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Complaint.

(Filed January 7th, 1927.)

New Jersey Supreme Court

10

BERGEN COUNTY.

SEWARD B. STURTEVANT,
Plaintiff,

v.

BOARD OF CHOSEN FREEHOLDERS,
COUNTY OF BERGEN,
Defendant.

Action at Law.

20

Plaintiff, by Ward & McGinnis, his attorneys, complains of the defendant as follows:

1. Plaintiff is a resident of the County of Bergen and State of New Jersey.

2. Defendant is a municipal corporation, charged with the duties of the County of Bergen.

30

3. Plaintiff was and now is, and at all times hereinafter mentioned, a duly qualified constable of the County of Bergen and State of New Jersey.

4. Being such duly elected and qualified constable as aforesaid, plaintiff on the 10th day of March, 1921, was by the Honorable Guy L. Fake, Judge of the District Court of the Second Judicial District, of the County of Bergen, designated as one of the constables to whom writs and orders issued out of said Court should be handed for

40

Complaint.

service; that the said order of the said Guy L. Fake, Judge, as aforesaid, reads as follows:

10 Mr. Seward E. Sturtevant having applied to be designated as one of the constables to whom writs and orders issuing out of this court may be handed for service and it appearing that he is regularly elected constable of the Borough of Rutherford and has filed his bond as such with the Borough Clerk, it is on this 10th day of March, 1921, ordered that he be placed upon the list of constables to be selected by the clerk for the service of any writs, orders or other process that may be required by law or the order of the court.

20

GUY L. FAKE,
Judge.

5. Thereupon plaintiff duly qualified for such office and service as aforesaid, and took upon himself the performance of all duties required by him to be performed under said order hereinabove mentioned, from and after the said mentioned 10th day of March, 1921, to date hereof.

30 6. Plaintiff avers that by virtue of Chapter 58 of the Laws of 1920, and thereafter by amendment in Chapter 203 of the Laws of 1923, plaintiff became entitled to certain compensation for the performance of his duties hereinabove referred to.

7. Plaintiff avers that he became entitled to the following compensation:

40 Two years and thirteen days at the rate of 900.00 per annum, said years being from March 10th, 1921, to March 10th, 1923, amounting in all to the sum of \$1,832.50.

Answer.

Three years' compensation from the 23rd day of March, 1923, to the 23rd day of March, 1926, at the rate of \$1,200.00 a year, amounting in all to the sum of \$3,600.00, and from March 23rd, 1926, to December 23rd, 1926, at the rate of \$1,500.00 per annum, amounting to \$1,125.00, making a total due plaintiff of \$6,557.50. 10

8. Plaintiff has applied from time to time from the defendant for the payment of said money, but the said defendant has wholly refused to pay the same, or any part thereof.

Plaintiff will claim judgment for the sum of \$6,557.50, together with interest thereon from the 23rd day of March, 1926.

WARD & MCGINNIS,
Attorneys of Plaintiff. 20

Answer.

(Filed January 15, 1927.)

NEW JERSEY SUPREME COURT,
BERGEN COUNTY.

SEWARD B. STURTEVANT,
Plaintiff,

v.

COUNTY OF BERGEN,
Defendant.

Action at Law. 30

The defendant answering the complaint of the plaintiff herein says:

1. Defendant has no knowledge of the allegations of paragraph one of the complaint sufficient to form a belief and puts the plaintiff on his proof. 40

Answer.

2. Defendant admits that it is a municipal corporation but states that its legal corporate name is "County of Bergen."

10 3. Defendant has no knowledge of the allegations of paragraph three of the complaint sufficient to form a belief and puts the plaintiff on his proof.

4. Defendant has no knowledge of the allegations of paragraph four of the complaint sufficient to form a belief and puts the plaintiff on his proof.

5. Defendant has no knowledge of the allegations of paragraph five of the complaint sufficient to form a belief and puts the plaintiff on his proof.

20 6. Defendant denies the allegations of paragraph six.

7. Defendant denies the allegations of paragraph seven of the complaint.

8. Defendant admits receiving bills of plaintiff for certain money alleged to be due the plaintiff, but denies that there are any moneys due and owing to plaintiff from defendant.

FIRST SPECIAL DEFENSE.

30 By way of defense to the complaint of the plaintiff the defendant herein says:

1. The allegations of the complaint do not set forth a legal cause of action in favor of the plaintiff against defendant. At the trial of this cause the defendant will move to dismiss the complaint on that ground.

SECOND SPECIAL DEFENSE.

40 By way of defense to the complaint of the plaintiff the defendant herein says:

Reply.

1. It denies the truth of the matters contained in the complaint.

JOHN B. ZABRISKIE,
Attorney for Defendant.

Reply.

10

(Filed April 8, 1927.)

NEW JERSEY SUPREME COURT,

BERGEN COUNTY.

SEWARD B. STURTEVANT,
Plaintiff,

v.

BOARD OF CHOSEN FREEHOLDERS,
COUNTY OF BERGEN,
Defendant.

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The plaintiff, in reply to the answer of the defendant, denies the matters contained in the first and second special defenses.

WARD & MCGINNIS,
Attorneys of the Plaintiff.

30

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Stipulation to Amend Complaint.

(Filed February 28, 1928.)

NEW JERSEY SUPREME COURT,

BERGEN COUNTY.

10

SEWARD B. STURTEVANT,
Plaintiff,

v.

BOARD OF CHOSEN FREEHOLDERS,
COUNTY OF BERGEN,
Defendant.

Action at Law.

20

It is hereby stipulated and agreed that the complaint in the above cause, be and it hereby is amended as follows:

30

5-A. Plaintiff avers that by virtue of the Judge of said Court having appointed him, as set forth in paragraph four of the said complaint, plaintiff was further designated by the said Guy L. Fake as Judge, to act as sergeant at arms of the Second Judicial District Court of the County of Bergen, to attend the sittings of the Court, preserve order therein and perform such other duties as the said Judge should prescribe, and in all other respects to act as a sergeant at arms, as defined by an act entitled, "An Act concerning District Courts" (Revision of 1898), approved June 14th, 1898, and the several supplements and acts amendatory thereto.

WARD & MCGINNIS,
Attorneys of Plaintiff.

JOHN B. ZABRISKIE,
Attorney of Defendant.

40

Answer to Complaint as Amended.

(Filed February 23rd, 1928.)

NEW JERSEY SUPREME COURT,

BERGEN COUNTY.

SEWARD B. STURTEVANT, <i>Plaintiff,</i>	}	10
<i>v.</i>		
COUNTY OF BERGEN, <i>Defendant.</i>		Action at Law.

The defendant, answering the plaintiff's complaint, as amended, says:

1. Defendant has no knowledge of the allegations of paragraph one of the complaint sufficient to form a belief and puts the plaintiff on his proof.

2. Defendant admits that it is a municipal corporation, but states that its legal corporate name is "County of Bergen."

3. Defendant has no knowledge of the allegations of paragraph three of the complaint sufficient to form a belief and puts the plaintiff on his proof.

4. Defendant has no knowledge of the allegations of paragraph four of the complaint sufficient to form a belief and puts the plaintiff on his proof.

5. Defendant has no knowledge of the allegations of paragraph five of the complaint sufficient to form a belief and puts the plaintiff on his proof.

5-A. Defendant denies the allegations of paragraph 5-A.

Answer to Complaint as Amended.

6. Defendant denies the allegations of paragraph 6.

7. Defendant denies the allegations of paragraph seven of the complaint.

10 8. Defendant admits receiving bills of plaintiff for certain money alleged to be due the plaintiff, but denies that there are any moneys due and owing to plaintiff from defendant.

FIRST SPECIAL DEFENSE.

20 The allegations of the complaint do not set forth a legal cause of action in favor of the plaintiff against the defendant. At the trial of this cause the defendant will move to dismiss the complaint on that ground.

SECOND SPECIAL DEFENSE.

The defendant denies the truth of the matters contained in the complaint.

THIRD SPECIAL DEFENSE.

30 The plaintiff was not legally designated to act as sergeant-at-arms before or during the time mentioned in the complaint.

FOURTH SPECIAL DEFENSE.

The plaintiff, Seward B. Sturtevant, was never designated by the said Guy L. Fake, as Judge, to act as sergeant-at-arms.

FIFTH SPECIAL DEFENSE.

40 The said Seward B. Sturtevant did not file a statutory bond as sergeant-at-arms as required by Section 12 of an act entitled "An Act to amend an

Answer to Complaint as Amended.

act entitled 'An Act concerning District Courts (Revision of 1898),' approved June fourteenth, one thousand eight hundred and ninety-eight."

SIXTH SPECIAL DEFENSE.

The said Seward B. Sturtevant did not file in the office of the Clerk of the Board of Chosen Freeholders of the County of Bergen a bond as required by Section 12 of an act entitled "An Act to amend an act entitled 'An act concerning District Courts (Revision of 1898),' approved June fourteenth, one thousand eight hundred and ninety-eight."

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SEVENTH SPECIAL DEFENSE.

The said Seward B. Sturtevant did not file a statutory bond as sergeant-at-arms as required by section 1 of an act entitled "A Supplement to an act entitled 'An act concerning district courts (Revision of 1898),' approved June fourteenth, one thousand eight hundred and ninety-eight."

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EIGHTH SPECIAL DEFENSE.

At an election held prior to the year 1920, the provisions of "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 powers and duties" was adopted by the voters of the County of Bergen by a majority of the votes cast for and against the acceptance of said act. At all times mentioned in the complaint such act was in force and effect in said County of Bergen. The plaintiff failed to comply with the provisions of said act. His name did not appear on the payroll for salary or compensation as constable perform-

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Answer to Complaint as Amended.

ing the duties of a sergeant-at-arms or otherwise as required by said act at any of the times mentioned in the complaint.

NINTH SPECIAL DEFENSE.

10 At an election held prior to the year 1920, the provisions of "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 powers and duties" was adopted by the voters of the County of Bergen by a majority of the votes cast for and against the acceptance of said act. At all times mentioned in the complaint, such act was in force and effect in said County of Bergen. The plaintiff failed to comply with the provisions of said act. His name did not appear on the payroll for salary or compensation as sergeant-at-arms or otherwise as required by said act, at any of the times mentioned in the complaint.

TENTH SPECIAL DEFENSE.

30 At an election held prior to the year 1920, the provisions of "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 powers and duties" was adopted by the voters of the County of Bergen by a majority of the votes cast for and against the acceptance of said act. At all times mentioned in the complaint such act was in force and effect in said County of Bergen. The plaintiff failed to comply with the provisions of said act. His name did not appear on the payroll for salary

Answer to Complaint as Amended.

or compensation as constable of the Second Judicial District Court of the County of Bergen, or otherwise, as required by said act, at any of the times mentioned in the complaint.

ELEVENTH SPECIAL DEFENSE.

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At an election held prior to the year 1920, the provisions of "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 powers and duties" was adopted by the voters of the County of Bergen by a majority of the votes cast for and against the acceptance of said act. At all times mentioned in the complaint such act was in force and effect in said County of Bergen. The plaintiff did not present to the Civil Service Commission of the State of New Jersey a certificate of appointment as constable of the Second Judicial District Court of the County of Bergen, as required by said act.

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TWELFTH SPECIAL DEFENSE.

At an election held prior to the year 1920, the provisions of "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 powers and duties" was adopted by the voters of the County of Bergen by a majority of the votes cast for and against the acceptance of said act. At all times mentioned in the complaint, such act was in force and effect in said County of Bergen. The plaintiff did not present to the Civil Service Com-

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Answer to Complaint as Amended.

mission of the State of New Jersey a certificate of appointment as sergeant-at-arms of the Second Judicial District Court of the County of Bergen, as required by said act.

10

THIRTEENTH SPECIAL DEFENSE.

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At an election held prior to the year 1920, the provisions of "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 powers and duties" was adopted by the voters of the County of Bergen by a majority of the votes cast for and against the acceptance of said act. At all times mentioned in the complaint such act was in force and effect in said County of Bergen. The plaintiff did not present to the Civil Service Commission of the State of New Jersey a certificate of appointment as constable performing the duties of sergeant-at-arms of the Second Judicial District Court of the County of Bergen, as required by said act.

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FOURTEENTH SPECIAL DEFENSE.

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At an election held prior to the year 1920, the provisions of "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 powers and duties" was adopted by the voters of the County of Bergen by a majority of the votes cast for and against the acceptance of said act. At all times mentioned in the complaint, such act was in force and effect in said County of Bergen. The

Reply to Amended Complaint.

plaintiff failed to take and pass a competitive examination as required by the provisions of said act.

FIFTEENTH SPECIAL DEFENSE.

At an election held prior to the year 1920, the provisions of "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 powers and duties" was adopted by the voters of the County of Bergen by a majority of the votes cast for and against the acceptance of said act. At all times mentioned in the complaint, such act was in force and effect in said County of Bergen. During all the times mentioned in the complaint, the plaintiff failed to comply with each and all of the provisions of said act.

JOHN B. ZABRISKIE,
Attorney for Defendant.

Reply to Amended Complaint.

(Filed February 25th, 1928.)

NEW JERSEY SUPREME COURT, 30
BERGEN COUNTY.

SEWARD B. STURTEVANT,
Plaintiff,

v.

COUNTY OF BERGEN,
Defendant.

Action at Law.

40

Plaintiff joins issue with the defendant on the

Postea.

first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth and fifteenth special defenses of defendant's answer to complaint as amended.

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WARD & MCGINNIS,
Attorneys of Plaintiff.

Postea.

(Filed March 20th, 1928.)

NEW JERSEY SUPREME COURT,
BERGEN COUNTY.

20

SEWARD B. STURTEVANT,
Plaintiff,

v.

BOARD OF CHOSEN FREEHOLDERS,
COUNTY OF BERGEN (or County
of Bergen),
Defendant.

Action at Law.

30

This cause was tried without a jury before Judge Edwin C. Caffrey, at the Bergen Circuit on February 27th, 1928.

The court found a verdict in favor of the plaintiff and against the defendant, and assessed the plaintiff's damages including interest at the sum of \$3,477.00.

EDWIN C. CAFFREY,
Judge.

Damages \$3,477.
Costs 59.92

40

\$3,536.92

Rule for Judgment.

(Filed March 20, 1928.)

NEW JERSEY SUPREME COURT,

SEWARD B. STURTEVANT, <i>Plaintiff,</i> <i>v.</i> BOARD OF CHOSEN FREEHOLDERS, COUNTY OF BERGEN (or County of Bergen), <i>Defendant.</i>	}	Action at Law.	10
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\$3,477.00	
59.92	20
\$3,536.92	

It is ordered that judgment be and hereby is entered in favor of plaintiff and against the defendant for the sum of three thousand four hundred and seventy-seven dollars, besides costs to be taxed *nisi*.

Entered March 20, 1928.

On motion of WARD & MCGINNIS, Attorneys.	30
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Transcript of Judgment.

(Filed April 19, 1928.)

NEW JERSEY SUPREME COURT,

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SEWARD B. STURTEVANT,
Plaintiff,

v.

BOARD OF CHOSEN FREEHOLDERS,
COUNTY OF BERGEN (or County
of Bergen),

Defendant.

Action at Law.
On Postea.
Ward & McGinnis,
Attorneys.

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Judgment entered this twentieth day
of March, A. D. nineteen hundred and
twenty-eight in favor of plaintiff and
\$3,477.00 against the defendant for the sum of
59.92 three thousand four hundred and sev-
——————
\$3,536.92 eny-seven dollars damages and fifty-
nine dollars and ninety-two cents costs.

WM. S. GUMMERE,
C. J.

30

I, FRED L. BLOODGOOD, Clerk of the Supreme Court
of the State of New Jersey, do certify that the fore-
going is a true copy of the Judgment entered in the
above-stated cause which said Judgment is re-
corded in this office in Vol. 23 of Judgments, page
485.

In testimony whereof I have set my
hand and the seal of said Court at
(SEAL) Trenton, this nineteenth day of April,
A. D. nineteen hundred and twenty-
eight.

40

FRED L. BLOODGOOD,
Clerk.

Notice and Grounds of Appeal.

(Filed April 20, 1928.)

NEW JERSEY SUPREME COURT,

BERGEN COUNTY.

SEWARD B. STURTEVANT, <i>Plaintiff,</i>	}	Action at Law.
<i>v.</i>		
COUNTY OF BERGEN, <i>Defendant.</i>		

10

To Messrs. WARD & MCGINNIS,
 Attorneys of Plaintiff:

20

Take notice, that the defendant, the County of Bergen (designated in plaintiff's complaint as Board of Chosen Freeholders, County of Bergen), appeals to the Court of Errors and Appeals of the State of New Jersey, from the whole of the judgment entered in this case, upon the following grounds:

1. The trial court erroneously denied defendant's motion to strike out plaintiff's complaint, said motion being based upon the ground that the complaint failed to allege facts which constituted a cause of action.

30

2. The trial court erroneously denied defendant's motion for a nonsuit at the close of the plaintiff's case, said motion being based upon the grounds that the evidence failed to disclose evidence which would justify a recovery by the plaintiff against the defendant.

40

Testimony.

3. The trial court erroneously denied defendant's motion for a direction of a verdict at the close of the whole case, said motion being based upon the ground that there was no evidence in the whole case from which it might be found that the plaintiff was entitled to compensation from the defendant.

4. Because the evidence in the case did not justify the finding of a verdict for the plaintiff.

Respectfully,

JOHN B. ZABRISKIE,
Attorney for Defendant-Appellant.

Testimony.

NEW JERSEY SUPREME COURT,

BERGEN COUNTY.

Before—Honorable EDWIN C. CAFFREY, Judge.

SEWARD B. STURTEVANT,
Plaintiff,

v.

COUNTY OF BERGEN,
Defendant.

Action at Law.

Hackensack, New Jersey,
February 27, 1928.

APPEARANCES:

For the Plaintiff, WARD & MCGINNIS, PETER
J. MCGINNIS and JOHN J. BRESLIN, Jr.,
of Counsel.

For the Defendant, JOHN B. ZABRISKIE.

Testimony.

The Court: I understand there will be no jury in this case?

Mr. McGinnis: No jury, sir.

Your Honor please, we have amended, a few weeks ago, after stipulation, another paragraph of the complaint, and then the answer was amended Friday, so that we did not have time to give a completed answer. That is the transcript. 10

The Court: What count has been amended?

Mr. McGinnis: The additional paragraph called 5-A has been inserted and a number of special defenses added to the old answer.

Mr. Zabriskie: If your Honor please, in my answer I gave notice for a motion to strike out, probably that would raise some of the issues, if I may make that motion now. In other words, I say that the complaint does not make out a cause of action. 20

Now, of course, the first allegation is, the plaintiff was a resident of Bergen County. Assuming that to be so—and the defendant a municipal corporation and so on. The crux of the case seems to come down to—

Mr. McGinnis: Wouldn't it be better if I open the case so the Court may know what we are all talking about? I won't consider that as any waiver. 30

Mr. Zabriskie: All right.

Mr. McGinnis opens the case to the Court on behalf of the plaintiff.

Mr. McGinnis: The amendment to the original complaint, you see, by paragraph 5 of that, I clarify the issue a little more, and the amendments which Judge Zabriskie filed to his original answer are to set up a number of special defenses which I have not been able to go into detail, I only got them, I think, Friday. 40

Testimony.

Mr. Zabriskie: Of course, I think the Senator in his opening went farther than the complaint would justify.

10 Now, as I said before, the plaintiff was a resident of Bergen County, and the defendant is a municipal corporation. As to whether he is a constable, that is a matter of proof.

Now, coming down to "4," on March 10th, 1921, Guy L. Fake, Judge of the Second Judicial District Court of the County of Bergen designated the plaintiff as one of the constables to whom writs and orders issued out of said court should be handed for service. The order by Guy L. Fake, Judge, was in the following language:

20 "Mr. Seward E. Sturtevant having applied to be designated as one of the constables to whom writs and orders issuing out of this court may be handed for service and it appearing that he is regularly elected constable of the Borough of Rutherford and has filed his bond with the Borough Clerk, it is on this 10th day of March, 1921, ordered that he be placed upon the list of constables to be selected by the clerk for the service of any writs, orders or other process that
30 may be required by law or the order of the court."

In other words, I take it that that was simply a designation of this man as one of what might be a hundred others who would have the right to serve process. Now, the fact is that at that time the law was so broad that a man could pick out his own constable, regardless of any designation, even by the judge, under Section 117-E of the
40 Public Laws of 1905, page 495.

Testimony.

The Court: That is the act I had in mind when I said 1903.

Mr. Zabriskie (reading): "It is lawful for any constable of any city or county wherein a district court is or may hereafter be established, to serve and execute any and all writs or process of said district court; provided, that when any party plaintiff, or the attorney of such plaintiff, shall, in writing, require the clerk of any district court to deliver such writ or process to any constable authorized by the provisions of this supplement to serve or execute the process of said district court, and designated by name in such written request, it shall be the duty of such clerk to deliver such writ or process to the constable therein designated."

10

20

The spirit of the act was so broad that a man could even pick out his own constable, all of them were authorized to serve writs. So I say that this order signed by Judge Fake did not have anything like the far-reaching effect that the Senator would give to it.

Now, we go on a step further. "Plaintiff qualified for such office and service, and took upon himself the performance of all duties required by him to be performed under said order," just the same as every other constable in the County of Bergen.

30

Now then, 5-A seems to be a sort of a—it is not a statement of the fact; but it says "plaintiff avers that by virtue of the judge of said court having appointed him as set forth in paragraph 4 of the complaint, the plaintiff was further designated by the said Guy L. Fake"—in other words, he pleads a conclusion there that by reason of his having received the appointment as indicated under Sec-

40

Testimony.

tion 4—"Why, I really appointed him as a sergeant-at-arms," and I say that is not a good contention, as he was "further designated by said Guy L. Fake to act as sergeant-at-arms of the Second District Court of the County of Bergen, to attend the sittings of the Court, preserve order therein and perform such other duties as the said judge should prescribe, and in all other respects to act as a sergeant-at-arms," and so on. I say that is not a logical conclusion or a correct conclusion, and I say that the complaint is defective, and I say that it does not make out a cause of action, and I think that it should be stricken, because I cannot by any stretch of language conceive of the effect of it being given to what is contained in paragraph 4 and that is attempted to be given by paragraph 5-A, and on those facts I think the complaint should be stricken out.

The Court: Does not the word "constable" and "sergeant-at-arms" define—I mean, we have an understanding of what is meant by a "sergeant-at-arms" and an understanding of what is meant by "constable"?

Mr. McGinnis: Oh, yes. May I say to your Honor that that is the point. We do not say that the plaintiff in this case was a sergeant-at-arms; he was a constable, entirely different officially from a sergeant-at-arms, but he did his work, he did the work of a sergeant-at-arms, and what counsel in his motion just now does not seem to grasp, I do not say that that order by Judge Fake of itself, with full force and effect, makes this man an acting sergeant-at-arms, as it were; I say that started the thing, that was the date when he designated him and at that time told him he was to do these duties and after that he actually performed the duties. That is the thing.

Seward B. Sturtevant, direct.

The Court: Well, I won't strike this out. I will hear the testimony.

Mr. Zabriskie: Your Honor will allow me an exception for the purpose of the record.

SEWARD B. STURTEVANT, the plaintiff, sworn as a witness in his own behalf, testified as follows: 10

The Court: What page is that statute of 1920?

Mr. Breslin: Chapter 58.

The Court: And what in 1923?

Mr. Breslin: 1923, Chapter 203, and Chapter 274 of the Laws of 1926.

The Court: All right.

Direct examination by Mr. McGinnis:

Q. Mr. Sturtevant, where do you live? A. 104 Union Avenue, Rutherford, New Jersey. 20

Q. And are you a constable of the County of Bergen? A. I am.

Q. How many years have you been constable? A. Since 1918.

Q. And have you, during all those years, qualified in every respect as a constable? A. I have.

Q. In 1921, did you in any wise become connected with the Second District Court? A. I did. 30

Q. Of the Second Judicial District? A. I did.

Q. Of Bergen County. And how did that come about? A. On appointment of Judge Fake.

Q. Was that a written appointment? A. A written appointment.

Mr. McGinnis: Have you got it?

Mr. Zabriskie: Yes. (Paper produced.)

Q. Is this the appointment you have reference to, showing you a paper signed "Guy L. Fake, Judge"? A. Yes, sir. 40

Seward B. Sturtevant, direct.

The Court: I will take that.

Mr. McGinnis: Yes, sir. I offer it in evidence.

10 Q. Now, at the time that that appointment was made, or around that time, did you have any conversation with Judge Fake as to any duties you were to perform, or anything you were to do? A. I did.

Mr. Zabriskie: I object. It seems to me that an appointment of a sergeant-at-arms must be done, or a constable must be by some writing. I do not think—

20 Mr. McGinnis: I do not know of any law, sir. I say right off now he was not appointed sergeant-at-arms, I tried to make that quite clear; he is a constable.

Mr. Zabriskie: Well, you have “constable” in there.

The Court: Now, we come to the question of what he did just in pursuance to whatever power was conferred by virtue of that order.

Mr. McGinnis: What was my question?
(Question and answer read.)

30 Q. Now, what was it that Judge Fake directed you to do? A. Why, attend court, pick the jurors, attend the jurors, attend all the sessions of court, keep order in the court, and perform the duties of a sergeant-at-arms.

Q. And did you do so? A. I did.

Q. From that time on? A. From that time on.

Q. At that time, did they have a sergeant-at-arms in the court there? A. They did.

40 Q. What was his name? A. Peter P. Davids.

Seward B. Sturtevant, direct.

Q. And what was Peter Davids' health? A. Not in the best of health.

Q. And who did, then, all the work that had theretofore—or most of the work that had been theretofore done by Mr. Davids? A. Well, I done a great deal of the work after that. 10

Q. Yes. A. After the appointment.

Q. And from the time that you have just given us, on or about the 10th of March, 1921, how long did you continue to perform those duties under Judge Fake? A. Until Judge Fake's term expired.

Q. And when was that? A. Four years ago, I believe.

Q. And when Judge Fake retired, who took his place? A. Judge Ely.

Q. Now, when Judge Ely came on the bench, did you take up this matter with Judge Ely? A. I did. 20

Q. When? A. Right at the time he came on the bench, that day.

Q. And what orders or directions of any kind did you receive from Judge Ely? A. He ordered me to continue on picking the juries, attending juries, attending the sessions of court, keeping order in the court, and all other duties of a sergeant-at-arms.

Q. And from that time on, did you, or not, do these things? A. I have. 30

Q. Did you receive any compensation for it? A. I did not.

Q. Are you acquainted with the duties of sergeants-at-arms in other courts? A. I am.

Q. Did you, or not, perform the same duties? A. The same duties.

Mr. McGinnis: Cross examine.

*Seward B. Sturtevant, cross.**Cross examination by Mr. Zabriskie:*

Q. Well, you did receive the regular constable's fees in connection with the work? A. The fees, yes.

10 Q. In connection with the work of that court, did you not? A. The fees, yes.

Q. When you served any papers for that court, you received the regular constable's fees? A. Yes, sir.

Q. Throughout this entire— A. Yes, sir.

Q. —term of service? A. Yes, sir.

Q. And when you served the venire to get together a jury, you were paid the regular, legal fees for that always? A. The regular legal fees of \$1.00; yes, sir.

20 Q. If you attended the jury, why, you were paid the regular, statutory fees for that? A. I was.

Q. I show you a paper, Mr. Sturtevant, and I ask you if—

Mr. Zabriskie: I will ask to have it marked for identification, first.

(Paper marked Exhibit D-1 for Identification.)

30 Q. And I ask if that is your signature on there, is it? A. (Referring.) It is.

Mr. Zabriskie: I suppose counsel has no objection to putting it in evidence, even though it is irregular. You have seen it already.

Mr. McGinnis: Well, except that it beclouds the issue, doesn't it, and it may raise confusion.

40 Q. Referring now to the paper which is just

Seward B. Sturtevant, cross.

marked D-1 for Identification, you admit that is your signature, "Seward E. Sturtevant"? A. Yes, sir.

Q. You did at one time accept this place of sergeant-at-arms without pay, isn't that so? A. Yes.

10

Q. That is, yes? A. Yes.

Q. And that was on March 26th, 1925? A. Yes, sir.

Q. Did you ever apply to the civil service for any establishment of any status—

Mr. McGinnis: Objected to as irrelevant and incompetent.

The Court: I do not know whether that— according to the upper courts, the appointment of sergeant-at-arms comes through civil service.

20

Mr. McGinnis: But, again, I want to point out to your Honor that this was not an appointment as a sergeant-at-arms. He never was, excepting when he served voluntarily for a period of three weeks or thereabouts. I will show by that paper he never was a sergeant-at-arms.

The Court: I will allow the question.

30

A. What is the question, again, please?

Mr. McGinnis: Exception, sir.
(Question read.)

A. I did not.

Q. Did you ever take any examination under civil service? A. I did not.

Q. Did you ever apply? A. I did not.

Mr. McGinnis: We will admit he did not.

40

Seward B. Sturtevant, redirect.

Q. You never communicated with civil service or had your name placed on the payroll or took any steps to do anything? A. No, sir.

Mr. McGinnis: The answer is "no"?

10

The Witness: I did not.

Q. Of course, you do not know what your approximate fees have amounted to?

Mr. McGinnis: Objected to on the ground that this is a salary provided by statute.

The Court: I sustain that objection.

Mr. Zabriskie: Just testing his recollection.

20

The Court: Well, no; that is immaterial. What we are interested in is whether or not he had any status as sergeant-at-arms.

Q. I think you testified that Mr. Davids was the regularly appointed sergeant-at-arms during all of this period for which you are suing, so far as you know? A. Yes, sir.

Q. Yes.

Mr. Zabriskie: That is all.

Redirect examination by Mr. McGinnis:

30

Q. Counsel showed you a paper in which you volunteered to act as temporary sergeant-at-arms. Now, that covered a period, I believe, of about three weeks? A. Something like that.

Q. Yes, whatever it was. And at that time, you were not a constable for those three weeks, is that it? A. That is it; yes, sir.

Q. And is that while you acted, then, as a temporary sergeant-at-arms? A. Yes, sir.

40

Mr. McGinnis: That is all.

William Harvey J. Ely, direct.

WILLIAM HARVEY J. ELY, sworn as a witness on behalf of the plaintiff, testified as follows:

Direct examination by Mr. McGinnis:

Q. Judge, you are duly appointed Judge of the Second Judicial District Court of Bergen County? 10

A. I am.

Q. And when did you take office? A. The 26th of February, 1924.

Q. Succeeding who? A. Judge Fake.

Q. And you have been judge ever since? A. I have.

Q. And you know the plaintiff in this case, Mr. Sturtevant? A. I do.

Q. When you came on the bench, was Mr. Sturtevant in court, or not? A. He was. 20

Q. And did you have any conversation of any kind with Mr. Sturtevant respecting his position, or in court? A. I did.

Q. And how did that come about, Judge? A. Well, at that time, the only officer in the court was Mr. Davids, who was an old man and not very able to take care of things, and I told Mr. Sturtevant that I expected him to attend the sittings of the court and look out for order and quiet in the court, and perform the duties of a sergeant in the court. 30

Q. And from that time, did he perform the duties of a sergeant-at-arms? A. He did.

Q. Now, before you went on the bench, did you practice in the Second Judicial District Court? A. I did.

Q. And how frequently were you there? A. Well, I think I was there almost every court day.

Q. And did you see Mr. Sturtevant there? A. I did.

Q. Do you know what duties he performed that 40

William Harvey J. Ely, cross.

you saw? A. Well, he attended the juries that were called there; he soemtimes would assist in the swearing of the juries, and take the juries out to the room for their deliberations, and keep order in the court.

10 Q. So far as anything you saw, did it differ from what he did after you came on the bench? A. No, sir; it did not.

Mr. McGinnis: You may cross examine.

Cross examination by Mr. Zabriskie:

20 Q. For this service of attending juries that you have mentioned, he was paid the regular, statutory fee, as far as you know, I suppose, Judge? A. Well, I never paid him, Judge, but whatever fees he was entitled to from the Clerk, the Clerk, I presume, paid him.

Q. Yes. And the only time, then, that you ever appointed him sergeant-at-arms— A. I do not think he was ever paid for attending the sittings of the court. I do not think there were any fees prescribed for that.

Q. Yes. Well, that would be one day a week? A. That is one day a week, sir.

30 Q. Yes. And you did appoint him a sergeant-at-arms without pay on the 26th of March, 1925, didn't you? A. I did.

Q. And that was for a temporary emergency of some kind? A. I think his term of office as constable had expired, and there wasn't any date for an appointment, or something, and it was to take care of the serving of papers during that time.

Q. So that, at that time, you appointed him temporary sergeant-at-arms? A. That is right, sir.

40 The Court: Do I understand, Judge, that when you took office in February, 1924, you

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did not change his designation, but you made a formal order, that is, not necessarily in writing, but in January, 1925, as sergeant-at-arms in the court?

The Witness: No. I don't—not as sergeant-at-arms, sir.

10

Mr. McGinnis: May I clear that up? In 1924, the Judge came on, and it was a verbal order he gave the plaintiff to continue his work, acting—doing the duties of a sergeant-at-arms. Then there came a period of about three weeks, I think the paper shows—I have forgotten the date—

Mr. Zabriskie: Supposing we put it in evidence.

Mr. McGinnis: All right.

20

(Paper marked Exhibit D-1 in evidence.)

Mr. McGinnis: It does not show the time, it does not help us any, the 26th of March, 1925.

The Witness: My recollection is that his term of office as constable expired, and before the Mayor and Council of Rutherford convened again to reappoint him, we needed him to serve papers, and the act provided that I might appoint a sergeant-at-arms, and so, during that period, I appointed him sergeant-at-arms.

30

The Court: What was he before you appointed him in 1925?

The Witness: He was a constable.

Mr. McGinnis: May I then supply the—if counsel will permit me—on the 7th of April, he became constable again, so that temporary order covered from the 26th of March to the 7th of April, if your Honor please.

40

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Will you let me put that on the record, 7th of April?

Mr. Zabriskie: If that is the fact.

The Witness: That is the fact.

Mr. Zabriskie: Yes.

10 Mr. McGinnis: All right. That is all.

Mr. Zabriskie: I think that is all.

Mr. Breslin: That is all. We rest.

Mr. McGinnis: Now, I may say, if your Honor please, I have plenty of witnesses as to what the constable did during all those years.

The Court: I do not suppose there is any dispute of services rendered. That is just a question of—

20 (The plaintiff rests.)

Mr. Zabriskie: I want at this time now to make a motion for a nonsuit on the ground that the plaintiff has not made out a case which, under the law, would justify recovery. I mention the same grounds that I made before. I would say that there is no legal justification for the paying of any salary under these circumstances anywhere in the statute.

30 The Court: Of course, all of these acts, that is, the act of 1920, and the act of 1923, all refer to section 10 of the District Court Act of 1898, and whatever office the plaintiff holds, it is by virtue—that is, without considering the act of 1926 as yet, the act provides for the appointment by the Court of the sergeant-at-arms, and fixes compensation for the service of \$1.00 a day upon the actual sittings of the Court, to be paid
40 monthly, and then it provides for their term.

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Now, the act of 1920 refers to section 10, and refers to the fees and a salary; but before we can determine whether the amendment of 1920 or the amendment of 1923 has any application to the plaintiff, we must get his designation as sergeant-at-arms. Now, under the order, that is, under this signed by Judge Fake, there is an appointment as constable or, rather, an appointment to the list. 10

Mr. McGinnis: Yes, sir.

The Court: The statute makes a distinction between a constable and a sergeant-at-arms.

Mr. McGinnis: Yes, sir.

The Court: So, taking the language "constable," knowing it has a definite meaning in the act as distinguished from "sergeant-at-arms," we cannot say that Judge Fake's appointment was the appointment under which he claims a right to compensation as sergeant-at-arms. 20

Mr. McGinnis: No. We do not claim that, sir.

The Court: Now, we come to Judge Ely. Under the power of the Court to designate one as sergeant-at-arms, it is not necessary that a sergeant-at-arms be a constable. Now, if when he served under the direction of Judge Ely, he served as a constable, then we find the order to meet the time when the appointment as constable has expired, we find a temporary appointment of sergeant-at-arms, and the acceptance of that by the plaintiff. So it follows that up to the time of this order, he was not claim- 30 40

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ing sergeant-at-arms. Now, if, upon the expiration of this order, he went back to work, he went back under the designation of his office as constable, and that brings us to the act of 1926.

10 The act of 1926 provides that in all counties and all district courts, other than counties of the first class, having a constable, said constable shall be entitled to all the rights and privileges of the sergeant-at-arms, provided they have performed the duties required of a sergeant-at-arms, and receive compensation as now provided.

20 Now, this act changes the other act in the sense that, irrespective of whether he is a sergeant-at-arms by designation, if he is a constable who is engaged for four years in the work now required by a sergeant-at-arms, then he is entitled to the rights and privileges of a sergeant-at-arms.

 Now, what does "rights and privileges" mean? Does it mean compensation?

30 Mr. McGinnis: Yes, sir. Of course, your Honor, I want an opportunity to correct your Honor's impression as to my point in this case later on, but I would say for the moment that that does include compensation, of course, but I am not laying stress on that.

 The Court: Now, have you any evidence, Judge?

 Mr. Zabriskie: Have I evidence?

 The Court: Have you any evidence to offer?

40 Mr. Zabriskie: I will have, yes. But does that mean that that is to be retroactive, this

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act of 1926, going to take us back to 1921, compensation for—

The Court: I would rather hear the rest of the testimony before I decide that. I will hear your testimony, Judge.

Mr. Zabriskie: Is your Honor ruling on the motion? 10

The Court: No. I am not ruling yet.

Mr. McGinnis: I will have an opportunity to make my position a little clearer? I am afraid I am not very clear in what I intended to convey to your Honor, namely, that at all times this man, excepting that two or three weeks, except when he was acting as a temporary sergeant-at-arms, at all times he was a constable, never a sergeant-at-arms. 20

The Court: That is true.

Mr. McGinnis: And I do not claim, and we have never claimed intentionally, that this certificate that Judge Fake made, was—

The Court: What compensation are you claiming for?

Mr. Breslin: If your Honor please, if I may appear at this time, our contention is that this man was a constable just like any other constable, that due to Mr. Davids' physical inability, he was performing the duties of a sergeant-at-arms, and to cover a situation of that kind, in 1920 the Legislature passed this act, and here is the part that we rely on. We rest our case on this proviso,—provided, however, that if there are any constables in any of the aforesaid counties now acting as sergeants-at-arms— we contend that is what he was doing, that 30 40

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10 he was only an ordinary constable, that he was never a sergeant-at-arms, but because of the fact that Mr. Davids was unable to perform his work, the Legislature passed this law to cope with the situation that existed in East Rutherford, and that is the basis of our case.

20 Mr. Zabriskie: I think, your Honor please, that counsel overlooks the original history of the District Court Act. Your Honor will recall that originally there was no such thing as sergeant-at-arms, they were all constables, but there were some courts, finally, which, under the act, could appoint sergeants-at-arms. Now, they did not make any distinction between those courts which had one constable acting as a sergeant-at-arms, and one which had one regularly designated as such, so they put that provision in the law, if there are any constables in the aforesaid counties now acting as sergeants-at-arms, having in mind such courts as I have indicated, they were to receive the same compensation. On this theory, you could have a dozen men helping out a single man and they would say they were all entitled to compensation under this act. That would be very far-fetched.

30 Mr. Breslin: The Legislature has provided payment to the man who actually performed the work, and the question is this: Whether Sturtevant is within the scope of that proviso, and the uncontradicted testimony at this stage of the case is that Mr. Davids was unable to perform his work, and Sturtevant did his work.

40

Guy L. Fake, direct.

The Court: Well, I will hear your testimony.

Mr. Zabriskie: Yes. I will call Judge Fake.

(THE DEFENDANT'S CASE.)

10

GUY L. FAKE, sworn as a witness on behalf of the defendant, testified as follows:

Direct examination by Mr. Zabriskie:

Q. Judge Fake, you were the Judge of the District Court up until January 24, 1924, and had been for a long time, preceding all the time that was involved in this controversy, up till January 24, 1924? A. I was.

20

Q. Now, you made the order that has been referred to?

Mr. Zabriskie: It is your exhibit.

Mr. Breslin: It was not marked, your Honor. Have you a copy of this appointment of Judge Fake's?

Mr. McGinnis: The Judge has the original.

Q. You made the order of March 10th, 1921?

30

Mr. Breslin: Suppose we offer it at this time.

(Paper marked Exhibit P-1 in Evidence.)

Q. Judge, will you outline the circumstances, and tell us the conversation that you had with Mr. Sturtevant at the time that that order was signed?

Mr. Breslin: Objected to, if your Honor please, on the ground it is immaterial. Whatever conversations were merged in the written authorization, the written order.

40

Guy L. Fake, direct.

Mr. Zabriskie: Well, you brought out some evidence there that did not seem to have that theory.

Mr. Breslin: I will withdraw the objection.

10 A. May I see a copy of the District Court Act?

Mr. Breslin: What do you want, Judge?

The Witness: I want to see a copy of the District Court Act.

The Court: Here it is, right here.

The Witness: I want to see the one that is in the book there (indicating), Judge, if I may.

20 Q. (Handing book to the witness.) Do you want to see that Section 5? A. I do not know that I could give verbatim the conversation that I had with Mr. Sturtevant prior to the order which I made on the 10th day of March, 1921, but pursuant to Paragraph 5 of the District Court Act, the Judge of the District Court was empowered to designate constables, and at that time, under another section of the District Court Act, it was provided—or, I will say, prior to that time, prior to 1920, I think it was provided that whenever a District Court had

30 a sergeant-at-arms, then, and in that—

The Court: Section 11.

A. (Continuing.) Is that it, Section 11?

The Court: Sections 10 and 11.

A. (Continuing.) Yes. Then, in that event, no fees, per diem, or otherwise, were to be paid to the—to such constable as might be designated.

40 We had been having a little difficulty in getting competent and efficient work done in the service

Guy L. Fake, direct.

of process, and, as I remember it, Captain Ely, one of the older members of the bar, came to me and recommended the appointment of Mr. Sturtevant who, at that time, was employed in Captain Ely's office. And upon going into the matter, and thinking it over—

10

Mr. McGinnis: It seems to me, this is all—

Mr. Breslin: No. We won't object.

A. (Continuing.) I concluded that Mr. Sturtevant was a proper man for the appointment; and, furthermore, I desired to have the work of the court done by men whom I knew, and whom I knew had filed their bonds and properly qualified, and so, in the designation of constables, I think it was always done in writing.

20

After Mr. Sturtevant was appointed, I should judge a year or two, a question arose one day in court as to whether or not process had been properly served; and at or about that time, I concluded that it would be wise to have the service of the constables in the courtroom on court days, so that if any question arose concerning a proper serving of process, or anything involved in any of the cases, that the constables would be there and could be questioned on the service of process, or any other question that might come up in which they as constables, would be interested. Furthermore, that they would be then familiar with the proceedings that were going on in court, and could govern themselves accordingly in any of the duties that they had to perform afterward.

30

At the time when Mr. Sturtevant was first appointed, I remember having a conversation with him, and explaining to him that no salary would

40

Guy L. Fake, direct.

be provided for him, and no fees other than the fees that were fixed by statute by way of service of process, and he was quite willing to serve under those conditions, provided he could get enough work so that it would pay him.

10 Q. As constable? A. As constable.

Q. Yes? A. And so, through the Clerk's office, and through my direction, the Clerk saw to it that Mr. Sturtevant should get the burden of the work so that it would give him sufficient remuneration so that he could devote his time to the work, and that the fees that were allowed by law would be sufficient to give him a proper income. Along that line we worked, and never at any time during—
20 never, at any time while I was on the bench in the District Court, did any question arise between us. He was a capable officer of the court and understood thoroughly that the fees he was to get were the fees fixed by—

Mr. Breslin: We ask the word "understood" be stricken out.

The Court: Strike it out.

A. (Continuing.) I will say this: In the beginning I had a conversation with him and explained
30 to him that there would be no fees other than the fees that were fixed for the service—

Mr. Breslin: I object to this.

The Court: There is no question pending.

Q. You mean his designation as contained in your order there, as an officer, as a constable who could serve process for that court? A. Yes, sir.

40 Q. Now, up until the time when you finished your term of office, which I believe was in January

Guy L. Fake, direct.

or February, 1924, was he ever required to perform the duties of a sergeant-at-arms in the courtroom, as to maintaining order and so forth? A. Oh, at times, yes, but not regularly. There were times when he did assist and volunteer to do that work, without pay.

10

Mr. Breslin: Again, we ask the word "volunteer" be stricken out.

The Court: Well, there is no jury here.

Mr. McGinnis: No.

Q. Up until the time when your office terminated, was Davids incapacitated for work for any length of time that you know about? A. Oh, not for that sort of work in the courtroom, he was never incapacitated.

20

Q. He was a regularly appointed— A. Oh, yes.

Q. —sergeant-at-arms during that period of the bill which comes up until January 24, 1924, which I take to be the date of the termination of your term of office; up to that time, he was performing the duties of sergeant-at-arms? A. He was.

Q. And the other gentleman, Mr. Sturtevant, was not?

Mr. Breslin: I object to that as calling for a conclusion.

30

The Court: Just a minute. You are testifying.

Q. Do you know what the duties of a sergeant-at-arms are? A. Why, simply maintaining order in the courtroom, and administering to the commands of the Court.

Q. And was that done by Sturtevant as a regular occupation? A. Not as a regular occupation, no.

40

Guy L. Fake, cross.

Q. It was attended to by Mr. Davids? A. It was attended to by Mr. Davids.

Mr. McGinnis: Again, counsel is testifying.

10 Q. Then do I understand the only designation that you ever gave to Mr. Sturtevant is the one which has been offered here in evidence in writing today? A. That is all.

Q. Nothing further? A. Nothing further.

Cross examination by Mr. McGinnis:

Q. He did, Judge, attend upon juries? A. Oh, now and then, spasmodically, not regularly, no.

20 Q. You kept no record as to when he did and when he did not, have you? A. I would say that the occasions were extremely rare when Peter Davids, the sergeant-at-arms, did not officiate in polling the jury, swearing the jury, and attending to the ministrations of the court.

Q. But you did have Sturtevant regularly in court on the court day? A. Mr. Sturtevant?

Q. Yes, or no, please? A. Well, I have to fix a time on that, Senator. Not at the beginning.

30 Q. I think you stated in your direct examination, about a year after, there came a time in the court when you felt that the constables that were serving process should be there; and from time on, these constables were there, and Mr. Sturtevant was there? A. They were there, and Mr. Sturtevant was there.

Q. And that continued until you went out of office, what was it, January, 1924? A. 1924, I think.

Q. Yes. A. January or February. I think it was February.

40 Q. Whenever it was. And you were succeeded by Judge Ely? A. By Judge Ely.

Guy L. Fake, redirect.

Mr. Breslin: That is all.

Mr. Zabriskie: I think I will call Mr. Davids.

PETER DAVIDS, sworn as a witness on behalf of the defendant, testified as follows: 10

Mr. Zabriskie: I recall Judge Fake.

(Witness Excused.)

GUY L. FAKE, recalled as a witness on behalf of the defendant, testified as follows:

Direct examination by Mr. Zabriskie:

Q. At the time of the making of the order that has been offered in evidence here, under date of March 10th, 1921, was there an understanding as to whether or not the employment— 20

Mr. Breslin: Objected to.

Q. —was to be with or without pay, or subsequently—

Mr. Breslin: Objected to.

The Court: I sustain the objection. We have been into that. 30

The Witness: Your Honor struck that out on the ground I was volunteering it on another question.

The Court: Yes. I will allow that.

A. Yes. I had an agreement with him that he was to receive no remuneration for his attendances upon court, and would be entitled only to such fees as he obtained in the service of process, and outside work. 40

Mr. McGinnis: That is all.

Mr. Breslin: No cross examination.

Peter Davids, direct—cross.

PETER DAVIDS, recalled as a witness on behalf of the defendant, testified as follows:

Direct examination by Mr. Zabriskie:

10 Q. Mr. Davids, you are the Sergeant-at-arms that has been spoken of in the Second District Court?

A. Yes.

Q. And you were the Sergeant-at-arms when Judge Fake retired, were you not? A. Yes.

Q. And you have continued to be up until the present time? A. Yes.

Q. And have you been doing the—what work have you been doing since Judge Fake's retirement from that court? A. Do you want the whole thing?

20 Q. I say, since Judge Fake left the court, what have you been doing? A. I go there in the morning and get the mail and arrange the things, and during court days, arrange the court room and the judge's desk, and so forth, and put the supplies out. I open the mail, and help the Clerk to get out the papers.

Q. Do you carry out whatever orders the judge makes for you? A. Whatever orders the judge makes for me.

30 Q. And you did the same before the judge went on the bench, before Judge Ely was on the bench?

A. Yes.

Mr. Zabriskie: I think that is all.

Cross examination by Mr. Breslin:

Q. How old are you, Peter? A. What?

Q. How old are you? A. Well, I am about between seventy-three and four.

Q. Aren't you eighty-six? A. Between seventy-three and four.

40 Q. Since Judge Ely went on the bench, Mr.

Peter Davids, redirect.

Sturtevant has been calling most of the juries? A. What?

Q. I will get over here. A. No. You can stand there. I can hear you.

Q. Since Judge Ely was appointed, Mr. Sturtevant calls most of the juries? A. No. 10

Q. Who does? A. They are called by the different ones. I have called some of them, Mr. Hilles calls some, and he has called some.

Q. Since Judge Ely has been appointed, you have called very few? A. No; quite a number.

Q. Well, give us some of the cases, now? A. I cannot give you the cases, for I don't keep track of them.

Q. Since Charlie Hill has been assigned there, you haven't done anything at all, have you? Since Mr. Hill was appointed, with Mr. Sturtevant, they do all the work, don't they? A. I never see them do any work there. 20

Q. You do not hear well, do you, Peter? A. Yes. I say I didn't see them do any work there.

Q. You say they don't do all the work? A. I say I never see them do any work there.

Q. You never fell asleep in court, did you? A. No. 30

Mr. Breslin: That is all.

The Court: That is all.

By Mr. Zabriskie:

Q. I don't suppose you know— A. I may have closed my eyes, but I wasn't asleep.

Q. You are about the same age as Sturtevant, aren't you? A. I don't know how old he is. I never asked him.

Mr. Zabriskie: I withdraw the question. 40

Joseph Policastro, direct.

A. (Continuing.) I don't inquire people's business, or stick my nose into their business.

Mr. Zabriskie: The defense rests.

 REBUTTAL.

10

JOSEPH POLICASTRO, sworn as a witness in rebuttal, testified as follows:

Direct examination by Mr. Breslin:

Q. Mr. Policastro, you are Clerk of the East Rutherford District Court? A. Yes, sir.

Q. And how long have you been Clerk of that court? A. Since October 6th, 1921.

Q. And you served under Judge Fake? A. I did, sir.

20

Q. And you are serving under Judge Ely now? A. Yes, sir.

Q. Now, since Judge Ely took the bench, who has been doing most of the work as sergeant-at-arms?

A. Well, it has been equally distributed between—well, may I ask a question?

Q. Just answer that question. A. Insofar as serving of papers?

30

Q. Serving papers and calling juries, and so forth? Attending court? A. Well, Mr. Sturtevant serves most of the summons.

Q. Who picks the juries? A. Well, I give the venires to Mr. Sturtevant or to Mr. Hill.

Q. Has Mr. Davids been doing any of that work to any extent? A. Not of late.

Q. I see. A. Not since Judge Fake's term, the reason for that being—

The Court: No.

40

Q. Never mind about the reason. Now, after

Joseph Policastro, cross.

Mr. Sturtevant was appointed by Judge Fake, was he in attendance at the court sessions on Tuesday?

A. Yes.

Q. Every Tuesday? A. Yes, sir; as far as I can remember.

Q. And during Judge Fake's term, he called a lot of the juries? A. Yes, sir. 10

Q. And has Mr. Davids been very active since you have been there? A. Well, for a man of his age, I would say yes.

Q. Well, has he been active, has he been around? A. No. The papers that came in, if they are around the same locality, Rutherford, I generally give them to Mr. Davids, because they are around in the vicinity of the court.

Q. You are Clerk down there? A. I am, sir. 20

Q. Mr. Davids testifies that he helps you, he says he opens the mail. A. Oh, yes.

Q. And helps the Clerk? A. Yes, sir; that is correct.

Q. Does he enter the cases in the book? A. No, he does not do that.

Q. Well, he does some of your work? A. Yes, sir.

Q. And in the meanwhile, Mr. Sturtevant is doing his work? A. Yes, sir. 30

Mr. Breslin: That is all.

Cross examination by Mr. Zabriskie:

Q. He does all he is asked to do by the Judge, doesn't he? A. Sir?

Q. He does all he is asked to do by the Judge? A. Well, I cannot answer for Judge Ely. I do not know what the Judge asks him.

Q. You are generally all right there, aren't you? 40

Joseph Policastro, cross.

A. Well, Judge Ely has his office in Rutherford. The court is in East Rutherford.

Q. But you never heard Mr. Davids refusing to obey an order? A. Oh, no.

10 Q. And he is on the job all the time, he is there, isn't he, attending to his duties? A. What do you mean, on court days?

Q. Yes. A. Yes. Mr. Davids is there every court day, yes. And so is Mr. Hill and Mr. Sturtevant.

Q. And Mr. Hill is a regularly appointed sergeant-at-arms, isn't he? A. Yes, sir.

Q. And Mr. Davids is a regularly appointed sergeant-at-arms? A. Yes, sir.

20 Q. And Sturtevant, he is a constable that has been serving a lot of the summons?

Mr. McGinnis: Now, I object to that.

The Court: I am not interested in that.

A. Am I to answer that question?

The Court: No.

Mr. Zabriskie: Only the question of what is being done by Davids.

30 The Court: No. What Davids is doing is—because the act provides one or more, so it does not make any difference whether he was doing anything or nothing.

Q. You said the work is about equally distributed? A. Do you mean summons? No. What I meant, the executions that I have, that I get, I give to Mr. Hill.

Q. Yes. A. Mr. Davids hasn't had an execution, I could safely say, within the last three years.

40 Q. Sturtevant got about a hundred behind, himself, of his executions, didn't he? A. Now?

Q. Some time back? A. Well,—

Seward B. Sturtevant, direct.

The Court: Just a minute. I am not at all interested in that. You are delaying the proceedings.

Mr. Zabriskie: I think that is all.

The Court: That is all.

Mr. McGinnis: Have you rested?

10

Mr. Zabriskie: Yes.

SEWARD B. STURTEVANT, recalled as a witness in rebuttal, testified as follows:

Direct examination by Mr. McGinnis:

Q. Mr. Sturtevant, at the time you talked with Judge Ely, or Judge Fake, rather, with regard to attending court and doing these other duties, was there anything said about salary? A. No, sir; nothing said to me, as I remember it, at all, about the salary.

20

Q. You expected such compensation as the law would give you?

Mr. Zabriskie: I object to what he expected.

The Court: I sustain the objection.

Mr. McGinnis: All right.

Cross examination by Mr. Zabriskie:

30

Q. What was the whole conversation at that time? A. Well, he wanted me to be there on court days to help preserve order.

Q. Don't you know that the only reason he—

Mr. McGinnis: Let him finish his answer.

The Court: Do not argue with the witness.

A. To preserve order.

40

Seward B. Sturtevant, cross.

Mr. Zabriskie: I ask that be stricken out as not responsive. I did not say what he wanted. I wanted to know what he said.

The Court: Just one minute, now.

Mr. Zabriskie: Yes.

10 The Court: Do not argue with the witness.

Mr. Zabriskie: I am not arguing with the witness, sir.

The Court: Now, Judge Zabriskie, I have ears. Now, ask a question, and do not argue with the witness.

20 Q. Isn't it a fact that Judge Fake told you that he wanted you to be there on court days so that in case there came up any controversy as to the service of process, that you would be there to explain or to justify the making of the service in the way in which it was actually done, or words to that effect?

30 Mr. McGinnis: I object. He has not withdrawn the other question. There are two questions here. If he withdraws the other question, well and good. He was asked what the entire conversation was, and the witness started to answer it; there was an interruption.

Mr. Zabriskie: I withdraw the former question, and ask that.

Mr. McGinnis: I submit he is entitled to answer that former question. He had started to answer. I do not think it can be withdrawn. They cannot gamble with the question.

40 The Court: Withdraw both questions.

Motion for Direction of Verdict.

Mr. Zabriskie: Then I will ask the last question, if the stenographer will read it.

(Question read as follows):

“Q. Isn't it a fact that Judge Fake told you that he wanted you to be there on court days so that in case there came up any controversy as to the service of process, that you would be there to explain or to justify the making of the service in the way in which it was actually done, or words to that effect?” A. No, sir. 10

Mr. Zabriskie: That is all.

Mr. Breslin: That is all.

Mr. McGinnis: We rest.

Mr. Zabriskie: I make a motion for the direction of a verdict on the same grounds that have heretofore been indicated, that the case as it stands now does not make out a case under any statute or decision of this state which entitles the plaintiff to the compensation that he asks in his complaint. 20

The Court: I am satisfied from the time of Judge Fake's designation to the appointment of Judge Ely that the plaintiff is not entitled to compensation on the basis of the act.

I am satisfied, however, from the appointment of Judge Ely, that the plaintiff has made out his case, and the act of 1920 has application with reference to the salary. The act of 1926— 30

Mr. McGinnis: The 1923 act fixes the salary rather than 1926. The 1923 is the same as 1920, except to increase the salary.

The Court: Yes. I mean, taking the act of 1920 as a basis.

Mr. McGinnis: Yes, sir.

The Court: I hardly see the application of 40

Motion for Direction of Verdict.

1926. The judgment will be in favor of the plaintiff from the time of Judge Ely's appointment.

Mr. Zabriskie: You say his appointment and incumbency into office of Judge Ely?

The Court: Yes.

10 Mr. McGinnis: I will make a computation afterwards.

The Court: So, from the time of 1921, from the time of Judge Fake's, I am satisfied that Judge Fake did not appoint him with a view that he would get this compensation.

Mr. McGinnis: All right, sir.

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Exhibit P-1.

<p style="text-align: center;">In the Matter</p> <p style="text-align: center;">of</p> <p>The Application of SEWARD E. STURTEVANT for appointment to serve papers in the Second Judicial District Court.</p>	}	Order.	10
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Mr. Seward E. Sturtevant having applied to be designated as one of the constables to whom writs and orders issuing out of this court may be handed for service and it appearing that he is regularly elected constable of the Borough of Rutherford and has filed his bond as such with the Borough Clerk, it is on this 10th day of March, 1921, ordered that he be placed upon the list of constables to be selected by the clerk for the service of any writs, orders or other process that may be required by law or the order of the court.

GUY L. FAKE,
Judge.

Exhibit D-1.

DISTRICT COURT
OF THE SECOND JUDICIAL DISTRICT
OF THE COUNTY OF BERGEN.

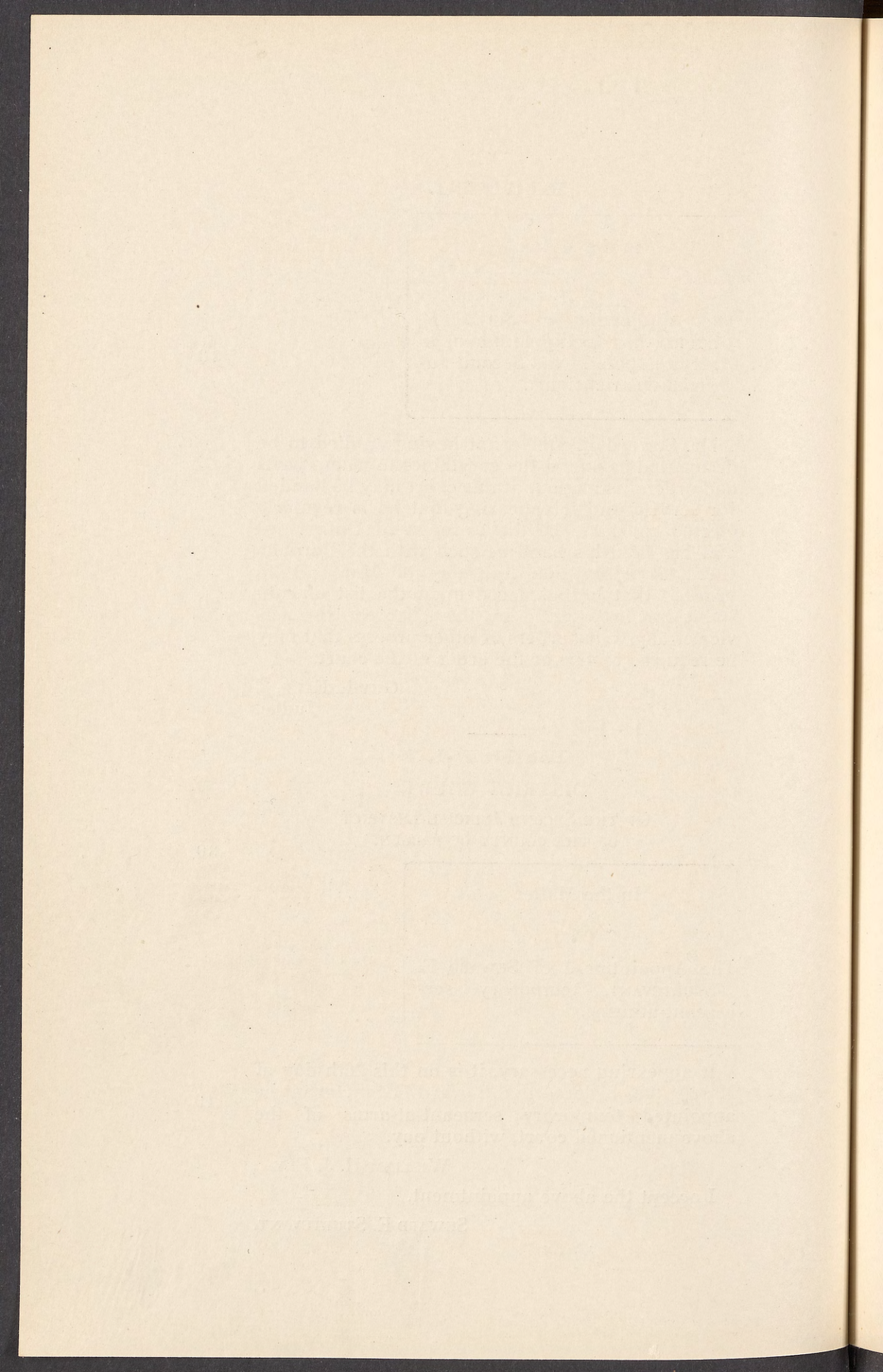
<p style="text-align: center;">In the Matter</p> <p style="text-align: center;">of</p> <p>The Appointment of SEWARD E. STURTEVANT, temporary sergeant-at-arms.</p>	}		30
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It appearing necessary, it is on this 26th day of March, 1925 ordered that Seward E. Sturtevant be appointed temporary sergeant-at-arms of the above mentioned court, without pay.

WILLIAM H. J. ELY

I accept the above appointment.

SEWARD E. STURTEVANT.



New Jersey Court of Errors and Appeals

SEWARD B. STURTEVANT,
Plaintiff-Respondent,

v.

COUNTY OF BERGEN,
Defendant-Appellant.

Action at Law.

On Appeal from
New Jersey
Supreme Court.

BRIEF FOR DEFENDANT-APPELLANT.

This is an appeal in a Supreme Court action tried at the Bergen Circuit before Judge EDWIN C. CAFFREY, without a jury.

The plaintiff sued to recover for services rendered while a constable, claiming that for said services he should be paid the same compensation as if he had been acting as sergeant-at-arms. He relied upon the provisions of Chapter 58 of the Laws of 1920 which was approved March 30th, 1920, and Chapter 203 of the Laws of 1923 which was approved March 23rd, 1923.

He sued to recover for the period extending from March 10th, 1921, to December 23rd, 1926.

A part of that time included the concluding period of the term of office of Judge Fake, and the remainder included time while his successor, William H. J. Ely, was judge.

Judge Fake's term of office expired February 26th, 1924, and on that date he was succeeded in office by Judge William H. J. Ely.

The Court found that the plaintiff was not entitled to recover for services rendered during the time of Judge Fake's term of office, but found a

judgment in favor of the plaintiff from the time of Judge Ely's appointment—from February 26th, 1924, until December 23rd, 1926.

The verdict was for \$3,477.00.

The defendant made a motion to strike out the complaint (pp. 19 and 22), a motion for nonsuit (p. 32) and a motion for direction of a verdict (p. 51).

This appeal is based upon the refusal of the Trial Court to strike out plaintiff's complaint, the refusal to grant a nonsuit, and the refusal to direct a verdict.

I.

The Trial Court erred in its refusal to strike out plaintiff's complaint.

Both Chapter 58 of the Laws of 1920 which was approved March 30th, 1920, and Chapter 203 of the Laws of 1923 which was approved March 23rd, 1923, could only be of advantage to the plaintiff if he could be brought within the terms of this proviso contained in each:

“provided, however, that if there are any constables in any of the aforesaid counties now acting as such sergeant-at-arms, they shall receive the same compensation as herein provided for, for sergeants-at-arms.”

Each of said laws by their respective provisions took effect immediately upon passage and approval by the governor.

The complaint as originally filed, and as amended, failed to aver that on March 30th, 1920, or on March 23rd, 1923, the plaintiff was acting as “such sergeant-at-arms.”

II.

The Trial Court erred in its refusal to grant a nonsuit.

Attention is called to the fact that under the original district court act, Chapter 228 of the Laws of 1898, page 557, Section 5:

“The ministerial officers of each of said courts shall be a clerk, and such of the constables of the city or county wherein such court may be established as the judge thereof may designate.”

Section 11 of the same act provided as follows:

“The judge of any district court may appoint a sergeant-at-arms to attend the sittings of the court, preserve order therein, and perform such other duties as said judge may prescribe; such sergeant-at-arms shall during his continuance in office be invested with and possess all the rights, privileges, powers and duties of a constable of such city or county, and all papers, warrants and processes issued out of any court of record in this state shall be as binding and effectual when served or executed by such sergeant-at-arms as if served or executed by a constable.”

In the early stages of the existence of the district court in this state, the constable was an essential officer, but the district court judges had the right to appoint a sergeant-at-arms for certain purposes. The legislation designed to increase the salary of the sergeants-at-arms placed them in a position where they became more favorably situated from the point of view of compensation than the constables. No doubt several of the courts had constables only rendering service. They did all the work that came within the scope of the sergeants-at-arms. It was, therefore, logical that

such constables receive the same compensation as provided for, for sergeants-at-arms.

It is respectfully submitted that the act was not intended to apply to courts that already had in office a sergeant-at-arms.

The testimony at the conclusion of plaintiff's case was undisputed that during all of the time for which Sturtevant claimed compensation, Peter Davids was in office as sergeant-at-arms of the district court.

III.

The Trial Court erred in its refusal to direct a verdict.

What is said under the preceding point, applies to this point. To what has been said under the preceding point, the following may be added:

The Trial Court must have found, as a matter of fact, that Sturtevant was not a constable acting as sergeant-at-arms prior to the incumbency of Judge Ely, which began February 26th, 1924.

He therefore could not have become the beneficiary of the provisions of either Chapter 58 of the Laws of 1920, which affected the cases of constables acting as such sergeants-at-arms on March 30th, 1920, or of Chapter 203 of the Laws of 1923, which affected the cases of constables acting as such sergeants-at-arms on March 23rd, 1923.

Respectfully submitted,

JOHN B. ZABRISKIE,
Attorney for Defendant-Appellant.

124 MAR. 1. 1928

New Jersey Court of Errors and Appeals

Seward B. Sturtevant, Plaintiff-Respondent, vs. Board of Chosen Freeholders, County of Bergen, Defendant-Appellant.	} On Appeal from Bergen Circuit
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BRIEF ON BEHALF OF RESPONDENT

STATEMENT OF FACTS

The appellant seeks to reverse a judgment in favor of the plaintiff for the sum of \$3477.00, and costs.

The contention of the plaintiff as set forth by his amended complaint (See amendment P. 6), claimed that from about March, 1921, being a constable of the County of Bergen, Judge Fake, Judge of the Second Judicial District Court, who had theretofore designated him as such constable to serve writs and processes out of the court, directed him also to perform the duties of a sergeant at arms, and that following the directions of Judge Fake, the plaintiff did perform these duties, and continued to do so throughout the term of office of Judge Fake, and when Judge Fake retired from office to be succeeded by Judge Ely in January, 1924, that thereafter, the plaintiff was directed by Judge Ely to continue with his duties as sergeant at arms of the court, and that he had done so up to the time of the trial of the action.

These facts were testified to by the plaintiff. Judge Ely was also called as a witness on behalf of the plaintiff, and he corroborated plaintiff's testimony in all respects. The defendant called former Judge Fake, who although in some respects corroborated the story of plaintiff, in other respects failed to do so. Other witnesses were called in support of plaintiff's testimony, viz., Joseph Policastro, Clerk of the Court, and the result was that the Judge of the Circuit Court before whom the case was tried, without a jury, found against the plaintiff, as to the period covered by his services under Judge Fake, but found in favor of plaintiff as to his services under Judge Ely, that is to say, from the 1st of January, 1924, and accordingly, rendered judgment for the amount above.

It never was contended and it is conceded, that the plaintiff was not formally appointed sergeant at arms of the court, plaintiff's contention being solely that he performed the duties of a sergeant at arms. This brief is drawn without the brief of appellant before counsel, and therefore, we are assuming that perhaps appellant may contend that the plaintiff is relying upon a certain certificate made by Judge Fake, and set forth in the original complaint in paragraph four, as the justification for the performance of his duties as a sergeant at arms. That is not so.

The certificate referred to was simply set out in the complaint (P. 2 State of Case), as showing the history of the beginning of any relation between the plaintiff and the District Court, and to clear this misunderstanding, the complaint was amended, as we have indicated above by paragraph 5-A (See page 6).

POINT I.

THE LAW

As the facts conclusively showed that during the period of time found by Judge Caffrey, the plaintiff performed all the duties of a sergeant at arms of the Court, and as it is conceded that he was not a sergeant at arms by appointment, and that compensation was for his services in doing that work, however, the question arises as to his right under the law to recovery.

All the law in the case is covered by three different enactments of the Legislature, which are as follows:

Chapter 58 of the law of 1920, P. 107, is an amendment to Section 10 of the District Court Act, and its object was to re-arrange salaries of sergeants at arms. The pertinent part of this act, so far as this case is concerned, is the proviso, which reads as follows:

“In counties having less than twenty-five thousand inhabitants, an annual salary of three hundred dollars; **provided, however, that if there are any constables in any of the aforesaid counties now acting as such sergeants at arms, they shall receive the same compensation as herein provided for sergeants-at-arms.**”

In 1923, Chapter 203, P. 520, Section 10, was again amended. This amendment was for the purpose of increasing the salaries of the sergeants at arms in the various counties, and the pertinent part of this act is the proviso which reads as follows:

“In counties having less than twenty-five thousand inhabitants, an annual salary of four hundred and fifty dollars; **provided however, that if there are any constables in any of the aforesaid counties now acting as such sergeants at arms, they shall receive the same compensation as herein provided for, for sergeants at arms.**”

In 1926, Chapter 274, page 457, an Act was passed which reads as follows:

“An Act to enable constables in counties of the second class to receive the same rights and privileges as those now granted to sergeants-at-arms; provided, said constables are connected with District Courts.

Be it Enacted by the Senate and General Assembly of the State of New Jersey:

1. In all District Courts in counties other than counties of the first class, having a constable, said constable shall be entitled to all the rights and privileges of those of sergeants-at-arms of said courts; provided, they have within the past four years performed the duties as are now required of a sergeant-at-arms, and shall be entitled to receive the same compensation as is now provided for sergeants-at-arms.

Approved March 29th, 1926.”

Exactly why it was necessary to pass this Act counsel is at a loss to know, but surely it clinches the right (if there was any doubt on the subject) of plaintiff to recover compensation having performed the duties of a sergeant at arms.

POINT II.

THE GROUNDS OF APPEAL

Four grounds of appeal are set out, three of which viz., 2, 3 and 4, deal with the sufficiency of the evidence.

Thus, the 2nd ground:

“That the testimony failed to disclose evidence which would justify a recovery.”

3rd ground:

“The trial court erroneously denies defendant’s motion for a direction of a verdict, etc.”

4th ground:

“Because the evidence in the case did not justify the finding of a verdict.”

As we have indicated in our statement of facts, there was testimony to justify the finding that the plaintiff performed the work of a sergeant at arms. We shall not discuss the evidence with reference to Judge Fake’s period of office, as the court found against plaintiff on that, but from the period that Judge Ely occupied the bench.

Mr. Sturtevant testified that he did the work of a sergeant at arms. See his evidence at page 25, l. 20-40. See also Judge Ely’s testimony on this point at page 29, l. 20-33. The evidence on this point concludes with the following question and answer:

“Q. And from that time, did he perform the duties of a sergeant-at-arms? A. He did.”

Joseph Policastro, the Clerk of the Court, whose testimony begins at page 46, testified to the same effect. (See his testimony beginning at page 46, l. 22-35.) In any event, Judge Caffrey sat as a jury in the consideration of this phase of the case, and he found there was sufficient evidence to warrant him in finding that the plaintiff during the incumbency of office of Judge Ely, performed all the duties of a sergeant at arms, and therefore under the law was entitled to compensation, under the acts, which have been hereinbefore quoted.

It would seem from a reading of the state of case and the grounds of appeal that the validity of the acts of the legislature are not attacked. The law is plain in its provision, that any constable acting as sergeant at arms, should receive the same compensation as sergeant at arms. On the facts therefore, the court found that he acted as sergeant at arms; that he was a duly authorized constable of the County of Bergen, and that he was entitled to said compensation.

Counsel for defendant seems to misconceive, as we have pointed out before, that plaintiff was grounding his case upon his appointment by Judge Fake, under the order set out at page 2 of State of Case, but as we have stated, while emphasis was laid upon this order in the pleadings, as to show the history of the connection of the plaintiff with the Court, nevertheless plaintiff's rights do not, and it is not contended otherwise, that they grew out of this appointment. We again refer to the amendment to the complaint, as set out at page 6.

CONCLUSION

It is respectfully submitted under the law, and the facts as proven, that the judgment below should be affirmed.

WARD & McGINNIS,
Attorneys of Respondent.
PETER J. McGINNIS,
Of Counsel.

May term, 1928.

