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(Omitted from case).

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INDEX TO CASE

There is hereby certified that a true and correct copy of the foregoing has been made and filed in the office of the Clerk of the Court.

## New Jersey Court of Errors and Appeals.

AMOS HARKER,

*Prosecutor,  
Defendant in Error.*

*vs.*

MAYOR AND COUNCIL OF THE CITY  
OF BAYONNE,

*Defendant,  
Plaintiff in Error.*

*On Error.*

### STATE OF CASE.

The judgment removed into this Court for review was rendered by the Supreme Court upon a writ of certiorari granted to AMOS J. HARKER to review a resolution reorganizing the Water Department of the City of Bayonne, passed and approved on January 22nd, 1912, and a resolution discharging prosecutor from the City's service.

In 1906 the Board of Councilmen created the office of Assistant Water Purveyor, and Harker was appointed to fill the same at a salary of \$1,000 per annum, payable in equal monthly installments.

The ordinance is as follows:

*“Resolved, That the office of Assistant Water Purveyor is hereby created, and that Amos Harker be and*

hereby is appointed Assistant Water Purveyor at a salary of \$1,000 per annum, payable in equal monthly installments, said salary to be paid out of the receipts of the Water Department, and, be it further

“*Resolved*, That for the present it shall be the duty of the said Assistant Water Purveyor to supervise the repairing of meters and the placing of meters on all lines where city water is being used without a meter, and to prosecute said work with as much speed as possible.” (Case, pages 14 and 15.)

Harker entered upon the duties of his office, and continued therein until January 1st, 1908, when a reorganization of the Water Department was made by the Mayor and Council.

Under this reorganization, an accounting department was established to be in charge of a water register, whose duties were prescribed. Among these duties, he was placed in charge over the Assistant Water Purveyor, whose duties were also prescribed. (Case, pages 16, 17 and 18.)

Upon this reorganization, Amos Harker was, by resolution, appointed Assistant Water Purveyor.

The resolution is in the following words:

“*Resolved*, That Amos Harker be and he is here appointed Assistant Water Purveyor for a term of one year at a salary of \$1,000 per annum.” (Case, page 25.)

Mr. Harker accepted said appointment and entered upon his duties.

On March 1st, 1910, Harker was again appointed Assistant Water Purveyor until December 31st, 1910, by a resolution adopted by the council and approved by the Mayor, which resolution is in the following words:

“Resolved, That Amos Harker be and he is hereby appointed and elected Assistant Water Purveyor at a salary of \$1,000 per annum until December 31, 1910.”  
(Case, p. 25, l. 25.)

Before entering upon his duties he subscribed and filed with the City Clerk, an oath in the following words:

“I, Amos Harker, do solemnly swear that I will faithfully and impartially execute the duties of the office of Assistant Water Purveyor of the City of Bayonne for the term during which I may hold said office, to the best of my knowledge, skill and ability, so help me God.”

He then entered upon the duties of said office.

At an adjourned regular meeting of the Board of Councilmen, held on January 22, 1912, a resolution was adopted reorganizing the Water Department, which resolution was approved by the Mayor on January 23, 1912.

By the terms of this resolution, the office of Superintendent of the Water Department was created and established, and the duties thereof prescribed.

The office of Assistant Superintendent of the Water Department was likewise created and established, and the duties thereof prescribed.

The office of Chief Clerk of the Water Department was created and its duties prescribed. (Case, p. 19, l. 30, to p. 23 inclusive.)

The necessity for this reorganization is clearly set forth in the testimony of Mayor Cronan, who stated that up to that date the City was buying more than One Million Gallons of water in excess of its sales, and that the collection department of the City was in a bad condition, and was in arrears for over Two Hundred Thousand

Dollars (\$200,000) of uncollected moneys, and this state of the Water Department compelled a reorganization thereof. (Case, p. 29, l. 19, etc.)

Upon this reorganization, James J. Bannon was appointed Assistant Superintendent of the Water Department by resolution, passed by the Board of Councilmen and approved by the Mayor, and which is in the following words, to wit:

“*Resolved*, That James J. Bannon be and he is hereby appointed Assistant Superintendent of the Water Department for the term ending December 31st, 1912, at an annual salary of \$1,500, to be paid out of the money received from the water rents.” (Case, p. 24, l. 15.)

On the date of the last reorganization, as aforesaid, the office of Assistant Water Purveyor was abolished by a resolution in the following terms, to wit:

“*Resolved*, That the office of Assistant Water Purveyor be and the same is hereby abolished, and the present incumbent is discharged from the employ of the City.” (Case, p. 23, l. 15.)

This resolution was approved by the Mayor on January 23rd, 1912, and it is this resolution which the Supreme Court, by its judgment, sets aside, together with the resolution appointing James J. Bannon Assistant Superintendent of Water Department, and incidentally destroying the reorganization resolution of that department of January 22nd, 1912. (Case, p. 38.)

Harker was a veteran of the Spanish-American War, and as such, claimed to be entitled to hold the office of Assistant Water Purveyor until such date as he might be removed therefrom, after charges submitted and trial.

Upon the grounds stated in the opinion of the Supreme Court in *McGrath vs. Bayonne* (presented to this

Court at this term for review), the Supreme Court in this case, based its judgment. (Case, p. 38.)

The reorganization resolutions, above specified, were adopted under the powers conferred by Chapter 310 of the Act of 1872, p. 686, entitled, "An Act revising the Act to incorporate the City of Bayonne, in the County of Hudson and State of New Jersey, approved March 10, 1869." Sections 3, 28 and 35.

#### THE QUESTIONS INVOLVED ARE:

(a) Whether the reorganization resolution of January 1st, 1908 (Case, pages 16, 17 and 18), created an "office," the title to which can be questioned only through proceedings in the nature of quo warranto, or whether it created a "position," so that the incumbent's right to exercise the duties thereof can be successfully challenged by certiorari.

(b) Whether the reorganization resolution of January 22, 1912 (Case, p. 19, etc.), can be effectually destroyed by a judgment of the Supreme Court on certiorari which sets aside a resolution necessary to its vitality.

(c) Whether the prosecutor, having accepted the office or position of Assistant Water Purveyor under the resolution of appointment of March 1st, 1910 (Case, p. 25), which fixed the term of appointment to December 31st, 1910, is protected from removal by the terms of the Veterans' Act of 1907, p. 37.

(d) Whether the acceptance of such office or position in 1910 is in the nature of a contract with the City, and a waiver of any claim to protection under said Act of 1907.

## GROUNDS OF APPEAL.

(1) The Supreme Court erroneously decided that certiorari was an appropriate remedy in this case.

(2) The Supreme Court erroneously decided that the question involved pertains to a position or office under the government of Bayonne, "the term of which is not now fixed by law."

(3) The Supreme Court erroneously determined that the prosecutor was protected by the provisions of Chapter 14 of the Laws of 1907, p. 37, and could not be removed, except upon charges and after trial.

(4) The Supreme Court erroneously decided that the resolution of January 22, 1912, reorganizing the Water Department, and the resolution appointing James J. Bannon, Assistant Superintendent of Water Department, should be set aside.

(5) The Supreme Court erroneously decided and adjudged that the resolution of January 22, 1912 (Case, p. 23), abolishing the office of Water Purveyor, and discharging the incumbent therefrom, should be set aside, made void and for nothing holden.

## ARGUMENT.

## POINT ONE.

FOR THE GENERAL ARGUMENT OF THE QUESTIONS INVOLVED IN THIS CASE, COUNSEL RESPECTFULLY REFER TO THE BRIEF FILED IN McGRATH VS. CITY OF BAYONNE, SO FAR AS THE LEGAL QUESTIONS INVOLVED IN THAT CASE PERTAIN TO THE DECISION OF THE CASE SUB JUDICE.

Those questions are discussed in McGrath's brief under points 1, 2, 3, 4 and 5, substituting, however, reference to the Veterans' Act of 1907 in such places as reference in the McGrath brief is made to the Exempt Firemen's Act of 1911, as the language of each Act, respecting the office or position embraced within the protection thereof, is identical, which included within their protection any incumbent "whose term of office is not now fixed by law."

The case *sub judice* differs from the McGrath case, in the particular that whereas the Exempt Firemen's Act was enacted subsequent to the time of his appointment, in this case the Veteran's Act, to which the prosecutor appealed, was passed prior to his acceptance of the appointment as Assistant Water Purveyor, and, therefore, the cases of *Hardy vs. Orange*, 61, N. J. L. 620, and *Horan vs. Orange*, 58 N. J. L. 533, are directly in point and decisive against the prosecutor.

In the case at bar, as in those cases, the term accepted by the incumbent was definitely fixed in the resolution of appointment, and is in the nature of a contract between the municipality and the appointee, and the provisions of the Veterans' Act, if they could apply, were waived by the acceptance of such appointment by the prosecutor.

N. B.—The second cause of error (Case, p. 40) was erroneously assigned, and the plaintiff in error relies upon the first, third and fourth assignments.

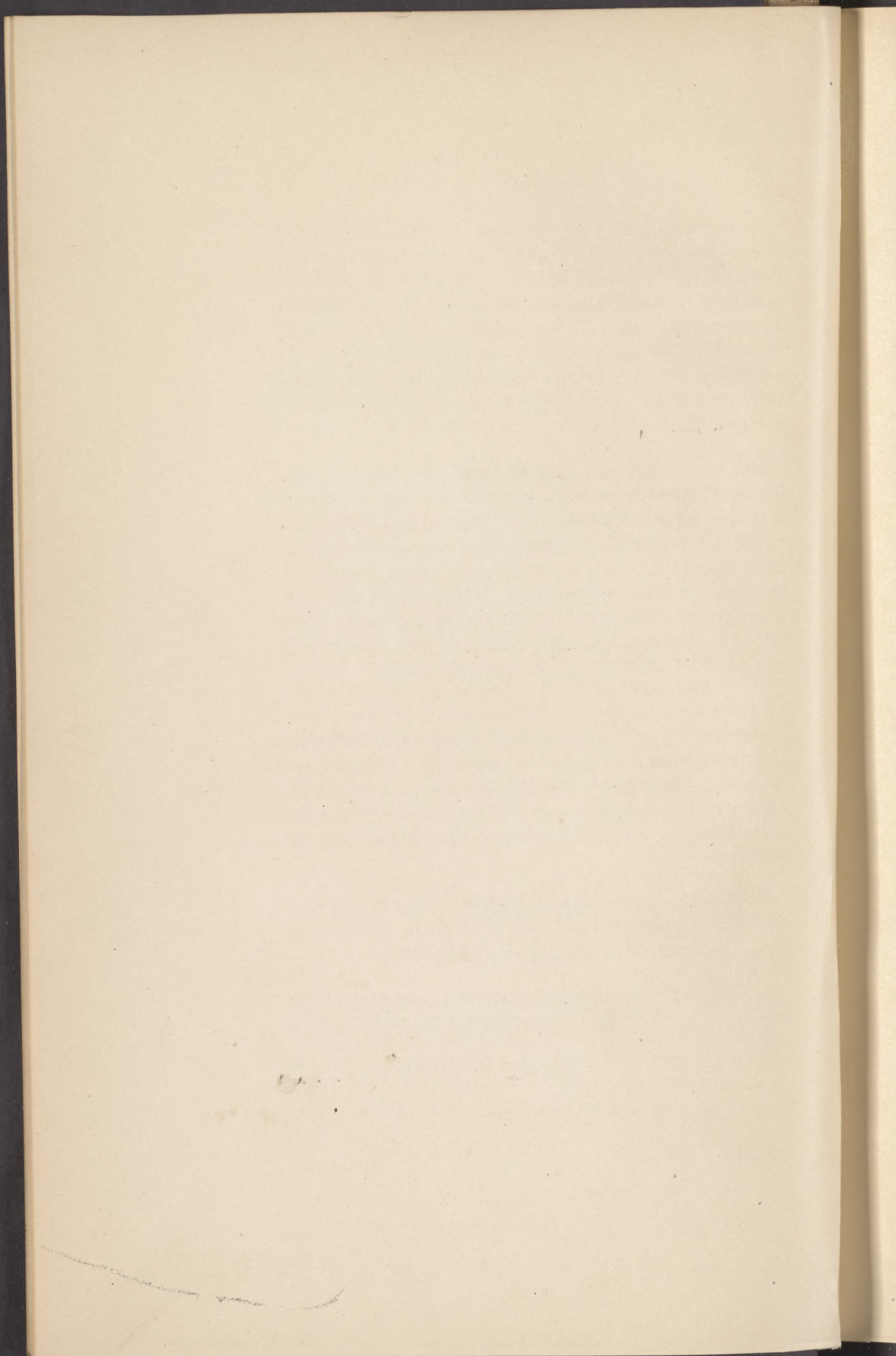
It is respectfully submitted that the judgment of the Supreme Court should be reversed for the causes aforesaid.

DANIEL J. MURRAY,

*Of Counsel with Plaintiff in Error.*

WARREN DIXON,

*Of Counsel.*



## New Jersey Court of Errors and Appeals.

AMOS J. HARKER, Prosecutor, Defendant-in-Error,	} On Error.	10
<i>v.</i>		
THE MAYOR AND COUNCIL OF THE CITY OF BAYONNE, Defendant, Plaintiff-in-Error.		20

### **BRIEF ON BEHALF OF DEFENDANT- IN-ERROR AMOS J. HARKER.**

#### **Statement of Case.**

The defendant-in-error held the position of Assistant Water Purveyor in the City of Bayonne, from January 6th, 1906, until January 22nd, 1912, when he was discharged without cause and without any complaint having been preferred against him. 30

He served as a sailor in the United States Navy in the war between the United States and Spain, and in the Philippine Insurrection and the Boxer Uprising, and was honorably discharged from the service of the United States, and therefore claims that he was entitled to hold the position of Assistant Water Purveyor during good behavior, by virtue of the provisions of Chapter 141, of the Laws of 1907. 40

**POINT I.**

**The defendant-in-error being an honorably discharged sailor, having served in the wars of the United States, was entitled to hold his position during good behavior.**

10      By Section 1, of an act entitled, "An act regarding soldiers, sailors and marines honorably discharged from the United States service" (P. L., 1907, p. 37, compiled Statutes, Vol. 4, p. 4873, §63), it is provided

20                   "that no person now holding a position or office under the Government of this State, or the Government of any county, city town, township, or other municipality of this State, or may hereafter be appointed to any such position, whose term of office is not now fixed by law, and receiving a salary from such State, county, city, town, township, or other municipality, who is a soldier, sailor or marine, who has served in any war of the United States and has been honorably discharged from the United States service, shall be removed from such position or office except for

30                   "good cause shown after a fair and impartial hearing; that such soldier, sailor or marine who has served in any war of the United States and who has been honorably discharged from the United States service shall hold his position or office during good behavior, and shall not be removed for political reasons."

40                   The second section of the act provides that charges must be preferred in writing, and copy served upon the holder of the position, and a hearing given him before his removal.

It has been settled in a great many cases in this State that soldiers and sailors are entitled to protection under the so-called tenure of office acts.

*Lewis v. Jersey City,*

22 Vr., p. 240.

*Stewart v. Freeholders,*

32 Vr., p. 118.

*Peterson v. Freeholders,*

34 Vr., p. 57, and cases cited.

10

The defendant-in-error is an honorably discharge sailor. He enlisted in the Navy of the United States, September 19, 1898 (Case, p. 13 line 17).

He served as such sailor in the Navy in the Spanish-American War, the Philippine Insurrection, and the Boxer Uprising (Case, p. 13, line 30).

He was honorably discharged from the service of the United States, July 29th, 1901. (See his Testimony, p. 13 line 35).

20

He holds a certificate of honorable discharge, which was offered in evidence, and is marked "Exhibit P17" (Case, p. 13, line 39; p. 14, lines 10 to 20).

He therefore had the required qualifications to entitle him to the benefits of the act, if the place he held was a position or office and the term not fixed by law.

30

## POINT II.

**The defendant-in-error held a position under the government of the City.**

The position he held was known as "Assistant Water Purveyor."

40

It was created and the prosecutor was appoint-

ed thereto February 6th, 1906, by the adoption of the following resolution:

10       *Resolved*, That the office of Assistant Water Purveyor is hereby created and that Amos Harker be and hereby is appointed Assistant Water Purveyor at a salary of \$1,000 per annum, payable in equal monthly installments; said salary to be paid out of the receipts of the Water Department" (Case, p. 14, line 40, and p. 15, lines 1 to 30).

He was reappointed to the same position (Case, p. 25, line 17), January 1st, 1908, at the same salary, for a term of one year (p. 24, line 30, to line 10, p. 25). He was again appointed to the same position March 1st, 1910, at a salary of \$1,200 per annum, until December 31st, 1910 (p. 25, lines 20 to 40).

He entered upon the discharge of the duties of the position immediately upon his first appointment on February 6th, 1906, and served therein continuously until January 22nd, 1912, when he was discharged without cause (p. 14, line 30, to line 40, p. 15).

30       The duties of the position were defined as follows:

And be it further

40       *Resolved*, That for the present, it shall be the duty of the Assistant Water Purveyor to supervise the repairing of meters and the placing of new meters on all lines where City water is being used without a meter, and to prosecute said work with as much speed as possible" (see Case, p. 15, line 10).

The duties of the position were revised by resolution, passed January 1st, 1908, as follows:

“ASSISTANT WATER PURVEYOR.”

“That the duties of an Assistant Water Purveyor shall be to report to the water purveyor; to make all repairs necessary in the field, to make taps for house services and other connections, and to perform such other duties as may be required of him by the Water Purveyor” (p. 18, lines 2 to 10). 10

THE DEFENDANT-IN-ERROR HELD A “POSITION” AND NOT AN “OFFICE.”

These terms have been defined as follows:

“OFFICE.”

“An office is a place created or at least recognized by the laws of the State, and to which certain permanent duties are assigned either by the law itself, or by resolution adopted under authority of law.” 20

*Bownes v. Meehan,*

16 Vr., p. 189.

*Lewis v. Jersey City,*

22 Vr., p. 240.

*State v. Broome,*

32 Vr., p. 115.

30

“POSITION.”

A position is defined to be a place, the duties of which are continuous and permanent, analogous to those of an office, and which pertain to the position as such.

*Lewis v. Jersey City,*

22 Vr., p. 240.

*Stewart v. Freeholders of Hudson,*

32 Vr., at p. 117.

40

## POINT III.

**The term of his position was not fixed by law.**

The resolution of February 6th, 1906, by which the defendant-in-error was appointed, *is silent as to the term* during which he was to hold the position. It was as follows:

“Resolved, That the office of Assistant Water Purveyor is hereby created, and that Amos Harker be and hereby is appointed Assistant Water Purveyor at a salary of \$1,000 per annum, payable in equal monthly installments; said salary to be paid out of the receipts of the Water Department” (Case, p. 14, line 40 to line 10, p. 15).

There is certainly no term fixed by this resolution. It may be argued that his subsequent appointment of January 1st, 1908, and of March 1st, 1910, respectively, each being for a limited period, his term thereby became fixed. But we contend, since the term of the position fixed by the Legislature, is *during good behavior*, it was unnecessary for the Council to reappoint him from year to year, and that it was beyond its power to limit the term.

The remarks of Mr. Justice Dixon, in *Stewart v. Freeholders of Hudson*, 32 Vr., page 117, are appropriate to the present case, he said:

“We also think that the resolution mentioned goes beyond the authority of the Board in its attempt to limit the relator’s appointment to one year. The Act of March 14th, 1895, confines the tenure by which all such positions are to be held, when the incumbents are persons of the character there-

"in described, and the term is not otherwise  
 "fixed by the laws of the State. It not only  
 "forbids the removal of such persons, except  
 "for good cause shown after a fair and im-  
 "partial trial, and declares that political rea-  
 "sons shall not constitute good cause, but it  
 "affirmatively ordains that they shall hold  
 "their positions during good behavior; and  
 "so prevents the appointing power from set- 10  
 "ting any other bound to the duration of the  
 "incumbency. Thus every office or position  
 "under the Government of the State, or of  
 "any county, or city, when occupied by one  
 "of these favored citizens, is held either for  
 "a term fixed by the law of the State, or  
 "during the good behavior of the incumbent.  
 "This clause of the statute we regard as es-  
 "tablishing a legislative policy which cannot 20  
 "be thwarted by the simple device of making  
 "appointment for a specified term. The vari-  
 "ous bodies and officers empowered to fill  
 "these places, may fill them or not as they  
 "choose, with honorably discharged Union  
 "soldiers, sailors or marines, but if they do  
 "so fill them, they can exact from their ap-  
 "pointees no stipulation which will defeat 30  
 "the legislative design—that the incumbency  
 "shall continue during good behavior. As well  
 "might they attempt to provide that the posts  
 "should become vacant when the political  
 "complexion of the appointing power should  
 "change."

The fact is that the Board attempted to abolish  
 the position and thereby avoid the necessity of  
 proving some cause, which would justify them in  
 removing the defendant-in-error from the position 40  
 he held.

#### POINT IV.

#### The resolution abolishing the position of defendant-in-error is void.

10 By the third section of an act entitled "An Act regarding soldiers, sailors and marines honorably discharged from the United States service" (P. L. 1907, p. 37, Compiled Statutes, Vol. 4, p. 4873, Sec. 63), it is made unlawful for the governing body of any municipality in this State to abolish any position or office held by any soldier, sailor or marine who has served in any war with the United States, and who has been honorably discharged, or to change the title of any such office or position, or to reduce the emoluments thereof for the purpose of terminating the service of any such employee.

20 The resolution of the Board of Councilmen, by which it is pretended that the position was abolished, also discharged the defendant-in-error from the position. It was passed January 22nd, 1912. It is as follows:

30 *Resolved*, That the office of Assistant "Water Purveyor be and the same is hereby "abolished and the present incumbent is discharged from the employ of the City" (Case, p. 8, lines 20 to 30).

At the same meeting of the Board of Councilmen at which the prosecutor was discharged, and his position was abolished, a resolution was offered purporting to reorganize the Water Department (Case, p. 5, line 10).

40 The position of water purveyor and assistant water purveyor were not abolished. The title of the position or office was simply changed, instead of a "water purveyor" they provided for a "su-

perintendent," and instead of an "assistant water purveyor" an "assistant superintendent."

The duties of the assistant water purveyor, prior to the so-called reorganization of the department on January 22nd, 1912, were defined by a resolution of the Board of Councilmen, passed January 1st, 1908, as follows:

"That the duties of the assistant water purveyor shall be to report to the water purveyor; to make all repairs necessary in the field; to make taps for house service and other connections, and perform such other duties as may be required of him by the water purveyor" (p. 22, line 38). 10

The duties of the assistant superintendent, under the resolutions adopted January 22nd, 1912, are defined as follows: 20

"To assist the superintendent in the performance of his duties; to have charge of the repairs and maintenance department, and to perform such other duties as may from time to time be assigned to him by the superintendent."

If a slight change in the phraseology in the definition of the duties of a person holding a position, or a slight change in such duties, justifies the governing body of a municipality declaring a position abolished, the plain intent of the Legislature would be easily nullified. 30

"A veteran whose position is abolished merely by change of title for the sole purpose of displacing him, to bestow the position on another will be reinstated."

Ingram v. Jersey City, 40  
34 Vr., p. 542.

**POINT V.**

**The defendant-in-error was dismissed without cause and the resolution discharging him should be set aside.**

10 Mr. Cronin, the Mayor of the City, testified as to the reason for the reorganization of the Water Department. He said concerning the department

“It was in very bad condition, inasmuch as “the City was losing more than a million gallons of water every day; in other words, we “were buying more than a million gallons more “than we sold” (p. 29, line 20).

20 The testimony of the Mayor was objected to on the ground that it was incompetent (p. 29, line 11). He was not in a position to know the condition of the Water Department. He had only assumed the duties of the office of Mayor on January 1st, 1912 (p. 29, line 3).

30 James J. Bannon, now the assistant superintendent of the Water Department (p. 31, lines 20 to 30), and who was water purveyor for two years prior to January 1st, 1912 (p. 31, lines 30 to 40) was offered as a witness by the City, and on cross examination, testified as follows:

“Q. Were you water purveyor for the two years prior to January 1, 1912?

A. Yes, sir.

40 Q. The Mayor has stated in his testimony this morning, in another case, that one million gallons of water per day was lost to the City, did you know anything about that loss of water?

Mr. Murray: That is objected to on the ground that it is irrelevant.

A. No.

Q. The water purveyor was in charge of the Water Department prior to January 22nd, 1912, was he not?

A. No.

Q. Who was?

A. Why the water register and water purveyor, as near as I can understand, have been on equal footing." 10

If the conclusion of the Mayor is correct, that there was great loss of water, it is singular that the water purveyor, who was at least on equal footing, according to his own testimony, with the water register, did not know anything of such loss.

By the regulations in force prior to January 22nd, 1912, the water purveyor had control over all water lines, hydrants, gates and valves, and was required to keep the same in perfect condition. 20  
(See Case, p. 17, lines 32 to 40.)

The Repairs and Maintenance Department was also in charge of the water purveyor (p. 16, line 38).

The Council must have considered Mr. Bannon competent, because he was appointed to the position of assistant superintendent on January 22nd, 1912, under the new regulations then adopted (p. 31, lines 30 to 40; also p. 9, line 20), and his appointment was approved by Mayor Cronin, January 23rd, 1912 (p. 9, line 30). 30

If there had been such waste of water, a competent water purveyor would certainly have been aware of the fact, so that the question is fairly raised, whether there was any waste of water? The Mayor, who took office January 1st, 1912, says there was. The water purveyor who had been in office for two years prior thereto, says he never knew of it. 40

If there had been such a waste as the Mayor testified to, and the defendant-in-error, Mr. Harker, was responsible for such waste, the Council would have been justified in removing him from his position, but not until charges were preferred against him, and he was given an opportunity to defend himself.

10 If he was removed because of the loss of water, he should have had an opportunity to be heard on the question whether there was such loss of water, or not; and if there was, whether he was responsible for it.

20 There is no intimation, however, in the testimony of either the Mayor or Mr. Bannon, that the defendant-in-error was in any way responsible for the loss of any water. Nor is there any intimation that he was not competent to serve in the position, nor has there ever been any charges of any kind made or preferred against him during all the time he occupied the position. (See Testimony, p. 15, line 40 to line 10, p. 16).

30 *The position formerly known as "assistant water purveyor" is now known as "assistant superintendent." The defendant-in-error was removed therefrom, and James J. Bannon, who had formerly been water purveyor, was appointed in the place of the defendant-in-error.*

## POINT VI.

**Certiorari is the appropriate remedy.**

Daily v. Freeholders of Essex,  
29 Vr., p. 319.

In *Peterson v. Freeholders of Salem*, 34 Vr., 57, the present Chief Justice Gummere said:

“The first question which the case presented  
 “for consideration, is whether a writ of cer-  
 “tiorari is the proper method of procedure to  
 “test the legality of this action of the Board,  
 “and its solution depends upon whether the  
 “janitorship of the County Court House is a  
 “public office or not. If it is, and if as a re- 10  
 “sult of this appointment, the prosecutor has  
 “been ousted from it, certiorari is not the ap-  
 “propriate remedy, and he can only be restored  
 “to the office by *quo warranto* proceedings.  
 “(citing cases.) If, on the other hand, the jani-  
 “torship is not a public office it is a ‘position’  
 “\* \* \* then an information in the nature  
 “of a *quo warranto* will not lie to review the le- 20  
 “gality of the action of the Board of Free-  
 “holders, and the prosecutor’s remedy is by a  
 “writ of certiorari (citing cases).”

He held in that case that certiorari was the proper remedy, because the prosecutor therein held a position and not an office.

#### POINT VII.

**The judgment below should be af- 30  
 firmed.**

All of which is respectfully submitted.

BENNY & CRUDEN,  
 Attorneys.

JAMES BENNY,  
 Of Counsel with  
 Defendant-in-Error.

40



NEW JERSEY, ss :

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 judgment in a plaint, which was in our said Supreme Court before you, between Amos J. Harker, plaintiff, and The Mayor and Council of the City of Bayonne, defendant, on a certiorari issued out of our said Supreme Court to the said The Mayor and Council of the City of Bayonne, defendant, as is said manifest error hath intervened to the great damage of the said The Mayor and Council of the City of Bayonne, defendant as aforesaid as by its 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 is 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, before the judges thereof, on the twenty-third day of July, instant, and this writ, and that the records and proceedings aforesaid being inspected, we may cause to be further done thereupon what of right and according to law ought to be done.

WITNESS, EDWIN ROBERT WALKER, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, aforesaid, the third day of July, Nineteen Hundred and Twelve.

DAVID CRATER,

*Clerk.*

DANIEL BENNY,

*Attorney.*

The answer of William S. Gummere, Chief Justice within named.

The record and proceedings of the plea whereof mention is within named, with all things 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 writ annexed, as I am within commanded.

10

WILLIAM S. GUMMERE,

*Chief Justice.*

20

30

40

Writ of certiorari returnable February 15, 1912.

BENNY & CRUDEN,  
*Attorneys for Prosecutor,*  
 No. 211 Broadway,  
 Bayonne, N. J.

Allowed January 30, 1912.

10

F. J. SWAYZE, J. S. C.

STATE OF NEW JERSEY,

The State of New Jersey to the Mayor  
 (Seal) and Council of the City of Bayonne.

20

GREETING:

We being willing to be certified of certain proceedings of the City of Bayonne, and by the Mayor and Council of the City of Bayonne, for the removal and dismissal of Amos J. Harker, from the position of Assistant Water Purveyor of the City of Bayonne, as is alleged, do command you, that all communications, complaints, charges, resolutions and all proceedings by you, touching and concerning the removal and dismissal of the said Amos J. Harker from the position of Assistant Water Purveyor of the City of Bayonne, as aforesaid, to our Supreme Court, to be held at Trenton, on the 15th day of February, in the year of our Lord, one thousand nine hundred and twelve, you do certify and send together with this writ, that therein may be done what of right and according to the Constitution and laws of the State of New Jersey ought to be done.

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40

WITNESS: William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton, this 1st day of February, in the year of our Lord, one thousand nine hundred and twelve.

BENNY & CRUDEN,

*Attorneys.*

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WILLIAM RIKER, JR.,

*Clerk.*

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### Return to Writ

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*To the Honorable Justices of the Supreme Court of  
Judicature of New Jersey:*

In obedience to the command of the within writ, The Mayor and Council of the City of Bayonne, do send to you, the Honorable Justices of the Supreme Court of Judicature of New Jersey, the following proceedings of the Board of Councilmen of the City of Bayonne and the action of the Mayor of said City thereon.

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IN WITNESS WHEREOF, I, William P. Lee, City Clerk, and also Clerk to the Board of Councilmen of said City, have hereunto set my hand, and the seal of said City, this sixth day of February, nineteen hundred and twelve.

(Seal)

WILLIAM P. LEE,

40

*City Clerk and also Clerk of Board.*

Extract from minutes of meetings of the Board of Councilmen of the City of Bayonne.

Adjourned regular meeting of the Board of Councilmen, Monday, January 22nd, 1912, at 8:45 p. m.

Present—President Carbin, Councilmen O'Mahony, Welcher, Minton, Boyle, Hornak, Driscoll, Daly, Doolley, Phillips and Moser.

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By Councilman O'Mahony:

*Resolved*, That hereafter the management and operation of the Water Department shall be carried on and conducted as follows:

1. The office of Superintendent of the Water Department is hereby created and established, such superintendent to have entire control and supervision of all branches of the department, and all persons employed therein. 20

2. The offices of Assistant Superintendent of the Water Department is hereby created and established, such Assistant Superintendent to assist the Superintendent in the performance of his duties, to have charge of the Repairs and Maintenance Department and to perform such other duties as may, from time to time, be assigned to him by the Superintendent. 30

3. The office of Chief Clerk of the Water Department is hereby created and established, such Chief Clerk to have charge of the Accounting Department.

The Accounting Department shall consist of the Chief Clerk, who shall be in charge thereof; the Senior Clerk, the Junior Clerk, Meter Inspector, Meter Readers, and such other help as may be assigned to said 40

department from time to time. In this department shall be kept the accounts, records and bookkeeping of the Water Department. All taps and extension permits, and permits for the repair, setting and removal of meters shall be issued by the Superintendent, to whom all charges for repairs or other work performed by any branch of the Water Department shall be reported. All permits to be issued in duplicate, one of which to go to the Assistant Superintendent. All supplies shall be

10 purchased only by the Board of Councilmen on requisition by the Superintendent.

The Repair and Maintenance Department shall consist of the Assistant Superintendent of the Water Department in charge thereof; shop foreman, meter setters and helpers, and such other help as may be assigned to said department. This department is hereby charged with the duty of keeping the water lines, hydrants, gates, valves and all other equipment of the department in good and serviceable condition and repair,

20 at all times, for the proper operation of the same, and shall make all taps and extensions, repair, set and remove such meters as may be directed by the Superintendent.

The Superintendent is hereby authorized to make such temporary changes and transfers of employes in the Repair and Maintenance Department, from time to time, as may be necessary to increase the efficiency of that branch of the department, and all employes therein are required to perform such duties as he may direct.

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#### METER INSPECTOR.

That the duties of the Meter Inspector shall be to inspect all meters, check all meter readings, report all meters out of repair to the Chief Clerk and perform all such other duties as may be required of him by the Superintendent.

#### METER READERS.

40 That the duties of the Meter Readers shall be to read

meters and record such readings in books to be provided for that purpose, and perform such other duties as may be assigned them by the Superintendent.

#### SENIOR AND JUNIOR CLERKS.

That the duties of such clerks shall be to perform such services as the Chief Clerk may prescribe.

#### SHOP FOREMAN.

That the Shop Foreman, who shall also be the stock clerk, shall have charge of the receiving of all goods and stock to be used in the Water Department, keeping an accurate record of the same, and shall not permit any of the goods in his keeping to leave the store-rooms, except upon an order approved by the Superintendent or Assistant Superintendent. 10

He shall have charge of the testing and repairing of all meters brought to the department shop, and shall have direct supervision over such employes as may be assigned him, and shall perform such other duties as may be required of him by the Superintendent or Assistant Superintendent. 20

#### METER SETTER.

The meter setter shall have charge of the meter wagon; he shall set all new meters and remove for repair and reset when ready, such meters as require repair, and perform such other duties as may be prescribed by the Superintendent or Assistant Superintendent. He shall have charge of such help as may be assigned him for service on the meter wagon. 30

Adopted as follows:

Ayes—Councilmen O'Mahony, Welcher, Minton, Hornak, Boyle, Driscoll, Daly, Phillips, Moser and President Carbin.

Nays—Councilman Dooley. 40

Presented to and approved by the Mayor, Matthew T. Cronin, January 23d, 1912.

\* \* \* \*

By the same:

*Resolved*, That the office of Water Purveyor be and the same is hereby abolished and the present incumbent is discharged from the employ of the city.

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Adopted as follows:

Ayes—Councilmen O'Mahony, Welcher, Minton, Hornak, Boyle, Driscoll, Phillips, Moser and President Carbin.

Nays—Councilman Daly.

Presented to the Mayor of said City, Matthew T. Cronin, and approved January 23d, 1912.

\* \* \* \*

By the same:

*Resolved*, That the office of Assistant Water Purveyor be and the same is hereby abolished and the present incumbent is discharged from the employ of the city.

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Adopted as follows:

Ayes—Councilmen O'Mahony, Welcher, Minton, Hornak, Boyle, Driscoll, Phillips, Moser and President Carbin.

Nays—Councilmen Daly and Dooley.

Presented to the Mayor of said city, Matthew T. Cronin, and approved January 23d, 1912.

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By the same:

*Resolved*, That Edward C. Dolan be and he is hereby appointed and elected Superintendent of the Water Department for the term ending December 31, 1912, at an annual salary of seventeen hundred dollars, to be paid out of the moneys received for water rents.

Adopted as follows:

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Ayes—Councilmen O'Mahony, Welcher, Minton, Hornak, Boyle, Driscoll, Phillips, Moser and President Carbin.

Nays—Councilmen Daly and Dooley.

Presented to the Mayor of said city, Matthew T. Cronin and approved January 23d, 1912.

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By the same:

*Resolved*, That James J. Bannon be and he is hereby appointed Assistant Superintendent of the Water Department for the term ending December 31, 1912, at an annual salary of fifteen hundred dollars, to be paid out of the moneys received for water rents.

Adopted as follows:

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Ayes—All the members present.

Presented to the Mayor of said city and approved January 23, 1912.

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**Reasons**

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NEW JERSEY SUPREME COURT.

10	AMOS J. HARKER, <i>Prosecutor,</i> <i>vs.</i> THE MAYOR AND COUNCIL OF THE CITY OF BAYONNE, <i>Defendant.</i>	} <i>On Certiorari</i> <i>Reasons.</i>
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20 The Prosecutor presents the following reasons for setting aside the proceedings by which he was dismissed from the position of Assistant Building Inspector of the City of Bayonne, brought before the court by the writ of certiorari in the above-entitled cause.

30 *First*—Because the prosecutor served as a sailor in the war between the United States of America and the Kingdom of Spain, and has been honorably discharged from the United States service, and is secured against dismissal without cause and without a hearing by virtue of an act of the Legislature entitled “An Act regarding soldiers, sailors and marines honorably discharged from the United States service, approved March twenty-seventh, nineteen hundred and seven,” as well as by virtue of other acts of the Legislature.

*Second*—Because the Prosecutor was dismissed without cause and without any charge or complaint having been preferred against him.

40 *Third*—Because the Prosecutor was dismissed without cause and without notice and without a hearing or

trial, and without having been given any opportunity to make any defense.

*Fourth*—Because the proceedings by the writ herein removed to this Court are in divers other particulars unlawful, unjust and oppressive to the Prosecutor.

BENNY & CRUDEN,  
*Attorneys of Prosecutor.* 10

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*Direct Examination by Mr. Benny:*

Q. Mr. Harker, you are the Prosecutor in this cause, are you not?

A. Yes, sir.

Q. Where do you reside?

A. 696 Broadway, Bayonne, New Jersey.

Q. How long have you been a resident of Bayonne?

A. All my life, with the exception of—

Q. Were you born here? 10

A. Yes, sir. I have lived here all my life, with the exception of three years that I was in the navy.

Q. When did you enlist in the navy of the United States?

A. In 1898.

Q. What day of the month?

A. September 19th, 1898.

Q. In what capacity did you enlist?

A. Coal passer.

Q. And what other position did you serve in? 20

A. I served as Third Class Seaman and when I came home I was Acting Master-at-Arms.

Q. And on board of what ship did you serve?

A. The Oregon and Newark.

Q. Were you in any war that the United States was engaged in?

A. Yes, sir.

Q. What war?

A. The Spanish-American War, the Philippine Insurrection and the Boxer uprising. 30

Q. Have you been honorably discharged from the service of the United States?

Mr. Murraay—The question is objected to, as the discharge itself is the best evidence.

A. Yes, sir.

Q. Do you hold a certificate of honorable discharge?

A. Yes, sir.

Q. Will you please produce that? 40

A. Yes, sir.

(Witness produces a paper, partly printed and partly written, having printed upon it Discharge from the United States Navy.)

Mr. Benny—I offer this discharge in evidence.

10 Mr. Murray—I object to it as the making of the certificate and the signatures of the parties purporting to sign it has not been proved.

Marked Exhibit P. 1.

Q. From whom did you receive the certificate that has been marked Exhibit P. 1.?

A. From Lieutenant Fidelo Carter.

Q. And when did you receive it?

20 A. Why on July—it is marked there July, 1901; I don't know just the date.

Q. Just look at the certificate and see if you can find it?

A. Yes, July 29th.

Q. And where did you receive it?

A. In Boston, on board the U. S. Wabash.

30 Mr. Benny—I offer in evidence the Minutes of the Board of Councilmen of the City of Bayonne of a meeting held February 6, 1906, at which it appears that there were present President Post, Councilmen Bannon, Shortall, Meyer, Farr, Stenson, Wilson, Donohue, Cassidy, Wasiko.

Absent—Councilman Nugent.

The following resolution was offered by Councilman Farr:

40 “Resolved, That the office of Assistant Water

Purveyor is hereby created, and that Amos Harker be and hereby is appointed Assistant Water Purveyor at a salary of one thousand dollars per annum, payable in equal monthly installments, said salary to be paid out of the receipts of the Water Department; and, be it further

“*Resolved*, That for the present it shall be the duty of the said Assistant Water Purveyor 10 to supervise the repairing of meters and the placing of new meters on all lines where city water is being used without a meter, and to prosecute said work with as much speed as possible.”

Adopted.

Ayes—Councilmen Meyer, Farr, Stenson, 20  
Wilson, Wasko, and President Post.

Nays—Councilmen Bannon, Shortall, Donohue and Cassidy.

It is admitted that the above resolution was approved by the Mayor.

Q. Now, Mr. Harker, are you the same person as that mentioned in the resolution just read? 30

A. Yes, sir.

Q. Did you enter upon the duties of the position named in the resolution just read?

A. Yes, sir.

Q. How long did you remain in that position?

A. As Assistant Water Purveyor?

Q. Yes.

A. From that time until the 22d day of January of this year.

Q. During the time you held the position of Assist- 40

ant Water Purveyor, were any charges ever preferred against you?

A. No, sir.

Q. Was there ever any copy of any complaint or charge served upon you?

A. No, sir.

Q. Did you have any notice of the intention of the Board of Councilmen to remove you from the position of Assistant Water Purveyor?

10 A. No, sir.

Q. Did you have any hearing before you were removed from the position?

A. No, sir.

The minutes of a meeting of the Board of Councilmen of the City of Bayonne, held January 1st, 1908, at which there were present the following Councilmen: President George L. Post, Joseph B. McCormack, James F. Dowling, Aaron A. Melniker, Charles G. Hendrickson, Albert H. Phillips, C. A. Collier, Cornelius O'Mahony, George W. Russell, Michael O'Keefe and John J. Boyle, and at which meeting the following resolution was introduced by Councilman Melniker, is offered in evidence:

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“Resolved, That on and after January 1, 1908, the Water Department be divided into:

30 “1. An Accounting Department, to be in charge of a Water Register, which office be and is hereby created; which department shall consist of said Water Register, a meter inspector, two meter readers, one senior clerk, one junior clerk, a shop foreman, a meter setter, and such other help as may be deemed necessary.

“2. A Repair and Maintenance Department to be in charge of the Water Purveyor; which department  
40 shall consist of said Water Purveyor, an assistant Wa-

ter Purveyor, and such machinists and laborers as shall from time to time be deemed necessary.

“*Resolved*, further, That the duties of the Water Register shall be as follows:

“The Water Register shall have general supervision over all the affairs of the Water Department, and shall have direct control over the employes designated under the heading, An Accounting Department.” 10

“He shall have direct control over all accounts, records and bookkeeping of the Water Department, and in addition to the methods now employed, it shall be his duty to add with the approval of the Mayor and Council, such additional methods as may be necessary to place the department on a sound business basis.

“He shall have charge of the issuing of all tap and extension permits for the introduction of water to any premises, or for an additional supply, where water is already introduced, and for the setting of all meters 20 and the removal and repair of the same.

“He shall require and exact of all employes the rendering of such reports as shall enable him to satisfactorily account for every transaction of the Water Department.

“He shall have charge of the ordering of all supplies for the Water Department, subject to the regulations of the Mayor and Council.

“He shall furnish a good and sufficient bond to the city, in the sum of five thousand dollars, for the faithful performance of his duties. 30

“The duties of the Water Purveyor shall be as follows:

“The Water Purveyor shall have general control and direction over all lines, hydrants, gates and valves in use in the Water Department, and shall keep the same in perfect condition for use at all times. He shall make such taps and extensions to the water system as may be ordered by the Water Register.

“He shall have charge of the Assistant Water Pur- 40

veyor and such other help as may be assigned him.

“ASSISTANT WATER PURVEYOR.

“That the duties of the Assistant Water Purveyor shall be to report to the Water Purveyor, to make all repairs necessary in the field, to make taps for house services and other connections and perform such other duties as may be required of him by the Water Purveyor.

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“METER INSPECTOR.

“That the duties of the Meter Inspector shall be to inspect all meters, check all meter readings, report all meters out of repair to the Water Register, and perform such other duties as may be required of him by the Water Register.

20

“METER READERS.

“That the duties of the meter readers shall be to read meters and record such readings in books to be provided for that purpose, and perform such other duties as may be assigned them by the Water Register.

“SENIOR AND JUNIOR CLERKS.

“That the duties of such clerks shall be to perform such services as the Water Register may prescribe.

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“SHOP FOREMAN.

“That the shop foreman, who shall also be the stock clerk, shall have charge of the receiving of all goods and stock to be used in the Water Department, keeping an accurate record of the same, and shall not permit any of the goods in his keeping to leave the store room, except upon an order approved by the Water

40 Register.

"He shall have charge of the testing and repairing of all meters brought to the department shop, and shall have direct supervision over such employes as may be assigned him, and shall perform such other duties as may be required of him by the Water Register.

"METER SETTER.

"The meter setter shall have charge of the meter wagon; he shall set all new meters, and remove for 10 repair and reset when ready, such meters as require repair; and perform such other duties as may be prescribed by the Water Register. He shall have charge of such help as may be assigned him for service on the meter wagon."

Adopted.

Ayes—Councilmen Dowling, Melniker, Hendrickson, Phillips, Collier, O'Keefe and President Post. 20

Nays—Councilmen McCormack, O'Mahony, Russell and Boyle.

The above resolution was approved by the Mayor.

It is stipulated and agreed that the Minutes of January 22, 1912, and which may be read in evidence on the return of the writ, are as follows:

"Adjourned regular meeting of the Board of Councilmen, Monday, January 22nd, 1912, at 8:45 P. M. 30

"Present—President Carbin, Councilmen O'Mahony, Welcher, Minton, Boyle, Hornak, Driscoll, Daly, Doolley, Phillips and Moser.

"By Councilman O'Mahony:

"Resolved, That hereafter the management and oper- 40

ation of the Water Department shall be carried on and conducted as follows:

“1. The office of Superintendent of the Water Department is hereby created and established, such superintendent to have entire control and supervision of all branches of the department, and all persons employed therein.

10 “2. The office of Assistant Superintendent of the Water Department is hereby created and established, such Assistant Superintendent to assist the Superintendent in the performance of his duties, to have charge of the Repairs and Maintenance Department and to perform such other duties as may, from time to time, be assigned to him by the Superintendent.

20 “3. The office of Chief Clerk of the Water Department is hereby created and established, such Chief Clerk to have charge of the Accounting Department.

30 “The Accounting Department shall consist of the Chief Clerk, who shall be in charge thereof; the Senior Clerk, the Junior Clerk, Meter Inspector, Meter Readers, and such other help as may be assigned to said department from time to time. In this department shall be kept the accounts, records and bookkeeping of the Water Department. All taps and extension permits, and permits for the repairs, setting and removal of meters shall be issued by the Superintendent, to whom all charges for repairs or other work performed by any branch of the Water Department shall be reported. All permits to be issued in duplicate, one of which to go to the Assistant Superintendent. All supplies shall be purchased only by the Board of Councilmen on requisition by the Superintendent.

40 “The Repair and Maintenance Department shall consist of the Assistant Superintendent of the Water Department in charge thereof; shop foreman, meter setters and helpers, and such other help as may be as-

signed to said department. This department is hereby charged with the duty of keeping the water lines, hydrants, gates, valves and all other equipment of the department in good and serviceable condition and repair, at all times, for the proper operation of the same, and shall make all taps and extensions, repairs, set and remove such meters as may be directed by the Superintendent.

“The Superintendent is hereby authorized to make such temporary changes and transfers of employes in 10 the Repair and Maintenance Department, from time to time, as may be necessary to increase the efficiency of that branch of the department, and all employes therein are required to perform such duties as he may direct.

#### “METER INSPECTOR.

“That the duties of the Meter Inspector shall be to inspect all meters, check all meter readings, report all 20 meters out of repair to the chief clerk and perform all such other duties as may be required of him by the Superintendent.

#### “METER READERS.

“That the duties of the meter readers shall be to read meters and record such readings in books to be provided for that, and perform such other duties as may be assigned them by the Superintendent. 30

#### “SENIOR AND JUNIOR CLERKS.

“That the duties of such clerks shall be to perform such services as the chief clerk may prescribe.

#### “SHOP FOREMAN.

“That the shop foreman, who shall also be the stock clerk, shall have charge of the receiving of all goods 40

and stock to be used in the Water Department, keeping an accurate record of the same, and shall not permit any of the goods in his keeping to leave the store-rooms, except upon an order approved by the Superintendent or Assistant Superintendent.

10 "He shall have charge of the testing and repairing of all meters brought to the department shop, and shall have direct supervision over such employes as may be assigned him, and shall perform such other duties as may be required of him by the Superintendent or Assistant Superintendent.

"METER SETTER.

20 "The meter setter shall have charge of the meter wagon; he shall set all new meters and remove for repair and reset when ready, such meters as require repair, and perform such other duties as may be prescribed by the Superintendent or Assistant Superintendent. He shall have charge of such help as may be assigned him for service on the meter wagon."

"Adopted as follows:

"Ayes—Councilmen O'Mahony, Welcher, Minton, Hornak, Boyle, Driscoll, Daly, Phillips, Moser and President Carbin.

30 "Nays—Councilman Dooley.

"Presented to and approved by the Mayor, Matthew T. Cronin, January 23rd, 1912.

\* \* \* \*

"By the same:

40 "*Resolved*, That the office of Water Purveyor be and the same is hereby abolished and the present incumbent is discharged from the employ of the city.

“Adopted as follows:

“Ayes—Councilmen O’Mahony, Welcher, Minton, Boyle, Hornak, Driscoll, Phillips, Moser and President Carbin.

“Nays—Councilman Daly.

“Presented to the Mayor of said city, Matthew T. Cronin, and approved January 23rd, 1912. 10

\* \* \* \*

“By Councilman O’Mahony:

“*Resolved*, That the office of Assistant Water Purveyor be and the same is hereby abolished and the present incumbent is discharged from the employ of the city.

“Adopted as follows: 20

“Ayes—Councilmen O’Mahony, Welcher, Minton, Boyle, Hornak, Driscoll, Phillips, Moser and President Carbin.

“Nays—Councilmen Daly and Dooley.

“Presented to the Mayor of said city, Matthew T. Cronin, and approved January 23rd, 1912. 30

\* \* \* \*

“By the same:

“*Resolved*, That Edward C. Dolan be and he is hereby appointed and elected Superintendent of the Water Department for the term ending December 31, 1912, at an annual salary of seventeen hundred dollars, to be paid out of the moneys received for water rents. 40

“Adopted as follows:

“Ayes—Councilmen O’Mahony, Welcher, Minton, Boyle, Hornak, Driscoll, Phillips, Moser and President Carbin.

“Nays—Councilmen Daly and Dooley.

“Presented to the Mayor of said city, Matthew T. Cronin, and approved January 23rd, 1912.

\* \* \* \*

“By the same:

“*Resolved*, That James J. Bannon be and he is hereby appointed Assistant Superintendent of the Water Department for the term ending December 31, 1912, at an annual salary of fifteen hundred dollars, to be paid out of the moneys received for water rents.

“Adopted as follows:

“Ayes—All the members present.

“Presented to and approved by the Mayor January 23, 1912.”

30 Mr. Murray—I offer in evidence the Minutes of January 1st, 1908.

Mr. Benny—The offer is objected to on the ground that the minute is incompetent, irrelevant and immaterial.

The minutes offered are as follows:

40 “Present—President Garret L. Post, and the following Councilmen: Joseph P. McCormack, James F. Dowling, Aaron A. Melniker, Charles

H. Hendrickson, Albert H. Phillips, C. A. Collier, Cornelius O'Mahony, George W. Russell, Michael O'Keefe and John J. Boyle.

The following resolution was adopted:

*Resolved*, That Amos Harker be and he is hereby appointed Assistant Water Purveyor for a term of one year at a salary of one thousand dollars per annum." 10

Adopted.

It is stipulated and agreed that this resolution was approved by the Mayor.

Mr. Murray—I desire to offer the Minutes of March 1st, 1910, at which meeting there were present President Oliver, Councilmen McCormack, Daly, O'Mahony, Meyer, Welcher, Collier, Phillips, Russell, O'Keefe and Hornak, and which are as follows: 20

“By Councilman Collier:

*Resolved*, That Amos Harker be and he is hereby appointed and elected Assistant Water Purveyor at a salary of twelve hundred dollars per annum until December 31st, 1910.” 30

Adopted as follows:

Ayes—Councilmen McCormack, O'Mahony, Meyer, Collier, Phillips, O'Keefe and Hornak.

Nays—Councilmen Daly, Russell and President Oliver.

It is admitted that the above resolution was 40

presented to the Mayor and vetoed by him, and was subsequently passed over his veto on the 15th day of March, 1910, by the following vote:

Ayes—Councilmen McCormack, O'Mahony, Welcher, Meyer, Collier, Phillips, O'Keefe and Hornak.

10 Nays—Councilmen Daly, Russell and President Oliver.

It is stipulated and agreed that the members of the Council of the City of Bayonne consists of two members from each ward and that there are five wards in the city, and one Councilman at large, elected by the voters of the entire city.

20 Mr. Murray—I offer in evidence the official oath of Amos Harker on assuming his duties as Assistant Water Purveyor and made by him before William C. Hamilton, City Clerk, March 17, 1910.

Mr. Benny—I object to the offer as incompetent, irrelevant and immaterial.

The oath reads as follows:

30 STATE OF NEW JERSEY, }  
County of Hudson, } ss.:  
City of Bayonne, }

I, Amos Harker, do solemnly swear that I will faithfully and impartially execute the duties of the office of Assistant Water Purveyor of the City of Bayonne for the term during which I may hold the said office, to the best of my knowledge, skill and ability, so help me God.

40

AMOS HARKER.

Subscribed and sworn to before  
me this 17th day of March, 1910.

W. C. HAMILTON,  
City Clerk.

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## NEW JERSEY SUPREME COURT.

AMOS J. HARKER,  
*Prosecutor,*

*vs.*

10 THE MAYOR AND COUNCIL OF THE  
CITY OF BAYONNE,  
*Defendant.*

*On Certiorari.*

20 Testimony taken in the above entitled cause, on behalf of the defendant, before me, George A. Wardell, a Supreme Court examiner, on this twenty-sixth day of February, nineteen hundred and twelve, at 10 o'clock in the forenoon, at the City Hall in the City of Bayonne, in the County of Hudson and State of New Jersey, by consent of Council, and in the presence of James Benny Esquire, of Benny & Cruden, Attorneys of the Prosecutor, and Daniel J. Murray, Esquire, Attorney of the Defendant.

GEORGE A. WARDELL,  
*Supreme Court Examiner.*

30

MATTHEW T. CRONIN, a witness on behalf of the defendant, being duly sworn according to law, testified as follows:

*Direct Examination by Mr. Murray:*

40 Q. Mr. Cronin, what official connection with the City government of the City of Bayonne have you now?

A. Mayor.

Q. Since when?

A. January 1st, of this year.

Q. Do you recall a resolution of the Council passed on the 22nd day of January last reorganizing the Water Department?

A. I do.

Q. You took part, did you not, in preparing the resolution for the reorganization?

A. I did.

10

Q. Can you tell us now why the department was reorganized?

Mr. Benny—The question is objected to on the ground that it is incompetent, and that the minutes of the Board of Councilmen speak for themselves.

A. The resolution was adopted for the purpose of reorganizing the Water Department, which was in very bad condition, in as much as the city was losing more than a million gallons of water every day. In other words, we were buying more than a million gallons more than we sold, which had been continuing for a good many months. The collection department of the Water Department was in bad condition, in as much as there was over two hundred thousand dollars of money uncollected. The result of the adoption of the resolution was to so reorganize the department that there would be one head, who was known as the Superintendent of the Water Department, where prior to the passage of the resolution there were two heads, one known as the Water Register, who had charge of the clerical work of the department, as well as the inside repairs; that is, shop repairs, and the force within the shop. Now with the reorganization we have dispensed with the Register and appointed a chief clerk, who has charge of the clerical work only and is subordinate to the Superintendent. We have also an Assistant Superintendent, who has charge, subordinate to the Su- 40

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perintendent, of all outside repair work and construction work, as well as the repair shop and the employes in the shop. In other words, the Assistant Superintendent has immediate charge and control of everything pertaining to the mechanical end of the department; and the chief clerk everything pertaining to the clerical end, both subordinate to the Superintendent.

Q. And the Superintendent is directly responsible to the Mayor and Council?

10

Mr. Benny—The question is objected to on the ground that the resolution reorganizing the department defines the duties and responsibilities of the persons in charge.

A. He is.

Q. And the Chief Clerk and Assistant Superintendent are directly responsible to the Superintendent?

20

Mr. Benny—That is objected to for the same reason.

A. Yes, sir.

Q. In making the appointments to these offices, Mr. Cronin, did you have any regard to the special fitness for the offices?

A. We did; that was the only thing we had regard for.

30 Q. What do you know of the Superintendent's fitness for the position?

A. The Superintendent is an old time resident of Bayonne and for many years has been Superintendent of construction work for several different companies in the construction of water lines. In fact, he resigned a position as Superintendent for a contractor building the new water line being led into New York, in order to accept this position.

Q. What do you know of the experience and fitness of the present Assistant Superintendent?

40 A. The present Assistant Superintendent had many

years' experience as a master plumber in Bayonne, and he is familiar for that reason, to a very great extent with the water lines in the city from a plumbing standpoint, and he had charge of one branch of the Water Department during the past years, having served as Water Purveyor, and we thought he was a thoroughly competent man for the office to act subordinate to the Superintendent, and for that reason we appointed him.

Q. Did the Superintendent and the Assistant Superintendent take possession of their respective positions the day after the adoption of the resolution?

A. They did.

Q. And they have been employed in these respective positions ever since?

A. They have.

Q. The Chief Clerk took possession February 1st?

A. He did.

Q. And has since been employed in that position?

A. Yes, he has.

20

JAMES J. BANNON, a witness on behalf of the defendant, being duly sworn according to law, testified as follows:

*Direct Examination by Mr. Murray:*

Q. Mr. Bannon, what official position have you with the government of the City of Bayonne?

30

A. I am Assistant Superintendent of the Water Department at present.

Q. How long have you been in that position?

A. Since the 23rd of January, 1912.

Q. What position, if any, did you occupy prior to that time?

A. Why, the position of Water Purveyor.

Q. How long had you occupied that position?

A. Two years.

40

*Cross-Examination by Mr. Benny:*

Q. Were you Water Purveyor for the two years prior to January 1st, 1912?

A. Yes, sir.

Q. The Mayor has stated in his testimony this morning in another case that one million gallons of water per day was lost to the city; did you know anything about that loss of water?

10

Mr. Murray—That is objected to on the ground that it is irrelevant.

A. No.

Q. The Water Purveyor was in charge of the Water Department prior to January 22nd, 1912? Was he not?

A. No.

Q. Who was?

20 A. Why, the Water Register and Water Purveyor as near as I can understand have been on equal footing.

Q. Who was the Water Register prior to January 22nd, 1912?

A. Michael Kenney.

Q. What particular duties were performed by the Water Register?

A. Why, the clerical work and the issuing of all orders.

30 Q. In other words, he kept the account of the water consumed by those consuming water?

A. Yes, sir.

Q. And made up the bills for the water consumed?

A. Yes, sir.

Q. What were the Water Purveyor's duties?

A. The Water Purveyor's duties were to look after the mechanical department principally.

Q. Who is the Water Register now?

A. There isn't any.

40 Q. The office was abolished?

A. Yes, sir, abolished.

Q. And you hold what position now?

A. Assistant Superintendent.

Q. What are your duties now?

A. Why, I fill all orders issued by the Superintendent, whatever they may be.

Q. Had you anything to do with the duties performed by the Water Register prior to the reorganization of the department, which took place under the resolution of January 22nd, 1912?

10

A. No, sir.

Q. In what respect have your duties been changed from what they were during the years 1911 and 1910?

A. Why, I take all the mechanical end of it as I did before, and whatever orders the clerk issues in any way, why I follow those out.

Q. So that you are now performing all of the duties performed by you prior to the reorganization under the resolution of January 22nd, and in addition thereto such orders as may be given to you by the Water Register?

20

A. Yes, sir.

*Redirect by Mr. Murray:*

Q. By Water Register you mean the Chief Clerk?

A. Yes, sir. The office of Water Register was abolished and there is a position now known as Chief Clerk.

Q. The only orders you get from the Chief Clerk are in connection with the mechanical branch of the Department, are they not?

30

A. Yes, sir.

Q. Such as setting meters?

A. Yes, sir, and disconnecting meters and removing them.

Q. So that such work is now in your charge?

A. Yes, sir.

Q. Where formerly it was under the control of the Water Register?

40

A. Yes, sir.

*Re-Cross by Mr. Benny:*

Q. During 1910 and 1911 did the Water Register have anything to do whatever with looking after the laying of water pipes, the repair of breaks and placing and looking after the meters?

A. Looking after meters that comes in his work, but  
10 repairs I don't know of any.

Q. Who looked after the repairs to the breaks in the mains and the placing of meters and all that class of mechanical work, outside of the office of the City Hall?

A. The meters at that time came under the Register, it didn't come under me, but repairing breaks on the outside I took charge of that.

Q. What did the Water Register have to do, so far as the repairing of meters is concerned?

A. Well, personally he looked after the repair shop  
20 downstairs in the Meter Department, such as taking meters out and ordering them back when repaired.

I hereby certify that the foregoing depositions and other evidence on behalf of the Prosecutor and the Defendant were taken before me, by consent, at the City Hall, Bayonne, New Jersey, on the nineteenth and twenty-sixth days of February, 1912; that the witnesses were sworn by me and the testimony taken stenographically and reduced to typewriting by myself; and I certify that the foregoing truly states the evidence given before me.

30 Witness my hand this twenty-eighth day of February, nineteen hundred and twelve.

GEORGE A. WARDELL,

*Supreme Court Examiner.*

*Honorable discharge from the United States Navy.*

**Exhibit No. 1 on the part of Prosecutor.**

THIS IS TO CERTIFY that Mr. Amos J. Harker, a Master at Arms 2 Class as a "TESTIMONIAL OF FIDELITY AND OBEDIENCE," is HONORABLY DISCHARGED from the U. S. S. Wabash, and from the Naval Service of the United States, this 29th day of July, 1901, at Boston, Mass. 10

Now, according to the provisions of Section 1573 (as amended by Act of Congress approved March 3, 1899) of the Revised Statutes, if within four months from this date the said Amos J. Harker, shall present this, his Honorable Discharge, at any United States Naval Rendezvous, and shall be found physically qualified, and shall re-enlist for four years, he shall be entitled, as a gratuity, to four months' pay, at the rate he was receiving at the date of discharge. 20

Upon re-enlistment he shall receive an addition of one dollar and thirty-six cents per month to the pay prescribed for the rating in which he serves for each consecutive re-enlistment.

If he surrenders this discharge, he will receive a CONTINUOUS SERVICE CERTIFICATE, showing his service and honorable discharge. 30

Rating best qualified to fill, Master at Arms 3rd Class.

G. H. WADLEIGH, Captain, U. S. N.  
Commanding U. S. S. Wabash.

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And on the Reverse Side the following is partly printed and partly written: 40

ENLISTMENT RECORD.

Scale of Marks:—0, Bad. 1, Indifferent; 2, Fair, 3, Good, 4, Very Good; 5, Excellent.

Names, Amos J. Harker; Rate Coal Passer.

10

.....  
(At Enlistment)

Enlisted, 19 September, 1898, at New York, N. Y., for Three years;

Previous Naval Service, None, years, Served Apprenticeship, No.

Seaman Gunner, No; Trade, None, Citizenship, U. S.

20

Ratings held during enlistment, coal passer, Mat A 3 d, M-at-A, 2 class.

Proficiency in Rating, Very Good; Seamanship, Good to Very Good; Ordnance, Good to V. Good.

Marksmanship, Great Guns.....Marksmanship,

30

Small Arms, Good to Very Good.

Signaling, Fair; Sobriety, Excellent; Obedience, Good to V. Good.

Average standing for term of enlistment. Very Good.

F. S. CARTER, U. S. N.  
and Executive Officer.

40

## DESCRIPTIVE LIST.

(To be made after careful examination at date of discharge)

Where Born, Bayonne, N. J., Date 25 March, 1877.

Age 24 years, 4 months; Height 5 feet 10 $\frac{1}{4}$  inches;  
Weight 170 lbs.

Eyes, Gray; Hair Dk. Brown; Complexion Dark. 10

Personal Characteristics, marks, etc., Left varicocele, Friendship, v. fa. Scar tip r. little finger and back l. hand. Eagle Shield r. a. Japanese woman l. shoulder. Percentage of time on sick list during enlistment 2.01 per cent.

Is physically qualified for re-enlistment.

A. W. BALCH, Asst. Surgn. U. S. N. 20

(Signature Medical Officer.)

I hereby Certify that the above named A. J. Harker, C. P. has been paid three hundred and ninety four dollars twenty six cents (\$394.26) in full to date. Pay per month at date of discharge \$

July 29th, 1901.

R. T. M. BALL, U. S. N. 30

(Signature Paymaster.)

## NEW JERSEY SUPREME COURT.

FEBRUARY TERM, 1912.

10 AMOS J. HARKER,

VS.

THE MAYOR AND COUNCIL OF THE  
CITY OF BAYONNE.Argued, February Term, 1912. Decided, June Term,  
1912.

20 Argued before Trenchard, Parker and Minturn, JJ.

*Per Curiam:*

For the reasons given in the opinion filed this Term by Mr. Justice Minturn in the case of McGrath v. The Mayor and Council of the City of Bayonne, the resolution of the Board of Council of the City of Bayonne removing the prosecutor from his position as Assistant

30 Water Purveyor will be set aside.

**Rule for Judgment.**

The writ of certiorari issued in the above entitled cause having been returned, and the defendant having certified to this Court all communications, complaints, charges, resolutions and proceedings touching and con-

40 cerning the dismissal and removal of the prosecutor,

Amos J. Harker, from the position of Assistant Water Purveyor of the City of Bayonne, and the prosecutor having filed his reasons for the reversal of the said proceedings, and the cause having been regularly set down and noticed for argument at the February Term last of this Court, and having been argued before the Court by James Benny, counsel for the prosecutor, and by Daniel J. Murray, counsel for the defendant, and the Court having examined the return made by the defendant, and having read the testimony taken by the parties, and having considered said cause and directed that the resolutions and proceedings under and by virtue of which the prosecutor was dismissed from said position, be set aside. 10

IT IS ordered that judgment in favor of the said prosecutor and against the said defendant be entered in the above entitled cause, and that the resolutions and proceedings of The Mayor and Council of the City of Bayonne, under and by virtue of which the said prosecutor was dismissed and removed from the position of Assistant Water Purveyor of the City of Bayonne, and the said position of Assistant Water Purveyor abolished, be set aside, made void and for nothing holden, with costs to be taxed. 20

Entered June 29th, 1912.

On motion of

BENNY & CRUDEN, 30  
Attorneys for the Prosecutor.

## NEW JERSEY COURT OF ERRORS &amp; APPEALS.

10	<p>AMOS J. HARKER, <i>Prosecutor,</i> <i>Defendant in Error.</i></p> <p>vs.</p> <p>MAYOR AND COUNCIL OF THE CITY OF BAYONNE.</p> <p><i>Defendant,</i> <i>Plaintiff in Error.</i></p>	}	<p><i>On Error.</i></p> <p><i>Assignments of Error.</i></p>
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20 And now, at this day the plaintiff in error assigns the following causes of error:

First:—Because the Supreme Court decided that the prosecutor was the occupant of a position and not of an office, and that his removal from the same could be reviewed and the illegality thereof determined by a writ of certiorari.

30 Act entitled “An Act regarding exemption of voluntary fire departments, voluntary fire engine, hook and ladder, hose or supply or salvage corps of cities, towns, townships, boroughs and fire districts of this State,” approved April 24th, 1911, is not in controvention of the constitution of the State of New Jersey, and particularly of Art. 4, Sec. 7, Pas. 11, sub div. 7, inhibiting the passage of special laws.

40 Third:—Because the Supreme Court decided that the resolution removing the prosecutor from the office of

Assistant Water Purveyor of the City of Bayonne was illegal.

Fourth:—Because the said *Suprême Court* pronounced judgment in favor of the said prosecutor, and to set aside the said resolution, and removing said prosecutor from said office of Assistant Water Purveyor.

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## NEW JERSEY COURT OF ERRORS &amp; APPEALS.

	AMOS J. HARKER, <i>Prosecutor,</i> <i>Defendant in Error.</i>	}	<i>Joinder in Error.</i>
	vs.		
10	MAYOR AND COUNCIL OF THE CITY OF BAYONNE. <i>Defendant,</i> <i>Plaintiff in Error.</i>		

20 And hereupon, afterwards, to wit, on the third Tuesday of November, A. D. nineteen hundred and twelve, the said Amos J. Harker, by Benny and Cruden, his attorneys, comes into Court, and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and he prays 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 aforesaid, in manner aforesaid given, may in all things be affirmed, etc.

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BENNY & CRUDEN,  
 Attorneys for and  
 JAMES BENNY,  
 of Counsel with the Prosecutor.

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