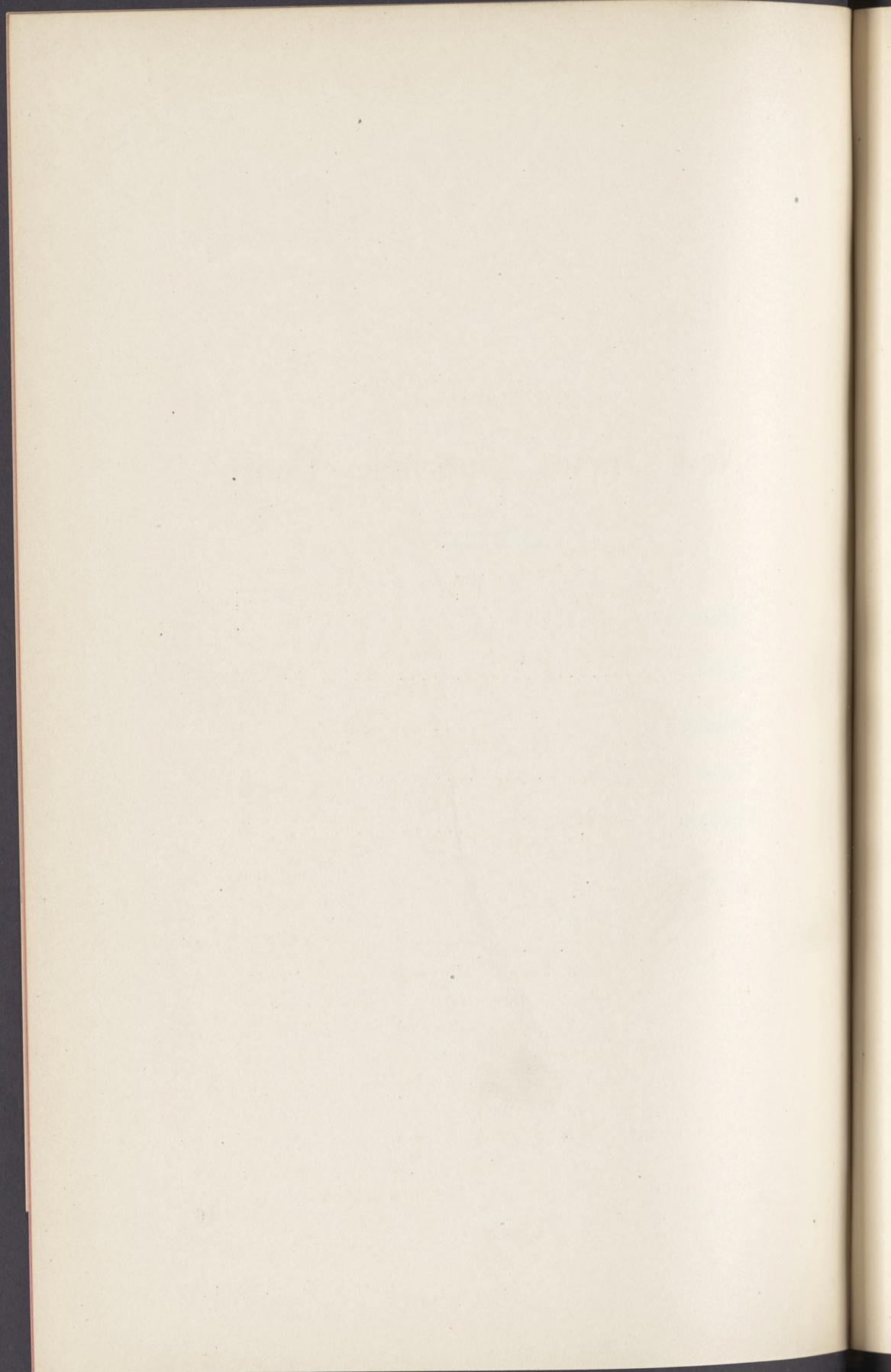


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Information.

10

New Jersey Supreme Court

THE STATE OF NEW JERSEY	{	On Quo	20
VS.		Warranto.	
THE BOARD OF HEALTH AND VITAL STATISTICS OF HUDSON COUNTY.		(Filed Nov. 19, 1912.)	

As yet of the November term, in the
year of our Lord one thousand
nine hundred and twelve.

Hudson County, ss.:

Edmund Wilson, Esquire, Attorney General of
the State of New Jersey, who sues for the said
State in this behalf, comes in his own proper per-
son here into the Supreme Court of the said State,
before the justices thereof, at the State House in
the City of Trenton, on this nineteenth day of No-
vember, in the year of our Lord one thousand nine
hundred and twelve, and for the said State of New
Jersey gives the said court here to be informed and
understand that Frank W. Mallalieu, George W.

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Information.

King, and Edwin J. G. Valentine of the County of Hudson and State of New Jersey, have, and each of them has, for a long period of time heretofore, unlawfully held, used and exercised the liberties, privileges and franchises of a Board of Health and Vital Statistics of the County of Hudson, and each of them has unlawfully held, used and exercised, and still does unlawfully hold, use and exercise the office of such a Board of Health and Vital Statistics of the County of Hudson, and its liberties, privileges and franchises, and claim to be a Board of Health and Vital Statistics of the County of Hudson, lawfully constituted, and to have, hold, use, exercise and enjoy the said office and the liberties, privileges and franchises thereof, under and by virtue of the terms and provisions of an act of the Legislature of the State of New Jersey entitled "An Act to provide for a Board of Health and Vital Statistics in the County of Hudson, and to prevent the spread of disease," approved March 27, 1874 (P. L., 1874, Chap. 484, page 569).

And the said Attorney General further says that the said Frank W. Mallalieu, George W. King and Edwin J. G. Valentine are unlawfully holding, using and exercising the office of the Board of Health and Vital Statistics of Hudson County, under color of the aforesaid act of the Legislature of this State, and of the several supplements and amendments thereto; but the said Attorney General here gives this Court to know and understand that the said act of the Legislature, and the supplements and amendments thereto, were repealed by a subsequent act of the Legislature of the State of New Jersey, approved March 31, 1887, entitled

Information.

"An Act to establish in this State, Boards of Health and a Bureau of Vital Statistics, and to define their respective powers and duties" (2 Comp. Stat., 2663).

WHEREFORE, the said Attorney General for the said State prays the advice of the Court here in the premises, and that the said Board of Health and Vital Statistics of Hudson County and the said Frank W. Mallalieu, George W. King and Edwin J. G. Valentine may be made to answer to the said State by what warrant they, or each of them, claim to hold, use, exercise and enjoy the liberties, privileges and franchises of a Board of Health and Vital Statistics of the County of Hudson, and the liberties, privileges and franchises thereof.

EDMUND WILSON,
Attorney General.

CHARLES L. CARRICK,
of Counsel for the State.

Demurrer.

NEW JERSEY SUPREME COURT.

10	THE STATE OF NEW JERSEY vs. THE BOARD OF HEALTH AND VITAL STATISTICS OF HUDSON COUNTY, et als.	} On Quo Warranto. (Filed Dec. 17, 1912.)
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20 And the said, The Board of Health and Vital Statistics of Hudson County, Frank W. Mallalieu, George W. King and Edwin J. G. Valentine, defendants, come by Nathan H. Pendergast, their attorney, and having heard the said information read, enter an appearance to said action and say that the State of New Jersey ought not to impeach or implead them, or any of them, by reason of the premises in the said information mentioned and specified, because they say that the said information and the matters therein contained are not sufficient in law and that they need not nor are any of them obliged by the law of the land, to answer thereto, and this they are severally ready to verify.*

30 Wherefore and because of the insufficiency of the said information, they pray judgment that they and each of them may be dismissed and discharged by the Court hereof and from the premises above charged upon them in form aforesaid.

Dated, December 16, 1912.

NATHAN H. PENDERGAST,
Attorney for Defendants.

WM. D. EDWARDS,
of Counsel.

NEW JERSEY SUPREME COURT.

BOARD OF HEALTH AND VITAL
STATISTICS OF HUDSON COUN-
TY, FRANK W. MALLALIEU,
GEORGE W. KING and EDWIN
J. G. VALENTINE,

Respondents,

ads.

STATE OF NEW JERSEY,

Relator.

On Quo War-
ranto. Demur-
rer to Infor-
mation. Judg-
ment for De-
fendants. (En-
tered Dec. 30,
1913.)

10

The information in this cause having been duly
filed and the respondents having filed a demurrer 20
thereto, and the cause having been argued before
the Court by Charles L. Carrick and George J. Mc-
Ewan, of counsel for the relator, and by William
D. Edwards, Joseph M. Noonan and Nathan H.
Pendergast, of counsel for the respondents, and
the Court having duly considered the same and di-
rected a judgment in favor of the respondents and
against the relator sustaining said demurrer, and
that the respondents Frank W. Mallalieu, George
W. King and Edwin J. G. Valentine be adjudged 30
to lawfully hold, use, exercise and enjoy the liber-
ties, privileges and franchises as members of the
Board of Health and Vital Statistics of the County
of Hudson; and that said Board of Health and
Vital Statistics of Hudson County was not abol-
ished or wiped out of existence by Chapter 68 of
the Laws of 1887, entitled "An Act to Establish in
this State Boards of Health and a Bureau of Vital
Statistics, and to define their respective powers

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Notice of Appeal.

and duties," but is an existing body corporate and entitled to exercise and enjoy all the liberties, privileges and franchises conferred upon it by law,

It is ordered that judgment final be and hereby is entered in favor of the respondents and against
 10 the relator without costs.

Entered December 30, 1913.

On motion of
 NATHAN H. PENDERGAST,
 Atty.

A True Copy,
 WM. C. GEBHARDT,
 Clerk.

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NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY

vs.

THE BOARD OF HEALTH AND
 VITAL STATISTICS OF HUDSON
 COUNTY, FRANK W. MALLA-
 30 LIEU, GEORGE W. KING and
 EDWIN J. G. VALENTINE.

On Quo War-
 ranto. Notice
 of Appeal.
 Filed Feby. 2,
 1914.

Take notice that the State of New Jersey appeals
 to the Court of Errors & Appeals from the whole
 of the judgment entered in this cause, on the ground
 that the Board of Health and Vital Statistics of
 Hudson County was abolished by the repealer of
 the Special Public Law enacted in 1874, under
 40 which said Board was operating, by Chapter 68 of

Opinion.

the Session Laws of 1887, entitled "An Act to establish in this State boards of health and a bureau of vital statistics, and to define their respective powers and duties."

CHARLES L. CARRICK,
Attorney of Appellant.

(Service acknowledged January 31, 1914.)

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NEW JERSEY SUPREME COURT.

February T., 1913.

THE STATE OF NEW JERSEY

vs.

THE BOARD OF HEALTH AND
VITAL STATISTICS OF HUDSON
COUNTY, et al.

20

On Quo Warranto. Demurrer to Information.
Argued before GUMMERE, Chief Justice, and Jus-
tices Bergen and Kalisch.

For the State, CHARLES L. CARRICK and GEORGE J.
McEWAN.

30

For the Demurrants, WILLIAM D. EDWARDS, JOS-
EPH M. NOONAN and NATHAN H. PENDERGAST.

The opinion of the Court was delivered by
GUMMERE, C. J.

The purpose of this proceeding is to determine
the legality of the existence of the Board of Health
and Vital Statistics of Hudson County, a public
corporation created by Chapter 484 of the laws of

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1874, P. L., page 569. The State claims that this act of incorporation was repealed by Chapter 68 of the laws of 1887, entitled, "An Act to establish in this State Boards of Health and a Bureau of Vital Statistics, and to define their respective powers and duties," passed on March 31, and found in 2 Comp. Stats., page 2656. The argument is that as the act of 1887 is a general law, providing not only for a State Board of Health and Bureau of Vital Statistics, but a local board in each of the municipalities of the State, and conferring upon such boards powers identical in many respects with those conferred on the Hudson County Board of Health and Vital Statistics, it must be presumed to have been the intention of the legislature to supersede by the later enactment all then existing county boards, and to repeal the statute under which the defendant was incorporated.

It may be that if the act of 1887 furnished the sole method for ascertaining the legislative purpose with relation to the County Board of Health of Hudson County, the contention of the State would have to be held to be sound, notwithstanding the fact that in the act of 1874 certain powers are conferred upon the County Board of Health of Hudson County, which were not afterwards conferred upon either the State Board of Health or any of the local boards created by the later enactment. But this is not the situation. On the 21st of April, 1887, twenty days after the enactment of the general board of health law, the legislature passed an act entitled, "An Act to amend the first section of an act entitled, 'An Act concerning county boards established for the protection of the public health and the registration of vi-

tal facts and statistics in counties of this state approved May 5, 1884." This amendatory act provided, "That in any and every county of this state wherein there is or may be established by law a county board of health, or county board of health and vital statistics, or other like county board for the protection or preservation of the public health, such board shall be and hereby is empowered to enact and make ordinances in relation to and for the protection of the public health and the registration of vital facts or statistics." This later statute was enacted by the legislature with full knowledge that it had a few weeks before adopted the general statute with relation to the public health, and is by implication a declaration by it that it did not intend by the general act to wipe out of existence county boards of health which had been theretofore created. To hold otherwise would be to declare that the later enactment was a mere *brutum fulmen*, possessed of no vitality, and operating upon no subect matter. When it is considered that repealers by implication are not favored, and will not be considered to have taken place unless the legislative intent to abrogate the prior enactment is entirely clear, the conclusion seems inevitable that the present County Board of Health of Hudson County is an existing corporate body, notwithstanding the enactment of the general statute upon which the State relies.

The defendants are entitled to judgment on the demurrer.

New Jersey Court of Errors and Appeals 10

THE STATE OF NEW JERSEY, <i>Appellant,</i>	}	
vs.		<i>On Appeal.</i>
THE BOARD OF HEALTH AND VI- TAL STATISTICS OF HUDSON COUNTY, FRANK W. MALLA- LIEU, GEORGE W. KING and ED- WIN J. G. VALENTINE, <i>Respondents.</i>		<i>On Demurrer to Informa- tion in the Nature of Quo Warranto.</i> 20

BRIEF FOR THE STATE.

PURPOSE OF PROCEEDING.

The State seeks, by information in the nature of a quo warranto, to oust the respondents from exercising the functions of a county board of health and vital statistics of Hudson County, on the ground that the special public law of 1874 creating such body has been repealed by later general legislation. It is contended on the part of the appellants that the special act is repealed because of inconsistency with the later act, dealing generally with the subject matter, and clearly intended

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- to be in substitution for the earlier special legislation. The general act carries with it an express repealer of all acts and parts of acts which in anywise conflict with its provisions, and is made to take effect immediately. The Supreme Court on demurrer to the State's information (*Case, pages 7-9*) has held that the implication of repealer which might arise from the terms of the general act of 1887, is negatived by the fact that the legislature at the same session, about three weeks later, passed another act which impliedly recognized the continued existence of county boards of health and vital statistics.

PROCEEDING PROPERLY BROUGHT.

- The adjudications in our state establish that an attack upon the existence of a public corporation must be conducted by the attorney general, acting as the representative of the people of the State.

- Holloway vs. Dickinson*, 69 N. J. L. (40 Vr.), 72 (S. C., Pitney, J., 1903).
State vs. Seymour, 69 N. J. L. (40 Vr.), 606 (S. C., 1903).
Steelman vs. Vickers, 51 N. J. L. (22 Vr.), 180 (S. C., Beasley, C. J., 1889).
Gibbs vs. Somers Point, 49 N. J. L. (20 Vr.), 515 (S. C., Scudder, J., 1887).

Such proceeding is properly brought against the usurping *de facto* corporation by the name which it has assumed.

- State vs. Atlantic Highlands*, 50 N. J. L. (21 Vr.), 457 (S. C., Beasley, C. J., 1888).

In the case at bar, the individuals purporting to act as the board are made parties, as well as the *de facto* corporation. All have appeared and demurred to the information.

THE STATUTES.

The board, whose existence is attacked, was created by a special public law, enacted in 1874, entitled "An Act to provide for a board of health and vital statistics in the County of Hudson, and to prevent the spread of disease" (*P. L. 1874, Chap. CCCCLXXXIV*, page 569). This act was amended from time to time, as stated more particularly below. It is claimed on the part of the state that the general act of 1887, establishing a State board of health, and local board of health in the various municipalities of the state, operated by implication or upon the ground of inconsistency, to repeal this special act under which the defendants hold office (*see 2 Comp. St., title "Health," page 2656*). Under the general act of 1887, local boards of health are constituted in every "city, borough, town and other local municipal government in this State." In Hudson County there are separately constituted boards of health in each municipality, under the general act of 1887, and the defendants, in addition, are acting and claiming to hold office as a county board of health under the special act of 1874. The object of this proceeding is to save the county the expense of maintaining a superfluous salaried board, clerks, inspectors and other officials, all of the duties with which they were charged at the time of their creation being now provided for in the general State law, and their useful functions being now discharged by the local boards of health in the various municipalities. The

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sole present use of the County board of health is to provide a means of livelihood for a useless set of officials.

- It may be premised that the special act of 1874, not only creates the County board of health, but by Section 4, makes it the duty of the board of chosen freeholders to erect on the county farm at
- 10 Snake Hill a suitable hospital, sufficiently large to provide for the care of all persons sick with any contagious disease in the County of Hudson, and to provide suitable nurses, medicines and provisions for the same, to which may be removed any person who is afflicted with a contagious disease in the county. In the attempt to differentiate the duties of the Hudson County board of health from the duties of the separate local boards of health
- 20 created under the general act of 1887, this provision of the act of 1874 was relied upon in the court below by counsel for the County board. It will be seen, however, that the erection of a contagious disease hospital and the provision for maintaining the same is committed by that act, not to the county board of health, but to the *chosen freeholders* of the county, nor does the following section of the special act of 1874, confer any different powers upon the county board than are
- 30 given to the local boards by the general act of 1887 (2 *Comp. St.*, page 2264, "*Isolation of persons having contagious diseases, etc., XIII*"). The powers and duties which it was claimed distinguished the scope of the two statutes relate to the chosen freeholders, and not to the County board of health.

AMENDMENTS TO ACT OF 1874.

- 40 The special act of 1874 in question was amended several times, by legislation general in form, but

relating to the Hudson County board alone, that being the only *county* board of health in existence. Such amendments are as follows:

P. L. 1880, page 278, chap. 187 (2 Comp. St., 2686, Sec. 107, et seq.).

P. L. 1884, page 282, chap. 193 (2 Comp. St., 2687, Sec. 109, et seq.).

P. L. 1885, page 239, chap. 182 (2 Comp. St., 2691, Sec. 121, et seq.).

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It is also claimed to have been amended by

P. L. 1887, page 211, chap. 157 (2 Comp. St., 2687, Sec. 109).

P. L. 1895, page 492, chap. 259 (2 Comp. St., 2682, Sec. 87),

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but if the state's contention is sound that the special act was repealed by the general legislation of 1887, there was no county board of health established by law when these last cited acts were passed.

The most important amendment, which amplifies and prescribes in detail the powers and functions of the Hudson County Board of Health, is found in the act concerning county boards established for the protection of the public health and the registration of vital facts and statistics in counties of this State, which became the law in 1884 (*P. L.* 1884, page 282, Chap. CXCIH). While this act is general in form, as there is but one county in the State which has a county board of health, viz.: Hudson County, this act, was in effect, an amendment to the special act of 1874 creating the Hudson County board of health and vital statistics. It is included in the compilation

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of the health laws in the Compiled Statutes (2 *Comp. St.*, title "*Health*," page 2686, §§107-120, incl.).

For the purpose of showing the similarity, and in many respects, the identity of the provisions of the special act of 1874, as amended by the act of 1884, with the general act of 1887, we subjoin a copy of the respective portions of the two statutes, prescribing the duties and powers of the respective boards, in parallel columns.

SPECIAL ACT 1874, as amended by P. L. 1884, page 282 (2 <i>Comp.</i> <i>St.</i> , 2687).	GENERAL ACT 1887 (P. L. 1887, page 80) (2 <i>Comp. St.</i> , 2663).
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20 30	That said board may and shall have power, at any special, regular or adjourned meeting thereof to pass, alter amend or repeal ordin- ances in relation to the public health and the keeping of a registry of vital facts or statistics in said county, and in so doing,	12. ORDINANCES, etc., —That the said local boards of health shall have power to pass, alter or amend ordinances, and make rules and reg- ulations in regard to the public health with- in their several juris- dictions for the follow- ing purposes * * * (<i>As to Vital statistics</i> , <i>see 1 Comp. St.</i> , 208.)
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40	I. To provide against the adulteration of all kinds of foods and drinks, or any kind of meat or vegetable not fit for human food, sold,	—ADULTERATION OF FOOD, etc.,—I. To aid in the enforcement of the law as to the adulteration of all kinds of food and drink, and
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for sale, or exposed for sale, or brought into said county for sale;

to prevent the sale or exposure for sale of any kind of meat or vegetable that is unwholesome or unfit for food;

II. To declare what shall be nuisances, in lots, streets, docks, wharves, vessels, piers and all public or private places in said county or any part thereof, and to provide for the removal or abatement of such nuisances;

—DECLARATION OF NUISANCES.—II. To define and declare what shall constitute nuisances in lots, streets, docks, wharves, vessels and piers and all public or private places.

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III. To prevent the spread of any dangerous epidemic or contagious diseases in said county or any part thereof, and to declare when the same has become epidemic;

—CONTAGIOUS DISEASES, etc.—III. To prevent the spreading of dangerous epidemics or contagious diseases, and to declare that the same has become epidemic, and to maintain and enforce proper and sufficient quarantine whenever deemed necessary.

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IV. To regulate, control or prohibit the keeping of all kinds of animals, birds and beasts,

—KEEPING OF ANIMALS, etc.—IV. To regulate, control and prohibit the keeping or

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and the slaughter of slaughtering of all kinds
the same, in said county of animals.
or any part thereof;

10 V. To regulate, control (Partly in State Board
or prohibit the carrying (2 Comp. St., page 2659,
on of all trades, manu- sec. 8b), and partly in
factures in said county, local boards (2 Comp.
which be noxious or of- St., 2664 (sec. 13).
fensive to the inhab-
itants of such county or
any part thereof, and
which is attended by
noisome or injurious
odors and otherwise in-
jurious to their estates;

20 VI. To regulate, license (Later act deals with
and control all night this. (2 Comp. St.,
scavengers, all dealers 2672, sec. 42; also see
in bones, fat and ani- subdivision X, in this
mal offal or refuse what- column, *infra*.)
soever; also all bones
and fat boiling or grease
making establishments.
30 to regulate and control
the removal of all night
soil in said county, and
the cleaning of all priv-
ies, vaults, sinks and
cesspools in said county
or any part thereof;

40 VII. To regulate, con- —OFFAL, etc.—V. To
trol and prohibit the ac- regulate, control and

cumulating of manure, compost and all decaying or vegetable substances, in any place in said county, public or private; prohibit the accumulation of offal and all decaying or vegetable substances;

VIII. To prohibit and remove any nuisance or offensive matter in any public highway, road, street, avenue, alleyway or other place, public or private, in said county, and to cause the removal of the same at the expense of the owner;

—PROHIBITION AND REMOVAL OF NUISANCES—VI. To prohibit and remove any offensive matter or abate any nuisance in any public highway, road, street, avenue, alley or other place, public or private, and to cause the removal at the expense of the owner;

IX. To provide for the proper registration of all physicians, nurses and midwives in said county;

(Covered by provisions of acts respecting Medicine and Surgery, 3 Comp. St., 3322, et seq.)

X. To compel the proper return of all births, deaths and marriages in said county, by physicians, midwives, nurses, clergymen, magistrates and all others professionally officiating at such death, birth or marriage under the pen-

—RETURN OF BIRTHS, DEATHS AND MARRIAGES.—VII. To compel the return of all births, deaths and marriages by physicians, midwives, nurses, clergymen, magistrates and other persons professionally of-

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alty for failure so to do ficiating at such death,
as provided in the acts birth or marriage;
regulating the return of
vital statistics in this
State;

- 10 XI. To regulate the (*Partly in State Board*
keeping of a registry of (*2 Comp. St., 2657, sec.*
the vital statistics of *2) and partly in local*
said county in accord- *boards (2 Comp. St.,*
ance with the State law *2669, sec. 33). see also*
as to the same; *1 Comp. St., 208.)*

- 20 XII. For all other such
purposes as are con-
nected with the public
health or the registra-
tion of vital statistics
and the practice of phy-
sicians, midwives and
nurses in said county,
with relation to such
object;

- 30 XIII. To secure the —TENEMENT
sanitary condition of HOUSES, etc.—VIII.
tenement houses, pris- To secure the sanitary
ons and all public build- condition of tenement
ings in said county. houses, jails, prisons
and all public build-
ings;

- 40 XIV. To regulate, con- —SEWERS, etc.—IX.
trol and prohibit the To regulate, control or
cleaning of sewers and prohibit the cleaning of

the dumping of garbage, and the filling of sunken lots or marsh lands in any part of said county; sewers, the dumping of garbage, the filling of sunken lots or marsh lands, and to provide for the filling up of such lots or lands;

XV. To provide for the filling of sunken lots which have become the repositories of stagnant water in the built up portions of such county. *(Partly in State Board (2 Comp. St., 2659 sec. 8b); see also subdivision IX, in this column, supra; partly in local boards (2 Comp. St. 2664 sec. 13 & 14.)* 10

—CESSPOOLS, etc.—

X. To regulate and control the method of construction, the location, the method or manner of emptying or cleaning, and the frequency of cleaning of cesspools and privies. 20

—HOUSE DRAINAGE, etc.—

XI. To regulate and control the mode of connection of house drainage and plumbing with outside sewers, cesspools or other receptacles; 30

—WATER SUPPLY.—

XII. To protect the public water-supply and prevent the pollution of any stream of water or well, the water of which is used for domestic purposes, and to order not to be used, or closed any well, the water of which is polluted or detrimental to the public health;

—ISOLATION OF PERSONS HAVING CONTAGIOUS DISEASES, etc.—XIII.

To remove persons infected to a suitable place, in case of contagious or infectious disease, where in the judgment of the board, such removal is necessary and can be accomplished without any undue risk to the person or persons diseased, and to disinfect the premises when deemed necessary;

—BURIAL, etc., OF HUMAN BODIES.—

XIV. To regulate the burial and disinterment of human bodies.

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It will be seen that where powers granted to the Hudson County board under the act of 1874, as amended by the act of 1884, seem not to be granted the local boards by the general act of 1887, it is because in some cases the omitted powers are retained by the State board and in others the powers omitted are conferred upon the local boards in some later section of the act of 1887. Still other omissions are supplied by subsequent legislation. Without reference to such later statutes, it is manifest on comparison of the two acts that when the legislature adopted the general act of 1887, it framed a new statute upon the subject which was designed as a complete scheme for the whole matter of public health regulation. There was a repealer of conflicting acts in the following terms:

“38. And be it enacted, That all acts and parts of acts which in anywise conflict with the provisions of this act be and the same are hereby repealed, and that this act shall take effect immediately.”

On the authorities cited below on this brief, the general statute of 1887 repealed the earlier legislation on this subject.

I.

NO BOARDS OF HEALTH IN COUNTIES UNDER THE ACT OF 1887.

It seems to have been the universal understanding throughout the state, that the act of 1887, does not require, even if it could be held to authorize, the establishment of *county* boards of

health. All local municipal bodies, including not only cities, boroughs and towns, but also townships, are required to have local boards of health, and there is also created a state board of health, with jurisdiction through the entire State. In practice, under the act of 1887, no county boards of health have been established. This is the only

10 reasonable construction to be put upon the scope and intent of the act of 1887, and that it was so understood by the legislature and the various municipalities throughout the state, is shown by the fact that there is but one *county* board of health in the state, viz.: that in Hudson County. It has not been imagined in any other community that the legis-

20 tation in its own territorial division, with plenary powers to make ordinances and enforce regulations for the public health, and would also create in such county a county board of health, having precisely the same functions and powers as the local municipal boards. Such dual system would necessarily lead to a duplication of labor and outlay of public funds, even if it should not bring about conflicting action by the two sets of independent officials operating in the same territory. We do not think

30 that there is any power under the act of 1887 to set up *county* boards of health. In any event, no attempt has been made in Hudson County to do so. The existence of a county board of health and vital statistics in Hudson County depends upon the special act of 1874 and subsequent amendments.

Counsel for the County Board have argued in their brief in the court below, that there is no evidence before the court that the Hudson County

Board of Health and Vital Statistics is the only county board of health operating in the State. It is submitted that evidence on this subject is not required; that facts as to the organization of governmental departments or boards in the various divisions of the State will be judicially noticed. For example, it has been held that the Court of Chancery will take notice that a constable who conducted a tax sale in the City of Elizabeth, was an officer of the State, and that it was not necessary to prove that he was properly elected and sworn and had given bond. 10

Campbell vs. Dewick, 20 N. J. Eq. (5 C. E. Gr.), 186-189.

II.

THE SPECIAL ACT OF 1874 CREATING THE HUDSON COUNTY BOARD IS REPEALED BY THE GENERAL ACT OF 1887. 20

(a) *The Rule of Construction is Settled in our State.*

It is apparent that the general act of 1887, was intended to cover the whole subject of state and local health boards. One board is created, having cognizance of matters affecting health and life among the citizens of the state, with authority to make sanitary investigations and inquiries into the cause of diseases, epidemics and the sources of mortality (2 *Comp. St.* 2657, *Sec. 2*). The state board is made a bureau of vital statistics, and has such relation to the local boards as that it may aid the latter in the abatement of nuisances. It is also given general power to take measures to in- 30 40

sure the purity of milk. An annual conference between the state and local boards is provided for. As local boards of health are created for every city, borough, town and other local municipality and government in the state, a complete system for overseeing health conditions and providing remedies for acts and conditions injurious to health, is established by this act of 1887. By the settled authority in our state, the enactment of a general law of this character repeals prior legislation which was meant to cover some part of the same ground. Perhaps as succinct and exact a statement of the rule on this subject as is to be found in the books, is that of *Mr. Justice Van Syckel* in the case of *Roche vs. Mayor of Jersey City*, 40 N. J. L. (11 Vr.), 257-262 (S. C., 1878) :

20 “Every statute must be considered according to what appears to have been the intention of the legislature, and even though two statutes relating to the same subject be not in terms repugnant or inconsistent, if the later statute is clearly intended to prescribe the only rule which should govern the case provided for, it will be construed as repealing the original act.

30 “The rule does not rest strictly upon the ground of repeal by implication, but upon the principle that when the legislature makes a revision of a particular statute and frames a new statute upon the subject matter, and from the framework of the act it is apparent that the legislature designed a complete scheme for this matter, it is a legislative declaration that whatever is embraced in the new law shall prevail, and whatever is excluded is discarded. It is decisive evidence of an intention to pre-

scribe the provisions contained in the later act as the only ones on that subject which shall be obligatory."

See also the opinion of *Van Fleet, V. C.*, in *Bracken vs. Smith*, 39 N. J. Eq. (12 Stew.), 169-172 (1884), in which the above quoted language of Mr. Justice Van Syckel is adopted with that learned Vice-Chancellor's weighty approval. 10

The Court of Errors and Appeals in the case of *Camden vs. Barney*, 63 N. J. L. (34 Vr.), 325-329 (1899), said that

"where it is plain that it is the legislative intent to embrace the whole subject, it is well settled that what is not included in the later statute must be held to have been discarded." 20

So in the Court of Errors and Appeals, in an opinion by *Dixon, J.*, in *Haynes vs. Cape May*, 52 N. J. L. (23 Vr.), 180-182 (1889), it is said that general statutes prescribing the law for all cities in the State

"should be deemed to repeal all inconsistent rules and special charters, whether an express repealer be stated or not; for if this force be not ascribed to them, the generality of the statutes will be defeated by their being confined to narrower limits than an entire class and thus, by judicial interpretation, the statutes will become unconstitutional" (citing cases); 30

"But further, it is a settled rule of statutory construction that when a later law deals generally with the subject matter of earlier statutes, not simply as a revision, but as a new and independent enactment, that affords decisive evidence of an intent to abrogate and repeal the older legislation." 40

See also *Acquackanock Water Co. vs. Passaic*, 65 N. J. L. (36 Vr.), 476 (1900, S. C., Dixon, J.), and also the recent case of *Board of Education vs. Tait*, 86 Atl. R., 379 (E. & A., 1913), *Garrison, J.*, in which in dealing with the effect of an amendment made in 1909 to the statute governing the subject of municipal liens, the court finds in the

10 later statute a legislative intent to cover in one statute the entire subject of municipal liens, and thus states the doctrine respecting statutory repealers by later enactment:

“By force of this legislative declaration the provisions of Section 3 of the Mechanic’s Lien Act are to be discarded, not upon the ground of repeal or because of inconsistency, but by way of substitution. *De Ginther vs. N. J. Home, etc.*, 58 N. J. Law, 354, 33 Atl., 968; *Cortelyou vs. Anderson*, 73 N. J. Law, 427, 63

20 Atl., 1095.

1. The doctrine in question is that when a general rule is provided by the Legislature to cover an entire subject matter, all earlier and different legislative rules touching such matter are to be discarded in favor of such later rule. *Harrington vs. Jersey City*, 78 N. J. Law, 610, 75 Atl., 943.

30 As to this doctrine, we care to add nothing to what has been said in these cases and in the more recent one of *Eldridge vs. Phila. & Reading R. Co.*, 85 Atl., 179.”

The case of *Eldridge vs. Phila. & R. R. Co.*, 83 N. J. L. (54 Vr.), 463, which is referred to by Mr. Justice Garrison in the opinion last quoted, presented a conflict between the one year limitation for actions for death contained in the 58th Section

of the General Railroad Law (P. L., 1903, page 674) and the Death Act (P. L., 1907, page 386), by which actions for death may be brought at any time within two years.

Garrison, J.: "This question is we think controlled by the rule that, 'When the legislature frames a new and general rule covering an entire subject matter, all earlier and different rules touching the same matter are to be discarded in favor of such later rule.' *Harrington's Sons Co. vs. Jersey City*, 49 Vroom, 610. 10

In an earlier case the same rule is thus stated by Chancellor Magie: 'It is the settled doctrine of our courts that general laws, passed in compliance with the constitutional mandate, are to be construed as repealing inconsistent provisions of previous local or special laws, whether they contain an express repealer or not, and, if they deal with the subject matter of such previous laws, a legislative intent is disclosed to supersede and abrogate the latter.' *Smith vs. Hightstown*, 42 Vroom, 536. 20

We have many other decisions to the same effect."

(b) *Repugnancy of the Special Act of 1874 to the General Act of 1887.* 30

It is manifest from a comparison of the two statutes that they cannot reasonably co-exist. Take, for instance, the provision of the special public act of 1874 as amended in 1884, on the subject of the prohibition and removal of nuisances, as compared with the authority given to the local boards of health by the general act of 1887. These provisions are as follows:

Special Public Act of
1874, as amended.

General Act of 1887.
PROHIBITION AND

10 VIII. To prohibit and
remove any nuisance or
offensive matter in any
public highway, road,
street, avenue, alleyway
or other place, public or
private, in said county,
and to cause the re-
moval of the same at
the expense of the own-
er.

REMOVAL OF NUI-
SANCES.

VI. To prohibit and
remove any offensive
matter or abate any
nuisance in any public
highway, road, street,
avenue, alley or other
place, public or private,
and to cause the re-
moval at the expense of
the owner.

20 Here we have, on the theory of the opinion in
the court below, two absolutely distinct bodies
of equal authority, separate in their creation, with
no legal relation to each other, each having plenary
power to make ordinances governing these import-
ant subjects in the same territorial division, and
to enforce their ordinances by fines and penalties.
Where the regulations conflict, as they necessarily
will, who is to say what the inhabitant of the city
or township shall do? Is he to obey the rule of
30 the city or township board of health, or is he to
follow the regulation prescribed by the county
board of health? Is he liable for the violation of
the ordinance of one body, although he complies
strictly with the ordinance of the other? The dif-
ficulty of administering this dual jurisdiction be-
came early apparent, and it was attempted to cure
it so far as "cities of the first class" were con-
cerned, that is to say, in Jersey City—another
instance of legislation special in substance, al-
40 though general in form. The provision is found

in the laws of 1895, page 492, and is also found in 2 *Comp. St.*, page 2682, title "*Health*," Sec. 87. This curious act, recognizing the manifest difficulties created by giving like powers to both the county board of health and the city board of health to prescribe rules governing health in Jersey City, provides that the ordinances of neither shall be of any effect within the limits of the city "until the said respective boards shall agree thereto, and by ordinance enact and define their separate and respective jurisdictions within the limits of said city." This extraordinary delegation of legislative power to the two boards of health has apparently been acted upon. What of cities not of the first class—Hoboken, Bayonne and others—and of the towns and townships in the county? No attempt has been made to deal there with the conflict of jurisdiction, which is quite as palpable and opposed to good government. 10 20

It is evident that the purpose of this cautiously expressed legislation, since the enactment of the general law of 1887, has been to refrain from disturbing a useless body having power to dispose of \$24,000 or more, of public funds each year appropriated to its use. The Hudson County Board of Health and Vital Statistics serves absolutely no useful purpose, but is rather a hindrance and a detriment to the administration of the health laws by the separate boards of the local municipalities. The reason for its existence ceased when the general law of 1887 was enacted. By that law its charter was repealed. 30

III.

LATER LEGISLATION NOT INCONSISTENT WITH
IMPLIED REPEALER.

10 On the argument of the demurrer in the court below, counsel for the County Board of Health urged that by reason of certain legislative enactments in 1887, and later, it was manifest that the legislature had not intended to repeal the special law of 1874 creating the Hudson County Board of Health, and that the legislature has since, on several occasions, recognized it as a legal, existing body. The Supreme Court in its opinion upon the demurrer, has taken the view that the passage of the later fact of 1887 which refers, in carefully guarded language, to counties wherein there is, or
20 may be established by law, a county board of health, amounts by implication to a declaration by the state legislature that it did not intend, by general act which had become effective about three weeks earlier, to wipe out of existence county boards of health which had theretofore been created.

A later act dealing with subject matter similar to that covered by a statute under consideration, not passed concurrently with the former act,
30 is not to be regarded as limiting the scope of the earlier act, or as governing the construction which should be put upon its language. It would seem, from the doctrine of the cases in this court on repealer by implication or substitution, that without the aid of the later act invoked by the respondents, approved April 21, 1887, there would clearly be a repealer by the terms of the general statute of 1887, by implication, if not expressly, of the 1874 special act creating the board whose ex-
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istence is being attacked. If it did operate as a repealer, there could have been no such body in existence at the time when the legislature passed the act now invoked, three weeks later. We do not understand counsel for the County Board of Health to contend, nor the Supreme Court to go the length of holding, that if the special act of 1874 was repealed by the general act approved March 31st, 1887, the act approved April 21, 1887, amounted to a re-enactment of the earlier special law. The act of April 21, 1887, is referred to apparently as showing legislative intent, as an aid in construing the act approved March 31st, 1887. Cases upon statutory construction arising under the former British rule of construction that all statutes passed at the same session take effect from the first day of the session, so that two statutes which may appear to be in conflict are to be regarded as part of the same act, have no application in our State, where the legislature has provided as in the case under consideration, that the act shall take effect immediately upon its approval. (*Potter's Dwaris on Statutes* (1871), page 155, and note.) Our courts apparently limit the rule that requires the reading of such statutes together to instances where the acts under consideration were approved contemporaneously. (*Jersey City vs. Hall*, 79 N. J. L. (50 Vr.), 559-566 [E. & A., 1910, Voorhees, J.].)

When it is borne in mind that the only county board of health within the state is that in Hudson County, created under the special public law of 1874, the reason for the subsequent statutes, which it is claimed refute the implication of a repealer, is at once apparent. Nor can there be any doubt of the source from which these statutes emanate. Chapter 157 of the Laws of 1887, approved April

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21, 1887 (*P. L.*, 1887, *page* 211), which was cited by counsel for the County Board of Health is not, and does not purport to be, amendatory to the general act governing this subject passed in the same year (*Chap. 68, approved March 31, 1887, P. L., 1887, page 80; 2 Comp. St., title "Health" page 2656, et seq.*) Chapter 157 of the Laws of 1887,
 10 purports to amend

"An Act concerning county boards established for the protection of the public health and the registration of vital facts and statistics in counties of this State,"

approved May 5, 1884. This act of 1884 itself affected Hudson County only, for in that county alone was a county board then in existence. By
 20 force of the new constitution, the act had to be general in form, but it concerned only Hudson County. The act is carefully drawn not to commit the legislature to any theory of the existence or non-existence at that time of county boards of health. It is, in full, as follows:

"That in any and every county of this state wherein there is or may be established by law a county board of health, or county board of
 30 health and vital statistics, or other like county board for the protection or preservation of the public health, such board shall be and hereby is empowered to enact and make ordinances in relation to and for the protection of the public health and the registration of vital facts or statistics."

By this language, the legislature refrained from making any declaration as to the existence or non-
 40 existence of county boards of health. It left the

question of whether there was, at that time, any legally constituted county board of health—so far as an expression of legislative opinion could have any effect—entirely open. The language is no doubt designedly chosen, and probably was as near an approach to a recognition (purely a negative one) as the Hudson County Board of Health could get the legislature to stand for as to the continued legal existence of that body. It will be observed that later legislation which referred to the subject was always couched in the same cautious language. The legislature has never taken the position that since the general act of 1887, creating the state board of health and local boards of health, there has been “established by law,” in any of the counties, a county board of health. There is no county which such legislation could affect except Hudson County, and it is reasonable to suppose that the statutes which referred to county boards of health were sent to the legislature by those who were interested in the continuance of the Hudson County Board of Health and Vital Statistics.

The earlier general and public laws which affected the powers and functions of the Hudson County Board of Health passed before 1887, but after the new constitution which forbade the enactment of special public laws, were necessarily drawn in general terms, but were also really designed to affect only Hudson County, which was the only county having a county board of health. See Chapter 187, Laws of 1880 (P. L., 1880, page 278); and Chapter 193, Laws of 1884 (P. L., 1884, page 282). It is not imputing to the several legislatures which passed the respective statutes upon this subject any other than the ordinary practical considerations which we know weigh with them,

to say that, having in mind the fact that since 1874, Hudson County alone has had a county board of health, all of the legislation upon this subject which purported to affect "county boards of health," has been enacted with reference to that well known fact. Since the general act of 1887, creating the state board of health and local boards

10 in all of the municipalities and townships, the legislature has carefully abstained from attempting to change the status of the Hudson County Board of Health as it might be affected by the general act of 1887. Each statute has cautiously refrained from adopting any theory as to the legal existence of the County board and has left the question explicitly to be determined by the judicial authority, when the status of the board should be questioned.

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IV.

THE JUDGMENT OF THE SUPREME COURT SUSTAINING THE DEMURRER TO THE STATE'S INFORMATION, SHOULD BE REVERSED.

CHARLES L. CARRICK,
GEORGE J. McEWAN,

Of Counsel.

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New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY,	} On Quo War- ranto Appeal from judg- ment sustain- ing Demurrer.	10
<i>Appellant,</i>		
<i>vs.</i>		
THE BOARD OF HEALTH AND VITAL STATISTICS OF HUDSON COUNTY, et als.		
<i>Respondents.</i>		

BRIEF FOR RESPONDENTS.

(Demurrants Below.)

This is an appeal from the judgment of the Supreme Court sustaining a demurrer filed to a writ of *quo warranto* issued by the State on the instance of the Attorney General against the Board of Health and Vital Statistics of Hudson County and the individual members of said Board to test the validity of the existence of the Board.

The opinion of the Supreme Court will be found on page seven (7) of the Case on Appeals.

The Board exists under the provisions of Chapter 484 of the Laws of 1874.

The Attorney General claims in his information that this Act of 1874 has been repealed by Chapter 68 of the Laws of 1887, entitled "An Act to establish in this State Boards of Health and a Bureau of Vital Statistics, and to define their respective powers and duties" (2 Comp. Stat., 2656). This is the sole ground.

To this information the Board and the indi-

vidual members thereof have filed a general demurrer, alleging the insufficiency of the information.

The only question before the Court then is—did the general Act of 1887 repeal the Special Act of 1874?

10 The County Board exists under a special act entitled, "An Act to provide for a board of health and vital statistics in the County of Hudson and to prevent the spread of disease," approved March 27, 1874 (Laws 1874, p. 569).

When this act went into effect the constitutional amendments against special legislation had not been adopted and the act was a perfectly valid exercise of legislative power.

20 Like the charters of most of our cities it remained in force after the enactment of the constitutional amendment.

It is still in force, unless repealed. There is no insistent of an express repealer.

There is no allegation in the information that it is the only County Board of Health existing in the State, so that on demurrer such a point cannot be urged.

30 The special counsel for the State in their brief urge that the object of the proceeding is to save the county the expense of maintaining a superfluous salaried board, whose functions were discharged by the local boards in the various communities.

Such arguments are wholly outside of the questions raised by the pleadings: the facts are not true and are not substantiated by any allegation, therefore they should be disregarded by the Court.

40 The State puts the whole stress of its case for repealer on the general act of 1887; this is its only claim under the information.

The repealer claimed is one by implication only. Section 9 of the Act of 1887 provides "that there

shall be a local board of health in every city, borough, town *and other local municipal government* in this State, which shall be composed of not less than five nor more than seven members, who shall be appointed in such manner and to hold their respective offices for such terms, not exceeding four years, as the Board of Aldermen, Common Council or other governing body may by ordinance provide."

The powers granted to these local boards by the Act of 1887 are substantially the same powers except in the one important particular hereinafter mentioned, as are conferred on the Hudson County Board by the Act of 1874 and other later Acts prior to 1887. 10

In its repealing clause the Act of 1887 says:

"That all acts and parts of acts which in anywise conflict with the provisions of this act be and the same are hereby repealed and that this act shall take effect immediately." 20

The argument at first sight seems to be that the term "other local municipal government" in Section 9 of the Act of 1887 includes counties and that therefore this section repeals the Act of 1874 because said section provides for Boards of not less than five nor more than nine members, all of whom are to be appointed as members by the governing body, while the Act of 1874 provides for a County Board of Health consisting of three members, two of whom are appointed as members of the governing body (the Board of Chosen Freeholders) and the County Physician, who is a member ex-officio. 30

The term "other local municipal government" as used in this Section 9 refers manifestly and exclusively to "local municipal government" other than a county. The ninth section does not even include all such municipal governments, for Section 10 provides a different method for the appointment of Boards of Health in townships. 40

Moreover, the very language of the Act, "local municipal government," shows that it was not intended to apply to counties. It makes a distinction between "local municipal governments" and "municipal governments" that are not local. But the only kind of municipal government in this State that can be said not to be local is the county.

10 If the legislature intended to include all the municipal governments why did it limit section 9 to local municipal governments?

But the notion of including Counties under such general terms is contrary to one of the best known canons of statutory construction. The county is superior to the city, village and the town.

20 Where a statute, after making mention of certain specific things, extends its operation by general words, the latter do not extend to objects superior in their nature to those specifically mentioned, unless such a construction would render the words wholly inoperative.

Barraccliff v. Griscom, Coxe, 193-195;
Livermore v. Board of Freeholders, 5
 Dutch, 245-248;
 Affirmed 2 Vroom, 507-512.

30 The words "officers chosen by the governing body of any town, township, borough or other municipality" do not however apply to solicitors of Board of Chosen Freeholders.

Wright v. Campbell, 45 Vr., 82-87, Affirmed 45 Vr., 610.

See also to same effect

Van Emburgh v. Trall, 44 Vr., 394.

40 "Towns" as used in Article IV, Section VII, Paragraph 11 of our amended constitution embraces cities, boroughs, towns, villages and townships; the whole range of bodies corporate less than counties, established for local government.

Van Riper v. Parsons, 40 N. J. L., 1;
Pell v. Newark, 40 N. J. L., 550.

But the very legislature that passed the general act of 1887, settled this question of legislative intent by a later enactment. Chapter 157 (p. 211). This act is entitled, "An Act to amend the first section of an act entitled, 'An Act concerning County Boards established for the protection of the public health and the registration of vital facts and statistics in counties of this state,' approved May 5th, 1884. The act of 1884, here amended, by its first section provides 'that in any and every county of this state wherein there is or may be established by law a County Board of Health * * for the protection or preservation of the public health * * shall be and *hereby is declared to be the only board* in said County empowered to enact and make ordinances in relation to and for the protection of the public health and the registration of vital facts or statistics any charter or law to the contrary notwithstanding.'" This section one of the act of 1884 was in conflict with Chapter 68 of the laws of 1887 (P. L. 1887, p. 80), which created the local boards of health and defined their powers and duties. For this latter act vested in these local Boards the power and duty to do many of the things which the act of 1884 declared should be done exclusively by the County Board. The Legislature of 1887, knowing of this conflict, provided by Chapter 157 of the laws of 1887 (P. L., 1887, p. 211), "that in any and every County of this state wherein there is or may be established by law a County Board of Health or County Board of Health and Vital Statistics, or other like County Boards for the protection or preservation of the public health, such board shall be and hereby is empowered to enact and make ordinances in relation to and for the protection of the public health and the registration of vital facts or statistics." The clear pur-

pose of this last legislation was to oust the County Board of its exclusive jurisdiction in the premises but to retain to the County Board, concurrently with the local boards, all the jurisdiction which the County Boards were empowered by the act of 1884 to exercise exclusively. The passage of this act—Chapter 157 of the laws of 1887—shows with the force of demonstration that the Legislature in enacting Chapter 68 of the laws of 1887 had
 10 no intention to abolish the County Board and, therefore, cannot be deemed by implication to have had such intention.

It will be noticed that the act of 1884 applied to all counties where there was then or should be thereafter, a County Board of Health.

The legislature has repeatedly recognized the existence of County Boards of Health by passing general acts relating thereto.

Since 1887 there have been other acts passed
 20 which recognized the existence of the County Board as for instance the act of 1895 (P. L. 1895, p. 492). This latter act provided that in any county in which there was established a County Board of Health no Ordinance enacted by the Board of Health of any city of the first class in the county, nor by any County Board of Health, shall be deemed of any force or effect within the limits of any such city until the respective boards,
 30 the county and the city boards of health—shall agree thereto.

The appellants seek to avoid the difficulty presented by Chapter 157 of the laws of 1887, supra, and this last mentioned act of 1895, by the bald assertion that Chapter 68 of the laws of 1887 abolished the county board of health and that, therefore, subsequent legislative reference to the County Board of Health, even during the year 1887, is to be accepted as proof
 40 that the Legislature did not know what it was

talking about. We are not acquainted with any such rule of construction. The Legislature manifestly knew what it was talking about when it passed Chapter 157 of the laws of 1887 so as to take away the exclusive jurisdiction of the County Board and leave it with concurrent jurisdiction exercised by the local municipal boards. The act of 1895 (P. L. 1895, p. 492), and many other acts subsequent to 1887, evince the deliberate legislative scheme to maintain a central County Board as well as the several local municipal boards. 10

There is moreover one important duty cast upon the County Board which is not shared by any of the local boards under the Act of 1887. Namely, the care of contagious diseases.

Section "4" of the Special Act of 1874 provides as follows:

And be it enacted, That it shall be the duty of the board of chosen freeholders to erect on the county farm at Snake hill a suitable hospital, sufficiently large to provide for the care of all persons sick with any contagious disease in the county of Hudson, and to provide suitable nurses, medicines and provisions for the same, to which may be removed any person inflicted with a contagious disease in the county of Hudson. 20

The States' brief dismisses this airily in page 4 of their brief by stating that the erection and care of this hospital is in the Freeholders. 30

Counsel evidently have not read the fifth section of the Act which reads as follows:

"5. And be it enacted, That it shall be lawful for the commissioners to make a requisition on board of chosen freeholders for such medicines, disinfectants and other supplies required by them in the discharge of their duties, and said board shall in their discretion, furnish al such supplies as they may deem necessary and needful; and said board shall provide said commissioners and their inspectors with the means of conveying 40

persons sick with contagious diseases, to and from the hospital at Snake Hill."

The Commissioners mentioned in this section are the members of the Board of Health, who are called commissioners in the first section.

This puts the care of this important institution in the County Board of Health.

This institution must in a great County like Hudson be cared for in some way; no way is provided except by the Act of 1874.

There is now under the Act of 1887 concurrent jurisdiction over health matter in every city, town, township and borough vested in the State Board and the Local Board; these boards work side by side: There is no friction.

Nothing appears in the information to show that the County Board does not work in harmony with the local boards.

20 There is a peculiar reason for the existence of a County Board in a County like Hudson, with its dense population and small area, where every one lives within five miles of the Court House.

The whole case of the State depends upon the assumed fact that no other County in the State, save Hudson, has a County Board of Health; but no such allegation appears in the information; the Court can hardly take judicial notice of such a fact, even if it were true; without that basic fact the whole argument falls.

30 But even admitting that fact to be so, there has been no repealer, express or implied, of its rights to exist and act.

In conclusion, it is respectfully submitted that the Legislative intent in the enactment of March 31, 1887, was to provide a general scheme covering local municipal boards; that the word local was used to limit the application of the Act to municipalities other than Counties, and that no repeal of the County Board Act was effected

either by implication or by the general repealer at the end of the Act of March 31, 1887; that the enactment at the same session of the Legislature of the Act of April 21, 1887, shows beyond any doubt that it was clearly the intention that the Act of March 31, 1887, did not affect County Boards; that this Act of April 21, 1887, repealed the Act of March 31, 1887, in so far as the terms of March 31, 1887, Act were repugnant to or inconsistent with the April Act.

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"The rule that statutes in *pari materia* should be construed together applies with peculiar force to statutes passed at the same session of the Legislature; it is to be presumed that such acts are imbued with the same spirit and actuated by the same policy, and that they are to be construed together as if parts of the same act. They should be so construed, if possible, as to harmonize and force and effect should be given to the provisions of each; if however, they are necessarily inconsistent, a statute which deals with the common subject matters in a minute and particular way will prevail over one of a more general nature; and of two inconsistent statutes enacted at the same session, that will prevail which takes effect at the later date."

20

Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way the two should be read together, and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy, between them, the special will prevail over the general statute. Where the special statute is later it will be regarded as an exception to, or qualification of the prior general one; an exception to its terms.

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36 *Cyc.*, pp. 1151-1152; pp. 1164-1165;
State, Britton, et al. v. Black, et al., 35
 N. J. L., 208.

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As was said by the Supreme Court, repealers by implication are not favored, and will not be considered to have taken place unless the legislative intent to abrogate the prior enactment is entirely clear.

McNeely v. Woodruff, 13 Law (1 Gr.), 352;

State v. Plunkett, 18 Law (3 Harr.), 5;

Naylor v. Field, 29 Law, 287;

10 *State, Britton, Pros. v. Blake*, 35 Law (6 Vr.), 208; *Aff'd.*, 36 Law, (7 Vr.) 442;

Ruckman v. Ransom, 35 Law (6 Vr.), 565;

State, Morris, Etc. R. R. Co. Pros. v. Commissioner, 37 Law, (8 Vr.), 228; 38 Law, (9 Vr.), 472;

State v. Collector, 37 Law (8 Vr.), 258;

State, ex rel, Landis v. Landis, 39 Law, (10 Vr.), 274;

20 *Plum v. Lugar*, 49 Law, 557;

Tomlin v. Hildreth, 65 Law, 438; 47 Atl., 649;

Hotel Registry Realty Corp. v. Stafford, 70 Law, 528; 57 Atl., 145.

30 "The repeal of statutes by implication is not favored by the courts. The presumption is always against the intention to repeal where express terms are not used. To justify the presumption of an intention to repeal one statute by another, either the two statutes must be irreconcilable, or the intent to effect a repeal must be otherwise clearly expressed. It follows that where the intention not to repeal is apparent or manifest from an act there is no room for repeal by implications, or the application of rules regarding implied repeal."

36 *Cyc.* (Statutes), 1071.

40 "Repeals by implication are not favored, and will not be indulged unless it is manifest that the legislature so intended. As laws are

presumed to be passed with deliberation and with full knowledge of all existing laws on the subject, it is but reasonable to conclude that in passing a statute it was not intended to interfere with or abrogate any former law relating to the same matter, unless the later act is either repugnant to the earlier one, or fully embraces the subject-matter thereof, or unless the reason for the earlier act is beyond peradventure removed."

26 Am. & Eng. Encyc. Law (Statutes),
721. 10

Judgment below should be affirmed.

Respectfully submitted,

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NATHAN H. PENDERGAST,
Of Counsel.

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