SUPREME COURT OF NEW JERSEY.

Morris County.

Notice of Appeal and Grounds Filed Jan. 24th, 1914.

John P. Lyons, Plaintiff, vs. The Board of Chosen Freeholders of the County of Morris, Defendant.	Notice of Appeal Action at Law

To King & Vogt, Attorneys of Plaintiff:

Take notice that the defendant appeals to the Court of Errors and Appeals from so much of the judgment entered in this cause as adjudges that:

1. The Court refused to find "that the plaintiff cannot recover salary as a member of the Board of Chosen Freeholders of the County of Morris (as and for the time in his complaint demanded) unless he has served as such member (de facto or de jure) for the period of time for which recovery is sought, and that not having so served he cannot recover," and the defendant objected.

2. The Court refused to find "that the defendant is precluded from paying to plaintiff the salary demanded, by Article 1, paragraph 19, of the Constitution of the State of New Jersey, which provides, that 'No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation," and the defendant objected.

3. The Court refused to find "that, under the last mentioned constitutional provision, the defendant is preclud-

ed from paying to the plaintiff his demand for expenses for litigation," and the defendant objected.

4. The Court refused to find "that, under the last mentioned constitutional provision, the defendant is precluded from paying to the plaintiff his demand for election expenses," and the defendant objected.

5. The Court refused to find "that, under the last mentioned constitutional provision, the act entitled "An Act providing for compensation and reimbursement of persons returned as elected to be members of boards of chosen freeholders in any county of this State, and to whom certificates of election as such were issued, the title to whose office has been adjudged against such persons in appropriate legal proceedings, or where their title to such office has been adversely affected by judicial decision against other persons similarly situated with reference to membership in any such like board of chosen freeholders, by a court of competent jurisdiction, within one year last past, and providing for the payment of the expenses incurred by any such persons in litigation in which their title to such office aforesaid was involved, in those cases where legal proceedings concerning such title were actually conducted, and also providing for compensation to be made to persons appointed or elected to office or position by persons returned and certified as elected to be members of boards of chosen freeholders as aforesaid, and acting or assuming to act as such boards," approved May 27, 1913, being Chapter 5 Special Session Laws of 1913, under which plaintiff seeks to recover, is unconstitutional, in that it provides for the giving of county money in aid of individuals," and the defendant objected.

6. The Court refused to find "that there is no evidence in this case to warrant a finding for the plaintiff," and the defendant objected.

7. The Court did find and rendered a verdict against

the defendant in favor of the plaintiff for the sum of Nine Hundred Four Dollars and forty-two cents ($904.42), with costs.

The appellant states the following grounds of appeal:

1. The first count of the complaint upon which the action is founded is unconstitutional, the plaintiff therefore, has no action at law against the defendant.

2. The plaintiff was not elected to be a member of The Board of Chosen Freeholders of the County of Morris and has no action against the defendant for services.

3. The Court refused to find:
That plaintiff cannot recover salary as a member of the Board of Chosen Freeholders of the County of Morris (as and for the time in his complaint demanded) unless he has served as such member (de facto or de jure) for the period of time for which recovery is sought, and that not having so served he cannot recover, and the defendant objected.

4. The Court refused to find:
That the defendant is precluded from paying to plaintiff the salary demanded, by Article 1, paragraph 19, of the Constitution of the State of New Jersey, which provides, that, "No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation," and the defendant objected.

5. The Court refused to find:
That, under the last mentioned constitutional provision, the defendant is precluded from paying to the plaintiff his demand for expenses for litigation, and the defendant objected.

6. The Court refused to find:
That, under the last mentioned constitutional pro-

vision, the defendant is precluded from paying to the plaintiff his demand for election expenses, and the defendant objected.

7. The Court refused to find:

That, under the last mentioned constitutional provision, the act entitled "An Act providing for compensation and reimbursement of persons returned as elected to be members of boards of chosen freeholders in any county of this state, and to whom certificates of election as such were issued, the title to whose office has been adjudged against such persons in appropriate legal proceedings, or where their title to such office has been adversely affected by judicial decision against other persons similarly situated with reference to membership in any such like board of chosen freeholders, by a court of competent jurisdiction, within one year last past, and providing for the payment of the expenses incurred by any such persons in litigation in which their title to such office aforesaid was involved, in those cases where legal proceedings concerning such title were actually conducted, and also providing for compensation to be made to persons appointed or elected to office or position by persons returned and certified as elected to be members of boards of chosen freeholders as aforesaid, and acting or assuming to act as such boards," approved May 27, 1913, being Chapter 5 Special Session Laws of 1913, under which plaintiff seeks to recover, is unconstitutional, in that it provides for the giving of county money in aid of individuals, and the defendant objected.

8. The Court refused to find:

That there is no evidence in this case to warrant a finding for the plaintiff, and the defendant objected.

9. The Court rendered a verdict against the defendant and in favor of the plaintiff without warrant of law.

JOHN M. MILLS,
Attorney of Appellant.

Judgment Record—Declaration

IN THE SUPREME COURT OF NEW JERSEY.

John P. Lyons,
Plaintiff,
vs.
The Board of Chosen Freeholders
of the County of Morris,
Defendant.
} Judgment Record.

The Board of Chosen Freeholders of the County of Morris, the defendant in this case, was summoned to answer unto John P. Lyons, the plaintiff therein, in an action at law upon the following Complaint.

NEW JERSEY SUPREME COURT,

Morris County.

Filed Sept. 14, 1913.

John P. Lyons,
Plaintiff,
vs.
The Board of Chosen Freeholders
of the County of Morris,
Defendants.
} Action at Law. (Declaration.)

Plaintiff residing in Morristown, Morris County, New Jersey, says that:—

1. By an act of the Legislature of the State of New Jersey entitled, "An Act providing for compensation and reimbursement of persons returned as elected to be mem-

bers of Boards of Chosen Freeholders in any county of this State, and to whom certificates of election as such were issued, the title to whose office has been adjudged against such persons in appropriate legal proceedings, or where their title to such office has been adversely affected by judicial decision against other persons similarly situated with reference to membership in any such like board of chosen freeholders, by a court of competent jurisdiction within one year last past, and providing for the payment of the expenses incurred by any such persons in litigation in which their title to such office aforesaid was involved, in those cases where legal proceedings concerning such title were actually conducted, and also providing for compensation to be made to persons appointed or elected to office or position by persons returned and certified as elected to be members of Boards of Chosen Freeholders as aforesaid, and acting or assuming to act as such boards," Chapter No. 5 of the Special Laws of 1913, provision was made for the payment to the officers therein mentioned.

2. That said Plaintiff was returned as elected to be a member of the Board of Chosen Freeholders of the County of Morris in this State; that the certificate of election, as such, was issued to him; the title to whose office was adjudged against the plaintiff in appropriate legal proceedings by a court of competent jurisdiction within one year last past.

3. That as such member of the Board of Chosen Freeholders of the County of Morris, in the said State of New Jersey, he the said plaintiff, together with the other members returned as elected to be members of Board of Chosen Freeholders of the County of Morris, organized its said Board on January 1st, and January 6th, 1913. The plaintiff's title to said office was adjudicated to be invalid on the twelfth day of March, 1913.

4. That the Legislature of the State of New Jersey had fixed the annual salary of said plaintiff as such

member of the Board of Chosen Freeholders of the County of Morris, at the sum of $1,500.00 a year.

5. That the plaintiff returned as elected to be a member of the Board of Chosen Freeholders of the County of Morris, and to whom a certificate of election as such was issued incurred expenses in and about procuring his election as a member of such board amounting to the sum of $184.20, according to his statement under oath filed by him according to law.

6. That there was incurred by plaintiff and by the others elected as members of the Board of Chosen Freeholders of the County of Morris, expenses in the litigation to which their title to such office aforesaid was involved, and in which instance the legal proceedings concerning such title was actually conducted, the sum of $397.50, which sum includes reasonable counsel fees.

7. That by the Act first herein mentioned, it became and was the duty of the defendant as one of the Boards of Chosen Freeholders in the Counties of this State affected by said Act to forthwith provide for and pay the salary and expenses herein mentioned.

8. Whereby by force of the Statute, said defendant became and was liable to an action by the plaintiff for the pro rata proportion of the annual salary provided for in the Act of the Legislature creating or purporting to create such Boards of Chosen Freeholders to which this plaintiff was returned and certified as elected to be a member thereof and it, then and there became and was the duty of the said defendant to pay to the said plaintiff the compensation and expenses provided for in said act.

9. That the defendant well knowing the premises did not regard its duty in this behalf, nor the statute in such case made and provided, but contriving and wrongfully intending to deceive and defraud the plaintiff in this respect of the damages accrued to him, contrary to the stat-

ute, would not and did not pay the plaintiff the said sum.

Plaintiff demands the sum of $856.60 with interest from March 12th, 1913, until date of payment.

KING & VOGT,
Attorneys of Plaintiff.

The Defendant answered as follows:

SUPREME COURT OF NEW JERSEY.

Morris County.

Filed Sept. 26, 1913.

John P. Lyons,
Plaintiff,
vs.
The Board of Chosen Freeholders of the County of Morris,
Defendant.
} Answer.

Defendant, a quasi-municipal corporation of the State of New Jersey, having its principal office at the Court House, in Morristown, in the County of Morris, in said State, says:

1. It denies the first paragraph of the complaint.

2. As to paragraph two, defendant admits that the title of the plaintiff to office as a member of The Board of Chosen Freeholders of the County of Morris, was adjudged against the plaintiff in appropriate legal proceedings by a Court of competent jurisdiction, within one year last past, as stated in said paragraph, but in all else defendant denies the allegations of said paragraph.

3. Defendants admit that the plaintiff's title to office

as a member of The Board of Chosen Freeholders of the County of Morris was adjudged invalid, as in the third paragraph of the complaint stated, but all other the allegations of said paragraph defendant denies.

4. Defendant denies the fourth, fifth, sixth, seventh, eighth and ninth paragraphs of the complaint.

5. First Defense.

The complaint discloses no cause of action in that it admits, by paragraph two, that the title of the plaintiff to office as a member of The Board of Chosen Freeholders of the County of Morris, has been adjudged against him, by appropriate legal proceedings in a Court of competent jurisdiction, and by paragraph three, admits that the title of the plaintiff to said office has been adjudged invalid, and the payment of any of plaintiff's said several demands by the defendant would be the giving of County money in aid of an individual in contravention of Article I, Paragraph 19 of the Constitution of the State of New Jersey.

6. Second Defense.

That the alleged return of the plaintiff to be a member of The Board of Chosen Freeholders of the County of Morris, mentioned in paragraph two of the complaint, was made without warrant of law and is of no effect, for that said return was founded upon an alleged election of chosen freeholders in and for said County of Morris, at the General Election in November, in the year 1912, whereas there was no such election of chosen freeholders in said County.

7. Third Defense.

That the alleged certificate of election of the plaintiff, as a member of The Board of Chosen Freeholders of the County of Morris, issued to him as alleged in paragraph two of the complaint, was void and of no effect in that it was founded upon the return of election mentioned in the sixth paragraph of this answer.

8. Fourth Defense.

That the plaintiff did not incur expenses in and about procuring his election as a member of The Board of Chosen Freeholders of the County of Morris, as in the fifth paragraph of the complaint alleged, for that the plaintiff was not elected to that office.

9. Fifth Defense.

That the alleged return and certificate of the election of the plaintiff as a member of The Board of Chosen Freeholders of the County of Morris, were void and of no effect, for that the said return was founded upon votes cast for the plaintiff for member of The Board of Chosen Freeholders of the County of Morris at the General Election in said County on the fifth day of November, in the year 1912, under the act entitled "An act to reorganize the boards of chosen freeholders of the several counties of this State, reducing the membership thereof, fixing the salaries and providing for the election and terms of office of the members, and also for the appointment and terms of office of officers appointed by such boards (Revision of 1912)", approved April 1, 1912, whereas the said act of the legislature did not apply to the election of members of the board of chosen freeholders of the County of Morris, at the time of said election.

10. Sixth Defense.

That the act of the legislature mentioned in the first paragraph of the complaint, entitled "An Act providing for compensation and reimbursement of persons returned as elected to be members of boards of chosen freeholders in any county of this State, and to whom certificates of election as such were issued, the title to whose office has been adjudged against such persons in appropriate legal proceedings, or where their title to such office has been adversely affected by judicial decisions against other persons similarly situated with reference to membership in any such like board of chosen freeholders, by a court of competent jurisdiction, within one year last past, and providing for the payment of the expenses incurred by

any such persons in litigation in which their title to such office aforesaid was involved, in those cases where legal proceedings concerning such title were actually conducted, and also providing for compensation to be made to persons appointed or elected to office or position by persons returned and certified as elected to be members of boards of chosen freeholders as aforesaid, and acting or assuming to act as such boards," approved May 27, 1913, is unconstitutional, under Article III of the Constitution of the State of New Jersey, for that in a certain proceeding heretofore had in the Supreme Court of New Jersey, on an information in the nature of a writ of quo warranto, filed in said court, by its leave, on the tenth day of January, in the year 1913, by Edmund Wilson, Attorney General of the State of New Jersey, at the relation of said John P. Lyons (the plaintiff herein), and John J. Cunningham, Christopher Kelly, Jr., George A. Estler and John K. Cook, against William H. Grimes, George A. Estler, August Molitor, William Dee, John Tierney, Theodore S. Hill, Edward Kayhart, Harry L. Prudden, Mahlon K. Tharp, E. Frank Oliver, Simon E. Estler, Moses N. Tucker, Christopher Kelly, Jr., John W. Fancher, William Coleman, Frank C. Carle, John A. Bermingham, James H. Hopler, Robert F. Jenkins, Leonard Elliott, Reuben H. Burchell, Harvey L. Mills, John J. A. Owens and William J. Ambrose, the defendants in said information named, in which information it was alleged that the said relators had been elected members of The Board of Chosen Freeholders of the County of Morris at the General Election of November, 1912, and that they had each been returned and received certificates to that effect, and were The Board of Chosen Freeholders of the County of Morris, and that the said defendants severally usurped and unlawfully held the office of chosen freeholder for said County and that they claimed to be The Board of Chosen Freeholders of the County of Morris, and entitled to use, exercise and enjoy, the liberties, privileges and franchises of chosen freeholders, and unlawfully usurped and held from said relators the said rights, liberties, privileges, duties and obligations, the final judgment of said

court was in favor of the said defendants, establishing their title to membership in The Board of Chosen Freeholders of the County of Morris, and their right to use, exercise and enjoy the rights, liberties, privileges and franchises thereof; and the return of the plaintiff as elected to be a member of The Board of Chosen Freeholders of the County of Morris, and the certificate of such election, mentioned in the second paragraph of the complaint, are the same return and certificate of election on which plaintiff, in the said information, founded his alleged right to membership in The Board of Chosen Freeholders of the County of Morris, and his claim to the rights, liberties, privileges, duties and obligations thereof.

11. Seventh Defense:

That the said act of the legislature referred to in paragraph one of the complaint, and in paragraph ten of this answer, is unconstitutional, for the following several reasons:

(1)

Said Act contravenes Article IV, Section VII, paragraph 4 of the Constitution of the State of New Jersey, which provides that "every law shall embrace but one object, and that shall be expressed in the title," in that the act in question embraces two objects, firstly, the "compensation and reimbursement of persons returned as elected to be members of boards of chosen freeholders in any county of this State, and to whom certificates of election as such were issued, the title to whose office has been adjudged against such persons in appropriate legal proceedings, or where their title to such office has been adversely affected by judicial decisions against other persons similarly situated with reference to membership in any such like board of chosen freeholders, by a court of competent jurisdiction, within one year last past, and providing for the payment of the expenses incurred by any such persons in litigation in which their title to such office aforesaid was involved, in those cases where legal proceedings concerning such title were actually conduct-

ed," and secondly, the "compensation to be made to persons appointed or elected to office or position by persons returned and certified as elected to be members of boards of chosen freeholders as aforesaid, and acting or assuming to act as such boards."

(2)

Said act conflicts with Article IV, Section VII, paragraph 4, of the Constitution of the State of New Jersey, which provides that "No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the act, or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act," for that the said act, in section one thereof, provides that the persons in said section described "shall have and receive the pro rata proportion of the annual salary provided for in the act of the Legislature creating or purporting to create such boards of chosen freeholders to which such aforesaid persons were returned and certified as elected to be members."

(3)

The said act conflicts with Article IV, Section VII, paragraph 4, of the Constitution of the State of New Jersey, which provides that "No general law shall embrace any provision of a private, special or local character," for that said act embraces only certain private persons of a special class, having particular characteristics.

(4)

Said act conflicts with Article I, paragraph 19 of the Constitution of the State of New Jersey, which provides that "No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation," for that the act provides for the giving of county money to and in aid of individuals.

(5)

Said act conflicts with Article IV, Section VII, paragraph 11 of the Constitution of the State of New Jersey, which provides that the legislature shall not pass private, local or special laws, "Regulating the internal affairs of towns and counties," in that the act operates only as to a special class of persons, and in connection with the internal affairs of counties and is applicable only to certain counties.

GEORGE G. RUNYON,
Attorney for Defendant.

NEW JERSEY SUPREME COURT.

Morris County.

Filed Oct. 17, 1913.

John P. Lyons, Plaintiff, vs. The Board of Chosen Freeholders of the County of Morris, Defendant.	Action at Law. Demand for Bill of Particulars.

Gentlemen:

Please take notice that the defendant in the above stated action hereby demands a bill of the particulars on which the complaint in said action is founded.

Dated, September 4, 1913.

GEORGE G. RUNYON,
Attorney of Defendant.

To KING & VOGT, Esqs.,
Attorneys of Plaintiff.

NEW JERSEY SUPREME COURT.

John P. Lyons,
Plaintiff,
vs.
The Board of Chosen Freeholders of the County of Morris,
Defendant.

Action at Law.
Bill of Particulars.

The following is a bill of particulars of the claim of the plaintiff mentioned in the plaintiff's complaint, namely

Services rendered the County of Morris, as the Board of Chosen Freeholders, from January 6, 1913, to March 11, 1913, at the rate of $1,500. a year $274.90
To expenses of election as filed with the County Clerk 184.20

$459.10

Amount due W. W. Cutler, counsel in quo warranto proceedings $250.00
Amount due Elmer King, counsel in quo warranto proceedings 125.00
Amount due Elmer King for costs paid in quo warranto proceedings 22.50

Special Chapter No. 5, Laws of 1913 ..... $397.50
Dated September 8, 1913.

KING & VOGT,
Attorneys of Plaintiff.

To George Runyon, Attorney of Defendant.

Judgment Record—Stipulation as to Facts

SUPREME COURT OF NEW JERSEY.

Morris County.

Filed Oct. 15, 1913.

John P. Lyons, Plaintiff, vs. The Board of Chosen Freeholders of the County of Morris, Defendant.		Action at Law, Stipulation as to Facts.

For all purposes, in the trial, argument, consideration and final disposition of the above stated action, it is hereby stipulated, agreed and admitted that the following shall be considered, and are, the facts of the case and shall be so considered in the consideration of the pleadings:

(1.) That the County of Morris, in the State of New Jersey, is a County of the second class, under the act entitled "An Act for the classification of counties of this state for all purposes of legislation in relation thereto," approved February 7, 1883 (P. L. 1883, p. 20, Gen. Stat. p. 420, Sec. 69 &c.), as amended by Chapter 113 of the Laws of 1901 (P. L. 1901, p. 250) and as further amended by Chapter 8 of the Laws of 1911 (P. L. 1911, p. 19), and that said County has been such county of the second class from the year 1900 until the present time, and still is a county of the second class, having, by the federal census of the year 1900, a population of 65,156, and by the State census of 1905, a population of 67,934, and by the federal census of the year 1910, a population of 74,704.

(2) That at the General Election in the County of Morris, on November 7, 1911, there appeared upon the official ballot, the following proposition:—

If you favor the proposition printed below, make an X mark in the square opposite the word "yes"; if you are opposed thereto, make an X mark in the square opposite the word "no".		
Shall an act entitled "An Act to reduce the number of Members of the Boards of Chosen Freeholders in Counties of this State, and to fix the salaries and provide for the Election of the Members of said Boards", Approved March 26, 1902, be adopted?	YES.	
	NO.	

(3) That at the said general election in 1911, of the 11,745 votes cast for members of the general assembly, in said Morris County, only 6,481 ballots contained the voters' approval or disapproval of the above mentioned proposition, and of the 6,481 voters who did express themselves on the proposition, 3,235 were against the proposition and 3,246 were for the proposition.

(4) That there was no election of chosen freeholders from the several townships, towns and boroughs of said Morris County at the general election on November 5, 1912, in said County.

(5) That at the general election, in said Morris County, on November 5, 1912, there were printed as candidates for "Members of the Board of Chosen Freeholders," for the County at large, among sixteen others, the names of the following persons:—John K. Cook and John J. Cunningham, for a term of three years, Christopher Kelly, Jr., and John P. Lyons (the plaintiff in this suit) for a term of two years, and George A. Estler for a term of one year; and as a result of a count of ballots cast at said election on which the voter had assumed to vote for any of the persons so appearing as candidates for "Members of the Board of Chosen Freeholders", for the

county at large, the Board of County Canvassers, in fact returned as elected the said John K. Cook and John J. Cunningham for a term of three years, the said Christopher Kelly, Jr., and John P. Lyons for a term of two years, and the said George A. Estler for a term of one year, and the Morris County Clerk in fact issued to each of them a certificate of election as such freeholder.

(6) That thereafter the said John P. Lyons (the plaintiff herein) filed in the office of the County Clerk of said County of Morris the following two statements:

This Statement to be filled out and sworn to by the Candidate and filed with the COUNTY CLERK within Twenty days after the General Election.

CANDIDATE'S STATEMENT OF PERSONAL CONTRIBUTIONS.

General Election, 1912.

Article 435-Sec. 3 Concerning Elections.

Every candidate who is voted for at any primary or general election held within the State shall, within five days after any primary election, and within twenty days after any general election, file as hereinafter provided, a statement under oath, showing all moneys paid, loaned, contributed or otherwise furnished by him to said committee in aid of his election or nomination. Such statement shall give the names of the various persons, if any, who paid, loaned, contributed, or otherwise furnished any moneys to said candidate in aid of his election or nomination. There shall be attached to such statement an affidavit, subscribed and sworn to by such candidate, which must be substantially in the following form:

State of New Jersey,
County of Morris. } ss.

I, John P. Lyons, having been a candidate for Member Board of Chosen Freeholders (2 yr. term) at the General Election held in the County of Morris, State of New Jersey, on the Fifth day of November, 1912, do solemnly swear that I have paid the sum of $184.20 to the Committee heretofore designated by me, for my expenses at the said Election, and no more, and the following named persons have paid, loaned, contributed or otherwise furnished to me or said Committee in aid of my election the sums written after their respective names, to wit: Received from Non Partisan Club the sum of Twenty-five (25.00) Dollars, and that, except as aforesaid, I have not, nor to the best of my knowledge and belief, has any person, committee, club, society or association on my behalf, directly or indirectly, made any payment, or given, promised or offered any reward, office, employment or valuable consideration, or incurred any liability on account of or in respect of the conduct or management of the said election except such moneys as may have been paid to or expended by the Committee designated by me.

JOHN P. LYONS.

Subscribed and sworn to before me this 12 day of November, A. D., 1912.

Nathaniel C. Toms,
Master in Chancery of New Jersey.

CANDIDATE'S

Statement and Affidavit Showing Sum of Money Paid to Committee for General Election in aid of

JOHN P. LYONS
Candidate for FREEHOLDER,
Morristown, N. J.,
Morris County, ,N. J.

Filed, November 18, 1912.
ELIAS BERTRAM MOTT, Clerk.

Failure to file this affidavit with the County Clerk within twenty days after General Election shall operate as a forfeiture of the office to which a candidate has been elected and no certificate of election shall be issued to him. Any candidate failing to file such certificate shall also be guilty of a misdemeanor.

This Statement to be filled out and sworn to by the Treasurer of the Committee and filed with COUNTY CLERK within twenty days after the General Election.

ITEMIZED STATEMENT AND AFFIDAVIT

Of the Treasurer of Committee Showing Moneys Received and Expended for General Election in aid of John P. Lyons, Candidate for the Office of Freeholder, in Morris County, N. J.

I, John P. Lyons, Treasurer of the Committee designated by me do hereby certify that the following itemized statement shows in detail all the moneys contributed, donated, subscribed or in anywise furnished or received to the use of myself, candidate for the Election of Member of Board of Chosen Freeholders (2 yr. term) at the General Election held on November 5th, 1912, coming under my control as such Committee or into my custody, directly or indirectly, together with the name of each

contributor, donor or subscriber or source from which such moneys were derived; and an itemized statement of all money expended in sums over five dollars.

I FURTHER CERTIFY that the foregoing statement shows the names of the various persons to whom such moneys were paid, the specific nature of each item, by whom the service was performed and purpose for which it was expended.

MONEYS RECEIVED.

(State here all moneys contributed, donated, subscribed or in anywise furnished or received to the use of above stated candidate for nomination, coming under the control of the Committee or into their custody, directly or indirectly, together with the name of each contributor, donor or source from which such moneys were derived.)

$25.00 Received from Non Partisan Club.

$159.20 from myself as candidate.

$184.20 Total amount received.

Total amount of money received, $184.20.

MONEYS EXPENDED.

Itemized Statement of All Moneys Expended in Sums of Over Five Dollars.

(State here the names of the various persons to whom any moneys were paid, the specific nature of each item, by whom the service was performed and the purpose for which the money was expended.)

Carfare at various times	$ 4.70
Printing & Stationery	13.00
Automobile Hire	153.00
Postage, &c	13.50
	184.20

Total amount of moneys expended in sums over $5.00, One Hundred and 84 dollars 20-100.

STATEMENT OF MONEYS EXPENDED IN SUMS OF $5.00 OR UNDER.

Car fare &c as stated above.
Total amount of all moneys expended in sums of $5.00 or under ..... $ 4.70
Total amount of all moneys expended $184.20

Respectfully submitted,
JOHN P. LYONS,
Treasurer of Committee.

State of New Jersey, } ss.
County of Morris. }

John P. Lyons, Treasurer of the Committee designated by me being duly sworn according to law on his oath deposes and says that he is the Treasurer of the Committee designated by himself and that the foregoing statement is in all respects true, and that the same is a full and detailed statement of all moneys, securities or equivalents coming under the control or in the custody of said Committee and by them expended directly or indirectly.

JOHN P. LYONS.

Sworn and subscribed before me this 12th day of November, A. D., 1912.

Chas. Stilwell, Jr.,
Master in Chancery of N. J.

ITEMIZED STATEMENT AND AFFIDAVIT of the Treasurer of Committee Showing Moneys Received and Expended for General Election in aid of JOHN P. LYONS, Candidate for FREEHOLDER, Morristown, N. J., Morris County, N. J.

Filed November 18, 1912.

Elias Bertram Mott,
Clerk.

This statement must be filed with the **County Clerk** within twenty days after the General Election.

(7) That thereafter, and on the tenth day of January, 1913, an information in the nature of a writ of quo warranto was filed by Edmund Wilson, Attorney General of the State of New Jersey, in the language following:—

"NEW JERSEY SUPREME COURT
Of the tenth day of January, in the Term of November, in the year of Our Lord one thousand nine hundred and thirteen.

Morris County, ss:

Edmund Wilson, Attorney General of the State of New Jersey, at the relation of John P. Lyons, John J. Cunningham, Christopher Kelly, Jr., George A. Estler and John K. Cook, who file this information with leave of the Supreme Court first had and obtained, comes here into the said Supreme Court of the said State, before the Justices thereof, at Trenton, on the tenth day of January, one thousand nine hundred and thirteen, and for and on behalf of the said relators gives the said Court, before the Justices thereof, here to understand and be informed in the manner following, that is to say:

1. That the said defendants, George A. Estler, August Molitor, William Dee, William H. Grimes, John Tierney, Theodore S. Hill, Edward Kayhart, Harry L. Prudden, Mahlon K. Tharp, E. Frank Oliver, Simon E. Estler, Moses N. Tucker, Christopher Kelly, Jr., John W. Fancher, William Coleman, Frank C. Carle, John A. Bermingham, James H. Hopler, Robert F. Jenkins, Leonard Elliott, Reuben H. Burchel, Harvey L. Mills, John J. A. Owens and William J. Ambrose, by the name and title of the Board of Chosen Freeholders of the County of Morris, in the said County of Morris, in said State, has since the organization of your relators as the Board of Chosen Freeholders of the County of Morris, on the sixth day of January, one thousand nine hundred and thirteen, unlawfully usurped, intruded into and unlawfully held and executed, and still do unlawfully usurp, intrude into and unlawfully hold, execute and exercise, the liberties, privileges and franchises of a body

politic and corporate, in fact and in law of the State of New Jersey, and as such body corporate and by the name of the Board of Chosen Freeholders of the County of Morris, claim to be entitled to use, exercise and enjoy the liberties, privileges and franchises heretofore conferred by an act of the legislature of the State of New Jersey entitled, "An Act to incorporate the Chosen Freeholders in the respective counties of this State," compiled statutes, Vol. 1, page 474, and the several supplements thereto and acts amendatory thereof, without any warrant, charter, legislative or other authority whatsoever.

2. And the said Attorney General at the relation of the said John P. Lyons, John J. Cunningham, Christopher Kelly, Jr., George A. Estler and John K. Cook, doth further give the Court here to understand and be informed that in the year one thousand nine hundred and twelve, the Board of Chosen Freeholders of the County of Morris consisted of twenty-four members, to wit, the defendants hereinabove named; that the office of George A. Estler, August Molitor, William Dee, William H. Grimes, John Tierney, Theodore S. Hill, Mahlon K. Tharp, E. Frank Oliver, Simon E. Estler, Moses N. Tucker, John W. Fancher, William Coleman and Frank C. Carle, expired in law on the first day of January, one thousand nine hundred and thirteen, by reason of the expiration of the time for which they were elected; that the term of office of the remaining members thereof expired by law on the first Monday of January, one thousand nine hundred and thirteen.

3. And the said Attorney General, at the relation of the said John P. Lyons, John J. Cunningham, Christopher Kelly, Jr., George A. Estler and John K. Cook, doth further give the Court here to understand and be informed that the said defendants Edward Kayhart, Harry L. Prudden, Christopher Kelly, Jr., John A. Bermingham, James H. Hopler, Robert F. Jenkins, Leonard Elliott, Reuben H. Burchel, Harvey L. Mills, John J. A. Owens and William J. Ambrose, met on the first day of January,

one thousand nine hundred and thirteen, and claim to have organized into and now constitute the Board of Chosen Freeholders of the County of Morris.

4. And the said Attorney General, at the relation of the said John P. Lyons, John J. Cunningham, Christopher Kelly, Jr., George A. Estler and John K. Cook, doth further give the Court here to understand and be informed that at the general election held in November, one thousand nine hundred and eleven, there was lawfully submitted to the legal voters of the County of Morris, the proposition of accepting or rejecting the provisions of the statute reducing the number of Chosen Freeholders, as therein set forth; and that at such election a majority of the votes cast were in favor of the statute reducing the number of members of the Board of Chosen Freeholders, and that by virtue of the statute in such case made and provided, thereafter the Board of Chosen Freeholders of the County of Morris should consist of five members.

5. And the said Attorney General, at the relation of the said John P. Lyons, John J. Cunningham, Christopher Kelly, Jr., George A. Estler, and John K. Cook, doth further give the Court here to understand and be informed, that at the general election held in November, one thousand nine hundred and twelve, your relators were legally and lawfully elected Chosen Freeholders of the County of Morris, and a certificate to that effect issued to each of them accordingly; that thereafter, at the time and in the manner designated by law, your relators duly qualified as such Chosen Freeholders, and that after such qualification a certificate of their election and qualification as Chosen Freeholders of the County of Morris was issued to each of them by the County Clerk of the County of Morris; that on the sixth day of January, one thousand nine hundred and thirteen, your relators met at the time and place designated by law, and then and there organized as the Board of Chosen Freeholders of the County of Morris, pursuant to the statute in such case made and provided; that thereupon your relators as the Board of

Chosen Freeholders of the County of Morris, demanded from the defendants and each of them, hereinbefore named, as individuals and as claiming to constitute the Board of Chosen Freeholders of the County of Morris, and from the Clerk thereof, all the books, papers, vouchers, records, seal and other indicia of office, together with the vaults and rooms formerly used and occupied by them, and of which they retain possession; that the said defendants then and there as individuals and claiming to be Chosen Freeholders of the County of Morris and claiming to constitute the legal Board of Chosen Freeholders of the County of Morris, refused to accede to the demand of your relators, and then and there unlawfully stated that the said defendants were Chosen Freeholders of the County of Morris and as such constituted the only legal and lawful Board of Chosen Freeholders of the County of Morris, and that they, the said defendants, as Chosen Freeholders, and as constituting the Board of Chosen Freeholders of the County of Morris, would continue to exercise, do and perform all of the rights, liberties, privileges, duties and obligations of Chosen Freeholders, and of the Board of Chosen Freeholders of the County of Morris.

All of which said rights, liberties, privileges, duties and obligations the said defendants, during all the time aforesaid, have usurped, intruded into, and unlawfully held and executed, and still do usurp, intrude into and unlawfully hold and execute upon and against your said relators as Chosen Freeholders, and as constituting the Board of Chosen Freeholders of the County of Morris, to their damage and prejudice.

Whereupon the said Attorney General, at the relation of the said John P. Lyons, John J. Cunningham, Christopher Kelly, Jr., George A. Estler, and John K. Cook, by leave of the Court first had and obtained, prays the advice of the said Court in the premises, and due process of law against the said George A. Estler, August Molitor, William Dee, William H. Grimes, John Tierney, Theodore S. Hill, Edward Kayhart, Harry L. Prudden, Mahlon K.

Tharp, E. Frank Oliver, Simon E. Estler, Moses N. Tucker, Christopher Kelly, Jr., John W. Fancher, William Coleman, Frank C. Carle, John A. Bermingham, James H. Hopler, Robert F. Jenkins, Leonard Elliott, Reuben H. Burchel, Harvey L. Mills, John J. A. Owens and William J. Ambrose, claiming to be Chosen Freeholders of the County of Morris, in this behalf requiring the said defendants, claiming as Chosen Freeholders, and claiming to constitute the Board of Chosen Freeholders of the County of Morris, to answer unto your relators by what warrant they claim to be entitled to use, exercise and enjoy the rights, liberties, privileges, duties and obligations aforesaid.

EDMUND WILSON,
Attorney General."

(8) That to the said information the following pleas were filed:—

"NEW JERSEY SUPREME COURT.

Edmund Wilson, Attorney General, etc. ex rel. John P. Lyons, et als., Relators, vs. William H. Grimes, et als., Respondents.	On Information in the nature of a Writ of Quo Warranto. PLEAS.

And now as yet of the term of November, in the year one thousand nine hundred and twelve, come the said August Molitor, William Dee, William H. Grimes, Theodore S. Hill, Edward Kayhart, E. Frank Oliver, Harry L. Prudden, Mahlon K. Tharp, Simon E. Estler, Moses N. Tucker, John W. Fancher, William Coleman, Frank C. Carle, John A. Bermingham, James H. Hopler, Robert F. Jenkins, Reuben H. Burchell, Harvey L. Mills, John J. A. Owens, and William J. Ambrose, twenty of the defendants, by George G. Runyon, their attorney, and having heard the information read, they complain, and under color of the premises in the said information contained

they are greatly vexed and disquieted, and that by no means justly, because protesting that the said information and the matters therein contained are by no means sufficient in the law, and that they need not, nor are subject by law to answer thereto, yet for plea thereto they say that they ought not to be impeached or impleaded by reason of the premises in the said information contained, because they say that pursuant to the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act relative to the time of election and appointment and terms of office of officers elected or appointed in towns, townships, boroughs and other municipalities in this state," approved February fifteenth, nineteen hundred and five, and the amendments thereof and supplements thereto, and pursuant to the provisions of a certain other act entitled "A General Act relating to boroughs (Revision 1897)", approved April twenty-fourth, eighteen hundred and ninety-seven, and the amendments thereof and supplements thereto, and in pursuance of a certain other act entitled "An Act to provide for the election of chosen freeholders in certain cities and incorporated towns in this state," approved March thirteen, eighteen hundred and ninety-five, and the amendments thereof and supplements thereto, and in pursuance of a certain other act entitled "An Act respecting the representation of incorporated towns in boards of chosen freeholders", approved March twenty-second, eighteen hundred and ninety-nine, and the amendments thereof and supplements thereto, and pursuant to a certain other act entitled "An Act to incorporate the chosen freeholders in the respective counties of the state," approved April sixteenth, eighteen hundred and forty-six, and the amendments thereof and supplements thereto, at a general election held on the eighth day of November, nineteen hundred and ten, in the County of Morris and State of New Jersey, the defendants, George Estler, August Molitor, William Dee, William H. Grimes, John Tierney, Frank C. Carle, Theodore S. Hill, Mahlon K. Tharp, E. Frank Oliver, Simon E. Estler, Moses N. Tucker, John W. Fancher and William Coleman, were duly elected from their

respective boroughs, towns and townships in the said County of Morris, as chosen freeholders for the said County, for the term of two years from twelve o'clock noon on the first day of January, nineteen hundred and eleven, and at a general election held on the seventh day of November, nineteen hundred and eleven, in the said County of Morris, the defendants, James H. Hopler, Leonard Elliott, Robert F. Jenkins, Harry L. Prudden, Reuben H. Burchell, Harvey L. Mills, John J. A. Owens, William J. Ambrose, Edward Kayhart, Christopher Kelly, Jr., and John A. Bermingham, were duly elected from their respective boroughs, towns and townships, in the said County of Morris, as chosen freeholders for said County for the term of two years from twelve o'clock noon on the first day of January, nineteen hundred and twelve; that, in accordance with the statute in such case made and provided, the said several defendants, after being severally elected as aforesaid, each subscribed the oath of his said office and filed the same in the office of the County Clerk of the said County of Morris, and received from the said Clerk the proper certificate of his election and qualification and entered upon the discharge of such office; that the elective terms of office of said defendants so elected on the seventh day of November, nineteen hundred and eleven, continue by operation of law until twelve o'clock noon of the first day of January, nineteen hundred and fourteen, and that while the elective terms of office of the said defendants so elected on the eighth day of November, nineteen hundred and ten, would have expired at twelve o'clock noon of the first day of January, nineteen hundred and thirteen, if their successors had been chosen and qualified, yet that no successors to any of the said defendants were chosen and qualified, and by the statute in such case made and provided, they severally continue to hold such office and to exercise the duties thereof; that at the hour of twelve o'clock noon, on the first day of January, nineteen hundred and thirteen, at the place of holding the Court of Common Pleas in and for the said County of Morris, the defendants, James H. Hopler, August Molitor, Robert F.

Jenkins, William H. Grimes, Frank C. Carle, Harry L. Prudden, Reuben H. Burchell, Harvey L. Mills, John J. A. Owens, William J. Ambrose, Theodore S. Hill, Mahlon K. Tharp, Edward Kayhart, E. Frank Oliver, Simon E. Estler, Moses N. Tucker, and John A. Bermingham, as such chosen freeholders, in pursuance of the statute in such case made and provided, met and duly organized as The Board of Chosen Freeholders of the County of Morris, and elected one of their members as the Director of said Board and elected a Clerk and other proper officers; and that the defendants in this plea first above named, from thence until the time of exhibiting the said information, were and still are chosen freeholders, as aforesaid, and members of said The Board of Chosen Freeholders of the County of Morris, and as such claim to be entitled to use, and in fact are using, exercising and enjoying the liberties, privileges and franchises created and provided for by the said act entitled "An Act to incorporate the chosen freeholders in the respective counties of the state", approved April sixteenth, eighteen hundred and forty-six, and the amendments thereof and supplements thereto, and during all that time in the said information specified, have used and exercised and still do use and exercise the office of chosen freeholders of said County of Morris. And these defendants aver that the proposition of accepting or rejecting the provisions of the act reducing the number of freeholders, referred to in the said information, was not lawfully submitted to the legal voters of the said county of Morris in accordance with the provisions of said act, as in the said information set forth, because they say, the said act, entitled "An Act to reduce the number of members of the boards of chosen freeholders in counties of this state, and to fix the salaries and provide for the election of the members of said boards", approved March twenty-sixth, nineteen hundred and two, the title to which act, was, by an amendment thereto, approved April twentieth, nineteen hundred and nine, amended to read "An act to reorganize the boards of chosen freeholders of the several counties of this State, reducing the membership thereof, fixing the salaries and

providing for the election and terms of office of the members and also for the appointment and terms of office of officers appointed by such boards", by the express language and provisions of the first section of an act amendatory thereof, entitled "An Act to amend an act entitled 'An act to reduce the number of members of the boards of chosen freeholders in counties of this state, and to fix the salaries and provide for the election of the members of said boards', approved March twenty-sixth, one thousand nine hundred and two", approved April tenth, nineteen hundred and eight, did not, at the time of said alleged submission, apply to counties of the second class, and the said County of Morris, at the time of said alleged submission of the said proposition, was, has continued to be and still is a county of the second class, and the said proposition, so unlawfully appearing upon the official ballots used at the said general election on the submission of the said proposition, was not stated, framed or submitted in accordance with the provisions of the said act for the reduction of the number of freeholders, as in the said information alleged; and these defendants aver that the said alleged submission of the said proposition to the legal voters of the County of Morris was void, futile and without binding force upon the people of the said County of Morris, and that thereafter The Board of Chosen Freeholders of the County of Morris was not reduced to and does not consist of five members, and that the alleged proceedings purporting to elect the relators as chosen freeholders of the County of Morris, and the alleged certificates to that effect and the alleged organization of the relators as such board were likewise futile, without warrant of law, and void; without this, that the said August Molitor, William Dee, William H. Grimes, Theodore S. Hill, Edward Kayhart, E. Frank Oliver, Harry L. Prudden, Mahlon K. Tharp, Simon E. Estler, Moses N. Tucker, John W. Fancher, William Coleman, Frank C. Carle, John A. Bermingham, James H. Hopler, Robert F. Jenkins, Reuben H. Burchell, Harvey L. Mills, John J. A. Owens and William J. Ambrose, the said offices, their liberties, privileges and franchises in the said

information above mentioned, or any of them, have usurped, or did usurp, in manner and form as by the said information is above alleged against them, all and singular which matters and things these defendants are ready to verify and prove, as the court shall award. Wherefore they pray judgment, that the said offices, their liberties, privileges and franchises by them claimed, in manner aforesaid, may be allowed and adjudged to them, and they may be discharged by the Court hereof, and from the premises above charged against them.

And for a further plea in this behalf by leave here of the Court first had and obtained, according to the form of the statute in such case made and provided, the said defendants challenge and deny the right of the relators to file their said information herein, and deny that they, the said relators, are, or were at the time of the filing of their said information, chosen freeholders of the said County of Morris, and deny that they have any right or title whatever to membership in The Board of Chosen Freeholders of the County of Morris, by reason of their allegations in their said information set forth, because these defendants say that while it was true that at the general election held in the said County of Morris on the seventh day of November, nineteen hundred and eleven, there appeared upon the official ballots used at the said election, a proposition for the adoption or rejection of an act entitled "An Act to reduce the number of Members of the Boards of Chosen Freeholders in Counties of this State, and to fix the salaries and provide for the election of the Members of said Boards", approved March twenty-sixth, nineteen hundred and two, and that at such election a majority of the ballots on which the voters had acted upon the said proposition, either affirmatively or negatively, were in favor of the adoption of the said proposition, NEVERTHELESS these defendants aver that the said proceedings and the said submission were altogether illegal, abortive and void, and that the proportion of accepting or rejecting the provisions of the act reducing the number of freeholders was not lawfully submitted to the legal voters of the said County of Morris, in accordance

with the provisions of said act, as in the said information set forth, because they say that the said act entitled "An Act to reduce the number of members of the boards of chosen freeholders in counties of this state, and to fix the salaries and provide for the election of members of said boards", approved March twenty-sixth, nineteen hundred and two, the title to which act, was, by an amendment thereto, approved April twentieth, nineteen hundred and nine, amended to read "An Act to reorganize the boards of chosen freeholders of the several counties of this state, reducing the membership thereof, fixing the salaries and providing for the election and terms of office of the members and also for the appointment and terms of office of officers appointed by such boards", by the express language and provision of the first section of an act amendatory thereof, entitled "An Act to amend an act entitled 'An act to reduce the number of members of the boards of chosen freeholders in counties of this State, and to fix the salaries and provide for the election of the members of said boards', approved March twenty-sixth, one thousand nine hundred and two", approved April tenth, nineteen hundred and eight, at the time of said alleged submission did not apply to counties of the second class, and the said County of Morris, at the time of said alleged submission of the said proposition, was, has continued to be and still is a county of the second class, and the said proposition, so unlawfully appearing upon the official ballots used at the said general election on the submission of the said proposition, was not stated, framed or submitted in accordance with the provisions of the said act for the reduction of the number of freeholders, as in the said information alleged; and these defendants therefore deny that the said relators were legally and lawfully elected chosen freeholders of the County of Morris at the general election in said County held on the fifth day of November, nineteen hundred and twelve, and they further deny that the said alleged certificates to that effect, issued to the said relators, have or had any validity whatever, and they deny that the said relators duly qualified as such chosen freeholders, and they say that if the al-

leged certificates of their election and qualification as chosen freeholders were issued to them, and each of them as in the said information alleged, the same are, for the reasons aforesaid, altogether invalid and void, and these defendants deny that the alleged meeting and organization of the said relators, on the sixth day of January, nineteen hundred and thirteen, set forth in said information, have any validity or legality, and they further deny that the election at which the question of the adoption by the legal voters of the County of Morris of the act hereinabove referred to, reducing the number of chosen freeholders, was submitted, was lawfully conducted, in accordance with the provisions of said act; without this, that the said defendants, the said offices, their liberties, privileges, and franchises in the said information above mentioned, or any of them, have usurped, or did usurp, in the manner and form as by the said information is above alleged against them.

All and singular of which matters and things these defendants are ready to verify and prove as the Court shall award; whereof they pray judgment, and that the said relators, and each of them, may be adjudged to have no title or right whatever to the office of chosen freeholder of the County of Morris or to membership in The Board of Chosen Freeholders of the County of Morris, by reason of the matters and things in said information alleged.

GEO. G. RUNYON,
Attorney of Defendants.

It is stipulated and agreed that the information in this cause and the foregoing pleas shall not be objected to or attacked on account of alleged formal defects or duplicity, and that the pleas of any of the defendants may be filed without affidavit in verification, it being the desire of all parties that the very right to the offices and franchise in question may be determined speedily and without regard to technicalities and matters of form.

Dated, Morristown, N. J.
January 22d, A. D., 1913.

KING & VOGT, Attorneys of Relators.
GEO. G. RUNYON, Attorney of Defendants."

On January 24, 1913, the following stipulation was entered into between the attorneys of the relators and the attorney of the defendants, in the matter of said quo warwanto proceedings, and filed with the Clerk of said Supreme Court of New Jersey, on January 25, 1913:—

"It is stipulated and agreed that, in conjunction with the pleadings, the following shall be taken as the material facts for all purposes in the submission, consideration and disposition of the above stated cause:

(1) That upon the official ballots used at the general election in Morris County on the seventh day of November, nineteen hundred and eleven, the proposition of accepting or rejecting the provisions of the statute reducing the number of chosen freeholders, mentioned in the information in this cause, was stated, framed and submitted in the following form, and not otherwise:—

If you favor the proposition printed below, make an X mark in the square opposite the word "yes"; if you are opposed thereto, make an X mark in the square opposite the word "no."		
Shall an act entitled "An Act to reduce the number of Members of the Boards of Chosen Freeholders in Counties of this State, and to fix the salaries and provide for the Election of the Members of said Boards", Approved March 26, 1902, be adopted?	YES.	
	NO.	

(2) That at said last mentioned election the total number of votes cast was twelve thousand and seventy-eight (12,078), out of which three hundred and thirty-three (333) ballots were rejected, and of the remaining eleven thousand seven hundred and forty-five (11,745) ballots, only six thousand four hundred and eighty-one

(6,481) ballots contained an expression of the voters' approval or disapproval of the above mentioned proposition; and that of the said six thousand four hundred and eighty-one (6,481) ballots which contained the voters' mark of approval or disapproval, three thousand two hundred and forty-six (3,246) ballots were marked in favor of said proposition and three thousand two hundred and thirty-five (3,235) ballots were marked as opposed to the said proposition."

That on January 27, 1913, a further stipulation was entered into in the matter of said quo warranto proceedings between the attorneys of the relators and the attorney of the defendants, and filed with the Clerk of said Supreme Court of New Jersey, on January 28, 1913, in the following words:—

"It is stipulated and agreed that the facts set forth in the stipulation in this cause dated the twenty-fourth day of January, A. D. nineteen hundred and thirteen, and now on file, shall be considered as though duly alleged in the pleas of defendants at the time of the filing thereof, and the said pleas shall be considered as amended accordingly."

(9) That afterwards the following demurrer was filed to the pleas of the defendants, as amended, in the said quo warranto proceedings:—

"NEW JERSEY SUPREME COURT.

Edmund Wilson, Attorney General, ex rel. John P. Lyons, et als., Relators, vs. William H. Grimes, et als., Respondents.	On Quo Warranto. DEMURRER.

The relators demur to the pleadings of the respondents upon the following grounds:

1. Because the County of Morris adopted the provisions of an act entitled "An act to reduce the number of members of the Boards of Chosen Freeholders in Counties of this State, and to fix the salaries and provide for the election of the members of said Boards," approved March 26, 1902, which act was amended by an act of the legislature, entitled "An Act to amend the title of an act entitled 'An act to reduce the number of members of the Boards of Chosen Freeholders in Counties of this State, and to fix the salaries and provide for the election of the members of said Boards' approved March twenty-sixth, Nineteen Hundred and two", which act was approved April 20, 1909, and thereupon the provisions of the act to incorporate the Chosen Freeholders of the respective counties of this State and the acts supplemental thereto and amendatory thereof, so far as relates to the number of freeholders and the terms of office no longer applied to the County of Morris.

2. Because the relators were elected the Board of Chosen Freeholders of the County of Morris by virtue of an act entitled "An act to amend an act entitled 'An act to reduce the number of members of the Boards of Chosen Freeholders in counties of this State, and to fix the salaries and provide for the election of the members of said Boards, approved March twenty-sixth, Nineteen Hundred and Two' ", approved April 10, 1908.

3. Because the election in the County of Morris adopting the provisions of the aforesaid mentioned act of 1902 was ratified and confirmed by virtue of an act of the legislature of the State of New Jersey, entitled "An act to amend and supplement an act entitled 'An act to reorganize the Boards of Chosen Freeholders of the several counties of this State, reducing the membership thereof, fixing the salaries and providing for the election and terms of office of the members, and also for the appointment and terms of office of officers appointed by such Boards', approved March twenty-sixth, Nineteen Hundred and Two, the title to which act was amended to read as above set forth

by an act approved April 20, 1909, and to validate elections heretofore held in conformity with the provisions of Section Seven of said act in counties of the second class", approved March 27, 1912.

4. Because the inhabitants of the County of Morris having previously adopted the provisions of the act of 1902 reducing the number of members of the Board of Chosen Freeholders hereinbefore referred to, at the first election after the adoption of said act, your relators were elected Chosen Freeholders of the County of Morris by virtue of the provisions of an act entitled "An act to reorganize Boards of Chosen Freeholders of the several counties of this State reducing the membership thereof, fixing the salaries and providing for the election and terms of office of the members, and also for the appointment and terms of office of the officers appointed by such boards (Revision of 1912)", approved April 1, 1912.

5. Because the relators were duly elected under and by virtue of the provisions of an act of the legislature entitled "An act to reorganize the Boards of Chosen Freeholders of the several counties of this state, reducing the members thereof fixing the salaries and providing for the election and terms of office of the members and also for the appointment and terms of office of officers appointed by such Board (Revision of 1912)", approved April 1, 1912.

6. Because the election of the relators as members of the Board of Chosen Freeholders of the County of Morris was ratified and confirmed by virtue of the provisions of an act entitled "An act relating to Boards of Chosen Freeholders in Counties of this State, validating elections therein, accepting laws providing for the reorganizing of Boards of Chosen Freeholders, reducing the membership thereof, confirming the election of members of such Boards and making lawful the appointment or election of officers by such Boards", approved January , 1913.

7. Because upon the adoption of the act of 1902, as amended by the act of 1908, hereinbefore referred to, by the inhabitants of the County of Morris, and the election of the relators as Chosen Freeholders of the County of Morris, the said relators by virtue of said act, and the act of 1902, hereinbefore referred to became the Board of Chosen Freeholders of the County of Morris in the place of the respondents.

8. Because upon the adoption of the act of 1902 hereinbefore referred to, by the inhabitants of the County of Morris and the election of the relators as Chosen Freeholders of the County of Morris, the relators became the Board of Chosen Freeholders of the County of Morris, in the place of the respondents.

9. Because the respondents are not the Board of Chosen Freeholders of the County of Morris.

KING & VOGT,
Attorneys of Relators."

"State of New Jersey, } ss.
County of Morris, }

Carl V. Vogt, being duly sworn, on his oath deposes and says, that he is one of the members of the firm of King & Vogt, who are conducting the within suit by leave of the Supreme Court in the name of the Attorney General; that he is one of the attorneys of the said relators and that the above demurrer is not intended for the purpose of delay, but that the affiant verily believes that the relators have a just and legal action on the merits of the case.

Sworn and subscribed before me on this 4th day of February, A. D., 1913.

Robert H. Schenck,
Attorney at Law
of New Jersey."

CARL V. VOGT.

(10) That the argument on said demurrer was regularly set down and was in fact heard with like cases of Union and Mercer Counties before Justices Swayze and Kalisch, of the said Supreme Court of New Jersey, at the February Term of said Court, in the year 1913, and on March 12, 1913, the following memorandum opinion was filed with the Clerk of said Court:—

"NEW JERSEY SUPREME COURT.

Edmund Wilson,
Attorney General,
ex rel., John P. Lyons, et als.,
Relators,
vs.
William H. Grimes, et als.,
Respondents.

Messrs. King and Vogt, and Willard W. Cutler, for the Relators.

Messrs. Robert H. McCarter and George G. Runyon, for the Defendants.

PER CURIAM:

The defendants are entitled to judgment for the reasons substantially as stated in the opinion filed in the case of Attorney General against Cady."

(The case of attorney General vs. Cady was a like case of information in the nature of a writ of quo warranto, filed by the Attorney General on the relation of Thomas J. Pierson and others vs. John M. Cady and others, claiming to be The Board of Chosen Freeholders of the County of Union, and is reported in 86 Atlantic Reporter, pages 167 &c.)

(11) That in pursuance of said memorandum opinion, the following rule for judgment was duly entered:—

Judgment Record—Stipulation as to Facts

"NEW JERSEY SUPREME COURT.

Edmund Wilson, Attorney General, ex rel., John P. Lyons, et als., Relators, vs. William H. Grimes, et als., Respondents.	On Quo Warranto. Rule for Judgment.

The information in the above cause, by leave of the Court having been duly filed, and the defendants having filed a plea thereto, and the relators having demurred to said plea, and the defendants having joined issue in demurrer, and the cause having been regularly set down for hearing and having been argued before the Court by Counsel for the respective parties, and the court having considered the said cause, and having directed judgment in favor of the defendants:

It is ordered that said demurrer be overruled, and that judgment final be and hereby is entered in favor of the defendants establishing their title to membership in the Board of Chosen Freeholders of the County of Morris, and their right to use, exercise and enjoy the rights, liberties, privileges and franchises thereof, with costs to the said defendants to be taxed.

Rule entered, April 1st, A. D., 1913.

On motion of, GEORGE G. RUNYON,
Attorney of Defendants."

(12) That the twenty-four persons defendant mentioned in the said information, on the relation of said John P. Lyons and others, still comprise The Board of Chosen Freeholders of the County of Morris.

(13) That the return and certificate of election of the said John P. Lyons to be a member of The Board of Chosen Freeholders of the County of Morris, mentioned in section two of his complaint, and whereon he founds his

present action, were founded upon the said ballots so cast at the said general election in said Morris County, in November, 1912, and which were counted for him as aforesaid, and that the said John P. Lyons, John J. Cunningham, Christopher Kelly, Jr., George A. Estler and John K. Cook considered themselves to have been elected as members of The Board of Chosen Freeholders of the County of Morris, at the said election, under and by virtue of the act of the legislature entitled "An Act to reorganize the boards of chosen freeholders of the several counties of this State, reducing the membership thereof, fixing the salaries and providing for the election and terms of office of the members and also for the appointment and terms of office of officers appointed by such boards (Revision of 1912)", approved April 1, 1912 (P. L. 1912, p. 619, chap. 355), and did consider and insist that they were the Board of Chosen Freeholders of the County of Morris, and on January 6, 1913, did, in fact, meet for organization as such board and elect from among themselves the said John P. Lyons to be their director in compliance with the provisions for the organizing of boards of chosen freeholders under the last mentioned act of the legislature, and on January 10, 1913, caused the said information in the nature of a writ of quo warranto to be filed, and did incur in the said litigation, in which their title to office as aforesaid was involved, the following expenses:—

Amount due Elmer King, Esq., for services in quo warranto $125.00

To costs on final judgment in quo warranto, taxed to the defendants ..... $ 22.50

Amount due Willard W. Cutler, Esq., for services in quo warranto $250.00

(14) That both the large and small boards of freeholders held meetings on the same day and all matters passed on by the large board were also passed upon by the small board, so that in case either board was held to be the lawful one, the business of the county would be properly done and its interests protected.

(15) That the twenty-four persons named as defendants in the above stated information, filed on the relation of said John P. Lyons and others against the said William H. Grimes and others, on the first day of January, 1913, in accordance with the statutes in such case made and provided, duly organized as The Board of Chosen Freeholders of the County of Morris, in fact and in law, and ever since have so continued to act and to be, and that theretofore they were severally elected Chosen Freeholders from their respective towns, boroughs and townships in said County, in accordance with the statutes in such case made and provided; and have been and still are entitled to have and to use, exercise and enjoy the liberties, privileges and franchises to them pertaining as such Chosen Freeholders and as the members of The Board of Chosen Freeholders of the County of Morris.

Dated, October 13, 1913.

Morristown, N. J.

KING & VOGT,
Attorneys of Plaintiff.

GEO. G. RUNYON,
Attorney of Defendant.

SUPREME COURT OF NEW JERSEY.

Morris County.

John P. Lyons,
Plaintiff,
vs.
The Board of Chosen Freeholders of the County of Morris,
Defendant.

Action at Law.

Request for Findings.

Before Mr. Justice Charles W. Parker, at the Morris County Circuit, October Term, 1913, by consent, without a jury. Submitted on agreed state of facts.

Request for Findings

THE DEFENDANT REQUESTS THE FOLLOWING FINDINGS BY THE SAID JUSTICE, ON MATTERS OF LAW:—

(1) That the act entitled "An Act to reorganize the boards of chosen freeholders of the several counties of this State, reducing the membership thereof, fixing the salaries, and providing for the election and terms of office of the members and also for the appointment and terms of office of officers appointed by such boards", approved March 26, 1902, being Chapter 34 of the Laws of 1902, was not applicable to Morris County at the time of the General Election in said County in November, 1911, and was not legally adopted in said County at said election.

(2) That the act entitled "An Act to reorganize the boards of chosen freeholders of the several counties of this State, reducing the membership thereof, fixing the salaries and providing for the election and terms of office of the members, and also for the appointment and terms of office of officers appointed by such boards (Revision of 1912)", approved April 1, 1912, being Chapter 355 of the Laws of 1912, was not applicable to Morris County at the time of the General Election in said County in November 1912.

(3) That the plaintiff was not lawfully elected a member of the Board of Chosen Freeholders of the County of Morris at the General Election in said County in November, 1912.

(4) That there was no authority of law for the election of members of the Board of Chosen Freeholders of the County of Morris, from the county at large, at the General Election in said County in November, 1912.

(5) That the return and certificate of election of the plaintiff as a member of the Board of Chosen Freeholders of the County of Morris, elected by the county at large,

founded upon the General Election in said county, in November, 1912, were made and issued without warrant of law and are void and of no effect.

(6) That plaintiff cannot recover salary as a member of the Board of Chosen Freeholders of the County of Morris (as and for the time in his complaint demanded) unless he has served as such member (de facto or de jure) for the period of time for which recovery is sought and that not having so served he cannot recover.

(7) That the organization of the plaintiff and others as the Board of Chosen Freeholders of the County of Morris, under the act entitled "An Act to reorganize the boards of chosen freeholders of the several counties of this State, reducing the membership thereof, fixing the salaries and providing for the election and terms of office of the members, and also for the appointment and terms of office of officers appointed by such boards (Revision of 1912)", approved April 1, 1912, being Chapter 355 of the Laws of 1912, was without warrant of law, and void and of no effect.

(8) That, it not appearing that the plaintiff ever served as a member of the Board of Chosen Freeholders of the County of Morris, he cannot recover the salary demanded.

(9) That the defendant is precluded from paying to plaintiff the salary demanded, by Article I, paragraph 19, of the Constitution of the State of New Jersey, which provides that, "No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation."

(10) That, under the last mentioned constitutional provision, the defendant is precluded from paying to the plaintiff his demand for expenses for litigation.

Request for Findings

(11) That, under the last mentioned constitutional provision, the defendant is precluded from paying to the plaintiff his demand for election expenses.

(12) That, under the last mentioned constitutional provision, the act entitled "An Act providing for compensation and reimbursement of persons returned as elected to be members of boards of chosen freeholders in any county of this State, and to whom certificates of election as such were issued, the title to whose office has been adjudged against such persons in appropriate legal proceedings, or where their title to such office has been adversely affected by judicial decision against other persons similarly situated with reference to membership in any such like board of chosen freeholders, by a court of competent jurisdiction, within one year last past, and providing for the payment of the expenses incurred by any such persons in litigation in which their title to such office aforesaid was involved, in those cases where legal proceedings concerning such title were actually conducted, and also providing for compensation to be made to persons appointed or elected to office or position by persons returned and certified as elected to be members of boards of chosen freeholders as aforesaid, and acting or assuming to act as such boards", approved May 27, 1913, being Chapter 5 Special Session Laws of 1913, under which plaintiff seeks to recover, is unconstitutional, in that it provides for the giving of County money in aid of individuals.

(13) That there is no evidence in this case to warrant a finding for the plaintiff.

GEORGE G. RUNYON,
Attorney of Defendant.

Findings

SUPREME COURT OF NEW JERSEY,

Morris County.

Filed Dec. 22, 1913.

John P. Lyons,
Plaintiff,
vs.
The Board of Chosen Freeholders of the County of Morris,
Defendant.

Action at Law.
Findings.

Before Mr. Justice Charles W. Parker, at the Morris County Circuit, October Term, 1913, by consent, without a jury. Submitted on agreed state of facts.

THE DEFENDANT REQUESTS THE FOLLOWING FINDINGS BY THE SAID JUSTICE, ON MATTERS OF LAW:—

(1) That the act entitled "An Act to reorganize the boards of chosen freeholders of the several counties of this State, reducing the membership thereof, fixing the salaries, and providing for the election and terms of office of the members and also for the appointment and terms of office of officers appointed by such boards", approved March 26, 1902, being Chapter 34 of the Laws of 1902, was not applicable to Morris County at the time of the General Election in said County in November, 1911, and was not legally adopted in said County at said election.

The said Justice so finds.

(2) That the act entitled "An act to reorganize the boards of chosen freeholders of the several counties of this State, reducing the membership thereof, fixing the salaries and providing for the election and terms of office

of the members, and also for the appointment and terms of office of officers appointed by such boards (Revision of 1912)", approved April 1, 1912, being Chapter 355 of the Laws of 1912, was not applicable to Morris County at the time of the General Election in said County in November, 1912.

The said Justice so finds.

(3) That the plaintiff was not lawfully elected a member of the Board of Chosen Freeholders of the County of Morris at the General Election in said County in November, 1912.

The said Justice so finds.

(4) That there was no authority of law for the election of members of the Board of Chosen Freeholders of the County of Morris, from the county at large, at the General Election in said County in November, 1912.

The said Justice so finds.

(5) That the return and certificate of election of the plaintiff as a member of the Board of Chosen Freeholders of the County of Morris, elected by the county at large, founded upon the General Election in said county, in November, 1912, were made and issued without warrant of law and are void and of no effect.

The said Justice so finds.

(6) That plaintiff cannot recover salary as a member of the Board of Chosen Freeholders of the County of Morris (as and for the time in his complaint demanded) unless he has served as such member (de facto or de jure) for the period of time for which recovery is sought, and that not having so served he cannot recover.

The said Justice refuses so to find, and the defendant objects.

(7) That the organization of the plaintiff and others

as the Board of Chosen Freeholders of the County of Morris, under the act entitled "An Act to reorganize the boards of chosen freeholders of the several counties of this State, reducing the membership thereof, fixing the salaries and providing for the election and terms of office of the members, and also for the appointment and terms of office of officers appointed by such boards (Revision of 1912)", approved April 1, 1912, being Chapter 355 of the Laws of 1912, was without warrant of law, and void and of no effect.

The said Justice so finds.

(8) That, it not appearing that the plaintiff ever served as a member of the Board of Chosen Freeholders of the County of Morris, he cannot recover the salary demanded.

The said Justice refuses so to find, and the defendant objects.

(9) That the defendant is precluded from paying to plaintiff the salary demanded, by Article I, paragraph 19, of the Constitution of the State of New Jersey, which provides that, "No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation."

The said Justice refuses so to find, and the defendant objects.

(10) That, under the last mentioned constitutional provision, the defendant is precluded from paying to the plaintiff his demand for expenses for litigation.

The said Justice refuses so to find, and the defendant objects.

(11) That, under the last mentioned constitutional provision, the defendant is precluded from paying to the plaintiff his demand for election expenses.

Findings

The said Justice refuses so to find and the defendant objects.

(12) That, under the last mentioned constitutional provision, the act entitled "An act providing for compensation and reimbursement of persons returned as elected to be members of boards of chosen freeholders in any county of this State, and to whom certificates of election as such were issued, the title to whose office has been adjudged against such persons in appropriate legal proceedings, or where their title to such office has been adversely affected by judicial decision against other persons similarly situated with reference to membership in any such like board of chosen freeholders, by a court of competent jurisdiction, within one year last past, and providing for the payment of the expenses incurred by any such persons in litigation in which their title to such office aforesaid was involved, in those cases where legal proceedings concerning such title were actually conducted, and also providing for compensation to be made to persons appointed or elected to office or position by persons returned and certified as elected to be members of boards of chosen freeholders as aforesaid, and acting or assuming to act as such boards, approved May 27, 1913, being Chapter 5 Special Session Laws of 1913, under which plaintiff seeks to recover, is unconstitutional, in that it provides for the giving of county money in aid of individuals.

The said Justice refuses so to find, and the defendant objects.

(13) That there is no evidence in this case to warrant a finding for the plaintiff.

The said Justice refuses so to find, and the defendant objects.

CHARLES W. PARKER,
Justice, Supreme Court of New Jersey.

Postea

SUPREME COURT OF NEW JERSEY.

Morris County.

Filed Jan. 14, 1914.

John P. Lyons,
Plaintiff,
vs.
The Board of Chosen Freeholders of the County of Morris,
Defendant.

Action at Law.

Postea.

This case was tried before the Honorable Charles W. Parker, one of the Justices of the Supreme Court, without a jury at the Morris County Circuit
nineteen hundred and thirteen, upon an agreed state of facts. The findings of the court were as follows:

1. That the act entitled "An Act to reorganize the boards of chosen freeholders of the several counties of this State, reducing the membership thereof, fixing the salaries, and providing for the election and terms of office of the members and also for the appointment and terms of office of officers appointed by such boards", approved March 26, 1902, being Chapter 34 of the Laws of 1902, was not applicable to Morris County at the time of the General Election in said County in November, 1911, and was not legally adopted in said County at said election.

The said Justice so finds.

2. That the act entitled "An Act to reorganize the boards of chosen freeholders of the several counties of this State, reducing the membership thereof, fixing the salaries and providing for the election and terms of of-

fice of the members, and also for the appointment and terms of office of officers appointed by such boards (Revision of 1912)", approved April 1, 1912, being Chapter 355 of the Laws of 1912, was not applicable to Morris County at the time of the General Election in said County in November 1912.

The said Justice so finds.

3. That the plaintiff was not lawfully elected a member of the Board of Chosen Freeholders of the County of Morris at the General Election in said county in November, 1912.

The said Justice so finds.

4. That there was no authority of law for the election of members of the Board of Chosen Freeholders of the County of Morris, from the county at large, at the General Election in said County in November, 1912.

The said Justice so finds.

5. That the return and certificate of election of the plaintiff as a member of the Board of Chosen Freeholders of the County of Morris, elected by the county at large, founded upon the General Election in said county, in November, 1912, were made and issued without warrant of law and are void and of no effect.

The said Justice so finds.

6. That plaintiff cannot recover salary as a member of the Board of Chosen Freeholders of the County of Morris (as and for the time in his complaint demanded) unless he has served as such member (de facto or de jure) for the period of time for which recovery is sought, and that not having so served he cannot recover.

The said Justice refuses so to find, and the defendant objects.

7. That the organization of the plaintiff and others as the Board of Chosen Freeholders of the County of Morris, under the act entitled "An Act to reorganize the

boards of chosen freeholders of the several counties of this State, reducing the membership thereof, fixing the salaries and providing for the election and terms of office of the members, and also for the appointment and terms of office of officers appointed by such boards (Revision of 1912)", approved April 1, 1912, being Chapter 355 of the Laws of 1912, was without warrant of law, and void and of no effect.

The said Justice so finds.

8. That, it not appearing that the plaintiff ever served as a member of the Board of Chosen Freeholders of the County of Morris, he cannot recover the salary demanded.

The said Justice refuses so to find, and the defendant objects.

9. That the defendant is precluded from paying to plaintiff the salary demanded, by Article 1, paragraph 19, of the Constitution of the State of New Jersey, which provides that, "No county, city, borough, town, township or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation."

The said Justice refuses so to find, and the defendant objects.

10. That, under the last mentioned constitutional provision, the defendant is precluded from paying to the plaintiff his demand for expenses for litigation.

The said Justice refuses so to find, and the defendant objects.

11. That, under the last mentioned constitutional provision, the defendant is precluded from paying to the plaintiff his demand for election expenses.

The said Justice refuses so to find and the defendant objects.

12. That, under the last mentioned constitutional pro-

vision, the act entitled "An Act providing for compensation and reimbursement of persons returned as elected to be members of boards of chosen freeholders in any county of this State, and to whom certificates of election as such were issued, the title to whose office has been adjudged against such persons in appropriate legal proceedings, or where their title to such office has been adversely affected by judicial decision against other persons similarly situated with reference to membership in any such like board of chosen freeholders, by a court of competent jurisdiction, within one year last past, and providing for the payment of the expenses incurred by any such persons in litigation in which their title to such office aforesaid was involved, in those cases where legal proceedings concerning such title were actually conducted, and also providing for compensation to be made to persons appointed or elected to office or position by persons returned and certified as elected to be members of boards of chosen freeholders as aforesaid, and acting or assuming to act as such boards", approved May 27, 1913, being Chapter 5 Special Session Laws of 1913, under which plaintiff seeks to recover, is unconstitutional, in that it provides for the giving of county money in aid of individuals.

The said Justice refuses so to find, and the defendant objects.

13. That there is no evidence in this case to warrant a finding for the plaintiff.

The said Justice refuses so to find, and the defendant objects.

I did thereupon render a verdict against the defendant and in favor of the plaintiff for the sum of $904.42, with costs.

CHAS. W. PARKER,
J. S. C.,

JOHN M. MILLS,
Attorney of and of Counsel with Appellant.

NEW JERSEY COURT OF ERRORS and APPEALS.

John P. Lyons, Plaintiff and Defendant in Error, vs.	Action at Law Appeal
The Board of Chosen Freeholders of the County of Morris, Defendant and Plaintiff in Error.	Brief of Defendant and Plaintiff in Error.

STATEMENT OF PROCEEDINGS.

This action was brought in the New Jersey Supreme Court under Chapter 5 of the Special Session Laws of 1913.

The summons and declaration were filed September 14, 1913 (see page 5 of Printed Case).

Bill of Particulars furnished September 8, 1913 (see page 15 of Printed Case).

Answer filed September 26, 1913 (see page 8 of Printed Case).

The facts of the case were fixed upon by Stipulation of Counsel dated October 13, 1913, which stipulation was presented to the Court at the opening of the Morris Circuit October 14, 1913, and was filed with the Clerk of the Supreme Court October 15, 1913 (see Stipulation, pages 16 to 43, inclusive, of Printed Case).

The defendant requested thirteen findings by the said Justice on matters of law (see page 43 of Printed Case).

The findings of the Justice on the thirteen questions of law were filed December 22, 1913 (see page 47 of Printed Case), the said Justice finding as requested by the defendant and plaintiff in error in the first, second, third, fourth, fifth and seventh questions of law and refused to

so find in the sixth, eighth, ninth, tenth, eleventh, twelfth and thirteenth questions of law, and thereupon, the defendant objected to the findings in the said sixth, eighth, ninth, tenth, eleventh, twelfth and thirteenth questions of law (see pages 47, 48, 49 and 50 of Printed Case).

The Postea having been signed by the Justice the same was filed January 14, 1914 (see page 51 of Printed Case).

The defendant and plaintiff in error thereupon appeals (see Notice of Appeal and Grounds, filed January 24, 1914, page 1 of Printed Case).

STATEMENT OF THE CASE.

Morris county is a second-class county. The Board of Chosen Freeholders of the County of Morris is organized each year on the first day of January, on which date it holds its stated annual meeting and its fiscal year begins (Comp. Stat. p. 474, sec. 6; P. L. 1908, p. 597, amended by P. L. 1909, p. 36). Its members are elected from the several towns, boroughs and townships of the county, under an act entitled "An Act to incorporate the chosen freeholders in the respective counties of the State," approved April 16, 1846 (Compl. Stat. p. 474, sec. 56), and Chapt. 82, Laws of 1899 (P. L. 1899, p. 203), and Chapt. 121, Laws of 1895 (P. L. 1895, p. 268), and Chapt. 161, Laws of 1897 (P. L. 1897, p. 285, sec. 2), and Chapt. 3, Laws of 1905 (P. L. 1905, p. 14), and the amendments and supplements of the said several acts. In the event of no successor being elected at the expiration of the term for which a chosen freeholder is elected, he continues in office until a successor is chosen and qualified (Chapt. 3, Laws of 1905, sec. 7).

The Board of Chosen Freeholders of the County of Morris for the year 1913 was duly organized as usual on January 1, 1913, by the chosen freeholders (24 in all) from the several townships, towns and boroughs of the county, and they have continued to be and are The Board of Chosen Freeholders of the County of Morris, in fact and in law (see stipulation, page 42, lines 34-39 of printed case).

Statement of the Case

An act entitled "An Act to reduce the number of members of the boards of chosen freeholders in counties of this state, and to fix the salaries and provide for the election of the members of said boards," known and hereinafter referred to as the "STRONG ACT," was approved March 26, 1902 (P. L. 1902, p. 65, Chapt. 34).

Sec. 1 of said act provided for small boards of freeholders in the counties of the state, classifying the counties for the purposes of the act on a special basis of population and provided that "in counties having between fifty thousand and one hundred thousand inhabitants," such board should consist of five members to hold office for two years.

The 7th section of said act provided that the act should not take effect in any county "until the same shall have been adopted by vote of the legal voters of such county," at an election for members of the General Assembly.

Sec. 7 further provided "and the legal voters of said County may, at such election, decide upon the acceptance or rejection of this act **in the following manner:** there shall be printed on each official ballot, containing the names of candidates for members of the general assembly next under the party heading, the proposition, 'For the law reducing the number of freeholders,' and immediately thereunder the proposition, 'Against the law reducing the number of freeholders,' and the voter may vote to adopt this act **by obliterating** the second proposition or may vote to reject this act **by obliterating** the first proposition."

By an act entitled "An Act to amend an act entitled 'An act to reduce the number of members of the boards of chosen freeholders in counties of this State, and to fix the salaries and provide for the election of the members of said boards,' approved March twenty-sixth, one thousand nine hundred and two," approved April 10, 1908 (P. L. 1908, p. 269, Chapt. 164), sec. 1 of the STRONG ACT of 1902 was amended, and said section was made to end with the following proviso:

"PROVIDED, HOWEVER, THIS ACT SHALL

NOT APPLY TO COUNTIES OF THE SECOND CLASS."

The title to the STRONG ACT of 1902 was amended by Chapt. 199 of the laws of 1909 (P. L. 1909, p. 294) to read as follows: "An act to reorganize the boards of chosen freeholders of the several counties of this State, reducing the membership thereof, fixing the salaries, and providing for the election and terms of office of the members and also for the appointment and terms of office of officers appointed by such boards."

NOTWITHSTANDING that the STRONG ACT of 1902, as amended by Chapt. 164, laws of 1908, did not apply to counties of the second class (of which Morris County is one), there appeared on the official ballots used at the General Election in November, 1911, in said county, a proposition for the adoption or rejection of that act by its old title.

The proposition as submitted appears (see stipulation, page 17 of printed case). It was not submitted in accordance with Sec. 7 of the STRONG ACT of 1902, nor was it submitted in accordance with the provision for adoption of propositions contained in the general act concerning elections (P. L. 1911, p. 276, sec. 58).

By "An Act to reorganize the boards of chosen freeholders of the several counties of this State, reducing the membership thereof, fixing the salaries and providing for the election and terms of office of the members, and also for the appointment and terms of office or officers appointed by such boards (Revision of 1912)", approved April 1, 1912 (P. L. 1912, p. 619, Chapt. 355), known and hereinafter referred to as the GILL ACT, the law pertaining to the reduction of the membership of the boards of freeholders was revised and all inconsistent acts repealed, and by Sec. 1 it was provided that "in counties having between fifty thousand and one hundred and thirty-five thousand inhabitants, said boards shall consist of five members," and that their terms of office should be three years.

Sec. 7 provided that none of the provisions of the act should take effect in any county "until the same shall

have been adopted by vote of the legal voters of such county, **except as hereinafter provided."**

Sec. 9 provided "in all counties in which there has heretofore been held an election for the acceptance or rejection of the act entitled 'An act to reduce the number of members of the boards of chosen freeholders in counties of this State, and to fix the salaries and provide for the election of the members of said boards,' approved March twenty-sixth, one thousand nine hundred and two, either as originally passed or as amended, at which election a majority of the votes cast for or against the law reducing the number of freeholders were in favor of the adoption of said act; the board of chosen freeholders of such county shall consist of the number of members, according to population, as provided for herein, and where no election for members of the board of chosen freeholders has been held in such county, subsequent to the adoption of said act, the board of freeholders of such county shall be elected at the next general election held in such county, in the manner herein set forth, and such boards of chosen freeholders shall be subject to and be governed by the provisions of this act."

This section is probably unconstitutional in its denial of the referendum to the counties therein described.

This is the only act under which members of The Board of Chosen Freeholders of the County of Morris could have been elected, **by the county at large,** at the time of the General Election of November 1912, at which plaintiff claims to have been elected by the county at large. No election could be had under this act until its provisions had first been adopted as the result of a referendum, and no such referendum was ever had in Morris County. See PIERSON et als vs. CADY et als, 86 Atl. Rep. p. 167, at bottom of p. 171.

The plaintiff and twenty others, claiming that the STRONG ACT of 1902 had been adopted at the General Election of November 1911, became candidates for members of the board of chosen freeholders of Morris County, to be elected by the county at large, and the plaintiff and

four others claim to have been returned and certified as elected at the general Election in November 1912, as members of the board of chosen freeholders in Morris County, under the GILL ACT of 1912.

FACTS ADMITTED BY STIPULATION.

That Morris County is a county of the **second class** and has been such since the year 1900 (see stipulation of facts page 16, line 22, etc., of printed case).

That the proposition for the adoption of the STRONG ACT of 1902 was submitted (in a form not authorized by law) at the General Election in Morris County, on November 7, 1911 (see stipulation of facts, page 16, line 37, etc.)

That at the General Election in Morris County, on November 5, 1912, the name of the plaintiff, among twenty others, appeared upon the official ballot as candidate for "Members of the Board of Chosen Freeholders" for the county **at large,** and that as the result of a count of such ballots cast at said election, on which the voter had assumed to vote for any of the persons so appearing as candidates, the Board of County Canvassers, **in fact,** returned the plaintiff, and four of the others, as elected and a certificate of election was, **in fact,** issued to each of them by the clerk of Morris County (see stipulation of facts, page 17, lines 26, etc., of printed case).

That the plaintiff filed in the office of the county clerk of Morris County two statements, which purport to show that his election expenses amounted to $184.20 (see stipulation of facts, page 18 of printed case, lines 21, etc., and all of pages 19, 20, 21 and 22).

That the return and certificate of election of the plaintiff, whereon he founds his present action, were founded upon the said ballots so cast at the general election in said Morris County in November 1912, and that the plaintiff and the four others considered themselves as elected under the GILL ACT of 1912, and that they considered themselves The Board of Chosen Freeholders of the County of Morris, and on January 6, 1913, **in fact,** did

meet for organization as such board and elect from among themselves John P. Lyons (the plaintiff herein) to be their director, in compliance with the provisions of the GILL ACT of 1912 for the organizing of boards of chosen freeholders elected thereunder, and that **the plaintiff and the four others,** in the QUO WARRANTO proceedings hereinafter mentioned (in which their titles were declared invalid) incurred the following expenses: (see stipulation of facts, printed case, page 42, lines 28-33).

Amount due Elmer King, Esq., for services in Quo Warranto $125.00
Costs on final judgment in Quo Warranto taxed to the defendants 22.50
Amount due Willard W. Cutler, Esq., for services in Quo Warranto 250.00

That the plaintiff, with the four others, on January 10, 1913, through the Attorney General, filed an INFORMATION in the nature of a writ of QUO WARRANTO (see stipulation of facts, "Quo Warranto," page 23 of printed case) against the members of the Morris County Board of Chosen Freeholders, in the Supreme Court of New Jersey, in which it was maintained that the defendants did unlawfully usurp, enter into and unlawfully hold, execute and exercise, the liberties, privileges and franchises of a body politic and corporate, **in fact and in law,** and unlawfully claim to be The Board of Chosen Freeholders of the County of Morris, and that the proposition to reduce the number of members of the board of freeholders of said county to five (5) to be elected by the county at large, had been adopted in Morris County at the General Election in November 1911 (see stipulation of facts, page 25 of printed case, lines 4-19), and that the plaintiff herein, and the four others, had been legally and lawfully elected as members of The Board of Chosen Freeholders of the County of Morris at the General Election in November, 1912, and that certificates of election had been issued to them and that they had, on January

6, 1913, organized as the board of chosen freeholders of the said county pursuant to the statute in such case made and provided (see page 25 of printed case, lines 20 to end of page, and page 26, lines 1, etc).

That the defendants in said QUO WARRANTO proceedings, by their pleas (see stipulation of facts, "Plea," pages 27, 28, 29, 30, 31, 32, 33 and 34 of printed case) denied the title of the plaintiff and his fellow relators, and denied that the proposition for the reduction of the number of members of the board of chosen freeholders had been adopted at the General Election in Morris County in November 1911, and denied that the plaintiff and the other relators had been elected at the General Election in said County in November, 1912, and alleged that they, the defendants, comprised the only true and lawful Board of Chosen Freeholders of the County of Morris.

That in said QUO WARRANTO proceedings it was finally adjudged by this court:—

"THAT JUDGMENT FINAL BE AND IS HEREBY ENTERED IN FAVOR OF THE DEFENDANTS ESTABLISHING THEIR TITLE TO MEMBERSHIP IN THE BOARD OF CHOSEN FREEHOLDERS IN THE COUNTY OF MORRIS, THEIR RIGHT TO USE, EXERCISE AND ENJOY THE RIGHTS, LIBERTIES, PRIVILEGES AND FRANCHISES THEREOF." (See stipulation of facts "Rule for Judgment" printed case Page 41).

That the twenty-four persons named as defendants in the INFORMATION in QUO WARRANTO, in which judgment went against the relators, did on January 1, 1913, in accordance with the statutes in such case made and provided, duly organize as The Board of Chosen Freeholders of the County of Morris, **in fact and in law,** and have ever since so continued to act and to be, and that theretofore they were severally elected chosen freeholders from their respective towns, boroughs and townships in said county, in accordance with the statutes in such case made and provided (see stipulation of facts, page 41, lines 31, 32, 33 and 34 of printed case).

THE PLEADINGS.

THE COMPLAINT in this action (see page 5 of printed case) alleges as follows:

Paragraph 1, that by Chapt. 5 Spec. Sess. Laws of 1913, "provision was made for the payment to the officers therein mentioned."

This allegation is denied by the answer and the plaintiff is left to his proof, if that were necessary. It is, however, a question of law, for the court, as to what the act provides.

Paragraph 2, that the plaintiff "was returned as elected to be a member of the Board of Chosen Freeholders of the County of Morris," and that a certificate of election was issued to him.

These allegations are denied by the answer.

Paragraph 3, that the plaintiff, with others, organized a board on January 1st and January 6th, 1913, and that the plaintiff's title "was adjudicated to be invalid on the twelfth day of March, 1913."

The answer admits that the plaintiff's title was adjudged invalid, but denies the matter of the organization of a board, by plaintiff and others.

Paragraph 4, that the Legislature had "fixed the annual salary of said plaintiff as such member" at the sum of $1500. per year.

The answer denies this allegation.

Paragraph 5, that the plaintiff "incurred expenses in and about procuring his election as a member of such board amounting to the sum of $184.20, according to his statement under oath filed by him according to law."

Allegation denied by the answer.

Paragraph 6, that there was "incurred by plaintiff and by the others elected as members of the Board of Chosen Freeholders of the County of Morris, expenses in the litigation to which their title to such office aforesaid was involved," the sum of $397.50, "which sum includes reasonable counsel fees."

This paragraph is denied by the answer.

Paragraph 7, that under Chapt. 5, Spec. Sess. Laws

1913, it was the duty of the defendant to pay plaintiff's demands for salary and expenses.

This allegation is denied by the answer.

Paragraph 8, that by the last mentioned act the defendant became liable "for the pro rata proportion of the annual salary provided for in the Act of the Legislature **creating or purporting to create** such Boards of Chosen Freeholders to which this plaintiff was returned and certified as elected to be a member thereof, and it, then and there became and was the duty of the said defendant to pay to the said plaintiff the **compensation** and expenses provided for in said act."

This paragraph is denied by the answer.

Paragraph 9 is as follows:

"That the defendant well knowing the premises did not regard its duty in this behalf, nor the statute in such case made and provided, but contriving and wrongfully intending to deceive and defraud the plaintiff in this respect of the damages accrued to him, contrary to the statute, would not and did not pay the plaintiff the said sum."

"Plaintiff demands the sum of $856.60 with interest from March 12th, 1913, until date of payment."

The BILL OF PARTICULARS (see page 15 of printed case) furnished by plaintiff on demand, is as follows:—

"The following is a bill of particulars of the claim of the plaintiff mentioned in the plaintiff's complaint, namely:

Services rendered the County of Morris as the Board of Chosen Freeholders, from January 6, 1913, to March 11, 1913, at the rate of $1500. a year $274.90

To expenses of election as filed with the County Clerk 184.20

$459.10

Amount due W. W. Cutler, counsel in Quo Warranto proceedings 250.00

Amount due Elmer King, counsel in Quo Warranto proceedings 125.00
Amount due Elmer King for costs paid in Quo Warranto proceedings 22.50

$397.50

Special Chapter No. 5 Laws 1913.
Dated September 8, 1913."

ARGUMENT.

I.

THE COMPLAINT DISCLOSES NO CAUSE OF ACTION (see Answer Page 9 of printed case, line 10, etc.)

The act under which this action is brought, by its purview, does not require a **quid pro quo** by the persons of the description of plaintiff, to whom it attempts to give a right of action, and the COMPLAINT contains no allegation of services rendered.

The plaintiff and the others, organizing the alleged board, acted at their peril and in the face of the express provision of the statute (Chapt. 164, Laws 1908), in assuming that the STRONG ACT of 1902 applied to Morris County, a county of the second class.

The legal and true Board of Chosen Freeholders of the County of Morris existed in its full official capacity and was performing its functions during the period in question (see stipulations of facts, page 42 of printed case, lines 34, etc.) and the plaintiff and his alleged board so admitted or alleged in the QUO WARRANTO proceedings.

By paragraph 2 and 3 of the COMPLAINT (page 6 of printed case) it is admitted that plaintiff's title to the office in question has been adjudged **invalid.** The plaintiff appears in this action therefore only in the character of a private person demanding, under Chapt. 5 Spec. Laws 1913, that the defendant give to him money of the County of Morris, not for services rendered, or for goods furnished or money paid, for or on account of the county,

but on the plea that he, having in fact merely, and without warrant of law, been returned and certified as elected to the office of member of the board of chosen freeholders of the county of Morris, the court adjudged his title **invalid,** and that therefore he should be paid the salary provided for that office (under an act not in force in said county), from a certain day on which he and others organized an alleged board (which in law never existed), to and until the day when the court adjudged his title invalid, and that he should also be reimbursed for certain expenditures made by himself and others, not for and on account of the county, but in their personal attempts to be elected to that office, and in their personal but unsuccessful attempts to establish their title to the office.

The object of the act, as appears from the express language of the title, is to provide for **compensation** for the two classes of persons described in the title, but in the body of the act (see sec. 1) a departure is made from the **expressed** purpose of the act, and payments to persons of the description of plaintiff are not required to be by way of compensation, or salary for services rendered.

By sec. 3 of the act, provision is made for payment for the services of employees "who have actually performed the duties and functions of the office or positions" to which they have been appointed, but plaintiff is not a person of this description. He claims to have been a **member** of the alleged board of freeholders, not an employee or officer elected or appointed by such a board.

In construing sec. 1 of the act, the court will have recourse to the title, and the object of the act as **expressed** therein.

By compensation was meant a recompense or reward for services rendered, as is evidenced by sec. 3 of the act.

Mr. Justice Garrison, in the case of GRIFFITH vs. TRENTON, 76 N. J. L. 23, at 25, said, " 'The criterion in these cases,' said Chief Justice Beasley, in Falkner vs. Dorland, 25 Vroom 409, 'is to ascertain, as closely as practicable, what impression, as to the object of a statute, its titular expression is calculated to disseminate.' 'It is true,' said the same learned jurist, in Rader vs. Un-

ion, 10 Id. 509, 515, 'that it may be difficult to indicate by a formula how specialized the title of a statute must be, but it is not difficult to conclude that it must mean something in the way of being a notice of what is doing. Unless it does this it can answer no useful end. It is not enough that it EMBRACES the legislative purpose—it must EXPRESS IT.' The constitution provides that 'Every law shall EMBRACE but one object, and that shall be EXPRESSED in its title.' Art. 4, sec. 7, pl. 4."

The title of a statute is not only an indication of legislative intent, but is also a limitation upon the enacting part of the law. It can have no effect with respect to any object that is not expressed in the title. HENDRICKSON vs. FRIES, 45 N. J. L. 555, 563; GRIFFITH vs. TRENTON, 76 N. J. L. 23, 25; JORDAN vs. MOORE, 82 N. J. L. 552; PATTERSON vs. CLOSE, 86 Alt. 430.

Art. I, par. 19, of the Constitution of the State of New Jersey, provides:

"NO COUNTY, * * * * SHALL HEREAFTER GIVE ANY MONEY OR PROPERTY, OR LOAN ITS MONEY OR CREDIT, TO OR IN AID OF ANY INDIVIDUAL, ASSOCIATION OR CORPORATION."

NOTE. The comma after the word "individual" in the above paragraph does not appear in the paragraph of the Constitution as printed in the Revision of 1877, the General Statutes of 1895, or in the Compiled Statutes of 1910, but that it should so appear, see P. L. 1876, pp. 27, 433: Revision of 1877, p. xxx.

Under this Constitutional provision, the defendant is enjoined from giving the plaintiff the moneys he demands, and his action fails.

In JERSEY CITY vs. NORTH JERSEY ST. RY. CO., 78 N. J. L. 72, 74, Mr. Justice Swayze says, "The exact question then may be thus stated: Is it competent for a municipality without express legislative authority to give away to a private corporation a portion of the city's revenues, not merely revenues then due, but revenues to accrue in the future for years thereafter. To state this question is to answer it. The doubt has never been

whether such an act required express legislative authority, but whether it was even within the power of the legislature to authorize such a donation. Since the decision in Loan Association v. Topeka, 20 Wall. 655, it has been thought beyond the power of the legislature itself to authorize municipal aid to private corporations, and certainly such aid has been impossible since the amendments to our constitution in 1875, article 1, section 19, 20. I cannot distinguish in principle between direct pecuniary aid by means of a release from a pecuniary burden."

In MORRIS & ESSEX R. R. CO. vs. NEWARK, 76 N. J. L. 555, an action against Newark for money agreed to be paid for track elevation, it was contended that the stipulated sum to be paid by the city should be regarded as a voluntary "contribution" by the municipality, and therefore prohibited by art. I, sec. 19, 20 of the State Constitution. The court held that there was in that case, a valuable consideration, and that **therefore** the case was not within the constitutional prohibition.

The same reasoning applies to gifts to individuals. The case at hand is that of giving county money in aid of an individual without a consideration.

In the case of STROCK vs. EAST ORANGE, 77 N. J. L. 382, in passing upon that portion of an act which permitted the use of municipal play grounds upon such terms as the Board of Play Ground Commissioners **might deem proper,** the court held that it was in violation of the spirit, if not the letter, of Art. I, sec. 19, 20, in that it provided a possible taking from the public of its property rights and giving them to private persons.

ARGUMENT.

II.

THE RETURN AND CERTIFICATE OF ELECTION OF THE PLAINTIFF AS ELECTED TO BE A MEMBER OF THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF MORRIS NEVER HAD ANY VALIDITY.

By "An Act to regulate elections (Revision of 1898)" (P. L. 1898, p. 237, sec. 111) election returns are regulated as follows:—

"111. THE BOARD OF COUNTY CANVASSERS, IN CASE OF AN ELECTION FOR A MEMBER OF THE SENATE, MEMBERS OF THE GENERAL ASSEMBLY, OR FOR ANY **COUNTY** OR CITY OFFICER OR OFFICERS, SHALL PROCEED TO DETERMINE THE PERSON OR PERSONS WHO SHALL, BY THE GREATEST NUMBER OF VOTES, HAVE BEEN **DULY ELECTED** TO THE OFFICE OR OFFICES FOR WHICH HE OR THEY HAVE BEEN DESIGNATED."

By sec. 114 of the last mentioned act, it is provided that the county clerk shall deliver a certificate of election "TO EACH PERSON **WHO SHALL BE SO ELECTED.**"

It is an admitted fact in this case (see stipulation of facts, page 17, line 30, etc., of printed case) that the RETURN AND CERTIFICATE OF ELECTION of plaintiff were founded upon the votes counted for plaintiff, on official ballots voted in the county, **at large,** on which the voter had assumed to vote for the plaintiff as such member of the board of chosen freeholders, at the General Election in Morris County, in November, 1912, whereas, as has been shown, the act for the reduction of the number of the members of the board of chosen freeholders, and providing for their election in the county at large (the GILL ACT of 1912), was not in operation in Morris County at the time of said election. The plaintiff's return and certificate of election therefore had no validity.

In the language of Mr. Justice Swayze, in the case of PIERSON et als vs. CADY et als, 86 Atl. Rep. 167, at bottom of 171, "WHEN THE RELATORS WERE ELECTED, THE ONLY ACT UNDER WHICH THEY COULD BE ELECTED WAS CHAPTER 355 OF THE LAWS OF 1912, AND THAT ACT AT BEST WAS INEFFECTIVE WITHOUT A REFERENDUM THEREON."

The act under which this suit is brought, by sec. 1, re-

stricts its benefits to "persons **returned as elected** to be members of boards of chosen freeholders in any county of this State, and to whom **certificates of election** as such were issued," and the plaintiff must prove himself to be a person of this description. By this language it will be understood that the Legislature meant only, persons **legally** returned and certified as elected, persons who had actually been elected, and whose title had thereafter been "adjudged against such persons," on proper grounds, possibly for neglect to take the statutory oath (Manahan vs. Watts, 64 N. J. L. 465).

The judiciary alone shall say whether the return and certificate of election, having been made and issued, have any existence in law and it did so in said QUO WARRANTO proceedings of plaintiff. The Legislature cannot control the judiciary in its consideration of the sufficiency of the return and certificates of election mentioned in the act, and the law existing at the time of the making and issuance thereof.

The court will not presume that the Legislature intended an absurdity, or that absurd consequences should flow from its enactments, and it certainly would be an absurdity, if a person, managing to have himself illegally returned as elected, by having this illegality established by the court, should be, under this act, entitled to the salary of the office illegally sought.

The plaintiff, not having been **legally** returned and certified as elected, is not entitled to recover.

ARGUMENT.

III.

CHAPT. 5 SPEC. SESS. LAWS 1913, UNDER WHICH THIS ACTION IS BROUGHT IS CONTRARY TO THE ORGANIC LAW OF THE STATE, BECAUSE IT IS A LEGISLATIVE ENCROACHMENT OR INVASION UPON THE JUDICIARY.

The matter of plaintiff's title to the office in question, and to the rights, liberties, privileges and franchises

thereof (which includes the salary attached to the office) and the same RETURN and CERTIFICATE OF ELECTION on which plaintiff relies in this suit, were fully and finally adjudicated upon in the proceedings in this court on INFORMATION in the nature of a WRIT OF QUO WARRANTO wherein plaintiff was one of the relators and the present members of the defendant board were defendants, and by that adjudication it is established that plaintiff never had any title to the office in question, or to the rights, liberties, privileges and franchises thereof.

In the QUO WARRANTO proceedings the title of the plaintiff in this action was questioned by the pleas and thereby placed in issue and brought squarely before the court for adjudication (Lane vs. Otis, 68 N. J. L. 64.)

The court in its memorandum opinion (see stipulation of facts, page 41, Rule for Judgment) said,

"The defendants are entitled to judgment for the reasons substantially as stated in the opinion filed in the case of Attorney General vs. Cady."

The case of Attorney General vs. Cady was a like case of INFORMATION in the nature of a writ of QUO WARRANTO, filed by the Attorney General on the relation of Thomas J. Pierson and others vs. John M. Cady and others, claiming to be the board of chosen freeholders of the county of Union, and is reported in 86 Atl. Rep. pp. 167 &c. The opinion in that case deals almost wholly with the alleged title to office, of the relators, and the grounds upon which they base their claim to the office, which were like those on which the plaintiff in this action founded his claim of title to office.

If the act is to have operation, and it is held that plaintiff's return and certificate of election (notwithstanding their adjudged invalidity), are sufficient for the purposes of this action, the effect of this act of legislation is to recognize **pro tanto** the official character of the plaintiff, which has been denied by the court, and to declare him entitled to that to which the court adjudged him not entitled. The court, in effect, adjudged that the

plaintiff was not entitled to the office or its salary. The Legislature says by the act in question that the plaintiff is entitled to the salary, and the judgment of the court is to that extent by this legislative fiat impaired and avoided, contrary to the prohibition contained in Art. III of the Constitution of the State of New Jersey, which provides:

"THE POWERS OF THE GOVERNMENT SHALL BE DIVIDED INTO THREE DISTINCT DEPARTMENTS—THE LEGISLATIVE, EXECUTIVE AND JUDICIAL; AND NO PERSON OR PERSONS BELONGING TO, OR CONSTITUTING ONE OF THESE DEPARTMENTS, SHALL EXERCISE ANY OF THE POWERS PROPERLY BELONGING TO EITHER OF THE OTHERS, EXCEPT AS HEREIN EXPRESSLY PROVIDED."

By Art. VI, sec. 1 of the said Constitution, the judicial power is vested in the courts.

The powers properly belonging to each of these departments, and therefore forbidden to the others, are those assigned under the general terms legislative power, executive power and judicial power. ROSS vs. FREEHOLDERS OF ESSEX, 69 N. J. L. 291.

When questions involving private interest have been settled by the final sentence of a judicial tribunal, the power of reopening them is by our Constitution confided to the judiciary and denied to the Legislature. ALDRIDGE vs. ESSEX ROAD BOARD, 51 N. J. L. 166.

ARGUMENT.

IV.

CHAPT. 5 SPEC. SESS. LAWS 1913 IS IN CONTRAVENTION OF THE CONSTITUTION OF THE STATE OF NEW JERSEY IN THAT IT EMBRACES TWO OBJECTS.

Art. IV, sec. VII, par. 4 of the Constitution provides:

"TO AVOID IMPROPER INFLUENCES WHICH MAY RESULT FROM INTERMIXING IN ONE

Argument IV

AND THE SAME ACT SUCH THINGS AS HAVE NO PROPER RELATION TO EACH OTHER, EVERY LAW SHALL EMBRACE BUT ONE OBJECT, AND THAT SHALL BE EXPRESSED IN THE TITLE."

The act in question by secs. 1 and 2 provides for **gifts** to, and reimbursement of, a certain class of individuals, i. e. persons who have been returned and certified as elected to be members of the board of chosen freeholders and whose title to office has been "adjudged against such persons" or affected by judicial decision, **within one year** (from the date of the act) last past.

The act by sec. 3 provides for **compensation** to persons "elected or appointed to offices and positions," and who have **actually performed** the duties of the offices or positions to which they were appointed by persons who have been returned and certified as elected to be members of boards of freeholders and who have acted or assumed to act as such boards.

There is no proper or necessary connection between the two groups of persons described, or between the two ends sought to be accomplished. The first group of persons is provided with a gift of a portion of the salary of the office (chosen freeholder for the county at large) which they never held, and are not required by the terms of the act to have held (unless it shall be construed that the act requires a **legal** return and certificate of election), and which in Morris County did not exist. The second group of persons provided for are persons who have been **de facto** officers or appointees under **de facto** boards.

These two ends or objects of the act are not expressed in its title, for by the title of the act a gift or gratuity is not provided for the first group of persons, but **compensation** is to be provided for the two groups of persons described.

An act of the Legislature which contains two or more subjects having no (proper) relation to each other, will, for that reason, be within the Constitutional prohibition, although its title be comprehensive enough to embrace

all the subjects contained in it. GROVER vs. TRUSTEES OF OCEAN GROVE, 45 N. J. L. 399, 402.

ARGUMENT.

V.

CHAPT. 5 SPEC. SESS. LAWS 1913 CONFLICTS WITH ART. IV, SEC. VII, PAR. 4 OF THE CONSTITUTION OF THE STATE OF NEW JERSEY, which provides:

"NO ACT SHALL BE PASSED WHICH SHALL PROVIDE THAT ANY EXISTING LAW, OR ANY PART THEREOF, SHALL BE MADE OR DEEMED A PART OF THE ACT, OR WHICH SHALL ENACT THAT ANY EXISTING LAW, OR ANY PART THEREOF, SHALL BE APPLICABLE EXCEPT BY INSERTING IT IN SUCH ACT."

The act provides that the persons who have been returned and certified elected and whose titles have been adversely passed upon by the courts, "shall have and receive the pro rata proportion of the annual salary provided for IN THE ACT OF THE LEGISLATURE CREATING OR PURPORTING TO CREATE SUCH BOARDS OF CHOSEN FREEHOLDERS to which such aforesaid persons were returned and certified as elected to be members."

It may be, as plaintiff insists, that by this language the legislature intended to make the 3rd section of the GILL ACT of 1912 (which provides an annual salary of $1500.) applicable to the act in question, but said GILL ACT of 1912 neither creates or purports to create boards of freeholders. By its very title it only purports to be an act "to reorganize" the boards of freeholders, and that simply by reducing the number of members, and the act is not yet applicable to Morris County, in this respect.

The only act creating boards of chosen freeholders, applicable to Morris County, is the act entitled "An Act to incorporate the chosen freeholders in the respective counties of the State," approved April 16, 1846 (Comp. Stat. p. 474), which has been in force and operation in

Morris County since it became a law, by a supplement to which (P. L. 1880, p. 315; Comp. Stat. p. 482, sec. 36), it is provided that each of the members of the board of chosen freeholders shall receive as compensation for their official services, the sum of "two dollars for each day he shall be actually and necessarily employed in discharging the duties enjoined on him as such officer." The only act fixing a salary for the members of the board of chosen freeholders, applicable to Morris County, is the act entitled:

"AN ACT RELATING TO THE COMPENSATION OF MEMBERS OF THE BOARDS OF CHOSEN FREEHOLDERS, approved May 1, 1911 (P. L. 1911, p. 622, Chapt. 295), sec. 1 of which is as follows:

"1. Each of the members of every board of chosen freeholders in any county of this State having a population of not less than seventy thousand inhabitants and not more than one hundred thousand inhabitants shall receive as a salary and compensation for his services the sum of three hundred dollars per annum, and the director of the board shall receive the sum of five hundred dollars per annum, to be paid out of the county treasury by the county collector, in equal quarterly payments, and that no other compensation shall be allowed, given or paid to any of said members for any services or expenses whatsoever; PROVIDED, HOWEVER, that this act shall not apply to or be held to affect or regulate the salaries of members of the board of chosen freeholders in any county of this State that has adopted and is now acting under, or that hereafter adopts the provisions of the act entitled 'An act to reduce the number of members of the board of chosen freeholders in the counties of this State, and to fix the salaries and provide for the election of the members of said boards, 'approved March twenty-sixth, one thousand nine hundred and two, and the amendments and supplements thereto."

The plaintiff cannot claim salary under the act to incorporate the chosen freeholders, above mentioned, approved April 16, 1846, for the reason that the alleged board of which he claims to have been a member was

not, in the language of said Chapt. 5 Spec. Sess. Laws 1913, "the act of the legislature creating or purporting to create such boards," and he cannot claim salary under the GILL ACT of 1912, unless by the said reference sec. 3 of said act is made a part of or applicable to the act under which he brings his action.

In speaking of constitutional objection of this nature, the late Chief Justice Beasley, in the case of STATE vs. HANCOCK, 54 N. J. L. 393, 397, says "the egregious construction of this sort have already been exploded, and it has been intimated that it may be probably the universal test in such instances as the one before us, that if the expressions in a given act of reference to the antecedent laws may be struck out or eliminated without altering or impairing the effect of the law in which they are found, that such references are harmless and can possess no invalidating force."

The reference appearing in sec. 1 of the act in question, to "the act of the Legislature creating or purporting to create such boards of chosen freeholders to which such aforesaid persons were returned and certified as elected to be members," if struck out or eliminated, would leave that section of the act unintelligible, and would fatally impair the act. It does not stand the test. It is meaningless without reading into it some other act of the legislature, or a portion thereof, to which an uncertain reference is made, and from which, when ascertained, must be gathered what it is that the Legislature seeks to give the plaintiff or persons of his description.

In the words of Mr. Justice Depue, in the case of CHRISTIE vs. BAYONNE, 48 N. J. L. 408, "It is an imperfect and incomplete act of legislation."

ARGUMENT.

VI.

SAID CHAPT. 5, SPEC. SESS. LAWS 1913 IS IN CONFLICT WITH ART. IV, SEC. VII, PAR. 4 OF THE CONSTITUTION OF THE STATE OF NEW JERSEY, which provides:—

"NO GENERAL LAW SHALL EMBRACE ANY PROVISION OF A PRIVATE, SPECIAL OR LOCAL CHARACTER."

The act, in its operation, is an act for private relief, or aid, of a certain few individuals, whose cases and limited numbers were known and cannot be augmented, and who did not form a proper class for legislation. It is special in its selection of beneficiaries. It is local in that its operation and applicability is fixed and confined to the necessarily few counties in which the described instances of **"one year last past"** are found, and to those counties alone its mandate is expressly directed (see sec. 4 of the act).

At the General Election in November 1912, twenty-one persons appeared as candidates for the office of member of the board of chosen freeholders of the county of Morris, to be elected by the county at large, under the GILL ACT of 1912, but by the act in question only those who were returned and certified as elected are to receive its benefits, although they were no more elected (the act not applying to Morris County) than the sixteen others who were candidates and who are left to suffer their disappointment in failing to gain office, without the salve of a gratuity and without reimbursement for their election expenses as candidates.

In the passing of this act, it is manifest the Legislature had in mind the particular counties in which the instances described had become facts **"within one year last past,"** and under the terms of the act no other county can be brought within its scope, although therein the same circumstances may have come into existence the day after the approval of the act.

If the act be sustained, the classes into which counties may be divided, will be as numerous and diversified as the purposes of the Legislature, and all the evils sought to be adverted by the abolution of the power to legislate for individuals, will return under the form of class legislation. ANDERSON vs. TRENTON, 42 N. J. L. 486, 489.

The Legislature cannot confine the force of its enact-

ments to the condition of affairs existing at the date of the act if similar conditions are likely to arise thereafter. BURLINGTON vs. PENN. R. R. CO., 56 N. J. Eq. 259, 263; Affirmed 58 N. J. Eq. 547.

ARGUMENT.

VII.

SAID CHAPT. 5, SPEC. SESS. LAWS 1913, IS IN CONTRAVENTION OF ART. I, PAR. 19, OF THE CONSTITUTION OF THE STATE OF NEW JERSEY, which provides:

"NO COUNTY, CITY, BOROUGH, TOWN, TOWNSHIP OR VILLAGE SHALL HEREAFTER GIVE ANY MONEY OR PROPERTY * * * * * TO OR IN AID OF ANY INDIVIDUAL, ASSOCIATION OR CORPORATION."

The act is a legislative mandate to appropriate county money for the use and benefit of private individuals, and it is therefore inoperative.

ARGUMENT.

VIII.

SAID CHAPT. 5 SPEC. SESS. LAWS 1913, IS INCONSISTENT WITH ART. IV, SEC. VII, par. 11, OF THE CONSTITUTION OF THE STATE OF NEW JERSEY, which provides:

"THE LEGISLATURE SHALL NOT PASS PRIVATE, LOCAL OR SPECIAL LAWS IN ANY OF THE FOLLOWING ENUMERATED CASES, THAT IS TO SAY:

"REGULATING THE INTERNAL AFFAIRS OF TOWNS AND COUNTIES; APPOINTING LOCAL OFFICES OR COMMISSIONS TO REGULATE MUNICIPAL AFFAIRS."

It would appear that in enacting Chapt. 5 Spec. Sess. Laws 1913, the Legislature had in view only the counties

of the second class like Morris, Union and Mercer (FACTS, p. 20, sec. 10), in which an attempt had been made (notwithstanding the law to the contrary) to adopt the STRONG ACT of 1902, at the General Election of November 1911, and in which, in pursuance of such abortive attempts at adoption, an election of members of the board of freeholders for the county at large had been attempted under the GILL ACT of 1912. This is evidenced by the fact that its operation is confined to instances (therein described) occurring **"within one year last past."** It does not attempt to make a general rule or provision, for instances of this nature.

The act is restricted in effect to particular instances in existence at the time of its approval, and the particularity of the descriptive language shows that its framer was providing for the particular instances above mentioned. ATTORNEY GENERAL vs. NEWARK PLANK RD. CO., 65 N. J. L. 51, 603. This view is strengthened by an examination of the series of curative acts, intended to right the instances in question, which were passed during the years 1912 and 1913, and which culminate in the act in question, viz.:

CHAPT. 181, LAWS 1912, sec. 2, purporting to validate such attempted adoption in counties of the second class.

CHAPT. 314, LAWS 1912, purporting to validate any irregularity in the submission of the proposition in any county.

CHAPT. 355, LAWS 1912, sec. 9 (GILL ACT), recognizing such abortive adoption of the STRONG ACT of 1902, as sufficient, and by reason thereof denying its referendum to counties where such adoption had occurred.

CHAPT. 2, LAWS 1913, purporting to validate all elections for the adoption of the act reducing the membership of the board of freeholders, and also purporting to validate all elections for members of the board of freeholders under the GILL ACT of 1912.

CHAPT. 4, LAWS 1913, purporting to validate the at-

tempted election of members of the board of freeholders under the GILL ACT of 1912.

CHAPT. 5, LAWS 1913, approved Feb. 5, 1913, purporting to validate all elections for the adoption of the laws reducing the number of members of the board of chosen freeholders.

The last mentioned act was approved 26 days after the INFORMATION in proceedings in the nature of a writ of QUO WARRANTO had been filed, (January 10, 1913), as hereinbefore set forth, and no judgment in said proceedings had yet been rendered. No further legislation on the subject occurred until after the court had adjudged the abortive elections under the STRONG ACT of 1902 and the GILL ACT of 1912 unlawful and void (March 12, 1913), when the Legislature again gave its attention to the matter and enacted CHAPT. 5 SPEC. SESS. LAWS 1913, (approved May 27, 1913), under which this action is brought.

The language of the fourth section of the act bears out the contention that the Legislature had in view only the instances of abortive elections under the GILL ACT of 1912, which had just been the subject of adverse adjudication, for by this section the mandate of the act is directed, not to the counties of the state generally, but to "the boards of chosen freeholders in the counties of this state affected by this act."

Of the 21 counties of the State, eleven were counties of the second class, in which the STRONG ACT of 1902 could not have been adopted since April 10, 1908 (being excluded from the operation of the act by Chapt. 164, Laws 1908), and in which counties the GILL ACT of 1912 could not have been adopted until the General Election of 1912, and in which an election of members under the GILL ACT of 1912 could not be had until the General Election of 1913.

It is not to be presumed that defective proceedings were taken in other counties than those brought to the attention of the court by the Stipulation as to facts in this case within the brief space of one year that elapsed before the passage of the act under which recovery is

sought. All acts of an official nature are presumed to be rightly done until the contrary is proved. RUTTEN vs. PATTERSON, 73 N. J. L. p. 467, at top of page 476.

That Chapt. 5 Spec. Sess. Laws 1913, "regulates the internal affairs" of the counties within its scope, seems too plain for argument.

The test of the generality of a law adopted is that it shall embrace all and exclude none whose conditions and wants render such legislation equally appropriate to them as a class. WANSER vs. HOOS, 60 N. J. L. 482, at 525.

If the act be restricted to persons returned and certified as elected under the GILL ACT of 1912, it excludes persons returned and certified as elected to the boards of chosen freeholders created under "An act to incorporate the chosen freeholders in the respective counties of the state," approved April 16, 1846, and its supplements and amendments, from the recovery of their election expenses, and if their titles have been adjudged against them, from the salary of the office. If the act be construed to include in its scope all persons who may have been (under **any act** creating boards of freeholders) returned and certified as elected to be members, it is, notwithstanding, restricted by its terms to such only as have had their titles "adjudged against such persons," or whose titles have been "adversely affected by judicial decision against other persons similarly situated with reference to membership in any such **like board** of chosen freeholders," and that "within one year last past." In other words only those returned as elected to boards of the character of those which had actually been the subject of adverse litigation is intended and included.

Sec. 2 provides for the reimbursement, for "the expenses incurred by them in and about procuring their election" of "all persons returned as elected to be members of boards of chosen freeholders, and to whom certificates of election as such were issued, as mentioned in the first section of this act." Construing the language to refer only to the class of persons described in sec. 1, that is, persons returned as members of boards of the charac-

ter of those which had been actually litigated, then all persons who have been returned or who had been returned, and certified as elected, whose titles have not been adjudged against them, or adversely affected by judicial decisions, are excluded from recovery of election expenses, and all persons legally returned and certified as elected, and who comprise the true boards of freeholders of the counties within the scope of the act, are excluded from recovery of election expenses.

The adverse adjudications of the year preceding the act, on the question of membership in boards of freeholders, in fact arose only and were founded upon, cases of persons claiming under an abortive attempt to adopt the STRONG ACT of 1902 in counties of the second class and subsequent attempted elections under the GILL ACT of 1912, and it would seem therefore that by the restrictive descriptions of sec. 1, the act is confined to persons claiming election under the last mentioned act.

Gauged by the rules which have heretofore been adopted by our courts as the proper basis of classification, the legislature by the act in question has chosen characteristics and incidents as marking a distinct class of too special, restrictive and unimportant a character to give to the enactment the quality of a general law. RANDOLPH vs. WOOD, 49 N. J. L. 85; RICHARDS vs. HAMMER, 42 N. J. L. 435; ZEIGLER vs. GADDIS, 44 N. J. L. 363; PAVONIA HORSE R. R. CO. vs. JERSEY CITY, 45 N. J. L. 297; STATE vs. RIODRAN, 75 N. J. L. 16.

The Judgment of the Supreme Court should be reversed, and this Court should find that the plaintiff and defendant in error is not entitled to recover anything against the defendant.

Respectfully submitted,

JOHN M. MILLS,

Attorney and Counsel for Defendant and Plaintiff in Error.

THE EVENING POST JOB PRINTING OFFICE, 156 FULTON ST., N. Y.

Court of Errors and Appeals.

JOHN P. LYONS,
Plaintiff and Defendant in Error,

vs.

THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF MORRIS,
Defendant and Plaintiff in Error.

Action at Law.

BRIEF ON BEHALF OF PLAINTIFF AND DEFENDANT IN ERROR.

The County of Morris is a county of the second class.

At the general election November seventh, one thousand nine hundred and eleven, "An Act reducing the number of members of the Boards of Chosen Freeholders in Counties of this State; and to fix the salaries and provide for the election of members of said boards, approved March 26th, 1902," was adopted in the County of Morris.

At the general election November fifth, one thousand nine hundred and twelve, John P. Lyons, John K. Cook, John J. Cunningham, Christopher Kelly, Jr., and George A. Estler were returned as elected members of the Small Board of Chosen Freeholders

of said county as provided by the said Act of 1902, and proper certificates of election were issued to them; at this election no persons were elected from the various municipalities, to fill vacancies in the old board of freeholders.

On the first day of January, one thousand nine hundred and thirteen, the said John P. Lyons, John K. Cook, John J. Cunningham, Christopher Kelly, Jr., and George A. Estler organized themselves as the Board of Chosen Freeholders of the County of Morris, and the defendant in error was duly elected director thereof.

On the same day, the remaining members of the old board also met and organized.

From the organization of both boards, resolutions, ordinances, approval of bills, payment of claims, etc., were passed by both boards, so that, irrespective of the question pending on *quo warranto*, the business of the county would be lawfully and legally conducted.

On January tenth, one thousand nine hundred and thirteen, the said John P. Lyons, John K. Cook, John J. Cunningham, Christopher Kelly, Jr., and George A. Estler, at the relation of the Attorney General of the State of New Jersey, filed an information in the nature of a *quo warranto* in the Supreme Court of New Jersey against the old members of the Board of Chosen Freeholders, who were holding over from the year one thousand nine hundred and twelve.

On March twelfth, one thousand nine hundred and thirteen, the Supreme Court of New Jersey determined that the said John P. Lyons, John K. Cook, John J. Cunningham, Christopher Kelly, Jr., and George A. Estler had not been legally elected.

The annual salary of each of the members of the small board was, by statute, fixed at the sum of $1,500.

After the decision in *quo warranto*, the Legislature of this State at a special session, passed an act,

approved May 27, 1913, entitled "An Act providing for compensation and reimbursement of persons returned as elected to be members of boards of chosen freeholders in any county of this State, and to whom certificates of election as such were issued, the title to whose office has been adjudged against such persons in appropriate legal proceedings, or when their title to such office has been adversely affected by judicial decision against other persons similarly situated with reference to membership in any such like board of chosen freeholders, by a court of competent jurisdiction, within one year last past, and providing for the payment of the expenses incurred by any such persons in litigation in which their title to such office aforesaid was involved, in those cases where legal proceedings concerning such title were actually conducted, and also providing for compensation to be made to persons appointed or elected to office or position by persons returned and certified as elected to be members of boards of chosen freeholders as aforesaid, and acting or assuming to act as such boards."

P. L. 1913, p. 810.

Suit was brought by the plaintiff to recover the compensation allowed by the said statute from January first, one thonsand nine hundred and thirteen to March fifteenth, one thousand nine hundred and thirteen, and for the payment of the expenses incurred by the small board in the litigation in which their title to such office was involved.

This action was submitted to Justice Parker on an agreed state of facts, who found for the plaintiff in the sum of $904.42.

POINTS.

(For full notation of cases see brief in *extenso* following.)

POINT I.

The act of 1913, P. L. 1913, page 810, does not provide for the giving of county money in aid of an individual in contravention of Article I, Par. 19 of the Constitution.

Morris & Essex R. R. Co. *vs.* Newark, 47 Vr., 555.

Rader *v.* Township of Union, 10 Vr., 509.

Cleveland *v.* Board of Finance, 9 V., 259.

Mutual Benefit *v.* Elizabeth, 13 V., 235.

Orville *v.* Woodcliff, 32 V., 107.

Gas Co. *v.* New Orleans, 95 U. S., 644.

Town of Gulford *v.* Chenango, 13 N. Y., 143.

POINT II.

The Act does not provide for the payment of the members elected in 1912, but provides that those "returned as elected" should be compensated, and it is admitted that the said Lyons was returned as elected, at the election held November fifth, one thousand nine hundred and twelve.

POINT III.

The Act of 1913 does not nullify the adjudication of the Supreme Court in re the Attorney General ex rel. Lyons et als. vs. Grimes, et als.

Doyle *vs.* City of Newark, 5 Vr., 236.
Cooley on Constitution Lim. (5 Ed.), 109. Star, page 91.
Central Pacific R.R. *vs.* Galatin, 99 U. S., 761.
Penn. *vs.* Wheeling & Cen. Bridge Co., 18 How., 440.
Wayman *vs.* Southard, 10 Whea., 1, 46.
Bates *vs.* Chapman, 2 Chip (Vt.), 77.
Greenough *vs.* Greenough, 11 Penn St., 49.
Schumway *vs.* Bennett, 29 Mich., 451.
Taylor *vs.* Place, 4 R. I., 324.
6 Am. & En. Cyc. (2 Ed.), 1032.

POINT IV.

Said Act does not embrace two subjects, and the subject of the Act is clearly set forth in the title in compliance with Article 4, Section 7, paragraph 4 of the Constitution.

Boorem *vs.* Connelly, 66 N. J. L., 197.
Easton & Amboy R.R. Co *vs.* Central R.R. Co., 52 N. J. L., 267.
Kennedy *vs.* Belmar, 61 N. J. L., 20.

Stockton *vs.* Cen. R.R. Co., 50 N. J. E., 52.
State *vs.* Union, 33 N. J. L., 350.
Rader *vs.* Union, 49 N. J. L., 509.
Bergen Co. Savings Bank *vs.* Union, 44 N. J. L., 599.
State *vs.* Egan, 85 (N. J.), Atl., 235.

POINT V.

Said Act is not within the interdiction of Article 4, Section 7, paragraph 4 of the Constitution, providing, "No Act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of the Act, etc."

Bradley & Currier Co. *vs.* Loving, 54 N. J. L., 227.
Campbell *vs.* Board of Pharmacy, 45 N. J. L., 241.
State *vs.* Hancock, 25 Vr., 393.
Christie *vs.* Bayonne, 48 N. J. L., 407.
Haring *vs.* State, 51 N. J. L., 390.
Kennedy *vs.* Belmar, 61 N. J. L., 20.
Evernhaum *vs.* Hulit, 45 N. J. L., 53.
Decamp *vs.* Hibernia R. R. Co., 47 N. J. L., 43.

POINT VI.

The Act of 1913, aforesaid, is general, and is not a private, special or local act.

Hermann *vs.* Guttenburg, 62 N. J. L., 605; aff'd, 63 N. J. L., 616.
Longbranch *vs.* Sloane, 20 Vr., 356.
Hudson *vs.* Buick, 22 Vr., 161.
State *vs.* Hammer, 13 Vr., 435.
Carlstadt National Bank *vs.* Hasbrouck Heights, 84 Atl., 1069,
Mara *vs.* Bayonne, 48 Vr., 288.
Rutgers *vs.* New Brunswick, 42 N. J. L., 51.

POINT VII.

The Legislature may compel municipal corporations to pay claims not enforcible at law or in equity, when they are morally binding.

Rader *vs.* Union. 10 Vr., 509.
Cleveland *vs.* Board of Finance, 9 Vr., 259.
Mutual Benefit Insurance Co. *vs.* Elizabeth, 13 Vr., 235.
Orville *vs.* Woodcliff *vs.* 32 Vr., 107.
Morris & Essex R. R. *vs.* Newark, 47 Vr., 555.
Carlstadt National Bank *vs.* Hasbrouck, 84 Atl., 1069.
Jefferson City Gas Co. *vs.* New Orleans, 95 U. S., 644; 24 Law Ed., 521.

Gilford *vs.* Chenango Co., 13 New York, 143.

Weismer *vs.* Village of Douglas, 64 New York, 91.

Witherbee *vs.* Essex, 70 New York, 228.

State *vs.* Aberdeen, 34 Wash., 61, 74, Pacific, 122.

State *vs.* Seattle, 110 Pacific (Wash), 1008.

It is respectfully submitted that the judgment of the Supreme Court should be affirmed.

KING & VOGT,
Attorneys of Plaintiff,

ELMER KING,
Of Counsel.

POINT I.

The Act does not provide for the giving of county money in aid of an individual in contravention of Article I., paragraph 19 of the Constitution.

Rader *v.* Township of Union, 10 Vr., 509.

Cleveland *v.* Board of Finance, 9 Vr., 259.

Mutual Benefit *v.* Elizabeth, 13 Vr., 235.

Orville *v.* Woodcliff, 32 V., 107.

Gas Co. *v.* New Orleans, 95 U. S., 644.

Town of Guilford *v.* Chenango, 13 N. Y., 143.

Morris & Essex Railroad Co. *v.* Newark, 47 Vr., 555.

As this subject is treated more in extenso under Point VII. it will not be here repeated.

POINT II.

The Legislature deemed it proper that compensation should be made to those members of the small board who had secured the nomination and been elected to that office. The statutory conditions upon which the plaintiff and defendant in error could maintain his suit were:—

a. His return as elected to be a member of a board of chosen freeholders of any county of this state.

b. The issuance to him of a certificate of election.

c. The title to whose office has been adjudged against him by a court of competent jurisdiction within one year last past.

WHEN HE SHALL HAVE AND RECEIVE

The *pro rata* proportion of the annual salary provided for in the Act of the Legislature creating or purporting to create such boards of chosen freeholders * * * for a period of time between the date of the organization of such persons as such board and the date when their title to such office was or may be adjudicated to be invalid, or was adversely affected by judicial decision.

The facts show all these statutory conditions together with the performance, in conjunction with the old board, of the duties as the board of freeholders.

POINT III.

The Act of 1913, Chapter 5, Special Session of 1913 (P. L., 1913, p. 810) does not nullify the adjudication of the Supreme Court in re Atty. Gen. ex rel. John P. Lyons et als. vs. William H. Grimes et als.

The difference between the departments is, that the legislative makes, and the judiciary construes the law. That which distinguishes a judicial from a legislative act is, that the judicial is a determination of what the existing law is in relation to some existing thing already done or happened, while the legislative is a predomination of what the law shall

be for the regulation of all future cases falling under its provisions. The judicial decides upon the legality of claims and conduct, and the legislature makes rules upon which, in connection with the constitution, those decisions should be founded. It is the province of judges to determine what is the law upon the existing cases. In fine the law is *applied* by the one and *made* by the other. To do the first then—to compare the claims of parties with the law of the land before established—is, in its nature a judicial act. But to do the last—to pass new rules for the regulation of new controversies—is, in its nature, a legislative act, and if these rules interfere with the past, or the present, and do not look wholly to the future, they violate the definition of a law "as a rule of civil conduct," because no rule of conduct can with consistency operate upon what occurred before the rule itself was promulgated. It is the province of the judicial power, also to decide private disputes between or concerning persons, but of legislative power to make laws for the benefit and welfare of the State. Cooley on Const. Lim. (5 Ed.) 109 star p. 91.

The judicial determines what the law is, and what the rights of the parties are, with reference to transactions already had; the legislative prescribes what the law shall be in future cases arising under it. Whenever an act undertakes to determine a question or right of obligation or of property, as a foundation upon which it proceeds, such act is to that extent a judicial one, and not the proper exercises of legislative function (Central Pac. R. R. Co. *vs.* Gallatin, 99 U. S., 761).

The judicial power is exercised in decision of cases, the legislative in making general regulations by the enactment of laws. The latter acts from consideration of public policy, the former by the pleadings and evidence (Pennsylvania *vs.* Wheeling etc. Bridge Co., 18 How. (U. S.), 440).

See also Wayman v. Southard, 10 Wheat., 1, 46;

Bates *vs.* Chapman, 2 Chip. (Vt.), 77; Greenough *vs.* Greenough II, Penn. St., 449; Shumway *vs.* Bennett, 39 Mich, 451; Taylor *vs.* Place, 4 R. I., 324; 6 Amer. & Eng. Ency. (2nd Ed.), 1032.

The case of Doyle *vs.* City of Newark, 5 Vr., page 236, is analogous to the case *sub judice*, and demonstrates clearly that the Act of1913 (P. L., 1913, p. 810) is not an attempt on the part of the legislative to usurp the functions of the judiciary. In this case the following facts were before the Court: On June 17th, 1859, the common council of the City of Newark, passed an ordinance for the grading, etc., of North Broad Street. An assessment, to pay the expenses of the improvement, was made upon the persons whose property was benefited by the improvement, one of them being Doyle. Doyle removed the assessment and ordinance into the Supreme Court and that Court set them both aside. Thereafter the Legislature by an act approved April 15th, 1868, after reciting, among other things, that the city had undertaken and performed, at considerable cost, the said improvements under the said ordinance, but, on account of certain informalities and defects in the proceedings taken with reference to said improvement, the city was embarrassed in collecting the costs and expenses of the same, enacted: that it should be lawful for the common council to appoint five disinterested freeholders, commissioners, to make an assessment of the whole costs, damages and expenses of said work or improvement upon the owners of the land so benefited or intended to be benefited. Another assessment was thereupon made by the said commissioners upon the said Doyle for the work performed under the Act of 1857. This assessment, so made by its new commissioners, was thereupon removed by Doyle into the Supreme Court and the objection was made that the Act of 1868 was unconstitutional and void, because it was an invasion of the legislative upon the judiciary. The contention was, that the Supreme Court having set aside the assessment made againt the prosecu-

tor, Doyle, for the improvement in question, the judgment then pronounced could not be nullified or rendered inoperative by an act of the Legislature. The Court said:

"The legal proposition is undoubtelly correct. The judgment of a court of competent jurisdiction cannot be reversed, avoided or set aside by the legislative power. The question here is, whether the Act of 1868, properly considered, has the effect ascribed to it. It must be borne in mind that the act does not revive or attempt to render valid an assessment, which this court has declared illegal or set aside. It simply orders a new and independent assessment to be made; to collect moneys which the city had expended for the benefit of the prosecutor and others. It leaves the judgment upon the first assessment untouched. Its effect is not to nullify the judgment of the court, but to reimburse the city, by means of a subsequent assessment, for the moneys expended in improving a street."

The same reasoning in Doyle *vs.* Newark applies to the case *sub judice.* The act in question does not interfere in any respect with the power of the judiciary. The function of the Supreme Court was to determine whether or not the plaintiff was duly elected a freeholder of the County of Morris. With this determination its function ceased. For the Legislature to now declare that he was elected, would admittedly be unconstitutional, as they would then be enacting a law concerning a past event already passed upon by a proper court. This they do not attempt to do by the Act of 1913. Whether or not the parties "returned as elected" should be paid deals entirely with the future. It simply provides that the plaintiff shall be paid for services rendered to the county. As was said in Redfield, 25 Vr., 288, 292, "it presents no question of law or fact. It is purely a question of policy to be determined by the legislative department." From their

decision, as to the equity, propriety and wisdom of authorizing such a payment there is no appeal (State Ruckman *vs.* Demorest, 3 Vr., 528, 540).

POINT IV.

The act in question is not violative of Art. IV, Section 7, Par. 4 of the Constitution, as it does not embrace two subjects, and the object of the act is clearly set forth in its title.

It is only in a plain case that a statute will be declared void because its title does not express the object of the law. When the subject of legislation is of a general character, all matters reasonably connected with it, which are appropriate to accomplish or facilitate the object of the act, may be embraced in it without infringing the constitutional interdict which prohibits the intermixing of such things as have no proper relation to each other. The constitutional requirements that the object of every law shall be expressed in its title is satisfied when the title fairly indicates the general object of the statute, although it does not indicate the means or method of attaining that object.

In giving effect to this clause of the constitution, the courts give paramount consideration to the general object of the act. The general object of the act being ascertained, the Legislature may include in it provisions of multiform character, designed to carry into execution the legislative purpose, which are not inconsistent with or foreign to the general object of the act.

Boorum *vs.* Connelly, 66 L., 197, 209.

The constitution does not prohibit the union in one act of several subjects, using that term in a limited

sense; the interdict is against the union in one act of such things as have no proper relation to each other. In giving effect to this constitutional provision, the courts give paramount consideration to the general object of the act, the general purpose of the legislative scheme. The general object of the act being ascertained, the power of the Legislature is vindicated to include in its provisions of a multiform character, designed to carry into execution the legislative purpose, which are not inconsistent with or foreign to the general object of the act. The decisions to this effect in our own court are numerous.

Easton & Amboy R. R. Co. *vs.* Central R. R. Co., 52 N. J. Law, 267, 271.

It is well settled that where the general object of the law is single, it will not be brought within this clause of the constitution by the inclusion of provisions not inconsistent with that object, but designed to effectuate the legislative design.

Kennedy *vs.* Belmar, 61 N. J. L., 20, 24.

The requirement is to be construed in the light of the expressed reason for it. The evil condemned for which the remedy is prescribed is not the uniting of properly related subjects in one act, but the uniting of subjects that are foreign to each other, and which do not tend to the promotion of a single object. Various subsidiary subjects, properly connected and relating to one comprehensive subject may be united in the same law. The end aimed at is that each law shall have a single general object, which shall be stated in its title, and that all parts of the law shall be germane to that one object. The purpose is that each distinct subject matter of legislation shall have independant consideration upon its merits, unaffected by the presence of foreign matter which may tend to distract, confuse or improperly influence, and that the title shall conspicuously indicate the general object of the act, so that the

intrusion of the irrelevant matter may be readily detected, and, if it shall remain in the law, be without effect, because inimical to the title.

Stockton *vs.* Central R. R. Co., 50 N. J. E., 52, 70.

It is not intended to prohibit the uniting in one bill of any number of provisions having one general object fairly indicated by its title.

The unity of the object must be sought in the end which the legislative act purposes to accomplish, and not in the details provided to reach that end. The decree of particularity which must be used in the title of the act rests in legislative discretion, and is not defined by the constitution. There are many cases where the object might be more specifically stated, yet the generality of the title will not be fatal to the act, if by fair intendment it can be connected with it."

State *ex rel* Walter *et al. vs.* Union, 33 N. J. L., 350.

See also Rader *vs.* Township of Union, 49 N. J. L., 509.

Bergen County Savings Bank *vs.* Union, 44 N. J. L., 599.

In re Commissioners of Elizabeth, 49 N. J. L., 495.

State *vs.* Egan, 85 Atl., 235.

The object of the act in question and the legislative scheme was the payment of a moral obligation to persons erroneously considering themselves officers of the county in which elections had been held under the Act of 1902. Every provision of the Act of 1913 is cognant to this object and is but one complete scheme.

POINT V.

The Act is not within the interdiction of Article IV, Section 7, Paragraph 4 of the Constitution, providing that "no act shall be passed which shall provide that any existing law, any part thereof, shall be made or deemed a part of the Act, or which shall enact that any existing law, or any part thereof, shall be applicable, except by inserting it in such act."

The purpose of this provision of the constitution was to prevent covert legislation, and, consequently, whenever the latter law is completely intelligible in itself and without comparison with the act to which, in a general way, it refers, such legislation is plainly unobjectionable.

Bradley & Currier Co. *vs.* Loving, 54 N. J. L., 227.

In Campbell *vs.* Board of Pharmacy, 45 N. J. L., 241, the second section of "An Act to regulate the practice of pharmacy" was before the Supreme Court. The second section of the act provided that "any person not being or having in his employ a registered pharmacist, who shall * * * keep a pharmacy or store for retailing or compounding medicines, shall for each and every such offense, be liable to a penalty of $150.00, such penalty to be sued for and recovered by the board of pharmacy * * * in the same manner provided by the statutes of this State for the recovery of penalties in other *quitam* actions."

It was contended that this act contravened Article 4, Section 7, paragraph 4, "no act shall be passed which shall provide that any existing law or any part thereof shall be made or deemed a part of an

act," etc. Justice Depue, speaking for the Court, said: "The constitutional provisions in question, and that which forbids the revival or amendment of a law by reference to its title only, were designed for the suppression of deceptive and fraudulent legislation, the purpose and meaning of which could not be discovered either by the legislature or the public without an examination of, and comparison with, other statutes. Neither of these provisions were designed to obstruct or embarrass legislation. Both were intended only as a means to secure a fair and intelligent exercise of the lawmaking power. An act of the Legislature, which is complete and perfect in itself, the purpose, meaning and full scope of which are apparent on its face, is valid, notwithstanding these constitutional provisions, although it may operate to amend a prior act by the repeal of the latter, *pro tanto* by implication, or may provide for actions or the means of carrying its provisions into effect by a reference to a course of procedure established by other acts of the Legislature. Any other construction would produce most embarrassing results.

In State *vs.* Hancock, P. L. of 1889, was before the Supreme Court. This act provided "That hereafter it shall be lawful for the Court of General Quarter Sessions of the Peace in which any recognizance has been or may be forfeited to certify such forfeiture into the Supreme Court or the Circuit Court of the County in which such forfeiture hath been made * * * to be therein prosecuted in the manner and *with the costs* provided in the several sections of the act to which this is a supplement." It was contended that this act violated Art. IV, Sec. 7, par. 4. The Court said "This particular provision of the constitution thus appealed to has on several occasions been recently considered by this court, and thus far it has invariably been circumscribed by construction so as not to apply to that class of costs to which the present one belongs. The clause has been deemed a refractory one and one most

difficult to utilize within the bounds of reason. When the Legislature authorizes, as frequently the case, a new suit to be brought, it thereby, either expressly or by implication, directs suit to be conducted in the mode prescribed by the practice act. and it would be little short of the *reductio ad absurdum* that such reference to the general law regulating procedures is forbidden by this constitutional provision, and that consequently at such times the greater part of the practice act must be re-enacted. All egregious constructions of this sort have already been exploded, and it has been intimated that it may be probably a universal list in such instances as the one before us, that if the expressions in a given act of reference to antecedent laws may be struck out or eliminated without altering or impairing the effect of the law in which they are found, that such reference is harmless and can possess no invalidating force. Applying this criterion to the present case, this supplement becomes plainly unassailable, for, if we expunge from it its entire reference to the original act, the legal character and methods of the prosecution which it inaugurates would not be affected by the obligation.

The object of the constitutional provisions was not to curtail or embarrass the Legislature in the enactments of laws, but the purpose was to obtain a fair and intelligent exercise of the law making power. It has been decided by this court and the court of errors that an act of the Legislature which is complete and perfect in itself, the purpose, meaning and full scope of which is apparent on its face, is valid though it may provide for auxillary proceedings to accomplish the purposes expressed in the act by a reference to general laws on the subject without violating the constitutional provisions.

Christie *vs.* Bayonne, 48 N. J. L., 407.

The object of the constitutional amendment was to show the lawmaker the true meaning of a pro-

posed enactment without the necessity of resorting to the old law.

Haring *vs.* State, 51 N. J. L., 386, 390.
See also Kennedy *vs.* Belmar, 61 N. J. L., 20.
Evernhaum *v.* Hulit, 45 N. J. L., 53.
DeCamp *vs.* Hibernia R. R. C., 47 N. J. L., 43.

The purpose, meaning and full scope of the Act of 1913 is perfectly apparent upon its face. It is a complete act providing for compensation to be made to certain persons. No one could be deceived as to the object of the act. It refers to another act simply as to mode and manner of payment and cannot be distinguished from the numerous statutes which refer to other statutes as to mode and manner for prosecuting and collecting penalties and the amount of costs allowed.

POINT VI.

The act does not violate Art. IV., 7 Par. 4, as it is a general act and not one regulating the internal affairs of a municipality.

In Herman *vs.* Guttenberg, 62 N. J. L., 605, an act of Legislature entitled "An act authorizing towns to issue bonds for the purpose of raising money to pay certain bonds and improvements certificates and interest thereon, and judgments recovered thereon, heretofore legally issued and now due" (P. L , 1898, p. 65, was attacked as being a special act regulating the internal affairs of a municipality.

The first section of said act provides that "it shall be lawful for the town council or other governing body of any town in this state to provide for the

payment of all bonds and improvement certificates heretofore legally issued by said town for and on account of any street improvement or improvements and now remaining unpaid, and for the payment of interest due thereon, and of any judgments recovered on such bond or bonds, improvement cer tificate or certificates, by the issue and sale of the corporate bonds of said town, in an amount not exceeding the total amount due by the town and for bonds, improvement certificate, interest and judgment aforesaid."

The Court said, " It will be observed that the act is general in its title and text; it applies to all towns in this state." * * * now, in consideration of these objections, we have seen that the act both in its title and text, is general, and we have seen that whilst this act may, in its application to the facts relate to one town alone, yet that by itself does not render the act invalid. It need embrace only subject and yet be a good enactment. *In classification which renders it repugnant to the constitutional prohibition against special legislation must arise from the act.*

The act here applies to a past indebtedness arising out of street improvements. *The act thus classifies the subject which is to be dealt with.*

It is not shown in this case that this classification of the subject is one which has attributes and qualities which render it one which cannot be appropriately dealt with by legislation, and when it does not so appear, or where it is doubtful in the mind of the court, the statute should be upheld. The towns, by the statute, are not subdivided into classes at all in this respect, but the situation is discovered to exist under an act general in its provisions, and if it be found that the statute has a reasonable relation to towns where such situations are found to exist, then the constitutional limitation or condition has been entirely fulfilled.

Past due unpaid indebtedness of a municipality must necessarily stand apart from indebtedness

which is not due and payable, and from indebtedness which must necessarily be incurred in the future exercise of the functions and duties of government. I think that instances of legislation relating to this class of indebtedness are so numerous, and cover such a space of legislative period, that if they are elimitated the bulk of our statutes would be seriously diminished. It has become a legislative policy to deal with it separately. The legislature, in dealing with it has found its attributes and qualities in such as not only to need but to require exclusive legislation upon the subject.

And on this particular subject, as to costs and expenses of street improvements, I venture to say that there has hardly been a municipality of any size in territory or population which has not required legislation in order to do justice to its creditors in relation to past due indebtedness by reason of the costs and expenses of such improvements. Remedial statutes have been numerous and varied in their character, and it is too late in the history of the legislation of this State, as it now appears, to question the validity of such legislation merely on the ground that it relates to obligations incurred in the past and overdue. There are so many incidents between the initiation of the improvements, its completion and the payment of the costs and expenses thereof, to those who have furnished the labor and materials therefor, which so seriously interferes with the success of the scheme by which they were inaugurated, carried on and completed, and payment therefor provided, that it cannot be said that the indebtedness therefor remaining unpaid does not possess characteristics so reasonable and natural, which render the classification by legislation, having exclusive reference to it, appropriate."

This language and reasoning of the Supreme Court was approved and affirmed by the Court of Errors and Appeals in Harman *vs.* Guttenberg, 63 N. J. L., 616.

"That a determination whether or not a given law is general will proceed from a consideration both

of the purpose of the act and the objects on which it is intended to operate. If these objects are distinguished from others by characteristics evincing a peculiar relation to the legislative purpose, and showing the legislation to be reasonably appro priate to the former and inappropriate to the latter, the objects will be considered, as respects such legislation, to be a class by themselves and legislation affecting such class to be general. But if the characteristics used to distinguish the objects to which legislation applies from others be not germane to the legislative purpose, or do not indicate some reasonable appropriateness in its application, or if objects with similar characteristics and like relation to the legislative purpose have been excluded from the operation of the law, then the classification would be incomplete and faulty and the legislation not general, but local and special."

Long Branch *vs.* Sloan, 20 Vr., 356, cited in Freeholders of Hudson *vs.* Buck, 22 Vr., 161.

In State *vs.* Hammer, 13 Vr., 435, Chief Justice Beasley said: "that the true principal of classification requires something more than a mere designation by such characteristics as will serve to classify, for the characteristics which will thus serve as the basis of classification must be of such a nature as to mark the object so designated as peculiarly requiring exclusive legislation. There must be a substantial distinction having a reference to the subject matter of the proposed legislation between the objects of places embraced in such legislation and the objects or places excluded. The marks of distinction on which the classification is founded must be such, in the nature of things, as will, in some reasonable degree, at least account for or justify the restriction of the legislation; cited by the Court of Errors and Appeals in Freeholders of Hudson *vs.* Buck, 22 Vr., 155.

In the case of Carstadt National Bank *vs.* Borough of Hasbrouck Heights, 84 Atl., 1069, the act entitled "An Act providing for the payment of certificates, notes or other indebtedness, issued by Commissioners appointed under an act entitled "An Act to provide for the drainage of any pond, artificial reservoir, etc., when the same is necessary for public health was attacked as being special legislation and therefore unconstitutional.

The Court said:

"There is no substance in the contention that the act of 1911 is special legislation for it is applicable to all municipalities similarly situated. It is a general act, imposing upon the municipalities which have lands of the character described in the act, a liability to defray expenses of their drainage as beneficial to public health. Municipalities thus classified are classified upon a substantial basis to make the legislation general in its character.

In the case of Mara *et al.*, *vs.* Bayonne, 48 Vr., 288, affirmed 49 Vr., 740, the act of P. L. 1908, 266, providing that the voters of any election district, in which a voting machine was used, might petition the governing body of such district to hold a special election in said district, was attacked on the ground that that the act was private, local or special. The Court said "Moreover the act is neither private, local nor special. It provides a general scheme by which any district in which the Secretary of State has placed a voting machine may determine for itself whether it will retain the same or not. It applies to every district in which a voting machine has been placed. So far from tending to produce diversity its tendency would be to produce uniformity by bringing the method of voting, in districts where a voting machine had been placed, into harmony with the method of voting in other districts.

"In the strictest sense, special or local law would comprise all such laws as are confined in their ap-

plication to a limited number of localities or subjects, and a general law would be one universal in its application. In this sense acts of the Legislature relating to a particular kind of private corporations, or to a particular class of municipalities would fall within the prohibition of the constitutional interdiction, as being special or local, however general they might be in their application within scope of the purpose of such legislation, but this is not the signification given to their terms by this court in this case of Van Riper *vs.* Parsons, 11 Vr. *Id.*, 123. When that case was first before this court, it was held that within the sense of these prohibitory clauses, a general law, as contradistinguished from one special or local, is a law that embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class. The second time that case passed under judicial examination in this court, the holding was that a law framed in general terms, restricted to no locality and operating equally upon all of a group of objects which having regard to the purpose of the Legislature, are distinguished by characteristics sufficiently marked and important to make them a class by themselves, is not a special or local law, but a general law, without regard to the consideration that, within this State, there happens to be but one individual of that class, or one place where it produces effects. The statute which the court in that case gave effect to, in fact, spent its force entirely in its application to Jersey City. The distinction to be observed is between classifications which are merely illusory and those which are of such a nature and are founded on such qualities and characteristics as make the objects to which the legislation applies a distinctive class by itself. Acts of the legislature of the first class are within the constitutional prohibition, those of the the latter are not.

Rutgers *vs.* New Brunswick, 42 L., 51.

The act in question is general in its terms as it purports to apply "to all counties." The mere fact that in some counties of the State there were not freeholders "returned as elected and whose election was declared void" does not make the act local or special. The objects or subjects of the act have characteristics that make them stand in a class entirely distinct from any other group in the State. They are men and officers, who believing they had been properyly elected and appointed as freeholders and officers thereof, by the people exercising the sovereign right of voting, performed services for the county, and whom the people of the county were under a moral obligation to recompense for those services. This mark of distinction fully justifies the Legislature in dealing with them as a class by themselves.

POINT VII.

The payment by a municipal corporation of a recognized moral obligation for services rendered does not constitute a donation or appropriation of the public funds within the prohibition of either Section 19 or Section 20 of the Constitution.

"The payment of a recognized moral obligation assumed for services rendered has been held repeatedly by this Court to be within the legislative power, and its discharge does not constitute a donation of public funds" (Morris & Essex R. R. Company, 47 Vr., 555, 560).

POINT VIII.

The Legislature may compel municipal corporations to pay claims not enforceable at law or in equity, when they are morally binding.

In the case of Rader *v.* Township of Union, 10 Vr., 509, the declaration contained a count stating that by an act of the Legislature of this State, entitled "An Act in relation to streets in Union Township, in Union County," approved March 29, 1871, the inhabitants of a certain part of Union Township, in the County of Union therein described, were created a body politic and corporate, to be called the "Southeasterly Road District of the Township of Union, in the County of Union," for the purpose of laying out, opening and improving streets, roads, &c.; that said board should consist of five persons; that said act provided for and regulated the making of improvements under said act, by said commissioners, and providing for the payment and collection of the costs and expenses thereof. The count then alleged that on April 1st, 1872, the said board of commissioners were indebted to plaintiff in the sum of $4,500. for improvements made under said act.

The count further alleged that by an act of the Legislature of New Jersey, approved March 29th 1871, the first mentioned act was repealed, and in said repealing act it was provided, *inter alia*, "That this repeal of said act shall not in any way effect or impair any legal contracts which the Board of Commissioners of Public Roads of the southeasterly district of the Township of Union have made or indebtedness contracted by said commissioners * * * but the Township Committee of Union Township * * * to pay all just debts contracted by said commissioners, for improvements under said act."

The count concluded with an allegation that the

obligation to pay the moneys claimed was, by force of this act, transferred to the Township Committee of Union.

The contention was made that, as the original act was unconstitutional, and the Board of Commissioners, being an illegal body, the Legislature could not validate contracts made by the commissioners and compel the Township of Union to pay the same. The Court said:

"It has already been declared that this original act is void All contracts, therefore, entered into by its authority, are to be regarded as unwarranted by law, and as originally unenforceable; so that the distinct inquiry is, whether it is competent for the Legislature to legalize claims of this character, having in law no inherent force."

"But whatever doubts may still exist with respect to the control which the legislature may exert in some departments over political corporations, it appears to me that a measure of authority over such institutions must be conceded to reside in the law-making power, that will fully justify the conclusion that the obligation to pay the claims now in controversy could be legitimately imposed on these defendants. The moneys now sued for must, on this argument, be taken to be honestly due, for the Township, represented by the defendants, is now in the enjoyment, in the shape of improved streets, of the results of the plaintiff's labor, and, consequently, it is manifest that the district so benefited should remunerate the plaintiff for his services. Antecedently, then, to the enactment of this second law, a duty existed in a portion of the inhabitants of this Township to pay this claim; and it has been repeatedly decided by courts of the highest authority that the legislature has the undoubted right to compel a corporation of this character to pay a debt, which, although not legally enforceable, carries with it the force of a moral obligation. Such power grows out of the fact that these corporations are altogether public in their

nature and uses, and that, in the language of Chief Justice Marshall, their 'whole interest and franchises are the exclusive property and domain of the government itself.'" "The contract out of which the debt in question issued was palpably *ultra vires*, as it was made by a body having no legal existence; but it was nevertheless an object beneficial to the locality now sought to be burthened for its payment, and which object could, beyond all question, have been legally authorized."

"I have found no case which, under the given circumstances, has denied the right of the lawmakers, under their powers of taxation, to compel the payment of a claim thus originating" (Corp. No. 44).

See also Cleveland *vs.* Board of Finance, 9 Vr., 259; Mutual Benefit Ins. Co. *vs.* Elizabeth, 13 Vr., 235; Orvil *vs.* Woodcliff, 32 Vr., 107; Morris & Essex R. R. Co. *vs.* Newark, 47 Vr., 555.

"The books are full of cases where claims, just in themselves, but which, from some irregularity or omission in the proceedings by which they were created, could not be enforced in the court of law, have been thus recognized and their payment secured. The power of the Legislature to require the payment of a claim for which an equivalent has been received, and from the payment the City can only escape on techical grounds, would seem clear. Instances will readily occur to every one, where great wrong and injustice would be done if provision could not be made for claims of this character. For example, services of the highest importance and benefit to a city may be rendered in defending it, perhaps, against illegal and extortionate demands, or moneys may be advanced in unexpected emergencies to meet possibly the interest on the securities when its means have been suddenly cut off without the previous legislative or municipal sanction required to give the parties rendering the services or advancing the money a legal claim against the city. There would be a

great defect of the power of the legislature if it could not in such case require payment for the services, or reimbursement of the moneys, and the raising of the necessary means by taxation for that purpose. A very different question would be presented if the attempt was made to apply the means raised to the payment of claims for which no consideration had been received by the City." * * *

"The power of taxation which the Legislature of a State possesses may be exercised to any extent upon the property within its jurisdiction, except as especially restrained by its own or the Federal Constitution; and its power of appropriation of the money raised is equally unlimited. It may appropriate them for any purpose calculated to promote the public good. Of the expediency of the taxation of the wisdom of the appropriation it is the sole judge. The power which it may thus exercise over the revenues of the State it may exercise over the revenues of the city, for any purpose connected with its present or past condition, except as such revenue may, by the law creating them, be devoted to special uses; and, in imposing a tax, it may prescribe the municipal purpose to which the moneys raised shall be applied. A city is only a political subdivision of the State, made for the convenient administration of the government. It is an instrumentality with powers more or less enlarged, according to the requirement of the public, and which may be increased or repealed at the will of the Legislature. In directing therefore a particular tax by such corporation, and the appropriation of the proceeds to some special municipal purpose, the Legislature only exercises a power through its subordinate agent which it could exercise directly, and it does this only in another way when it directs such corporation to assume and pay a particular claim not legally binding for want of some formality in its creation, but for which the corporation has received an equivalent." * * *

"A law requiring a municipality to pay a demand

which is without legal obligation but which is equitable and just in itself, being founded upon a valuable consideration received by the corporation, is not retroactive law no more than an appropriation act providing for the payment of a pre-existing claim. The constitutional inhibition does not apply to legislation recognizing or affirming the binding obligation of the State, or any of its subordinate agencies with respect to the past transactions. It is designed to prevent retrospective legislation injuriously affecting individuals, and thus protecting rights from evasion" (Field, *J.*, in Jefferson City Gas Co. *vs.* New Orleans, 95 U. S., 644; 24 Law Ed., 521).

In the case of Town of Guilford *vs.* Chenango County, 13 N. Y., 143, Cornell and Clark were formerly commissioners of highways of the Town of Guilford, and, as such, by the direction of the voters of the town, had sued the Butternut and Oxford Turnpike Co. They were unsuccessful in their action, and were, after a long litigation obliged to pay costs. The town then refused to reimburse them these costs. Cornell and Clark sued the town, and after prosecuting the action to the highest court of the last resort, ascertained that they had no legal remedy. They then applied to the Legislature and procured an act authorizing the question of payment or not by the town to be submitted to the voters at the next succeeding town meeting. The voters decided that they would not tax themselves for that purpose. The next year they applied to and the Legislature passed an act requiring the Town of Guilford to raise the moneys necessary to reimburse them by taxation and to appropriate the money thus raised toward paying Cornell and Clark their costs incurred in their unsuccessful litigation. The Court of Errors and Appeals decided that the town must raise the said money, and Denio, *J.*, speaking for said court, said: "The Legislature cannot take or authorize the taking of property of an individual for public purposes, without compensation or for private purposes, though

compensation is provided. It can, however, determine what sums shall be raised by taxation and the purposes to which the money shall be applied. * * *

"The Legislature is not confined in its appropriation of public moneys, or of the sums to be raised by taxation in favor of individuals to cases in which a legal claim exists against the State. It can thus recognize claims found in equity and justice in the largest sense of those terms, or in gratitude or charity. Independently of express constitutional restrictions, it can make appropriations of money whenever the public well being requires or will be promoted by it, and it is the judge of what is for the public good. It can, moreover, under the power to levy taxes, apportion the public burthens among all the tax-paying citizens of the State, or among those of a particular section or political division. It is well settled that the authority to raise money by the exercise of the taxing power is not in conflict with constitutional provisions protecting private property from seizure. The two principles co-exist in the constitution, and it is not difficult to distinguish between them."

This broad statement of Denio, *J.*, was criticised in the case of Weismar *vs.* Village of Douglas, 64 N. Y., 91, but the Court said: "It has been accepted in this State as a binding adjudication, that the Legislature may tax or delegate to a politica- division of the State the power to tax, or may compel that division to tax, to raise money to pay a legal, equitable or moral claim, or to do that toward an individual which proper and expected sense of gratitude for public service ought to prompt, or a feeling of charity (which in a legal sense is, perhaps, as used here no other than moral obligations) urge. It may also be conceded that it is a public purpose, from the attainment of which will flow some benefit or convenience to the public, whether of the whole commonwealth or a circumscribed community. In this latter case, however, the benefit must be direct and immediate from the purpose and not collateral, remote or consequential."

The principle upon which the Court of Errors of New York sustained the case of Guilford *vs.* Chenango was recognized and followed in the case of Witherbee *vs.* County of Essex, 70 N. Y., 228:

"The plenary powers of the legislature over municipalities of its own creation have been held to be greater than those pertaining to private corporations and individuals, and in pursuance of the exercise of such powers it has been held that the legislature may compel municipalities to pay debts or claims not strictly binding in law, but which are just and equitable in their character and involve a moral obligation. The principle is stated in Vol. I, Dillon's Municipal Corp. (4 Ed), § 75, as follows: "The fact that claim against a municipal corporation is not such an one as the law recognizes as of legal obligation has often been decided by the courts of the highest respectability and learning to form no constitutional objection to the validity of a law imposing a tax and directing its payment * * * The cases of this subject, when carefully examined, seem to the author to go no further, probably, than to assert the doctrine that it is competent for the legislature to compel municipal corporations to recognize and pay debts or claims not binding in strict law, and which, for technical reasons, could not be enforced in equity, but which nevertheless are just and equitable in their character and involve a moral obligation. To this extent, the doctrine is unobjectionable in principle, and must be regarded as settled, although it asserts a measure over the municipalities in respect to their duties and lia bilities which probably does not exist as to private corporations and individuals." State *vs.* City of Aberdeen, 34 Wash., 61, 74 Pac., 1022; State *vs.* Seattle, 110 Pac. (Wash.), 1008. See also Carlstadt Nat'l. Bank *vs.* Borough of Hasbrouck, 84 Atl. (N. J.), 1069.