New Jersey Court of Errors and Appeals.

WILLIAM STUHR, *Plaintiff*, *v.* JAMES CURRAN, *Defendant.*	*In Error.*

BRIEF.

Point I.

The compensation of a public officer is incident to the *true title*, and not to mere occupancy.

People *v.* Tieman, 30 Barb., 193, S. C.; 8 Abb. Pr. R., 359; 4 Abb. Dig., 206.
People *ex rel.* Dorsey *v.* Smith, 28 Cal., 21.
Auditors *v.* Benoit, 20 Mich., 192.
People *v.* Miller, 24 Mich., 459.
Comstock *v.* City of Grand Rapids, 40 Mich., 397.

Point II.

Election of an eligible person confers upon him the right, the title to such office. The certificate of election is the mere evidence of such title.

Glascock *v.* Lyons, 20 Ind., 1.
Magee *v.* Supervisors, 10 Cal., 233.

Point III.

A person who is rightfully entitled to an office, although not in the actual possession of it, has a property in it and against a mere intruder, who may perform the duties of the office for a time, and receive the fees or salary arising therefrom, he may maintain an action for money had and received to recover such fees or salary, and such intruder cannot retain any part thereof as compensation for his labor.

Glascock *v.* Lyons, 20 Ind., 1.
Dolan *v.* The Mayor, 68 N. Y., 274, S. C.; 23 Am. Rep., 168.

WILLIAM. S. STUHR,
Attorney of Plaintiff.

Wm. S. Sharp, Printer, 21 W. State St., Trenton, N. J.

COURT OF ERRORS AND APPEALS

WILLIAM STUHR,
Plaintiff,
vs.
JAMES CURRAN,
Defendant.

In Error.

Defendant's Points.

I.

An office and the prospective fees of the officer ~~is~~ are not property; the right to fees and salary grows out of services performed.

Smith *v.* New York, 37 N. Y. 518.
Harley *v.* Mayor, 33 N. Y. 607.
Wayne Co. *v.* Benoit, 20 Mich. 176.
Jarvis *v.* Mayor, 2 N. Y. Leg Obs. 396.
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Queen *v.* Mayor of Cambridge, 12 Ad. & El. 702.
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II.

There is a clear distinction taken by the authorities between an office held *de facto* under color of title and one usurped without any legal pretext.

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III.

The defendant was entitled to receive from the county collector, the disbursing officer of the county, his salary as chosen freeholder from May 1st to November 1st; the latter date being the time when he gave up his office and the plaintiff took it.

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Cases cited in this first points

IV.

If there be a right of recovery at all in the cause, it would be as damages, and not for money had and received.

Glasscock *v*. Lyons, 20 Ind. 1.
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V.

Both plaintiff and defendant held office under an act of the legislature of the State of New Jersey, entitled "An act to reorganize the Board of Chosen Freeholders of the county of Hudson," approved March 23d, 1875, (*Laws of* 1875, *page* 324,) which provides that there shall be elected in the county of Hudson two chosen freeholders from each assembly district; they must give bonds in the sum of $10,000 each; bonds to be approved by a justice of the Supreme Court; and they also must take an oath of office before a justice of the Supreme Court. All this the defendant did before he was allowed to take his seat. This bond is given and oath taken by virtue of the declaration of the board of county canvassers provided for in this act. The act then provides, "that the said members of the board of chosen freeholders shall receive, *as a salary* and compensation for their services as members of said board, the sum of five hundred dollars each per annum, * * * such salaries to be paid out of the county treasury by the county collector, in equal quarter-yearly payments, as the same become due; and such salary shall be in lieu of any *per diem* heretofore allowed, and in lieu of all other fees for committee or otherwise, perquisites, carriage hire or traveling expenses or personal entertainment whatever, and no other compensation shall be allowed or given or paid to any of said members * * * for any services or expenses whatever."

Under this statute the compensation is an incident to the service, and the defendant having, under a legal title, (not being a mere intruder,) performed the same, is entitled to the salary against all. The salary or compensation is set off against service and expenses, by the statute.

J. H. LIPPINCOTT,
Counsel of Respondent.

NEW JERSEY COURT OF ERRORS AND APPEALS.

WILLIAM STUHR, Pltff, *vs.* *JAMES CURRAN, Deft.*	*In Error.*

WILLIAM S. STUHR,

Attorney of Plaintiff.

JOB. H. LIPPINCOTT,

Attorney of Defendant.

WRIT OF ERROR.

New Jersey, *ss.*—The State of New Jersey to Manning M. Knapp, Esquire, Judge of our CircuitCourt, at Jersey City in and for the County of Hudson, or such Justice of the Supreme Court of the State of New Jersey as shall hold such Circuit Court, 10 greeting:

SEAL.

For as much as in the record and proceedings, and also in the giving of judgment in a certain plaint, which was in our Circuit Court, holden at Jersey City, in and for the said County of Hudson, between William Stuhr plaintiff, and James Curran defendant, of a plea of trespass on the case upon promises, manifest error hath intervened to the great damage of the said William Stuhr, as it is said; we being willing that the error, if any there be, should, in due manner, be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed, then you distinctly and openly send, under your seal, the records and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the first Tuesday, of July next, 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, Hon. Theodore Runyon, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the twenty-fifth day of June in the year of our Lord one thousand eight hundred and eighty one.

HENRY C. KELSEY,
Clerk.

WILLIAM S. STUHR,
Attorney.

THE ANSWER OF MANNING M. KNAPP, JUSTICE, WITHIN NAMED.

This record and proceedings of the plea whereof mention is within made, with all things touching and

concerning the same, to the Court of Errors and Appeals in the last resort in all causes, within specified at the day and place within contained I certify in a certain schedule to this suit annexed, as I am within commanded.

M. M. KNAPP.

Judge.

[L. S.]

JUDGMENT.

Hudson Circuit Court of the eighteenth day of December in the year of our Lord one thousand eight hundred and eighty. 10

Hudson County, ss.

James Curran the defendant in this suit was summoned to answer unto William Stuhr the plaintiff therein of a plea of trespass on the case upon promises; and thereupon the said plaintiff by William S. Stuhr his attorney complains for that whereas the said defendant on the first day of December in the year of our Lord one thousand eight hundred and eighty at Hoboken, 20 to wit: at Jersey City in the County of Hudson aforesaid was indebted to the said plaintiff in the sum of six hundred and fifty dollars for the price and value of goods sold and delivered by the plaintiff to the defendant at his request, and in the like sum of money for the price and value of goods bargained and sold by the plaintiff to the defendant at his request, and in the like sum of money for the price and value of work done and materials for the same provided by the plaintiff for the defendant at his request; and in the like sum of money 30 for money lent by the plaintiff to the defendant at his request; and in the like sum of money for money had

and received by the defendant to and for the use of the plaintiff; and in the like sum of money for money paid by the plaintiff for the use of the defendant at his request; and in the like sum of money for interest due from the defendant to the plaintiff at the defendants request for a long time then elapsed; and in the like sum of money for money found to be due from the defendant to the plaintiff on an account then and there stated between them; and the defendant afterwards (to
10 wit) on the day and year last aforesaid in the County aforesaid in consideration of the premises respectively promised to pay the said several last mentioned moneys respectively to the plaintiff on request; yet the defendant disregarded his promises and has not paid any of the said moneys or any part thereof to the plaintiffs damage six hundred and fifty dollars and thereupon he brings his suit etc.

And the said defendant by J. H. Lippincott his attorney comes and defends the wrong and injury when etc.
20 and says that he did not undertake or promise in manner and form as the said plaintiff hath in his said declaration in this behalf complained against him and of this he puts himself upon the County etc.

Therefore to try the issue above joined let a jury come before the Circuit Court at Jersey City aforesaid on the twenty second day of April as yet of the Term of April in the year of our Lord one thousand eight hundred and eighty one who neither &c., by whom &c, to recognize &c., because as well &c., the same day is given to the
30 parties aforesaid, at which day before the said Circuit Court came the said parties by their attorneys aforesaid and the Jurors of the Jury above mentioned also came who to speak the truth of the matter aforesaid being chosen tried and sworn.

Upon their oath say: "That an election was held in "Hoboken April 13, 1875 at which Mr. Stuhr and Mr. "Curran were opposing candidates for the office of Cho- "sen Freeholder from the 7th Assembly District of the "County of Hudson, which district was composed entire-

"ly of Hoboken ; That the Board of County Canvassers
"declared James Curran, Jr. elected to that office from
"that district, That Mr. Curran gave bond, took the oath
"of office, and took his seat on the 4th day of May 1875
"and served and acted as Chosen Freeholder from that
"time until the 4th of November. That the oath of office
"was taken before the Hon M. M. Knapp a Supreme
"Court Justice, and the bond approved by the said Jus-
"tice ; That the certificate of election by the Board of
"Canvassers was awarded to him by their declaration, 10
"That immediately after his taking his seat on the 12th
"day of May Mr. Stuhr in the name of the State, he
"being the relator, commenced proceedings in *quo war-*
"*ranto* against Mr. Curran, a rule to show cause was
"granted by his Honor Justice Knapp on which testi-
"money was taken and leave given to file information
"against Mr. Curran by the Supreme Court in the June
"Term of 1875, that the information was filed, a plea of
"Mr. Curran and replication by Mr. Stuhr, all of which
"proceedings are admitted in evidence here, That 20
"a trial of the cause was had at the Hudson
"Circuit, September Term 1875, in which there was a
"verdict of guilty, and that the Supreme Court at the No-
"vember Term rendered a *judgment of ouster* on the 4th
"day of November. And on the fourth day of November
"Mr. Curran vacated his seat in the Board, and Mr. Stuhr
"took his seat, That Mr. Stuhr qualified by taking the
"oath of office before his Honor Justice Knapp and
"entered into bonds, which were approved by the said
"Justice on the 4th of November; That on that day 30
"Mr. Stuhr took his seat and served as a Chosen Free-
"holder from said district until the expiration of the
"term in May 1876 and drew pay from that time ; That
"Mr. Curran drew pay from May 4th 1875 until Novem-
"ber 4th 1875, the time at which Mr. Stuhr took his seat
"being $250 or two quarters salary ; That the claim is
"now by Mr. Stuhr to recover from Mr. Curran that $250
"which was received from the County Collector as Free-
"holder at that time ; The County Collector paid him

"two quarters salary and the vouchers are offered in evi-
"dence one dated August 25, 1875, for $125, and one
"dated November 2, 1875 for $125,

"That Mr. Curran performed services as Freeholder
"from May 4th 1875 to November 4th 1875 and that
"Mr. Stuhr performed services as Freeholder from No-
vember 4th 1875 to the expiration of his term of his office."

But whether or not, upon the whole matter aforesaid, by the jurors aforesaid, in form aforesaid found, the
10 said defendant did promise and undertake in manner and form, as the said plaintiff hath thereof complained against him, the jurors aforesaid are altogether ignorant, and thereupon pray the advice of the said Circuit Court, before the aforesaid justice thereof; and if, upon the whole matters aforesaid, it shall seem to the said Court, that the said defendant did promise and undertake, in manner and form, as the said plaintiff hath thereof complained against him, then the jurors aforesaid, upon their oath aforesaid say, that the said defendant did
20 promise and undertake in manner and form as the said plaintiff hath within thereof complained against him and in that case they assess the damages of the said plaintiff by reason of the matters aforesaid at two hundred and fifty dollars besides his costs and charges by him about his suit in that behalf expended.

But if, upon the whole matter aforesaid, it shall seem to the said Court, that the said defendant did not promise and undertake in manner and form as the said plaintiff hath thereof complained against him then the
30 jurors aforesaid, upon their oath aforesaid say, that the said defendant did not promise and undertake in manner and form, as he hath within in pleading alleged.

At which day, before the Circuit Court aforesaid, came the parties aforesaid, by their respective attorneys aforesaid, Whereupon, all and singular the premises aforesaid, being seen, and by the said Court here fully understood, and mature deliberation being thereupon had, it appears to the said Court here, that the said defendant did not undertake and promise in manner

and form as the said plaintiff hath in his said declaration in this behalf complained.

Therefore it is considered, that the said defendant do recover against the said plaintiff, his costs and charges by him about his defence in this behalf laid out and expended, and by the jurors aforesaid, in form aforesaid assessed, and by the said Court adjudged to the said defendant, which said cost and charges in the whole amount to Eighteen dollars and thirty cents, And the said plaintiff in mercy &c.

M. M. KNAPP.

Judge.

BILL OF EXCEPTIONS.

Be it remembered that on the twenty second day of April, in the year of our Lord one thousand eight hundred and eighty one, at a Circuit Court held at Jersey City in and for the County of Hudson, before his Honor Manning M. Knapp, Esquire, one of the Justices of the Supreme Court of Judicature of the State of New Jersey and Judge of said Circuit Court, the issue joined in the above stated cause between the said parties, (pro ut the pleadings,) came on to be tried by a Jury for that purpose, duly empanelled; and there upon the jury by the direction of the court found a special verdict in the words following to wit:

"That an election was held in Hoboken April 13, 1875, at which Mr. Stuhr and Mr. Curran were opposing candidates for the office of Chosen Freeholder from the 7th Assembly District of the County of Hudson, which district was composed entirely of Hoboken."

That the Board of County Canvassers declared James Curran Jr., elected to that office from that district.

That Mr. Curran gave bonds, took the oath of office, and took his seat on the 4th day of May 1875 and served and acted as Chosen Freeholder from that time until the 4th of November. That that oath of office was taken before the Hon. M. M Knapp, a Supreme Court Justice, and the bond approved by the said Justice: that the certificate of election by the Board of Canvassers was
10 awarded to him by their declaration. That immediately after he taking his seat on the 12th day of May Mr. Stuhr in the name of the State, he being the relator, commenced proceedings in *quo warranto* against Mr. Curran, a rule to show cause was granted by his Honor, Justice Knapp, on which testimony was taken and leave given to file information against Mr. Curran by the Supreme Court in the June Term of 1875; that the information was filed, a plea of Mr. Curran and replication by Mr. Stuhr, all of which proceedings are
20 admitted in evidence here. That a trial of the cause was had at the Hudson Circuit, September Term 1875, in which there was a verdict of guilty, and that the Supreme Court at the November Term rendered a *judgment of ouster* on the 4th day of November, and on the Fourth day of November Mr. Curran vacated his seat in the Board and Mr. Stuhr took his seat. That Mr. Stuhr qualified by taking the oath of office before his Honor Justice Knapp and entered into bonds which were approved by the said Justice on the 4th of Novem-
30 ber; that on that day Mr. Stuhr took his seat and served as a Chosen Freeholder from said district until the expiration of the term in May 1876 and drew pay from that time. That Mr. Curran drew pay from May 4th 1875 until November 4th 1875, the time at which Mr. Stuhr took his seat, being $250, or two quarters salary.

That the claim is now by Mr. Stuhr to recover from Mr. Curran that $250 which he received from the County Collector as Freeholder at that time. The County Col-

lector paid him two quarters salary and the vouchers are offered in evidence one dated August 5, 1875, for $125 and one dated November 2nd 1875, for $125.

That Mr. Curran performed services as Freeholder from May 4th 1875 to November 4th 1875 and that Mr. Stuhr performed services as Freeholder from November 4th 1875 to the expiration of the term of office.''

Which being done, the plaintiff, by his attorney, moved for judgment in favor of the plaintiff, which motion, after argument, his Honor, the Judge, denied; to 10 which ruling of the Court the plaintiff prayed a bill of exceptions, and the said judge sealed the exception accordingly.

M. M. KNAPP
Judge.

ASSIGNMENT OF ERRORS.

Afterwards, that is to say on the fifth day of July in the year of our Lord one thousand eight hundred and eighty one, in the Court of Errors and Appeals in the last resort in all causes of the State of New Jersey, 20 comes the said William Stuhr, by William S. Stuhr, his attorney, and says that in the records and proceedings aforesaid, and also in the matters recited and contained in the said bill of Exceptions, and also in the judgment aforesaid, there is manifest error in this, to wit:

That by the record aforesaid, it appears that the judgment in form aforesaid, was given for the said James Curran against the said William Stuhr, whereas by the law of the land judgment ought to have been given for the said William Stuhr against the said James 30 Curran.

Therefore the said William Stuhr prays that the judgment aforesaid, by reason of the aforesaid errors, and of

New Jersey Court of Errors and Appeals.

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BRIEF.

Point I.

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Election of an eligible person confers upon him the right, the title to such office. The certificate of election is the mere evidence of such title.

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A person who is rightfully entitled to an office, although not in the actual possession of it, has a property in it and against a mere intruder, who may perform the duties of the office for a time, and receive the fees or salary arising therefrom, he may maintain an action for money had and received to recover such fees or salary, and such intruder cannot retain any part thereof as compensation for his labor.

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Under this statute the compensation is an incident to the service, and the defendant having, under a legal title, (not being a mere intruder,) performed the same, is entitled to the salary against all. The salary or compensation is set off against service and expenses, by the statute.

J. H. LIPPINCOTT,
Counsel of Respondent.

NEW JERSEY COURT OF ERRORS AND APPEALS.

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WRIT OF ERROR.

New Jersey, *ss.*—The State of New Jersey to Manning M. Knapp, Esquire, Judge of our CircuitCourt, at Jersey City in and for the County of Hudson, or such Justice of the Supreme Court of the State of New Jersey as shall hold such Circuit Court, 10 greeting:

SEAL.

For as much as in the record and proceedings, and also in the giving of judgment in a certain plaint, which was in our Circuit Court, holden at Jersey City, in and for the said County of Hudson, between William Stuhr plaintiff, and James Curran defendant, of a plea of trespass on the case upon promises, manifest error hath intervened to the great damage of the said William Stuhr, as it is said; we being willing that the error, if any there be, should, in due manner, be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed, then you distinctly and openly send, under your seal, the records and proceedings aforesaid, with all things touching the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the first Tuesday, of July next, 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, Hon. Theodore Runyon, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the twenty-fifth day of June in the year of our Lord one thousand eight hundred and eighty one.

HENRY C. KELSEY,
Clerk.

WILLIAM S. STUHR,
Attorney.

THE ANSWER OF MANNING M. KNAPP, JUSTICE, WITHIN NAMED.

This record and proceedings of the plea whereof mention is within made, with all things touching and

concerning the same, to the Court of Errors and Appeals in the last resort in all causes, within specified at the day and place within contained I certify in a certain schedule to this suit annexed, as I am within commanded.

M. M. KNAPP.

Judge.

[L. S.]

JUDGMENT.

Hudson Circuit Court of the eighteenth day of December in the year of our Lord one thousand eight hundred and eighty. 10

Hudson County, ss.

James Curran the defendant in this suit was summoned to answer unto William Stuhr the plaintiff therein of a plea of trespass on the case upon promises; and thereupon the said plaintiff by William S. Stuhr his attorney complains for that whereas the said defendant on the first day of December in the year of our Lord one thousand eight hundred and eighty at Hoboken, 20 to wit: at Jersey City in the County of Hudson aforesaid was indebted to the said plaintiff in the sum of six hundred and fifty dollars for the price and value of goods sold and delivered by the plaintiff to the defendant at his request, and in the like sum of money for the price and value of goods bargained and sold by the plaintiff to the defendant at his request, and in the like sum of money for the price and value of work done and materials for the same provided by the plaintiff for the defendant at his request; and in the like sum of money 30 for money lent by the plaintiff to the defendant at his request; and in the like sum of money for money had

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Upon their oath say: "That an election was held in "Hoboken April 13, 1875 at which Mr. Stuhr and Mr. "Curran were opposing candidates for the office of Cho- "sen Freeholder from the 7th Assembly District of the "County of Hudson, which district was composed entire-

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"ber 4th 1875, the time at which Mr. Stuhr took his seat
"being $250 or two quarters salary ; That the claim is
"now by Mr. Stuhr to recover from Mr. Curran that $250
"which was received from the County Collector as Free-
"holder at that time ; The County Collector paid him

"two quarters salary and the vouchers are offered in evi-
"dence one dated August 25, 1875, for $125, and one
"dated November 2, 1875 for $125,

"That Mr. Curran performed services as Freeholder
"from May 4th 1875 to November 4th 1875 and that
"Mr. Stuhr performed services as Freeholder from No-
vember 4th 1875 to the expiration of his term of his office."

But whether or not, upon the whole matter aforesaid, by the jurors aforesaid, in form aforesaid found, the
10 said defendant did promise and undertake in manner and form, as the said plaintiff hath thereof complained against him, the jurors aforesaid are altogether ignorant, and thereupon pray the advice of the said Circuit Court, before the aforesaid justice thereof; and if, upon the whole matters aforesaid, it shall seem to the said Court, that the said defendant did promise and undertake, in manner and form, as the said plaintiff hath thereof complained against him, then the jurors aforesaid, upon their oath aforesaid say, that the said defendant did
20 promise and undertake in manner and form as the said plaintiff hath within thereof complained against him and in that case they assess the damages of the said plaintiff by reason of the matters aforesaid at two hundred and fifty dollars besides his costs and charges by him about his suit in that behalf expended.

But if, upon the whole matter aforesaid, it shall seem to the said Court, that the said defendant did not promise and undertake in manner and form as the said plaintiff hath thereof complained against him then the
30 jurors aforesaid, upon their oath aforesaid say, that the said defendant did not promise and undertake in manner and form, as he hath within in pleading alleged.

At which day, before the Circuit Court aforesaid, came the parties aforesaid, by their respective attorneys aforesaid, Whereupon, all and singular the premises aforesaid, being seen, and by the said Court here fully understood, and mature deliberation being thereupon had, it appears to the said Court here, that the said defendant did not undertake and promise in manner

and form as the said plaintiff hath in his said declaration in this behalf complained.

Therefore it is considered, that the said defendant do recover against the said plaintiff, his costs and charges by him about his defence in this behalf laid out and expended, and by the jurors aforesaid, in form aforesaid assessed, and by the said Court adjudged to the said defendant, which said cost and charges in the whole amount to Eighteen dollars and thirty cents, And the said plaintiff in mercy &c.

M. M. KNAPP.

Judge.

BILL OF EXCEPTIONS.

Be it remembered that on the twenty second day of April, in the year of our Lord one thousand eight hundred and eighty one, at a Circuit Court held at Jersey City in and for the County of Hudson, before his Honor Manning M. Knapp, Esquire, one of the Justices of the Supreme Court of Judicature of the State of New Jersey and Judge of said Circuit Court, the issue joined in the above stated cause between the said parties, (pro ut the pleadings,) came on to be tried by a Jury for that purpose, duly empanelled; and there upon the jury by the direction of the court found a special verdict in the words following to wit:

"That an election was held in Hoboken April 13, 1875, at which Mr. Stuhr and Mr. Curran were opposing candidates for the office of Chosen Freeholder from the 7th Assembly District of the County of Hudson, which district was composed entirely of Hoboken."

That the Board of County Canvassers declared James Curran Jr., elected to that office from that district.

That Mr. Curran gave bonds, took the oath of office, and took his seat on the 4th day of May 1875 and served and acted as Chosen Freeholder from that time until the 4th of November. That that oath of office was taken before the Hon. M. M Knapp, a Supreme Court Justice, and the bond approved by the said Justice: that the certificate of election by the Board of Canvassers was
10 awarded to him by their declaration. That immediately after he taking his seat on the 12th day of May Mr. Stuhr in the name of the State, he being the relator, commenced proceedings in *quo warranto* against Mr. Curran, a rule to show cause was granted by his Honor, Justice Knapp, on which testimony was taken and leave given to file information against Mr. Curran by the Supreme Court in the June Term of 1875; that the information was filed, a plea of Mr. Curran and replication by Mr. Stuhr, all of which proceedings are
20 admitted in evidence here. That a trial of the cause was had at the Hudson Circuit, September Term 1875, in which there was a verdict of guilty, and that the Supreme Court at the November Term rendered a *judgment of ouster* on the 4th day of November, and on the Fourth day of November Mr. Curran vacated his seat in the Board and Mr. Stuhr took his seat. That Mr. Stuhr qualified by taking the oath of office before his Honor Justice Knapp and entered into bonds which were approved by the said Justice on the 4th of Novem-
30 ber; that on that day Mr. Stuhr took his seat and served as a Chosen Freeholder from said district until the expiration of the term in May 1876 and drew pay from that time. That Mr. Curran drew pay from May 4th 1875 until November 4th 1875, the time at which Mr. Stuhr took his seat, being $250, or two quarters salary.

That the claim is now by Mr. Stuhr to recover from Mr. Curran that $250 which he received from the County Collector as Freeholder at that time. The County Col-

lector paid him two quarters salary and the vouchers are offered in evidence one dated August 5, 1875, for $125 and one dated November 2nd 1875, for $125.

That Mr. Curran performed services as Freeholder from May 4th 1875 to November 4th 1875 and that Mr. Stuhr performed services as Freeholder from November 4th 1875 to the expiration of the term of office.''

Which being done, the plaintiff, by his attorney, moved for judgment in favor of the plaintiff, which motion, after argument, his Honor, the Judge, denied; to 10 which ruling of the Court the plaintiff prayed a bill of exceptions, and the said judge sealed the exception accordingly.

M. M. KNAPP
Judge.

ASSIGNMENT OF ERRORS.

Afterwards, that is to say on the fifth day of July in the year of our Lord one thousand eight hundred and eighty one, in the Court of Errors and Appeals in the last resort in all causes of the State of New Jersey, 20 comes the said William Stuhr, by William S. Stuhr, his attorney, and says that in the records and proceedings aforesaid, and also in the matters recited and contained in the said bill of Exceptions, and also in the judgment aforesaid, there is manifest error in this, to wit:

That by the record aforesaid, it appears that the judgment in form aforesaid, was given for the said James Curran against the said William Stuhr, whereas by the law of the land judgment ought to have been given for the said William Stuhr against the said James 30 Curran.

Therefore the said William Stuhr prays that the judgment aforesaid, by reason of the aforesaid errors, and of

other errors appearing in the record and proceedings aforesaid, be reversed, annulled and held for nothing, and that the said William Stuhr may be restored to all things he has lost on occasion of the said judgment, and that the prosecutor of said plea, in the name of the said James Curran may rejoin to the said errors.

WILLIAM S. STUHR.

Attorney of Pltff.

JOINDER IN ERROR.

10 And hereupon afterwards, to wit: on the third day of October in the year one thousand eight hundred and eighty one the said James Curran comes into court and says, that there is no error either in the record and proceedings aforsaid and he prays here, that the court may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid in manner aforesaid given may in all things be affirmed.

J. H. LIPPINCOTT,

Att'y for & of Counsel with Defendant.