

*Court of Errors & Appeals*

NEW JERSEY SUPREME COURT.

JOHN STUMPF,

*Plaintiff in Error*

*vs.*

THE STATE OF NEW JERSEY,

*Defendant in Error.*

*On Indictment.*

*Brief.*

The first, second and third assignments of error are abandoned, the same having been subsequently decided by the Court of Errors and Appeals.

**I.**

Upon the fourth, fifth and sixth assignments of error, it is insisted that the Court should have admitted evidence of defendant's reputation for "party loyalty," "honesty in politics" and for "loyalty to the Republican party." Excluded by the Court (p. ~~33~~<sup>40</sup>, line ~~22~~<sup>37</sup>; p. ~~41~~<sup>42</sup>, line ~~28~~<sup>45</sup>; p. ~~47~~<sup>48</sup>, line ~~8~~<sup>15</sup>; p. ~~58~~<sup>58</sup>, line ~~18~~<sup>25</sup>; p. ~~71~~<sup>71</sup>, line ~~8~~<sup>8</sup>.)

The indictment is for conspiracy to pervert, etc., the election laws, and for counting, etc., ballots not voted, thereby to corruptly and unlawfully influence the result of said election (pp. ~~6~~<sup>6</sup> and ~~7~~<sup>7</sup>). In sustaining this charge, it became necessary for the State to show what unlawful ballots were voted, thereby showing for whom voted and counted, and of necessity showing what set of candidates was thereby benefited. All these facts became part of the case upon which the State sought

to establish the conspiracy, and it was proper for the defendant to put in evidence reputation of a character of such a nature as would tend to rebut any of these facts, such as that he was a loyal partisan, and would be unlikely to aid his political opponents.

His general reputation for honesty would not go far enough. In relation to the crime charged, it would be no more inconsistent with its commission, than would be his reputation for truth and veracity, and the court held that such a reputation would not be a contradiction. (~~p. 34, line 2~~) (p. 41. l. 16)

As the prosecutor said in summing up this case, a man might be perfectly honest in all other respects, yet when it came to politics, he might fail to recognize a dishonest act, which in other pursuits he would shun. Reputation for honesty and reputation for truth and veracity, are both to some extent contradictory of the probability of committing the crime charged, but to a greater extent would be reputation for "honesty in politics" and "party loyalty."

The phrases may be somewhat new in law, but that would not disqualify them, provided they come within the rule of evidence. They are popular phrases, intelligible to every one, and the jury would doubtless have given more weight to a good reputation for "political honesty" or "party loyalty," than to a reputation for "honesty." And would not such reputation have come within the rule as to admissibility of this kind of evidence. The act charged was substantially one of "political dishonesty," and if this defendant were guilty of that act, the evidence would show that he was a "party traitor." If the charge had been one of treason to his country, could he not have shown a good reputation for loyalty to his flag, or would he be limited to a reputation for "honesty." This being a charge of

conspiracy, I understand that the defendant could show any kind of reputation that would make it unlikely that he would commit any act which the State might offer in order to prove the conspiracy, and which might involve a proof of many kinds of reputation, according to the acts proved to support such a charge.

The rule is that it is always admissible for the defendant to put in evidence that his character was such as to make it unlikely that he would have perpetrated the act charged upon him.

2 Russ. Cr. & M., 785.

Commonwealth v. Hardy, 2 Mass., 317.

Felix v. State, 18 Ala., 720.

Ransom v. People, 57 Barb., 324.

Epps v. State, 19 Ga., 102.

Wharton Crim. Ev., §67 & §60, note 3.

## II.

*As to the eighth Assignment of Error.*

That part of the charge (case p. ~~78~~<sup>91</sup>, l. ~~20~~<sup>14</sup>) complained of in this assignment does not correctly state the requirements of the statute (Rev. p. 344, §44) and was misleading to the jury, when taken in connection with the evidence of Stumpf (Case, p. ~~48~~<sup>58, 59</sup>) and the question by the Court (p. ~~49~~<sup>74</sup>, l. ~~25~~<sup>32</sup>) and the comment of the Court (p. ~~48~~<sup>85</sup>, line ~~20~~<sup>32</sup>) in that the jury was led to believe that it was the duty of Stumpf to look at the ballots, to examine them, to see whether they were "Jokers" or "fraudulent ballots."

The examination required by Rev. p. 344, §44 is simply for the purpose of ascertaining whether the ballot "has been correctly read" by the officer whose duty it is to take it from the box and read it.

### III.

The error complained of in the ninth Assignment of Error is that the charge of Court upon the value to be given to the evidence of defendant's reputation was inaccurate, uncertain and indefinite. "You (the Jury) are to judge whether this reputation is up to the standard required by the law, in order for you to consider it." (p. ~~35~~<sup>34</sup>, line ~~36~~<sup>36</sup>)

This is incorrect, for it was the province of the Court to determine whether it was up to the standard required by law, upon the question of its admissibility, and the Court having decided that it was up to the standard required by law, it became a fact proved in the case and entitled to as much weight as any other proved fact.

State v. Henry, 5 Jones, (N.C.), 65.

If, however, it was the province of the jury to first determine whether the evidence of reputation were "up to the standard required by law" before they could "consider it" yet the Court did not instruct the jury as to what standard the law required.

True, the Court says (p. ~~35~~<sup>35</sup>, line ~~37~~<sup>37</sup>) "But the reputation which you require to be proved is his reputation for honesty, what the people generally say about him in the community in which he lives; "This is a correct statement of the rule which makes the evidence of reputation admissible, but is it the "standard required by law" to authorize the jury to consider whether the fact of reputation is proved.

And when taken in connection with the preceding sentence (p. ~~35~~<sup>34</sup>, line ~~38~~<sup>38</sup>) "It is not his reputation acquired by reason of his dealings with one, two or more particular individuals;" what information has the jury as to the "standard required by law" which would entitle them to consider the evidence.

Certainly his reputation must have been acquired by his dealings with one or more individuals, otherwise how could he acquire a reputation? This must have confused the jury as to when and how they could consider the defendant's evidence of reputation. On this topic there were requests (Nos. 6 & 9, p. ~~40~~<sup>23</sup>) to charge.

It was also erroneous to charge that "the weight to be given to it (reputation) is entirely for you. You can give it such weight as you think proper, and allow it to have such influence over you as in your judgment it should have." (pp. ~~85 & 86, bottom & top~~<sup>95 line 16</sup>).

It was entitled to as much consideration as any other proved fact in the case, and the Court should have so charged.

U. S. v. Gunnel, (D. C.) 3 Cent, 764.

Baker v. State, 24 Vroom, 47.

#### IV.

The Court should have charged the first, second, fifth, and sixth requests, as they are all simple and correct statements of law, and though some of them are possibly touched upon, in the charge of the Court, yet they are so intermingled with other matters, as to warrant the defendant in having them specifically charged as requested.

#### V.

As to assignments of error numbers 11A., 13 and 14 it may be proper to consider them together.

It is urged that the Court erred, when it charged the jury (in the part of charge complained of in assignment 11A) that it could find the defendants guilty of a conspiracy, upon finding proved certain facts;

which facts, if proved, would not establish the conspiracy under the indictments.

The conspiracy charged in the indictment is that the said defendants with others unknown "did wickedly, &c, &c, combine, unite, &c., to pervert the due administration of the laws of the State of New Jersey, by putting and placing and causing, procuring, suffering and assenting to the putting and placing in the ballot-box, etc., etc., a large number of ballots, etc., which were not then and there cast and voted by persons entitled to the right of suffrage in said precincts, at said election, and by estimating, counting, canvassing, tallying and giving effect to the same with intent thereby to corruptly, etc., influence the said election" (pp. 6 and 7).

Upon this indictment the Court charged (p. <sup>88</sup>75, line 14<sup>29</sup>, etc.) "If you find that they all had a common intent to hold a dishonest election, or in any manner to pervert and obstruct the election laws of this State; that is to say, to make a false registration, to receive false ballots, to keep a false poll-book, to check falsely, to count the ballots falsely, as placed in the box, to hold a dishonest election \* \* \* \* if you find this common intent \* \* \* \* then you have found the conspiracy, and you proceed to ascertain whether any one or more \* \* \* \* did any act in execution of it, to effect the object of it, \* \* \* \* (p. <sup>88</sup>78, line 18). You need not find all the acts laid in the indictment to have been proved; one is sufficient. Suppose you find between them all a conspiracy to hold a dishonest election, then the signing of a false return by one of the conspirators would be the overt act required."

But no such overt act is charged in the indictment, and before the conspiracy can be established some overt act, as laid in the indictment, must be proved.

The proof required is the same as if the indictment charged a conspiracy to put and place in the ballot-box a large number of ballots which were not cast and voted by legal voters and to estimate, count, canvass, tally and give effect to the same.

In Moschell's case, on an exactly similar indictment, Justice Magie said, "The charge that the accused in this case conspired to pervert the administration of the election laws, by doing specific acts, cannot, in my judgment, be distinguished from a charge that they conspired to do those specific acts for the perversion of those laws. The charges are substantially equivalent."

Moschell v. State, 24 Vroom, p.501.

The indictment, under the statute, must set forth the illegal acts which the conspiracy was designed to effect.

U. S. v. Watson. 17 Fed. Rep., 145.

And so in defining the conspiracy upon which the jury might find the defendants guilty, the charge of the Court left it naturally to be inferred by the jury that if they found "A common intent existed to declare and effect a dishonest election by means of false registration or false pollbook, 'or' illegal canvass, 'or' by signing false returns"—then, if any one of these facts were established the conspiracy charged was proved. If the word "or" were placed in the charge as above, it would be clearly erroneous, as, for instance, a conspiracy to keep a false pollbook would not be the same as the conspiracy charged, nor would the keeping a false pollbook be an overt act charged in this indictment.

It may be argued, however, that the word "or" was not used nor intended, and that from the charge the

jury might consider that they were bound to find all the facts stated by the Court to have been proved, before they would find the conspiracy, thus benefiting the defendant.

This is open to two replies; first, such is not the natural inference from the language used, especially when taken in connection with the rest of the charge; second, the Judge could not possibly have intended the jury to so understand it. What the Court must have intended, and what the jury must have understood, was that the common intent to effect any one or all of these results, established the conspiracy; which, if so, was an error prejudicial to the defendant.

## VI.

The defendant's case was injured by the improper charge of the Court, complained of in the twelfth assignment of error.

The Court told the jury that the defendant (Stumpf) "admitted (p. 90, line 28) violating the statute and sought to explain or palliate such violations on the ground of 'mere neglect of duty'" (p. 90, line 20). "Now this defendant for whom there is set up this defence of careless intention, stupidity, or whatever it may be." (p. 92, line 1.) No such admission was made by the defendant, and no evidence in the case justified the Court in so stating to the jury. (See evidence of Stumpf, p. 44 to p. 67.)

Nor did the defendant Stumpf set up the defence of careless inattention, stupidity or mere neglect of duty.

On the contrary his testimony goes to show that he did his duty conscientiously as he understood it. Such

a statement by the Court left the jury the option only of deciding whether he was guilty of careless inattention, stupidity, or of conspiracy, according to his own admissions or story. And the injury such a statement would do the defendant, may be seen by referring to the charge, (p. 99, line 10, etc.) "He, (Stumpf) was in a position of great power and responsibility, and he is bound to know what his duties are there and you have a right to look closely to these violations of law, which *are said* to be the result of ignorance, neglect, inattention, carelessness, and see that these are not made the cover for crime, and you may inquire very closely why it was that he neglected such important duties. The defence of negligence is easy to make and it is hard to disprove it."

Thus instructing the jury, that if his admission, or "story," as to negligence, stupidity, carelessness or "whatever it may be" were not true, then he was guilty of the conspiracy charged.

Since no such admission, story or defence was made by this defendant, it seems to me that such a statement did this defendant great injustice, and was such error as entitled him to a new trial, under the decision in

Smith & Bennett v. State, 12 Vroom, 370.

~~Respectfully submitted,~~

~~WARREN DIXON,~~

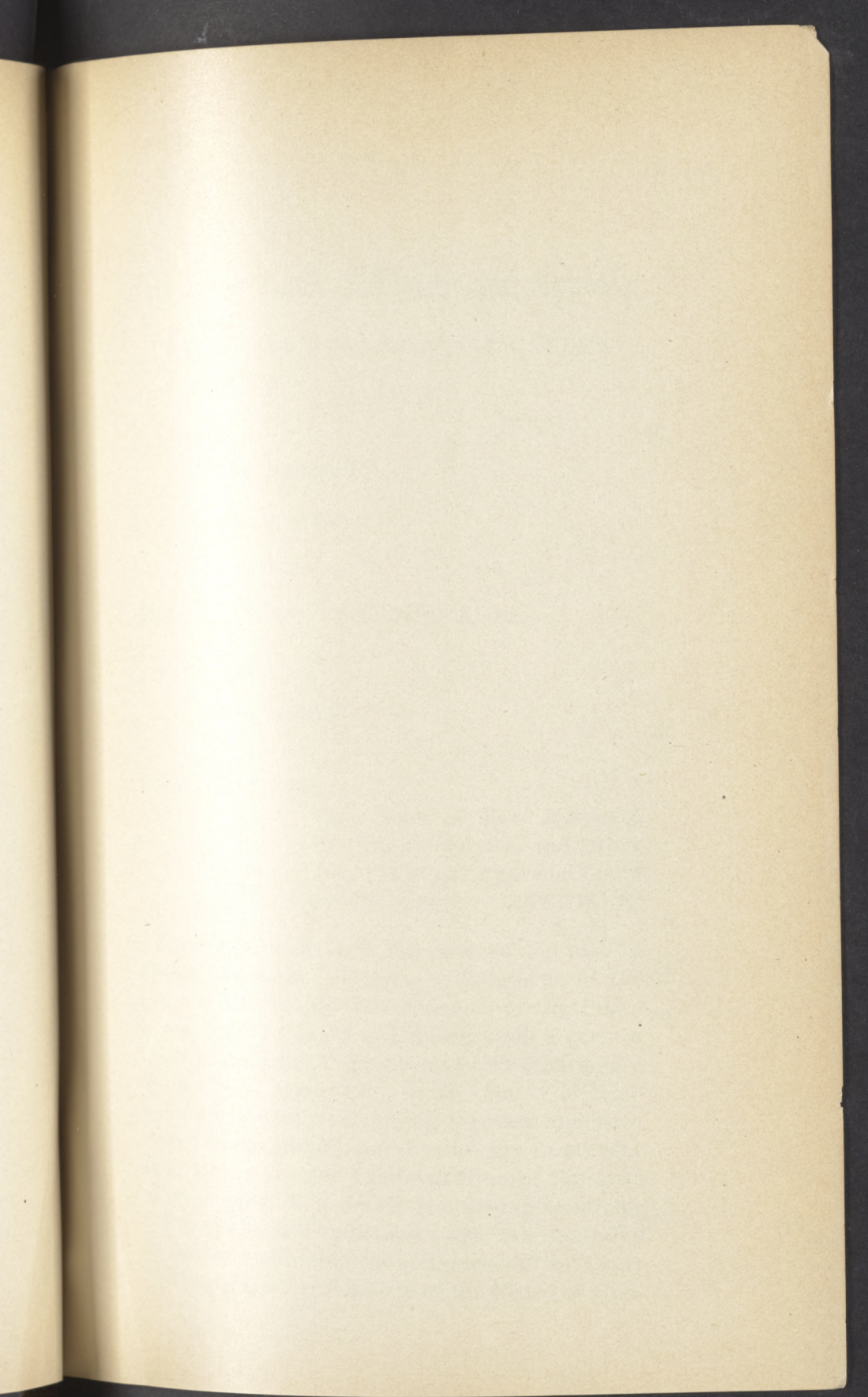
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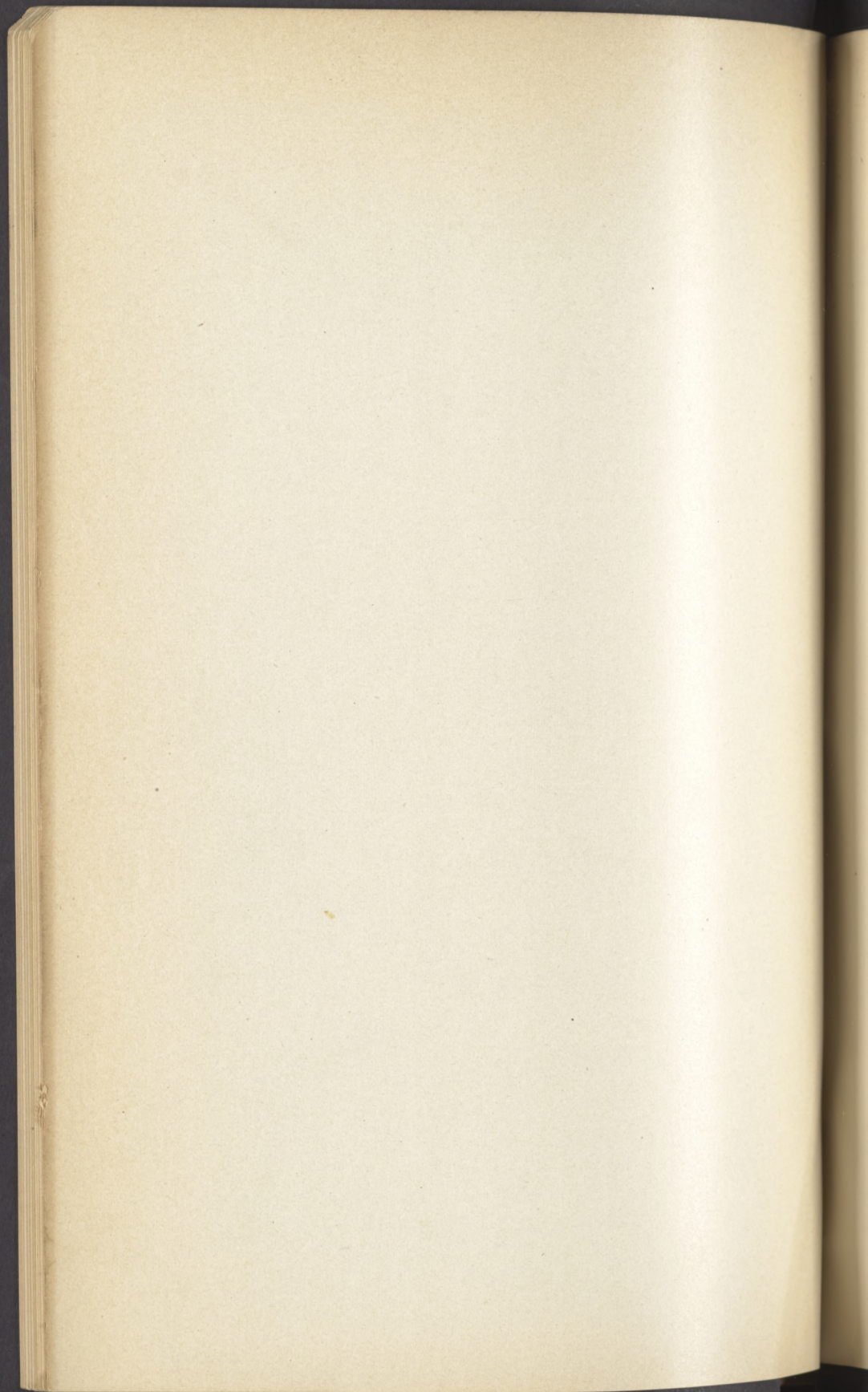
~~Att'y of Pl'ff in Error.~~

The evidence is satisfactory to prove the plaintiff in error was not guilty of crime charged and therefore the judgment be reversed.

This Court shall consider the evidence it finds that the defendant below was







# New Jersey Court of Errors and Appeals.

IN THE LAST RESORT IN ALL CAUSES.

JOHN STUMPF.		10
Plff. in error,		
vs.	On	
THE STATE OF NEW JER-	Error.	
SEY,		
Deft. in error.		20

## NEW JERSEY SS.

The State of New Jersey to  
the Chief Justice and other  
Justices of our Supreme Court  
of Judicature. GREETING:

Because in the record and process and also in  
giving judgment affirming a judgment of the  
Court of General Quarter Sessions of the Peace 30  
in and for the County of Hudson upon a certain  
indictment against John Stumpf and others, late  
of the City of Jersey City, in the County of Hud-  
son, for unlawfully combining together and with  
others, to the grand inquest unknown to prevent  
and obstruct the due administration of the laws  
of the State of New Jersey concerning elections.

Pro ut the said indictment and the rendering  
of judgment affirming the judgment of the Court  
of General Quarter Sessions of the Peace of Hud- 40

son County as is said, manifest error hath inter-  
 vened to the great damage of the said John  
 Stumpf, as from his complaint we have informa-  
 tion, we being willing, in this behalf, to correct  
 the error in due manner, if any there shall be, and  
 that speedy justice be done to him, the said John  
 Stumpf command you, that if judgment be there-  
 on given, then that you distinctly and openly  
 10 send, under your seal, the record and proceedings  
 aforesaid with all things touching the same to  
 our Court of Errors and Appeals in the last re-  
 sort in all causes, to be held at Trenton, on the  
 third Tuesday in November next, and this writ,  
 that the record and proceedings aforesaid being  
 inspected, we may further cause to be done there-  
 upon for correcting that error, what of right and  
 according to the laws and customs of New Jer-  
 sey, ought to be done.

20 Witness, Alexander T. McGill, our Chancellor  
 and President Judge of our said Court of Errors  
 and Appeals, at Trenton, aforesaid, the twenty-  
 second day of June, in the year of our Lord one  
 thousand eight hundred and ninety-four.

WARREN DIXON,  
 Attorney.

The answer of Mercer Beasley, Esquire, Chief  
 30 Justice, within named.

The record and proceedings of the plea whereof  
 mention is within named with all things concern-  
 ing the same, to the Court of Errors and Appeals  
 in the last resort in all causes, within specified,  
 at the day and place within contained, I certify  
 in a certain schedule to this writ annexed, as I  
 am within comanded.

MERCER BEASLEY,  
 Chief Justice.

<p>JOHN STUMPF.</p> <p>Plff. in error,</p> <p style="text-align: center;">vs.</p> <p>THE STATE OF NEW JER-</p> <p>SEY,</p> <p>Deft. in error.</p>	<p style="text-align: right;">On</p> <p>Indictment.</p> <p style="text-align: right;">10</p>
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WRIT OF ERROR.

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(Returnable first Tuesday in November, 1891.)

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New Jersey, ss.—The State of New Jersey to  
 Job H. Lippincott, presiding judge,  
 (L. S.) and to the judges of the Court of Com-  
 mon Pleas, constituting the Court of  
 General Quarter Sessions of the Peace in and for  
 the County of Hudson, holden at Jersey City, in  
 and for said County of Hudson, of the term of —,  
 in the year of our Lord eighteen hundred and  
 ninety —.

Because, in the record and process, and also in <sup>30</sup>  
 giving judgment upon a certain indictment  
 against John Stumpf and others, late of the City  
 of Jersey City, in the County of Hudson, for un-  
 lawfully combining and conspiring together, and  
 with others, to the grand inquest unknown, to  
 prevent and obstruct the due administration of  
 the laws of the State of New Jersey regulating  
 elections.

Pro ut the said indictment and the several  
 counts therein, he hath been indicted, and before <sup>40</sup>

you is thereof convicted by a certain jury of the county, taken between the State of New Jersey and the said John Stumpf, as it is said, manifest error hath intervened to the great damage of the said John Stumpf, as from his complaint we have received information, we being willing, in his behalf, to correct the error in due manner, if any there shall be, and that speedy justice be done to  
 10 him, the said John Stumpf, command you that if judgment be therein given, then that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Supreme Court, to be held at Trenton on the first Tuesday of November next, and this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon, for correcting that error, what of right and according to the  
 20 laws and customs of New Jersey, ought to be done.

Witness Mercer Beasley, esquire, Chief Justice at Trenton, this thirtieth day of July, A. D. eighteen hundred and ninety-one.

WARREN DIXON, Atty.

BENJ. F. LEE, Clerk.

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The answer of the judges of the court of General Quarter Sessions of the Peace in and for the County of Hudson, within named, the records and proceedings of the plaint whereof mention is within named, with all things touching the same, to certify to the justices of our Supreme Court of the State of New Jersey, at Trenton, at the day and year within named, in a certain

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schedule to this writ annexed, as we are commanded.

JOB H. LIPPINCOTT, P. J.  
ALBERT HOFFMAN.

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State of New Jersey, Hudson County, to wit:  
Be it remembered, that at a Court of Oyer and <sup>10</sup>  
Terminer and General Jail Delivery holden at  
Jersey City, in and for the said County of Hud-  
son, on the first Tuesday of April, in the year of  
our Lord, one thousand, eight hundred and nine-  
ty, before the Honorable Manning M. Knapp,  
one of the justices of the Supreme Court of Jud-  
icature of the State of New Jersey, and Hon.  
Job H. Lippincott, president; Hon. Elijah T. Pax-  
ton and Hon. Albert Hoffman, associate judges  
of the Inferior Court of Common Pleas in and <sup>20</sup>  
for the said County of Hudson, according to the  
form of the statute in such case made and pro-  
vided, by the oaths of Leonard J. Gordon, fore-  
man; John Ramsey, James Tumulty, Henry Kel-  
lers, Frederick Goddard, John Wade, Michael  
Smith, Lawrence Fagan, Paul Traust, Walter C.  
Westcott, Otto Lawrence, Charles Marks, Henry  
Ötterson, Garret Felter, Owen McGuire, Freder-  
ick Gassert, William Letts, Otto Tepper, Benja-  
min Edge, John Kavanagh, Patrick J. Condon, <sup>30</sup>  
George H. Bowly, John H. Schuffelin, Jr., good  
and lawful men of said county, sworn and charg-  
ed to inquire for the State in and for the body of  
the said County of Hudson, it is presented in  
manner and form following, that is to say, that  
the bills following are true bills.

L. J. GORDON, Foreman.

Hudson Oyer and Terminer and General Jail Delivery of April term, A. D. 1890.

Hudson County, to wit:—The grand inquest of the State of New Jersey, in and for the body of the County of Hudson, upon their respective oaths, present that Patrick McGrath, John Stumpf and John D. Egan, late of the City of  
 10 Jersey City, in the said County of Hudson, on the fifth day of November, in the year of our Lord, one thousand, eight hundred and eighty-nine, at the city of Jersey City aforesaid, in the County of Hudson aforesaid, and within the jurisdiction of this court, at an election for Governor, State  
 20 Senator, County Clerk, Register, Members of the General Assembly, and Members and Director-at-Large of the Board of Chosen Freeholders of said County of Hudson, then and there had  
 30 and held under and in pursuance of the laws of this State and of an act of the Legislature of this State entitled, "An act to regulate elections," approved April 18th, A. D. 1876, being then and there the members of and composing and constituting the election board of the Seventh  
 precinct of the Second Assembly district of said county, the said Patrick McGrath being then and there judge of election at said election in said  
 40 Seventh precinct, and the said John Stumpf and John D. Egan being then and there inspectors of election at said election in said Seventh precinct, and one Cormack F. Dolan being then and there clerk of said election board, and the said Patrick McGrath, as such judge of election as aforesaid, and the said John Stumpf and John D. Egan, as such inspectors of election as aforesaid, being then and there presiding at and conducting said election so had and held as aforesaid in said Seventh precinct of the said Second  
 40 Assembly district of said county, and the said

Cormack F. Dolan so being then and there clerk of said election board at said election in said precinct, being persons of evil minds and dispositions; together with divers other evil disposed persons, whose names are to the grand inquest aforesaid unknown, wickedly devising and intending, knowingly, corruptly and unlawfully to pervert and obstruct the due administration of the laws of this State regulating elections, did wickedly, corruptly, falsely, knowingly and unlawfully combine, unite, confederate, conspire and bind themselves by agreement to pervert and obstruct the due administration of the laws of the State of New Jersey regulating elections, by putting and placing, and causing, procuring, suffering and assenting to the putting and placing in the ballot box then and there provided, and then and there in use according to law for the receiving and holding of the ballots legally cast in said precinct, at said election, a large number of ballots, to wit, two hundred ballots, which were not then and there cast and voted by persons entitled to the right of suffrage in said precinct, at said election, and by estimating, numbering, counting, canvassing, tallying and giving effect to the same with intent thereby to corruptly and unlawfully influence the result of said election. 10 20

And the grand inquest aforesaid, upon their oath aforesaid, do further present that the said Patrick McGrath, John Stumpf, John D. Egan and Cormack F. Dolan, so being and acting as such members and clerk of said election board as aforesaid, together with divers other evil disposed persons, whose names are to the grand inquest aforesaid unknown, in execution of the said last mentioned premises, and in pursuance of the said conspiracy, combination, confederation and agreement between and amongst them 30 40

as aforesaid, and to effect the object thereof, afterwards, to wit, on the fifth day of November, in the year aforesaid, at the city of Jersey City aforesaid, in the County of Hudson aforesaid, did unlawfully receive and assent to receive, and did deposit in the ballot box, then and there provided according to law and in use as aforesaid, for the receiving and holding of the ballots legally cast  
 10 in said Seventh precinct of said Second Assembly District of said county, at said election, the votes of Anthony Hanley, Edward Hecke, Adam Eckman, John Nolan, Jack Bergen, Thomas Burns, Joseph Lyon, Willian Egan, William Moran and P. Dolan, whose first name is to the grand inquest aforesaid unknown, whose names did not, nor did the name of any of them, then and there appear on the revised and corrected register of persons entitled to the right of suffrage in said  
 20 precinct, at said election, and did not then and there record their dissent, nor did either of them record his dissent to the taking and receiving of the vote of any of the said persons.

And the grand inquest aforesaid, upon their oath aforesaid, do further present that the said Patrick McGrath, John Stumpf, John D. Egan and Cormack F. Dolan, so being and acting as such members and clerk of said election board as aforesaid, together with divers other evil dis-  
 30 posed persons, whose names are to the grand inquest aforesaid unknown, in further execution of the said last mentioned premises, and in pursuance of the said conspiracy, combination, confederation and agreement between and amongst them as aforesaid, and to effect the object thereof, afterwards, to wit, on the said fifth day of November, in the year aforesaid, at the city of Jersey City aforesaid, in the County of Hudson aforesaid, did willfully, corruptly and unlawfully  
 40 ly put and place, and cause, procure, suffer and

assent to be put and placed in said ballot box of said precinct, then and there in use as aforesaid, a large number of ballots, to wit, two hundred ballots, none of which were then and there cast and voted by any person at said election.

And the grand inquest aforesaid, upon their oath aforesaid, do further present that the said Patrick McGrath, John Stumpf, John D. Egan and Cormack F. Dolan, so being and acting as such members and clerk of said election board as aforesaid, together with divers other evil disposed persons, whose names are to the grand inquest aforesaid unknown, in further execution of the said last mentioned premises, and in pursuance of the said conspiracy, combination, confederation and agreement between and amongst them as aforesaid, and to effect the object thereof, afterwards, to wit, on the said fifth day of November, in the year aforesaid, at the city of Jersey City aforesaid in the County of Hudson aforesaid, did willfully, corruptly and unlawfully estimate, number, count, canvass, tally and give effect to a large number of ballots, to wit, two hundred ballots, none of which were then and there cast and voted by any person at said election, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same. 30

C. H. WINFIELD,  
Prosecutor of the Pleas.

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And afterwards, at a session of the Court of General Quarter Sessions of the Peace of the County of Hudson, before the Honorable Job H. Lippincott, presiding judge, and Elijah T. Pax 40

ton and Albert Hoffman, judges of the Inferior Court of Common Pleas, at Jersey City, in the aforesaid, in the form following, to wit:

County of Hudson aforesaid, here cometh the said Patrick McGrath, John Stumpf, and John D. Egan, under the custody of Robert Davis, esquire, Sheriff of the County of Hudson aforesaid, in whose custody they had been before committed  
 10 for the cause aforesaid, being brought to the bar in their proper person by the sheriff aforesaid, to whom they are also here committed, and having heard the indictment read, and forthwith being commanded of and concerning the premises in the said indictment above specified, and charged how they will acquit themselves thereof, they say they are not guilty thereof, and, therefore, for good and evil, they put themselves upon the country.

20 And Charles H. Winfield, esquire, Prosecutor of the Pleas for said County of Hudson, who prosecutes for the State of New Jersey, in this behalf doth the like.

Therefore, let the said indictment be continued and afterwards, to wit, on the 20th day of November, A. D. 1890, a rule having been granted by the said court, on motion of Charles H. Winfield, Prosecutor of the Pleas, on behalf of the State, for a struck jury for the trial of said in-  
 30 dictment, and said rule having been duly entered in the minutes of said court, on the day last aforesaid, in the form following, to wit:

Hudson General Quarter Sessions of the Peace.  
 The State of New Jersey v. Patrick McGrath,  
 John D. Egan and John Stumpf. Indictment  
 for conspiracy, April term, A. D. 1890.

On motion of Charles H. Winfield, Prosecutor  
 40 of the Pleas, on behalf of the State, it is on this

twentieth day of November, A. D. 1890, ordered that a jury be struck for the trial of the indictment in the above entitled cause.

Entered November 20th, A. D. 1890.

On motion of

C. H. WINFIELD,  
Prosecutor.

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And notice of the striking of said jury having been duly served, in conformity with the statute in such case made and provided, upon the said court, the said defendant and the Sheriff of the County of Hudson, and the said jury having been duly struck, under and in pursuance of said rule and notice, and a venire having been duly issued on the third day of July, A. D. 1891, for the summoning of said struck jury, in the form following, to wit:

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Hudson County, ss.—The State of New Jersey to  
(L. S.) our Sheriff of our County of Hudson:

We command you that you cause to come before the Court of General Quarter Sessions of the Peace, to be holden at Jersey City, in and for the County of Hudson, on the twentieth day of July, A. D. 1891, the persons named in the annexed list or panel, subscribed by the judges of the said court, to make a certain jury of the County of Hudson, between the State of New Jersey and Patrick McGrath, John Stumpf and John D. Egan, on a plea of not guilty to an indictment for conspiracy, because as well the said State of New Jersey as the said Patrick McGrath, John Stumpf and John D. Egan, between whom the contention is, have put themselves on the said jury, and in what manner you shall have executed this, our writ, make appear at Jersey City 40.

30

40

aforesaid, before our said justice of our said court, on the day aforesaid, and have you then and there the names of those persons and this writ.

Witness Job H. Lippincott, president judge of the said court, at Jersey City aforesaid, this third day of July, A. D. 1891.

10

C. H. WINFIELD,  
Prosecutor of the Pleas.

DENNIS M'LAUGHLIN,  
Clerk.

And said venire having been duly executed and the same being, on the twentieth day of July, A. D. 1891, duly returned into court with the jurors therein mentioned, and from the said jurors so returned and produced in said court, a jury having been selected before Hon. Job H. Lippincott, Elijah T. Paxton, and Albert Hoffman, judges as aforesaid, at Jersey City, in the County of Hudson aforesaid, on the twentieth day of July, in the year of our Lord one thousand eight hundred and ninety-one, as yet of the term of April, A. D. 1891, of twelve good and lawful men of this State, and resident within the County of Hudson aforesaid, above the age of  
20 twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known and who are not of kin to the said Patrick McGrath, John Stumpf, and John D. Egan, to recognize upon their oath, whether the said Patrick McGrath, John Stumpf and John D. Egan be guilty of the conspiracy in the indictment aforesaid specified, or not guilty, because as well the said Charles H. Winfield, esquire, Prosecutor of the Pleas for the County of Hudson  
30 aforesaid, who prosecutes for the State of New  
40

Jersey, in this behalf, as the said Patrick McGrath, John Stumpf and John D. Egan, have put themselves upon the said jury, and the same day is given to the parties aforesaid, at the same place.

At which time, that is to say, on the twentieth day of July, in the year of our Lord one thousand eight hundred and ninety-one, being as yet of the term of April aforesaid, at Jersey City aforesaid, before the said judges of the court aforesaid, here cometh as well the said Charles H. Winfield, esquire, Prosecutor of the Pleas aforesaid, who prosecutes as aforesaid, as the said Patrick McGrath, John Stumpf and John H. Egan, who, being brought to the bar here in their proper persons, by the sheriff aforesaid, and the jurors of the jury, by the Sheriff of the County of Hudson aforesaid, for this purpose empaneled and returned, to wit:

1. Daniel V. N. Williams,
2. Nicholas B. Cushing,
3. George W. Vreeland,
4. Alexander M. Cordukes,
5. William Wiggins,
6. Archibald A. Smith,
7. Charles J. Appleby,
8. John Holmer
9. John Morrill,
10. Alexander D. Elbers,
11. Alfred Heritage,
12. John Troll,

30

being called, come, who, being chosen, tried and sworn to speak the truth of and concerning the premises, and thereupon the trial of the said issue commenced before the said court and jury, and was con-40

tinued until the twenty-first day of July, in the year last aforesaid, being as yet of the April term aforesaid, at which first mentioned day the said issue, after a charge from the court, was submitted to the said jury, and the said jury, in charge of the officers of said court, duly sworn for that purpose, were taken in a private room to consider on their verdict.

10 And afterwards, to wit, on the day last aforesaid, at the city of Jersey City aforesaid, the said jury return into and before said court, in charge of said officers, sworn as aforesaid, to keep them in charge, and then and there, in the presence of the said Charles H. Winfield, Prosecutor of the Pleas aforesaid, and of the said Patrick McGrath John Stumpf and John D. Egan, do say that the said Patrick McGrath, John Stumpf and John D. Egan are guilty in manner and form as in the  
20 aforesaid indictment is charged against them, and the said jury do further say and offer that the said defendant, John Stumpf, be commended to the mercy of the said court.

And thereupon the said Patrick McGrath and John D. Egan are committed to the custody of the said sheriff, there to remain until the twenty-fourth day of July, in the year last aforesaid, and the said John Stumpf is committed to the  
30 custody of the sheriff aforesaid, there to remain until the thirtieth day of July, in the year last aforesaid. And on the said twenty-fourth day of July in the year last aforesaid, the said Patrick McGrath and John D. Egan being produced in and before the said court, at the city of Jersey City aforesaid, by the said Sheriff, and being in his custody, and it being further demanded of them if they have or know anything to say wherefore the court here ought not proceed to judg-  
40 ment and execution against them, who nothing

further saith unless as they have before said.

Whereupon all and singular the premises being seen, and by the court here fully understood—

It is considered and adjudged that the said Patrick McGrath and John D. Egan be confined in the State Prison at hard labor for the period of eighteen months each, and thence until the costs of prosecution are paid. 10

And on the said thirtieth day of July, in the year last aforesaid, the said John Stumpf, being produced in and before the said court, at the said city of Jersey City aforesaid, by the said sheriff and being in his custody, and it being further demanded of him if he hath or knoweth anything to say wherefore the court here ought not to proceed to judgment and execution against him, who nothing further saith unless as he hath before said. 20

Whereupon all and singular the premises being seen and by the court here fully understood—

It is considered and adjudged that the said John Stumpf be confined in the State Prison at hard labor for the period of eighteen months, and thence until the costs of prosecution are paid.

Judgment against Patrick McGrath and John D. Egan signed July 24th, 1891, and judgment against John Stumpf signed July 30th, 1891. 30

JOB H. LIPPINCOTT,

Presiding Judge,

and E. T. PAXTON,

ALBERT HOFFMAN,

Associate Judges

of the Court of General Quarter Sessions of the Peace,

Hudson County, New Jersey. 40

## TESTIMONY.

Jersey City, N. J., July 20th, 1891.

Before Hon. Job H. Lippincott, judge, and a struck jury.

Prosecutor Winfield, for the State.

10 Mr. Garrettson, Mr. Rowe and Mr. Daly, for the defendants McGrath and Egan.

Mr. Dixon, for defendant Stumpf.

20 MR. DIXON:—I desire to have it appear on the record, if the court will take my statement, or I will file an affidavit, that I am here as counsel for Mr. Stumpf. I am retained by him, and in no manner whatever represent any of the other defendants. And I understand Mr. Stumpf is willing to make an affidavit that no other counsel is here representing him but myself. Will the court allow it to go on record or shall I file an affidavit?

30 THE COURT:—That depends, perhaps, upon what you ask the court for. Ordinarily, I suppose there would be no objection to its appearing upon the record as a matter of fact that Mr. Stumpf has no other one representing him and has had not one else representing him as counsel but yourself, but I do not know to what point you desire to address yourself.

40 MR. DIXON:—I desire the privilege of cross examining the State's witnesses and any of the other defendants, except Mr. Stumpf, who may be put on the stand,

and of opening and closing for the defendant Stumpf.

THE COURT:—Those matters the court will not deal with now. It may go upon record that Mr. Dixon represents Mr. Stumpf, and that he himself, by no action of his, has employed any other counsel. That is the statement made by counsel and unless it is disputed, it can be conceded. 10  
Of course we will deal with the other matters so that counsel may have notice as to what the court's position is in time to prepare himself for any emergency. You may proceed with the case.

MR. ROWE:—I desire to ask leave to withdraw the plea of not guilty in order to make a motion to quash the indictment upon the same grounds as presented in the former cases. 20

THE COURT:—You may have that leave.

MR. ROWE:—I now make that motion upon the same grounds as in the former cases.

THE COURT:—The court will overrule that motion. 30

#### EXCEPTION.

To which ruling the defendants pray a bill of exception may be allowed, and it is allowed and signed and sealed accordingly.

JOB H. LIPPINCOTT, P. J. (L. S.)  
E. T. PAXTON, (L. S.) 40

MR. ROWE:—That motion is as to McGrath and Egan; I only appear for those two.

THE COURT:—That is a motion which operates in behalf of all.

The names of the following gentlemen were  
10 thereupon drawn from the box to serve as jurors  
upon the trial of the cause:

David V. N. Williams,  
Nicholas B. Cushing,  
George W. Vreeland,  
Alexander M. Cordeux,  
Oliver Combe,  
Joseph F. McCoy, challenged peremptorily by  
Mr. Rowe.  
Irving H. McBride.

20 THE COURT:—Mr. McBride has presented a matter to the court in which he says that he is suffering from a physical ailment which requires his absence from the jury box very often and that it is chronic. If there is no objection on the part of counsel, the gentleman may stand aside for a little while to see if we can make a jury without him.

30 MR. ROWE:—There is no objection.

William Wiggings,  
Archibald A. Smith,  
William F. Bender,  
Charles J. Appleby,  
John Holmes,  
John Morrell,  
Alexander B. Elbers.

MR. DIXON:—If the court please, we desire to enter a challenge to the fourth juror peremptorily, and also to Mr. Bender.

THE COURT:—Those gentlemen are excused, challenged peremptorily.

MR. DIXON:—We also desire to chal-10  
lenge the first juror.

THE COURT:—The court will overrule that challenge on the ground that the defendants have had the three challenges allowed them by the statute.

#### EXCEPTION.

To which ruling of the court the defendant, John Stumpf, prayed that a bill of exception may be allowed, and it is allowed<sup>20</sup> and signed and sealed accordingly.

JOB H. LIPPINCOTT, P. J. (L. S.)

E. T. PAXTON. (L. S.)

JOHN E. SCOTT, sworn on the part of the State,  
testified as follows:—

DIRECT EXAMINATION by Mr. Winfield:

I am city clerk of Jersey City; have been for 30  
twenty years.

Q. With whom are the papers relating to election filed?

A. With the city clerk, in my office.

Q. Give me a copy of the registry notice and election notice of the fall election of 1889.

A. I produce a copy of the election notice and also a copy of the registry notice of that election.

They are offered in evidence on the part 40

of the State, and are marked Exhibs. S 1 and S 2.

Q. Have you a book that will show the boundaries of the Seventh precinct of the Second district in that election?

A. I have it here. (Reads page—, September 26th, 1891. Copy of a resolution approved by the  
 10 Mayor October 1st, 1889; Resolved, That the following boundaries of election precincts in the several assembly districts are hereby fixed and determined for the purposes of the next ensuing registry and election: Second assembly district, Seventh precinct, bounded as follows: East by centre line of Monmouth street, from Railroad avenue to Morris Canal; south by Morris Canal and Halliday street; west, by centre line of Halliday street, from Morris Canal to Grand street;  
 20 north by centre line of Grand street, from Halliday street to Mill Creek; west by centre line of Mill Creek, from Grand street to Montgomery street; south by centre line of Montgomery street, from Mill Creek to Cornelison avenue; west by centre line of Cornelison avenue or Montgomery street to Railroad avenue; north by centre line of Railroad avenue, from Cornelison avenue to Monmouth street.

Q. Give us the odd and even numbering of the  
 30 boundaries in that precinct.

A. Monmouth street, west side, odd numbers; Morris Canal, north side, even numbers; Gilchrist street, from Monmouth street west, odd and even; Grand street, from Monmouth street to Mill Creek, both sides, odd and even; Colden street, from Monmouth street to Mill Creek, odd and even; Bright street, to Morris Canal, odd and even; York street, from Monmouth street to Mill Creek, odd and even; Montgomery street, from  
 40 Monmouth street to Cornelison avenue, odd and

even; Mercer street, from Monmouth street to Cornelison avenue, odd and even; Wayne street, from Monmouth street to Cornelison avenue, odd and even; Railroad avenue, south side, from Monmouth street to Cornelison avenue, odd; Brunswick street, from Railroad avenue, south, to Mill Creek, both sides, odd and even; Colgate street, from Railroad avenue to Mill Creek, both sides, 10 odd and even; Merseles street, from Railroad avenue to Mercer street, both sides, odd and even; Pryor street, from Railroad avenue to Mercer street, odd and even; Fremont street, from Railroad avenue to Montgomery street, both sides, odd and even; Factory street, from Railroad avenue to Montgomery street, both sides, odd and even; Cornelison avenue, east side, from Railroad avenue to Montgomery street, odd and even. That is all.

Q. Have you a map showing these numbers? 20

A. I have it here.

The State offers in evidence the map and it is marked Exhibit S 3.

Q. Have you the resolution of the Board appointing the election officers for that precinct that fall?

A. I have it here as follows: Resolution adopted by the Board of Aldermen of Jersey City 30 October 8th, 1889, approved by the Mayor October 10th, 1889: Resolved, that the following named persons are hereby appointed officers of registration and election: Seventh precinct, Second Assembly district, Judge, Patrick McGrath; inspectors, John Egan and John Stumpf; clerk, Charles Maxwell.

Q. Who keeps the election boxes from one election to another?

A. The City Clerk.

Q. When were they sent out in the fall of 1889 for that election?

A. They were sent out the afternoon of the day preceding.

Q. What was sent with the boxes?

A. A copy of the combination, instructions how to open a box, a package containing the book of instruction, the election law, necessary blanks and stationery.

Q. You mean this book of instructions (showing witness a book?)

A. Yes, that is the book.

Q. When are the boxes returned to you?

A. Immediately after the election is over and the counting is finished; the boxes are then sealed by the Inspectors of Election and delivered at the office of the City Clerk.

Q. Turn to your memorandum and tell us when and by whom the box in this precinct was returned to you on that election?

A. I received this box, the Seventh precinct of the Second Assembly district, at eleven minutes past five on the morning of November 6th, 1889; it was delivered at my office by J. E. Egan and John Stumpf, accompanied by Police Officer Wohlhaben; it was already sealed when I received it; I immediately placed this box, with others, in the lower vault of the City Clerk's office and it remained there with the other boxes until some time in January, 1890, when the boxes were taken from my office, under my supervision, to Trenton, in obedience to a summons from the Senate Committee.

Q. Who went with them to Trenton in the same wagon and car?

A. The City Marshal and Mr. Rose, sergeant-at-arms of the Senate, and Mr. Garretson.

Q. When they arrived at the State House in

Trenton, then what was your connection with them?

A. The boxes were placed in a vault in the State House, and the first night the door leading to the vault was sealed by myself; I placed a piece of paper with my name on it over the crack of the door, so it could not be opened without breaking the paper; the key was delivered to me; there were two keys. The other key was held by Mr. Rose. 10

Q. Now tell us when you ceased to have anything to do with it.

A. The committee began their investigation, and the first box, I think, that was produced before the committee was the first of the first, and was opened by myself; after that I left Mr. Timothy C. Long, City Marshal of Jersey City, in charge, and he opened all of the other boxes and saw that they were placed back in the vault at the end of the count, and he stayed there in Trenton by my orders; there my connection with the boxes ceased. 20

Not cross examined.

TIMOTHY C. LONG, sworn by the State, testified as follows:—

DIRECT EXAMINATION by the Prosecutor:

30

Q. You are City Marshal?

A. Yes, sir.

Q. Have been so for how long?

A. About sixteen years.

Q. What connection had you with the ballot boxes of 1889, when they went to Trenton?

A. Mr. Scott left me in charge of them, sir.

Q. You went down with them, did you?

A. Yes, sir.

Q. And when you got to Trenton; go on and 40

tell the jury all you had to do with them from that time on?

A. Well, after Mr. Scott had delivered them, through the Senate Committee, I got a key to the inside door of the vault where the boxes were kept; when the Senate Committee wanted a box I went down with the marshals, as they called them, and fetched the box up to the committee  
10 and opened it, and when they had examined the contents, they were put in the box again and it was locked in the vault.

Q. That was done with all of them?

A. With all of them until two days before I got the boxes emptied, to fetch them home; the contents were then taken out and put into a paper bag—the ballots, poll book, whatever was the contents—and they were sealed and delivered to the sergeant-at-arms of the Senate and the  
20 clerk of the Senate.

Not cross examined.

WILLIAM S. SHARP, sworn for the State, testified as follows:—

DIRECT EXAMINATION by Mr. Winfield:

Q. You were sergeant-at-arms of the Senate, were you not, in the winter of 1889-90?

30 A. Yes, sir.

Q. And as such, what control or connection did you have with the contents of the ballot boxes?

A. They were placed in my hands by a resolution of the Senate when they were called for; the ballot boxes were called for to be returned to Jersey City for the election in the spring; the contents were taken out and put in paper bags.

Q. The contents of each separate box was placed in a separate bag?

40 A. Yes, sir.

Q. And then what was done with them?

A. They were sealed up, tied up and sealed up and placed in the Treasurer's vault in Trenton.

Q. Take this precinct now, how long did that remain there?

A. That precinct, the books, registry list and tally sheets remained until the 28th of October.

Q. Then what?

A. Then they were turned over to Mr. John A. Nugent.

Q. The stenographer of this court?

A. Yes, sir.

Q. You have had them here before the grand jury, haven't you?

A. Yes, sir; in May.

CROSS EXAMINED by Mr. Garretson:

Q. Had them there several times didn't you? 20

A. Had them before the grand jury five days.

Q. You had them here in other matters?

A. Yes, sir; six times in June, before the court.

Q. You had them before Mr. Nugent, didn't you, in some examination?

A. Yes, sir.

Q. How many times?

A. On the 26th of May, an examination was to be at John Griffin's office, in the Taylor building, but in consequence of Mr. Nugent, the commissioner, being absent, it was adjourned to the next day, the 27th, when the examination was had; I brought them on the 26th and 27th. 30

Q. You had them in court, in Trenton, didn't you?

A. I had them there on the 20th of June, in the library room, but they were not opened.

Q. They were opened in the grand jury room?

A. Yes, sir.

Q. Examined there by the grand jurors? 40

A. Yes, sir.

Q. You were present part of the time?

A. About two minutes.

RE-DIRECT EXAMINATION:

Q. Do you know whether the contents of this precinct were before the grand jury when you  
10 were absent about two minutes?

A. I can't tell.

Q. When did you bring the ballots here and deliver them to Mr. Nugent?

A. On the first of July, this month.

JOHN A. NUGENT, sworn for the State, testified as follows:—

DIRECT EXAMINATION by Mr. Winfield:

Q. When were the first papers, whatever they  
20 might have been, delivered to you in this first precinct?

A. October 20th, 1890.

A. Poll book, tally sheet, oaths of officers, registry list.

Q. And when were the ballots delivered to you?

A. July 1st, 1891.

Q. In a paper bag?

A. Yes, sir.

Q. Any mark on it (showing paper bag to the  
30 witness?)

A. Marked on the outside in blue pencil. This is the bag that you show me and those are the marks. Those ballots I turned over to Mr. Winfield on that day, and the papers also, on the first of July.

Not cross examined.

dence the poll book, registry list and the oaths that were in them, the tally sheets and the ballots. There are two bundles of ballots, one containing the main string, the other thirteen rejected. I offer them both in evidence.

THE COURT—They are admitted.

10

GEORGE KURFESH, sworn for the State, testified as follows:—

DIRECT EXAMINATION by Mr. Winfield:

Q. Where do you live?

A. 191 Wayne street, Jersey City.

Q. How long have you lived there?

A. I have lived there eight years.

Q. You were living there, then, in November, 1889?

20

A. Yes, sir.

Q. Was there a man named Adam Eckman living there at the time?

A. No, sir.

THE PROSECUTOR—The number of his vote is 21, from 191 Wayne street.

Q. Did Charles Hunco live there?

A. No, sir.

30

THE PROSECUTOR—His vote is 292, from the same number.

Q. Did John Eickman live there?

A. Yes, sir.

Q. Chris Huncky?

A. No, sir.

THE PROSECUTOR—His vote is 362, from the same number.

40

## CROSS EXAMINED by Mr. Garretson:

Q. What house is this; where is it?

A. In Wayne street, between Monmouth and New Brunswick.

Q. Which side of the street is it?

A. It is on the east side, right next the city stables.

10 Q. That is the south side?

A. South side.

Q. What kind of a house is it?

A. Four story.

Q. Do you own the house?

A. Yes, sir.

Q. And you rent it out?

A. Yes, sir.

Q. Who were living there at that time?

20 A. John Meadows, myself, John Eickman, and there was another man; his name was Hepp.

Q. How many apartments in the house?

A. There is room for six families.

Q. Who were in the other apartments?

A. There was some idle.

Q. Any rear house?

A. No, sir, nothing in the rear; only front house.

Q. These names that have been called to you, how do you know they didn't live there?

30 A. Not as long as I was in.

Q. When were you there?

A. I am there yet; I was there eight years.

Q. There was a man named Eickman there, wasn't there?

A. Yes, sir.

Q. What was his first name?

A. John.

Q. The other man wasn't there, you think.

A. I didn't know him.

PATRICK McKENNA, sworn for the State, testified as follows:—

DIRECT EXAMINATION by Mr. Winfield:

I live at 384 Montgomery street, Jersey City; in the fall of 1889 I lived at 247 Wayne street.

Q. Was there any other man named McKenna living in that house at that time? 10

A. Yes; there was Frank James and Michael McKenna.

Q. Was there any Patrick McKenna?

A. No, sir.

THE PROSECUTOR—There are two Patrick McKennas voting from that number, votes 316 and 390.

CROSS-EXAMINED.

Q. What other McKennas live in that house besides you? 20

A. Frank and James, now; that is all at present.

Q. Your father was living then, was he not?

A. Yes, he lived there at that time; his name was Michael.

Q. (By the Prosecutor). Is that the same house that Cormack Dolan and Philip Egan lived in?

A. Yes, sir.

PHILIP M'GOVERN, sworn for the State, testified as follows:— 30

DIRECT EXAMINATION by Mr. Winfield.

Q. Where do you live?

A. 286 Wayne street.

Q. Where did you live in the fall of 1889?

A. 286 Wayne street.

Q. How many McGoverns living in that house?

A. I don't know. 40

Q. Were there any besides you?

A. I couldn't say.

Q. Is there any Philip McGovern?

A. I don't know; there is another Philip McGovern in that same block.

Q. In the house?

A. I don't know.

10 NOT CROSS EXAMINED.

JOHN SMITH, sworn for the State, testified as follows:—

DIRECT EXAMINATION by Mr. Winfield:

Q. Where do you live?

A. 462 Second street.

Q. Where did you live in November, 1889?

A. 261 Wayne street, I believe, is the number.

20 Q. Did you live at 260?

A. There are two numbers on it; I had it 261; the other, I believe, is 260.

Q. Was there any other John Smith living in that house?

A. My father was; he lives in Second street now; in November, 1889, he was in the hospital, confined there for three or four weeks.

Q. Was he there on election day of 1889?

A. No, he was out that day; he came out a  
30 couple of days ahead of election day.

Q. Where was he on election day?

A. I couldn't tell you; I was working.

Q. Do you think he voted on election day?

A. I don't know.

Q. What is his name?

A. John Smith.

NOT CROSS EXAMINED.

PETER McKIERNAN, sworn for the State, testified as follows:—

DIRECT EXAMINATION by Mr. Winfield:

Q. Where do you live?

A. 307 Railroad avenue; I have lived there thirty-five years.

Q. In the fall of 1889 were you living there? 10

A. I did.

Q. Any other McKiernan living there at that time?

A. My son, John McKiernan.

THE PROSECUTOR—Peter McKiernan is twice on the register from 307 Railroad avenue, both times and once on the poll book 680.

CROSS EXAMINED by Mr. Dixon:

20

Q. Did you register personally that day?

A. No, sir.

Q. Do you know the defendant, John Stumpf?

A. No, sir.

MICHAEL OTIS, sworn for the State, testified as follows:—

DIRECT EXAMINATION by Mr. Winfield:

Q. Where do you live? 30

A. No. 186 Wayne street; I have lived there five or six years. I lived there in the fall election of 1889.

Q. Was there any other Otis living there at that time?

A. The only other Otis was my father, Lawrence Otis.

THE PROSECUTOR—Votes 242 and 330, one by M. Otis and the other 40

Michael Otis, 186 Wayne; and Lawrence votes from 185 Wayne.

NOT CROSS EXAMINED.

THOMAS LAWLESS, sworn for the State, testified as follows:—

10 DIRECT EXAMINATION by Mr. Winfield:

Q. Where do you live?

A. 82 1-2 Monmouth street.

Q. Where did you live in the fall of 1889?

A. 273 Monmouth street.

Q. Any other Lawless living there?

A. Only my sons, one aged about 19 and the other about 14.

20 THE PROSECUTOR—Votes 266 and 318 are both Thomas Lawless.

Q. Did you ever live at 289 Monmouth street?

A. No, sir.

NOT CROSS EXAMINED.

JAMES DUNN, sworn for the State, testified as follows:—

DIRECT EXAMINATION by Mr. Winfield:

30 Q. Where do you live?

A. 45 Colgate street.

Q. How long have you lived there?

A. About twenty years.

Q. In the fall of 1889 was there any other Dunn living in that house besides you?

A. No, sir.

40 THE PROSECUTOR—Votes 359 and 360 are credited to him from 45 Colgate street.

## CROSS EXAMINED by Mr. Rowe:

Q. Have you a family?

A. Yes.

Q. Living there at that time?

A. Yes.

Q. Sons?

A. I have a son voting; he was living in Wayne street, 347. 10

Q. In this same precinct?

A. Yes.

Q. How old is he?

A. Between thirty-four and forty. He was a voter in the precinct; his name is John G.

THE PROSECUTOR—John G. votes from 238 Wayne street. There are two James voting from Colgate, and a John voting from 238 Wayne. 20

FELIX McELROY, sworn for the State, testified as follows:—

## DIRECT EXAMINATION by Mr. Winfield:

Q. Where do you live?

A. 357 Montgomery street.

Q. How long have you lived there?

A. Over eleven years.

Q. In the fall of 1889 did you live there? 30

A. Yes.

Q. Any other McElroy in that house besides you?

A. Only my own family; I have two sons, Charles and Thomas.

THE PROSECUTOR—Felix McElroy is once on the poll book and twice on the registry, checked as voting.

NOT CROSS EXAMINED.

40

CHARLES SMITH, sworn for the State, testified as follows:—

DIRECT EXAMINATION by Mr. Winfield:

Q. Where do you live?

A. 632 Grand street.

Q. Is your name Smith or Schmidt?

10 A. In German, Schmidt; and in English, Smith.

Q. Where did you live in the fall of 1889?

A. 155 Bright street.

Q. Any other Smiths in that house at that time?

A. No, sir.

Q. Any Schmidts or Schmidt?

A. No, sir.

20 THE PROSECUTOR—There are two Charles Smiths voting from 155 Bright, but they are not numbered on the poll book.

Q. Did you ever live 262 Wayne street?

A. No, sir.

NOT CROSS EXAMINED.

WILLIAM COSTELLO, sworn for the State, testified as follows:—

30 DIRECT EXAMINATION by Mr. Winfield:

Q. Where do you live?

A. 394 Montgomery street.

Q. Where is that located?

A. A little above Brunswick street.

Q. Is there any number 594.

A. I don't know, sir; there are not many houses along where I live.

40 Q. That would be away up on the meadows there, wouldn't it?

A. I don't know where it is sir, I am sure.

Q. Were you living there in the fall of 1889?

A. Well, I can't say right; I am not sure of that.

Q. How long have you been living there?

A. About a year and seven months.

Q. You don't know whether you lived there?

A. I am not sure about that time; I lived in Brunswick street, 23, if I didn't live there. 10

THE PROSECUTOR—I see on the registry it is 23 Brunswick street, but right over it is written 394 Montgomery, so that probably he changed about that time.

There are two votes of that name, 744 and 745, William Costello, but one is from 594 Montgomery. We will show there is no such number. 20

NOT CROSS EXAMINED.

PETER HINE, sworn for the State, testified as follows:—

DIRECT EXAMINATION by Mr. Winfield:

Q. Where do you live?

A. 568 Grand street.

Q. Where did you live in November, 1889? 30

A. 427 Montgomery street.

Q. Any other Hine living there in that house?

A. No, sir.

THE PROSECUTOR—Peter is down as voting three times; 770 is on the registry; vote 773, P. Hine, is not on the registry, and vote 776, Peter J. Hine, is not on the registry, but all from 427 Montgomery. They are not numbered in the poll book at 40

all. There is one vote without any number on Montgomery street.

NOT CROSS EXAMINED.

JOHN E. SCOTT, recalled on the part of the State:—

10 DIRECT EXAMINATION by Mr. Winfield:

Q. These are the certified lists of the registry of this precinct on file in your office?

A. Yes, sir.

NOT CROSS EXAMINED.

The said certificates are offered in evidence.

20 THE PROSECUTOR—I would like to have the ballots canvassed so far as relates to the director at large and the assemblyman in this precinct.

THE COURT—It may be done unless the other side agree to what the result is.

THE PROSECUTOR—I have canvassed the ballots myself with considerable care and arrived at the figures I gave you. Will you admit that to be correct?

30 MR. DIXON—I don't know anything about it, but I will admit it.

MR. ROWE—We admit it; we will take the Prosecutor's count.

THE COURT—There was nothing said about the count for Senator.

40 The PROSECUTOR—No, I don't care anything about that; I would state that the thing about that; I would state that the

balance of the sheet is apparently honest. I want to call the gentlemen's attention to three classes of figures. The ballots show for Bruggeman 421 votes; the tally sheet 494, as I figure it; and the returns 536. For Mr. Roche the ballots show 350; the tally sheet 244, and the returns 245. Burns, for Assembly, ballots, 636; tally sheet, 650; returns, 673. Abernathy, ballots, 121; tally sheet, 108; returns, 108.

THE State offers in evidence the returns of the election for chosen freeholder, taken from the files of the County Clerk's office, signed by McGrath, Judge; Smith and Egan inspectors, and Cormack Dolan, clerk; giving August Bruggeman 536 votes; James Roche, 245.

Also another return, giving Henry Byrnes 673 and Hugh B. Abernethy 108. 20

Also the result of county canvassers upon these two returns.

CHARLES W. PIERSON, sworn for the State, testified as follows:—

DIRECT EXAMINATION by Mr. Winfield:

Q. At my request did you investigate where certain numbers on certain streets were? 30

A. I did; last Wednesday and Thursday.

Q. Did you mark upon the paper that you had a memorandum?

A. Yes.

THE PROSECUTOR—Vote 678 on the poll book is 377 Railroad avenue.

Q. That is a vacant lot?

40

A. Yes; and 390 Railroad avenue is the yard of the Pennsylvania Railroad and is outside of this precinct.

THE PROSECUTOR—The number of the vote is 272 on the poll book.

- Q. 393 Railroad avenue?  
 10 A. That is a vacant lot.  
 The Prosecutor—See vote 290 and 304.  
 Q. 395 Railroad avenue?  
 A. Vacant lot.  
 The Prosecutor—See vote 287.  
 Q. 221 Wayne street?  
 A. Vacant lot.  
 The Prosecutor—See vote 650.  
 Q. 249 Wayne street?  
 A. Vacant lot.  
 The Prosecutor—See vote 781.  
 20 Q. 273 Wayne?  
 A. Vacant lot.  
 The Prosecutor—See vote 306.  
 Q. 289 Wayne?  
 A. Vacant lot.  
 The Prosecutor—See vote 736.  
 Q. No. 129 1-2 Fremont street?  
 A. There is no such number on the street.  
 Q. 485 Montgomery?  
 A. Vacant lot; meadow property.  
 30 The Prosecutor—See vote 75.  
 Q. 200 Mercer street?  
 A. Vacant lot, corner of Brunswick street.  
 The Prosecutor—See vote 19.  
 Q. 385 Monmouth street?  
 A. That is out of the precinct.  
 The Prosecutor—See vote 42.

MR. GARRETTSON—Isn't it 335?

- 40 The Witness—There is a 335, a tenement house;

that is the last numbered house in the precinct,  
but 385 is out of the precinct.

NOT CROSS EXAMINED.

ANDREW KEEN, sworn for the State, testified  
as follows:—

DIRECT EXAMINATION by Mr. Winfield:

Q. Where do you live? 10

A. 217 Mercer street.

Q. What is your business?

A. Agent for Mr. Colegate.

Q. Taking care of what?

A. Of his real estate.

Q. Where?

A. From Brunswick street to Merseles street,  
on the south side, and on the block where the old  
starch factory used to be.

Q. What street is that old starch factory? 20

A. Between Brunswick and Colegate and  
Wayne and Mercer.

Q. What are the numbers of that property?

A. The last number is 201, and commencing  
again the other side, on Colegate, at 235 on  
Wayne street, 217 and 219 are the houses on  
Mercer street; those are the only property that  
has been built on at present.

NOT CROSS EXAMINED. 30

THE PROSECUTOR—Now, I will call  
attention to some ninety-four names that  
are on the poll book which are not on the  
registry. (Reads names.) Now, I will  
call attention to names checked on the reg-  
istry, not on the poll book. Do you want  
me to go through those?

MR. ROWE—No.

40

THE PROSECUTOR—Here are a number of names on the poll book not checked on the registry; there are twenty-three names of Smith on the poll book, and five checked on the registry that are not on the poll book, making twenty-eight Smiths voting, while they are put eleven Smiths on the registry. The State offers in evidence the ballots and all of the papers that have been exhibited to the jury.

10

State rests.

MR. ROWE—We rest on the part of McGrath and Egan.

HENRY PUSTER, sworn on the part of the defence:—

20 DIRECT EXAMINATION by Mr. Dixon:

I reside in Jersey City; am the judge of the district court of Jersey City; I know the defendant John Stumpf; have known him about twenty-five years.

Q. Do you know his reputation for honesty in the community in which he lives?

A. I -do.

Q. What is it, good or bad?

A. Good.

30 Q. Do you know what political party he is a member of?

A. I do; the Republican party.

Q. Have you known him as a Republican?

A. I have, ever since I was eighteen years old; that is twelve years ago.

Q. Do you know his reputation for party loyalty?

40 THE PROSECUTOR—I object to the question as immaterial and irrelevant.

MR. DIXON—This is alleged to be a conspiracy against the party.

THE COURT—There is nothing here to show that there is any conspiracy against any particular political party.

The Court overrules the question, to which overruling Mr. Dixon, on behalf of the defendant, 10 Stumpf, prays that a bill of exceptions may be allowed, and it is allowed and signed and sealed accordingly.

JOB H. LIPPINCOTT, P. J., (L. S.)

E. T. PAXTON, (L. S.)

Q. Do you know his reputation for truth and veracity?

THE COURT—That is not a question in issue here; his reputation for truth and veracity has not been attacked. 20

Q. How long have you been in politics?

A. Twelve years.

Q. What is your political faith?

The prosecutor objects to the question, and the court overrules it.

JACOB RINGLE, sworn on the part of the defendant, Stumpf: 30

DIRECT EXAMINATION by Mr. Dixon:

Q. Where do you live?

A. 375 Fairmount avenue, Jersey City; I am a storekeeper in Jersey City; I know the defendant, John Stumpf; I have known him fifteen years, I suppose.

Q. Do you know what his reputation is for honesty and integrity?

A. I have always judged it to be first class. 40

Q. Do you know what is his loyalty to the principles of the Republican party?

THE COURT—You may prove that he was a Republican at that time.

Q. Do you know what his party principles were?

10 A. Yes.

Q. Do you know whether he was a member of the Republican party?

A. I do; he always was, to my knowledge.

Q. Do you know his reputation for loyalty to the Republican party?

The prosecutor objects to the question as immaterial and irrelevant.

20 The court overrules the question, to which overruling the defendant prays a bill of exceptions may be allowed, and it is allowed, and signed and sealed accordingly.

JOB H. LIPPINCOTT, P. J., (L. S.)  
E. T. PAXTON, (L. S.)

Q. Do you know Mr. Bruggeman, the director-at-large?

A. Yes.

30 Q. Do you know to what political party he belonged?

A. Yes, to the Democratic party; he was elected on the Democratic ticket.

Q. Who was the other candidate?

A. James Roche; I know him; he is a Democrat, also, but he was an independent candidate at that time, running on the independent ticket.

Q. Do you know Mr. Byrnes, the Democratic candidate for assembly?

40 A. No; I know Mr. Abernathy, the Republican

candidate; he was on the same ticket with Mr. Roche.

CROSS EXAMINED by Mr. Winfield:

Q. How long have you known Mr. Stumpf to have been one of the election board in that precinct?

A. I have heard he has been there a number of 10 times.

Q. That precinct has a bad reputation for honesty in counting?

Question objected to by Mr. Dixon and overruled by the court.

WILLIAM W. COWARD, sworn on the part of the defendant, Stumpf:—

DIRECT EXAMINATION by Mr. Dixon: 20

Q. What is your position?

A. A surgeon of police.

Q. Were you connected with the police department in the fall of 1889?

A. I was.

Q. Did you have occasion to go to the Seventh precinct, Second Assembly district, at that election?

A. I visited them all in the First police precinct. 30

Q. Can you recollect the time it was you got to the Seventh precinct, of the Second assembly district, that day?

A. In the morning I left the station house about 9 o'clock and I visited five or six before I got to this.

Q. When you got there, whom did you find in charge of the election business there?

A. Dolan was there; he was about the only one 40

I knew; I didn't know John Stumpf then; I don't think I ever saw him before; I have seen him since, and I recognize him as being one of the election board that day.

Q. How did you come to go in there?

A. I went up there to visit the officers, and while doing so Stumpf called me inside, and Dolan and him was wrangling about the combination of the box; Stumpf said that he was entitled to one of the combinations; Dolan said he wasn't, and he referred to the books; Stumpf, I think, produced the book, and the book didn't say anything about combination; it said that each officer was entitled to a key; and I left them there; I don't know how the dispute ended; Stumpf was asking to get one of the combinations, and I don't know whether he got one or not; I wasn't there when the poll was open; I think Officer McMahon was there in the morning; he is in the First precinct now.

NOT CROSS EXAMINED.

JOHN GRAHAM, sworn on the part of the defendant, Stumpf:

DIRECT EXAMINATION by Mr. Dixon:

Q. Where do you live?

30 A. 12 1-2 Mercer street.

Q. What is your occupation?

A. I am at present engaged with the prosecutor on these trials.

Q. Have you been aiding the prosecutor in this case and the other cases?

A. Yes, sir.

Q. The Senate committee, did you aid them?

A. Yes, sir.

Q. Do you know the defendant, John Stumpf?

40 A. I do; yes, sir.

Q. How long have you known him?

Q. Eight or ten years?

Q. Do you know his general reputation for honesty and integrity?

A. The only thing I know about it is his politics; that is all.

Q. Do you know about his honesty in politics?

Objected to.

10

THE COURT—His reputation for honesty; it must be reputation.

A. He has always been known to be a fair, square, honest young man as far as I know.

Q. In politics as well as anything else?

A. Yes, sir.

Q. What party do you belong to?

A. The Republican party.

Q. Are you one of the county committee?

20

A. I am; yes, sir.

Q. Do you know who assigned Mr. Stumpf to this precinct on that day?

A. I do not; no, sir.

CROSS EXAMINED by Mr. Winfield:

Q. Mr. Stumpf is also a member of that committee?

A. Yes, sir.

Q. How long has he been so?

30

A. For a number of years he has represented that precinct.

PHILIP TUMULTY, sworn for the defendant, Stumpf:

DIRECT EXAMINATION by Mr. Dixon:

Q. Where do you live?

A. 295 Monmouth street.

Q. Are you a member of the Democratic party? 40

A. Yes, sir.

Q. Do you know John Stumpf, a defendant in this case?

A. Yes, sir.

Q. How long have you known him?

A. Since he was sixteen or seventeen years old.

Q. Have you known him as a Republican or Democrat?

10 A. I have known him as a Republican.

Q. Always?

A. Yes, sir.

Q. Do you know his general reputation for honesty in politics?

A. I look upon him as being an honest man in politics; yes, sir.

Q. Do you know his general reputation for honesty?

A. Good.

20 Q. How about his honesty in politics; is that good?

Objected to.

THE COURT—His general reputation for honesty is all that can be inquired of. Confine the testimony on this part of the case to what the defendant's general reputation for honesty is. Don't go outside of that.

30

#### EXCEPTION.

To which ruling of the court the said defendant, John Stumpf, prays that a bill of exceptions may be allowed, and it is allowed and signed and sealed accordingly.

JOB H. LIPPINCOTT, P. J., (L. S.)  
E. T. PAXTON, (L. S.)

NOT CROSS EXAMINED.

40

JOHN STUMPF, the defendant, sworn in his own behalf, testified as follows:

DIRECT EXAMINATION by Mr. Dixon:

Q. Where do you live?

A. 306 Fifteenth avenue, Newark.

Q. Where did you live on the 5th of November, 1889? 10

A. 228 Lane street.

Q. Are you one of the defendant's in this indictment?

A. Yes, sir.

Q. Were you a member of the election board of the Seventh precinct, Second district, on that election?

A. I was.

Q. When did you first assume your duties?

A. On the first day of registry. 20

Q. How did you act then?

A. As Republican inspector of election.

Q. Who else were on the board?

A. At that time McGrath was judge; John Egan, Democratic inspector, and Cormack Dolan, clerk; all Democrats but me.

Q. On the first registry day who kept the registry book?

A. The registry book was made by the clerk, Cormack Dolan; he wrote the names in the registry. 30

Q. From what did he write those names?

A. From a copy that was brought from the city clerk's office of the preceding general election.

Q. Who brought that copy?

A. I don't know exactly.

Q. Did you?

A. No, sir. 40

Q. When that copy was brought what was done with it?

A. One member of the board took the copy and wrote off the names.

Q. Who was that?

A. Sometimes one and then another. It would sometimes be Mr. Egan and sometimes Mr. McGrath.

10 Q. Did you read any of them?

A. No, sir; I made a copy of those read off; when the names were read off by one of the members, the clerk wrote in the registry book the names as they were called off, and I wrote at the same time.

Q. Why did you write two copies?

A. Because the law calls for it; one copy was brought to the city clerk's office and the other was posted at the election booth outside the door.

20 Q. Did you on that day keep the registry book or make any entries in the registry book?

A. Not one.

Q. There was another registry there?

A. Yes, sir.

Q. Did you keep the registry book on the second day?

A. I did not.

Q. Did you read off the names from the copy sent from the city clerk?

30 A. No; only on the first registry day are names copied, but on the second day the registered persons generally come in person or by affidavit.

Q. And are those names usually written in a differently colored ink?

A. No; I don't know whether they were in in this case or not.

Q. Isn't it customary to write them in a differently colored ink on that day?

40 A. Not that I know of.

Q. Who made the entries in the registry on the second day?

A. Mr. Dolan, the clerk.

Q. Upon what did he enter them?

A. Upon the registry book.

Q. How did he come to write the name?

A. By persons coming there to register.

Q. Did you see persons come there and register on the second day that you knew? 10

A. Yes, sir.

Q. Did you see any come there to register whom you did not know?

A. Yes, sir.

Q. Those whom you knew, were they voters in the precinct?

A. Yes, they were.

Q. Were there any registrations made by affidavit?

A. I don't remember clearly, but it appears to me there were a few. 20

Q. On election day, what time did you open the polls?

A. Six o'clock in the morning.

Q. Were you there when they opened?

A. Yes, sir.

Q. Was the ballot box there when the polls were opened?

A. The ballot box that was brought there first in the morning was not used at all. 30

Q. Were you sworn in on the morning of election day as officers?

A. No, sir; we were not.

Q. Why not?

A. In the morning before we commenced I demanded that we be sworn in as an election board; the other members of the board differed from me; they said that it was not necessary, as we had been sworn in on the first day of registry, 40

and that that oath covered the whole; and they said it was not necessary, and I argued with them that it was; then the police officer who brought the ballot box in the morning was then questioned to give his opinion regarding it, and he decided and said that, being as we had been sworn in once, he thought it was not necessary, and we were not sworn in that day; I believe, he being  
 10 a police officer, he ought to know.

Q. State about the first ballot box that was brought there?

A. The first ballot box, the judge tried to open it with his key and it would not open; the ballot boxes open with a key and two combinations; Mr. McGrath had the key and I had one combination and Mr. Egan had another; when the first box was brought there Mr. McGrath proceeded to open the box; voters were waiting to  
 20 vote; the box would not open; we tried to force the head off the box; I protested, and said it was not necessary to break the box, as it could not be used any way, and I suggested that the policeman telephone down to the city clerk for a new box, and he did so; then some one proposed using a cigar box until the new one arrived, because men were waiting to vote, and the cigar box was procured from a neighboring store and used until the second ballot box came.

30 Q. How long were you voting in a cigar box?

A. I should judge three-quarters of an hour; the box was nailed shut, and there was a hole made in the top, and the ballots were put in that way separately.

Q. When the second box came?

A. That was a regular ballot box, opened with a key and the combinations were held by Mr. Egan and Mr. McGrath; the judge had the key  
 40 and a combination.

Q. How was it that you did not get that combination?

A. Because when the young man who brought the ballot box came, he had the two combinations enclosed in an envelope, and the clerk, Mr. Dolan, took them out of his hand and he gave one to Mr. Egan and the other to Mr. McGrath; and I protested all I could; I said that I ought to have one of the combinations to it; the combinations were figures written on a piece of paper; I protested against any such action, but I was overruled, and they said the law said nothing about the combinations; they asked me to refer them to a law and show it to them, and I looked at the book of instructions and I referred to the paragraph where it mentions "keys;" it appears that that part of the election law has not been changed since the old boxes were used, and so it said nothing about combinations; it said "keys," and the result was I was denied having possession of the combination. 10 20

Q. Well, what was the result?

A. Well, the result was that I was denied having possession of the combination; I did not have the combination from them on.

Q. Who was present then besides the election officers?

A. Well, I don't remember now clearly who was there. 30

Q. Any police officer?

A. There was, but he was outside; whether he heard or not I don't know.

Q. You don't know whether he went in or not, do you?

A. No, sir.

Q. Do you remember who he was?

A. No, sir.

Q. Was there a police officer there all day? 40

A. Yes, sir, two of them at times.

Q. Now, when the polls opened, who had the books?

A. Mr. Dolan, the clerk, had the registry book, and the poll book was brought there, I suppose, by the police officer that morning—a blank book, poll book.

10 Q. Were there any other books kept by the board?

A. Affidavits and such like.

Q. Were there any other books kept by the board?

A. One poll book and one registry book.

Q. Who took possession of them when they came in the morning?

20 A. Well, Mr. Dolan took possession of the registry book and I was going to take possession of the poll book, and Mr. Egan took the poll book away from me and said, "I will keep this;" I protested and said that I had usually kept the poll book on election day, and I thought I ought to hold it that day and keep it, and he said no, and we had quite an argument over it, in which we all took part, and the other members of the board all sided in with him and denied me the use of it; then I demanded the registry, but I was simply smiled at.

Q. Who kept the registry book?

30 A. Clerk Dolan kept the registry book.

Q. Is it customary, so far as you have observed, for the clerk to keep the registry book?

A. It was.

Q. Always been done?

A. Always been done ever since I have been in that precinct; the clerk kept the registry book and the inspector the poll book; I had supposed that it was that way all over.

40 Q. Well, did they keep the books all day?

A. Yes, sir; only on two or three occasions, when Mr. Egan went out to the water closet.

Q. Which book was it Mr. Egan kept?

A. The poll book.

Q. Except when he went out?

A. Yes, sir; just for a few moments each time; that was about three times that day.

Q. Well, who took the poll book then?

A. He, before leaving, said to me that I might keep it; if any came to vote that I might write the names in until he came back, which I did. 10

Q. How did you find—what condition did you find the poll book as to the numbering, when you took it?

A. The first two times that I took it, as far as I remember, they were numbered so far, up to then.

Q. Up to the last name on the book?

A. Yes, sir; but the third time I took it they were not numbered properly. 20

Q. What did you do?

A. I then proceeded to number where he had left off—continue on the numbering.

Q. Did you have possession of the registry book at all that day?

A. No, sir.

Q. Are you certain about the number of times you had this poll book in your possession or not?

A. I am certain as regarding twice and quite certain as regards the third time. 30

Q. Do you think you can identify any of your writing in here if you see it?

A. Yes, sir.

Q. Do you know in whose handwriting the first name is?

A. That is Mr. Egan's.

Q. Anthony Hanlon?

A. Egan's.

Q. And does this first page seem to be in the same handwriting?

A. Yes, sir.

Q. Any of yours in there?

A. No, sir.

Q. Turn through that book and see if you can find any in your handwriting?

A. From here to here.

10 Q. From 98 to 103 inclusive?

A. Yes, sir.

Q. Go on and find out where else you wrote?

A. From here to here.

Q. From 418 to 425 inclusive—is that your handwriting?

A. Yes, sir; the numbers are not, but the names are.

Q. Were those numbers put there before names were written in?

20 A. Yes, sir; it is generally done in this way; when there are no voters, to fill in the time, because at times there is a rush of voters, and we scarcely get time then to write the name and put the numbers as fast as they come, so in order to have it there it is oftentimes written down beforehand; just the numbers before the names are put down.

Q. Now go on and see if you can find any place else?

30 A. No; I find no other names there in my writing.

Q. Can you distinguish your writing as to any of the numbers?

A. From 540 down to 594.

Q. These numbers, 540 to 594, the 5 does not appear; 40—90, the 5 does not appear; explain that?

A. In this way; that was the argument I had 40 with Mr. Egan and the other clerk; it appeared

that he was unwilling to number the names any further, and then when I had possession of the book, in order to get the names all numbered as far as possible, I started where he had left off, and in order to get down as many as possible, I thought I would number the 5 in that way, and it could afterwards be put there; my object was to get as many as possible numbered before he came back, and I wrote two numbers instead of 10 three.

Q. The names were already entered at the time you began numbering?

A. Yes; and I went back where he had left off.

Q. Did you have any conversation with Mr. Egan in reference to the numbering in that book?

A. Yes; I have; just as soon as I noticed that he stopped numbering I asked him why he didn't continue numbering the names; said it wasn't necessary; I told him I thought it was; I said it had always been done at every other election that I had been to and I didn't see why it should not be done then; well, he said, it wasn't necessary and he wasn't going to do it; we had quite an argument about it, but he didn't do it then; he wouldn't do it; he got quite a number of names without numbering them; and every now and then I would draw his attention to it, and ask him to number them; well, he said it wasn't necessary; the last time I had possession of the book 20 when I wrote those names in there, there were no voters there, and that is the way I got time to put down the numbers; and after he came back he was riled; he said, "What are you doing there;" I says, "I am numbering them;" he said, "What right or what business have you to number those names?" says I, "I have a perfect right to do it; why didn't you write them, then I wouldn't have to do it;" and he tore the book from me and says, "I know how to keep this book with- 40

out you telling me, and I ain't going to number them;" I says, "I will see whether you will or not;" he wrote the names down, and every now and then I spoke to him about it, and then when he finished, he simply added it, page after page, and put the total up at the head of the page, the total number on the top of the next page, and continued to put the footing on the top of each page; that was the best I could get him to do.

10

Q. What time was recess?

A. Between one and two o'clock; I stayed there during recess; I made up my mind I was going to stay there at recess time and watch the ballot box and books; I have never done so at any other election—never took the precaution I did at this election—and I had previously ordered my dinner brought over; Mr. Egan also remained; at the conclusion of the polls, the poll book was closed inside the ballot box, the registry book was placed in the drawer and the box was locked and there were two policemen by it and several bystanders.

20

Q. Did you see anything wrong during recess?

A. No, sir.

Q. After recess, what did you do?

A. Simply looked on.

Q. Did you have any of those books, then?

A. No, sir; only such times as I stated before.

30

Q. That continued on until the close of the polls?

A. Yes, sir.

Q. Did anything arouse any suspicion during the afternoon?

A. During the afternoon I had suspicion of three men; I suspected they had voted twice, but I wasn't certain and I know how it is in that precinct; if you are not certain, the whole mob is at you; and I made up my mind to lie and wait, and see whether either one of them appeared; I

40

have made up my mind should either one of them appear, I would have them arrested immediately but neither of them showed up again; I then thought perhaps my suspicions were incorrect.

Q. Did anything else occur to attract your attention at all?

A. In the afternoon, some time, when I was looking out watching for these men, when I turned around I found Mr. Dolan and Mr. Egan in a low conversation with each other; I saw that Mr. Dolan had a slip of paper in the registry book, and I heard him mention the name of Kelly, and nothing more; and from their actions I suspected that Mr. Dolan was trying to smuggle names into Egan's poll book; and I went over towards Dolan, and I says, "What have you got there?" and he says, "Oh, that is nothing," and he put the paper away.

Q. Was there anything else aroused your suspicion?

A. Not as I remember now.

Q. That is all you saw that was suspicious at all?

A. Yes, sir; at another time I overheard a conversation between a police officer (one of them that was there) and Mr. Dolan; Mr. Dolan sat opposite me on a bench against the other wall, and I heard the police officer ask Mr. Dolan (whisper to him), "Will you go right ahead with the count tonight?" and Mr. Dolan said to him in a low voice (he didn't suspect that I heard it, but I did) and he said, "We will go ahead if everything is all right, and if not, we won't."

Q. What time did the polls close that night?

A. Seven o'clock, as far as I know.

Q. Were you there when the votes were counted?

A. Yes, sir; I was.

- Q. What part did you take in the counting?  
 A. In counting I strung the ballots.  
 Q. Describe how that counting was done?  
 A. Well, the judge of election, he opens the ballot box, and he takes out one ballot at a time and reads off the names and then passes it over to the inspectors.
- 10 Q. What inspector was it that evening?  
 A. Mr. Egan; and then it was passed over to the party who strings.  
 Q. What did the inspector do?  
 A. Well, both inspectors either string or number; Mr. Egan numbered the ballots and I strung them.
- 20 Q. Who else was present at the counting?  
 A. Mr. Thomas Egan, the candidate for freeholder, was present the most part of the evening, as far as I remember; he was candidate on the Republican ticket.  
 Q. Was that the Independent ticket?  
 A. Yes, sir; Fusion ticket.  
 Q. Did he overlook the counting?  
 A. Yes, sir; he was right alongside of me, to my left.  
 Q. What did you do when the ballots came to your hands?  
 A. I looked to see whether they were read correctly, and put them on the string.
- 30 Q. Did you read the ballots—did you read the names off?  
 A. I did; yes, sir.  
 Q. Every one of them?  
 A. Mostly every one of them.  
 Q. Did you look at any marks on the back?  
 A. Yes, they were numbered on the back.  
 Q. Well, were they punctured and milled on the back?  
 40 A. Yes, sir; they were; when the joker ballots

came out I looked particularly to see whether they were milled and punctured; and they were milled and punctured; some of them had very little ink on them, but you could see the puncture on them.

Q. (By the Court.) The joker ballots had very little ink on?

A. Yes, sir; quite some, and others had more. 10

Q. Did you notice whether they were punctured in the ellipse or not?

A. No, sir; I didn't.

Q. Where did you notice the joker ballots as being punctured?

A. Right along; sort of ribbon like.

Q. A sort of ribbon puncture on the joker ballots?

A. Yes, sir.

Q. Did you notice any puncture in the ellipse on the joker ballots? 20

A. I didn't take notice.

Q. Did you notice any difference in the type of the joker ballots?

A. No, sir; I didn't.

Q. Whether it was longer?

A. No, sir.

Q. On the regular ballots you found the puncture sometimes in one place and sometimes in another did you not?

A. I didn't take particular notice about that, 30 because I had no suspicion regarding two kinds; I supposed when I saw them—

Q. But you noticed the small ticket which was called the joker ballot?

A. Yes, sir.

FURTHER DIRECT:—

Q. Could you see the man who kept the tally sheet? 40

A. Yes, sir.

Q. Could you see the tally?

A. Well, not exactly, because the tally sheet was so long, and I sat this way from it.

Q. How far did you sit from him?

A. For instance, I sat here, and he sat there, and the tally sheet went out in that direction (illustrating), and when the tally went out to the  
10 furthest end I couldn't follow it quite so well.

Q. Did I understand you to say that Mr. Egan, the candidate also examined these ballots when you did?

A. Yes, sir.

Q. Examined the marks on the back?

A. He did; the joker ballots especially.

Q. Did he make any protest against the ballots being received and counted?

A. I did not.

20 Q. I say did he make any protest against the ballot being counted?

A. No, sir.

Q. What time did you finish counting the ballots?

A. Well, I should judge some time about 4 o'clock in the morning; it might have been a little later; I don't know exactly; somewhere about that time; generally, after we finished counting the ballots, the returns are made out, and that  
30 takes quite some time, probably half an hour or so.

Q. On the poll book, number 102 is Philip Tumulty; do you know Mr. Tumulty?

A. Yes, sir.

Q. That is one of the names that you wrote in?

A. Yes, sir.

Q. Is he a voter in that precinct?

A. He is for years.

THE PROSECUTOR—What is his address there?

MR. DIXON—331 Railroad avenue.

THE WITNESS—That is the man.

Q. You know him?

A. Yes, sir. 10

Q. Do you know Edward Hays or Ed Hays?

A. I think I do; I am not quite certain.

Q. You, of course, while writing these names in, did not have the inspection of the register?

A. No, sir.

Q. Did you know Phillip McGovern or Phil McGovern?

A. Yes, sir; I do.

Q. Is he a voter?

A. He is. 20

Q. William Monnell—did you know him?

A. I am not acquainted with him; he is one of the new voters, I suppose.

Q. Michael Mehan—did you know him?

A. I think not.

Q. Michael Wholan—did you know him?

A. I think not.

Q. In other words, these names you wrote, some of them you knew personally and some you did not? 30

A. Yes, sir.

Q. Whenever a man came up and whose name you wrote there and whom you did not know, did the clerk first signify that his vote was acceptable?

A. Yes, sir; before any man was allowed to vote, the clerk looked upon the register, and if his name was found, he was allowed to vote, and then the clerk would take the name, and when he 40

was allowed to vote the name went on the poll book.

Q. There are more names on the poll books than there are votes on the string?

A. Yes, sir.

Q. Do you remember anything about the rejected ballots?

10 A. Yes, they were rejected because they were double ballots.

Q. Were there any ballots left after you got to the last name on the poll book?

A. No, sir; there were none in the box then.

CROSS EXAMINED by Mr. Winfield:—

Q. Explain to me what this first certificate in this registry book means on the first page?

A. I don't know.

20 Q. You have signed it?

A. Yes, that is my signature.

Q. How long have you been one of the election board in that precinct?

A. For about seven or eight years.

Q. And you can't tell what that means?

A. I can't tell exactly; the only thing I can make out it it means the votes cast until 1 o'clock upon election day; that is, up to recess.

Q. There was a recess?

30 A. Yes, sir; between 1 and 2.

Q. You have been there for eight years?

A. Yes.

Q. If that is so, why did you enter it in the registry?

A. Well, this certificate is in the clerk's writing.

Q. Why did you sign it there?

A. I thought it was in the other book.

40 Q. Then why didn't you have the certificate as the law requires, at the end of the poll book—

if you thought that that was the one at recess, why didn't you think to have the one at the close of the polls at night time?

A. I don't know; the only way I can account for that is, that in the hurry to commence counting the ballots it was overlooked.

Q. Don't you know you cannot begin to canvass the vote until you have announced the number to the public that the poll book shows? 10

A. That was done.

Q. How did you announce the number when the poll book didn't show it?

A. At the close of the poll Mr. Egan added up the names upon the poll book, and Mr. Dolan, who kept the registry book, he added up these names, and they both made out the number as 812, and that was announced to the public.

Q. They announced 812?

A. Yes, sir. 20

Q. Didn't you know that the law required you to put that certificate under the last name voted?

A. I don't know.

Q. Don't you know further that neither of the inspectors had the right to touch that poll book during the day—that it belonged to the clerk to keep it, and the clerk alone?

A. I don't know as I did; it had always been done as it was at this time, that the clerk kept the register book. 30

Q. Don't you know he had no right to touch the register book?

A. No; I don't.

Q. You were registered there and voting there?

A. Yes.

Q. How does it come that your name is not on the poll book?

A. I don't know; I didn't keep the book.

Q. Here are some returns of the result of that 40

election in that precinct which I suppose you signed—is that your signature?

A. That is my signature. (Referring to certificate for assemblyman.)

Q. Is that your signature to the certificate of the freeholder at large?

A. Yes.

10 Q. Tell me where you got the number that you gave Bruggenman, 536?

A. I don't know, because I was not clerk; the clerk done all that; that is his duty.

Q. Tell me where you got the number that you gave to Mr. Byrne and to Mr. Abernethy?

A. I don't know; the clerk had all that under him; I supposed it was correct; I watched all I could and saw nothing wrong.

20 Q. I show you the tally sheet—is there any numbering there as the result of the tally of any candidate?

A. No.

Q. Then if the numbering had not been carried out in the figures, why didn't you carry it out yourself before you signed the certificate of the result?

A. I have never seen it figured up on the tally sheet.

Q. Then how do you get at the figures which you certify to?

30 A. They are added up by the clerk; they are not put down in totals on this tally sheet, but he adds them up on a piece of paper.

Q. Did you add the tallies?

A. No.

Q. Didn't you know that in this tally sheet sometimes three went for one and four went for five?

A. No, sir; I didn't see it.

40 Q. You didn't care to see it?

A. I did care to see it; I watched all I could that day.

Q. Why didn't you watch if you were suspicious?

A. I did watch.

Q. You can't tell the jury why it is that this tally differs from the returns?

A. No, I can't.

Q. You can't tell how it is your certificate differs from the tally?

A. I cannot.

Q. This tally sheet was lying before you when you signed the returns?

A. I don't know whether it was or not.

Q. You didn't care to know, did you?

A. The tally sheet was all figured up and the returns thereafter made up, and the sheet laid aside.

Q. Whose figuring is this in one place on the tally sheet?

A. I don't know; I know it isn't mine.

Q. Were you present when that figuring was done?

A. I suppose I was, because I was there all the time.

Q. Do you know why it was done?

A. I do not.

Q. Whose handwriting is this first page of the S's in the registry?

30

A. The clerk's—Dolan's.

Q. Whose is the second page?

A. I don't know.

Q. Whose writing is your name?

A. I suppose that is Egan's; I wrote no names on the registry; none whatever.

Q. What were you doing during the day when Egan was taking care of the registry and Dolan had the poll book?

A. I was simply looking on and watching. 40

Q. Watching for what?

A. For suspicious persons.

Q. Did you see three Phillip Tumultys voting?

A. No, sir.

Q. Nor two Phillip Tumultys?

A. No, sir.

Q. Did you see two Michael Otises voting?

A. I did not; I might have seen them, but as  
10 the clerk said they were on the registry, I supposed it is so; I had no suspicion when he said they were down on the registry.

RE-DIRECT by Mr. Dixon:

Q. When you said you didn't know where you got your figures from that you put on your certificate you meant to say that Dolan, the clerk, was giving the figures as being the sums of the tally mentioned?

20 A. Yes, sir.

RE-CROSS EXAMINATION by Mr. Winfield:

Q. You saw those little ballots that we call joker ballots?

A. Yes.

Q. You strung them?

A. I did.

Q. Didn't you notice that some of them were  
30 different from the others?

A. No, I didn't; I tried to rule out the joker ballots, and as soon as they came out I looked over the backs of them where they were milled and punctured, to see whether they had gone through the box and were stamped; I thought if they had been voted in the large ballots the inside ballots could not be marked, and I saw they were apparently stamped and punctured, just  
40 like the regular ballots, and I showed them to Mr. Egan, and he and I looked carefully over

them, and I didn't notice any difference in the mark or the puncture, and I saw that they had gone through the box, and I thought that they had gone through that box.

FURTHER RE-DIRECT EXAMINATION by  
Mr. Dixon:

Q. Did you have any suspicion about the joker 10  
ballots?

A. On the Sunday previous to election there was a meeting in Kegan's Hall, in Lafayette, about the Fusionists and the Republicans, and there was Colonel Abernathy, and he said he heard there was going to be joker ballots, that the Democrats had got out joker ballots, and he showed one right there to all the room, and then Mr. Seymour said that the law didn't specify the size of the ticket; he had said before that to have 20  
every man arrested that came to vote a joker ballot; but I couldn't see that we could have a man arrested for voting a small ticket.

Q. Did you see anybody vote these joker ballots?

A. Only one person; that was Mr. Egan, the Democratic inspector.

Q. BY THE COURT—The joker ballot you saw at Lafayette Hall, did it have a stamp on? 30

A. I was too far away to see that.

Q. Was anything said about their being stamped?

A. Not a word.

PATRICK McGOVERN, sworn for the defendant Stumpf.

DIRECT EXAMINATION by Mr. Dixon: 40

Q. Where do you live?

A. 224 Wayne street?

Q. Are you a member of the Democratic party or the Republican party?

A. I am a Democrat.

Q. Do you know Mr. Stumpf, the defendant?

A. I do.

Q. How long have you known him?

10 A. About fifteen years.

Q. Do you know what his party affiliations are?

A. I believe him to be a Republican.

Q. Have you always known him as a Republican?

A. Yes, sir.

Q. Do you know his general reputation for honesty and integrity?

A. Good, sir; for my part, also, I believe him to be a good and honest man.

20 NOT CROSS EXAMINED.

MARTIN SWEENEY, sworn for the defendant Stumpf, testified as follows:—

DIRECT EXAMINATION by Mr. Dixon:

Q. Where do you live?

A. 422 York street.

30 Q. Do you live within this precinct—the Seventh of the Second?

A. I live within that precinct.

Q. Do you know Mr. Stumpf?

A. Yes, I know Mr. Stumpf for twelve or thirteen years.

Q. Do you know him as a Republican?

A. All the time.

Q. Do you know his reputation for honesty and integrity?

40 A. I never heard anything about his character but good.

Q. But what was good?

A. Always good.

Q. Were you at this polling place in the election of November, 1889?

A. I was there most all the day.

Q. What were you doing there?

A. I stood outside the polls in the interest of Mr. Egan.

Q. He was the independent candidate? 10

A. For Freeholder.

Q. Was he running in opposition to Mr. Byrnes?

A. He was on the ticket with Mr. Byrnes.

Q. He was one of the defeated candidates, was he?

A. Yes, sir.

Q. What did you do there that day—what part did you take in it?

A. I done what I could to try to elect the man 20 what I was in his interest, Mr. Egan; I tried to get all the votes I could for him.

Q. Did you see Stumpf there?

A. I saw Mr. Stumpf; considered him a friend there.

Q. Did he at any time during the day speak to you of any suspicions he had about men voting more than once?

A. No; I asked him on several occasions and he said he didn't see any thing wrong going on 30 there; of course, I wasn't inside; I told him to keep a good lookout.

Q. You stayed outside?

A. I stayed outside.

Q. You saw all those that came to vote?

A. Most of them; I was around the street there.

Q. Don't you remember Mr. Stumpf calling your attention to any suspicious circumstances there?

A. No, sir; I don't; I asked him several times during the day and he told me everything was going on all right as far as he could see.

Q. Didn't he say to you :“Look out, Sweeny, I am sure there is some voting more than once?”

A. He told me that at one time, that is so, and I had a couple of fellows watch there around the polls, but they didn't detect any.

10 Q. Do you remember about what time of day that was?

A. I do not; I could not say positively; it is so long ago I forgot all about it.

Q. Were you there when the votes were counted?

A. I saw the second hundred counted.

Q. Everything appeared to be going on all right?

20 A. Everything appeared to be going on all right; I left there; the place was too crowded; I couldn't stand the crush there.

NOT CROSS EXAMINED.

BRYAN MCGUINNESS, sworn for the defendant Stumpf:—

DIRECT EXAMINATION by Mr. Dixon:

Q. Where do you live?

30 A. 240 Wayne street.

Q. Do you know Mr. Stumpf?

A. Yes, sir; I think I know him going on twenty years.

Q. Do you know his reputation for honesty and integrity?

A. I never heard nothing against his character; he has always been a sober, good young man.

Q. Do you know him as a Republican?

40 A. I knew him as a Republican always, and a good one.

NOT CROSS EXAMINED.

MICHAEL STROUL, sworn for the defendant  
Stumpf:—

DIRECT EXAMINATION by Mr. Dixon:

Q. Where do you live?

A. 232 Wayne street. 10

Q. Do you know Mr. Stumpf?

A. Yes, sir.

Q. How long have you known him?

A. Fifteen or eighteen years.

Q. Do you know him as a Republican?

A. Yes, sir.

Q. Do you know what his reputation as to honesty and integrity is?

A. Good, sir.

NOT CROSS EXAMINED. 20

Adjourned for the day.

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## SECOND DAY'S PROCEEDINGS.

Tuesday, July 21, 1891.

JOHN STUMPF, the defendant, takes the stand  
for further examination in his own behalf:— 30

BY MR. DIXON:

Q. Did you have, subsequent to election day in November, 1889, any knowledge of or connection with any popular organization which was formed for the purpose of investigating the frauds committed at that election?

Question objected to.

MR. DIXON—I wish to ask him if he 40

took any part in conjunction with any organization formed for the purpose of investigating and exposing frauds that were committed at that election?

The prosecutor objects to the question as irrelevant and immaterial.

10 The Court overrules the question, to which overruling the defendant Stumpf prays a bill of exceptions may be allowed, and it is allowed, and signed and sealed accordingly.

JOB H. LIPPINCOTT, P. J. (L. S.)  
E. T. PAXTON. (L. S.)

Q. Did you subscribe to any fund for the purpose of investigating the election frauds?

20 The prosecutor objects to the question as before.

MR. DIXON—There has been no intent proved by the State except as may be inferred from the acts of the parties.

THE PROSECUTOR—This was all subsequent to the commission of the fraud.

30 The Court overrules the question, to which overruling the defendant prays a bill of exceptions may be allowed, and it is allowed, and signed and sealed accordingly.

JOB H. LIPPINCOTT, P. J. (L. S.)  
E. T. PAXON. (L. S.)

Q. How old are you?

A. Thirty-five years.

Q. Married?

40 A. Yes, and have three children.

Q. On the night of election, when the count took place, do you recollect now, anything you omitted to testify to in relation to the casting up of the count of the ballot?

A. Yes; during the counting of the ballots, at which time Thomas Egan, the candidate, was sitting alongside of me, I noticed that on about four occasions Judge McGrath had read off the name of Henry Byrnes for Assembly where he should have read off Hugh Abernathy for Assembly, the Republican candidate; I, in each instance, as soon as I took notice of that, drew his attention to it, and also the other members of the board; they thereupon corrected it upon the tally; I saw the corrections made; that occurred about four times, as near as I can remember it, and at first they did correct them apparently very willingly, but later on they made me argue quite awhile before they did make the corrections on the tally; I then watched as close as I could and saw no further wrong counting.

Q. You spoke yesterday of having a wrangle with the other members of the board concerning the combinations of the second box that was brought there, and you referred to a book of instructions to find out whether your position was correct or otherwise?

A. Yes.

30

THE PROSECUTOR—I offer that book in evidence.

Q. This is the same book the Prosecutor has now offered in evidence?

A. Yes.

Q. I have another book which was furnished to you at a preceding election; is this one that you received at a preceding election?

A. Yes; they come in an envelope, and inside 40

of that is the combination of the lock; that is, the explanation of the combination of the lock.

Q. Those were furnished, I understand, to this board at this election?

A. Yes.

Q. And you had the combination of the first box?

A. Yes.

10 Q. But when the second box came they would not give it to you?

A. They would not give it to me; I could not get possession of it, and I referred to the book; they said I could not find anything in the book where it said I had a right to the combination; and finally, towards afternoon, Sergeant Coward came along and I immediately asked him to explain that, and to say whether I had a right or not to have the combination, and he read over the  
20 paragraph in the book of instructions; the clerk and the other officers said there was nothing about combination; it simply said "key;" and they would not give me the combination.

JOHN H. HOPKINS, sworn for the defendant, Stumpf, testified as follows:—

DIRECT EXAMINATION by Mr. Dixon:

Q. Where do you reside?

30 A. 167 Jackson avenue, Jersey City.

Q. Were you a candidate on the Independent Fusionist ticket in the election of 1889?

A. I was a candidate for Register of Deeds.

Q. Your name was one of the names voted on in this precinct?

A. Yes, sir.

Q. Did you visit that precinct during the day?

A. I did not; I had full confidence in Mr. Stumpf as a Republican.

Objected to.

Objection sustained.

Q. Do you know Mr. Stumpf?

A. I do.

Q. How long have you known him?

A. Twenty-two to twenty-five years.

Q. Do you know his general reputation for honesty and integrity?

A. I believe it excellent; I never heard any doubt.

Q. Have you always known him as a Republican?

Objected to.

THE COURT—I think we had enough proof of that yesterday.

29

NOT CROSS EXAMINED.

GILBERT COLLINS, sworn for the defendant Stumpf, testified as follows:—

DIRECT EXAMINATION by Mr. Dixon:

Q. You live in Jersey City?

A. Yes, sir.

Q. How long have you lived in Jersey City? 30

A. 28 years.

Q. You are a counsellor at law?

A. Yes, sir.

Q. I understand you are a member of the Republican County Committee?

A. I am President; I know the defendant Stumpf; I have known him about ten years.

Q. Have you always known him as a Republican?

A. Yes.

40

Q. Do you know his general reputation for honesty and integrity?

A. I do.

Q. What is it?

A. Good.

Q. Do you know his general reputation for party loyalty?

10 (The Prosecutor objects to the question.)

The Court overrules the question, to which overruling the defendant prays a bill of exceptions may be allowed, and it is allowed, and signed and sealed accordingly.

JOB H. LIPPINCOTT, P. J. (L. S.)

E. T. PAXTON, (L. S.)

NOT CROSS-EXAMINED.

20 THOMAS McEWAN, Jr., having conscientious scruples against taking an oath, being duly affirmed according to law, by the ceremony of the uplifted hand, on the part of the defendant Stumpf, testified as follows:—

DIRECT EXAMINATION by Mr. Dixon:—

Q. Where do you live?

A. 198 Congress street, Jersey City.

30 Q. You are a counselor-at-law here?

A. Attorney in New Jersey.

Q. Are you a member of the Republican County Committee?

A. I am; yes, sir; Secretary.

Q. Do you know the defendant, Mr. Stumpf?

A. I do.

Q. How long have you known him?

A. About eleven years, I think.

40 Q. Do you know his general reputation as to honesty and integrity?

A. Yes, sir.

Q. Is it good or bad—what is it?

A. It is good.

NOT CROSS—EXAMINED.

HENRY C. GROOVER, sworn for the defendant  
Stumpf, testified as follows:—

DIRECT EXAMINATION by Mr. Dixon: 10

Q. Where do you live?

A. 303 Newark avenue.

Q. Are you a member of the Ballot Reform Association?

A. Yes, sir; I was Vice President.

Q. Do you know Mr. Stumpf?

A. Born and raised with him.

Q. Do you know his general reputation for honesty and integrity? 20

A. First class.

NOT CROSS EXAMINED.

HUGH H. ABERNATHY, sworn for the defendant  
Stumpf, testified as follows:—

DIRECT EXAMINATION by Mr. Dixon:

Q. Where do you live?

A. 314 Varick street. 30

Q. Were you a candidate on the Republican or Fusionist ticket in 1889, November election?

A. I was a candidate on the Republican ticket; yes sir.

Q. Do you know Mr. Stumpf?

A. Yes, sir.

Q. How long have you known him?

A. About ten years.

Q. Do you know his reputation for honesty and integrity? 40

A. I have never doubted it.

A. Do you know whether it is good or not?

A. All my dealings with him have been fair—  
perfectly satisfied that he should act fair.

NOT CROSS EXAMINED.

10 MR. DIXON—There are a few witnesses  
that we relied upon; sent subpoenas to last  
night; Mr. Egan and Mr. Seymour I did not  
send subpoenas to because they promised  
to be here at 10 o'clock; we want to prove  
by them not as to reputation, but as to  
facts that transpired there at the polls;  
Your Honor has already indulged me to a  
considerable extent.

20 THE COURT—Yes, you will have to  
proceed now; we will not wait any longer  
for evidence.

Mr. Dixon rests on behalf of defendant Stumpf.

30 THE COURT—The Court has considered  
the question as to who shall open and  
close, and in this matter we see no reason  
at all for departing from the usual rule;  
of course, if the defense require an opening  
from the State I suppose they have a right  
to have it, but the State has the opening  
and closing in relation to one or all of the  
defendants; your contention was that you  
had the right to open and close.

MR. DIXON—Yes, sir.

40 THE COURT—That is irrespective of the  
rights of the other defendants; the court  
on that matter says that the State has the  
opening and closing; now, does counsel in-  
tend to sum up for the defendants?

MR. DIXON—I desire to sum up for the defendant I represent.

THE COURT—Counsel for McGrath and Egan signify that they do not wish to sum up, so that you may proceed.

Mr. Dixon sums up for defendant Stumpf.

The Prosecutor sums up for the State and the Court charges the jury. <sup>10</sup>

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#### THE JUDGE'S CHARGE.

Gentlemen of the jury—If it was not the duty, as it seems to be, under our law, for the Court to charge you, we feel that the case could be safely left to you upon the question of whether there was here a conspiracy between these defendants, <sup>20</sup> or any one of them, and another or others unknown. It is the duty of the Court, at least to some extent, so far as it appears proper from the facts in the case, to instruct you as to the law of conspiracy and as to the principles of law governing the case, and for your guidance in finding the ultimate facts of guilt or innocence.

These defendants, as officers of election of the Seventh precinct, of the Second Assembly district, at the November election in 1889, for mem- <sup>30</sup> bers of Assembly and other officers, with others, as the indictment charges, unknown, are indicted for a conspiracy to pervert and obstruct the administration of the laws of this State regulating elections, by means of putting and placing, or causing to be put or placed, in the ballot box, a large number of ballots which were not then and there cast by persons entitled to the right of suffrage in that precinct, and by means of estimating, numbering, counting, canvassing, tallying <sup>40</sup>

and giving effect to these votes with intent thereby to corruptly and unlawfully influence the result of that election.

This, as you will find, when you come to look at the indictment, is the general charge of conspiracy against them.

The indictment also alleged that the officers of election, with others unknown, in execution of  
 10 that conspiracy between and amongst them, and to effect the object of that conspiracy, did unlawfully receive and deposit in the ballot box a large number of votes of persons whose names were not on the registry, of persons not entitled to the right of suffrage in that precinct at said election. And the indictment also alleges that in further execution of said conspiracy they put and placed in the ballot box a large number of ballots, none of  
 20 which were then and there cast and voted by any person at said election. And that, in further execution of the conspiracy, they unlawfully and willfully and corruptly estimated, numbered, counted, canvassed, tallied and gave effect to a large number of ballots, none of which were then and there cast and voted by any person at said election.

First, the indictment charges a general conspiracy against these defendants; secondly, it charges the overt acts of receiving and taking  
 30 the votes of persons not registered, and of putting votes in the box when no one was there to cast them; and of knowingly canvassing and giving effect to the ballots they had so corruptly placed in the ballot box. These latter acts, as charged in the indictment, are the alleged acts of execution, or alleged acts to effect the object of the conspiracy. Generally, in the law, they are called overt acts, and will be referred to by the Court in dealing with this case as overt acts. They are,  
 40 by the statute of this State, necessarily laid in the

indictment, and one of which it is necessary for you to find as proven before you can convict. It is necessary for you to find two elements existing before you convict. You must find, first, the conspiracy which includes the object, and here the alleged conspiracy was to accomplish the object of holding a dishonest election, to influence the result of the election. And in addition, the overt acts, or one of them, as laid in the indictment. 10

The conspiracy here charged is an agreement or corrupt union to do something either as a means or object for the purpose of obstructing the administration of the laws regulating elections; an alliance, a union or a combination between these defendants, or between one or more of them, with some person unknown, to cheat and defraud at this election. If you should find this, then, in order to convict the defendants, or those implicated in the conspiracy, you must find they did some act in the execution of and to effect the object of the conspiracy. You must find the conspiracy, and then that some overt act was done by some one or more of them, before you can convict, and you must find both of these ultimate facts beyond a reasonable doubt. 20

If you find this a conspiracy between two or more of these defendants beyond a reasonable doubt, or between one or more of them and some person unknown, beyond a reasonable doubt; and if you find beyond reasonable doubt that some one or more of the defendants did some act knowingly and with intent to effect the object of the conspiracy; that is did some one of the acts laid in the indictment, in order to cheat or defraud, with the intention of cheating and defrauding and carrying out the original intention of the conspiracy, then you will convict the defendants, or one or more of them, found by you to have been engaged 40

in the conspiracy. This conspiracy is a corrupt agreement, or union, a corrupt alliance or breathing together, so to speak, of two or more persons to do, by concerted action, something unlawful, either as a means or end. It is an agreement to effect an unlawful object by lawful means, or to effect a lawful object by unlawful means, or to effect an unlawful object by unlawful means.

- 10 Now, did these defendants, as officers of election, any two or more of them acting together, or any one or more of them, as an officer of election, acting in concert and together with some person unknown, corruptly unite or agree together to hold a dishonest election; to pervert and obstruct the administration of the laws of this State by the means alleged in the indictment? Did they so unite to hold a dishonest election and declare a dishonest result? By the term "corrupt" is meant a dishonest mind or intent, an intent to cheat, to defraud, an intent to do an illegal act, to do an unlawful act, to effect an unlawful object, to pervert and obstruct the law regulating elections. Generally speaking, it is an evil mind, a dishonest mind in relation to the act which is being performed. This constitutes what is known, under our statute and under the law of this State; as "corrupt." If the defendants had this sort of intent, this condition of mind, then
- 20 they had a corrupt intent, and if they united to hold an election for these objects it would be a corrupt union, a corrupt agreement, a corrupt alliance or combination, a binding together or breathing together for that purpose. And it would make no difference whether the conspiracy succeeded or not, if there was any act knowingly and intentionally done in the execution of it, or whether it succeeded or not in influencing the result of this election. To illustrate: Suppose the
- 30 candidates declared elected were in fact elected,
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yet, if there was this mind, this common intent, this concerted action between the defendants to effect the object of holding an unlawful election, to cheat, pervert, or obstruct the law regulating elections, they would yet be guilty of this conspiracy if they knowingly and intentionally did one act tending to carry it into effect, although the result of the election was not changed thereby. The proof of conspiracy does not depend upon its consummation or its success. It may be that the proof becomes stronger the more successful the object of it is. The consummation of the offence of conspiracy into a distinct offence does not merge the conspiracy; an indictment will lie for conspiracy although a distinct offence was committed by the consummation of the conspiracy, and the consummation of the conspiracy can be shown to make the proof of the existence of the conspiracy stronger.

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There was at one time in the law, some question whether a conspiracy did not merge into an offence committed by the consummation of the conspiracy, but it is sufficient to say that is not the law now, and the indictment may be for the conspiracy, or for the consummated offence.

It may be important to you to know what is meant by the term concert, agreement, combination or confederation, or by whatever term conspiracy may be called. It is not meant by the use of this term that it is necessary for you to find that the defendants, or for any two or more of them, or any one or more of them, with a person unknown, met together at any particular time and place, and then and there agreed, formally, to pervert and obstruct the law, or to hold a dishonest election, to keep false poll books or registration, to make false checks upon the registry or a false canvass, and to declare a false result. It need not be a formal agreement to do these

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things. It is not necessary that it should be that sort of an agreement that is understood as a formal agreement, which we generally know and understand by the word agreement. It is not necessary that two or more should be together and then and there formally agree to do the act which is unlawful. If this measure of proof were required, it would rarely be that conviction could be had for conspiracy. If you find the defendants all, or any two or more, or any one or more of them, with a person unknown, had in their minds a common object to be arrived at between them, and that object was to cheat and defraud at this election, or to hold a dishonest election, and this common intent existed to declare and to effect a dishonest election by means of false registration, false poll book, illegal ballots, illegal canvass and false returns—if you find this common intent existed in the minds of the defendants, or in the minds of one or more of them with a person unknown, then you have the corrupt agreement, then you have the conspiracy, the union, which is required by the law, for, you see, you have then the common, unlawful, corrupt intent, because it becomes common, concurrent, as soon as two or more of them are found with a corrupt object or intent; and applying this rule to each individual defendant, it can make no difference when that object and intent became common and concurrent, whether at the beginning, middle or end of the conspiracy, so long as the carried out before such intent and object became final act was not fully completed and the object common.

The intent and object may have originated in the mind of one of the defendants alone or in the mind of a person unknown, an outsider, and after a time one of the defendants may have joined that intent, and later on another, and not until

the closing act up to the time of signing these returns and depositing them in the place where the law requires them to be deposited, yet if the last act were done with this corrupt, common intent to cheat and defraud, to obstruct and pervert the laws of the state regulating elections, this last act, the signing of the returns, may have been the only act done with that common intent by one or more of them, yet he or they would be just as guilty of conspiracy as if they initiated the scheme, and yet there need never have been a spoken word between them, if their acts were done with a knowledge of each other's act, tending to the same object, if the intent, as indicated by their acts found by you, were corrupt, common and unlawful, directed to the same purpose, you would find conspiracy without finding any direct proof of this intent and object.

Of course you must find the existence of a conspiracy beyond a reasonable doubt before you can convict.

In determining whether a conspiracy existed or not, you can consider every act of each of these defendants, every fact before you admitted in evidence in this case, and you are to conclude whether or not a common, concurrent, corrupt union ever existed between these defendants, or any two or more of them, or between any one or more of them and any person unknown to you. Suppose you find 100 false tickets in the box, put in there by the judge alone, and no other one of these defendants acting with him, and then suppose you found those ballots to be stamped with a stamp similar to the one used in that ballot box, calculated to deceive, now, would you infer that he alone did this illegal act of his own motion, or would you infer that some one else had prepared and furnished the tickets, and supplied them to him for the purpose of having them il-

legally placed in the box? If you found there was some one acting in concert with him in that matter, knowingly aiding and assisting him in that act; some one unknown to you, his identity not established, that judge would, with the person unknown, be guilty of conspiracy to hold a dishonest election, and the others, if that was all that was done, would not be guilty. This is simply an illustration, and you are to determine whether these defendants, or any one of them, are guilty of conspiracy as charged against them, or not. As the court has stated, the conspiracy need not be shown by direct proof; you may infer it from facts and circumstances. Inferences arising from proven facts are often as convincing as direct proof, but the circumstances must be such as to satisfy you beyond a reasonable doubt of guilt, and they must be such facts, acts and circumstances as are not consistent with any hypothesis of innocence of the defendants, or any of them. You take that rule and apply it to this case.

You can take the act of the judge in receiving a ballot in connection with the act of the inspector in signing the returns, in order to discover whether there be a common intent or not. It is necessary that there should be a joint action in material matters. Every man must be held, to some extent, to have intended the natural results and consequences of his act. It is rarely that you find an expressed intent to do wrong. No one goes upon the streets revealing his intention to commit a crime. You would not expect to find an open agreement between these defendants to violate the law. Under ordinary circumstances, testimony showing an expressed agreement of that character would require corroboration. The object of the conspiracy, and the conspiracy, to accomplish an unlawful purpose, is generally

formed in secret and clothed with every possible precaution to prevent discovery, and your investigation, in order to ascertain whether they existed or not, ought to be as thorough and deep as your intelligence permits. The proof of a corrupt agreement or evil intent may be extracted from the circumstances connected with the transaction which forms the subject of the accusation. It would be, perhaps, singular to find direct proof of conspiracy except from an accomplice, and then it would need the corroboration of circumstantial evidence before it would be accepted as proved. It will not do to say to a jury that nothing short of direct proof is sufficient to establish a corrupt conspiracy; that would be giving immunity to this sort of crime; hence it is that, in order to discover the existence of this offence, you may follow the defendants and others connected with them through all their acts in relation to this election. 10 20

Now, do you find there was here a false and dishonest election held? Is there any doubt in your mind, in the face of this registration, this poll book, these votes, this canvass and these returns? How came these things in the condition in which they are? Was it the act of one of these defendants in concert with a person unknown? Is it the act of two or more of these defendants? If the acts of some of these officers of election, among themselves, or as connected with one or more persons unknown, did not bring about this state of affairs, whose acts did? These are questions for you to answer. You are to draw natural conclusions and natural inferences from the facts proven in the case. The facts are distinctly within your recollection; counsel have commented upon them fully, and you will no doubt be able to reach a conclusion as to whether a conspiracy existed or not. If you find no conspiracy, then 30 40

you will acquit. If you have a reasonable doubt as to whether there was a conspiracy or not, you will acquit.

You can consider the case of each defendant separately. If any one or more of them are not proved beyond a reasonable doubt, as joined to this conspiracy, you will so far acquit.

10 But if you should find the corrupt union existing between any one of these defendants and a person unknown, or between two or more of these defendants, then you find which ones were implicated in it, and consider the case then as to them. If you find that they all had a common intent to hold a dishonest election, or in any manner to pervert and obstruct the election laws of the State; that is, to make a false registration, to receive false ballots, to keep a false poll book, to check falsely, to return falsely, to count the bal-  
 20 lots falsely, as placed in the box, to hold a dishonest election; and if you find this common intent and object between all, one or more of them, then you have found the element of conspiracy, and then you proceed to ascertain whether any one or more of them *oortvorua bi xto etao shrdo* one or more of those against whom you have found this conspiracy, this corrupt union, did any act in execution of it, to effect the object of it.  
 30 Suppose you find that intent, as against all of them, entered into by them at any time, and you should find that some person unknown came to that box and illegally voted a false ticket, that act, with knowledge and intent on their part, would be, under this indictment, the overt act of these defendants, the outsider having a common intent with them.

The statute adds this latter element to the crime, and not only must the conspiracy be estab-  
 40 lished, but some act to effect the object of it, as

laid in the indictment, done by some one or more of those in the conspiracy, must be shown. You need not find all the acts laid in the indictment to have been proved; one is sufficient. Suppose you find between them all a conspiracy to hold a dishonest election, then the signing of a false return by one of the conspirators would be the overt act required, and would be the overt act of all in the conspiracy, for after the conspiracy is formed the act of any one is the act of each one. The reception of a single illegal ballot, knowingly to effect the object of the conspiracy, would be the sufficient overt act; it would meet the requirements of this indictment under the law. If you should find that the judge, or any one or more of these officials, agreed with a person unknown to hold a dishonest election by the means stated in the indictment, the reception by the judge, or any one of the conspirators, knowingly, of a single illegal ballot, would connect him and them with the conspiracy. The counting of a single false ballot, knowingly, by any one of the election officers, with knowledge that there had been such an agreement, would fasten him to the conspiracy; that is, provided he knew of the corrupt combination to cheat and defraud. And so every act done by every one of them, with knowledge that there had been such an agreement, would fasten him to the conspiracy. To illustrate, it might be that one of them did no act to effect the object, except the final one of signing the false returns, yet if he had knowledge of the conspiracy, and he entered into it at that moment, and by that act done to complete it, this would join him to the conspiracy. Though it be not laid in the indictment as an overt act, it would make the overt act of the others his. It makes no difference in law when a conspiracy is entered into; the moment one enters into it he accepts all that has passed before;

the acts of every one of the conspirators become his; he adopts their acts; his intent becomes common the moment he acts in furtherance of it, with knowledge of it, and his acts in the same way become the acts of the others. These acts, or one of them, as laid in the indictment, must be proved beyond reasonable doubt in order to convict.

10 Two of the defendants here have not taken the witness stand. The court charges you that that is not a fact which tends to establish their guilt. The State must prove a case. You have a right to give the force of truth to the testimony which is offered on the part of the State against them and admitted before you. When a fact is once proved by the State and remains uncontradicted, you have the right to say that fact is established. Now, as applicable to the defendant, for whom  
 20 the defence of mere neglect of duty has been offered, the court, by the way in which the case has been conducted, is bound to charge you that there were violations of the statute by this defendant; it is so admitted, and yet the defence against his having a common intent, common corrupt mind, to defraud at this election with the other defendants; if the other defendants had any such intent, which is entirely a question for you, is placed substantially upon the ground that, from his knowledge and observation there, he thought an honest  
 30 election was being conducted; that he had no intent to defraud and that he entered into no conspiracy for that purpose, and that his mind was free from evil intent. If this be so, he would not be joined to this conspiracy. What the court has said to you in relation to the general principles of a conspiracy, apply to him as well as to the other defendants. If you find that the acts of this defendant were the result of ignorance, or mistake or inattention, then you find that he had  
 40 no guilty intent. He is not answerable in a con-

spiracy indictment for neglect or omission of duty, for carelessness or inattention. He is answerable only for the intent, to hold a dishonest election.

A person whose name is not upon the registry list shall not be permitted to vote. The election officers must not accept it. The clerk would have no right to record it; they have no right to receive a vote of a non-resident, even if it is registered; 10 they have no right to put a ballot in the box unless it is tendered in person by a voter; no voting by proxy or by delegation is permitted by law. They are bound to make an honest canvass. The inspectors are required, as the judge reads the ballot and it is passed to them to be numbered and strung; they are required by law to look at it, to examine it, to see whether it has been announced correctly or not. They must make a fair and honest count. If things are being done 20 which are not right and against their protest, they are required to record their protest. All these are safeguards thrown about our elections, in order that the will of the people may be declared at the ballot box. Now, so far as mere results are concerned, you see it can make no difference whether these safeguards are disregarded and violated intentionally, or as the result of carelessness, ignorance and neglect. The same results may follow, and the will of the people may 30 not be declared as announced in the result. No election can be conducted honestly without their observance. Yet, you understand, gentlemen, if these defendants violated all these principles of law, and did acts contrary to them, and their action was the result of ignorance, and not intent and design, but was carelessness, stupidity or inattention, you could not hold them, under this indictment, for conspiracy. You must find the common evil intent in order to convict. Now, 40

this defendant, for whom there is set up this defence of careless inattention, stupidity, or whatever it may be, must have had this evil intent in order to be convicted; and you must find that he had it, beyond reasonable doubt, before you can convict. But in considering this matter, you have a right to assume that he was acquainted with the laws. He admits on the stand that he  
 10 was acquainted with them. He was in a position of great power and responsibility, and he is bound to know what his duties are there, and you have a right to look closely to these violations of law which are said to be the result of ignorance, neglect, inattention, carelessness, and see that these are not made the cover for crime, and you may inquire very closely why it was that he neglected such important duties. The defence of negligence is easy to make, and it is hard to disprove  
 20 it; and, therefore, from the beginning to the end, you may investigate and look into all the facts and circumstances and incidents occurring at this election, to determine whether that defence is a true one or not. If it be true, give him the benefit of it and acquit him. If any cannot find, beyond reasonable doubt, that he acted with criminal intent, you will acquit him. But if, on an examination of all the facts, you are satisfied, beyond a reasonable doubt, that he had this crim-  
 30 inal, evil, common intent, with others, then you will find him guilty under this indictment.

This is all the court deems its necessary to say to you. You take the case and determine whether all, or any one or more of these defendants are guilty or not.

MR. DIXON—I have some request to charge, to hand to the court. (Hands request to the court, and the court looks at them.)

Mr. Dixon, on the part of the defendant, Stumpf, requests the court to charge the jury as follows:—

1. To enable the jury to bring in a verdict of guilty against said Stumpf, it must appear from the evidence that there existed a conspiracy as charged in the indictment, of which conspiracy the said Stumpf had knowledge before its consummation and to which he joined and consented. 10

2. That under the indictment as found, mere evidence of violations of the election laws, however numerous, will not support a conviction.

3. That if it appears to the jury that such a conspiracy existed as charged, and if it appears that the conduct of the defendant, John Stumpf, was hostile and antagonistic to the conspirators, he must be acquitted.

4. That if the jury believe the story as related by the defendant, John Stumpf, he is not guilty, and that the jury must believe it, as he is uncontradicted by any evidence. 20

5. That the reputation for honesty of the defendant, Stumpf, is as much a fact to be considered by the jury as any other fact in this case.

6. That the good character of the defendant, Stumpf, in this case is entitled to weight.

7. That the evidence against the defendant, Stumpf, in this case makes the evidence of his good character of so much weight as to entitle him to an acquittal. 30

8. That under all the evidence of this case the jury must acquit the said Stumpf.

9. I ask the court to charge the jury upon the weight to be given to the evidence of reputation.

THE COURT—Gentlemen, some requests have been handed to the court to charge, and in considering them there appears but one subject upon which we think 40

it necessary to say anything farther than  
 has already been said, and that is on the  
 subject of reputation of the defendant.  
 When a defendant is put upon trial for an  
 offence he has a right to prove his good  
 character in opposition to that offence.  
 This defendant, Stumpf, is upon trial for  
 conspiracy, and the court has restricted  
 the proof of reputation to his reputation for  
 honesty, which the court considered to be  
 the only reputation which would be a con-  
 tradiction of or inconsistent with the com-  
 mission of this offence. The offence is  
 that of a conspiracy to obstruct and per-  
 vert the administration of the laws of this  
 State relating to elections, and the reputa-  
 tion to be offered here in contradiction of  
 that offence is reputation for honesty. As  
 the court has admitted proof of the gen-  
 eral reputation of Stumpf for honesty, and  
 the jury can consider this proof of reputa-  
 tion for honesty. It may be sufficient to  
 convince you that there was no likelihood  
 that the defendant would commit this of-  
 fence or to cause you to have reasonable  
 doubt whether he would commit it, and if  
 so, then you would acquit him of the of-  
 fence charged against him. It may be so  
 strong as to create a reasonable doubt in  
 your minds as to his being willing or likely  
 to commit the offence. If so, you can give  
 him the benefit of reputation and it would  
 result in his acquittal. The evidence in re-  
 lation to his reputation for honesty is be-  
 fore you. You are to judge whether this  
 reputation is up to the standard required  
 by law, in order for you to consider it. It  
 is not his reputation acquired by reason of  
 his dealings with one, two or more particu-

lar individuals. But the reputation which you must consider and which you require to be proved, is his general reputation for honesty—what the people generally say about him in the community in which he lives. If he has acquired a reputation for honesty in this city or county, or elsewhere, then you are to consider it in connection with the other facts and circumstances in the case, as bearing, under the rule which the court has given you, upon the question of his guilt. This reputation may cause you to believe him innocent. It may produce reasonable doubt in your minds as to his guilt. The weight to be given to it is entirely for you. It is a question of fact for you. You can give it such weight as you think proper and allow it to have such influence over you as in your judgment it should have.

The other requests the court declines to charge except so far as they have been charged.

The case is with you to determine guilt or innocence.

And the said defendant, John Stumpf, prays that a bill of exceptions may be allowed to the refusal of the court to charge as requested by the said defendant in each and every of his said requests to the said court, to charge, except in so far as the said court, in its charge, has charged as requested, which bill of exceptions is allowed and signed and sealed accordingly.

JOB H. LIPPINCOTT, P. J. (L. S.)

E. T. PAXTON. (L. S.)



3. That the said court before whom, etc., at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, refused to allow more than three peremptory challenges to said jury, and ruled that a challenge made by one of the other defendants aforesaid must be also on the part of the said defendant, John Stumpf.

4. That the said court before whom, etc., at and upon the trial of the said issue so joined between the parties aforesaid, against the objection of the said defendant, John Stumpf, and contrary to the law of the land, refused to permit certain witnesses then and there produced on behalf of the said defendant, John Stumpf, to wit, Gilbert Collins, Henry Puster, Jacob Ringle, to testify as to their knowledge of the general reputation of said defendant, John Stumpf, for party loyalty.

5. That the said court before whom, etc., at and upon the trial of the said issue so joined between the parties aforesaid, refused to permit Philip Tumulty, a witness then and there produced and sworn, to testify concerning his knowledge of the general reputation of the said defendant, John Stumpf, for honesty in politics.

6. That the said court before whom, etc., at and upon the trial of the said issue so joined between the parties aforesaid, excluded legal evidence then and there offered by and on behalf of the defendant, John Stumpf, as to the general reputation of said John Stumpf, for party loyalty, for honesty in politics, for loyalty to the Republican party.

7. That the said court before whom, etc., at and upon the trial of the said issue so joined between the parties as aforesaid, against the protest of the said defendant, John Stumpf, refused to allow the said John Stumpf to prove whether, subsequent to the election in November, A. D., 1889, he had any knowledge of or connection with

any popular organization which was formed for the purpose of investigating the frauds committed at that election, and also that the said court refused to allow the said defendant, John Stumpf, to prove whether he had subscribed to any fund for the purpose of investigating the said election frauds.

8. There is manifest error in this, to wit, that  
 10 the court before whom, etc., and at and upon the trial of the issue so joined between the parties as aforesaid, and after the evidence was closed, charged and instructed the jury, among other things, as follows:—

“The inspectors are required, as the judge reads the ballot and it is passed to them to be numbered and strung, they are required by law to look at it, to examine it, to see whether it has been announced correctly or not. They must  
 20 make a fair and honest count.”

There is manifest error in this, that the court before whom, etc., and at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, and after the evidence was closed, charged and instructed the said jury, among other things, as follows:—

“Gentlemen of jury—Some requests have been handed to the court to charge, and in considering them there appears but one subject upon which  
 30 we think it is necessary to say anything farther than has already been said, and that is on the subject of reputation of the defendant. When a defendant is put upon trial for an offence he has a right to prove his good character in opposition to that offence. This defendant, Stumpf, is upon trial for conspiracy, and the court has restricted the proof of reputation to his reputation for honesty, which the court considered to be the only reputation which would be a contradiction  
 40 of or inconsistent with the commission of this of-

fence. The offence is that of a conspiracy to obstruct and prevent the administration of the laws of this State relating to elections, and the reputation to be offered here in contradiction of that offence is reputation for honesty. And the court has admitted proof of the general reputation of Stumpf for honesty, and the jury can consider this proof of reputation for honesty. It may be sufficient to convince you that there was no likelihood that the defendant would commit this offence or to cause you to have reasonable doubt whether he would commit it, and if so, then you would acquit him of the offence charged against him. It may be so strong as to create a reasonable doubt in your minds as to his being willing or likely to commit the offence. If so, you can give him the benefit of reputation and it would result in his acquittal. The evidence in relation to his reputation for honesty is before you. You are to judge whether this reputation is up to the standard required by the law, in order for you to consider it. It is not his reputation acquired by reason of his dealings with one, two or more particular individuals. But the reputation which you must consider and which you require to be proved, is his reputation for honesty—what the people generally say about him in the community in which he lives. If he has acquired a reputation for honesty in this city or county, or elsewhere, then you are to consider it in connection with the other facts and circumstances in the case, as bearing, under the rule which the court has given you, upon the question of his guilt. This reputation may cause you to believe him innocent. It may produce reasonable doubt in your minds as to his guilt. The weight to be given is entirely with you. It is a question of fact for you. You can give it such weight as you

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think proper and allow it to have such influence over you as in your judgment it should have.

The other requests the court declines to charge except so far as they have been charged.

The case is with you to determine guilt or innocence.

10 10. There is manifest error in this, to wit, that the said court before whom, etc., at and upon the trial of the issue so joined between the parties aforesaid, and after the evidence was closed, charged and instructed the said jury contrary to law and the evidence in the case.

20 11. And there is manifest error in this, that the said court before whom, etc., at and upon the trial of the issue so joined between the parties as aforesaid, and after the evidence was closed, the said defendant, John Stumpf, having requested the court to charge and instruct the jury, in writing, as stated and set forth in the bill of particulars.

1. To enable the jury to bring in a verdict of guilty against said Stumpf, it must appear from the evidence that there existed a conspiracy as charged in the indictment, of which conspiracy the said Stumpf had knowledge before its consummation and to which he joined and consented.

30 2. That under the indictment as found, mere evidence of violations of the election laws, however numerous, will not support a conviction.

3. That if it appears to the jury that such a conspiracy existed as charged, and if it appears that the conduct of the defendant, John Stumpf, was hostile and antagonistic to the conspirators, he must be acquitted.

4. That if the jury believe the story as related by the defendant, John Stumpf, he is not guilty, and that the jury must believe it, as he is uncontradicted by any evidence.

4) 5. That the reputation for honesty of the de-

fendant, Stumpf, is as much a fact to be considered by the jury as any other fact in this case.

6. That the good character of the defendant, Stumpf, in this case is entitled to weight.

7. That the evidence against the defendant, Stumpf, in this case, makes the evidence of his good character of so much weight as to entitle him to acquittal.

8. That under all the evidence of this case the jury must acquit the said Stumpf. 10

9. I ask the court to charge the jury upon the weight to be given to the evidence of reputation.

The said court refused so to charge.

11A. There is manifest error in this, that the said court before whom, etc., at and upon the trial of the said issue so joined between the parties as aforesaid, permitted the jury to consider evidence of an assumed conspiracy not charged in the indictment, using the following language in the charge to the jury:— 20

“But if you should find the corrupt union existing between any of these defendants and a person unknown, or between two or more of these defendants, then you find which ones were implicated in it, and consider the case as to them. If you find that they all had a common intent to hold a dishonest election, or in any manner to pervert and obstruct the election laws of this State; that is, to make a false registration, to receive false ballots, to keep a false poll book, to check falsely, to return falsely, to count the ballots falsely, as placed in the box, to hold a dishonest election; and if you find this common intent and object between all, one or more of them, then you have found the element of conspiracy, and then you proceed to ascertain whether any one or more of those against whom you have found this conspiracy, this corrupt union, did any act in execution of it, to effect the object of it,” 30 40

and the language quoted in the eighth assignment of error.

12. There is manifest error in this, that the said court before whom, etc., at and upon the trial of the said issue so joined between the parties as aforesaid, erroneously instructed the jury that the defendant, John Stumpf, had offered as a defence, that his acts were merely neglect of duty, 10 ignorance, inattention, carelessness or stupidity, implying that he admitted some or one of these things, and expressly charging that he admitted violations of law, the court using the following language in the charge to the jury:—

“Now, as applicable to the defendant (meaning Stumpf), for whom the defence of mere neglect of duty has been offered, the court, by the way in which the case has been conducted, is bound to 20 charge you that there were violations of the statute by this defendant; it is so admitted, and yet the defence, against his having a common intent, common corrupt mind, to defraud at this election with the other defendants—if the other defendants had any such intent, which is entirely a question for you—is placed substantially on the ground that, from his knowledge and observation there, he thought an honest election was being conducted; that he had no intent to defraud and 30 that he entered in to no conspiracy for that purpose, and that his mind was free from evil intent. If this be so, he would not be joined to this conspiracy. What the Court has said to you in relation to the general principles of a conspiracy, apply to him as well as to the other defendants. If you find that the acts of this defendant were the result of ignorance, or mistake or inattention, then you find he had no guilty intent. He is not answerable in a conspiracy indictment for 40 neglect or omission of duty, for carelessness or

inattention. He is answerable only for the intent, to hold a dishonest election.

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“Now this defendant, for whom this defence of carelessness, stupidity, inattention or whatever it may be \* \* \* \* \* you have a right to look closely to these violations of law which are said to be the result of ignorance, neglect, inattention, carelessness,, and see that these are not 10 made the cover for crime, and you may inquire very closely why it was that he neglected such important duties. The defence of negligence is easy to make, and it is hard to disprove it; and, therefore, from the beginning to the end, you may investigate and look into all the facts and circumstances and incidents occurring at this election, to determine whether that defence is a true one or not. If it be true, give him the benefit of it and acquit him. If you cannot find beyond 20 reasonable doubt, that he acted with criminal intent, you will acquit him. But if, on examination of all the facts, you are satisfied, beyond a reasonable doubt, that he had this criminal, evil, common intent, with others, then you will find him guilty under this indictment,” and in these respects also, permitting the jury to consider evidence not germane to the indictment.

There is manifest error in this, that the said Court, before whom, &c., at and upon the trial of 30 the said issue so joined between the parties as aforesaid, erroneously charged the jury as to the nature of the indictment under which this defendant was found guilty and by said charge erroneously applied the definition of the conspiracy charged in said indictment, thereby misleading the jury as to what facts they might find in order to convict under said indictment, the Court used the following language:—

“If you find the defendants all, or any two or 40

more, or any one or more of them, with a person unknown, had in their minds a common object to be arrived at between them, and that object was to cheat and defraud at this election, or to hold a dishonest election, and this common intent existed to declare and effect a dishonest election by means of false registration, false poll book, illegal ballots and false returns—if you will find this  
 10 common intent existed in the minds of the defendants, or in the minds of one or more of them with a person unknown, then you have the corrupt agreement then you have the conspiracy.”

There is manifest error in this, that the said Court before whom, &c., at and upon the trial of the said issue so joined between the parties as aforesaid, erroneously instructed the jury as to what overt act they might find to have been committed, in order to convict, thereby leading the  
 20 jury to believe that they might find this defendant guilty if they found that the only overt act committed by the defendants was the signing of a false return, the Court using the following language in the charge to the jury.

“The intent and object may have originated in the mind of one of the defendants alone or in the mind of a person unknown, an outsider, and after a time one of the defendants may have joined in that intent, and later on another, and not until  
 30 the closing act up to the time of the signing of these returns and depositing them in the place where the law requires them to be deposited, yet if the last act were done with this corrupt, common intent to cheat and defraud, to obstruct and pervert the laws of the State regulating elections, this last act, the signing of the returns, may have been the only act done with that common intent by one or more of them, yet he or they

would be just as guilty of conspiracy as if they initiated the scheme." \* \* \* \* \*

"The statute adds this latter element (meaning "overt act") to the crime, and not only must the conspiracy be established, but some act to effect the object of it, as laid in the indictment, done by some one or more of those in the conspiracy must be shown. You need not find all the acts laid in the indictment to have been proved; one is sufficient. Suppose you find between them all a conspiracy to hold a dishonest election, then the signing of a false return by one of the conspirators would be the overt act required, and would be the overt act of all in the conspiracy, for after the conspiracy is formed the act of any one is the act of each one. \* \* \* \* \* And so every act done by everyone of them with knowledge that there had been such an agreement, would fasten him to the conspiracy." 20

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#### JOINDER IN ERROR.

And whereupon, afterwards, to wit, on the twenty-ninth day of April, in the year eighteen hundred and ninety-two, the said State of New Jersey, by Charles H. Winfield, Prosecutor of the Pleas, its attorney comes into Court and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and prays here that the Court here may proceed to examine as well the record and proceedings aforesaid in the matter aforesaid assigned for error, and that the judgment aforesaid in manner aforesaid given, may in all things be affirmed, &c. 30

C. H. WINFIELD,  
Prosecutor of the Pleas and Atty. of the State.

I hereby consent that within joinder be filed as within time, upon condition that said cause shall not be moved before the November term, A. D. 1892, of said Court.

WARREN DIXON,  
Atty. of Pros.

This cause having been duly argued at the present February term, Eighteen hundred and ninety-three of this Court, by Warren Dixon, of counsel for the plaintiff in error, and Charles H. Winfield, of counsel of the defendant in error, and the Court having inspected the record and judgment below, and considered the causes assigned for error,

It is thereupon ordered that the judgment of the said General Quarter Sessions of the Peace of Hudson County be affirmed with costs to be taxed; and that the record and proceedings be remitted to the said Court of General Sessions of the Peace of Hudson County to be proceeded with in accordance with the judgment and practice of said Court.

On motion of

CHARLES H. WINFIELD,  
Att'y. of Def't. in Error

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#### ASSIGNMENTS OF ERROR.

Afterwards, to wit:—at the November Term, Eighteen hundred and ninety-four, before the Judges of the said Court of Errors and Appeals in the last resort in all causes, at Trenton, comes the said John Stumpf and says:—That in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit: that by the record aforesaid, it appears that the judgment aforesaid, was giv-

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en for the said the State of New Jersey against the said John Stumpf affirming the judgment rendered by the Court of General Quarter Sessions of the Peace in and for the County of Hudson, whereas by the law of the land judgment ought to have been given for the said John Stumpf against the said the State of New Jersey reversing the judgment of the said Court of General Quarter Sessions of the Peace in and for the County of Hudson. 10

And the said John Stumpf prays that the judgment of the Supreme Court aforesaid may be reversed, annuled and altogether held for nothing, &c.

WARREN DIXON,

Att'y. for and of Counsel with Pl'ff. in Error.

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