WARD & TICHENOR, Law Case Printers, 832 and 834 Broad Street, Newark, N. J.

N. J. Court of Errors and Appeals.

JEREMIAH D. POINIER,
Plaintiff in Error,
vs.
THE STATE, (*ex rel.* JACOB I. SCHMITT.)

On Error to Sup. Court.

POINTS OF PLAINTIFF IN ERROR.

I.

Under the demurrer to the plea of the plaintiff in error, (defendant in the Court below,) the allegations of the plea are to be taken as true, for the purposes of this argument, so that the following facts appear from the pleadings, viz:

1. That the relator has no title, whatever, to the office of Commissioner of the Essex Public Road Board, from which he seeks to oust the plaintiff in error, that he may intrude into the same himself—he not having been elected to, or qualified for, that office.

(*Case*, p. 11, ll. 25–35; p. 15, ll. 31–35.)

2. That the plaintiff in error, under the acts of 1879 and 1881, (referred to in the plea,) was eligible and elected or appointed to, and qualified for the office in question, and that he has filled said office and actually served as such Commissioner, since January, 1880, under repeated elections.

II.

The plaintiff in error, by his plea, has shown himself, fully and in every respect, within the terms and provisions of the act of February 10, 1881, (Laws of 1881, p. 19,) the title and tenor of which are as follows, viz:

"AN ACT TO REDUCE THE EXPENSES OF PUBLIC ROAD BOARDS, AND TO PLACE THEM UNDER THE CONTROL OF THE BOARDS OF CHOSEN FREEHOLDERS OF THE SEVERAL COUNTIES OF THIS STATE.

"BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the Commissioners constituting the *county public road boards* WHICH NOW EXIST OR MAY HEREAFTER EXIST, IN ANY OF THE COUNTIES OF THIS STATE, under the laws thereof, shall consist of members of the boards of chosen freeholders of said counties respectively, to be appointed in the same manner as the standing committees of the said boards of chosen freeholders are or may be appointed for the time being, which persons so appointed shall continue in office only during the time for which they shall have been elected as such chosen freeholders, but be subject to removal at the pleasure of said boards of chosen freeholders, and shall receive only such compensation for their services as such commissioners as shall be fixed, from time to time, by the said boards of chosen freeholders; *provided*, that no more than a major part of the commissioners of any public road board shall be of the same political party; and *provided further*, that nothing herein coniained shall be construed to affect the tenure of office or compensation of any commissioner *now in office and in actual service as a member of any such road board; but that every such person who duly qualified and entered on the discharge of his duties on or before the first Monday of January, one thousand eight hundred and eighty-one, and has ever since been actually serving as such member*, whether elected by the people or the said boards of chosen freeholders, under any general or special law of this State, SHALL BE ENTITLED TO HOLD HIS SAID OFFICE DURING THE TIME FOR WHICH HE WAS SO ELECTED;

provided, that the provisions of this act shall not apply to or affect in any way township road boards.

"*And be it enacted*, That all acts and parts of acts, inconsistent with any of the provisions of this act, be and the same are hereby repealed, and that *this act shall take effect immediately.*"

Approved February 10th, 1881.

1. The plaintiff in error was "*in office, and in actual service as a member*" of the Essex Public Road Board.

2. He was "*duly qualified and entered on the discharge of his duties, on or before the first Monday of January, one thousand eight hundred and eighty-one.*"

3. He "*has ever since been actually serving as such member.*"

4. He was elected by the Board of Chosen Freeholders of the County of Essex, under a general or special law of this State—it is immaterial which.

5. Therefore, by the express provisons of the act, he became and was "ENTITLED TO HOLD HIS SAID OFFICE *during the time for which he was elected*,"—unless the act is unconstitutional and therefore void.

III.

The act is constitutional.

It is alleged to be unconstitutional as in contravention of the provision that "*the legislature shall not pass private, local or special laws in any of the following enumerated cases, that is to say:* * * * * *regulating the internal affairs of towns and counties.*" (*Art. 4, Sect. 7, Par. 2.*)

But the act in question is neither "private, local," nor "special," within the meaning of the constitutional prohibition; but on the contrary, is a public and general act.

1. It applies to all county public road boards, *in all the counties of the State.*

2. It applies not only to all county public road boards, "which now exist," but also, to all that "*may hereafter exist.*"

3. The act, in its scope, is as broad as the State and as lasting as time. Every county public road board which exists or may come into being, is subject to its provisions.

4. That there may not *now* be a county road board in every county of the State, or even in more than one county of the State, cannot affect the nature or scope of the law.

"*The terms 'general laws' do not impart universality in the subjects or operation of such law.* * * * A law settling the methods by which all railroads should become incorporated, would be special in the sense that it would be confined in its operation to but a single kind of corporation, and so a law would be local, by this same test, that should provide for the organization, under one system, of all the municipal governments in the State, as such a law would manifestly have a restricted effect with respect to locality. *But who, conversant with the usage touching these terms, would venture the assertion that such statutes as these would not be general laws?*"

BEASLEY, *C. J.*, in *Van Riper* vs. *Parsons*, 11 Vroom, 8.

—"*The law, in all its provisions, is general; broad enough to reach every portion of the State.* * * * *A law so framed is not a special or local law, but a general law, without regard to the consideration that, within the State, there happens to be but one individual of the class, or one place where it produces effects.*"

DIXON, *J.*, in *Van Riper* vs. *Parsons*, 11 Vr., 123.

"In the strictest sense, special or local laws would comprise all such laws as are confined in their application to a limited number of localities or subjects, and a general law be one universal in its application. In this sense, acts of the legislature relating to a particular kind of private corporations, or to a particular class of muni-

cipalities, would fall within the prohibition of the constitutional interdiction, as special or local, however general they might be in their application, within the scope of the purpose of such legislation. But this is not the signification given to their terms by this Court in the case of *Van Riper* vs. *Parsons*, 11 Vroom, 1; *Id.* 123; when that case was first before this Court, it was held that, within the sense of these prohibitory clauses, a general law as contradistinguished from one special or local, *is a law that embraces a class of subjects or places, and does not omit any subject or place naturally belonging to such class.* The second time that case passed under judicial examination in this Court, the holding was that *a law framed in general terms, restricted to no locality, and operating equally upon all of a group of objects, which, having regard to the purpose of the legislature, are distinguished by characteristics sufficiently marked and important to make them a class by themselves, is not a special or local law, but a general law, without regard to the consideration, that, within this State, there happens to be but one individual of that class, or one place where it produces effect. The statute which the Court in that case gave effect to, in fact, spent its force entirely in its application to Jersey City.*"

DEPUE, *J.*, in *Rutgers* vs. *New Brunswick*, 13 Vr., 51.

The case of *State*, (*ex rel. Richards*) vs. *Hammer*, 11 Vroom, 435, is in principle totally unlike the case at bar.

The act under consideration in that case was entitled: "*An act relating to the assessment and revision of taxes in cities in this State;*" but in its purview it was made special or local by a limitation of its application *to only two* of the cities in the State.

5. A county road board like the one in Essex county, is quite as important and public an institution as any which has been made the subject of legislation.

6. The object of the law in question is to place the road boards under the control of the boards of chosen freeholders, and to reduce the salaries of each of the

commissioners from one thousand dollars to about one hundred dollars.

If this cannot be effected by *general* legislation, it cannot be accomplished at all; and the Essex Public Road Board is not a subject of legislation, and is above the legislature.

7. If, as is insisted, the law is a general one, it is effectual to make the changes proposed in respect to the tenure and compensation of the commissioners.

1 *Dillon on M. C.* (3d Ed.), § 231, 232.
Hoboken vs. *Geer*, 3 Dutch., 265.
Butcher vs. *Camden*, 2 Stew., 478.
Love vs. *Mayor of Jersey City*, 11 Vr., 456.
Rutgers vs. *New Brunswick*, 13 Vr., 51.

The case of *Michael Summers* vs. *The State*, (*ex. rel. Joseph W. Wildey*,) *No. 36*, is like the foregoing, and abides the result of it.

FREDERICK W. MORRIS,

vs.

THE STATE, (*ex. rel.* WILLIAM HARRIGAN.)

The information in this case was filed September 8th, 1881, by virtue of leave, granted in June term, 1881.

The plea contains allegations similar to those in the other two cases, but also *shows that the title of the plaintiff in error to the office, expired by efflux of time, the second Wednesday of May, 1881—four months* before the information was filed, and *one month* before leave was granted for filing; and that since the last mentioned date, "*he has not held, used, occupied, enjoyed, or executed the said office of commissioner, nor its liberties, privileges, franchises, or emoluments, and he denies the allegations in the said information to the contrary, to be true.*"

(*Case*, p. 14, ll. 20–21.)

To this plea the relator demurred, thereby admitting the allegations therein.

In addition to what has been said in the case of *Poinier* vs. *The State*, *supra*, it is insisted, especially, in view of the fact admitted by the pleadings, that the relator has no right or title to the office, that the judgment should have been against the relator on the ground of the expiration of the term of office of the plaintiff in error, a month before leave was granted for filing the information, and four months before it was actually filed.

"Where the term of office has expired by efflux of time, and the officer no longer exercises or claims the

franchise, so that judgment of amotion or ouster can not be rendered against him, the proceedings will not usually be entertained, and the Courts will refuse leave to file the information."

High on Ex. Rem., § 633.
Morris vs. *Underwood*, 19 Geo., 559.
State vs. *Jacobs*, 17 Ohio St., 143.

10 In the last cited case, the term of office expired after information filed, and the Court on that ground gave judgment against the relator.

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NEW JERSEY

Court of Errors and Appeals.

JEREMIAH D. POINIER,

vs.

THE STATE, *ex rel*,

JACOB I. SCHMITT.

On Error to Supreme Court.

RELATOR'S POINTS.

The relator was elected in 1877 a member of the Essex public road board. Duly qualified by taking oath of office and filing required security.

He served two years as such.

Re-elected in 1879. Took oath of office and filed security pursuant to law.

See Pamph. 1869, p. 957.

Respondent occupies the seat of relator, under appointment by Board of Chosen Freeholders and act of 1879.

Pamph. 1879, p 68.

We insist that the act of 1879 is unconstitutional in this— .

That it is a special law for regulating the affairs of a County—and for making roads.

Pell v. Newark, 11 Vr., 123.

That the act of 1876, to which it is a supplement, is special. That it pretends to be a general law, but it only applies to Counties of 75,000 inhabitants and embraces other provisions of a private, special and local character; indeed, the supplement of 1879 embraces nothing else. See Art. iv, Sec. vii, ¶ 4, amended Constitution.

Van Riper v. Parsons. 11 Vroom.

That it amends the act of 1869 without inserting the section amended at length.

That if it were constitutional it is nevertheless invalid for the purpose of entitling respondent to his seat.

It is an act merely providing a different method of filling vacancies in the board.

There was no vacancy when the respondent was appointed, and there has been none since. The relator was re-elected to succeed himself, and there has been no interim in this time of service.

That the act of January, 1881, is equally invalid for same reasons as above.

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vs.
THE STATE OF NEW JERSEY,
(*ex rel.* JACOB I. SCHMITT.)

On Error to Supreme Court.

WRIT OF ERROR.

NEW JERSEY, SS:

[L S.] The State of New Jersey to the Justices of the Supreme Court of the State of New Jersey, Greeting:

Because in the record and proceedings, and also in the giving of judgment, in a plaint which was in our Supreme Court before you, by our writ, between the State (on the relation of Jacob I. Schmitt), and Jeremiah D. Poinier, on a *quo warranto* information, as it is said, manifest error hath intervened, to the great damage of the said Jeremiah D. Poinier, as by his complaint we are informed; we being willing that the error, if any there be, should in due manner be corrected, and speedy justice done to the parties aforesaid, in this behalf, do command you that if judgment be thereupon given, then, without delay, you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Court of Errors and Appeals on the twenty-ninth day of November instant, together with this writ; that the record and proceedings aforesaid being inspected, we may further cause to be

done what of right and according to law ought to be done.

Witness, THEODORE RUNYON, Esq., our Chancellor, at Trenton, the ninth day of November, in the year eighteen hundred and eighty-one.

HENRY C. KELSEY, *Clerk.*

JOHN W. TAYLOR, *Att'y.*

RETURN.

The answer of the Justices of the Supreme Court of New Jersey, within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do hereby certify to the Court of Errors and Appeals in a certain schedule to this writ annexed, as within we are commanded.

M. BEASLEY, *C. J.* [L. S.]

SCHEDULE.

New Jersey Supreme Court.

THE STATE OF NEW JERSEY, (*ex rel.* JACOB I. SCHMITT, *Relator*,) *vs.* JEREMIAH D. POINIER.	*On information in nature of Quo Warranto.* *Rule to Appear, plead, &c.*

On motion, in behalf of the Attorney General, upon affidavits read and filed, it having been ordered that leave be granted to file an information in this cause, and that process do issue against the defendant; and thereupon an information being filed setting forth, among other things, that the defendant for the space of more than eleven months last past hath unlawfully held, used and executed, and still doth unlawfully hold, use and execute, without any legal authority, warrant or right whatsoever, the office of Commissioner of the Essex Public Road Board, and its liberties, privileges and franchises, and praying that he, said defendant, may be made to answer to said State by what warrant he claims to hold, use, execute and enjoy the aforesaid office of Commissioner of the Essex Public Road Board, and the liberties, privileges and franchises thereof, and why, if adjudged guilty of usurpation in the premises, a fine should not be imposed for the use of the State, besides costs of these proceedings to be taxed;

It is thereupon further ordered, that the defendant appear and plead or demur to the information filed in this cause, within twenty days after service upon him of a copy of this rule and of the information, and that the

defendant take short notice of argument at the next term of the Supreme Court.

On motion of

BENJ. C. POTTS,
Attorney for Relator.

Entered.

Let the above rule be entered on the minutes.

M. BEASLEY, *C. J.*

[Endorsed.]
Service acknowledged January 10, 1881.
JOHN W. TAYLOR,
Attorney for Defendant.

New Jersey Supreme Court.

THE STATE OF NEW JERSEY, (*ex rel.* JACOB I. SCHMITT,) *vs.* JEREMIAH D. POINIER. — *On Quo Warranto. Information*

John P. Stockton, Esq., Attorney General of the State of New Jersey, who sues for the said State in this behalf, comes in his own proper person here into the Supreme Court of Judicature of the said State, before the justices thereof, at the State House in the city of Trenton, on the second day of November, in the year one thousand eight hundred and eighty, for the said State of New Jersey, at the relation of Jacob I. Schmitt, of the city of Newark, Essex county and State of New Jersey, desiring to sue and prosecute in this behalf, according to the form of the statute in such cases made and provided, and gives the said Court here to be informed and understand, that under and by virtue of an act of the legislature of the State of New Jersey, entitled an "An act constituting a Public Road Board, for the laying out, constructing, appropriating, improving and maintaining public carriage roads in the county of Essex," approved March 31, 1869, there was organized in the said county of Essex, the Essex Public Road Board, and at a general election held in this State on Tuesday, the sixth day of November, eighteen hundred and seventy-seven, for the election of members of the general assembly, and other State and county officers, one John Hunkele was duly elected a Commissioner of the said Essex Public Road Board for the term of two years, from the first Monday in January,

eighteen hundred and seventy-eight, whereupon the said John Hunkele duly qualified and took upon himself the performance of the duties of his said office of Commissioner aforesaid, and continued to perform the duties thereof until the expiration of his said term, to wit, until the first Monday in January, 1880. That under and by virtue of said act, at a general election held in this State on Tuesday, the fourth day of November, eighteen hundred and seventy-nine, for the election of members of the general assembly and other State and county officers, the said Jacob I. Schmitt, being an elector and resident of said county, was duly and regularly elected by the electors of said county, a Commissioner of the said Essex Public Road Board, to succeed the said John Hunkele, for the term of two years from the first Monday in January, eighteen hundred and eighty, as appears by the following statement, viz :

"A statement of the determination of the board of county canvassers relative to an election held in the county of Essex, on the fourth day of November, in the year of our Lord one thousand eight hundred and seventy-nine, for the election of members of the general assembly of this State, and a sheriff and coroners for said county, for the ensuing year.

"The said board do determine that at the said election William Harrigan and Jacob I Schmitt were duly elected Commissioners of Essex Public Road Board of said county.

"I do hereby certify that the foregoing is a true, full and correct statement of the determination of the board of canvassers therein mentioned.

"In witness whereof, I have hereunto set my hand and seal this seventh day of November, in the year of our Lord one thousand eight hundred and seventy-nine.

"THOMAS PIERSON,

Chairman of the Board of Canvassers.

Attest :

WM. A. SMITH, *Clerk.*"

"STATE OF NEW JERSEY, }
ESSEX COUNTY. } *ss.*

"I, William A. Smith, clerk of the county of Essex, do hereby certify that the foregoing is a true, full and correct statement of the board of county canvassers, as now on file in my office.

"In testimony whereof, I have hereunto set my hand and official seal this fifth day of December, eighteen hundred and seventy-nine.

[L. S.] WM. A. SMITH, *Clerk.*"

That the said Jacob I Schmitt, after his election as aforesaid, and before the commencement of his said term of office thereunder, in pursuance of said act, took and filed, with the county clerk of said county, the required oath of office, and gave bond to the county collector of said county, in the sum of ten thousand dollars, with two sufficient sureties conditioned for the performance of his duties under said act.

That after the filing of said bond as aforesaid, the said Jacob I. Schmitt made application to the finance committee of the board of chosen freeholders of said county to have said bond examined and approved, but that said finance committee, contrary to their duty under said act, refused to examine or consider the same.

And the said Attorney General at the relation of Jacob I. Schmitt aforesaid, doth further give the Court here to be informed and understand that, claiming authority under and by virtue of a pretended act of legislature of this State, entitled "An act concerning Public Road Boards," approved April 21, 1876, and a pretended supplement thereto, approved March 4, 1879, which said act of 1876, purporting to be a general law, provided for the organization of road boards in such counties only of this State having upwards of seventy-five thousand inhabitants, and not having already in existence a public road board organized in accordance with the provisions of said act or any other act of this State; and the first section of said pretended supplement, which provides "that any and all vacancies hereafter occurring by death,

"resignation or any other cause whatever in any board "of commissioners of any public road board lawfully "created or existing in and for any county of this State, "(prior to the passage of the act to which this is a sup- "plement,) shall be filled only by election or appoint- "ment to be made by the board of chosen freeholders of "said county," &c. The board of chosen freeholders of said Essex county, on or about the ninth day of October, eighteen hundred and seventy-nine, under pretence that a vacancy would occur in said road board at the expiration of said John Hunkele's aforesaid term of office, did illegally and unlawfully appoint one Jeremiah D. Poinier to fill such pretended vacancy and to be a member of said road board from the time of the commencement of said Jacob I. Schmitt's aforesaid term of office. That the said Jeremiah D. Poinier aftewards, to wit, on the said first Monday in January, 1880, by virtue of said pretended appointment, unlawfully and without any legal warrant or authority whatever, intruded into, usurped and held, and without other warrant or authority than the aforesaid, or some other subsequent pretended appointment, still doth usurp, hold, use, occupy and exercise said office of Commissioner of said road board, to the exclusion and prevention of the said Jacob I. Schmitt from his said office of Commissioner aforesaid.

That the said Jeremiah D. Poinier, for the space of more than eleven months last past, hath by virtue of the premises unlawfully held, used and executed, and still doth unlawfully hold, use, execute and enjoy the office of Commissioner of the said Public Road Board and its liberties, privileges and franchises, and claims to be one of the Commissioners of said road board, and to have, hold, use, exercise and enjoy the said office and the liberties, privileges, franchises and emoluments thereof without any legal election, appointment, warrant or authority other than hereinbefore set forth, which was wholly insufficient in law to entitle or enable him to hold the same.

And the said Attorney General, at the relation of Jacob I. Schmitt aforesaid, doth further give the Court here to

be informed and understand that prior to and at the time of the passage of the said pretended act of 1876, the counties of Essex and Hudson were the only counties in this State having seventy-five thousand inhabitants or upwards, and that said Essex county was the only county in this State having already in existence a duly organized road board, to wit, the said Essex Public Road Board, organized as aforesaid, and that prior to the passage of said pretended supplement, the said Essex Public Road Board was the only road board lawfully created or existing in any county of this State.

That at the time when the said or any subsequent pretended appointment of the said Jeremiah D. Poinier was made by the said board of chosen freeholders as aforesaid, there had not occurred, nor did there then exist, nor was there in contemplation, nor has there at any time since occurred or existed, or been in contemplation, any lawful vacancy in said Essex Public Road Board, that could or would legally and lawfully authorize the making of the said or any subsequent pretended appointment by the said board of chosen freeholders as aforesaid, or which, when made, would or could legally entitle the said Jeremiah D. Poinier to hold, use, occupy, exercise and enjoy said office of Commissioner of said road board, to the exclusion therefrom of the said Jacob I. Schmitt, as aforesaid.

That the said Jacob I. Schmitt, by virtue of his election aforesaid, was, under the act first hereinbefore referred to, duly elected and chosen one of the Commissioners of the said Essex Public Road Board for the term aforesaid, and that by virtue thereof, the said Jacob I. Schmitt hath ever since been and still is rightly and legally entitled to hold, use, exercise and enjoy the said office of Commissioner of the Essex Public Road Board as aforesaid, at Essex county as aforesaid, which said office the said Jeremiah D. Poinier, during all the time aforesaid, to wit, for the space of more than eleven months last past, upon the State of New Jersey, hath usurped, intruded into, and unlawfully held, used, exercised and enjoyed, and still doth usurp, intrude into and unlawfully

hold, use, exercise and enjoy, to the exclusion of the said Jacob I. Schmitt, to wit, at Essex county aforesaid, in contempt of the State of New Jersey, and to its great damage and prejudice against its sovereignty and dignity.

Whereupon the said Attorney General for the said State, at the relation of the said Jacob I. Schmitt, desiring to sue and prosecute in this behalf, prays the advice of the Court here as to the rights of the relator in the premises, as well as for due process of law against the said Jeremiah D. Poinier in this behalf to be made, to answer to the said State by what warrant he claims to hold, use, execute and enjoy the aforesaid office of Commissioner of the Essex Public Road Board and the liberties, privileges and franchises thereof, and why, if adjudged guilty of usurpation in the premises, a fine should not be imposed for the use of the State, besides the costs of these proceedings to be taxed.

JOHN P. STOCKTON,
Attorney General.

BENJ. C. POTTS,
Attorney for Relator.

New Jersey Supreme Court.

JEREMIAH D. POINIER, ads. THE STATE, (*ex rel.* JACOB I. SCHMITT.)	*On Quo Warranto information.* *Plea.*

And now comes the said Jeremiah D. Poinier, defendant, by John W. Taylor, his attorney, and having heard the said information read, complains that he is by color thereof greatly troubled and vexed, and that unjustly, because protecting that the said information and the matters therein contained are not sufficient in law, and that he is not bound by the law of the land to answer the same, and further protesting that it is not true, and denying it be true as alleged in the said information, that the said relator, at the general election held on the fourth day of November, eighteen hundred and seventy-nine, was elected by the electors of said county of Essex, a Commissioner of the said "The Essex Public Road Board," for the term of two years, or any term, from the first Monday in January, in the year eighteen hundred and eighty, or that any valid statement was made showing that he was so elected, or that any valid certificate was given of any such election; yet, for plea in this behalf, the said defendant says that after the passage of the act of the legislature of this State, in said information first mentioned, and under which the said relator alleges, and this defendant denies, he was so elected, and on the fourth day of March in the year eighteen hundred and seventy-nine, there was enacted by the legislature of this

State an act entitled "A supplement to the act entitled 'An act concerning Public Road Boards,' approved April twenty-first, one thousand eight hundred and seventy-six," whereby it was (among other things) provided, that any and all vacancies thereafter occurring by death, resignation or any other cause whatever in the board of commissioners of any public road board, lawfully created and existing in and for any county in this State (prior to the passage of the said original act), and not governed by the provision of the said original act, should be filled only by election, or appointment to be made by the board of chosen freeholders of such county, from the members of such board of chosen freeholders, for the time being, and that the persons so elected or appointed should continue in office as commissioners only during the term for which they should have been elected such chosen freeholders, and should receive such compensation per diem (in lieu of salary) as chosen freeholders were entitled by law to receive; and that all acts and parts of acts inconsistent with the provisions of said supplemental act should be and were thereby repealed; as by the said supplemental act, reference being thereto had, will more fully and at large appear.

And the said defendant further says that a vacancy was occasioned and arose in the board of commissioners of the said The Essex Public Road Board, (which was within the provisions of the said supplemental act) afterwards, to wit, on the first Monday of January, in the year eighteen hundred and eighty, by the expiration of the term of office of one John Hunkele, who had been elected by the legal voters of said county a Commissioner of the said The Essex Public Road Board, at the general election for members of the general assembly and for State and county officers, held in the month of November in the year eighteen hundred and seventy-seven, to serve for the term of two years from the first Monday in January then next, as well as by the failure of any other person to be elected to and to be qualified for entering upon the duties of the said office, as the successor of the said John Hunkele.

And the said defendant being, at the time said vacancy happened, and having for a long time before, as well as ever since, been a member of the board of chosen freeholders of the said county of Essex, and duly qualified according to the provisions of all the acts of the legislature hereinbefore mentioned, he was thereupon, to wit, on the day and year last aforesaid, in the county aforesaid, duly elected by the said board of chosen freeholders of the county of Essex to be a Commissioner and member of the said The Essex Public Road Board, to fill the vacancy occasioned as aforesaid.

And the said defendant further says, that being so elected, he thereupon, to wit, on the day and year last aforesaid, duly qualified as such member and Commissioner of said Public Road Board, by taking the oath of office and giving the bond prescribed by law, (which bond was duly approved by the finance committee of the said board of chosen freeholders,) and thereupon entered on the duties of the said office of Commissioner, and continued to discharge the duties thereof, during his term of office of chosen freeholder of the said county of Essex, and until the second Wednesday in May, in the year eighteen hundred and eighty, when and whereby his term of office as such Commissioner expired, and a vacancy arose in the said The Essex Public Road Board by reason of the expiration of his said term of office.

And the said defendant further says, that having at the regular charter election in the city of Newark, in said county, held in the month of October, in the year eighteen hundred and seventy-nine, been duly re-elected a member of the said board of chosen freeholders of the county of Essex, for another term of one year, to commence on the second Wednesday in May, in the year eighteen hundred and eighty, and having duly qualified and entered on the duties of his said office of chosen freeholder, on the day and year last aforesaid, for his new term then commencing, the said board of chosen freeholders of the said county of Essex thereupon, afterwards, to wit, on the day and year last aforesaid, in the county aforesaid, duly elected the said defendant to be a

Commissioner and member of the said The Essex Public Road Board, to fill the last mentioned vacancy therein, occasioned as aforesaid, the said defendant being at the time of the last mentioned election, and having ever since been, a member of the board of chosen freeholders of the said county of Essex, and duly qualified for the office to which he was so elected, according to the provisions of all the acts of the legislature hereinbefore mentioned. And the said defendant further says, that being so re-elected such Commissioner he thereupon accepted said office and entered on the discharge of the duties thereof as such Commissioner, having first taken and filed in the office of the county clerk of said county of Essex an oath to act faithfully and impartially in the execution of the trust reposed in him by law, and given bond to the county collector of said county, in the sum of ten thousand dollars, with three sufficient sureties, approved by the finance committee of the board of chosen freeholders of said county, conditioned for the faithful performance of his duties as such Commissioner, under the act of the legislature in such case made and provided.

And the said defendant further says, that he has ever since the day and year last aforesaid, been actually serving as such Commissioner and member of the said The Essex Public Road Board.

And the said defendant further says, that by an act, entitled "An act to reduce the expenses of public road boards, and to place them under the control of the boards of chosen freeholders of the several counties of this State," approved the tenth day of February, in the year eighteen hundred and eighty-one, it is, among other things, enacted, that the commissioners constituting the public road boards which now exist, or may hereafter exist, in any of the counties of this State, under the laws thereof, shall consist of members of the boards of chosen freeholders of said counties respectively, to be appointed in the same manner as the standing committees of the said boards of chosen freeholders are, or may be appointed for the time being, and that said persons so appointed shall continue in office only during the time

for which they shall have been elected as such chosen freeholders, but shall be subject to removal at the pleasure of the said boards of chosen freeholders, and shall receive only such compensation for their services, as such commissioners, as shall be fixed from time to time by the said board of chosen freeholders; provided that nothing in said act contained should be construed to affect the tenure of office or compensation of any commissioner now in office as a member of any such road board; but that every such person who duly qualified and entered on the discharge of his duties on or before the first Monday of January, one thousand eight hundred and eighty-one, and has ever since been actually serving as such member, whether elected by the people or by the said board of chosen freeholders, shall be entitled to hold his said office during the time for which he was so elected; and that all acts and parts of acts inconsistent with any of the provisions of the last recited act should be and were thereby repealed.

By virtue whereof, he, the said defendant, for all the time in the said information in that behalf mentioned, has used and exercised, and still uses and exercises, the said office of Commissioner of the said The Essex Public Road Board, and hath claimed and still claims to be such Commissioner, and to have, use and enjoy all the liberties, privileges and franchises to the said office of Commissioner appertaining, as it was lawful for him to do; without this, that the said defendant has usurped the said office, liberties, privileges and franchises, or any part thereof, upon the State of New Jersey, in manner and form as in the said information is above supposed; and without this, and the said defendant expressly denies, that the said relator was elected to said office of Commissioner, or qualified therefor, or that there was any statement of the determination of the board of county canvassers that he was elected to said office, or that the counties of Essex and Hudson were the only counties in this State having seventy thousand inhabitants, or that the said The Essex Public Road Board was the only public road board lawfully created or existing at the

time of the passage of the said act, approved March 4th, eighteen hundred and seventy-nine; or that the said act was, for any reason, invalid in manner and form as in the said information in that behalf alleged. And this the said defendant is ready to verify, &c.

Wherefore he prays judgment, and that the said office, liberties, privileges and franchises, in form aforesaid claimed by him, may for the future be allowed to him, and that he may be dismissed and discharged by the Court hereof and from the premises aforesaid.

JOHN W. TAYLOR,
Att'y of Defendant.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } *ss.*

JEREMIAH D. POINIER, the above named defendant, being duly sworn, on his oath says, that the foregoing plea is not intended for the purpose of delay, and that he verily believes that he has a just and legal defence to the action or information on the merits of the case.

JERE. D. POINIER.

Subscribed and sworn to before me, }
at Newark, N. J., this 12th day }
of February, A.D. 1881. }

THOMAS C. PROVOST,
Master in Chancery of N. J.

New Jersey Supreme Court.

THE STATE, (*ex rel.* JACOB I. SCHMITT, *Relator*,) *vs.* JEREMIAH D. POINIER.	*On information in nature of Quo Warranto. Demurrer.*

And the said Attorney General, as to the said several pleas of the said defendant by him above pleaded, saith that the same and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude the State of New Jersey from having the information aforesaid against the said Jeremiah D. Poinier, defendant, and that he, the said Attorney General, is not bound by law to answer the same, and this the said Attorney General is ready to verify. Whereupon by reason of the insufficiency of the said plea in this behalf, the said Attorney General prays judgment for the State, and that the said Jeremiah D. Poinier of the premises above charged upon him by said information may be convicted.

JOHN P. STOCKTON,
Attorney General.

BENJ. C. POTTS,
Attorney for Relator.

JOINDER IN DEMURRER in usual form.

OPINION OF THE SUPREME COURT.

New Jersey Supreme Court.

THE STATE, (*ex rel.* JACOB I. SCHMITT,) *vs.* JEREMIAH D. POINIER. — *On Demurrer to Plea.*

BENJAMIN C. POTTS, for relator.

JOHN W. TAYLOR, for defendant.

The Court, at the November term, 1881, announced that judgment would be ordered for the relator against the defendant, for the reasons stated in the opinion on the rule to show cause in the case of *The State* (*ex. rel.* Richards) vs. *Hammer*, 13 Vroom, p. 437, which opinion is as follows:

BEASLEY, Chief Justice:

The relators in these cases claim that they respectively are members of the Board of Assessment and Revision of Taxes, in the city of Newark, and that such offices have been usurped by the defendants. The claim of each of these actors rests on similar grounds, and the defence to each application is the same, so that both proceedings can conveniently be considered and disposed of at the same time.

The title which the relators rely on, is through an alleged election held by virtue of the act passed in the year 1866, (Pamph. L., p. 445,) and it is shown by the testimony taken, and is an admitted fact, that the defendants are now in office under the force of the act of the year 1878, (Pamph. L., p. 329.)

The right thus asserted on the part of the relators has been challenged by the counsel of the defendants, on the ground that it is not sufficiently manifested and substantiated by the proofs. But I shall pause but little on this head, for the subject does not seem of any importance on this inquiry, because, whether these relators are or are not strictly entitled to fill, at present, the offices in question, they plainly are entitled to a standing, as relators, in a procedure of this nature. The objects here in litigation are public offices, and are, therefore, things of public concern, in which every resident of the city of Newark has an interest, and I know not how the suit of a tax-payer of that locality is to be repulsed, when the ground of complaint is, (for such is the allegation,) that the assessment and revision of taxation, which affects his property, is in unauthorized hands. All that the Court requires in such instances is, to be satisfied that the relator is of sufficient responsibility, is acting in good faith, and not vexatiously, and has not become disqualified by his own conduct with respect to the election that he is seeking to impeach. The authorities are numerous to this purpose. It is indeed intimated in the briefs of counsel in the present case, that the titles of the relators to these offices will be presented for judgment by the requisite allegations in the informations sought to be filed, but whether such is the purpose or not, the subject is now unessential, the only question being whether the parties have a right to a *status* enabling them to make their present application, and, as has been said, that *status* is not dependent upon official right. It is proper, however, as a precaution against misconception, to say that it is far from clear that the titles of these relators, can be put in issue or adjudged upon the contemplated informations, for although in the Courts of some of the States such a course appears to have prevailed, it would seem not improbable that such practice has originated in a statute on some local usage, for, so far as has been observed, it does not appear to have had, at any time, a footing in the English courts, or at the common law. The point, however, is not intended to be decided, for, as it is deemed irrelevant, it has not been fully examined.

Passing, then, from the position of the relators, we come to a consideration of that of the defendants. That position is assailed on the single ground that the beforementioned act of 1878, by force of which the defendants have been invested with office, is unconstitutional, and therefore, void. For this arraignment of this law two causes are assigned, the first of such objections being that the object of the statute is not expressed in its title. This objection must be overruled. The title of this statute is this: "An act relating to the assessment and revision of taxes in cities of this State" The purpose accomplished by this law is single, that is, a modification of the mode of appointing the members of the board of assessment and revision, and such an object is sufficiently expressed in this title. This law, in its title, expresses a specific subject to which it relates, and the purpose effectuated is fairly embraced in such subject. In the case cited of *Rader* vs. *Union Township*, 10 Vroom, 509, the subject stated in the title was so wide a one that the reference to it was calculated to convey no useful information as to the legislative intent embodied in the enactment. In that instance the object was to organize and establish a public body of a peculiar and unusual character, and such an object could not be indicated by the expression of a general purpose that was usually effected by well-known agencies. The case was an extreme one, and was so dealt with by the Court; and I may here say, that it is only in perfectly plain cases that it is proper for the Courts to vacate statutes on the ground now in question. And in this connection it is ever to be remembered that the language employed in the titles to legislative acts is to be interpreted according to its accepted signification, and, tested by this rule, an act described as "An act relating to the assessment and revision of taxes," would be understood to relate as much to the machinery by which such assessment and revision were to be effected, as to any other part of the affair. This exception cannot prevail.

The second exception taken to this act is that it contravenes, in its spirit, that provision of the constitution

that prohibits the enactment of any local or special law which regulates the internal affairs of towns and counties. *Cons.*, Sec. VII., p. 11.

As the act thus challeged provides a new method for the selection of the members of the board for the assessment and revision of taxes in the city of Newark, there can be no doubt that, within the meaning of this clause of the constitution, such act is one regulating the internal affairs of that municipality. This law has not only the effect to regulate such affairs, but to regulate them in an important particular, for it has the force of substituting, with respect to these considerable offices, an appointment by the Mayor and Common Council, in the place of an election by the citizens at large. This change is radical and of moment, affecting, as it does, in an eminent degree, the entire property of the inhabitants of the city. Therefore, such an innovation, as I have said, must be regarded as a municipal regulation in the constitutional sense of the term, and the consequence is, the object aimed at cannot be compassed by a law that is special and local.

The question, therefore, arises, is this law of that character? It does not profess to be such, for its title is, "An act relating to the assessment and revision of taxes in cities in this State." But this descriptive generality is immediately dwarfed and curtailed by the initial words of the body of the enactment, for it at once proceeds to declare, "that in any city of this State where a board of assessment and revision of taxes now exists, such board," &c.; the effect being to restrict the operation of the law to those certain localities that were possessed, at the time of the passage of the enactment, of the body of officers so designated. The evidence now before us shows that there were only two localities so circumstanced, the one being the city of Elizabeth, and the other the city of Newark. The result, therefore, is that the act was intended to apply, and that it does and must ever apply, to these two cities alone, and that the legal effect of this law, as now constituted, is the same as though it had, in express terms, declared that it was not to be operative through the State at large, but in the

cities of Elizabeth and Newark only. Can a law thus designed and framed, stand the constitutional test?

But a single argument has been presented in its support, which is, that this act is general in its terms, and embraces "all of a group of objects having characteristics sufficiently marked and distinguished to make them a class by themselves." And these qualities, it is contended, bring this case within the requirements of the constitution, as the same is expounded in the case of *Van Riper* vs. *Parsons*, 11 Vroom, 125. But I do not understand that the decision thus invoked will bear the construction thus put upon it. It does not undertake, as I understand it, to lay down any abstract rule on this subject; but the expressions quoted are employed in reference to the facts thus under adjudication. Plainly, a law may be general in its provisions, and may apply to the whole of a group of objects having characteristics sufficiently marked and important to make them a class by themselves, and yet such law may be in contravention of this constitutional prohibition. Thus, a law enacting that in every city in this State in which there are ten churches, there should be three commissioners of the water department, with certain prescribed duties, would present a specimen of such a law, for it would sufficiently designate a class of cities, and would embrace the whole of such class, and yet it does not seem to me that it could be sustained by the Courts. If it could be so sanctioned, then the constitutional restriction would be of no avail, as there are few objects that cannot be arbitrarily associated, if all that is requisite for the purpose of legislation is, to designate them by some quality, no matter what that may be, which will so distinguish them as to mark them as a distinct class. But the true principle requires something more than a mere designation by such characteristics as will serve to classify, for the characteristics which thus serve as the basis of classification must be of such a nature as to mark the objects so designated as peculiarly requiring exclusive legislation. There must be substantial distinction, having a reference to the subject matter of the proposed legisla-

tion, between the objects or places embraced in such legislation, and the objects or places excluded. The marks of distinction on which the classification is founded must be such, in the nature of things, as will, in some reasonable degree, at least, account for or justify the restriction of the legislation. Principles of this sort can be best elucidated by examples.

I have already given a sample of a merely arbitrary classification, founded on no causal relation between the subject matter of such legislation and the things so classified. A sample of the other, or legitimate kind, would be signified in a law that should give to all cities in the State, situated on tide-water, the privilege of using such waters in connection with their sewers. In such an enactment, but a part of the cities of the State would be embraced, but the classification would be lawful and proper, inasmuch as the places embraced would be possessed of a characteristic distinct from those possessed by the excluded places, such characteristic being of such a nature as to afford a reasonable ground for such special legislation. In the two classes of instances thus exemplified, the basis of the classification of the one would be by a reference to marks of distinction having no connection with the substance of the supposed statute; in the other, the opposite of this would obtain; so that in the former, the classification would be formal and arbitrary; in the latter, substantial and springing out of the nature of the subject of this legislation. The present law is seemingly of the former kind. The class to which it is made applicable, is designated and selected by the mark of each of its members being possessed of a certain kind of board of officers, a circumstance having no connection but a formal one with the subject matter of this law, and in no way indicating a reasonable ground for making these particular places the objects of such special legislation. In all but mere form, as I have said, these places might as well have been designated by name, as by a reference to these organic bodies possessed by them, and the effect of this law would have been precisely the same. It seems to me difficult to find any stable ground

for sustaining such an act, and therefore these writs should be issued so that the question can be brought before the Courts in a formal manner.

With respect to the argument which was pressed upon the attention of the Court, and which was founded on the supposed public inconvenience that will have to be encountered, in case these defendants should be ousted, it is sufficient to say that the force of this appeal is entirely dissipated, if we take into the account a consideration which this reasoning ignores. It is not pretended that the illegality which the relator here attacks is of a temporary or evanescent nature, and which will pass away with even the official term of these defendants; for it is clear that it is a radical and inherent defect, if it is a defect, in the municipal system into which it has become incorporated; nor is it alleged that the present time is peculiarly unpropitious for the removal of such defect; so that the consequence is that if, as an exercise of discretion, from the fear of a possible derangement of the finances of the city, we are to refuse the relief asked, the same motive would be equally prevalent in the future; the result being that the citizens of Newark would be obliged to submit, in perpetuity, to have their taxes assessed and revised by a body of men, who, there is some reason to think, have no legal right to perform such functions. In short, the Court, in the exercise of its discretionary power, is asked to perpetuate what is not improbably an unconstitutional exercise of power.

JUDGMENT OF OUSTER was thereupon entered in the usual form.

ASSIGNMENT OF ERROR.

N. J. Court of Errors and Appeals.

JEREMIAH D. POINIER, *Plaintiff in Error,* vs. THE STATE, (*ex rel.* JACOB I. SCHMITT, *Relator,*) *Defendant in Error.*	*On Error to the Supreme Court.* / *Assignment of Error.*

Afterwards, that is to say, on the 29th day of November, in the year eighteen hundred and eighty-one, before the Court of Errors and Appeals of the State of New Jersey, comes the said Jeremiah D. Poinier by John W. Taylor, his attorney, and says that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, to wit, that by the record aforesaid, the judgment aforesaid appears to have been given for the State of New Jersey against the said Jeremiah D. Poinier, whereas, by the law of the land, the said judgment ought to have been given for the said Jeremiah D. Poinier against the State of New Jersey. And the said Jeremiah D. Poinier prays that the judgment aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings being, may be reversed, annulled, and altogether held for naught, and that he may be restored to all things which he has lost by occasion of the said judgment, &c.

JOHN W. TAYLOR,
Att'y for Pl'ff in Error.

JOINDER IN ERROR in usual form.

N. J. Court of Errors and Appeals.

	MICHAEL SUMMERS, *vs.* THE STATE, (*ex rel.* JOSEPH W. WILDEY.)	*On Error to Supreme Court.*

This case is similar to the foregoing, and by agreement, is to abide the result in that case.

WARD & TICHENOR, Law Case Printers, 832 and 834 Broad Street, Newark, N. J.

N. J. Court of Errors and Appeals.

FREDERICK W. MORRIS, *vs.* THE STATE, (*ex rel.* WILLIAM HARRIGAN.)	*On Error to Supreme Court.*

WRIT OF ERROR.

NEW JERSEY, SS:

[L.S.] The State of New Jersey to the Justices of the Supreme Court of the State of New Jersey, Greeting:

Because in the record and proceedings, and also in the giving of judgment, in a plaint which was in our Supreme Court before you, by our writ, between the State (on the relation of William Harrigan), and Frederick W. Morris, on a *quo warranto* information, as it is said, manifest error hath intervened, to the great damage of the said Frederick W. Morris, as by his complaint we are informed; we being willing that the error, if any there be, should in due manner be corrected, and speedy justice done to the parties aforesaid, in this behalf, do command you that if judgment be thereupon given, then, without delay, you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Court of Errors and Appeals on the twenty-ninth day of November instant, together with this writ; that the record and proceedings aforesaid being inspected, we may further cause to be

done what of right and according to law ought to be done.

Witness, THEODORE RUNYON, Esq., our Chancellor, at Trenton, the ninth day of November, in the year eighteen hundred and eighty-one.

HENRY C. KELSEY, *Clerk.*

JOHN W. TAYLOR, *Att'y.*

RETURN.

The answer of the Justices of the Supreme Court of New Jersey, within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do hereby certify to the Court of Errors and Appeals in a certain schedule to this writ annexed, as within we are commanded.

M. BEASLEY, *C. J.* [L. S.]

SCHEDULE.

New Jersey Supreme Court.

THE STATE OF NEW JERSEY, (*ex rel.* WILLIAM HARRIGAN, *Relator*,)	*On information in nature of Quo Warranto.*
vs.	
FREDERICK W. MORRIS.	*Rule to Appear, plead, &c.*

On motion, in behalf of the Attorney General, upon affidavits read and filed, it having been ordered that leave be granted to file an information in this cause, and that process do issue against the defendant; and thereupon an information being filed setting forth, among other things, that the defendant for a long space of time, to wit, from the 12th day of May, 1880, hitherto, hath unlawfully held, used and executed, and still doth unlawfully hold, use and execute, without any legal warrant, authority or right whatsoever, the office of Commissioner of the Essex Public Road Board, and its liberties, privileges and franchises, and praying that he, the said defendant, may be made to answer to said State by what warrant he claims to hold, use, execute and enjoy the aforesaid office of Commissioner of the Essex Public Road Board, and the liberties, privileges and franchises thereof, and why, if adjudged guilty of usurpation in the premises, a fine should not be imposed for the use of the State, besides costs of these proceedings to be taxed;

It is thereupon further ordered, that the said defendant appear and plead or demur to the information filed in this cause, within ten days after service upon him of

a copy of this rule and of the information, and that the defendant take short notice of argument at the next term of the Supreme Court.

On motion of

BENJ. C. POTTS,
Attorney for Relator.

[Endorsed.]

I acknowledge service September 13, 1881, of a paper whereof within is a copy.

JOHN W. TAYLOR,
Attorney for Defendant.

New Jersey Supreme Court.

THE STATE OF NEW JERSEY, (*ex rel.* WILLIAM HARRIGAN, *Relator*,) *vs.* FREDERICK W. MORRIS. — *On Quo Warranto. Information*

John P. Stockton, Esq., Attorney General of the State of New Jersey, who sues for the said State in this behalf, comes in his own proper person here into the Supreme Court of Judicature of the said State, before the justices thereof, at the State House in the city of Trenton, on the seventh day of June, in the year one thousand eight hundred and eighty-one, for the said State of New Jersey, at the relation of William Harrigan, of the city of Newark, Essex county and State of New Jersey, desiring to sue and prosecute in this behalf, according to the form of the statute in such case made and provided, and gives the said Court here to be informed and understand, that under and by virtue of an act of the legislature of the State of New Jersey, entitled an "An act constituting a Public Road Board, for the laying out, constructing, appropriating, improving and maintaining public carriage roads in the county of Essex," approved March 31, 1869, there was organized in the said county of Essex, the Essex Public Road Board, and at a general election held in this State on Tuesday, the sixth day of November, eighteen hundred and seventy-seven, for the election of members of the general assembly, and other State and county officers, the said William Harrigan, being a resident and citizen of said county, was duly and regularly elected by the electors of said county, a Commissioner of the said Road Board for the term of two years, from the first Monday in January, eighteen hundred and seventy-

eight; that the said William Harrigan, after his election, as aforesaid, duly qualified pursuant to the requirements of said act, and took upon himself the performance of the duties of said office as such Commissioner of said Road Board, and continued to perform and execute the duties thereof until the expiration of his said term, to wit, until the fifth day of January, 1880. That under and by virtue of said act, at a general election held in this State on Tuesday, the fourth day of November, eighteen hundred and seventy-nine, for the election of members of the general assembly and other State and county officers, the said William Harrigan, being an elector and citizen of said county, was again duly and regularly elected by the electors of said county, a Commissioner of the said The Essex Public Road Board, to succeed himself for the further term of two years from the first Monday in January, eighteen hundred and eighty, as appears by the following statement, viz:

"A statement of the determination of the board of county canvassers relating to an election held in the county of Essex, on the fourth day of November, in the year of our Lord one thousand eight hundred and seventy-nine, for the election of members of the general assembly of this State, and a sheriff and coroners for said county, for the ensuing year.

"The said board do determine that at the said election William Harrigan and Jacob I. Schmitt were duly elected Commissioners of the Essex Public Road Board of said county.

"I do hereby certify that the foregoing is a true, full and correct statement of the determination of the board of canvassers therein mentioned.

"In witness whereof, I have hereunto set my hand and seal this seventh day of November, in the year of our Lord one thousand eight hundred and seventy-nine.

"THOMAS PIERSON,
Chairman of the Board of Canvassers.

Attest:

WM. A. SMITH, *Clerk.*"

"STATE OF NEW JERSEY, } ss.
ESSEX COUNTY. }

"I, William A. Smith, clerk of the county of Essex, do hereby certify that the foregoing is a true, full and correct statement of the board of county canvassers, as now on file in my office.

"In testimony whereof, I have hereunto set my hand and official seal this fifth day of December, eighteen hundred and seventy-nine.

[L. S.] WM. A. SMITH, *Clerk.*"

That the said William Harrigan, after his last aforesaid election, and before the commencement of his term of office thereunder, in pursuance of said act, took and filed, with the county clerk of said county, the required oath of office, and gave bond to the county collector of said county, in the sum of ten thousand dollars, with two sufficient sureties conditioned for the performance of his duties under said act.

That after the filing of the said oath of office, and the giving of said bond as aforesaid, the said William Harrigan made application to the finance committee of the board of chosen freeholders of said county to have said bond examined and approved, but said finance committee, contrary to their duty under said act, refused to examine or consider the same.

And the said Attorney General, at the relation of William Harrigan aforesaid, doth further give the Court here to be informed and understand that, claiming authority under and by virtue of a pretended act of the legislature of this State, entitled "An act concerning Public Road Boards," approved April 21, 1876, and a pretended supplement thereto, approved March 4, 1879, which said act of 1876, purporting to be a general law, provided for the organization of road boards in such counties only of this State having upwards of seventy-five thousand inhabitants, and not having already in existence a public road board organized in accordance with the provisions of said act or any other act of this State; and the first section of said pretended supplement, which provides

"that any and all vacancies hereafter occurring by death, "resignation or any other cause whatever in any board "of commissioners of any public road board lawfully "created or existing in and for any county of this State, "(prior to the passage of the act to which this is a sup- "plement,) shall be filled only by election or appoint- "ment to be made by the board of chosen freeholders of "said county," &c. The board of chosen freeholders of said Essex county, on or about the ninth day of October, eighteen hundred and seventy-nine, under pretence that a vacancy would occur in said road board at the expiration of the said William Harrigan's first above mentioned term of office as such Commissioner aforesaid, did illegally and unlawfully appoint one Robert McGowan to fill such pretended vacancy, and to be a member of said Road Board from the time of the commencement of said William Harrigan's said second term of office, to wit, from the first Monday in January, 1880.

That the said Robert McGowan afterwards, to wit, on the said first Monday in January, 1880, by virtue of his said pretended appointment, unlawfully and without any legal warrant or authority whatsoever, intruded himself into, usurped and held, and continued to usurp, hold, use, occupy, enjoy and exercise the said office of Commissioner of said Road Board, to the exclusion and prevention of the said William Harrigan from his said office of Commissioner of said Road Board, until on or about the twelfth day of May, 1880.

That at said last mentioned date, or some time prior thereto, the said board of chosen freeholders, again claiming authority under and by virtue of said act of 1876, or said pretended supplement thereto, pretended to appoint one Frederick W. Morris to be a Commissioner of said Road Board for the term of one year, or for some other term, from the said twelfth day of May, 1880, to succeed the said McGowan.

That the said Frederick W. Morris, by virtue of his said pretended appointment, unlawfully and without any legal warrant or authority whatever, intruded himself into, usurped and held, and continued to usurp, hold,

use, occupy, enjoy and exercise said office of Commissioner of said Road Board, together with the liberties, privileges, franchises and emoluments thereof, to the exclusion and prevention of the said William Harrigan from his said office of Commissioner, aforesaid, from the twelfth day of May, 1880, hitherto, without any legal election, appointment, warrant or authority, other than hereinbefore set forth, which was wholly insufficient in law to have entitled him to hold the same, by virtue of which said several appointments, and the unlawful action of the said board of chosen freeholders in the premises, the said William Harrigan hath for all the times aforesaid, been, and still is, excluded and prevented from the occupation and exercise of his said office, to wit, from the said first Monday in January, 1880, hitherto.

And the said Attorney General, at the relation of William Harrigan aforesaid, doth further give the Court here to be informed and understand that prior to and at the time of the passage of the said pretended act of 1876, the counties of Essex and Hudson were the only counties in this State having seventy thousand inhabitants or upwards, and that said Essex county was the only county in this State having already in existence a duly organized road board, to wit, the Essex Public Road Board, organized as aforesaid, and that prior to the passage of said pretended supplement, the said Essex Public Road Board was the only road board lawfully created or existing in any county in this State.

That, at the different times aforesaid, when said several appointments of said McGowan and Morris were made by the said board of chosen freeholders as aforesaid, there had not occurred, nor did there exist, nor was there in contemplation, nor has there at any time since occurred or existed, or been in contemplation, any lawful vacancy in the said Essex Public Road Board, that could or would legally and lawfully authorize the making of said pretended appointments by the said board of chosen freeholders as aforesaid, or which, when made, would or could legally entitle either the said McGowan or Morris to hold, use, occupy, exercise and enjoy said office of Com-

missioner of the said The Essex Public Road Board, to the exclusion therefrom of the said William Harrigan, as aforesaid.

That the said William Harrigan, by virtue of said last mentioned election, was, under the act first hereinbefore referred to, duly elected and chosen one of the Commissioners of the said The Essex Public Road Board, and that by virtue thereof, the said William Harrigan hath ever since been and still is rightfully and legally entitled to hold, use, exercise and enjoy the said office of Commissioner of the said The Essex Public Road Board as aforesaid, at Essex county aforesaid, which said office the said Robert McGowan, during all the time aforesaid, to wit, from the first Monday in January, 1880, to on or about the twelfth day of May, 1880, and the said Frederick W. Morris, during all the time aforesaid, to wit, from thence hitherto, upon the State of New Jersey, did usurp, intrude into and unlawfully hold, use, exercise and enjoy, to the exclusion of the said William Harrigan, to wit, at Essex county aforesaid, in contempt of the State of New Jersey, and to its great damage and prejudice against its sovereignty and dignity.

Whereupon the said Attorney General for the said State, at the relation of the said William Harrigan, desiring to sue and prosecute in this behalf, prays the advice of the Court here as to the rights of the relator in the premises, as well as for due process of law against the said Frederick W. Morris in this behalf to be made, to answer to the said State by what warrant he has claimed or now does claim to hold, use, execute and enjoy the aforesaid office of Commissioner of the said The Essex Public Road Board and the liberties, privileges, franchises and emoluments thereof, and why, if adjudged guilty of usurpation in the premises, a fine should not be imposed for the use of the State, besides the costs of these proceedings to be taxed.

JOHN P. STOCKTON,
Attorney General.

BENJ. C. POTTS,
Attorney for Relator.

New Jersey Supreme Court.

FREDERICK W. MORRIS, *ads.* THE STATE, (*ex rel.* WILLIAM HARRIGAN.)	*On Quo Warranto information.* *Plea.*

And comes the said Frederick W. Morris, defendant, by John W. Taylor, his attorney, and having heard the said information read, complains that he is by color thereof greatly troubled and vexed, and that unjustly, because protesting that the said information and the matters therein contained are not sufficient in law, and that he is not bound by the law of the land to answer the same, and further protesting that it is not true, and denying it be true as alleged in the said information, that the said relator, at the general election held on the fourth day of November, eighteen hundred and seventy-nine, was elected by the electors of said county of Essex, a Commissioner of the said "The Essex Public Road Board," for the term of two years, or any term, from the first Monday in January, in the year eighteen hundred and eighty, or that any valid statement was made showing that he was so elected, or that any valid certificate was given of any such election; yet, for plea in this behalf, the said defendant says that after the passage of the act of the legislature of this State, in said information first mentioned, and under which the said relator alleges, and this defendant denies, he was so elected, and on the fourth day of March in the year eighteen hundred and seventy-nine, there was enacted by the legislature of this State an act entitled "A supplement to the act entitled 'An act concerning Public Road Boards,' approved

April twenty-first, one thousand eight hundred and seventy-six," whereby it was (among other things) provided, that any and all vacancies thereafter occurring by death, resignation or any other cause whatever, in the board of commissioners of any public road board, lawfully created and existing in and for any county of this State (prior to the passage of the said original act, and not governed by the provisions of the said original act,) should be filled only by election or appointment, to be made by the board of chosen freeholders of such county, from the members of such board of chosen freeholders, for the time being, and that the persons so elected or appointed should continue in office as commissioners only during the term for which they should have been elected such chosen freeholders, and should receive such compensation per diem (in lieu of salary) as chosen freeholders were entitled by law to receive; and that all acts and parts of acts inconsistent with the provisions of said supplemental act should be and were thereby repealed, as by the said supplemental act, reference being thereto had, will more fully and at large appear.

And the said defendant further says that a vacancy was occasioned and arose in the board of commissioners of the said The Essex Public Road Board, (which was within the provisions of the said supplemental act) afterwards, to wit, on the first Monday of January, in the year eighteen hundred and eighty, by the expiration of the term of office of one William Harrigan, who had been elected by the legal voters of said county a Commissioner of the said The Essex Public Road Board, at the general election for members of the general assembly and for State and county officers, held in the month of November, in the year eighteen hundred and seventy-seven, to serve for the term of two years from the first Monday in January then next, as well as by the failure of any other person to be elected to and to be qualified for entering upon the duties of the said office, as the successor of the said William Harrigan; and one Robert McGowan, being, at the time said vacancy happened, and having for a long time before, been a member of the board of chosen

freeholders of the said county of Essex, and duly qualified according to the provisions of all the acts of the legislature hereinbefore mentioned, he was thereupon, to wit, on the day and year last aforesaid, in the county aforesaid, duly elected by the said board of chosen freeholders of the county of Essex to be a Commissioner and member of the said The Essex Public Road Board, to fill the vacancy occasioned as aforesaid.

And the said defendant further says, that the said Robert McGowan, having been so elected, he thereupon, to wit, on the day and year last aforesaid, duly qualified as such member and Commissioner of said Public Road Board, by taking the oath of office and giving the bond prescribed by law, (which bond was duly approved by the finance committee of the said board of chosen freeholders,) and thereupon entered on the duties of the said office of Commissioner, and continued to discharge the duties thereof, during his term of office of chosen freeholder of the said county of Essex, and until the second Wednesday of May, in the year eighteen hundred and eighty, when and whereby his term of office as such Commissioner expired, and a vacancy arose in the said The Essex Public Road Board by reason of the expiration of his said term of office.

And the said defendant further says, that having at the regular charter election in the city of Orange, in said county, held in the month of March, in the year eighteen hundred and eighty, been duly re-elected a member of the said board of chosen freeholders of the county of Essex, for the term of one year, to commence on the second Wednesday of May, in the year eighteen hundred and eighty, and having duly qualified and entered on the duties of his said office of chosen freeholder, on the day and year last aforesaid, for his term then commencing, the said board of chosen freeholders of the said county of Essex thereupon, afterwards, to wit, on the day and year last aforesaid, in the county aforesaid, duly elected the said defendant to be a Commissioner and member of the said The Essex Public Road Board, to fill the last mentioned vacancy therein,

occasioned as aforesaid, the said defendant being at the time of the last mentioned election a member of the board of chosen freeholders of the said county of Essex, and duly qualified for the office to which he was so elected, according to the provisions of all the acts of the legislature hereinbefore mentioned.

And the said defendant further says, that being so re-elected such Commissioner, he thereupon accepted said office and entered on the discharge of the duties thereof as such Commissioner, having first taken and filed in the office of the county clerk of said county of Essex an oath to act faithfully and impartially in the execution of the trust reposed in him by law, and given bond to the county collector of said county, in the sum of ten thousand dollars, with three sufficient sureties, approved by the finance committee of the board of chosen freeholders of said county, conditioned for the faithful performance of his duties as such Commissioner, under the act of the legislature in such case made and provided.

And the said defendant further says, that from the day and year last aforesaid, he actually served as such Commissioner and member of the said The Essex Public Road Board, until the second Wednesday of May, in the year eighteen hundred and eighty-one, when his term of office as such chosen freeholder and Commissioner expired, and since which last mentioned date he has not held, used, occupied, enjoyed or executed the said office of Commissioner, nor its liberties, privileges, franchises or emoluments; and the said defendant denies the allegations in the said information to the contrary, to be true.

And the said defendant further says, that upon the day and year last aforesaid, in the county aforesaid, one John H. Eastwood, then and ever since a member of the said board of chosen freeholders, duly elected and qualified according to law, was duly elected by the said board to be a Commissioner and member of the said The Essex Public Road Board, to fill the vacancy occasioned therein by the expiration of this defendant's said term of office; and that the said John H. Eastwood, being so elected

such Commissioner, he thereupon accepted said office, and entered on the discharge of the duties thereof as such Commissioner, having first taken and filed in the office of the county clerk of the said county of Essex an oath to act faithfully and impartially in the execution of the trust reposed in him by law, and given bond to the county collector of the said county, in the sum of ten thousand dollars, with three sufficient sureties, approved by the finance committee of the board of chosen freeholders of said county, conditioned for the faithful performance of his duties as such Commissioner, under the act of the legislature in such case made and provided.

And the said defendant further says, that the said John H. Eastwood has ever since the day and year last aforesaid, been serving as such Commissioner as the successor of the said defendant in the said office.

And the said defendant further says, that by an act, entitled "An act to reduce the expenses of public road boards, and to place them under the control of the boards of chosen freeholders of the several counties of this State," approved the tenth day of February, in the year eighteen hundred and eighty-one, it is, among other things, enacted, that the commissioners constituting the public road boards which now exist, or may hereafter exist, in any of the counties of this State, under the laws thereof, shall consist of members of the boards of chosen freeholders of said counties respectively, to be appointed in the same manner as the standing committees of the said boards of chosen freeholders are, or may be appointed for the time being, and that said persons so appointed shall continue in office only during the time for which they shall have been elected as such chosen freeholders, but shall be subject to removal at the pleasure of the said boards of chosen freeholders, and shall receive only such compensation for their services, as such commissioners, as shall be fixed from time to time by the said boards of chosen freeholders; provided that nothing in said act contained should be construed to affect the tenure of office or compensation of any commissioner now in office as a member of any such road

board; but that every such person who duly qualified and entered on the discharge of his duties on or before the first Monday of January, one thousand eight hundred and eighty-one, and has ever since been actually serving as such member, whether elected by the people or by the said boards of chosen freeholders, shall be entitled to hold his said office during the time for which he was so elected; and that all acts and parts of acts inconsistent with any of the provisions of the last recited act should be and were thereby repealed.

By virtue whereof, he, the said defendant, for all the time in the said information in that behalf mentioned, prior to the said second Wednesday of May, in the year eighteen hundred and eighty-one, used and exercised the said office of Commissioner of the said The Essex Public Road Board, and claimed, during all that time, to be such Commissioner, and to have, use and enjoy all the liberties, privileges and franchises to the said office of Commissioner appertaining, as it was lawful for him to do; without this, that the said defendant has usurped the said office, liberties, privileges and franchises, or any part thereof, upon the State of New Jersey, in manner and form as in the said information is above supposed; and without this, and the said defendant expressly denies, that the said relator was elected to said office of Commissioner, or qualified therefor, or that there was any statement of the determination of the board of county canvassers that he was elected to said office, or that the counties of Essex and Hudson were the only counties in this State having seventy thousand inhabitants, or that the said The Essex Public Road Board was the only public road board lawfully created or existing at the time of the passage of the said act, approved March 4th, eighteen hundred and seventy-nine; or that the said act was, for any reason, invalid in manner and form as in the said information in that behalf alleges. And this the said defendant is ready to verify, &c.

Wherefore he prays judgment, and that he was by law entitled to the said office, liberties, privileges and fran-

chises in form aforesaid claimed by him, and that he may be dismissed and discharged by the Court here, of and from the premises aforesaid.

JOHN W. TAYLOR,
Attorney for Defendant.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } *ss.*

FREDERICK W. MORRIS, the above named defendant, being duly sworn, on his oath says, that the foregoing plea is not intended for the purpose of delay, and that he verily believes that he has a just and legal defence to the action or information on the merits of the case.

FREDERICK W. MORRIS.

Subscribed and sworn to before me, at Newark, N. J., this 23d day of September, A.D. 1881.

SAMUEL J. MACDONALD,
Notary Public of N. J.

New Jersey Supreme Court.

THE STATE, (*ex rel.* WILLIAM HARRIGAN, *Relator*,)
vs.
FREDERICK W. MORRIS.

On information in nature of Quo Warranto. Demurrer.

And the said Attorney General, as to the said several pleas of the said defendant by him above pleaded, saith that the same and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude the State of New Jersey from having the information aforesaid against the said Frederick W. Morris, defendant, and that he, the said Attorney General, is not bound by law to answer the same, and this the said Attorney General is ready to verify. Whereupon by reason of the insufficiency of the said plea in this behalf, the said Attorney General prays judgment for the State, and that the said Frederick W. Morris of the premises above charged upon him by said information may be convicted.

JOHN P. STOCKTON,
Attorney General.

BENJ. C. POTTS,
Attorney for Relator.

JOINDER IN DEMURRER in usual form.

OPINION OF THE SUPREME COURT.

New Jersey Supreme Court.

THE STATE, (*ex rel.* WILLIAM HARRIGAN,)
vs.
FREDERICK W. MORRIS.

On Demurrer to Plea.

BENJAMIN C. POTTS, for relator.
JOHN W. TAYLOR, for defendant.

The Court, at the November term, 1881, announced that judgment would be ordered for the relator against the defendant, for the reasons stated in the opinion on the rule to show cause in the case of *The State* (*ex. rel.* Richards) vs. *Hammer*, 13 Vroom, p. 437, which opinion is as follows:

BEASLEY, Chief Justice:

The relators in these cases claim that they respectively are members of the Board of Assessment and Revision of Taxes, in the city of Newark, and that such offices have been usurped by the defendants. The claim of each of these actors rests on similar grounds, and the defence to each application is the same, so that both proceedings can conveniently be considered and disposed of at the same time.

The title which the relators rely on, is through an alleged election held by virtue of the act passed in the year 1866, (Pamph. L., p. 445,) and it is shown by the testimony taken, and is an admitted fact, that the defendants are now in office under the force of the act of the year 1878, (Pamph. L., p. 329.)

The right thus asserted on the part of the relators has been challenged by the counsel of the defendants, on the ground that it is not sufficiently manifested and substantiated by the proofs. But I shall pause but little on this head, for the subject does not seem of any importance on this inquiry, because, whether these relators are or are not strictly entitled to fill, at present, the offices in question, they plainly are entitled to a standing, as relators, in a procedure of this nature. The objects here in litigation are public offices, and are, therefore, things of public concern, in which every resident of the city of Newark has an interest, and I know not how the suit of a tax-payer of that locality is to be repulsed, when the ground of complaint is, (for such is the allegation,) that the assessment and revision of taxation, which affects his property, is in unauthorized hands. All that the Court requires in such instances is, to be satisfied that the relator is of sufficient responsibility, is acting in good faith, and not vexatiously, and has not become disqualified by his own conduct with respect to the election that he is seeking to impeach. The authorities are numerous to this purpose. It is indeed intimated in the briefs of counsel in the present case, that the titles of the relators to these offices will be presented for judgment by the requisite allegations in the informations sought to be filed, but whether such is the purpose or not, the subject is now unessential, the only question being whether the parties have a right to a *status* enabling them to make their present application, and, as has been said, that *status* is not dependent upon official right. It is proper, however, as a precaution against misconception, to say that it is far from clear that the titles of these relators can be put in issue or adjudged upon the contemplated informations, for although in the Courts of some of the States such a course appears to have prevailed, it would seem not improbable that such practice has originated in a statute on some local usage, for, so far as has been observed, it does not appear to have had, at any time, a footing in the English courts, or at the common law. The point, however, is not intended to be decided, for, as it is deemed irrelevant, it has not been fully examined.

Passing, then, from the position of the relators, we come to a consideration of that of the defendants. That position is assailed on the single ground that the beforementioned act of 1878, by force of which the defendants have been invested with office, is unconstitutional, and therefore, void. For this arraignment of this law two causes are assigned, the first of such objections being that the object of the statute is not expressed in its title. This objection must be overruled. The title of this statute is this: "An act relating to the assessment and revision of taxes in cities of this State." The purpose accomplished by this law is single, that is, a modification of the mode of appointing the members of the board of assessment and revision, and such an object is sufficiently expressed in this title. This law, in its title, expresses a specific subject to which it relates, and the purpose effectuated is fairly embraced in such subject. In the case cited of *Rader* vs. *Union Township*, 10 Vroom, 509, the subject stated in the title was so wide a one that the reference to it was calculated to convey no useful information as to the legislative intent embodied in the enactment. In that instance the object was to organize and establish a public body of a peculiar and unusual character, and such an object could not be indicated by the expression of a general purpose that was usually effected by well-known agencies. The case was an extreme one, and was so dealt with by the Court; and I may here say, that it is only in perfectly plain cases that it is proper for the Courts to vacate statutes on the ground now in question. And in this connection it is ever to be remembered that the language employed in the titles to legislative acts is to be interpreted according to its accepted signification, and, tested by this rule, an act described as "An act relating to the assessment and revision of taxes," would be understood to relate as much to the machinery by which such assessment and revision were to be effected, as to any other part of the affair. This exception cannot prevail.

The second exception taken to this act is that it contravenes, in its spirit, that provision of the constitution

that prohibits the enactment of any local or special law which regulates the internal affairs of towns and counties. *Cons.*, Sec. VII., p. 11.

As the act thus challenged provides a new method for the selection of the members of the board for the assessment and revision of taxes in the city of Newark, there can be no doubt that, within the meaning of this clause of the constitution, such act is one regulating the internal affairs of that municipality. This law has not only the effect to regulate such affairs, but to regulate them in an important particular, for it has the force of substituting, with respect to these considerable offices, an appointment by the Mayor and Common Council, in the place of an election by the citizens at large. This change is radical and of moment, affecting, as it does, in an eminent degree, the entire property of the inhabitants of the city. Therefore, such an innovation, as I have said, must be regarded as a municipal regulation in the constitutional sense of the term, and the consequence is, the object aimed at cannot be compassed by a law that is special and local.

The question, therefore, arises, is this law of that character? It does not profess to be such, for its title is, "An act relating to the assessment and revision of taxes in cities in this State." But this descriptive generality is immediately dwarfed and curtailed by the initial words of the body of the enactment, for it at once proceeds to declare, "that in any city of this State where a board of assessment and revision of taxes now exists, such board," &c.; the effect being to restrict the operation of the law to those certain localities that were possessed, at the time of the passage of the enactment, of the body of officers so designated. The evidence now before us shows that there were only two localities so circumstanced, the one being the city of Elizabeth, and the other the city of Newark. The result, therefore, is that the act was intended to apply, and that it does and must ever apply, to these two cities alone, and that the legal effect of this law, as now constituted, is the same as though it had, in express terms, declared that it was not to be operative through the State at large, but in the

cities of Elizabeth and Newark only. Can a law thus designed and framed, stand the constitutional test?

But a single argument has been presented in its support, which is, that this act is general in its terms, and embraces "all of a group of objects having characteristics sufficiently marked and distinguished to make them a class by themselves." And these qualities, it is contended, bring this case within the requirements of the constitution, as the same is expounded in the case of *Van Riper* vs. *Parsons*, 11 Vroom, 125. But I do not understand that the decision thus invoked will bear the construction thus put upon it. It does not undertake, as I understand it, to lay down any abstract rule on this subject; but the expressions quoted are employed in reference to the facts thus under adjudication. Plainly, a law may be general in its provisions, and may apply to the whole of a group of objects having characteristics sufficiently marked and important to make them a class by themselves, and yet such law may be in contravention of this constitutional prohibition. Thus, a law enacting that in every city in this State in which there are ten churches, there should be three commissioners of the water department, with certain prescribed duties, would present a specimen of such a law, for it would sufficiently designate a class of cities, and would embrace the whole of such class, and yet it does not seem to me that it could be sustained by the Courts. If it could be so sanctioned, then the constitutional restriction would be of no avail, as there are few objects that cannot be arbitrarily associated, if all that is requisite for the purpose of legislation is, to designate them by some quality, no matter what that may be, which will so distinguish them as to mark them as a distinct class. But the true principle requires something more than a mere designation by such characteristics as will serve to classify, for the characteristics which thus serve as the basis of classification must be of such a nature as to mark the objects so designated as peculiarly requiring exclusive legislation. There must be substantial distinction, having a reference to the subject matter of the proposed legisla-

tion, between the objects or places embraced in such legislation, and the objects or places excluded. The marks of distinction on which the classification is founded must be such, in the nature of things, as will, in some reasonable degree, at least, account for or justify the restriction of the legislation. Principles of this sort can be best elucidated by examples.

I have already given a sample of a merely arbitrary classification, founded on no causal relation between the subject matter of such legislation and the things so classified. A sample of the other, or legitimate kind, would be signified in a law that should give to all cities in the State, situated on tide-water, the privilege of using such waters in connection with their sewers. In such an enactment, but a part of the cities of the State would be embraced, but the classification would be lawful and proper, inasmuch as the places embraced would be possessed of a characteristic distinct from those possessed by the excluded places, such characteristic being of such a nature as to afford a reasonable ground for such special legislation. In the two classes of instances thus exemplified, the basis of the classification of the one would be by a reference to marks of distinction having no connection with the substance of the supposed statute; in the other, the opposite of this would obtain; so that in the former, the classification would be formal and arbitrary; in the latter, substantial and springing out of the nature of the subject of this legislation. The present law is seemingly of the former kind. The class to which it is made applicable, is designated and selected by the mark of each of its members being possessed of a certain kind of board of officers, a circumstance having no connection but a formal one with the subject matter of this law, and in no way indicating a reasonable ground for making these particular places the objects of such special legislation. In all but mere form, as I have said, these places might as well have been designated by name, as by a reference to these organic bodies possessed by them, and the effect of this law would have been precisely the same. It seems to me difficult to find any stable ground

for sustaining such an act, and therefore these writs should be issued so that the question can be brought before the Courts in a formal manner.

With respect to the argument which was pressed upon the attention of the Court, and which was founded on the supposed public inconvenience that will have to be encountered, in case these defendants should be ousted, it is sufficient to say that the force of this appeal is entirely dissipated, if we take into the account a consideration which this reasoning ignores. It is not pretended that the illegality which the relator here attacks is of a temporary or evanescent nature, and which will pass away with even the official term of these defendants; for it is clear that it is a radical and inherent defect, if it is a defect, in the municipal system into which it has become incorporated; nor is it alleged that the present time is peculiarly unpropitious for the removal of such defect; so that the consequence is that if, as an exercise of discretion, from the fear of a possible derangement of the finances of the city, we are to refuse the relief asked, the same motive would be equally prevalent in the future; the result being that the citizens of Newark would be obliged to submit, in perpetuity, to have their taxes assessed and revised by a body of men, who, there is some reason to think, have no legal right to perform such functions. In short, the Court, in the exercise of its discretionary power, is asked to perpetuate what is not improbably an unconstitutional exercise of power.

JUDGMENT OF OUSTER was thereupon entered in the usual form.

ASSIGNMENT OF ERROR.

N. J. Court of Errors and Appeals.

FREDERICK W. MORRIS, *Plaintiff in Error,*	*On Error to the Supreme Court.*
vs.	
THE STATE, (*ex rel.* WILLIAM HARRIGAN, *Relator,*) *Defendant in Error.*	*Assignment of Error.*

Afterwards, that is to say, on the 29th day of November, in the year eighteen hundred and eighty-one, before the Court of Errors and Appeals of the State of New Jersey, comes the said Frederick W. Morris by John W. Taylor, his attorney, and says that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, to wit, that by the record aforesaid, the judgment aforesaid appears to have been given for the State of New Jersey against the said Frederick W. Morris, whereas, by the law of the land, the said judgment ought to have been given for the said Frederick W. Morris against the State of New Jersey. And the said Frederick W. Morris prays that the judgment aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings being, may be reversed, annulled, and altogether held for naught, and that he may be restored to all things which he has lost by occasion of the said judgment, &c.

JOHN W. TAYLOR,
Att'y for Pl'ff in Error.

JOINDER IN ERROR in usual form.