New Jersey Court of Errors and Appeals

MARY FEENEY,

Relator-Appellant,

vs.

GEORGE H. BURKE, JOSEPH S. HOFF, ALEXANDER R. FORDYCE and EDWARD H. WRIGHT, composing the Civil Service Commission of the State of New Jersey,

Respondents.

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BRIEF FOR APPELLANT.

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Jersey City has adopted the provisions of the so-called "Walsh Act", Chapter 221, Laws of 1911 (Case, p. 5, par. 2). The present members of the Board of Commissioners of that City were elected on the 10th day of June, 1913, and were organized under said Act on the 17th day of June, 1913. On the day last mentioned George F. Brensinger, one of the members of the said Board, was elected or appointed by the said Board of Commissioners to be Director of Revenue and Finance and at the same time was elected or appointed by the said Board Treasurer of Jersey City, Comptroller of Jersey City and City Collector of Jersey City (Case, p. 6, par. 4). Subsequently, the said George F. Brensinger appointed one Joseph F. S. Fitzpatrick to be his private secretary and the said Fitzpatrick was such private secretary when relator was appointed as hereinafter set out. Subsequently, on the 29th day of October, in the year

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1914, the said Board, declaring that there was necessity for a confidential stenographer to the said Brensinger as City Comptroller, appointed the relator such stenographer (Case, p. 7, par. 5). The City Clerk of Jersey City certified such last mentioned appointment to the Board of Civil Service Commissioners (Case, p. 8, ll. 7-11). The Civil Service Commissioners declined to consider the said relator as being in the exempt class under the provisions of the so-called Civil Service Law (P. L. 1908, p. 235) (Case, p. 8, ll. 19-34). The said Civil Service Board has also refused to certify the name of the said relator for payment as provided for in the twenty-sixth section of the said Civil Service Act (Case, p. 13, ll. 1-9) and it is under this twenty-sixth section that she now makes her application for a writ as authorized and directed therein. She has performed the services of such stenographer (Case, p. 11, par 6).

The theory of the relator is that her appointment is valid and that she is entitled to payment as an appointee coming within the fourth subdivision of the thirteenth section of the Civil Service Act as a stenographer to a principal executive officer, to wit, the Comptroller of Jersey City.

POINT I.

The relator is the proper party to seek this writ.

The Civil Service Act (Section 26) provides that no fiscal officer of any municipality that has adopted the provisions of that act shall draw, sign or issue any warrant for the payment of the salary of any employe or other person in the classified service unless the name of such employe shall hear the certificate of the Civil Service Commission to the effect that the employe

has been appointed, employed, etc., in pursuance of the rules of the Civil Service Commission. It then says:

> "Any officer, clerk, employe or person entitled to be certified by the said commission to the Comptroller, or other fiscal officer or disbursing officer as having been appointed or employed in pursuance of law and of the rules made in accordance with this act, who shall be refused such certificate, may maintain a proceeding by mandamus to compel such commission to issue such certificate" (Comp. Stat. p. 3805, sec. 82).

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POINT II.

Relator is an employe in the exempt class of the Civil Service.

So far as counsel has been able to learn, this is a case of first impression in this particular so far as the reports of this State are concerned. After considerable activity, no decision is found in the books construing the fourth sub-division of Section 13 of the Civil Service Law (Comp. Stat. p. 3800). The meaning of that subdivision, however, is so clear that the failure to secure expressions of opinion upon it can hardly be of any moment. If the phrase comprised in the last three words thereof is established, no further light need be obtained. The pertinent parts of the thirteenth section of that act are as follows:

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> "The following positions shall be included in the exempt class:
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> * * * * * *
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> "(4) One private secretary or clerk, or stenographer, of each judge or principal executive officer."

It only remains to be determined whether or not

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POINT III.

The Comptroller of Jersey City is a "Principal Executive Officer".

The Charter of Jersey City, known as "An Act to reorganize the local government of Jersey City", P. L. 1871, p. 1094, is still the principal foundation of the city government, except as it conflicts with the provisions of the Walsh Act. It is still a very important part of the Charter (*Salter vs. Burk,* 54 Vr., 152). Section 30 provides:

> "That the city comptroller shall receive an annual salary of four thousand dollars, and shall keep an accurate record of all receipts and disbursements on account of the police department, the fire department, the city water works, city docks, wharves and piers, the opening, widening, grading, regulating, paving, repairing or improving of the streets and public places, as far as the same may come into and be chargeable upon the city treasury, the poor, the public schools, the city prison, salaries, interest, the city debt and contingencies, and such other specific objects as the correct management of the city finances may render advisable, to the end that his books may at all times show whether the appropriations for any specific object are exhausted, or how much remains to the credit of such appropriation, and how much is expended for such object; his office shall be in the city hall, where he shall attend during the business hours of each day; he shall perform such other duties as may be required in this act, and shall give such bond for the faithful performance of his duties as the board of finance and taxation may require."

It is thus evident that the comptroller was and still is an officer of great importance in Jersey City. The Board of Commissioners have recognized that fact by continuing his office. The

comptroller is given charge of a department or bureau of the government upon the conduct whereof depends to a very large extent the financial credit and condition of the city and the safeguarding of the taxpayers' money. His is the great checking office interposed between the collector, who receives the city's funds, and the treasurer, who holds and disburses the same. No corrupt combination to embezzle the money of the city can be successfully consummated while he remains true to his trust. He is charged with recording of all moneys received and spent and upon him devolves the duty of a system of accounts, far more complicated and important than mere bookkeeping, for the preservation of the public funds. He is given an office for his accommodation in the City Hall. He is supplied with a large force of clerks. And perhaps more important than anything else, (P. L. 1891, p. 62) he has the power and authority to appoint, suspend and remove all clerks and assistants in his office with the concurrence of the Board of Finance. He is likewise authorized to appoint a deputy comptroller (P. L. 1904, p. 269; also by P. L. 1889, p. 188).

These are the very earmarks and of the essence of the qualifications, powers and duties of a principal executive officer within the phrase as employed in the Civil Service Act (Dillon on Municipal Corporations, 5th Ed., Sec. 404 and notes).

The charter of 1889 (P. L. 1889, p. 187) specifically speaks of the comptroller of Jersey City as an "officer". That this act applies to Jersey City, see In re Cleveland, 51 N. J. L., 319, at page 321.

No money can be drawn from the city treasury on any warrant until the same is countersigned by him (P. L. 1871, p. 1150, sect. 134) nor

can payment be made upon any bond, coupon, improvement certificate or other evidence of indebtedness without his signature (P. L. 1871, page 1149, sect. 134).

There can be no question but that to sustain the appellant it must be established that the comptroller of Jersey City is a *principal executive officer*. That he is an executive officer as contradistinguished from a judicial or legislative officer is too apparent and true to require argument. That an officer charged with duties so important, privileges so valuable and powers so broad and discretionary, may be said to be one of the *principal* officers is likewise apparent. The remaining word to be considered is that he must be an officer.

The important duties set out above clearly show him to be the incumbent of an office as opposed to an employee.

Hoboken vs. Gear, 3 Dutch 265;
Uffert vs. Vogt, 65 N. J. L., 377;
Hart vs. Newark, 80 N. J. L., 600.

When this matter was argued in the Supreme Court the relator undertook to establish that the office of comptroller was still in existence in Jersey City and that the incumbent thereof was still an officer such as is mentioned in sub-division 4 of Section 13 of the Civil Service Act. Counsel for the respondents did not deny that such was the case, and, in fact, admitted that there was still such an office and that in a proper case the comptroller might come within that sub-division. Respondents argued, however, that under the reasoning in *Salter vs. Burk,* 54 Vr., 152, Mr. Brensinger was not the Comptroller of Jersey City. In a subsequent point that objection will be taken up and discussed in this brief. The Supreme Court, however, was of the opinion that the in-

cumbent of the office of comptroller was a mere employe of the Board of Commissioners and hence not a principal executive officer.

This leads to a consideration of the Walsh Act and the construction that should be put upon that statute. Some little attention will be devoted to the subject because of the rapidity with which municipalities of all sizes, located from one end to the other of the State, have seen fit to adopt the form of government provided therein. It is obvious that not only do several hundred thousands of our inhabitants now live under Commission Government, but the probabilities are that the number will be increased many fold within a short time, which makes it of extreme importance that some guidance should be given to those who are subject to its provisions and to the officers of the municipalities that have adopted it in their handling of the public affairs.

A hasty perusal of the Walsh Act is sufficient to disclose the fact that no comprehensive, complete charter was intended to be created thereby, but a mere outline or skeleton to be rounded out and filled in with so much of the previous charter as does not conflict therewith (*Salter vs. Burk*, 54 Vr., 152). In fact, it will immediately appear that no city could possibly exist if the Walsh Act were to be its sole and only charter. The thousand and one details of administration and the numerous powers, important and unimportant, that have been found necessary and useful to carry on municipal government would be wanting. No provision is made, for example, for the issuing of bonds. To be sure, a limitation is placed upon the amount to which bonds may be issued (section 8), but no bond house could be prevailed upon to purchase the debentures of any city if that section were its sole authority for the issue.

Turning to the language of the Walsh Act per-

tinent to the case in hand, it will be found that the act itself expressly contemplates that offices in the city government are not abolished and it would, of course, be untenable to argue that the office was to be retained and the officer who was the incumbent thereof should be no officer, but a mere employe.

It is said that the terms of officers shall be at an end (section 2) and in section 4 of the Walsh Act it authorizes the Board of Commissioners to prescribe the powers and duties of all *officers* and *employees*—"The board of commissioners shall determine the powers and duties to be performed by each department and assign such powers and duties to the appropriate departments, and they shall prescribe the powers and duties of all *officers* and *employees* * * *" thus clearly recognizing that there should be a distinction. But the act does provide (section 2) that "upon the organizing of the commissioners in any such city, elected under this act, the city council or other governing body or bodies theretofore acting as governing body or bodies in such city and having any other functions shall be ipso facto *abolished.*" And then (section 4) it is prescribed that the Board of Commissioners "shall have and possess all administrative, judicial and legislative powers and duties now had and possessed and exercised by the *Mayor and City Council* and all other executive or legislative *bodies* in said city and have complete control over the affairs of the city adopting the provisions of this act. The executive and administrative powers, authorities and duties in such city shall be *distributed* into and among five departments."

It is thus apparent, first, that the abolishing only applies to governing boards or bodies and not by any means to the officers who had been provided for executing the laws and the ordinances of those bodies. In place of such govern-

ing boards there is substituted, with all their powers, a board of commissioners charged with all of the duties and clothed with all of the powers that had previously been in such governing boards.

In the quotation above from section 4 is the limit of the powers that they inherited from the old administration, although, of course, new powers are created by the act and conferred upon the Board of Commissioners. The word "distributed" shows that the executive and administrative powers and duties are not given to the Board of Commissioners, but still remain in the officers who exercised them and were subject to them prior to the adoption of the act and such officers and employes are to be divided into five groups, each group to constitute one of the prescribed departments, if, as in the case of Jersey City, it be a large city.

Now, turning to the quotation from section 2 of the Walsh Act, a very important addition should be considered to the part of it that was quoted above. The quotation with the additional language, which is here emphasized, is as follows:

> "Upon the organizing of the commissioners in any such city, elected under this act, the city council or other governing body or bodies theretofore acting as governing body or bodies in such city and having any other functions shall be ipso facto *abolished,* and the *terms* of all councilmen, or aldermen, and all other *officers,* whether elective or appointive, shall immediately cease and determine."

Thus is the distinction made as between the abolishing of the governing bodies and the retaining of the offices with a mere ending of the terms of the incumbents thereof. Of course, the power to fill the offices is vested in the Board of Commissioners by the language quoted above from section 4 of the Walsh Act.

It will be observed that the executive powers vested in the Board of Commissioners only embrace those exercised by the Mayor and City Council and other *bodies* but does not include the powers and duties of charter *officers*.

It is conceived that the Board of Commissioners or the individual members thereof are not to be charged with the details of administration. That would be well nigh impossible of performance. But on the other hand they are charged with general supervision over every department and branch of the government. Responsibility is centered in them and they may, of course, enforce the honest and efficient administration of affairs by impeaching or discharging any officer or employe for cause. They, the members of the Board, are responsible and accountable to the electors and the other officers are accountable and responsible to them. The hundred and one loose ends of responsibility are garthered up and woven into one set of reins.

If it be established, as the foregoing is intended to accomplish, that the office of comptroller still exists in Jersey City and that the comptroller is a principal executive officer, one other thought should be expressed, namely, that

POINT IV.

The office of Comptroller is, and should be kept, distinct from any other financial office.

Of course, the comptroller's office might be assigned to any other department than that of the Director of Revenue and Finance under the fourth section of the Walsh Act. If the office had been placed in the Department of Public Safety and the director of that department should have a deputy, a secretary or a stenographer, it would scarcely be wise to force him to appoint as a

deputy a stenographer who would be second in command of the fire and police and who could also be assigned to duty with the comptroller. The mere statement of such a condition of affairs shows that it would be absurd.

Now, as to the reason for keeping the office of comptroller distinct. The City Charter of 1871 provides that the executive financial offices shall be the comptroller's, collector's and treasurer's. The collector collects annually millions of dollars of taxes. The treasurer's office receives from the collector those millions of dollars and for more than an accounting reason the office of comptroller is interposed, for under the law the collector cannot deposit one cent with the treasurer until that deposit is first recorded in the comptroller's office, nor can the treasurer lawfully disburse such an amount until a record is made of such disbursal. (Charter of Jersey City, P. L. 1871, Ch. 424, sects. 134 and 136.)

The Civil Service Commissioners say that only one individual appointment in the exempt class may be made by the Director of Revenue and Finance, and, if that is so and the contingency for which deputies are appointed arises, it leaves as the actual head of these three offices one man, who collects, checks and keeps in his possession practically all the revenue of the city. In a great municipality such as Jersey City the temptation would be extreme and such as no Legislature should place before any man.

The only purpose of the comptroller's office is to prevent a practical consolidation of the collector's and treasurer's offices. They must be kept distinct and apart and the comptroller's office must be placed between them as a check against mistakes, honest or otherwise, that would repeatedly occur if the records of the other two offices did not come together in his.

Now, if this is a salutary and wise management, namely, to keep the three offices distinct, does not the very reason and purpose of the exemption in the fourth sub-division of section 13 of the Civil Service Act apply? It is not only well, it is imperative, that the director having charge of the three—not being able to occupy three positions at once, physically—should have a trusted subordinate in each of them. Were he obliged to take them from the Civil Service list, they not only might, but in most instances would, be utter strangers to him, in whose integrity, fidelity and intelligence he would be worse than foolish to place any confidence. It is assumed that no argument is necessary to show that the exemption sought in this case was permitted for the very purpose of giving such an officer the appointment of a trusted and safe subordinate through whom he could transact the details of his office.

POINT V.

Mr. Brensinger was at least de facto comptroller of Jersey City.

It is so well established that the action of officers, whether de facto or de jure, are valid that it would be a needless repetition to enter into an extensive argument. The leading case of *Brinkerhoff vs. Jersey City,* 35 Vr., 225, is so exhaustive and luminous upon this point as to require no further argument than to cite it. The Supreme Court has recognized it in its fullest scope in *Ross vs. Freeholders of Essex,* 40 Vr. 143, where, at page 147, the Court says:

> "In this State the doctrine of the validity for all purposes of the action of officers de facto is explicit, and is fully sustained by the Court of last resort", citing *Brinkerhoff vs. Jersey City.*

Oliver vs. Jersey City, 63 N. J. L., 634, is a decision directly in point by this Court, reversing the Supreme Court whose opinion will be found in the same volume at page 96.

But whether or not Mr. Brensinger is de jure Comptroller of Jersey City on a proceeding against him, directed to a determination of that question, the law of this State is and always has been that it cannot be raised by collateral attack. The authorities are uniform and unanimous that if he was a de facto officer this relator had a right to rely upon his official act and will be protected. As early as 1795 this Court so decided in the case of the *State vs. Anderson, Coxe* 318, at pages 325-326, when it said:

> "But in the present case these arguments are altogether groundless. All acts done in the performance of his duty by one who is an officer de facto, or who is under a color of right, are valid to every intent."

This rule was recognized in the case of *Dugan vs. Farrier,* 18 Vr., 383. The opinion written by Mr. Justice Dixon in that case has been quoted with approval from the time of its rendition to the present and has always been considered authority for the rule now sought to be enforced by the relator.

Were this a matter between the State or the de jure comptroller and Mr. Brensinger, it could readily be conceived that he would come within the exception expressed in *Armstrong vs. Whitehead,* 38 Vr., 405. In that case, quoting from Throop on Public Officers, Article 649, the Court say:

> "The exercise of a power by an officer de facto either judicial or ministerial, which lawfully pertained to the office of which he has possession, is valid and binding, where it is for the interest of the public, or of any individual, except the officer himself, to

> sustain the officer's act; but where the officer himself founds a right upon such exercise, either personally or officially, it is not valid in his favor."

If Mr. Brensinger were the relator and sought a benefit from his act, then it is conceded that it would be for this Court to determine whether or not he had a right to perform the same. But in this instance the relator is one of the very class of persons who have a right to assume that he was acting within his legal authority.

The case of *Lang v. Bayonne,* 44 Vr., 109, is a very recent authority supporting the relator's case. And it might not be amiss to say in passing that this was a proceeding in mandamus as is the case in hand and that there, although the official body acted under color of right of a statute that was at odds with the Constitution, the Supreme Court did not hesitate to apply the rule under discussion. Its judgment was affirmed in this Court in 45 Vr. 455.

In his very recent, exhaustive and accurate work on Municipal Corporations, Mr. McQuillin, Section 484, sums up the entire matter by saying:

> "The acts of an officer de facto, although his title may be bad, are valid so far as they concern the public *or third persons* who have an interest in the thing done."

And in Section 485 he says:

> "The title of one exercising municipal functions and who is acting as a de facto officer cannot be attacked collaterally, before the title to the office is determined."

Before closing it should be said that the relator does not conceive that the case of *Salter vs. Burk,* 54 Vr. 152, is of any effect in this proceeding, except to establish the fact that the office of comptroller not only exists but is a de jure office.

Upon the above reason, it is respectfully urged that Mr. Brensinger was a principal executive officer of the administration of Jersey City within the meaning of the fourth subdivision of section 13 of the Civil Service Act, and that relator's appointment to be his stenograpber or confidential stenographer was a valid appointment, making her an employe of the City of Jersey City in the exempt class.

Respectfully submitted. 10

JOHN BENTLEY,
WILLIAM D. EDWARDS,
Of Counsel with Appellant.

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Telephone 1697 Worth THE WEIBEZAHL PRINT 25 Elm St., N. Y.

MacCrellish & Quigley Co., Printers, Trenton, N. J.

NEW JERSEY
Court of Errors and Appeals

Mary Feeney, *Relator-Appellant,* *vs.* George H. Burke, Joseph S. Hoff, Alexander R. Fordyce and Edward H. Wright, *Respondents.*	*On Mandamus. On Appeal from Supreme Court.*

Brief for the Respondents.

Jersey City was governed by its charter (*P. L.* 1871, *p.* 194), "An act to reorganize the local government of Jersey City," and the general laws of the State applying to Jersey City.

November 7th, 1911, Jersey City adopted the provisions of the Civil Service Law.

April 15th, 1913, Jersey City adopted the provisions of the law known as the Walsh Act (*Chap.* 221, *Laws* 1911). A board of five commissioners was elected pursuant to the provisions of that act.

June 17th, 1913, at the first regular meeting after the election of its members, the Board of Commissioners adopted the resolution at Case, p. 6, par. 4.

October 29th, 1914, the Board of Commissioners adopted the resolution at Case, p. 7, par. 5, l. 10, ap-

pointing appellant confidential stenographer in the Department of the Comptroller, for the use of the Director as Comptroller.

November 15th, 1914, the pay roll of the Department of Revenue and Finance for the period from November 1–15, 1914, containing the name of the appellant, Mary Feeney and her compensation for said period, was submitted to the Civil Service Commission for its approval and certification, pursuant to section 26 of the Civil Service Act (*P. L.* 1908, *p.* 235). The Commissioners refused to certify and approve this pay roll under this statute.

This application is for a Writ of Mandamus to compel the Commissioners to approve and certify this pay roll as to the appellant.

The Civil Service Commissioners refused to certify on the ground that this position as stenographer is within the Classified Service, and in the Competitive Class thereof (Section 14, Civil Service Act), and could only be filled from a list of eligibles certified by the Civil Service Commissioners under section 21 of the act; that appellant was not appointed from such a list, and her appointment was in violation of the Civil Service Act and invalid, and, therefore, they could not certify and approve the pay roll.

The appellant claims that while she is within the Classified Service and within the Civil Service Act, she is in the *exempt class*, as a private or confidential stenographer to Mr. Brensinger, Director of the Department of Revenue and Finance, as Comptroller of the city, under the said resolution of June 17th, 1913 (Case, p. 6, par. 4), and, therefore, could be appointed without examination and without a certified list; that her appointment was valid, and the pay roll should be certified by the Civil Service Commissioners.

The contention is that Mr. Brensinger, under the above resolution, is not only Director of the Department of Revenue and Finance, but is also Comptroller,

Treasurer and Collector of the city. That he unites in his one person and holds these four distinct and separate offices in the city government, and that under section 13, par. 4, of the Civil Service Act, he is entitled to *four* private secretaries or clerks or stenographers in the exempt class, one for each office so held by him.

I.

EVEN THOUGH THE OFFICES OF TREASURER, COMPTROLLER AND COLLECTOR, UNDER THE CHARTER OF JERSEY CITY, ARE STILL DISTINCT AND SEPARATE OFFICES AND DEPARTMENTS, AND THE HOLDERS OF SUCH OFFICES, PRINCIPAL EXECUTIVE OFFICERS, WITHIN THE MEANING OF THE CIVIL SERVICE ACT, THE DIRECTOR OF THE DEPARTMENT OF REVENUE AND FINANCE (MR. BRENSINGER), TEMPORARILY DISCHARGING THE DUTIES OF THOSE OFFICES, WAS NOT ENTITLED TO APPOINT A PRIVATE SECRETARY, OR CLERK, OR STENOGRAPHER FOR EACH SUCH DEPARTMENT.

The charter of Jersey City is still in force and was not repealed by the adoption of the Walsh Act, except where it is inconsistent with that act. *Salter* v. *Burk*, 83 *N. J. L.* (54 *Vr.* 152).

The charter of Jersey City provides for the three separate and distinct offices of Treasurer, Comptroller and Collector. These three offices still exist and have not been abolished, either by the Walsh Act, or by any act of the Commissioners. The office of Comptroller is distinct and separate from that of Director of Revenue and Finance, and from the offices of Collector and Treasurer. These three offices are distinct and separate offices and under the charter must be kept separate and distinct from each other. The Collector to collect the city moneys, the Treasurer to receive, hold and disburse them, and the Comptroller to audit accounts, to do the general bookeeping and to act as a check upon

the two other offices in the receipt and expenditure of the city moneys. The three offices and the duties of the offices are distinct from and incompatible one with the other. The same person cannot consistently and properly hold the three offices and discharge the duties thereof. This is the very wise scheme of the charter of Jersey City, a scheme which has not been abolished by the Walsh Act, but is still in force, and is one which the Board of Commissioners cannot override.

But if these offices and their duties are so distinct and separate that they cannot be united or merged into one, can these separate offices be filled by one and the same individual, who at the same time holds a superior office? Can one person as Collector collect the moneys and pay them over to himself as Treasurer, and as Comptroller audit and keep a check upon his own collection and disbursement of moneys, and still, as Director, supervise his own discharge of these divers and distinct duties and of his administration of these distinct and separate offices?

Section 4 of the Walsh Act (*P. L.* 1911, *p.* 465) provides that the Board of Commissioners shall have and possess all administrative, judicial and legislative powers and duties now had and possessed and exercised by the Mayor and City Council, and all other executive or legislative *bodies* in said city, and have complete control over the affairs of the city adopting the provisions of the act. It further distributes the executive, administrative and legislative powers, authority and duties into five departments designated as Department of Public Affairs, Department of Revenue and Finance, Department of Public Safety, Department of Streets and Public Improvements, and Department of Parks and Public Property. It gives to the Board of Commissioners authority to determine the powers and duties to be performed by each department, and to assign such powers and duties to the appropriate departments, to prescribe the powers and

duties of all officers and employees and to assign particular officers and employees to one or more departments, &c. The intent of this act is to give to the Board of Commissioners the general supervision and control of the affairs of the city, and to a Commissioner assigned to a particular department, the general supervision and oversight of the affairs of that department. The Director of Revenue and Finance does not become the Treasurer, Collector and Comptroller of the city, nor are those positions abolished. He has a supervisory power over these departments which still exists, and the law still contemplates the filling of these offices and the discharge of the duties of these offices by separate persons, subject to the general supervision of the Director, and to the general supervision and control of the Board of Commissioners. The only effect of the resolution of June 17th, 1913 (Case, p. 6), was to designate Mr. Brensinger as the Director of this department, and to provide for the temporary discharge of the duties by Mr. Brensinger until such time as the vacancies existing in these offices created by the adoption of the Walsh Act should be filled by the Commissioners.

By Section 2 of the Walsh Act the terms of all officers, whether elective or appointive, immediately cease and determine upon its adoption, with the exception of certain officers or persons named in the act, and with the further exception that where the Civil Service Act had been adopted in the municipality, then persons holding positions or offices coming within the classified service of the Civil Service Law should continue in office and be protected by that act. The Treasurer, Collector and Comptroller of Jersey City, being under the charter, heads of departments within the meaning of Section 11 of the Civil Service Act, were within the unclassified service, and not subject to any of its provisions. They were, therefore, not protected from removal by the Civil Service Act, but while the offices became

vacant upon the adoption of the Walsh Act, the offices were not abolished, and it became the duty of the Board of Commissioners to fill these offices thus made vacant by the adoption of the act and the organization of the Board of Commissioners under the charter of Jersey City, still in force. (*Salter* v. *Burk, supra.*)

Even if the Board of Commissioners had power to appoint Mr. Brensinger Comptroller of the City of Jersey City, as well as Director of Revenue and Finance, the resolution of June 17th, 1913 (Case, p. 6), could have no force or effect, because the appointment was not for the term specified by the charter and laws relating to the City. (*Salter* v. *Burk, supra.*) The resolution in question recognizes the existence of a vacancy in the said office to be filled by a subsequent appointment, and appoints Mr. Brensinger Treasurer, to act as such during said term, that is, during the term of the vacancy existing. How there can be a term to continue during the existence of a vacancy it is difficult to understand.

The resolution must, therefore, be regarded as simply providing for the temporary discharge of the duties of the position by the Director of Revenue and Finance until the existing vacancy should be filled.

II.

By the Adoption of the Walsh Act, These Offices Became Mere Subordinate Positions or Subdivisions of the Department of Revenue and Finance. The Holders of These Offices Were No Longer Principal, Executive Officers, Within the Meaning of Paragraph 4, Section 13, of the Civil Service Act. The Only Principal, Executive Officer of the Department Was the Director Thereof.

While under the charter of the City of Jersey City, the offices of Comptroller, Treasurer and Collector were undoubtedly departments of the city government, and

the persons holding these offices, principal executive officers, within the meaning of the Civil Service Law, yet, by the adoption of the Walsh Act, this status was completely altered and changed. These offices ceased to be independent departments of the city government. Thy became mere positions, and the holders of these offices became subordinate officers and mere employees of the Commissioners; they ceased to be principal executive officers of departments.

This is the view taken by the Supreme Court, in its opinion in this case, and it is the correct one. An examination of Section 4 of the Commission Government Act (Walsh Act, P. L. 1911, Chap. 221) shows that all authority is thereafter vested in five departments, one of the Commissioners to be at the head of each department, and the Commissioner assigned to a particular department has general control and supervision of all the work and duties of that department and of all the subordinates therein.

The effect of this legislation is to make the offices of Treasurer, Comptroller and Collector mere bureaus or subdivisions of the one Department of Finance, of which the Director assigned to that department is the head.

The only principal executive officer of this department is the Director assigned thereto and in charge thereof. It can no longer be said that there is a department of the Comptroller's office, of which the Comptroller is the chief executive, but under this Walsh Act, while the offices provided for by the charter may still exist, they become, as I have said, mere subdivisions of a great department, that of Revenue and Finance, of which the Director is the principal and sole executive officer and head.

As a result, the only principal executive officer of the department in the exempt class is the Director, and only he has the power to appoint a private secretary, clerk or stenographer, as principal executive officer of

the department under paragraph 4, section 13, of the Civil Service Act.

It is to be noticed that section 4 of the Walsh Act creates five distinct departments, with a director or principal executive officer of each department. As the Supreme Court says in its opinion, "If this office of Comptroller can be said to exist still, he is obviously a mere employee of the Commissioners, and no longer a principal executive officer."

The judgment of the Supreme Court should be affirmed and the appeal dismissed.

Respectfully submitted,

HERBERT BOGGS,
Assistant Attorney-General,
Counsel for Respondents.

INDEX.

Notice of Appeal.

(Filed January 26, 1916.)

New Jersey Supreme Court.

MARY FEENEY, *Relator,* *vs.* GEORGE H. BURKE, et als., comprising the BOARD OF CIVIL SERVICE COMMISSIONERS, *Respondents.*	On Mandamus.

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To JOHN W. WESCOTT, ESQ.,

Attorney General of New Jersey:

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SIR:—

PLEASE TAKE NOTICE that the above named relator appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause on the following grounds:

1. The relator was regularly appointed confidential stenographer to the Comptroller of Jersey City by the Board of Commissioners, the governing body thereof, at an annual salary of $720, and is, therefore, exempt from the provisions of the act of the Legislature known as the "Civil Service Act".

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2. That the fourth subdivision of Section 13 of the Civil Service Law (Comp. Stat., p. 3800) exempts the relator from examination by the respondents, the Civil Service Commission, as a prerequisite to her right to serve as such stenographer and be paid the remuneration provided.

3. That the City Clerk of Jersey City notified

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the respondents of the appointment of relator by certifying a copy of the resolution making such appointment within two days after the passage of such resolution and thereby relator became entitled to have her name certified on the payroll of Jersey City.

4. That being within the fourth subdivision of the thirteenth section of the Civil Service Act, it became a mere administrative duty of the respondents, as Civil Service Commissioners, to certify the payroll with her name thereon.

5. That the Comptroller of Jersey City is a principal executive officer as comprehended in the meaning of the fourth subdivision of the thirteenth section of the said Civil Service Act.

6. That relator's appointment as confidential stenographer to such executive officer was valid and effective and beyond the power of the said Civil Service Commission.

7. That the adoption of Chapter 221 of the Laws of 1911, commonly known as the "Walsh Act," did not affect the standing of the charter office of comptroller so as to make the incumbent thereof a mere employee of the commissioners and not a principal executive officer.

Your obedient servant,

JOHN BENTLEY,
Relator's Attorney.

Rule to Mould Pleadings.

(Filed January 24, 1916.)

NEW JERSEY SUPREME COURT.

MARY FEENEY, *Relator,* *vs.* GEORGE H. BURKE, JOSEPH S. HOFF, ALEXANDER R. FORDYCE and EDWARD H. WRIGHT, *Respondents.*	On Rule to Show Cause.

A rule to show cause having been heretofore allowed in the above entitled proceeding on the 18th day of January, in the year 1915, by a Justice of the Supreme Court of New Jersey, why a writ of mandamus should not issue therein, directing and commanding the respondents herein to certify upon the payrolls of Jersey City the name of Mary Feeney for payment of her compensation, pursuant to Section 26 of an act of the Legislature entitled "An Act regulating the employment, tenure and discharge of certain officers and employes of this State, and of the various counties and municipalities thereof, and providing for a civil service commission, and defining its powers and duties," approved April tenth, nineteen hundred and eight, and the said rule coming on to be heard at the February Term, 1915, and the Court having read the pleadings and stipulations of fact and the briefs of respective counsel, and the Court having heard John Bentley, Counsel for the Relator, and Herbert Boggs, Counsel for the Respondents, and having considered the same, did, on the 7th day of June, in the year aforesaid, file an opinion directing a discharge of the said rule to show cause, whereupon judgment was entered herein by the Clerk of the Supreme Court, whereby it was de-

termined and adjudged that the said rule to show cause was discharged, and application being made to me by John Bentley, Attorney for and of Counsel with the said relator, for the following rule, and it being represented by him to the Court that Herbert Boggs, Attorney for and of Counsel with the Respondents, consents to the making hereof, it is hereby

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Ordered that the judgment aforesaid be and the same hereby is opened, set aside, annulled and for nothing holden; and it is further

Ordered that the rule to show cause aforesaid, now on file in the office of the Supreme Court Clerk, be amended and moulded into the form and after the manner of the alternative writ of mandamus hereto annexed; and it is further

Ordered that there be filed in the office of the said Clerk the demurrer hereto annexed in answer to the said alternative writ of mandamus.

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And the Court having considered the allegations and facts set forth in the said alternative writ of mandamus, and being of the opinion that notwithstanding anything therein contained or alleged the said relator is not entitled to the relief sought and prayed by her under the law and customs of the State of New Jersey, it is thereupon further

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Ordered that judgment final be entered in the office of the Clerk of the Supreme Court upon the demurrer aforesaid in favor of the said demurrants, and that the said alternative writ of mandamus be and the same hereby is dismissed and discharged with costs to the said demurrants.

Let the foregoing rule be entered.

January 22, 1916,

Entered January 24, 1916.

On motion of

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John Bentley,
Attorney.

Francis J. Swayze,
Justice, Supreme Court.

Alternative Writ of Mandamus.

(Filed Jan. 24th, 1916.)

NEW JERSEY, SS:

THE STATE OF NEW JERSEY to GEORGE H. BURKE, JOSEPH S. HOFF, ALEXANDER R. FORDYCE and EDWARD H. WRIGHT.

(L. S.)

GREETING: 10

Whereas complaint has come to us by the affidavit of Mary Feeney of the following facts and circumstances, namely:

1. That on November seventh, nineteen hundred and eleven, a majority of the legal voters of the City of Jersey City adopted the provisions of the act entitled "An Act regulating the employment, tenure and discharge of certain officers and employes of this State and of the various counties and 20 municipalities thereof, and providing for a Civil Service Commission, and defining its duties and powers", approved April tenth, nineteen hundred and eight—commonly known as "The Civil Service Act".

2. That on the fifteenth day of April, nineteen hundred and thirteen, the act of the legislature of State of New Jersey, entitled "An Act relating to, regulating and providing for the government of 30 cities, towns, boroughs and other municipalities within this state," approved April twenty-fifth, nineteen hundred and eleven (Chapter 221 P. L. 1911), commonly known as "The Walsh Act", was duly adopted by a majority of the legal voters of the City of New Jersey, and thereby became and now is the law governing the said city, and under which the affairs of said city are administered.

3. That pursuant to said act, a board of commissioners, known as the Board of Commissioners 40

of Jersey City, were duly elected, and now are, and were on the twenty-ninth day of October, nineteen hundred and fourteen, the govering body of said city.

4. That on the 17th day of June, 1913, the said Board of Commissioners passed the following resolutions:

10 "RESOLVED, That George F. Brensinger be and he is hereby designated and appointed as Director of the Department of Revenue and Finance."

"RESOLVED, That all the powers and duties of the office of the City Treasurer of Jersey City shall be exercised and discharged by George F. Brensinger, the Director of the Department of Revenue and Finance, until such time as the vacancy now existing in said office shall have been filled by appointment;

20 "RESOLVED, That the said George F. Brensinger, Director of the Department of Revenue and Finance, be and is hereby appointed said Treasurer of Jersey City, to act as such during said term without compensation."

"RESOLVED, That all the powers and duties of the office of City Comptroller of Jersey City shall be exercised and discharged by George F. Brensinger, the Director of the Department of Revenue and Finance, until such time as the vacancy now in said office shall have

30 been filled by appointment;

"RESOLVED, That said George F. Brensinger, Director of the Department of Revenue and Finance, be and he is hereby appointed City Comptroller to act as such during said term without compensation."

"RESOLVED, That all the powers and duties of the office of City Collector of Jersey City shall be exercised and discharged by George F. Brensinger, the Director of the Department of Revenue and Finance, until such time as the vacancy now existing in

40 said office shall have been filled by appointment; and

"RESOLVED, That the said George F. Brensinger, Director of the Department of Revenue and Finance, be and he is hereby appointed City Collector of Jersey City, to act as such during said time without compensation."

5. That on the twenty-ninth day of October, nineteen hundred and fourteen, the Board of Commissioners of the City of Jersey City, the governing body thereof, duly adopted the following resolution, by unanimous vote:

"WHEREAS, The Director of Revenue and Finance as Comptroller of Jersey City is the principal executive officer of the Department of the Comptroller of Jersey City, and is constantly in communication with the various bonding houses of New York and elsewhere in the negotiation for the disposal of City bonds, and the procuring of bonds for the Sinking Fund; and

"WHEREAS, Such negotiations are of a confidential and secret nature in order that advantage may not be taken of the demand so created, to the disadvantage of Jersey City; and

"WHEREAS, The said Director reports that his varied duties makes it imperative for him to have a confidential agent in his office as Comptroller; and

"WHEREAS, It is also possible to secure such agent so as to obtain additional benefits from the appointment to be made;

"THEREFORE BE IT RESOLVED, That Mary Feeney be and she hereby is appointed confidential stenographer in the Department of the Comptroller of Jersey City for the use of the Director as Comptroller, and such other departmental use or duty as the said Director may order, at an annual salary of Seven hundred and twenty ($720) dollars a year, to be paid in equal semi-monthly installments, such appointment to take effect on and from the 1st day of November, in the year 1914; and be it further

"RESOLVED, That until the 1st day of December, in the year 1914, the salary of the said Mary Feeney be paid out of the unexpended balances, if any, in the Department of Revenue and Finance, Bureau of Control."

That on October thirtieth or thirty-first, nineteen hundred and fourteen, the respondents, the Board of Civil Service Commissioners, received from the City Clerk of Jersey City a certified copy of said resolution; that on October thirty-first, nineteen hundred and fourteen, the Board of Civil Service Commissioners, by Commissioner Edward H. Wright, wrote to the City Clerk of Jersey City a certain letter, of which the following is a true copy:

"October 31st, 1914.

Mr. Michael I. Fagen,
City Clerk,
City Hall, City.

Dear Sir:—

The resolution passed by the City Commission appointing Miss Mary Feeney as Confidential Stenographer to the Comptroller, has reached the Civil Service office.

This appointment is in contravention to the Civil Service law and you are hereby served with notice not to pay any claims for services of Miss Feeney without proper certification from the Civil Service Commission.

Yours very truly,
(Signed) EDWARD H. WRIGHT,
Commissioner."

W/H

That said letter was delivered to the said Clerk and was received by him either on the day of the date thereof, or on the first day of November, nineteen hundred and fourteen; on November ninth, nineteen hundred and fourteen, the respondent Edward H. Wright, a member of the

Board of Civil Service Commissioners, received from the City Clerk of Jersey City a letter, of which the following is a true copy:

"Jersey City, N. J., November 9, 1914.

Hon. Edward H. Wright,

State Civil Service Commissioner,

Jersey City, N. J. 10

Dear Sir:—

Your communication to me of October 31, 1914, with relation to the appointment of Miss Mary Feeney as Confidential Stenographer to the Comptroller has been attended to. I have held the payroll and have not signed her warrant as per your direction.

I would have answered your communication sooner but for the election press of business.

Yours respectfully, 20

(Signed) M. I. FAGEN,
City Clerk."

and that the said Edward H. Wright communicated the same to and filed the same with the Board of Civil Service Commissioners; that on the thirteenth day of November, nineteen hundred and fourteen, the Board of Civil Service Commissioners, by Commissioner Edward H. Wright, wrote to George F. Brensinger, Director, Department of Revenue and Finance, a letter, of which the following is a true copy: 30

"Nov. 13th, 1914.

Mr. Geo. F. Brensinger, Director,

Dept. of Revenue & Finance,
City Hall, City.

Dear Sir:

At the meeting of the Commission last Tuesday held at Trenton, I took up the question of the appointment of a confidential 40

stenographer to the Comptroller. You already have a secretary and deputy, as chief executive officer of the department, in the exempt class which is all you are entitled to. I would suggest that for the good of all concerned that the matter of Miss Feeney be settled once and for all, and if she wishes to be employed in your department she must come in through the regular civil service channels.

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I have notified City Clerk Fagen not to pass any warrants for Miss Feeney's pay.

I would like to have done this if possible but, it seems to me, it ought to have been apparent to you that it was not possible to carry out this scheme.

Yours very truly,

(Signed) EDWARD H. WRIGHT,

W/H Commissioner."

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That said letter was delivered to the said George F. Brensinger, Director, at his office in the City Hall, either on November thirteenth or November fourteenth, nineteen hundred and fourteen; that on December eighth, nineteen hundred and fourteen, the respondent Edward H. Wright received from said George F. Brensinger, Director, a letter, of which the following is a true copy:

"December 8th, 1914.

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Hon. Ed. H. Wright,
Civil Service Commissioner,
Jersey City, N. J.

Dear Sir:—

In reply to your communication of November 13th, I desire to say that I am not cognizant that Miss Feeney's desire to serve the city is the motive in her appointment, but my desire to have one whom I trust as my confidential stenographer.

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As Comptroller, I am legally entitled to

such an appointment and the duty devolves upon you under the laws of the state to exempt such an appointment.

If you are above the law then it will be impossible for me to have Miss Feeney as confidential stenographer, but if you are a public official imbued with the proper spirit of carrying out the law and not a dictator you will formally grant what I am entitled to.

Very truly yours, 10

(Signed) GEORGE F. BRENSINGER,
Director."

6. That from November first, nineteen hundred and fourteen, and up to the present time, the relator, Mary Feeney, has performed services as a stenographer in the Department of Revenue and Finance of the City of Jersey City, and claims to have performed such services as confidential stenographer to the Comptroller, under and by virtue of the aforesaid resolution of October twenty-ninth, nineteen hundred and fourteen; that since November first, nineteen hundred and fourteen, the relator, Mary Feeney, has not received any pay or compensation from the City of Jersey City for such services. 20

7. That the officers and employes of the said City of Jersey City are paid semi-monthly, on the first and fifteenth of each and every month.

8. That on the fifteenth day of November, nineteen hundred and fourteen, a payroll purporting to be a payroll of officers and employes of the Department of Revenue and Finance of the City of Jersey City, for the period from November first to the fifteenth, nineteen hundred and fourteen, inclusive, containing the name of the relator, Mary Feeney, as such stenographer, and salary or compensation for said period, was made up and was submitted to the Civil Service Commission of this State for its approval and certifica- 30 40

tion, pursuant to the provisions of section twenty-six of the act entitled "An Act regulating the employment, tenure and discharge of certain officers and employes of this State, and of the various counties and municipalities thereof, and providing for a civil service commission, and defining its powers and duties", approved April tenth, nineteen hundred and eight, commonly known as "The Civil Service Act".

9. That the said Board of Civil Service Commissioners refused to certify upon said payroll that the relator, Mary Feeney, named therein, had been appointed, employed, reinstated or promoted, in pursuance of the so-called Civil Service Law, and of the rules of the Commission made in accordance with the said act.

10. That no notice has been received by the Civil Service Commission from the Director of Revenue and Finance, as provided for under section twenty-one of the act commonly known as the Civil Service Act, or from the Board of Commissioners of the City of Jersey City, that a vacancy in the position of confidential stenographer existed, with a request that the Civil Service Commission certify the names and addresses of three candidates standing highest upon the eligible list appropriate to such position, from whom the Director of Revenue and Finance or the Board of Commissioners should select a person to fill the position, and that no notice has been received from the said Director of Revenue and Finance or from the Board of Commissioners of Jersey City, stating the title or name of the position to be filled, the duties to be performed or the compensation to be paid, and that no notification whasoever has been received by the Civil Service Commission relating to the said relator, Mary Feeney, except the above recited resolution, the said payroll, and the letters above set forth.

11. That the respondents, the Board of Civil Service Commissioners, have refused to certify upon any payroll submitted since November, 1st, 1914, that the relator, Mary Feeney, was appointed, employed, reinstated or promoted, in pursuance of the socalled Civil Service Law, and of the rules of the Commission made in accordance with the said act.

12. That on October 29th, 1914, when the above recited resolution of the Board of Commissioners of the City of Jersey City was adopted, the position or office of Secretary and Deputy to the Director of the Department of Revenue and Finance of the City of Jersey City had been established by the said Board of Commissioners of the said City, and had been classified by the respondents, the Board of Civil Service Commissioners of the State of New Jersey, in the exempt class of the classified service of said City; that Joseph F. S. Fitzpatrick had then been appointed to said position or office, and was then, and now is, discharging the duties thereof, and was then, and now is, Secretary and Deputy to the Director of the Department of Revenue and Finance of said City.

We, therefore, being willing that due and speedy justice should be done in this behalf, command and strictly enjoin you that, immediately after the receipt of this writ, you do certify upon the payroll, and each and every payroll from and after the said first day of November, 1914, that the said Mary Feeney has been appointed and employed in the said position of stenographer to the Comptroller of Jersey City in pursuance of law and of the rules made in accordance with "An Act regulating the employment, tenure and discharge of certain officers and employees of this State, and of the various

counties and municipalities thereof, and providing for a civil service commission, and defining its duties and powers," approved April tenth, nineteen hundred and eight, and the acts amendatory thereof and supplementary thereto, or cause to us to the contrary to be signified, lest in your default complaint should come to us repeated; and how you shall execute this, our command, certify to our Justices of our Supreme Court at Trenton on the day of November, 1915, together with this our writ, and this no wise omit.

WITNESS WILLIAM S. GUMMERE, Esq., Chief Justice of our said Court at Trenton, the 4th day of November, in the year One thousand nine hundred and fifteen.

WM. C. GEBHARDT,
Clerk.

JOHN BENTLEY,
Attorney for Relator.

(Endorsement.)

NEW JERSEY SUPREME COURT.

MARY FEENEY,
Relator,

vs.

GEORGE H. BURKE, JOSEPH S. HOFF, ALEXANDER R. FORDYCE and EDWARD H. WRIGHT,
Respondents.

ALTERNATIVE WRIT OF MANDAMUS.

JOHN BENTLEY,
Attorney of Relator,
City Hall,
Jersey City, N. J.

I allow the within writ. Let it be sealed.

Demurrer.

(Filed Jan. 24th, 1916).

NEW JERSEY SUPREME COURT.

MARY FEENEY, *Relator*, *vs.* GEORGE H. BURKE, JOSEPH S. HOFF, ALEXANDER R. FORDYCE and EDWARD H. WRIGHT, *Respondents.*	On Mandamus.

The respondents herein above named, and each of them, hereby demur to the alternative writ of mandamus heretofore granted herein upon the following ground:

That the said writ shows that an act of the Legislature entitled "An Act relating to, regulating and providing for the government of cities, towns, townships, boroughs, villages and municipalities governed by boards of commissioners or improvement commissions in this State," approved April twenty-fifth, Nineteen hundred and eleven, the title whereof was changed, as hereinabove set out, by an act of the Legislature approved April second, Nineteen hundred and twelve had been adopted and was operative in Jersey City at the time of the appointment of the relator to the said position of stenographer to the Comptroller of said City, and that the adoption and going into operation of said act gave all administrative, judicial and legislative powers, theretofore had and possessed and exercised by the Mayor and City Council and all other executive or legislative bodies in the said City, to the Board of Commissioners, and that the Board of Commissioners thereof had complete control over the

affairs of the City, and that thereby the Comptroller became a mere employe of the said Board of Commissioners and was not a principal executive officer within the intent and meaning of Subdivision 4 of Section 13 of an act of the Legislature entitled "An Act regulating the employment, tenure and discharge of certain officers and employes of this State, and of the various counties and municipalities thereof, and providing for a civil service commission, and defining its duties and powers," approved April tenth, Nineteen hundred and eight.

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JOHN W. WESCOTT,
Attorney for Respondents.

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Opinion.

(Filed, June 1, 1915.)

NEW JERSEY SUPREME COURT.

February Term, 1915.

MARY FEENEY,

vs.

CIVIL SERVICE COMMISSION.

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Argued Feb. 18, 1915.
Decided June 1, 1915.

On rule for mandamus.

Before Justices Swayze, Parker and Kalisch.

John Bentley, for the rule.

Herbert Boggs, Assistant Attorney General, opposed.

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PER CURIAM:

The facts and the question involved are thus stated in the brief of counsel for the rule.

Jersey City has adopted the provisions of the so-called "Walsh Act", Chapter 221, Laws of 1911. The present members of the Board of Commissioners of that city were elected on the 10th day of June, 1913, and were organized under said act on the 17th day of June aforesaid. On the day last mentioned George F. Brensinger, one of the members of the said Board, was elected or appointed by the said Board of Commissioners to be Director of Revenue and Finance and at the same time was elected or appointed by the said Board Treasurer of Jersey City, Comptroller of Jersey City and City Collector of Jersey City. Subsequently the said George F. Brensinger appointed one Joseph F. S. Fitzpatrick to be his private secretary and the said Fitzpatrick has ever since and still is such private secretary to the said Brensinger as Director of Revenue and Finance.

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Subsequently, on the 29th day of October, in the year 1914, the said Board, declaring that there was necessity for a confidential stenographer to the said Brensinger as City Comptroller, appointed the Relator such stenographer. The City Clerk of Jersey City certified such last mentioned appointment to the Board of Civil Service Commissioners. The Civil Service Commissioners declined to consider the said relator as being the exempt class under the provisions of the so-called Civil Service Law (P. L. 1908, p. 235). The said Civil Service Board has also refused to certify the name of the said relator for payment as provided for in the twenty-sixth section of the said Civil Service Act and it is under this twenty-sixth section that she now makes her application for a writ as authorized and directed therein.

The theory of the relator is that her appointment is valid and that she is entitled to payment as an appointee coming within the fourth subdivision of the thirteenth section of the Civil Service Act as a stenographer to a principal executive officer, to wit, the Comptroller of Jersey City.

The statute provides that one private secretary, or clerk, or stenographer of such principal executive officer shall be included in the exempt class. We think the Treasurer, Comptroller and Collector of Jersey City are not principal executive officers. Section 4 of the Commission Government act expressly enacts that the board of commissioners shall have and possess all administrative, judicial and legislative powers now had and possessed and exercised by the Mayor and City Council and all other executive or legislative bodies in the city and have complete control over the affairs of the city. If this office of comptroller can be said to exist still, he is obviously a mere employee of the commissioners and no longer a principal executive officer.

The rule must be discharged with costs.

Judgment.

The Court having considered the allegations and facts set forth in the said alternative writ of mandamus, and being of the opinion that notwithstanding anything therein contained or alleged the said relator is not entitled to the relief sought and prayed by her under the law and customs of the State of New Jersey, it is thereupon

ORDERED, that judgment final be entered in the office of the Clerk of the Supreme Court upon the demurrer aforesaid in favor of the said demurrants, and that the said alternative writ of mandamus be and the same hereby is dismissed and discharged with costs to the said demurrants.

Whereupon it is adjudged that the writ of mandamus be dismissed and that the respondents, George H. Burke, Joseph S. Hoff, Alexander R. Fordyce and Edward H. Wright, do recover against the said relator, Mary Feeney, the sum of

Judgment entered January 24, 1916.

WM. S. GUMMERE, C. J.