

Required Same Term
Chas. H. Harwood
1861
173. 41

No.

COURT OF APPEALS OF MARYLAND.

JUNE TERM, 1861.

2675 **STATE OF MD. vs. JARRETT & HARWOOD. 21. 25 -**

*To the Honorable John H. Price, Judge of the
Circuit Court for Harford County, sitting in Equity :*

Informing, Thomas S. Alexander, solicitor for the State of Maryland, on this behalf appointed by the Governor of Maryland, shews unto your Honor, that Dennis Claude, of the City of Annapolis, is Comptroller of the State of Maryland, having been duly appointed and commissioned to said office by his Excellency, the Governor of Maryland, to supply a vacancy in said office, occasioned by the resignation of William H. Purnell, late Comptroller; and that said Claude has bonded and taken the oaths of office prescribed by law, as by the certificate of appointment and qualification of said Claude, marked Exhibit A, and filed with this information, will more certainly appear; and that from the time of the appointment and qualification of the said Claude, as Comptroller as aforesaid, that is to say, from the 8th day of May 1861, to the present time, the said Claude, has been, and now is in possession, of the said office of Comptroller, actually occupying the chambers in the record office building, which were appropriated to the use of the Comptroller, and which have ever since the completion of said building, have been so used, and possessing and using all the books of accounts and other documents and muniments appertaining to said officer, including the seal or stamp belonging thereto; and during all the said term has been exercising the powers and duties belonging to the said office, until his disturbance therein, as will be hereinafter stated.

And further informing, the said Solicitor for and on behalf of the said State, shews that the said Claude, as Comptroller as aforesaid, is entrusted with the general superintendance of the fiscal affairs of the State; with the superintendance and enforcement of the collection of all taxes and revenues; with the adjustment of all public accounts; with the granting of all warrants for payment of monies out of the Treasury; and with the countersigning of all evidences of State debt; and without which it is declared by the Constitution of this State that such evidences shall not be valid. And that it is requisite to the proper transaction of the fiscal

affairs of the State, and essential to the maintenance of the public credit, that the said Claude should be protected in the exercise of the functions appropriate to his said office, until his term of office shall have determined by law, and until his successor, duly appointed and qualified in that behalf, shall have been duly inducted into said office, and entered upon the discharge of the duties thereof.

But now the said solicitor for and in behalf of the said State, further informs and shews your Honor, that on the twenty-third day of July, in the year aforesaid, Sprigg Harwood, Treasurer of the said State, addressed to the said Claude a letter, of which Exhibit B is a copy, and the said Claude also received from the President of the Farmers' Bank of Maryland, in which bank the monies of the said State are deposited, a letter, of which Exhibit C is a copy, and that on the twenty-ninth day of the month, and the year last aforesaid, the said Harwood, Treasurer as aforesaid, refused to pay a warrant drawn by the said Claude as Comptroller, as aforesaid on the said treasurer, in favor of one Thomas J. Wilson, for the sum of one hundred and forty-three dollars, money justly due and owing from the said State to the said Wilson, the said Howard alleging as excuse for non-payment of said money, that he did not recognize the authority of said Claude as Comptroller to issue warrants on the Treasury, and that one A. Lingan Jarrett, of Harford County, is the true and lawful Comptroller of the State, as by the deposition of said Wilson, marked Exhibit D, will appear, and it is prayed by said informant that said exhibits and all others which may be filed herewith, may be taken as parts of this information; so that it is apparent, that the said A. Lingan Jarrett pretends to be the Comptroller of the State, and claims to exercise all the powers and authorities incident to said office, and that the said Harwood, as Treasurer as aforesaid, aids and abets him in the said pretences; and that the said Harwood will disburse the monies of the State on the warrants of the said Jarrett as Comptroller, and will receive monies into the Treasury on the warrants of the said Jarrett, and that he will not recognize the validity of any warrant which may be issued by the said Claude, as Comptroller as aforesaid, either for payment of monies into the Treasury or for payment of monies thereout; and thereby the fiscal interests of the said State are placed in imminent hazard, since it will be impossible for any one advisedly to adjust the account of any debtor to the State, or to ascertain who is creditor of the State, or to exercise the duties of Comptroller in reference to the countersigning of evidences of debt of the State, without the aid of the books of accounts, and other written muniments appertaining to the office of Comptroller, and which are in the actual possession of the said Claude as Comptroller aforesaid, and which came into his possession by virtue of his appointment and qualification as Comptroller as aforesaid. And the said

informant for and on behalf of the said State suggests and insists, that even if the said Jarrett was of right the Comptroller of the State, (which is denied,) he ought not to be permitted to exercise the functions of said office, nor to disturb the said Claude in the exercise thereof, until the said Jarrett shall have obtained actual possession of said office, and of the books of accounts, and other muniments thereof, and shall be in a condition to exercise the duties thereof, advisedly, and with due regard to the safety of the interests of said State; and that so long as the said Claude is permitted to remain in the actual possession and enjoyment of the said office of Comptroller, with its books of accounts and other muniments thereof, the said Harwood, as Treasurer, ought not to be permitted to repudiate the authority of the said Claude, as Comptroller, as aforesaid. And the said informer further informs your Honor, that the said Wilson has filed his petition on the law side of the Circuit Court for Anne Arundel county, praying for a writ of Mandamus to the said Harwood as Treasurer as aforesaid, to compel him to pay to said Wilson the sum of money therein mentioned, and that thereupon a rule has been passed, requiring the said Harwood to shew cause wherefore a writ of Mandamus ought not to issue as prayed: as by a copy of said petition and rules, marked Exhibit E, and filed as part of this Information, will appear; and the said informant further suggests, that on said proceeding issue will be joined on the conflicting titles of said Claude and Jarrett; and that until the said question of title shall have been adjudged in said proceeding or in some other proceeding, to be instituted by the said Jarrett against the said Claude, the exercise by the said Claude of the rights and functions of said office of Comptroller, ought to be recognized by the said Harwood as valid acts, and done by rightful authority.

To the end, therefore, that the said Harwood and Jarrett may answer the premises, and that the said Jarrett may be restrained and enjoined from exercising any of the powers attached or incident to the office of Comptroller, until his title to said office shall have been adjudged valid and he shall have been inducted into the possession of said office by due process of law, and that until the said Jarrett shall have been adjudged to be Comptroller, and inducted into said office as aforesaid, the said Harwood, as Treasurer, shall be restrained and enjoined from obeying the warrants or recognizing other acts done by the said Jarrett, under color of his pretended title to said office of Comptroller, and from refusing obedience to the warrants of the said Claude as Comptroller, as aforesaid; as aforesaid and that the said State may be further relieved as equity and right may require:

It is prayed that a writ of Injunction may be issued to the said A. Lingan Jarrett and Sprigg Harwood, strictly enjoining and restraining

the said Jarrett from exercising any of the powers and duties attached or incident to the office of Comptroller, until the further order of this court, and also enjoining and restraining the said Harwood from recognizing as valid or obeying any warrants issued or other acts done by the said Jarrett under color of title to the said office of Comptroller, and from refusing to obey the warrants issued and other acts done by the said Claude as Comptroller as aforesaid, until the further order of this court, and also the writ of subpoena to the said Jarrett of Harford county, and Harwood of Anne Arundel county, commanding them to be and appear in this court to answer the premises, and obey such decree as may be passed thereon, and as, &c.,

TH. S. ALEXANDER,

For State.

Anne Arundel County, to wit:

On this 30th day of July 1861, before me, a justice of the peace in and for said county, personally appeared the within named Dennis Claude, and made oath that the matters stated in the forgoing information are true, to the best of his knowledge and belief.

WM. GLOVER.

STATE OF MARYLAND,

vs.

A. L. JARRETT and SPRIGG HARWOOD.

In the Circuit Court for Harford County in Equity.

Ordered, this 10th day of August 1861, that the prayer for injunction in this case stand for hearing at the Court House at Towsontown, on Tuesday, the 27th inst., provided a copy of the information and this order, be served on the defendants on or before the 19th inst.

(Signed,) JOHN H. PRICE.

Service of copy admitted.

TH. S. ALEXANDER,
For State.

W. HARWOOD,
For Treasurer.

*To the Honorable the Judge of the Circuit Court
for Harford county, as a Court of Chancery:*

The answer of A. Lingan Jarrett, of Harford county, to the bill of complaint and information of the State of Maryland, on the relation of Thomas S. Alexander, exhibited in this honorable court, against the respondent and Sprigg Harwood.

This respondent, saving to himself the benefit of all manner of exception to said information, for answer thereto, or to so much thereof as he is advised is material or necessary for him *him* to make answer unto, says, that it is not true, and he positively denies, that the said Dennis Claude, in said information mentioned, is Comptroller of the State of Maryland; and he also denies that at the time when the said informer pretends that said Claude was appointed to said office, by the Governor of Maryland, there was any vacancy in said office. On the contrary, this respondent avers that he is the Comptroller of the State of Maryland, duly elected and qualified, and in possession of said office, and in the legitimate and full exercise of the duties thereof. That at a general election held on the 2nd day of November, in the year 1859, your respondent was duly elected Comptroller, as aforesaid, and accepted the said office, but that some of the judges of the election, to wit, the judges for the city of Baltimore, made false and fraudulent return, by which it falsely appeared that one William H. Purnell was elected, instead of your respondent. That your respondent thereupon protested to the Governor of Maryland against his issuing a commission to said Purnell, and gave notice to said Purnell, that as soon as the Legislature convened, he would contest his election as Comptroller of the State, on the ground that the election in the city of Baltimore, and the return thereof, was fraudulent and void.

Your respondent further states, that at the session of the Legislature of Maryland next after the said election, he contested the same, and brought his claim to said office before the House of Delegates, which was the only tribunal authorized by the laws of Maryland to adjudicate and settle controversies of that kind. And the said House of Delegates, after a hearing of this respondent and said Purnell, and a full investigation of all the facts, determined and declared and adjudged that your respondent, at the said election, on the 2nd day of November 1859, was duly elected Comptroller of the State of Maryland, for a term of years, which has not yet expired, as will appear by the resolution of said House of Delegates, (No. 6,) passed on the 10th day of March, in the year 1860, a copy of which is herewith filed, as part of this answer. That your respondent thereupon claimed the said office, and is advised that by the judgment of said House of Delegates, he then and there became entitled to the same. That your respondent thereupon went before the Governor of Maryland, as soon as he conveniently could, and tendered to him a bond, executed by your respondent, with ample security, in the form and penalty prescribed by law, for the faithful performance of the duties of said office, and offered to take the oath of office prescribed by the constitution and laws of this State. That said

Governor then and there approved of the security in said bond as entirely sufficient, but, for some reason to your respondent unknown, he refused to accept the same, or to administer to your respondent the oath of office; and your respondent thereupon, before and in the presence of the said Governor, took and subscribed the oath of office prescribed by the constitution and laws of this State, which was duly administered to him by Philip Clayton, Esq., a justice of the peace of said State, duly commissioned and qualified, as will appear by certified copies of said bond and oath herewith filed.

But your respondent avers, that because the Governor refused to accept the said bond and administer the oath, he was unable at that time to obtain possession and exercise the duties of said office, although, as he avers, he then, and ever since, has claimed to be the Comptroller of said State, and has used due diligence to assert his right, and perform the duties of the office.

And your respondent further says, that afterwards, on the 12th day of June 1861, the Legislature of Maryland passed a law authorizing any Judge of the Court of Appeals to administer to him the oath of office, and approve his bond as Comptroller; and in pursuance of said Act of Assembly, your respondent, on the 9th day of July 1861, took and subscribed, before the Honorable James L. Bartol, one of the Judges of the Court of Appeals, the oath of office prescribed by the constitution and laws of this State. And the said judge, at the same time, took and approved your respondent's bond as Comptroller, as will appear by a certified copy thereof, herewith filed as part of this answer, marked "Respondent's Exhibit B." And he also herewith files, as part of this answer, a certified copy of the oath taken by him as aforesaid, marked "Exhibit P. C.," both of which were duly recorded.

And your respondent avers, that immediately or very soon after he had given bond and taken the oath of office, as last aforesaid, he entered upon the performance of the duties of his said office, and has ever since continued in the same, and was duly recognized by the Treasurer and by the Legislature of the State, and was in fact, and still is, the only legal Comptroller of the State of Maryland, and that neither the said Dennis Claude, nor any other person, has any power or authority to issue any warrant or perform any other act or duty as Comptroller. And he positively denies that his performance of the duties of said office has occasioned, or will occasion any loss, injury or hazard to the State of Maryland, or to her interests.

Further answering, your respondent denies that said Claude has possession of the said office of Comptroller, or has had, since your respondent took the oath of office, as aforesaid, or has possession of the muni-ments of title. That it is true, said Claude has possession of the room

which was used for the accommodation of the Comptroller, and of books and papers belonging to the office, but your respondent has opened a new set of books, and has procured a stamp, and has access to the accounts, (of which there are duplicates,) and has ample accommodation for the performance of his duties, in the old Comptroller's office in the State House, and if any detriment should by possibility occur, by reason of said Claude's wrongful detention of said books and papers, your respondent denies that he is in any manner responsible.

Further answering, your respondent says, that he has understood that said Claude, pretending to act as Comptroller, has drawn a warrant on said Harwood, as Treasurer, for the payment of a sum of money, as stated in said bill, but he has no personal knowledge of the fact; and he has been informed that said Wilson filed his petition for a writ of Mandamus, as stated, which case is still pending. And your respondent is advised that said Claude's pretended claim to the said office of Comptroller, which is now held by your respondent, is a case proper to be tried in a court of law, where there is a full, complete and speedy remedy for all the pretended grievances set forth in said bill. And he denies that this court has any jurisdiction to try said Claude's right to said office, or to restrain either this respondent or said Harwood in the performance of the duties pertaining to their respective offices, or to compel them to recognize the pretended claims of said Claude, whereby would ensue great confusion and interruption in the public business, and loss and injury to the State.

And having thus answered said bill and information as fully as he is advised is material, he prays that the same may be dismissed, and that your Honor will refuse to grant any injunction as prayed; and that if your Honor should grant an injunction, that the same may be dissolved.

HENRY W. ARCHER,

Sol'r for Respondent.

BALTIMORE CITY, *to wit*:—I hereby certify, that on this 26th day of August, A. D., 1861, before me, the subscriber, a Justice of the Peace of the State of Maryland, in and for the city of Baltimore, personally appeared A. Lingan Jarrett, the above named respondent, and made oath that the several matters and things contained in the above are true, to the best of his knowledge and belief.

EDW. J. PETERS.

*To the Honorable John H. Price, Judge of the
Circuit Court for Harford County, sitting in Equity:*

The answer of Sprigg Harwood, Treasurer of Maryland, to the information heretofore filed in your honorable court by Thos. S. Alexander, Esq., at the instance or by the authority of the Governor of the State.

This Respondent, but for the respect which is due from him to your Honorable Court, would not have deemed it necessary for him to take any notice of said information for the reason apparent to the Court, that he individually and officially has no interest whatever in the controversy inaugurated by this proceeding, whether Doctor Dennis Claude or Mr. Jarrett is legally the Comptroller of the State.

This Respondent, in the earliest stage of the controversy, in relation to this matter between Mr. Jarrett and Mr. Purnell, declined to take any step by which the rights of one would be preferred over the other; and left the parties to have legally decided their respective rights, being advised, that it was his duty, *ad interim*, to recognize the authority of Mr. Purnell.

Your Respondent further states, that since the Act of the 25th June 1861, entitled An Act to enable A. Lingan Jarrett, Comptroller of Maryland, to enter into Bond and qualify, and the Act of August 1861, marked Exhibit A, herewith filed as a part of this answer, he has been advised, that it is his duty to obey the plain action of the Legislature in reference to this subject; and he has in accordance with said action of the Legislature, recognized the claims of Mr. Jarrett to the said office.

In fact, this Respondent has no interest in the matter in controversy, in so far as it is confined to the question, whether the one or the other of those gentlemen is legally entitled to exercise the functions of said office?

But he has a deep interest in one of the questions raised by the said information, in as much as he would not feel himself at liberty to obey any order which might gratify the prayer of the informant in that particular. Your Respondent refers to the prayer of the Informant, in these words: "It is prayed that a writ of injunction may be issued to the said A. Lingan Jarrett and Sprigg Harwood, strictly enjoining, &c., and also enjoining and restraining the said Harwood from refusing to obey the warrants issued, and other acts done by the said Claude as Comptroller as aforesaid," &c.

And your Respondent further is advised and avers, that the said Dennis Claude is not legally the Comptroller of the Treasury of Maryland; and that the said Dennis Claude has not been elected or appointed Comptroller in accordance with the Constitution or Laws of Maryland; and that A. Lingan Jarrett is the Comptroller of the Treasury of Maryland; that the said Jarrett was elected Comptroller at the general election held on the 2nd November 1859, and that said Jarrett has given bond and qualified in accordance with the Constitution and Laws of the State, and is now in the actual discharge of the duties of the said office. And said Harwood further shows to the court, that a petition for a Mandamus has been filed in the Circuit court for Anne Arundel county, in the name of Thomas J. Wilson, to compel Sprigg Harwood, the

Treasurer of Maryland, to pay a warrant in favor of said Wilson, drawn by Dennis Claude as Comptroller, and thereby to recognize the title of said Claude as Comptroller as aforesaid; which petition, with the answer of the said Harwood, and the exhibits, are herewith filed, marked Exhibit B; and he prays that they may be taken as part of this his answer. Whereof the said Sprigg Harwood submits to the court, that the prayer of the said Informant ought not to be granted, and if the injunction should be granted, he prays your Honor that the same may be dissolved.

T. G. PRATT &
W. HARWOOD,
For Respondent.

BAETHMORE, TO WIT:—I hereby certify, that on this 26th day of August 1861, before me, the subscriber, a justice of the peace of the State of Maryland, in and for the city aforesaid, personally appeared Sprigg Harwood the within Respondent, and made oath, that the several matters and things set forth in the within answer, are true to the best of his knowledge and belief.

EDW. J. PETERS.

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No.

COURT OF APPEALS OF MARYLAND.

JUNE TERM, 1861.

STATE OF MD. vs. JARRETT & HARWOOD.

Statement on behalf of the State.

At the general election held in November 1857, William H. Purnell was elected Comptroller, and was duly commissioned and qualified to act as such. He entered into possession and transacted all the duties of the office, until on or about the 8th May 1861; at which time, he resigned his office. Dr. Dennis Claude was thereupon appointed to fill the vacancy thus occasioned. He qualified himself to act as Comptroller, by giving bond and taking the oaths and making the declaration, entered into the actual possession of the chambers in the record office building, which are appropriated to the accommodation of the Comptroller; and of the books and papers and stamp or seal belonging to the office, and necessary for the despatch of the business thereof;—and has ever since remained in possession of said chambers and other muniments of the office, and has been transacting, and is yet transacting, the general business of the office.—From the time of his first entering upon the duties of the said office, down to the 23rd July last, he was recognized as the Comptroller by the Treasurer, and all his warrants as Comptroller were respected and obeyed at the Treasury office.

On the 23rd July 1861, he drew a warrant on the Treasury, for payment of money to Thomas Wilson, which was presented a day or two thereafter, when payment thereof was refused. The reason assigned was, that in the opinion of the Treasurer, Mr. Jarrett was the legally elected and constituted Comptroller, and it was his purpose to recognize the authority of Mr. Jarrett as Comptroller, and to disregard the acts of Dr. Claude.

In this state of things, the Governor directed an information to be filed on the equity side of the Circuit court for Harford county, asking, in behalf of the State, an injunction to prevent Jarrett from performing any act appropriate to the office of Comptroller, and to prevent the Treasurer from recognizing him as Comptroller, and from disregarding or disobeying the warrant drawn on the Treasury by Claude as Comptroller.

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A day was assigned for the hearing of this application, at which time, the defendants appeared and filed their answers, and the motion was thereupon heard and the injunction was refused.

The State has appealed from the order refusing the injunction prayed for; this appeal is to be heard upon the whole record, but subject to the operations of the common rule, that so much of the information as is not denied by the answers is to be taken as true, with so much of the answers as is responsive to the averment in the information; the new matter alleged in the answers is to be disregarded.

The rule is admitted, but as there may be a difference in regard to the extent of its application, it is deemed expedient here to give an outline of the case attempted to be made by the answers.

They state in substance, that at the general election of 1859, Jarrett received a majority of votes of the duly qualified electors; and that by a resolution of the House of Delegates, passed 10th March 1861; he was declared to be duly elected Comptroller. That on the 16th March 1861, he presented his official bond in due form to the Governor for approval, and that he approved the same. That on the April 1861, he took the oaths and made the declaration required by the Constitution and laws, before the Governor;—that by an Act of the General Assembly, passed July 1861, any one of the judges of the Court of Appeals is authorized to approve Mr. Jarrett's bond, to administer to him the oaths of office and to receive his declaration; and that on the July 1861, he did present to Judge Bartol his bond, which was approved, and that he took before the same judge the oaths of office and made the declaration as prescribed by the Constitution and laws, and that on the 23rd July 1861, he opened his office as Comptroller, and prepared a set of books and otherwise entered upon the discharge of the duties of his office. By consequence, and by indirection, it is denied that Claude is the rightful or acting Comptroller.

All those averments are introductive of new matter, and do not change the state of the case made by the information; in support of that case it will be insisted:

First:—That the danger of loss to which the Treasury will be exposed by the exercise of the functions of Comptroller by two distinct and opposing persons, embarrassing the collection of the public revenues complicating the public accounts, and exposing the public credits to hazard entitles the State, upon the general principles of equity, to an injunction to stay that competition until the title to the office can be determined at law.

Constitution, Art. VI., s. 2, prescribes the duties of the Comptroller. He is clothed with the general superintendance of the fiscal affairs of

the State, with the duty of superintending and enforcing the collection of all taxes and revenue, of granting all warrants for payment of money out of the Treasury, and of countersigning all evidences of State debt.

The treasury belonging to the State, and the Comptroller and Treasurer being agents of the State, the court may interpose on the principle on which it protects a private trust from waste and dilapidation by the trustee.

2 Story Eq., s. 905, &c.

Second. As the equity cannot determine the question of title, it will respect the possession of Claude as comptroller *de facto*, and will compel Jarrett to establish his title by suing out a Mandamus, or to abide by the litigation now pending at the suit of Wilson.

That Jarrett is not in possession of the office.

1 T. R., 399, note, Powell vs. Millbank.

5 Md., 423, Marshall vs. Harwood.

That Claude as comptroller *de jure* or *de facto* may exercise all the functions of the office.

In every contingency therefore the acts of Claude will be valid as well for, as against the State, whereas the acts of Jarrett pretending to be comptroller *de jure*, must depend for their validity upon the validity of his title to that office. And overlooking all minor objections it may be sufficient to say, that the public credit must be imperilled by his acting as Comptroller, since, by the Constitution, no certificate of State indebtedness is of any value unless countersigned by the comptroller *de jure* or *de facto*.

Third. It will be denied that the question of title is in issue in this case, or if in issue that it can be examined at this stage of the cause. But if it shall be determined otherwise, the State will object, that Mr. Jarrett has not shown a title to the office, and will rely on the following reasons:

1. It is conceded, that by the election returns it is shown that Mr. Purnell was elected by a vast majority of the votes cast; and Mr. Jarrett claims under a resolution of the House of Delegates avowedly by disfranchising one-third of the voters of Maryland, and awarding the return to the candidate who in fact received a small minority of the votes cast; conceding then, for the purposes of this point, that the House of Delegates has jurisdiction to determine a question of contested election, and that the proceeding in this case was regularly conducted and adjudicated, it will be maintained that it is a case of false judgment.

Constn., Art. 6, s. 1.

1860, Resolution, No. 6.

2. That the House of Delegates has not the constitutional right to determine a case of contested election.

Declaration of Rights, Art. 6.

Constn., Art. III., s. 48.

Act 1843, ch. 244.

3. That the resolution of the House of Delegates is not *per se* admissible as evidence of what was done in the premises, and that if the entire record is examined into it will be apparent, that the whole proceeding was irregularly conducted, and in utter disregard of the plainest rules of law and dictates of justice.

4. That it is to be assumed that Jarrett had notice of the Resolution of the House of Delegates, on the day of the passing thereof; and if the said Resolution is assumed to establish his right, he ought to have given Bond and taken the oaths, and made the declaration required by law, within thirty days from the time of passage thereof;—whereas it is not pretended that the said Jarrett took said oaths and made said declaration at any time prior to the day of April 1860.

Act 1852, ch. 172, sec. 5.

5. That he did not, at any time, take said oaths or make said declarations before the Governor, as required by law.

As to the oaths of officers, vide Act 1852, ch. 12, & 172, sec. 3. 9 East, 246, King vs. Courtney, et note, Rex vs. Ellis.

As to Bond, vide Act 1852, ch. 12, secs. 2, 5, 6, 8.

6. That he did not, at any time, give Bond approved by the Governor, as required by law.

7. That the Act of the General Assembly, passed July 1861, was simply inoperative as against the title of Claude, acquired prior to that date.

8. That the said Jarrett has not, at any time, given a valid Bond as required by said Act of Assembly; the paper approved by the judge, having been sealed and delivered on the 16th March 1860, to be approved by the Governor, having been rejected by the Governor, and having been, without any first delivery thereof, presented to and approved by said judge.

3 Co., 26 b, Butler & Barker's case.

5 Co., 119 b, vs. Whelpoole's case.

THOS. S. ALEXANDER,

For the State.

No.

COURT OF APPEALS OF MARYLAND.

JUNE TERM, 1861.

STATE OF MD. vs. JARRETT & HARWOOD.

Appellees' Statement.

At the general election in November 1859, William H. Purnell and A. Lingan Jarrett were voted for, for the office of Comptroller of the Treasury. Each of these gentlemen claimed to have been legally elected to said office; but Mr. Purnell having received the certificate of election, and being in possession of the office in virtue of a preceding election, continued in said office and gave bond and qualified as for the term of office commencing in January 1860.

The Constitution, article 3, section 48, declares, that the Legislature shall make provision for all cases of contested elections of any of the officers not herein provided for. And in article 10, section 2, it provides that the Legislature shall have power to pass all such laws as may be necessary and proper for carrying into execution the powers vested by this Constitution, in any department or office of the government, and the duties imposed upon them thereby.

In accordance with these provisions of the Constitution, it has been provided by the Legislature, that the House of Delegates shall decide all contested elections for Comptroller. See Code, section 52, Art. 35, page 268.

The proceedings in this case show, that Mr. Jarrett; at the session of the Legislature next ensuing said election, contested the claim of the said Purnell to the said office; and that the said case of the contested election to said office was full examined, testimony taken, and the counsel of the respective parties heard by the House of Delegates; and that thereupon the said House of Delegates decided said case of contested election by the passage of the following Resolution on the 10th of March 1860:—

Resolved by the House of Delegates of Maryland, That it appears to this House that there was such tumult and intimidation, fraud and injustice at the Election held in the City of Baltimore, on the 2nd of November last, in contempt of law and in violation of the freedom of Elections, that the said Election, so far as the said City, is void; and that A. Lingan Jarrett having received a majority of two thousand, four hun-

dred and ninety-two of the legal votes, cast in the State of Maryland on the said 2nd day of November, for the office of Comptroller of the Treasury of the State of Maryland, be, and he is hereby declared, elected to said office;—

thereby deciding in favor of the contestant, Jarrett, and against the then incumbent, Purnell.

That the said Jarrett did, on the sixteenth day of March, in the year 1860, present his bond to the Governor for his approval, and offered, at the same time, to take the oath of office before him; but that the Governor, although he did approve the sufficiency of the securities in said Bond, did nevertheless refuse to suffer the said Jarrett to take oath of office before him; and that the said Jarrett consequently took said oath of office before a justice of the peace in the presence of the Governor, and then filed his bond for record, in the office of the clerk of the Court of Appeals; as will appear by the said bond filed with the papers in this cause. That the said Jarrett then claimed to be entitled to act as the comptroller of the State, but that the said Purnell, who had possession of said office, refused to deliver the same to him, and the Legislature not being in session, he had no other remedy but by a Mandamus; and that he accordingly filed a petition to the Hon. Judge Brewer, for a Mandamus, which has not as yet been decided.

The proceedings further show that the Legislature, at a session begun and held in Frederick on the 27th day of April 1861, upon the petition of the said Jarrett for relief, that body passed An Act authorizing any judge of the Court of Appeals to approve the bond of the said Jarrett, and qualify him by administering to him the oath of office, and that his bond was accordingly approved by the Hon. James L. Bartol, before whom he also qualified as will appear by the copy of said Act of Assembly, and the certificate of Judge Bartol filed among the papers in the cause. He has opened his office in the State House, in the City of Annapolis, as required by law, and has been recognized as Comptroller by the Legislature of the State, by the State Treasurer and by the Farmers' Bank of Maryland, the depository of the money of the State, and is now in law and in fact the Comptroller.

T. G. PRATT,
W. HARWOOD,
For Treasurer, S. Harwood.