of Newark," which board should consist of five members, four of whom should be elected at the annual charter elections held in said city, and the fifth appointed by the Common Council upon the nomination of the Mayor thereof. And the said act after designating the persons who should constitute the first board created thereunder, and their tenure of office for one and two years, respectively, as the same should be determined by lot, further provided that at the charter election to be held in said city in the year eighteen hundred and sixty-seven and every year thereafter, there should be elected two members of said board, being residents and electors of said city, each of whom should hold his office for the term of two years from the first Tuesday after the first day of January next succeeding such election; and also that the first member of said board so nominated by the Mayor and appointed by the Common Council as aforesaid, should hold his office until the first Tuesday after the first day of January, eighteen hundred and sixty-eight, and the person so nominated and appointed thereafter should hold his office for the term of two years.

And this defendant further says, that after the approval of said act, and in accordance with its provisions, two members of said board were annually thereafter elected at the charter elections of said city, and one member thereof nominated by the Mayor and confirmed by the said Council of said city as vacancies occurred, or were about to occur, up to the time of the adoption of the act next hereinafter referred to.

And this defendant further says, that under and by virtue of the provisions of another act of the legislature of New Jersey, entitled "An act relating to the assessment and revision of taxes in cities of this State," approved April 5th, in the year eighteen hundred and seventy-eight, (which said act by the terms thereof became, after its approval, applicable to and operative in

the city of Newark, the said city then having, as aforesaid, a board of assessment and revision of taxes therein, and a population exceeding one hundred thousand inhabitants,) it became and was the duty of the Mayor of said city, immediately after the approval of said act, to nominate to the Council thereof for its confirmation four persons, being resident electors of said city, to be members of a board of assessment and revision of taxes therein, two of whom should be chosen from one and two from another political party, and who should be nominated to said offices for the terms of three and four years respectively, in and by which said act it was also provided that the said persons so nominated as aforesaid, when confirmed by the Council of said city as aforesaid, should constitute the board of assessment and revision of taxes therein, and should hold their offices for the terms for which the members thereof were respectively nominated, as aforesaid, and that upon their appointment as aforesaid, the terms of office of the members of any existing board of assessment and revision of taxes in said city should immediately terminate; and that all acts or parts of acts, general or special, inconsistent therewith, were thereby repealed.

And this defendant further says, that the said last mentioned act, which also provides that its provisions should not apply to cities having a population of less than 100,000 inhabitants, was subsequently amended by supplement thereto, entitled "A supplement to an act entitled 'An act relating to the assessment and revision of taxes in cities of this State,' approved April 5th, in the year eighteen hundred and seventy-eight," which said supplement was approved March 14th, in the year eighteen hundred and seventy-nine, and repealed immediately after its adoption so much of the said original act as restricted its operation to cities having the population aforesaid; and thereupon the said act, as amended as aforesaid, became a general law, applicable to all cities in this State wherein boards of assessment and revision of taxes existed, and is still in full force and operation, and unrepealed.

And this defendant further says, that shortly after the approval of the said last mentioned act, to wit, on the sixth day of September, in the year one thousand eight hundred and seventy-eight, at Newark aforesaid, the Mayor of said city of Newark, in compliance with the directions of the said act last mentioned, nominated to the Common Council thereof the following named persons, who were resident electors of said city, to be the members of the board of assessment and revision of taxes in said city, as constituted under the provisions of said act, to wit, this defendant, William A. Hammer, for the term of four years, James F. Connelly for the term of four years, James Buchanan for the term of three years, and Gustavus A. Wiedenmayer for the term of three years; of whom two, this defendant, William A. Hammer, and James Buchanan, were republicans, and two, James F. Connelly and Gustavus A. Wiedenmayer, were democrats.

And this defendant further says, that the said Common Council of said city of Newark, (then consisting of twenty nine members,) acting under the provisions and authority of the said act, afterwards, to wit, on the same day and year last aforesaid, at Newark aforesaid, by a vote of twenty-two in the affirmative and seven in the negative, confirmed this defendant William A. Hammer, and the said James Buchanan, James F. Connelly and Gustavus A. Wiedenmayer, as members of the said board of assessment and revision of taxes in said city, for the respective terms for which they had been severally nominated as aforesaid.

And this defendant further says, that afterwards, to wit, on the seventh day of September, in the year one thousand eight hundred and seventy-eight, and before he entered upon the duties of his said office, he took and subscribed an oath before the clerk of said city of Newark, that he would faithfully and impartially, to the best of his skill and understanding, discharge the duties of his said office as a member of said board; and that at the same time, and in the same manner, the remaining members of said board, so appointed as aforesaid, took

and subscribed a similar oath; and thereupon the terms of office of the members of the board of assessment and revision of taxes previously existing in said city, were, under the provisions of said act, terminated and annulled, and this defendant became entitled to use, exercise and enjoy, for the term of four years from the date of his said appointment, the said office of a member of the board of assessment and revision of taxes of the said city of Newark, as the same was constituted and maintained under the provisions of the said act and its supplement.

And this defendant further says, that immediately after his appointment and qualification as aforesaid, to wit, on the seventh day of September, in the year one thousand eight hundred and seventy-eight, at Newark aforesaid, he took upon himself the office of member of said board of assessment and revision of taxes of the said city of Newark, as constituted as aforesaid; and by virtue of the premises he then and there became, and from thence continued, until the time of exhibiting the said information, was and still is a member of the said board, and during all the time in the said information specified has used and exercised, and still doth use and exercise, the said office, without this, that the said defendant, the said office, its liberties, privileges and franchises, in the said information above mentioned, or any of them, has usurped, or did usurp, in manner and form as by the said information is above alleged against him. And without this, and the said defendant expressly denies that the said relator was elected to said office of Commissioner of the board of assessment and revision of taxes of the city of Newark, or that any public notice of such election was given as required by law, or that there was any statement or determination of the Common Council of said city, acting as a board of city canvassers, that he was elected to said office, or that the cities of Newark and Elizabeth are the only cities in the State wherein boards of assessment and revision of taxes existed, and to which the provisions of said act of April 5th, eighteen hundred and seventy-eight, applied, or that said act was for any reason invalid in manner and form as in the said

information in that behalf alleged, all and singular, which matters and things this defendant is ready to verify. Wherefore he prays judgment, and that the said office, its liberties, privileges and franchises, by him claimed in manner aforesaid, may be allowed and adjudged to him, and he may be discharged by the Court hereof, and from the premises above charged against him.

WILLIAM A. HAMMER.

HENRY YOUNG,
*Attorney of Defendant.*

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.

WILLIAM A. HAMMER, the above named defendant, of full age, being duly sworn, on his oath saith, that the plea by him above pleaded, is not intended for the purpose of delay, but that he verily believes the said defendant hath a just and legal defence to said action and information on the merits of the case.

WILLIAM A. HAMMER.

Subscribed and sworn to before me, }
at Newark, N. J., this 12th day }
of February, A.D. 1881. }

JOHN S. SCOTT,
*Master in Chancery of N. J.*

# New Jersey Supreme Court.

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| THE STATE OF NEW JERSEY, (*ex rel.* MARCUS S. RICHARDS, *Relator*,) *vs.* WILLIAM A. HAMMER. | *On information in nature of Quo Warranto. Demurrer.* |

And the said Attorney General, as to the said several pleas of the said defendant by him above pleaded, saith that the same and the matter therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude the State of New Jersey from having the information aforesaid against the said William A. Hammer, defendant, and that he, the said Attorney General, is not bound by law to answer the same, and this the said Attorney General is ready to verify. Wherefore by reason of the insufficiency of the said plea in this behalf, the said Attorney General prays judgment for the State, and that the said William A. Hammer of the premises above charged upon him by said information may be convicted.

JOHN P. STOCKTON,
*Attorney General.*

BENJ. C. POTTS,
*Attorney for Relator.*

# New Jersey Supreme Court.

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| WILLIAM A. HAMMER, | | *On information in nature of Quo Warranto.* |
| *ads.* | | |
| THE STATE, (*ex rel.* MAROUS S. RICHARDS, *Relator.*) | | *Joinder in Demurrer.* |

And the said respondent saith, that his said plea, by him above pleaded, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law; and the said respondent is ready to verify and prove the same as the Court shall award; Wherefore, inasmuch as the said Attorney General hath not hitherto answered or denied the said plea, nor in any manner replied to the same, the said respondent prays judgment, and that the said office, liberties, privileges, and franchises, so claimed by him as aforesaid, may be allowed and adjudged to him, and that he may be dismissed and discharged by the Court, of and from the premises, by the said information above charged upon him.

HENRY YOUNG,
*Attorney for Respondent.*