

New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY,
Defendant-in-Error,

v.

GEORGE M. BREWSTER,
Plaintiff-in-Error,

THE STATE OF NEW JERSEY,
Defendant-in-Error,

v.

WALTER SCOTT,
Plaintiff-in-Error.

In Error to
Mercer Ses-
sions.

BRIEF FOR PLAINTIFFS-IN-ERROR.

The plaintiffs-in-error were separately indicted, each for a like alleged offense, and by consent the indictments were tried together in the Mercer Sessions. Separate writs of error were of course taken; but there is but one printed book for the two cases, the questions therein being identical.

The indictment in each case was based on Chapter 83 of the Laws of 1895, and was for wilful neglect and refusal to appear in obedience to a summons alleged to have been issued by a Joint Committee of the Legislature of 1914.

The indictments were removed to this Court by certiorari, and motion to quash was here denied and the records remanded to the Mercer Sessions. *State v. Brewster*, 93 Atl., 189. The sufficiency of

the indictment is challenged on the present record under the refusal of the Trial Court to charge the defendants' tenth request (Case, p. 69, line 32), but will not be argued here because the question is foreclosed in this Court by its denial of the motion to quash. The present argument will be confined to points made at the trial on the theory that the indictment though sufficient was not supported by the evidence. That this might be so was pointed out by Bergen, J., as to some elements in the case, in his opinion read on the denial of the motion to quash.

The cases are here on certificate of the "entire record," under Section 136 of the Criminal Procedure Act.

POINTS.

I.

There was no joint Appropriations Committee of the Legislature of the State of New Jersey for the year 1914 as alleged in the indictment.

The rules of the two houses of the Legislature were offered in evidence, by consent the Legislative Manual being used for that purpose. As that publication is accessible to the Court, and probably in the library of each member, we have not printed the rules. On consulting them it will be found that while the Senate and Assembly have respectively committees on appropriations, there is no such joint committee. There are seventeen joint committees provided for, each of three members from the Senate and five members from the House (Leg. Man. 1914, pp. 71, 85); but none on appropriations or anything equivalent thereto.

It appears that for many years the committees on appropriations of the Senate and the House have been accustomed to meet together and effect a sort of organization with a chairman and a secretary, but this was merely for convenience and expedition. The reports of the two committees would of course be made separately. Probably the reason there has never been a joint committee on appropriations is that under the constitution money bills must originate in the House of Assembly. The two committees of the Legislature of 1914 followed the usual custom, and after concluding their labors adjourned *sine die* April 7, 1914 (Case, p. 28, line 21). On April 9, 1914, the Legislature passed general Resolution No. 2 (erroneously called No. 7 in the indictment) authorizing "the Joint Appropriations Committee of the Legislature for the year 1914" to make an investigation into certain subjects and to report at the next session of the Legislature, with power to issue subpoenas for the attendance of witnesses and to sit after the adjournment of the Legislature at any place in the State which they might designate (Pamph. Laws, pp. 639, 40). I do not doubt that by this resolution that Legislature meant to refer to the anomalous body composed of the two appropriations committees of the respective houses that had been up to April 7th acting conjointly; but my point is that such committee was not within the purview of the Act of 1895. That statute embraced only a joint committee of the Legislature or a standing committee or special committee of either house; the procedure was by summons, not subpoena, and there is no hint of power to sit after the adjournment of the Legislature. It is perhaps doubtful if the statute was intended to apply to any other Legislature than the one that enacted it.

Penal statutes must of course be construed strictly, and unless the case of the plaintiffs-in-error falls clearly within this Act of 1895 their conviction cannot be sustained.

II.

The respective plaintiffs-in-error were not compellable to attend at Trenton on December 5, 1914.

(a) No place of meeting was ever designated by the committee.

If we assume that the gentlemen who undertook the investigation into the subject matter of Joint Resolution No. 2 composed the committee referred to therein, they of course could only act legally on conforming to the resolution which was the source of their power. That resolution provided as follows:

“2. The said committee shall have power to sit after the adjournment of the Legislature at any place in this State which they may designate.”

The Joint Committee, to call it such, consisted of four Senators and five Assemblymen (Case, p. 24), and Senator Hennessy (Case, p. 27). After the adjournment *sine die* on April 7th and the passage of the Joint Resolution No. 2 on April 9th Senator Hennessy assumed to call a meeting of the “Joint Appropriations Committee” at Newark on June 1, 1914, at which there were present three Senators and two Assemblymen (Case, pp. 29, 30). Without transacting any business the committee adjourned subject to the call of the chair (*idem.*). On June 10th two Senators and two Assemblymen (less than a quorum) met at

Palisades Park but transacted no business (Case, p. 31). On June 27th two Senators and three Assemblymen met in Atlantic City. The minutes of the committee do not show how such meeting was convened and an adjournment was had subject to the call of the chair (Case, p. 31). This completes the recorded minutes of the committee. From that time on there seem to have been meetings in different parts of the State (Case, p. 36), but no formal minutes were kept. The case is barren of proof that any place was ever designated by the committee for any meeting. The members, or such of them as cared to, responded from time to time to the call of the chairman. It was not proved nor is it claimed that the committee designated Trenton as the place of meeting on December 5. There seems to have been a meeting held on that day in Trenton, the proceedings of which were read by the stenographer from his notes (Case, p. 37). There were present three Senators and three Assemblymen. It was to attend at that meeting that the plaintiffs in error were subpœnaed. They failed to appear and sent their excuses by their counsel, Mr. Mackay. The Trial Judge charged the jury as follows:

“There is no evidence in the case that the alleged committee ever designated Trenton as the place of sitting for December 5th, 1914, as required by the alleged resolution, Laws of 1914, page 639” (Case, p. 69).

(b) *The committee never authorized the issue of summons to the plaintiffs in error.*

The pertinent section of the Act 1895 is as follows:

“2. And be it enacted, that if any witness summoned to appear before any such committee shall wilfully neglect or refuse to ap-

pear in obedience to the summons or shall refuse to be sworn or affirmed he shall be deemed guilty of a misdemeanor."

It goes without saying that to be legal a summons to appear before the committee must be authorized by the committee, and it is not pretended that there was any such authorization. Senator Hennessy testified that there was no specific authority therefor at any meeting. His voluntary statement that "the understanding was that the chairman of the committee issue the subpoenas" was struck out by the Court (Case, p. 47).

III.

No offense was committed in Mercer County.

It seems to me, as argued orally, that if a statutory offense of *omission* is made dependent upon its being *wilful*, as in the case in hand, the place where the final act of will occurs is the place of the offense; and as the plaintiffs in error were never in Mercer County after they were served with summons and were in Bergen County at the time named for appearance at Trenton, the offense must have been committed in Bergen County. Inasmuch, however, as a careful study of the opinion of Bergen, J., *supra*, convinces me that the point has been ruled otherwise in this Court, I will yield to *stare decisis* and not argue it further. I merely mention it that the Court may not consider the point abandoned.

The judgments of the ^{Supreme Court} ~~Mercer Sessions~~ should be reversed. *affirmed.*

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New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,
Defendant in Error,)
vs.) On Writ of
GEORGE M. BREWSTER and WALTER) Error to
SCOTT,) Court of
Plaintiffs in Error.) Errors and
Appeals.

BRIEF OF THE STATE OF NEW JERSEY, DEFENDANT IN ERROR.

Both defendants were separately indicted, and were tried together and convicted April 26th, 1915, for refusing to appear before a legislative committee, after summons had been served upon them. Both took a writ of error to the Supreme Court, which reversed the conviction in the Mercer County Court of Quarter Sessions. The State now claims there is error in the judgment of the Supreme Court.

The legislature of 1914 passed the resolution empowering the Appropriations Committee to investigate expenditures of State moneys. Under this resolution a summons was issued to each of the defendants to appear on the 5th day of December, 1914, at Trenton, for the purpose of giving testimony. Both defendants refused to obey the subpoena, for which they were indicted. The act under which they were indicted is found in C. S. vol. 2, page 2241, sections 67 and 68, which are as follows:

“An act respecting the examination of witnesses before legislative committees and pro-

viding for the punishment of witnesses refusing or neglecting to appear or give evidence before such committees. P. L. 1895, p. 162.

“67. Legislative investigations; examination of witnesses; privilege, refusal to testify. Sec. 1. That in any investigation or inquiry by any joint committee of the legislature, any standing committee of either house or any special committee which shall have been or may be by resolution directed to enter upon such investigation or inquiry, all witnesses sworn or affirmed before such committee shall truly answer all questions put to them which the committee shall decide to be proper and pertinent to such investigation and inquiry; and no witness shall be excused from answering any such question on the ground that to answer the same might or would incriminate him, or tend to criminate him; but no answer made by any witness to any such question shall be used or admitted in evidence in any proceeding against him, except in case of a criminal proceeding for perjury in respect to his answer to such questions; and if any such witness shall refuse to answer any question so decided to be proper and pertinent he shall be deemed guilty of a misdemeanor.

“68. Refusal to appear or testify; penalty. Sec. 2. That if any witness summoned to appear before any such committee shall wilfully neglect or refuse to appear in obedience to the summons, or shall refuse to be sworn or affirmed, he shall be deemed guilty of a misdemeanor.”

“2. The alleged committee had adjourned *sine die* after the adjournment of the legislature and before the defendant was subpoenaed, and therefore was without power to reorganize.”

The State of the Case, pages 27, 28 and 29 shows that Mr. Owen W. Kite, a witness, had been Secretary of the Joint Appropriations Committee of the Legislature, and the minutes of the committee show the Appropriations Committee of both houses to have met in joint session and elected Kite as Secretary. And the minutes, on page 30 of the State of the Case, show an item in the supplemental bill "for investigation by Joint Committee on Appropriations for the purpose of carrying out provisions of Senate Joint Resolution No. 7, which is also known as Resolution No. 2, providing that said resolution becomes a law." And that the committee here adjourned *sine die*.

This no doubt implies that the resolution was in process through the legislature and if it failed of passage, the committee adjourned *sine die*, and if it passed, then the committee met to perform the work for which money was provided in the supplemental bill. This, no doubt, was the understanding of the committee itself, but regardless of the understanding of the committee, the legislature, by the resolution, commanded that committee to meet and investigate and "to report to the next session of the Legislature." We submit this settles beyond question that the committee could not put itself out of commission, but could only be put out of commission by its creator, the Legislature. And instead of being without power to reorganize, if they ever intended to dissolve, it was their duty to organize and perform the work which they actually did perform.

"3. The subpoena served on the defendant recited that he was subpoenaed by virtue of Joint Resolution No. 7, whereas in fact there was no such joint resolution in the laws of 1914."

In answer to this point, we are unable to see how the number of the resolution has any substantial bearing on this case except to identify the order in which the resolution went through the legislature. It is a well-

known fact that as resolutions are introduced into the legislature they are numbered, and as they reach the printer they are also numbered, and the fact that the resolution is number seven in the legislature and number two in the statute books simply indicates that the resolutions between numbers seven and two failed of passage and resolution number seven was the resolution that was number two and reached the Governor's office. There is no pretence that the aim, object, purpose and language of resolution number seven is identical with that which is designated as number two. We submit the defendants cannot claim anything on that point.

“4. There was no Joint Appropriations Committee of the Legislature of 1914.”

The rules of both houses show that each house has an appropriations committee among its standing committees, but the rules do not show any joint appropriations committee. The State proved (pages 53 and 54 State of the Case) that it had been a custom for years in the legislature for the appropriations committee of both houses to meet and act as a joint committee; and the defense admitted (pages 54 and 55) that they had been meeting as a joint appropriations committee for years in the past, but objected to the relevancy. Combine this with the fact that that the legislature, in the title of the resolution, used the words “Committee on Appropriations” and in the body of the resolution, “Joint Committee on Appropriations,” indicating very clearly that the custom of a joint appropriations committee in the legislature has obtained for years, just as it has been the custom for the Speaker of the House and the President of the Senate to certify to the passage of bills. There is nothing in the constitution or law directing the Speaker of the House and President of the Senate to certify bills, but custom has established it as law for the Legislature, and while there is nothing

in the rules of the House or Senate making a joint appropriations committee, yet custom has made it such, and the fact that the body of the resolution designates it as a joint committee on appropriations, shows that the legislature has accepted such custom as binding upon it.

In reply to this it may be urged by the defendant that the legislature did not, in the title to the resolution, call it a joint appropriations committee, but called it a committee on appropriations of the Legislature. I would say the title would have to be read with the body of the resolution, which shows the intent of the legislature to intend the title to apply to the joint committee. However, the title should not govern the body of the resolution because a resolution is not a law, as it deals only with the actions of the legislature itself in dealing with public affairs, and while the constitution requires that every law shall have a title, there is nothing that requires any resolution or joint resolution to have a title.

“5. The alleged offense could not have been committed in Mercer county, because the defendant was not in that county at the time of the service or at any time afterwards.”

It is admitted that the subpœnas were served in Bergen county and the defendants were to answer and appear before the committee which was to sit in Mercer county. We say that the county where the crime was completed is the county that has jurisdiction. It matters not in what part of New Jersey the defendants were served nor does it matter how contemptuously they treated the subpœna served upon them. Whether or not they committed the crime could not be determined until the committee met at Trenton, New Jersey, and called for their presence.

“The general rule of the law has been that a crime is to be tried in the place in which the criminal act has been committed. It is not sufficient that part of such act shall have been done in such place, but it is the completed act alone which gives jurisdiction.” *State v. Wyckoff*, 31 N. J. L. 68, and *State v. Stow*, 83 N. J. L. 14; *State v. Carter*, 27 N. J. L. 499; *Noyes v. State*, 41 N. J. L. 418.

The function of a resolution passed by a legislative body is usually confined to some ministerial act of the body itself or a committee of the body acting for it, and it is a common practice to designate the chairman to call the committee together by letter and for the committee to delegate to him the power to say when and where they shall meet. “A committee may meet when and where it pleases, if the House has not ordered the time and place for them.” Vol. 6 page 370 Grey’s Reports of Parliamentary Debates.

The State of the Case, pages 31 and 33, show that in this case the practice of delegating to the chairman the power to fix the time and place of meeting was followed.

Mr. Devlin (reading): “In response to a call issued by Chairman Hennessy a meeting of the Joint Appropriations Committee of the Legislature of 1914 was held at 13 Central Avenue, Newark, at noon on the above date. Present, Senators Hennessy, Ramsey, Smalley, and Assemblymen Leonard and Richards.

The Committee again met on June 27th at the Marlborough-Blenheim Hotel, Atlantic City, having present Senators Hennessy, Ramsey, Assemblymen Leonard, Fiske, Richards and State Auditor, Mr. Nevin. The Committee then adjourned at 8:15 P. M. and again met on August 4th at the office of Assemblyman Fiske, 15 Exchange Place, Jersey City.

There were present Senators Hennessy, Ramsey and Assemblymen Kays, Mount, Fiske and Leonard. Letters were received from Senator Smalley and Assemblyman Richards stating that they were unable to attend. After attending to business, the Committee adjourned, subject to the call of the chair.

The first reason the Supreme Court gives for reversal is that no place of meeting was ever designated by the committee. In reply to this we quote the resolution of the Legislature, page 9, line 7, of the State of the Case.

"The said committee shall have power to sit after the adjournment of the Legislature at any place in the State which they may designate." According to the evidence, pages 30 and 31, a meeting was held June 1st, 1914, in response to a call by Chairman Hennessy. The committee organized for the purposes of investigation and after attending to the business adjourned, subject to the call of the Chair, and they met again from time to time, and each time adjourned, to meet again at the call of the Chair. The part of the resolution that speaks of the designation of the meeting-place of the committee, refers only to the committee as the persons who shall receive notice of the designation. The purpose of this clause of the resolution was, that each member of the committee would know at what place in the State they would meet. For no purpose was it necessary for any persons except the members of the committee and witnesses to be notified of the place of meeting.

The defendants cannot complain of this. They had received a summons signed by the Chairman of the committee and its Secretary commanding them to appear "before the said the Joint Appropriations Committee of the Legislature of the State of New Jersey for the year of 1914, on Saturday, the fifth day of

December, A. D. 1914, at eleven o'clock in the forenoon of said day at the State House in the Senate Chamber in the City of Trenton and the State of New Jersey, to testify and give evidence of all and singular what he, the said George M. Brewster, knew relating to the matters under investigation by the said Joint Appropriations Committee of the Legislature of the State of New Jersey for the year 1914." What complaint can these defendants make as to whether or not the committee designated the place of meeting in a manner more or less public, when they, the defendants, had complete and detailed notice of the time and place of meeting? They suffered no wrong if the committee did not designate its place of meeting. No injury flowed to them from lack of place of designation. They got complete and comprehensive notification, as the time and place were specified, on the summons to have them testify. We submit that as to this part of the opinion the Supreme Court is in error.

Other grounds for the Supreme Court's reversal are, "the committee never authorized the issuance of the summons to the plaintiffs in error;" also, "the trial judge was requested to charge, 'there is no evidence that any such committee ever authorized the issuance of the subpoenas or summons to either defendant,' " and also, "the paper writings served on the respective defendants were beyond the power of the statute and the defendants were not bound to respond thereto."

Neither those three reasons combined nor any one of them were ever raised in the specification of causes for reversal (State of the Case, pages 71-72), served or filed in this cause in the Supreme Court, nor were they discussed in the brief of the defendants.

By section 137 of the Criminal Procedure Act, C. S., vol. 2, page 1866, it is enacted that, "where the plaintiff in error shall elect to take up the entire record with his writ of error as herein provided, he shall specify the causes in the record relied upon for relief or re-

versal and shall not be confined to his bill of exceptions or required to assign error thereon, and he shall serve a copy of the causes so relied upon for reversal upon the Attorney-General or the Prosecutor of the Pleas, representing the defendant in error, at least ten days before the first of the term at which the said cause shall be heard."

This section has been interpreted to mean—

"that upon a writ of error to review the judgment in a criminal case, the court will only consider such matters as have been called to the attention of the State either by assignment of error or specification of causes; and a general exception to a charge is only available when error is assigned upon the objectionable portions." State v. Shutts, 69 N. J. L. 206.

"One convicted of crime sued out a writ of error to review the judgment of conviction, and procured the return with the writ, not only of bills of exceptions, but of the entire record of the proceedings at the trial, as permitted by section 136 of the Criminal Procedure Act of 1898. He assigned errors, but did not file or serve any specification of causes for relief or reversal as required by section 137 of that act. *Held*, that upon the objection of the State, the plaintiff in error must be confined to his bill of exceptions and the assignments thereon." State v. Miller, 71 N. J. L. 527.

In this case there was no assignment of error made. There was a specification of causes for reversal that specified six causes. Not one of the three reasons assigned by the Supreme Court is found in the six causes specified.

Under section 136 of the Criminal Procedure Act the right is given to a defendant to take up the entire

record of the proceedings of the cause, and under 137 of the same act he has a right to go through the entire record and specify any cause that he believes is erroneous. If he does not avail himself of that right and serve notice on the prosecutor he cannot ask the court to search for a reason not in the specifications for reversal. Neither has the court the right to reverse for reasons other than those specified.

“Under section 137 of the Criminal Procedure Act of 1898, where the plaintiff in error elects to take up the entire record with his writ of error, he must specify the causes in the record relied upon for relief or reversal with sufficient precision to apprise the court and the counsel for the State of the injury of which he complains.” *State v. Herron*, 77 N. J. L. 523.

“Where the entire record of the proceedings had upon the trial has been returned by the defendant with the writ of error, under section 136 of the Revised Crimes Act, and the only cause for reversal specified is that the judgment passed against the defendant instead of against the state, no other cause can be considered.” *State v. Hess*, 65 N. J. L. 544.

“It is to be observed that the legislature has not in express terms limited the consideration of the reviewing court to errors pointed out by bills of exception and assignment of error, or causes for relief or reversal specified in conformity with section 137, nor has it expressly provided that such causes shall be filed and made part of the record. But the clear implication is that the review is to be confined to matters of which the state is apprised either by assignment of

error or specification of causes." *State v. Young*, 67 N. J. L. 226.

Assuming, for the purpose of discussion, that the Supreme Court was right in deciding the case on questions not raised in the specification of causes for reversal, we will proceed with the discussion of the case.

The Supreme Court further says, that the committee never authorized the Chairman to issue the summons, and that "the power of a committee of this character is to be found in sections 63 and 64 of the act entitled "An Act concerning evidence" (Revision of 1900), C. S., vol. 2, pages 2217 and 2239. Section 63 provides that any joint committee of the Legislature, or any standing committee of either house, or any special committee, which shall have been by resolution directed to enter upon any investigation or inquiry, the pursuit of which shall require the examination of witnesses, shall have power "to summon before them such persons as they may deem necessary and proper to testify in the matter under investigation." Section 64 provides that any such committee shall have power to compel the attendance before them of "such persons as they may deem necessary and proper to testify in the matter under investigation." This statute clearly shows that the power to summon witnesses is given only to the committee, and not to any member thereof acting alone.

In the opinion the court says that the powers of this committee are found in the two sections above quoted. We submit that the court is in error and that the powers of this committee are found in the resolution passed by the Legislature. The section 63, which the court refers to, is "An Act concerning fees" (Public Laws of 1874, page 54), and relates to how the witness fees shall be paid and who shall pay them, and does not in any manner confer or detract from the power of summoning witnesses, but leaves that entirely as it stood at

common law. Section 64, referred to (Public Laws of 1875, page 26), simply redeclares the common law power of legislative committees. It sets out who has power to swear witnesses and gives the committee power to employ legal and clerical assistance and provides for the payment of the same when properly approved. No legislature can by statute ban the powers of committees for future legislatures. Each legislature when it convenes, by the powers of the constitution, can create its own committees, designate their powers, and, by resolution, confine them to special duties. But no legislature can pass a statute defining, designating and limiting the powers of future committees.

Neither section 67 or 68 make the failure of a person to answer the summons of the committee a crime. It was not made a statutory crime until 1895, and in that year, by the act found in C. S. 2241, sec. 67 and 68. By these two sections failure to answer any proper and pertinent questions is denounced as a crime, and failure to appear after being summoned is also denounced as a crime.

Until this time courts had no jurisdiction over any of these contempts. This legislation is additional to the extensive powers inherent in a legislature or its committee, and makes these offenses triable in the courts as well as in the legislature. It is, under both sections 67 and 68, that these defendants were indicted and tried, and it is to these sections that we must go to see if they have been tried according to law.

The power of a committee to summon witnesses is not in any of the statute laws of this State, and if it is, it is but declaratory of their common law powers. Our legislature has the same powers as the British Parliament, with the two exceptions, to wit, in so far as they are restrained by the constitution of the United States and by the constitution of the State. *Maxwell v. Goetschius*, 40 N. J. L. 387, 388 and 389; *Panghorn v.*

Legislatures.

Ans. vs. Edward

act. 723.

h. vs. Frambach

W. Law 85.

L. Con., Sec. 4,

par. 3.

Young, 32 N. J. L. 29; ^{see pages 40 and 41} Mason v. The Township of Cranbury, 68 N. J. L. 149.

“Each house be allowed to proceed in its own way in the collection of such information as may seem important to a proper discharge of its functions, and whenever it is deemed desirable that witnesses should be examined, the power and authority to do so is very properly referred to a committee with any such powers short of final legislative or judicial action as may seem necessary or expedient in the particular case. Such a committee has no power to sit during a recess of the house which has appointed it without its permission to that effect, but the house is at liberty to confer such power if it sees fit. A refusal to appear or testify before such committee or to produce books and papers would be a contempt of the house, but the committee can not punish for contempts. It can only report the conduct of the offending party to the house for its action. The power of the committee will terminate with the final dissolution of the house appointing it.” Cooley’s Constitutional Limitation 193 (7th ed.).

“It is but the re-statement of a fundamental and familiar principle to say that the sovereign power is lodged in the people, and that the constitution framed and adopted by the people divides the powers of government into three distinct yet co-ordinate departments: executive, judicial and legislative. But it is not always borne in mind that the constitution acts differently with respect to these different branches. The authority of the executive and judicial departments is a grant. These departments can only exercise the powers enumerated in and conferred upon them by the constitution, and such

as are necessarily implied therefrom. The powers of the legislature in matters of legislation, broadly speaking, are absolute, except as restricted and limited by the constitution. As to the executive and judiciary, the Constitution measures the extent of their authority; as to the legislature it measures the limitation upon its authority." *Field v. People*, Scam. (Ill.) 79-81; *Cooley Const. Lim.* (6th ed.), p. 104, and cases cited.

"It has never been questioned, so far as I know," says Redfield, C. J., in *Thorpe v. Railroad Co.*, 27 Vt. 140; 62 Am. Dec. 625, "that the American Legislatures have the same unlimited power in regard to legislation which resides in the British Parliament, except where they are restrained by written constitution. This must be conceded, I think, to be a fundamental principle in the political organization of the American States. We cannot well comprehend how, upon principle, it should be otherwise. The people must, of course, possess all legislative power originally. They have committed this in the most general and unlimited manner to the several State Legislatures, saving only such restrictions as are imposed by the constitution of the United States or of the particular State in question." *Sawyer v. Gilmore* (Me.) 83 Atl. 673.

"In the earlier history of the country from which our institutions both of law and legislation are principally derived, the judicial and legislative functions existed and were exercised by the same body. When they were afterward separated and each came to be exercised by a separate tribunal or body, the legislative body

retained sufficient of the judicial power to enable it to investigate fully and to comprehend thoroughly any and every subject upon which that body proposes to act in its legislative capacity." *Wilkens v. Willet*, 1 Keyes (N. Y. 521.

"A general power to punish for contempts resided in with legislative bodies of England from time immemorable, and in America, it is a common law principle that the legislature cannot only punish its own members for contempt, but persons who commit disorder in its presence or who ignore or treat with contempt its lawful process, such as an obstinate and resistant witness before one of its committees." *Lowe v. Sommers*, 69 Mo. App. 637.

1. "The House of Representatives of Massachusetts has power to compel witnesses to attend and testify before the house or one of its committees."

2. "The refusal of a witness, duly notified or summoned, or who has voluntarily appeared, to attend or testify before the House of Representatives, or a committee of that house, is a contempt of the authority of the house, for which the house may cause him to be arrested and brought before the house. *Burnham v. Morrissey*, 14 Gray (80 Mass.) 226.

"By the common parliamentary law the legislative assembly may compel the attendance of all persons within the limits of their constituency as witnesses, in regard to the subject on which they have power to act, and into which

they have instituted an investigation." *Ex parte McCarthy*, 29 Cal. 395.

"It has always, at least practically, been considered to be the right of legislative assemblies to call upon and examine all persons within their jurisdiction as witnesses in regard to the subjects in reference to which they have power to act and into which they have already instituted, or are about to institute, an investigation. Hence they are authorized to summon and compel the attendance of all persons within the limits of their constituency as witnesses and to bring with them all papers and records in the same manner as is practiced by the courts of law. When an assembly proceeds by means of a committee in the investigation of any subject, the committee may be, and usually is, authorized by the assembly to send for persons, papers and records." *Cushing's Law and Practice of Legislative Assemblies*, page 253.

"Witnesses may be summoned to appear and give their testimony before the assembly, or before a committee either by a warrant from the presiding officer, issued in pursuance of a general order previously adopted authorizing him to send 'for persons, papers and record,' or in pursuance of a special order to the same effect, relating to the particular case or person; or they may be summoned by the special order of the committee in pursuance of a similar general or special order. The summons may be served by the sergeant-at-arms, or by any messenger or other officer, or in such other manner as will be legal in other cases according to the laws of the particular state." *Cushing's Law and Practice of Legislative Assemblies*, page 261.

See also *Anderson v. Dunn*, 6 Wheaton (U. S.) 204; *Johnson v. Commonwealth*, 1 Bilb. (Ky.) 598; *Burdett v. Abbott*, 14 East. 1; *Rapalgi on Contempts*.

A legislative committee has all the powers which the legislature can give it, by expression and implication, in the resolution under which it is expected to act. The power of this committee is found in the resolution and not in any statute law. If the resolution of the legislature did not authorize the committee to issue subpoenas that power would be implied from the nature of its resolution, as shown in cases where the resolution did not provide for any summons.

“The Legislature has power to institute an inquiry into the truth of an alleged bribery of one of its members or the members of a previous legislature, connected with the disposal of a trust committed to the legislature of a state and continuing under its present and future guardianship and supervision, and in the exercise of such power it must necessarily have power to and may compel the attendance of witnesses before it or before a committee of either house or a joint committee of both houses and compel such witnesses to testify and also to inflict punishment as for contempt upon such witnesses for their refusal to attend or testify.” *Valvey v. Massing*, 7 Wis. 630; *Burnham v. Morrissey*, 14 Gray 226.

At this point it is to be observed that the act (C. S., page 2241, sections 67 and 68) which denounces these contempts as crimes did not use the word subpoena, but the word summons. The draftsmen of this act knew full well that a subpoena is but one method of summoning a person to a legislative committee, and that a person who had notice that a legislature or its committee wanted his presence he would be deemed to be

summoned. The common law of parliaments went so far as to hold a person in contempt who was holding himself out of the jurisdiction of the legislature with the intention to avoid being summoned.

“If a witness upon whom an order for his attendance has been personally served is guilty of disobeying the order, or if one absconds for the purpose of preventing the service of the order upon him, such delinquent witness is then ordered to be taken into custody by the sergeant-at-arms or other proper officer. If, however, there is reason merely to believe that a witness is purposely keeping out of the way to avoid service, the practice is, in the first instance, to direct that service at his house shall be deemed good service. This precaution is observed, of course, in order to guard against the danger of taking the witness into custody who may be innocent of any intentional contempt of the house. But where the circumstances of the case preclude all reasonable doubt as to the intention of the witness, he may be ordered into custody at once. Thus, where it appeared by the report of the committee that two persons who were ordered to attend the committee, had not attended, but that having attended the day previous, agreeable to the order for their attendance, they had purposely kept out of the way in order to avoid being served with an order for their attendance on the day in question, they were ordered forthwith to be taken into custody by the sergeant-at-arms.” Cushing Law and Practice of Legislative Assemblies, page 376; May, 308, 309.

In the case at bar the resolution authorized the committee to issue the subpoena, which it did and duly served it on the defendants. The opinion of the court goes on

the theory that the only power a legislative committee has to subpœna witnesses is found in sections 63 and 64 of the C. S., page 2239, and that it must be done by the committee as an entirety. We insist that there is no statute in New Jersey that has curtailed the common law powers of a legislative committee when acting in a matter over which they have jurisdiction. We submit that not only has the committee the power to issue a subpœna, order or summons, but that they can delegate that power to any member of the committee, and that this power still exists in New Jersey.

“By virtue of this authority (to call witnesses) any witness may be summoned by an order signed by the Chairman to appear before the committee and to bring with him all such documents as he may be directed to bring for the use of the committee. Any neglect or disobedience of the summons will be reported to the house and the offender will be dealt with in the same manner as for similar contempt before the house itself.” Cushing Law and Practice of Legislative Assemblies, page 739.

In 1837 Reuben M. Whitney, for refusing to obey a subpœna issued by a committee of the House of Representatives of the United States, was arrested and brought before the bar of the house. In this case the validity of a subpœna signed only by the chairman of the committee was challenged, but was sustained. Also, in the case of the committee sent to Philadelphia to investigate the affairs of the Bank of the United States, the question whether the process issued by the committee under the powers given to them to send for persons and papers, should be signed by the Speaker and attested by the Clerk came up, and it was decided by a vote of 157 to 33 that the summons need only be signed by the chairman of the committee. Hind's

Precedents of the House of Representatives, vol. 3, par. 4540.

The next question in the case is, did the chairman of the committee, Senator Hennessy, have the power, or the authorization from the committee, to summon witnesses by issuing a subpoena. Page 35 of the state of the case.

Testimony of Mr. Hart—

Q. Who directed you to prepare and serve the subpoenas?

Mr. Collins: I object to that as irrelevant and incompetent.

The Court: You may answer the question.

Mr. Collins: Exception.

Whereupon the defendants, by their counsel, filed a bill of exceptions, which is hereby allowed and sealed accordingly.

ERWIN E. MARSHALL,
Judge.

A. The Chairman of the Committee, Senator Hennessy.

Q. He directed you to prepare them and to serve them? A. Yes, sir.

This shows that Chairman Hennessy directed Mr. Hart, the clerk of the committee, to serve the subpoenas.

Now as to the evidence of Mr. Hennessy's power or authority to issue the subpoenas. State of the case, pages 46, 47, 48 and 49.

Q. I show you two subpoenas that are dated December 2, and signed by you and the clerk. Now, state, is that your signature on those subpoenas?

A. It is.

Q. And you directed those subpoenas to be served?

A. I did.

Q. State whether or not the Committee authorized the service of those subpoenas?

Mr. Collins: I object to that as not being the best evidence.

The Court: It would seem to me that asking this question of the witness is not sufficient proof of it. The best proof would be the minutes.

Q. Do you know, Senator, if the Committee made a record, or if a record was made of the parties who were to be subpœnaed before the Committee?

Mr. Collins: Objected to on the ground that it is either intended to be proved by the answer that they did not make a record or that they did. If it is intended to prove that they did not make one then there is no answer. If it is intended to prove they did make one, it must be produced.

The Court: You may answer the question.

Mr. Collins: Exception.

Whereupon the defendants, by their counsel, filed a bill of exceptions, which is hereby allowed and sealed accordingly.

ERWIN E. MARSHALL,

Judge.

A. My impression is that the Committee did not make a record of the persons who were to be subpœnaed before the Committee.

Q. Are you able to state whether the Committee directed you to sign and have the Clerk sign and issue those subpœnas?

Q. (Question repeated.)—to George M. Brewster and Walter Scott? A. My recollection is that the Committee discussed at more than one session, informally, they discussed the question of issuing subpœnas for these witnesses. I have no recollection of a specific meeting. I cannot specifically recall a meeting at which specific authority was issued for this purpose. The

understanding was that the Chairman of the Committee issue the subpoenas.

Mr. Collins: I move to strike out the last part as to what his understanding was.

The Court: I think that is improper. The last part with reference to the understanding will be stricken out.

Q. I will now ask you if the committee discussed at any time the issuance of subpoenas, the general duty or work of issuing subpoenas, as to who should attend to it.

Mr. Collins: Objected to as irrelevant.

The Court: I will admit the question.

Mr. Collins: Exception.

Whereupon the defendants, by their counsel, filed a bill of exceptions, which is hereby allowed and sealed accordingly.

ERWIN E. MARSHALL,
Judge.

Q. (Question repeated.) A. My recollection is that on occasion I told the members of the Committee that such and such persons ought to be subpoenaed, in my opinion, for such and such reasons, stating the reasons why they could contribute testimony of value to the Committee. These matters were discussed informally, and my recollection is that an agreement was in each case arrived at as to what persons were to be subpoenaed. I have no recollection of a specific meeting at which specific subpoenas were authorized to be issued.

Q. I am speaking of the question of the general work of issuing subpoenas, that is what I am speaking about, the general duty of issuing subpoenas.

Mr. Collins: Objected to as incompetent.

The Court: Objection sustained.

Q. The two persons named here—were they the subject of discussion by the Committee before the subpoenas were issued?

Mr. Collins: Objected to as incompetent and leading.

The Court: Objection sustained.

I call attention below to the minutes of the meeting of the committee, at the meeting of December 5, 1914, when the defendants were summoned to appear. Mr. Porter, stenographer to the committee, read a transcript of the minutes, from which we quote. Pages 38, 39, 40, 43 and 44:

Q. Now, will you read the transcript? A. This is a public hearing in the matter of the investigation of the State Road Department by the Appropriations Investigating Committee of the Legislature of 1914.

“Senate Chamber, Trenton, December 5th, 1914.

“Senator Hennessy: Since the last meeting of the Committee, gentlemen, a subpoena was served upon Mr. George M. Brewster of Tenafly, New Jersey, by direction of the Committee whereby he was required to appear at this session of the Committee, and to produce certain books and papers relating to contracts for the building of certain roads in Bergen County named in the subpoena, which roads were roads improved partly with State funds. The Chair is informed that Mr. Brewster has been advised by his counsel not to respond to the subpoena to-day, and the counsel of Mr. Brewster, Mr. Mackay, is present and would like to make a statement to the Committee as to the reasons why he advised his client not to respond to the subpoena. I think it is entirely proper that Mr. Mackay be permitted to make that statement. If there be no objection on the part of any

member of the Committee I will ask Mr. Mackay to tell the Committee the reasons why his client is not present to-day.

Page 38 of the state of the case:

“Senator Hennessy: I would like to ask you, Mr. Fiske, if that is entirely proper?”

“Mr. Fiske: Why, I should think, Senator, that the committee has served the subpœna, and we consider that the service of the subpœna was good, and I should not receive back the money.”

Page 44 of the state of the case:

“Senator Hennessy: Well, on that matter, I may say that the committee has taken counsel, and the committee, before issuing these subpœnas, Mr. Mackay, was fully advised that it had the power to do what it did in this particular case, which information, of course, isn't conclusive either upon the committee or upon you, but the committee has not proceeded without proper advice.”

Page 41 of the state of the case:

“Senator Hennessy: When you say the Committee has no power to summon a private individual you are aware of the fact that this particular individual, Mr. Brewster, was summoned because he had received a large amount of State moneys in connection with road building.”

Pages 44 and 45 of the state of the case:

“By Mr. Fiske: Q. This resolution provides that the said Committee shall have power to issue subpœnas for the attendance of witnesses, and it does not provide that they may compel the attendance of witnesses, but I think that is possibly covered in this act that appears on page 2240 of the Compiled Statutes, and which provides ‘that any joint committee of the Legislature

or any standing committee of either house, or any special committee which shall have been or may be, by resolution, directed to enter upon any investigation or inquiry, the pursuit of which shall necessitate sending for persons and papers, and examination of witnesses, shall have power to compel the attendance before them of such person or persons as they may deem necessary and proper.' That would seem to give us that power, even though it wasn't specifically provided in the resolution."

After Mr. Mackey, counsel of Brewster and Scott, the defendants, explained to the committee, that his clients would not appear, Mr. Porter, stenographer to the committee, was asked if the committee took any action on their failure to appear, and he read as follows from the minutes of the committee, page 53:

A. (Witness reading): "Mr. Fiske: Mr. Chairman, I move the adoption of this resolution:

"Whereas, by order of this committee, George M. Brewster and Walter Scott have been summoned to appear and testify before it on the 5th day of December, A. D. one thousand nine hundred and fourteen, at eleven o'clock in the forenoon, in the City of Trenton, by summons in writing, duly served upon each of them, respectively, together with the witness fees and mileage allowed by law, and

"Whereas they have refused and neglected to obey said summons,

"Resolved, that the President of the Senate of this State is hereby requested, by warrants under his hand, to order the Sergeant-at-Arms of the Senate to arrest said George M. Brewster and Walter Scott and bring them before this committee to testify at its next sessions or a subsequent session; and that the chairman of this committee is authorized and directed to make application to said President of the Senate, on behalf of this committee, for the issue of such warrants.'

"The motion was duly seconded by Mr. Leonard, and on a yea and nay vote unanimously carried."

Showing that the committee not only authorized the issuance of the subpœna by Chairman Hennessy, but that they ratified his action.

This evidence shows conclusively that the committee authorized Senator Hennessy to issue subpœnas to Brewster and Scott, that the subpœna was properly issued and served on the defendants for their appearance, and that the committee ratified the act of their chairman and took further action to compel obedience to the subpœna, which they authorized their chairman to issue.

We insist that the defendants had no right to challenge the summons by subpœna to appear before the legislative committee. It was their duty to obey the summons, even if it was improvidently or irregularly issued.

The legislature by its committee, was on a mission of investigation, within their power and jurisdiction, and all orders, summons and subpœnas, issuing from that committee, that were regular on their face, must be respected until they are altered, modified or annulled by the authority that issued them.

By the constitution of this State, the legislature is one, and the most powerful of the three departments of government, and as such is entitled to the same respect and obedience as the process of our courts, as illustrated:

In the case of Cape May and Schellenger's Landing R. R. vs. Johnson, 35 N. J. Eq. 422, a restraining order was issued by the Court of Chancery. There was not sufficient time to have it served in the usual mode, but the defendants received notice by telegraph, and were advised by counsel to proceed in spite of the restraining order of the Court of Chancery, and they

did so, on the theory that no regular service of the court's order had been properly made.

The parties were later brought up for contempt, for their disobedience.

"The notice that the defendants had of the order, at the time they violated the command, was, according to the authorities, entirely sufficient. Where the charge is that the defendant has willfully contemned the authority of the court, all that need be shown is that he knew of the existence of the order at the time he violated it. *Haring v. Kauffman*, 2 Beas. 397. Lord Eldon held that if a defendant is in court when an injunction is granted, he has sufficient notice of it to make it his duty to respect it. He also held that if the defendant is not in court when an order for an injunction has been made, but is informed that such an order has been made, he has sufficient notice of the injunction to render him liable for its breach. *Vansandau v. Rose*, Jac. & Walk. 264. The same rule as thus stated by Lord Eldon was enforced in *Hull v. Thomas*, 3 Edw. Ch. 236; and *Hull and Thomas* is cited, with approbation, by Chancellor Williamson in *Endicott v. Mathis*, 1 Stock. 110, 114."

The court also held that the notice to be sufficient need possess but two requisites—first, it must proceed from a source entitled to credit; and second, it must inform the defendant clearly and plainly from what act he must abstain or what act he must do. The notice or summons in this quoted case had on its face both of these requisites and the court held:

"The regularity, validity or correctness of the order contemned cannot be examined on this proceeding. While an order of the court remains in force it must be obeyed. Even if it

was improvidently granted or irregularly obtained, it must nevertheless be respected until it is annulled by the proper authority. The rule upon this subject has been laid down with great clearness and force by Lord Truro. He says: 'It is an established rule of this court that it is not open to any party to question the orders of this court, or any process issued under the authority of this court, by disobedience. I know of no act which this court may do which may not be questioned in a proper form and on a proper application; but I am of the opinion that it is not competent for anyone * * * to disobey an injunction or any other order of the court on the ground that such orders were improvidently made. Parties must take a proper course to question their validity, but while they exist they must be obeyed. I consider the rule to be of such importance to the interests and safety of the public, and to the due administration of justice, that it ought on all occasions to be inflexibly maintained.'

A fact to be noted on the case to which the above law is applied is that the restraining order issued in that case was afterward dissolved, and that it was improvidently issued. The court, in passing judgment on the parties charged with contempt, noted that fact, but nevertheless punished them for failure to give the restraining order the respect and obedience due to a process from its organized tribunals, following the theory that in every well organized government there is the power and the authority, when acting in its constitutional scope, to which every man must give implicit obedience before he can seek a modification or an annulment of its orders. *Kempson v. Kempson*, 61 Eq. 303; *Ashton v. Wilkinson*, 53 Eq. 227; *Una v. Dodd*, 39 Eq. 173.

We contend that the committee of the legislature was acting for a co-ordinate branch of the government, on a matter important for it to know to enable it to enact remedial legislation, and its proceedings and its process, by force of all legislative authority, is entitled to the same degree of respect and obedience as the restraining order referred to in the above case.

Let us assume that the committee, instead of making a criminal complaint, had requested the Governor to call the legislature in session, and the legislature brought the two defendants before the bar of the House and judged them guilty of contempt, and the committee then committed them to jail as a punishment for contempt, and that thereupon the defendants sued out a writ of habeas corpus.

The return to the writ showed a commitment that set out the fact of the joint resolution of the legislature, the issuing of subpoenas, and the refusal to obey. And further assume that the defendants alleged the same defense as they alleged in this case.

It is a principle of law, well settled by the courts in England, the Federal courts and the State courts, that if the commitment shows a matter over which the legislature has jurisdiction, that the courts will not examine the proceedings, or any part thereof, by which the defendants were committed.

The court's refusal is based on the reason that they have no right or power to supervise the proceedings of the legislative branch of the government, no more than the legislature has the right to usurp the functions of the judicial or executive departments, as illustrated in the case of *Maxwell v. Goetschius*, 40 N. J. L. 383:

1. "An act of the legislature to validate a sale made on partition proceedings by commissioners in a court having no jurisdiction either over the property or the owners, is nugatory, and such sale is void."

2. "The general rule is that the legislature of this State cannot legalize any judicial act that is void for want of jurisdiction."

3. "On proceedings for partition by the tenants of the life estate, the remainder was ordered to be sold, said sale being prior to the act authorizing the sale of remainders—held, the sale was void and could not be made valid by subsequent legislative action."

And also in the case of *Kilbourn v. Thompson*, 103 U. S. 168, where the House of Representatives passed a resolution to investigate a certain pool. One of the witnesses was then in bankruptcy, and at the same time was a creditor of the United States. It was held there that the legislature has no power to compel him to testify in a matter that was then in the jurisdiction of the court and subject to judicial investigation.

We further insist and submit that the court had no right to compel the chairman of the committee to show the proceedings by which the summons was issued. On the trial of the defendants, at the Court of Quarter Sessions, of Mercer County, we proved the proceedings of the committee, by which the summons was issued, so far as they related to the issuance of the summons in question.

In this respect, we believe we over-proved our case, and we submit that when we proved that the committee in question was regularly appointed by the legislature, and proved the resolution under which it was acting; and that it issued a summons, signed by the chairman and attested by the clerk, as Exhibits P1 and 2, in the state of the case show, and prove that these summons were served on the defendants, we then proved our case completely.

We had complied with the statute, C. S., page 2241, section 68:

"That if any witness summoned to appear

before any such committee shall willfully neglect or refuse to appear in obedience to the summons, or shall refuse to be sworn or affirmed, he shall be deemed guilty of a misdemeanor,"

under which these men were indicted.

We take this position, that when a legislative body or its committee is commissioned in any proceedings in a matter which is within the scope of their jurisdiction, and as a result of these proceedings it is necessary for them to commit some person to jail, no judicial tribunal will go behind the face of the commitment when it shows that the matter for which the person was committed is within the jurisdiction of a legislative tribunal.

There are numerous cases where men have been committed to jail for contempt of the legislature or its committees. Courts have granted writs of *habeas corpus* to bring those persons before them. In many of these cases the persons committed to jail made efforts to show that the proceedings behind the commitment were illegal, and in each case the courts, both in England and in America, steadfastly refused to examine the proceedings behind the commitment to jail.

In all those cases the speaker of the House signed the commitment, and the courts held that it was not within their power to supervise the proceedings of a legislative body by which the commitment to jail was made. *Falvey v. Massing*, 7 Wis. 630; *Ex Parte John Nugent*, 4 Penn. L. J. 220; *Burdett v. Abbot*, 14 East. 1.

In our own State in the case of *Pangborn v. Young*, 32 N. J. L. 29, C. J. Beasley held:

1. "Where an act has been passed by the legislature, and signed by the speaker of each house, approved by the governor as authenti-

cated by his signature, and filed in the office of the secretary of state, an exemplification of it under the great seal is conclusive evidence of its existence and contents."

2. "It is not competent for this court to go behind this attestation, or to admit evidence to show that the law as actually voted on and passed and approved by the governor was variant from that filed in the office of the secretary of state." *See Bloomfield v. Bd. Freeholders, 74 N.J. Law 261.*

Regardless of the proof of what the proceedings of the legislature were, the Supreme Court flatly refused to go behind the certificate of the speaker and of the president, notwithstanding that there is neither constitutional or statutory provisions for the authentication of measures by the speaker of the house or the president of the senate.

In the matter of Low and Morgan, 95 Atl. Rep. 616, under the act of 1873, it was proved in the application that chapter 351 of the Laws of 1915, was not passed in compliance with the requirements of the constitution, as shown by the legislative journals. Yet the court held while the journals were evidence, the signature of the speaker of the house and the president of the senate are superior to an entry on the minutes, which they deemed a mistake and held the law valid.

We submit, on reason and authority, that at the trial of these defendants for refusing to obey the summons, that if the summons has on its face the requirements of coming from a proper body and for a proper purpose, that the court can no more go into the proceedings of that body, than they can go into the proceedings as to how the commitment to jail came to be made in the above quoted contempt cases.

The only body that can supervise the proceedings of that committee is its parent body, the legislature in session assembled. We say this with all due respect

for this court, and urge it as beyond the constitutional power of the courts, and within the common parliamentary law and constitutional rights of legislative assemblies.

Hence, we submit that the defendants below had no right to treat the subpœna with contempt when it was served, nor had the Court of Quarter Sessions or the Supreme Court the right to examine or to supervise the manner in which that summons was issued.

1. "Every court, including the Senate and the House of Representatives, is the sole judge of its own contempts; and in the case of a commitment for contempt, in such case no other court can have the right to inquire directly into the correctness or the propriety of the commitment, or to discharge the prisoners on *habeas corpus*."

2. "The warrant of commitment need not set forth the particular facts which constitute the alleged contempt."

3. "The Senate of the United States has power to punish for contempt of its authority in cases of which it has jurisdiction, and an inquiry whether any person had violated the rule of the United States Senate, which requires that all treaties laid before them should be kept secret until the Senate should take off the injunction of secrecy, is a matter within the jurisdiction of the Senate." Circuit Court of the District of Columbia, *Ex parte John Nugent*, 4 Penn. L. J. Rep. 220.

The court, in the opinion written in this case, discussed with great clearness all the leading cases in England involving the question of contempt, and also the leading cases in the United States courts and the various state courts.

"The Supreme Court has no appellate juris-

diction over or supervisory power over the proceedings of the legislature in a matter within the constitutional jurisdiction of that body." *Falvey v. Massing*, 7 Wis. 630.

The case of *Burdett v. Abbot*, 14 East. 1, determined in 1811 in the King's Bench, sets the precedent that proceedings of Parliament cannot be attacked, even collaterally in a law court.

The facts of this case were that Burdett, a member of Parliament, was summoned to the bar of the House for libelous statements made in his newspaper. He refused to obey the summons of Parliament. The House then found him guilty of contempt and ordered the speaker to issue his warrant to commit him to the Tower of London. Accordingly the speaker issued his warrant and commitment and placed both in the hands of the sergent-at-arms, to forthwith take Burdett into custody and place him in the Tower.

Burdett sued Abbott, the speaker, in the Court of King's Bench, for damages for the trespass and assault and battery. Abbott pleaded the general issue and, by a special plea, pleaded the speaker's warrant and commitment for contempt of the House of Commons.

Burdett demurred to the special plea, and in the argument of the case insisted that the matter set up in the plea should not bar his action, and furthermore that the court should examine the facts set up in the pleas and pass upon the question as to whether or not they were such libels as to justify the trespass.

The court, speaking through Lord Ellenborough, C. J., asserted the principle that a law court had no right to pass judgment on the facts which the House of Commons deemed to be libelous, as the House of Commons had already passed on that question, and their decision was conclusive, in the same manner as the decision of any court on a question of contempt. And while their decision as to what was libelous might not

conform to the rules of the common law, yet the House of Commons had determined that it was according to the rules of Parliament, and that was binding upon all judicial tribunals, and therefore they dismissed the demurrer and sustained the plea in bar made by the defendant.

Since the case of *Burdett v. Abbott*, 14 East. 1, the case of *Stockdale v. Hansard*, 9 Ad. & E. 2, is sometimes quoted as reversing the doctrine laid down in *Burdett v. Abbott*. But a closer examination of the decision shows that all this case holds is that the House of Commons was treating of a subject not within its jurisdiction, and the principle is still upheld that when Parliament is treating a subject within its jurisdiction a judicial tribunal, neither directly or collaterally will inquire into or supervise the proceedings by which the legislative body reached its final judgment.

We respectfully submit that for the above reasons the Supreme Court should be reversed.

Respectfully submitted,

MARTIN P. DEVLIN,
Prosecutor.

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MARTIN LUTHER

Protestant

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11

New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,
Defendant in Error,
vs.
GEORGE M. BREWSTER and WALTER
SCOTT,
Plaintiffs in Error.

} Writ of
Error to
Supreme
Court. 10

WRIT OF ERROR.

(Filed April 11, 1916.)

NEW JERSEY, ss.

The State of New Jersey to the Chief Justice and
other Justices of our Supreme Court of
[L. s.] Judicature—Greeting: 20

Because in the record and proceedings,
and also in the giving of judgment in a certain plaint
which was in our Supreme Court of Judicature, before
you, between the State of New Jersey, defendant in
error therein, and George M. Brewster, plaintiff in error
therein, upon a certain indictment against the said
George M. Brewster, late of the Village of Hackensack,
County of Bergen and State of New Jersey, for wil-
fully neglecting and refusing to appear in obedience to
a summons and writ of subpœna and refusing to be 30
sworn and refusing to be affirmed, manifest error hath
intervened, to the great damage of the said the State of
New Jersey, defendant in error as aforesaid, as by its
complaint we are informed, we being willing that the
error, if any there be, should in due manner be cor-
rected and full and speedy justice be done to the par-
ties aforesaid in this behalf, do command you, that if
judgment be thereupon given, then you send distinctly

and openly, under your seal, the record and proceedings and plaint aforesaid, and also including the entire record of the proceedings had upon the trial of said cause, with all things touching and concerning the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the twelfth day of April next, together with this writ, that the record and proceedings aforesaid being inspected we may
 10 cause to be done thereupon for correcting that error, what of right and according to law and custom of the State of New Jersey ought to be done.

Witness Edwin Robert Walker, our Chancellor and presiding judge of our Court of Errors and Appeals, at Trenton, the twenty-fourth day of March, nineteen hundred and sixteen.

THOMAS F. MARTIN,

Clerk.

20 MARTIN P. DEVLIN,

Attorney.

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

30

WM. S. GUMMERE, *C. J.*

WRIT OF ERROR.

(Filed April 11, 1916.)

NEW JERSEY, *ss.*

The State of New Jersey to the Chief Justice and other Justices of our Supreme Court of
 [L. s.] Judicature—Greeting:
 Because in the record and proceedings,

and also in the giving of judgment in a certain plaint which was in our Supreme Court of Judicature, before you, between the State of New Jersey, defendant in error therein, and Walter Scott, plaintiff in error therein, upon a certain indictment against the said Walter Scott, late of the Village of Hackensack, County of Bergen and State of New Jersey, for wilfully neglecting and refusing to appear in obedience to a summons and writ of subpœna and refusing to be sworn and refusing to be affirmed, manifest error hath intervened, to the great damage of the said the State of New Jersey, defendant in error as aforesaid, as by its complaint we are informed, we being willing that the error, if any there be, should in due manner be corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, then you send distinctly and openly, under your seal, the record and proceedings and plaint aforesaid, and also including the entire record of the proceedings had upon the trial of said cause, with all things touching and concerning the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the twelfth day of April next, together with this writ, that the record and proceedings aforesaid being inspected we may cause to be done thereupon for correcting that error, what of right and according to law and custom of the State of New Jersey ought to be done.

Witness Edwin Robert Walker, our Chancellor and presiding judge of our Court of Errors and Appeals, at Trenton, the twenty-fourth day of March, nineteen hundred and sixteen.

THOMAS F. MARTIN,
Clerk.

MARTIN P. DEVLIN,
Attorney.

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

10

WM. S. GUMMERE, C. J.

WRIT OF ERROR.

NEW JERSEY, ss.:

To Erwin E. Marshall, Esquire, Judge of
[L. s.] the Court of Quarter Sessions of the
County of Mercer:

20 Because in the record and proceedings, and also in giving of judgment upon a certain indictment against George M. Brewster, late of the Village of Hackensack, County of Bergen and State of New Jersey, for wilfully neglecting and refusing to appear in obedience to a summons and writ of subpœna, and refusing to be sworn and refusing to be affirmed.

30 *Pro ut* the said indictment and the several counts therein, whereof, before you, he hath been indicted, and is thereof convicted by a certain jury of the county taken between the State of New Jersey and the said George M. Brewster, as it is said, manifest error hath intervened to the great damage of the said George M. Brewster as from his complaint we have received information, 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 George M. Brewster, command you that if judgment be thereon given, then that you distinctly and openly send, under your seal, the entire record and proceedings aforesaid, with all things touching the same to our Justices of

our Supreme Court of the State of New Jersey, on the twenty-sixth day of May instant 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 law ought to be done.

Witness, William S. Gummere, our Chief Justice, at Trenton aforesaid, the sixth day of May, A. D. 10 1915.

WM. C. GEBHARDT,
Clerk.

MACKAY & MACKAY,
Attorneys.

RETURN.

20

(Filed May 25, 1915.)

MERCER COUNTY, to wit:

Be it remembered, that at a Court of Oyer and Terminer, holden at Trenton, in and for the said County of Mercer, on the third Tuesday of October, in the year of our Lord one thousand nine hundred and fourteen, before the Honorable Thomas W. Trenchard, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and the Honorable Frederick W. Gnichtel, Judge of the Court of Common Pleas, in and for the said county, according to the form of the statute in such case made and provided, by the oath of Fred J. Pittenger, Frederick Scott, Elmer Locke, August F. Treptow, Gustav Wagner, Sr., William J. Blackwood, Max K. Bash, John R. Hendrickson, William H. Blackwell, Emanuel Hoffman, Rodman P. Henderson, Isaac Goldberg, Griffith J. Edwards, James H. Anderson, Herbert Sinclair, Charles P. Field, Harry F. Smith, Frank E. Pierce, Foster C. 30

Griffith, Frank J. Clark, James I. Beatty, Philip Johnson and Carl Smith, good and lawful men of the said County of Mercer, duly summoned, and then and there sworn, and charged to inquire for the State of New Jersey, in and for the body of the said County of Mercer.

It is presented in manner and form following, that
10 is to say:

The bills herewith presented are true bills.

HARRY F. SMITH,

Foreman.

(Endorsed):

Mercer Oyer and Terminer. Caption to Indictments. October Term, 1914. Filed Nov. 11th, 1914. Geo. R. Robbins, Clerk.

20

Mercer Oyer and Terminer.

October Term, A. D. 1914.

MERCER COUNTY, to wit:

The grand inquest of the State of New Jersey, in and for the body of the County of Mercer, upon their respective oath Present, That George M. Brewster, late of the City of Trenton in the said County of Mercer,
30 on the fifth day of December, in the year of our Lord nineteen hundred and fourteen, with force and arms, at the City of Trenton aforesaid, in the County aforesaid, and within the jurisdiction of this Court, was summoned to appear before the Joint Appropriations Committee of the Legislature of the State of New Jersey for the year 1914, to testify in an investigation and inquiry of the financial needs of the department of education and department of public roads and the institutions under the department of charities and corrections and other departments and commissions and

new sources of public revenue. That the said Joint Appropriations Committee of the Legislature of the State of New Jersey for the year 1914 was composed of the Committee on Appropriations of the Senate, and the Committee on Appropriations of the House of Assembly for the said year of 1914; that the Committee on Appropriations of the Senate was duly appointed on the thirteenth day of 10 January, 1914, by the Honorable John Webley Slocum, the President of the Senate for the year 1914, and was composed of the following duly elected and qualified Senators, to wit: the Honorable Charles O'Connor Hennessy, the Honorable Samuel T. Munson, the Honorable William E. Ramsay, and the Honorable William W. Smalley; and that the Committee on Appropriations of the House of Assembly was duly appointed on the thirteenth day of January, 1914, by the Honorable Azariah M. Beekman, speaker of the 20 House of Assembly for the year 1914, and was composed of the following duly elected and qualified Assemblymen, to wit: the Honorable Clinton E. Fisk, the Honorable Henry T. Kays, the Honorable William A. Leonard, the Honorable William E. Mount and the Honorable Emerson L. Richards.

That the said Joint Appropriations Committee of the Legislature of the State of New Jersey for the year 1914, composed of the said Committee on Appropriations of the Senate and the said Committee on Appropriations of the House of Assembly met on the 30 twenty-ninth day of June at the State House in the City of Trenton, organized forthwith and duly appointed the said Charles O'Connor Hennessy Chairman of the said the Joint Appropriations Committee of the Legislature of the State of New Jersey for the year 1914, and duly appointed Edward J. Hart, Secretary of the said the Joint Appropriations Committee of the Legislature of the State of New Jersey for the year 1914, and met from day to day thereafter to investi-

gate the financial needs of the Department of Education and Department of Public Roads and institutions under the Department of Charities and Corrections and other departments and commissions and new sources of public revenue, pursuant to a joint resolution passed by the Legislature of the State of New Jersey, for the year 1914, entitled, "Joint Resolution
10 Authorizing the Committee on Appropriations of the Legislature of nineteen hundred and fourteen to inquire into the financial needs of the Department of Education, Department of Public Roads, the institutions under the Department of Charities and Corrections, or other departments or commissions, and into any new sources of public revenue," of the tenor and purport following, to wit:

"Whereas, It has been made evident to the Joint Committee on Appropriations of the Legislature of nineteen
20 hundred and fourteen that there is a constant growth of the financial needs of the established departments and institutions of the State as shown by requests for increased appropriations from year to year, these demands having particular relation to the Departments of Education and Public Roads, and to the institutions under the administration of the Department of Charities and Corrections; and

"Whereas, It is desirable that there should be an investigation undertaken, with more deliberation than
30 is possible during the legislative session of the question of new sources of State revenue, and of the possible curtailment of expenditures in certain directions; therefore,

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

"1. The Joint Appropriations Committee of the Legislature for the year nineteen hundred and fourteen be and they are hereby authorized and empowered to make investigations of the financial needs of the Department of Education, Department of Public Roads,

the institutions under the Department of Charities and Corrections or other departments or commissions, and of any new sources of public revenue, and to report to the next session of the Legislature. The said committee shall have power to issue subpoenas for the attendance of witnesses.

"2. The said committee shall have power to sit after the adjournment of the Legislature at any place in this State which they may designate. 10

"3. The sum of three thousand dollars, or so much thereof as may be necessary, be and the same is hereby appropriated for the purpose of carrying out the provisions of this joint resolution.

"4. This joint resolution shall take effect immediately.

"Approved April 9, 1914."

That the said, the Joint Appropriations Committee 20
of the Legislature of the State of New Jersey for the
year 1914, duly issued and directed to the said George
M. Brewster its summons and writ of subpoena com-
manding the summoning the said George M. Brewster
to personally be and appear before the said, the Joint
Appropriations Committee of the Legislature of the
State of New Jersey for the year 1914, on Saturday,
the fifth day of December, A. D. 1914, at eleven o'clock
in the forenoon of said day at the State House in the
Senate Chamber in the City of Trenton and State of 30
New Jersey, to testify and to give evidence of all and
singular what he, the said George M. Brewster, knew
relating to the matters under investigation by the said
the Joint Appropriations Committee of the Legisla-
ture of the State of New Jersey for the year 1914, to
wit, of the financial needs of the Department of Educa-
tion and Department of Public Roads and the institu-
tions under the Department of Charities and Correc-
tions and other departments and commissions and new
sources of public revenue; that the said summons and

writ of subpœna was, on the third day of December, A. D. 1914, legally and duly served on the said George M. Brewster personally, who then and there had notice to appear and give evidence according to the exigency of said summons and writ of subpœna.

That the said the Joint Appropriations Committee of the Legislature of the State of New Jersey for the
10 year 1914 met at the said time and place mentioned for the hearing of the evidence or witnesses, including the evidence of the said George M. Brewster relating to the said matters under investigation.

That the said George M. Brewster, summoned to appear before the said the Joint Appropriations Committee of the Legislature of the State of New Jersey for the year 1914, as aforesaid, did wilfully neglect and refuse to appear in obedience to the said summons and writ of subpœna and did refuse to be sworn and did re-
20 fuse to be affirmed, 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.

MARTIN P. DEVLIN,
Prosecutor of the Pleas.

(Endorsed) :

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Mercer Oyer and Terminer

October Term, A. D. 1914.

The State

v.

10

George M. Brewster

Indictment

For

Refusing and neglecting to appear and give evidence
in a legislative investigation.

Martin P. Devlin,
Prosecutor of the Pleas

20

A TRUE BILL.

Harry F. Smith, Foreman.

Plea, N. G., Dec. 22, 1914.

Trial day, April 26, 1915, and found Guilty
as charged.

30

Bail in \$2,000.00

By Standard Fidelity Insurance Co., Jersey
City, N. J.

JUDGMENT.

And afterwards, to wit: On Monday, the twenty-first day of December, in the year of our Lord nineteen hundred and fourteen, at a session of the said Court of Oyer and Terminer as aforesaid being as yet of the Term of October aforesaid, the said indictment was by the said Court of Oyer and Terminer handed, set and transmitted to the Court of Quarter Sessions of the said County for trial according to the form of the statute in such case made and provided, and a rule to that effect then and there duly made and entered upon the record of each of the said Courts respectively; and afterwards, to wit: On the twenty-second day of December, in the year of our Lord nineteen hundred and fourteen, at a session of the said Court of Quarter Sessions in and for the said County of Mercer of the Term of October of the year of our Lord nineteen hundred and fourteen, before the Honorable Frederick W. Gnichtel, Judge of the Court of Quarter Sessions at Trenton, in the County of Mercer aforesaid, cometh the said George M. Brewster in his proper person according to the condition of the recognizance by himself and his pledges in that behalf heretofore made and now here, touching the premises in the said indictment above specified and charged upon him being asked in what manner he will acquit himself thereof, he says that he is not guilty thereof, and of this he puts himself upon the Country, and Martin P. Devlin, Prosecutor of the Pleas of the said County of Mercer, who prosecutes for the state in this behalf, does likewise the same, therefore let the said indictment be continued until a jury thereupon come here before the said Judge aforesaid, at Trenton, in the County of Mercer. Wherefore let a jury thereupon come, to wit: On Monday, the twenty-sixth day of April, in the year of our Lord nineteen hundred and fifteen of the

January Term, nineteen hundred and fifteen, before the Honorable Erwin E. Marshall, Judge of the Court of Quarter Sessions in and for the said County, twelve good and lawful men of the County of Mercer aforesaid, by whom the truth of the matter may be better known and who are not of kin to the said George M. Brewster to recognize upon their oaths whether the said George M. Brewster be guilty of the misdemeanor in the indictment aforesaid above specified or not guilty, because as well the said Martin P. Devlin who prosecutes for the State in this behalf as the said George M. Brewster have put themselves upon the said jury and the jurors of the said jury by J. Warren Fleming, Sheriff of the said County of Mercer, for this purpose empanelled and returned agreeably to the statute in such case made and provided, to wit: Evans M. Stetser, Theodore P. Reed, George E. Forgas, Franklin M. Seeds, Price Henderson, Nicholas Marnel, Edward Skillman, William Woolverton, Harley W. Bozarth, Samuel S. Skirm, J. Edward Blackwell, Samuel V. Leigh, who having been elected, tried and sworn to speak the truth of and concerning the premises upon their oath, say that the said George M. Brewster is guilty of the misdemeanor aforesaid on him above charged in the form aforesaid and as by the indictment aforesaid is above supposed against him, and thereupon the said George M. Brewster was remanded for sentence until Friday, the seventh day of May, nineteen hundred and fifteen, at which last mentioned day the said George M. Brewster being present before the said Court of Quarter Sessions, and it being forthwith demanded of the said George M. Brewster if he hath or knoweth of anything to say wherefore the said Judge as aforesaid here ought not upon the premises and verdict aforesaid to proceed to judgment, against him, who nothing further saith unless as he before had said, whereupon all and singular the premises being seen and by the said Judge here fully understood it is considered

and adjudged by the Court here that the said George M. Brewster do pay a fine of two hundred dollars and the costs of this prosecution.

State of New Jersey, }
County of Mercer, } *ss.*

10 I, George R. Robbins, Clerk of the Court of Oyer and Terminer and Clerk of the Court of Quarter Sessions, do hereby certify that the foregoing are the entire record and proceedings and judgment in the case of The State of New Jersey *vs.* George M. Brewster, as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand and official seal of said Courts
[SEAL.] this twenty-second day of May, A. D. 1915.

20 GEO. R. ROBBINS,
Clerk.

The entire record and proceedings of the indictment, plea, trial, conviction and judgment whereof mention is within made with all things concerning the same to the Supreme Court of Judicature of New Jersey within specified at the day and place within contained we certify in a certain schedule to this writ annexed
30 as we are commanded.

ERWIN E. MARSHALL,
Judge.

WRIT OF ERROR.

NEW JERSEY, *ss.*:

To Erwin E. Marshall, Esquire, Judge of
[SEAL.] the Court of Quarter Sessions of the
County of Mercer:

Because in the record and proceedings, and also in

giving of judgment upon a certain indictment against Walter Scott, late of the Village of Hackensack, County of Bergen and State of New Jersey, for wilfully neglecting and refusing to appear in obedience to a summons and writ of subpœna, and refusing to be sworn and refusing to be affirmed.

Pro ut the said indictment and the several counts therein, whereof, before you, he hath been indicted, 10
and is thereof convicted by a certain jury of the county taken between the State of New Jersey and the said Walter Scott, as it is said, manifest error hath intervened to the great damage of the said Walter Scott as from his complaint we have received information, 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 Walter Scott, command you that if judgment be thereon given, then that you distinctly and openly send, under 20
your seal, the entire record and proceedings aforesaid, with all things touching the same to our Justices of our Supreme Court of the State of New Jersey, on the twenty-sixth day of May instant 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 law ought to be done.

Witness, William S. Gummere, our Chief Justice,
at Trenton aforesaid, the sixth day of May, A. D. 30
1915.

WM. C. GEBHARDT,

Clerk.

MACKAY & MACKAY,
Attorneys.

RETURN.

(Filed May 25, 1915.)

MERCER COUNTY, to wit:

10 Be it remembered, that at a Court of Oyer and Terminer, holden at Trenton, in and for the said County of Mercer, on the third Tuesday of October, in the year of our Lord one thousand nine hundred and fourteen, before the Honorable Thomas W. Trenchard, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and the Honorable Frederick W. Gnichtel, Judge of the Court of Common Pleas, in and for the said county, according to the form of the statute in such case made and provided, by the oath of Fred J. Pittenger, Frederick Scott, Elmer
 20 Locke, August F. Treptow, Gustav Wagner, Sr., William J. Blackwood, Max K. Bash, John R. Hendrickson, William H. Blackwell, Emanuel Hoffman, Rodman P. Henderson, Isaac Goldberg, Griffith J. Edwards, James H. Anderson, Herbert Sinclair, Charles P. Field, Harry F. Smith, Frank E. Pierce, Foster C. Griffith, Frank J. Clark, James I. Beatty, Philip Johnson and Carl Smith, good and lawful men of the said County of Mercer, duly summoned, and then and there
 30 sworn, and charged to inquire for the State of New Jersey, in and for the body of the said County of Mercer.

It is presented in manner and form following, that is to say:

The bills herewith presented are true bills.

HARRY F. SMITH,

Foreman.

(Endorsed):

Mercer Oyer and Terminer. Caption to Indictments. October Term, 1914. Filed Nov. 11th, 1914. Geo. R. Robbins, Clerk.

Mercer Oyer and Terminer.

October Term, A. D. 1914.

MERCER COUNTY, to wit:

The grand inquest of the State of New Jersey, in and for the body of the County of Mercer, upon their 10
respective oath Present, That Walter Scott, late of the City of Trenton in the said County of Mercer, on the fifth day of December, in the year of our Lord nineteen hundred and fourteen, with force and arms, at the City of Trenton aforesaid, in the County aforesaid, and within the jurisdiction of this Court, was summoned to appear before the Joint Appropriations Committee of the Legislature of the State of New Jersey for the year 1914, to testify in an investigation and inquiry of the financial needs of the department of 20
education and department of public roads and the institutions under the department of charities and corrections and other departments and commissions and new sources of public revenue. That the said the Joint Appropriations Committee of the Legislature of the State of New Jersey for the year 1914 was composed of the Committee on Appropriations of the Senate, and the Committee on Appropriations of the House of Assembly for the said year of 1914; 30
that the Committee on Appropriations of the Senate was duly appointed on the thirteenth day of January, 1914, by the Honorable John Webley Slocum, the President of the Senate for the year 1914, and was composed of the following duly elected and qualified Senators, to wit: the Honorable Charles O'Connor Hennessy, the Honorable Samuel T. Munson, the Honorable William E. Ramsay, and the Honorable William W. Smalley; and that the Committee on Appropriations of the House of Assembly was duly appointed on the thirteenth day of January, 1914, by

the Honorable Azariah M. Beekman, speaker of the House of Assembly for the year 1914, and was composed of the following duly elected and qualified Assemblymen, to wit: the Honorable Clinton E. Fisk, the Honorable Henry T. Kays, the Honorable William A. Leonard, the Honorable William E. Mount and the Honorable Emerson L. Richards.

- 10 That the said the Joint Appropriations Committee of the Legislature of the State of New Jersey for the year 1914, composed of the said Committee on Appropriations of the Senate and the said Committee an Appropriations of the House of Assembly met on the twenty-ninth day of June at the State House in the City of Trenton, organized forthwith and duly appointed the said Charles O'Connor Hennessy Chairman of the said the Joint Appropriations Committee of the Legislature of the State of New Jersey for the
- 20 year 1914, and duly appointed Edward J. Hart, Secretary of the said the Joint Appropriations Committee of the Legislature of the State of New Jersey for the year 1914, and met from day to day thereafter to investigate the financial needs of the Department of Education and Department of Public Roads and institutions under the Department of Charities and Corrections and other departments and commissions and new sources of public revenue, pursuant to a joint resolution passed by the Legislature of the State of New
- 30 Jersey, for the year 1914, entitled, "Joint Resolution Authorizing the Committee on Appropriations of the Legislature of nineteen hundred and fourteen to inquire into the financial needs of the Department of Education, Department of Public Roads, the institutions under the Department of Charities and Corrections, or other departments or commissions, and into any new sources of public revenue," of the tenor and purport following; to wit:

"Whereas, It has been made evident to the Joint Committee on Appropriations of the Legislature of nineteen

hundred and fourteen that there is a constant growth of the financial needs of the established departments and institutions of the State as shown by requests for increased appropriations from year to year, these demands having particular relation to the Departments of Education and Public Roads, and to the institutions under the administration of the Department of Charities and Corrections; and

10

“Whereas, It is desirable that there should be an investigation undertaken, with more deliberation than is possible during the legislative session of the question of new sources of State revenue, and of the possible curtailment of expenditures in certain directions; therefore,

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

“1. The Joint Appropriations Committee of the Legislature for the year nineteen hundred and fourteen 20
be and they are hereby authorized and empowered to make investigations of the financial needs of the Department of Education, Department of Public Roads, the institutions under the Department of Charities and Corrections or other departments or commissions, and of any new sources of public revenue, and to report to the next session of the Legislature. The said committee shall have power to issue subpoenas for the attendance of witnesses.

“2. The said committee shall have power to sit after 30
the adjournment of the Legislature at any place in this State which they may designate.

“3. The sum of three thousand dollars, or so much thereof as may be necessary, be and the same is hereby appropriated for the purpose of carrying out the provisions of this joint resolution.

“4. This joint resolution shall take effect immediately.

“Approved April 9, 1914.”

That the said, the Joint Appropriations Committee of the Legislature of the State of New Jersey for the year 1914, duly issued and directed to the said Walter Scott its summons and writ of subpœna commanding the summoning the said Walter Scott to personally be and appear before the said, the Joint Appropriations Committee of the Legislature of the State of New Jersey for the year 1914, on Saturday, the fifth day of December, A. D. 1914, at eleven o'clock in the forenoon of said day at the State House in the Senate Chamber in the City of Trenton and State of New Jersey, to testify and to give evidence of all and singular what he, the said Walter Scott, knew relating to the matters under investigation by the said the Joint Appropriations Committee of the Legislature of the State of New Jersey for the year 1914, to wit, of the financial needs of the Department of Education and Department of Public Roads and the institutions under the Department of Charities and Corrections and other departments and commissions and new sources of public revenue; that the said summons and writ of subpœna was, on the third day of December, A. D. 1914, legally and duly served on the said Walter Scott, personally, who then and there had notice to appear and give evidence according to the exigency of said summons and writ of subpœna.

That the said the Joint Appropriations Committee of the Legislature of the State of New Jersey for the year 1914 met at the said time and place mentioned for the hearing of the evidence or witnesses, including the evidence of the said Walter Scott relating to the said matters under investigation.

That the said Walter Scott, summoned to appear before the said the Joint Appropriations Committee of the Legislature of the State of New Jersey for the year 1914, as aforesaid, did wilfully neglect and refuse to appear in obedience to the said summons and writ of subpœna and did refuse to be sworn and did re-

fuse to be affirmed, 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.

MARTIN P. DEVLIN,
Prosecutor of the Pleas.

(Endorsed) :

155

10

Mercer Oyer and Terminer

October Term, A. D. 1914.

The State

v.

Walter Scott

20

Indictment

For

Refusing and neglecting to appear and give evidence in a legislative investigation.

Martin P. Devlin,
Prosecutor of the Pleas

A TRUE BILL.

Harry F. Smith, Foreman.

30

Plea, N. G., Dec. 22, 1914.

Trial day, April 26, 1915, and found Guilty as charged.

Bail in \$2,000.00

By Standard Fidelity Insurance Co., Jersey
City, N. J.

JUDGMENT.

And afterwards, to wit: On Monday, the twenty-first day of December, in the year of our Lord nineteen hundred and fourteen, at a session of the said Court of Oyer and Terminer as aforesaid being as
10 yet of the Term of October aforesaid, the said indictment was by the said Court of Oyer and Terminer handed, set and transmitted to the Court of Quarter Sessions of the said County for trial according to the form of the statute in such case made and provided, and a rule to that effect then and there duly made and entered upon the record of each of the said Courts respectively; and afterwards, to wit: On the twenty-second day of December, in the year of our Lord
20 nineteen hundred and fourteen, at a session of the said Court of Quarter Sessions in and for the said County of Mercer of the Term of October of the year of our Lord nineteen hundred and fourteen, before the Honorable Frederick W. Gnichtel, Judge of the Court of Quarter Sessions at Trenton, in the County of Mercer aforesaid, cometh the said Walter Scott in his proper person according to the condition of the recognizance by himself and his pledges in that behalf heretofore made and now here, touching the premises in the said indictment above specified and charged upon him being
30 asked in what manner he will acquit himself thereof, he says that he is not guilty thereof, and of this he puts himself upon the Country, and Martin P. Devlin, Prosecutor of the Pleas of the said County of Mercer, who prosecutes for the state in this behalf, does likewise the same, therefore let the said indictment be continued until a jury thereupon come here before the said Judge aforesaid, at Trenton, in the County of Mercer. Wherefore let a jury thereupon come, to wit: On Monday, the twenty-sixth day of April, in the year of our Lord nineteen hundred and fifteen of the

January Term, nineteen hundred and fifteen, before the Honorable Erwin E. Marshall, Judge of the Court of Quarter Sessions in and for the said County, twelve good and lawful men of the County of Mercer aforesaid, by whom the truth of the matter may be better known and who are not of kin to the said Walter Scott to recognize upon their oaths whether the said Walter Scott be guilty of the misdemeanor in 10
the indictment aforesaid above specified or not guilty, because as well the said Martin P. Devlin who prosecutes for the State in this behalf as the said Walter Scott have put themselves upon the said jury and the jurors of the said jury by J. Warren Fleming, Sheriff of the said County of Mercer, for this purpose empanelled and returned agreeably to the statute in such case made and provided, to wit: Evans M. Stetser, Theodore P. Reed, George E. Forgas, Franklin M. Seeds, Price Henderson, Nicholas Marnel, Edward 20
Skillman, William Woolverton, Harley W. Bozarth, Samuel S. Skirm, J. Edward Blackwell, Samuel V. Leigh, who having been elected, tried and sworn to speak the truth of and concerning the premises upon their oath, say that the said Walter Scott is guilty of the misdemeanor aforesaid on him above charged in the form aforesaid and as by the indictment aforesaid is above supposed against him, and thereupon the said Walter Scott was remanded for sentence 30
until Friday, the seventh day of May, nineteen hundred and fifteen, at which last mentioned day the said Walter Scott being present before the said Court of Quarter Sessions, and it being forthwith demanded of the said Walter Scott if he hath or knoweth of anything to say wherefore the said Judge as aforesaid here ought not upon the premises and verdict aforesaid to proceed to judgment, against him, who nothing further saith unless as he before had said, whereupon all and singular the premises being seen and by the said Judge here fully understood it is considered

and adjudged by the Court here that the said Walter Scott do pay a fine of two hundred dollars and the costs of this prosecution.

10 State of New Jersey, }
County of Mercer, } *ss.*

I, George R. Robbins, Clerk of the Court of Oyer and Terminer and Clerk of the Quarter Sessions, do hereby certify that the foregoing are the entire record and proceedings and judgment in the case of The State of New Jersey *vs.* Walter Scott, as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand and official seal of said Courts
20 [SEAL.] this twenty-second day of May, A. D. 1915.
GEO. R. ROBBINS,
Clerk.

The entire record and proceedings of the indictment, plea, trial, conviction and judgment whereof mention is within made with all things concerning the same to the Supreme Court of Judicature of New Jersey within specified at the day and place within contained
30 we certify in a certain schedule to this writ annexed as we are commanded.

ERWIN E. MARSHALL,
Judge.

Mercer County Court of Quarter Sessions.

STATE
 v.
 GEORGE M. BREWSTER AND WAL-
 TER SCOTT.

TESTIMONY.

10

Transcript of proceedings taken in the above entitled cause on Monday, April 26th, 1915, at 10 A. M., before Hon. Edwin E. Marshall, Judge, and a jury, in the Court House, Trenton, New Jersey.

APPEARANCES:

MARTIN P. DEVLIN, ESQ., for the State.
 GILBERT COLLINS, ESQ., and MACKAY
 BROTHERS, ESQS., for the Defendants.

Mr. Devlin: I understand that Judge Collins will admit the minutes of the Assembly and of the Senate as the proof of the appointment of a committee and the membership of the committee. 20

Mr. Collins: I think that the rules of the Senate and of the Assembly should first go in. I object to the offer of any appointment of such committees until the fundamental authority for the appointment of such committees is first proven. It would be a very simple matter for him to offer it, and I object to any proof until he does. 30

The Court: I will admit the minutes.

Mr. Collins: Exception.

Whereupon the defendants, by their counsel, filed a bill of exception, which is hereby allowed and sealed accordingly.

ERWIN E. MARSHALL,
 Judge.

Mr. Devlin: I will read this into the record, reading from the minutes of January 13, 1914, of the Senate, page 13, "The President of the Senate appointed Senators Hennessy, Ramsey, Munson and Smalley, as a Committee on Appropriations." Reading from the minutes of the Assembly of January 13, 1914, page 19, "The Speaker announced the appointment, with other Committees, of the following as members of the Appropriations Committee: Messrs. Kays, Mount, Leonard, Fiske and Richards." We offer the joint resolution as contained in the laws of 1914, and designated as No. 2, page 69.

Mr. Collins: I object on the ground that there has been as yet no proof of the appointment of that Joint Committee on Appropriations. The authenticity of it is admitted, but I object to it as being premature.

Mr. Devlin: We will offer it later.

The Court: That is all right. Take it up later.

CHARLES O'CONNOR HENNESSY, a witness being duly sworn on behalf of the State, testified as follows:

Direct examination by Mr. Devlin:

Q. You were a member of the Senate in 1914, were you not? A. Yes, sir.

Q. And a member of the Appropriations Committee of the Senate? A. Yes, sir.

Q. For the year 1914? A. Yes, sir.

Q. And did that Committee meet to perform its work on appropriations? A. Yes, sir.

Mr. Collins: If the Court please, I don't wish to keep repeating, and I don't think the learned Prosecutor desires me to do so, the objection to proof of any sort touching the work or the actions of a committee on the

grounds that they have not first proved the regular authority of having such a committee. If it may be understood that that general objection at the start shall stand in place of continually repeating it every time a question is asked, I am content, and I don't suppose you will object to that.

Mr. Devlin: No.

10

Q. When the Appropriations Committee met, Senator, what members were present, do you remember?

A. My recollection is that all of the members of the Senate Committee and all of the members of the House Committee were present.

Mr. Collins: I object to the answer. The question was only as to what members of the Senate Committee were present. He was asked if he was a member of the Senate Committee and he was asked what members were present and not whether there were some other gentlemen from the Assembly present. I think the two Committees must work separately. Isn't that a fact?

20

Mr. Devlin: I think they worked together.

Mr. Collins: Then I object to the question on the grounds that the minutes are the best evidence.

Mr. Devlin: I will withdraw the Senator for the present.

30

OWEN W. KITE, a witness being duly sworn on behalf of the State, testified as follows:

Direct examination by Mr. Devlin:

Q. Mr. Kite, you are employed in the Comptroller's office of the State, aren't you? A. Yes, sir.

Q. How long have you been employed there? A. About twenty years.

Q. About twenty years. Were you appointed as Clerk of the Joint Appropriations Committee of the Legislature of 1914?

10 Mr. Collins: I object to the question on the ground that the appointment will best appear by some record, and on the second ground that there has not been a proof of any appointment of any Committee on Appropriations.

The Court: I will admit the question.

Mr. Collins: Exception.

Whereupon the defendants, by their counsel, filed a bill of exceptions, which is hereby allowed and sealed accordingly.

ERWIN E. MARSHALL,

20

Judge.

Q. (Question repeated.) A. As Secretary.

Q. Have you the minutes of that Committee? A. I have.

Q. Let me see them, please. (Minutes produced.) You wrote these minutes yourself? A. Yes, sir.

30

Mr. Devlin: We offer this portion of the minutes, "Trenton, New Jersey, January 26th, 1914. The Appropriations Committee met this day in the Comptroller's office. All members present excepting Mr. Leonard. The Joint Committee organized and on motion of Mr. Kays, Chairman of the House Committee, Senator Hennessy, was elected Chairman of the Joint Committee.

"On motion Owen W. Kite was elected Secretary to the Committee, and John Eilenburg was elected Clerk to the Committee.

"On motion it was decided to meet each Mon-

day afternoon in the Comptroller's office at two o'clock, and to commence the Committee visitations to State Institutions Friday, January 30th, 1914, visiting the Sanitarium for Tuberculous Diseases at Glen Gardner and the Reformatory for Women at Clinton."

Mr. Collins: I object on the same grounds.

The Court—I will admit it.

10

Mr. Collins: Exception.

Whereupon the defendants, by their counsel, filed a bill of exceptions, which is hereby allowed and sealed accordingly.

ERWIN E. MARSHALL,

Judge.

Q. How long have you acted as Secretary to the Appropriations Committee, Mr. Kite? A. Ten or twelve years.

20

Q. Of the Legislature? A. Yes, sir.

Q. You have been Secretary to the only Appropriations Committee of the Legislature, have you

Mr. Collins: Speaking of former years? I object to that as irrelevant.

The Court: Objection sustained.

Q. Your secretaryship expired after the appropriations were all attended to?

30

Mr. Collins: I object to that on the ground that the minutes are the best evidence.

The Court: The objection will be sustained.

Can you show that by the minutes?

The Witness: No, sir, your Honor, I couldn't.

Q. I call attention to the minutes of April 7th, 1914, and ask you, are those the minutes, you wrote them in for that day? A. Yes, sir; I wrote those.

Mr. Devlin: The minutes of April 7th, 1915, contain this item, "For investigation by Joint Committee on Appropriations for the purpose of carrying out provisions of Senate Joint Resolution No. 7, providing that said resolution becomes a law."

10 Mr. Collins: What does "S. B." stand for, what does that mean?

The Witness: Supplemental Bill.

Mr. Devlin: And the minutes here show that the Committee then adjourned *sine die*.

Q. Signed by you, so that your work as Clerk of that Committee expired at that time? A. It ceased at that meeting; yes, sir.

No Cross Examination.

20 EDWARD J. HART, a witness being duly sworn on behalf of the State, testified as follows:

Direct examination by Mr. Devlin:

Q. I show you minutes of the Joint Committee on Appropriations to investigate under the resolution of 1914, and ask you if this is your name as Clerk of the Committee? A. Yes, sir.

Q. Were those minutes written by you?

30 Mr. Collins: Typewritten?

Mr. Devlin: Yes.

Mr. Collins: They were prepared by him?

Mr. Devlin: Prepared by him. I offer these minutes in evidence, "Monday, June 1st, 1914 —"

Mr. Collins: Before you begin to read them, this minute appears, if your Honor will examine it, on June 1st, 1914, and begins, "In response to a call issued by Chairman Hennessy a meeting of the Joint Appropriations Com-

mittee of the Legislature of 1914 was held at 13 Central Avenue, Newark, at noon on the above date." I object to any minutes of that character, or anything of that character, on the ground that it has already been proven that the Appropriations Committee, the Joint Committee, if it is to be so called, adjourned *sine die*—their work was done. They adjourned *sine die* April 7th. They can't revive themselves. No new committee was ever appointed. I don't understand how these minutes can possibly be relevant to this issue. 10

Mr. Devlin: They adjourned so far as the work of appropriations was concerned.

Mr. Collins: They adjourned *sine die*.

Mr. Devlin: And organized for the purpose of conducting this investigation, as, under this resolution of the Legislature, they were empowered to do. There is no question in my judgment that the minutes are admissible for that purpose. 20

The Court: I will admit them.

Mr. Collins: Exception.

Whereupon the defendants, by their counsel, filed a bill of exceptions, which is hereby allowed and sealed accordingly.

ERWIN E. MARSHALL,

Judge. 30

Mr. Devlin (reading): "In response to a call issued by Chairman Hennessy a meeting of the Joint Appropriations Committee of the Legislature of 1914 was held at 13 Central Avenue, Newark, at noon on the above date. Present, Senators Hennessy, Ramsey, Smalley, and Assemblymen Leonard and Richards.

"Chairman Hennessy stated the general purpose of the meeting was to be to have an in-

formal discussion of the future work of the Committee, and incidentally to join with the Executive Committee of the State Charities Aid Association in a discussion of the needs of the charitable and correctionable institutions of the State.

10 "Chairman Hennessy called attention to the possible need of the employment of a stenographer in case the Committee should need thereafter to take testimony. He suggested the name of Mr. Richard A. Porter, of Trenton, and on motion of Senator Ramsey, seconded by Assemblyman Leonard, and unanimously carried, Mr. Porter was designated as the stenographer of the Committee, subject to a compensation to be fixed hereafter. Mr. Edward J. Hart was, on motion of Mr. Hennessy, seconded by Assemblyman Leonard, designated as the Clerk of the Committee at a compensation of \$10.00 per week."

20

After attending to other business the Committee adjourned at 4:30 P. M., subject to the call of the Chair. We offer that in evidence, that portion of the minutes.

30 Mr. Collins: I object on the ground stated and also on the ground that it doesn't appear that all the members of the so-called Committee were notified to be present.

The Court: Objection overruled and exception allowed.

Whereupon the defendants, through their counsel, filed a bill of exceptions, which is hereby allowed and sealed accordingly.

ERWIN E. MARSHALL,
Judge.

Mr. Devlin: The Committee again met on

June 10th. Present, Senators Hennessy, Ramsey, Assemblymen Leonard and Richards, at Palisades Park.

The Committee again met on June 27th at the Marlborough-Blenheim Hotel, Atlantic City, having present Senators Hennessy, Ramsey, Assemblymen Leonard, Fiske, Richards and State Auditor, Mr. Nevin. The Committee then adjourned at 8:15 P. M. and again met on August 4th at the office of Assemblyman Fiske, 15 Exchange Place, Jersey City. There were present Senators Hennessy, Ramsey and Assemblymen Kays, Mount, Fiske and Leonard. Letters were received from Senator Smalley and Assemblyman Richards stating that they were unable to attend. After attending to business, the Committee adjourned, subject to the call of the chair. 10

Mr. Collins: The same objection goes to that, and I suppose there will be the same ruling. Your Honor will note an exception. 20

The Court—The same ruling.

Whereupon the defendants, by their counsel, filed a bill of exception, which is hereby allowed and sealed accordingly.

ERWIN E. MARSHALL,
Judge. 30

Q. Are the minutes of the December meeting in this book of the Committee? A. No, they are not.

Q. Who has them, the stenographer? A. Yes, sir.

Q. Mr. Porter? A. Yes, sir.

Mr. Collins: The last in that book, Mr. Devlin, is of what date?

Mr. Devlin: August 4th, 1914.

Mr. Collins: They are the last minutes in the book, is that right?

The Witness: Yes, sir.

Q. You were designated to serve subpoenas on Walter Scott and George M. Brewster?

10 Mr. Collins: I object to that question on the ground that it is leading, and on the ground that it isn't the best evidence. If he was designated it must appear in some official entry. It would appear on the minutes.

Mr. Devlin: I will withdraw the question.

Q. I show you two subpoenas and ask you if you served copies of those subpoenas on Walter Scott and George M. Brewster, and when and where?

20 Mr. Collins: I object to the question as irrelevant, immaterial and incompetent. There seems to have been no authority for this gentleman to serve subpoenas and no authority to issue any subpoenas.

The Court: I will admit it.

Mr. Collins: Exception.

Whereupon the defendants, by their counsel, filed a bill of exceptions, which is hereby allowed and sealed accordingly.

ERWIN E. MARSHALL,
Judge.

30 A. Yes, sir; I served them, Mr. Scott at Hackensack and Mr. Brewster at Tenafly.

Mr. Collins: Both in Bergen County?

The Witness: Both in Bergen County; yes, sir.

Q. Do you remember what date you served them?

A. The second or third of December, I am not clear about the date.

Q. But you served them. I call your attention to

the date of the subpoena, that may aid you. The date of the subpoena does that aid you in refreshing your memory as to the date of service? A. I don't remember whether I served them on the same day they were drawn or not.

Q. Who directed you to prepare and serve the subpoenas?

Mr. Collins: I object to that as irrelevant 10 and incompetent.

The Court: You may answer the question.

Mr. Collins: Exception.

Whereupon the defendants, by their counsel, filed a bill of exceptions, which is hereby allowed and sealed accordingly.

ERWIN E. MARSHALL,

Judge.

A. The Chairman of the Committee, Senator Hen- 20 nassy.

Q. He directed you to prepare them and to serve them? A. Yes, sir.

Q. Acting as Chairman of that Committee? A. Yes, sir.

Mr. Collins: I object to that as drawing for a conclusion. Perhaps the objection came too late.

Q. Were you present at the Committee meeting on 30 the fifth of December when the subpoenas were returned?

Mr. Collins: It is objected to on the ground that there doesn't appear to have been any official committee meeting. The minutes would be the best evidence.

The Court: I assume that that will be shown later, and at the present I will admit the question.

Mr. Collins: Exception.

Whereupon the defendants, by their counsel, filed a bill of exceptions, which is hereby allowed and sealed accordingly.

ERWIN E. MARSHALL,
Judge.

A. Yes, sir.

Q. Do you know Mr. Brewster and Mr. Scott as the
10 men you served with subpoenas? A. Yes, sir.

Q. Did they appear at the committee meeting on the fifth of December at the State House in the Senate?

A. No, sir.

Cross-examination by Mr. Collins:

Q. You cannot tell upon what day you served these gentlemen? A. No, sir.

Q. Did you give them any witness fees? A. Yes, sir.

20 Q. How much did you give each of them? A. \$4.75 each.

Q. That is all.

RICHARD A. PORTER, a witness being duly sworn on behalf of the State, testified as follows:

Direct examination by Mr. Devlin:

Q. Mr. Porter, you were the stenographer of the
30 committee? A. I was.

Q. Of the Joint Appropriations Committee in the investigation under this Resolution No. 7 in the Secretary of State's Office, and No. 2 in the Statute Book?

A. Yes, sir.

Q. Were you present at the committee meeting on December 5th? A. Yes, I was.

Q. You have been the stenographer for this committee since what date? A. The first hearing of the committee was June 27th or 28th, and that was my first time to serve as stenographer.

Q. How many hearings did you attend as stenographer?

Mr. Collins: I object to that as immaterial.

Mr. Devlin: I will withdraw the question.

Q. Have you got the minutes of every meeting of that committee that you attended?

Mr. Collins: I object to that. He has the stenographic notes but the minutes are already in. 10

Q. You attended hearings since June 27th? A. I did.

Q. Did you attend every hearing after June 27th?

A. I attended every public hearing from June 27th up until the conclusion of the committee's work.

Q. And Mr. Hart did the private hearing work? 20

A. Mr. Hart was Secretary of the committee.

Q. You were the stenographer? A. I was the stenographer.

Q. You took the minutes, or all the proceedings of the hearings? A. I took all the testimony in the public hearings.

Q. Have you any idea how many hearings you appeared at? A. The committee met for hearings on fourteen occasions, public hearings.

Q. Fourteen occasions? A. Yes.

Q. Between the 27th of June and the 5th of December? A. No; not between those times; between the 27th of June and along about the 10th of January. I think that was the last hearing. 30

Q. Have you any idea how many hearings you had between the 27th of June and the 5th of December?

A. That would be a guess.

Q. You have all those records? A. I have a transcript of all those records.

Q. Have you made the transcript? A. Yes, sir

Q. You haven't got it with you, have you? A. No, sir. There are about fourteen books.

Q. Were you the stenographer acting for the committee on December 5th? A. I was.

Q. Do you know Mr. Mackay, the attorney here? A. Yes, sir.

10 Q. There was a meeting of the committee that day in the State House? A. On the 5th of December; yes.

Q. At 11 o'clock? A. At 11 o'clock.

Q. Now, Mr. Mackay appeared before that committee? A. Yes, sir.

Q. Have you the transcript or the notes of what Mr. Mackay said to that Committee that morning? A. I have.

Q. Produce them and read them.

20 Mr. Collins: Produce them first, I would like to see them.

Transcript produced and handed to Mr. Collins.

Q. Now, will you read the transcript? A. This is a public hearing in the matter of the investigation of the State Road Department by the Appropriations Investigating Committee of the Legislature of 1914. "Senate Chamber, Trenton, December 5th, 1914.

30 "Senator Hennessy: Since the last meeting of the Committee, gentlemen, a subpoena was served upon Mr. George M. Brewster of Tenafly, New Jersey, by direction of the Committee whereby he was required to appear at this session of the Committee, and to produce certain books and papers relating to contracts for the building of certain roads in Bergen County named in the subpoena, which roads were roads improved partly with State funds. The Chair is informed that Mr. Brewster has been advised by his counsel not to respond to the subpoena to-day, and the counsel of Mr. Brewster, Mr. Mackay, is present

and would like to make a statement to the Committee as to the reasons why he advised his client not to respond to the subpœna. I think it is entirely proper that Mr. Mackay be permitted to make that statement. If there be no objection on the part of any member of the Committee I will ask Mr. Mackay to tell the Committee the reasons why his client is not present to-day.

10

“Mr. Mackay: Mr. Chairman and gentlemen, I would like first to say that I also represent another witness who has been subpœnaed, Mr. Scott, I think. Is that correct?”

“Senator Hennessy: Oh, yes. I thank you, Mr. Mackay for reminding the Chair that Mr. Walter Scott, who is Secretary, I believe of the George M. Brewster Construction Company, was also subpœnaed to come here and bring certain books and papers.

“Mr. Mackay: Now, inasmuch as these witnesses 20 are not appearing, I have also advised them that the moneys they received of \$4.75, which doesn't belong to them and I want to tender that to you, Mr. Chairman, or to the Clerk, whichever is satisfactory. I have the money here first, and I would like to tender it to you and then I would like to make the statement.

“Senator Hennessy: I would like to ask Mr. Fiske if that is entirely proper.

“Mr. Fiske: Why, I should think, Senator, that the Committee has served the subpœna and we con- 30 sidered that the services of the subpœna was good, and I should not receive back the money.

“Mr. Mackay: Well, so long as it is on the record that a proper tender was made and refused, all right.

“Senator Hennessy requested that it be recorded in the transcript of the minutes of this meeting that tender of money for witness fees and mileage was made by Mr. Mackay, Counsel for Mr. Geo. M. Brewster, and Mr. Walter Scott, which tender was refused.

“Mr. Mackay: Now, for the benefit of the Com-

mittee I want to give you the reasons because there is nothing we want to hide, or no subterfuge, and I want to state clearly and openly to the Committee the reasons for advising these witnesses not to appear. I was under the impression at first that the law or resolution had not been published. I found Resolution No. 2 on the Statute books but I could
10 not find Joint Resolution No. 7, the resolution on which this subpœna is based. I understand now that there is no Resolution No. 7; that it is Resolution No. 2, and that is one of the grounds—that there is no Resolution No. 7—and that the subpœna calls for appearance by virtue of the power given by Joint Resolution No. 7.

“Second, on the ground that the Legislature has no power by the passage of a resolution to compel the attendance of witnesses after the Legislature has
20 adjourned. That power must be by statute.

“Another reason for the non-appearance of Mr. Brewster and Mr. Scott is, on the point of refusing to produce the books, that there is nothing in the subpœna stating what books and of what corporations are required. The subpœna is addressed to George M. Brewster, personally, and it doesn't require the boks of any particular company. Another reason is that the resolution does not provide that the Committee can compel the attendance of witnesses. The
30 resolution, as I read it, says that they have the power to issue subpœnas, but there is nothing in the resolution that says that they have power to compel the attendance of witnesses.

“And a further point is that Mr. Brewster, personally, and when I say Mr. Brewster, Mr. Chairman, I am referring also to Mr. Scott, the other witness, so that my argument includes both. The resolution as I take it is for the examination into the financial needs of the Department of Public Roads and the resolution under its present reading does not

give the Committee power to compel the attendance of private individuals or private corporations not connected with this department. There was one or two other minor objections that I don't think I will argue at this time.

"Senator Hennessy: Let me get your point of view, Mr. Mackay, a little more clearly. Your objections here are all technical, aren't they, Mr. Mackay?"

"Mr. Mackay: I might say so. Just as they appear they are technical, no doubt—legal objections. 10

"Senator Hennessy: When you say the Committee has no power to summon a private individual you are aware of the fact that this particular individual, Mr. Brewster, was summoned because he had received a large amount of State moneys in connection with road building."

The answers refer to Mr. Mackay's statements and the questions to Senator Hennessy's.

"A. I understand that. Q. Don't you think it is the proper function of this Committee to inquire into the payment of State money? A. I don't think that makes him a public employee so far as the Department of Public Roads is concerned, because I don't know of any contract he had with the Department of Public Roads whereby he received any money from them. Q. Well, he received money from the County of Bergen on roads that were aided by the State. A. Yes, but I am giving you my point. He received money from the Board of Freeholders for a contract between the Board of Freeholders and himself, but the money paid by the State Department, called State Aid, was paid by the State, not to George M. Brewster, but turned over to the Board of Freeholders. 20 30

"Mr. Fiske: Well, the contract made between Mr. Brewster or his company and the Board of Freeholders first had the approval of the State Road Department before it became effective?"

The answers refer to Mr. Mackay.

“A. Yes. Q. Which made the State Road Department a party to a certain extent to the contract? A. Yes. Q. This joint resolution provides that ‘The Joint Appropriations Committee be and they hereby are authorized and empowered to make investigation of the financial needs of the Department of Public Roads, the institutions under the Department of Charities and Corrections, or other departments or commission, and of any new sources of public revenue, and to report to the next session of the Legislature, and said Committee shall have power to issue subpoenas for the attendance of witnesses.’ Don’t you think that the language ‘and to make investigation of the financial needs of the Department of Public Roads’—that it might be quite material to investigate the manner in which the money of this department had been paid out, so that we could draw conclusions as to the changes which may be necessary with reference to paying out the money in the future? A. Yes, sir, that is very true. Yes. Q. And that the very important and essential ones as to that point are the people to whom the money was paid, whether they be private individuals or State officials? A. No, that is where we disagree with you in that last statement. You carry it just one bit too far. I claim that Mr. Brewster, as a private individual, is not in any way connected, and cannot be compelled to appear, that is, I mean, connected with the Department of Public Roads.”

By Senator Hennessy:

Mr. Hennessy asked the questions and the answers refer to Mr. Mackay: “Q. Our records show that he received about three hundred thousand dollars in connection with roads approved by the State, Mr. Mackay. A. That may be, yes. That was the point we alluded to when we spoke about it going to the Board of Freeholders. I might say this: Of course, I want to be very frank with you, gentlemen. These men came to me for advice and I advised them. If I

said 'go down,' they would have gone down, but I gave them my legal opinion as a counsellor and a lawyer, and I also advised them I was looking up a little law. There is a case in the Missouri Reports that was decided against the defendants, and on appeal to the highest Court in the State, reversed. That case held that a resolution of a City Council, providing for the appointment of a Committee to investigate the books and records of the Department of the City wherein returns are made of taxes, and empowering the committee to subpoena witnesses and to send for persons and papers and administer oaths, does not authorize the committee so appointed to compel the production for inspection and examination of the private books and papers of a private business corporation (*Ex parte Conrades*, 85 S. W., 150, 185 Mo., 411, reversing (*App.*), 85 S. W., 150, *App.*, 21). 10

"I also gave them the opinion as laid down by our own Courts, which held that the Senate is not a continuous body. In that case it was held that the term 'resolution' is usually employed to denote the adoption of a motion, the subject matter of which would not properly constitute a statute. In other words, as to the particular case, it would be a rule of law for regulating the internal affairs of the Legislature and would only apply to that particular party and not the public at large, until it was supplemented by a statute or law, duly passed, appointing a committee to investigate, and conferring powers and duties. This is the only way it could be kept alive, because the Senate and General Assembly are not continuous bodies, and as the Nineteen Hundred and Fourteen Senate and Assembly have adjourned, their existence is at an end, and the Investigating Committee is helpless as it has no one to make its report to. The Committee cannot report to the next Legislature, under a resolution passed by the Nineteen Hundred and Fourteen body, unless the Nineteen hundred and Fourteen body supplements the 20 30

resolution by passing a law, conferring that power upon the Committee.

“The Senate is not a continuous body.

“See *State v. Rogers*, 56 *Law*, page 480, at law, 622.

The resolution provides for the making of the report to the next Legislature, and my contention is that the Legislature cannot bind the public by resolution.

10 “On the question of contempt, see *Vol. 44, Cen. Dig. States, Section 46.*

“Q. Well, on that matter, I may say that the Committee has taken counsel, and the Committee, before issuing these subpoenas, Mr. Mackay, was fully advised that it had power to do what it did in this particular case, which information, of course, isn't conclusive either upon the Committee or upon you, but the Committee has not proceeded without proper advice. You say you have nothing to conceal, and I assume that
20 is true, but if your clients have nothing to conceal, why don't they come here? A. Mr. Brewster is busy with his work, but he says, 'If I have to go down there, I will go,' and I said, 'I will let you know about that,' and he said, 'Well, if I don't have to go I don't want to bother going.' Q. Do you think that is the only reason he didn't want to come? A. I think that is the only reason, under our law, which, of course, is different from the English law, which needs to be given, because a man is innocent until he is proven guilty. I
30 supposed, when he told me that, he was telling the truth. I had no doubt, before I took up the matter that you had asked the Attorney General, and he had advised you in the matter. It is just a case of his word against mine.

“Senator Hennessy: Has any other member anything to ask Mr. Mackay before we go on?

“By Mr. Fiske: Q. This resolution provides that the said Committee shall have power to issue subpoenas for the attendance of witnesses, and it does not provide that they may compel the attendance of witnesses, but

I think that is possibly covered in this act that appears on page 2240 of the Compiled Statutes, and which provides 'that any joint committee of the Legislature or any standing committee of either house, or any special committee which shall have been or may be, by resolution, directed to enter upon any investigation or inquiry, the pursuit of which shall necessitate sending for persons and papers, and examination of witnesses, shall have power to compel the attendance before them of such person or persons as they may deem necessary and proper.' That would seem to give us that power, even though it wasn't specifically provided in the resolution. A. I should say so, if the Legislature was still in session. 10

That is all.

Q. That is the portion of the minutes that relates—that is all of the minutes that relates to what Mr. Mackay said to the Committee that day? A. Yes; 20 that is all.

Q. You have the other minutes of the meetings preceding that, haven't you? A. I think I have. If I haven't, Senator Hennessy has. Of course, I was supposed to turn them over to the Senator, as Chairman of the Committee.

No Cross-examination.

30

CHARLES O'CONNOR HENNESSY, recalled.

Continuation of direct examination by Mr. Devlin:

Q. Mr. Hennessy, when the Committee on Appropriations adjourned on April 7th, 1914, when did you meet again? The minutes of June 1st say, "In response to a call by Chairman Hennessy a meeting of the Joint Appropriations Committee of the Legislature of 1914 was held at 13 Central Avenue, Newark, at noon, on

the above date." A. I should assume that was the first.

Q. Did you mail a letter to the members of the Committee? A. I called the meeting; yes, sir, by letter.

Q. You called a meeting, then? A. Yes, sir, I called a meeting.

10

The Court: How was that meeting called?

The Witness: By a letter signed by me as Chairman.

The Court: And sent to each member of the Committee?

The Witness: Sent to each member of the Committee?

20 Q. As your minutes show at that time, you met from time to time at different places? A. Yes, sir.

Q. You had met, then, to act under Resolution No. 2 in the Statute Book, but No. 7 in the Secretary of State's office, page 639. That is the resolution of the Joint Appropriations Committee to investigate the different Departments of Roads and Health, and so forth? A. Yes, sir.

Q. And the call of that meeting on June 1st was for that purpose, to act under the resolution? A. Yes, sir.

30 Q. And the Committee continued in session from time to time? A. Yes, sir.

Q. Acting under that resolution A. Yes, sir.

Q. Down to December 5th and afterwards? A. Later than that; there were some meetings later.

Q. I show you two subpœnas that are dated December 2, and signed by you and the Clerk. Now, state, is that your signature on those subpœnas? A. It is.

Q. And you directed those subpœnas to be served? A. I did.

Q. State whether or not the Committee authorized the service of those subpoenas?

Mr. Collins: I object to that as not being the best evidence.

The Court: It would seem to me that asking this question of the witness is not sufficient proof of it. The best proof would be the minutes. 10

Q. Do you know, Senator, if the Committee made a record, or if a record was made of the parties who were to be subpoenaed before the Committee?

Mr. Collins: Objected to on the ground that it is either intended to be proved by the answer that they did not make a record or that they did. If it is intended to prove that they did not make one then there is no answer. If it is intended to prove they did make one, it must be produced. 20

The Court: You may answer the question.

Mr. Collins: Exception.

Whereupon the defendants, by their counsel, filed a bill of exceptions, which is hereby allowed and sealed accordingly.

ERWIN E. MARSHALL,
Judge.

A. My impression is that the Committee did not make a record of the persons who were to be subpoenaed before the Committee. 30

Q. Are you able to state whether the Committee directed you to sign and have the Clerk sign and issue those subpoenas?

Mr. Collins: I object to that. If the Clerk made no record, of course, they didn't direct him to do it. As your Honor said, if they did act the minutes are the best evidence. Now, he

says they did not act. The Committee can't act except in an organized capacity.

The Court: I will admit the question.

Mr. Collins: Exception.

Whereupon the defendants, by their counsel, filed a bill of exceptions, which is hereby allowed and sealed accordingly.

10

ERWIN E. MARSHALL,
Judge.

Q. (Question repeated.)—to George M. Brewster and Walter Scott? A. My recollection is that the Committee discussed at more than one session, informally, they discussed the question of issuing subpoenas for these witnesses. I have no recollection of a specific meeting. I cannot specifically recall a meeting at which specific authority was issued for this purpose. The
20 understanding was that the Chairman of the Committee issue the subpoenas.

Mr. Collins: I move to strike out the statement as to what his understanding was.

The Court: I think that is improper. The last part with reference to the understanding will be stricken out.

Q. How did you get that understanding?

30

Mr. Collins: I understand your Honor to strike that out.

The Court: It will be stricken out.

Q. I will ask you if the Committee discussed at any time the issuance of subpoenas, the general duty or work of issuing subpoenas, as to who should attend to it?

Mr. Collins: Objected to as irrelevant.

The Court: I will admit the question.

Mr. Collins: Exception.

Whereupon the defendants, by their counsel, filed a bill of exceptions, which is hereby allowed and sealed accordingly.

ERWIN E. MARSHALL,
Judge.

Q. (Question repeated.) A. My recollection is that on occasion I told the members of the Committee that such and such persons ought to be subpœnaed, in my opinion, for such and such reasons, stating the reasons why they could contribute testimony of value to the Committee. These matters were discussed informally, and my recollection is that an agreement was in each case arrived at as to what persons were to be subpœnaed. I have no recollection of a specific meeting at which specific subpœnas were authorized to be issued. 10

Q. I am speaking of the question of the general work of issuing subpœnas, that is what I am speaking about, the general duty of issuing subpœnas. 20

Mr. Collins: Objected to as incompetent.

The Court: Objection sustained.

Q. The two persons named here—were they the subject of discussion by the Committee before the subpœnas were issued?

Mr. Collins: Objected to as incompetent and leading. 30

The Court: Objection sustained.

Q. Were you present, as Chairman of the Committee, when Mr. Mackay appeared before the Committee? A. I was.

Q. Do you remember what members of the Committee were present? A. I do not recall. I could name some of them, but I am not at all sure.

No Cross-examination.

Mr. Devlin: Mr. Mackay, do you admit that you were the attorney for these two men that morning?

Mr. Mackay: Yes.

Mr. Devlin: And appeared there for them?

Mr. Mackay: Yes.

10 Mr. Devlin: I will not rest my case now because of some things the stenographer has to look up, but I will offer the two subpœnas here.

Mr. Collins: I object to them separately, to each one separately. I can't object to them in the plural way, but I object to each one as not being authorized by the proof, to have been issued.

The Court: I will admit them.

20 Mr. Collins: You will note an exception in each case.

The Court: You may have an exception.

Whereupon, the defendants, by their counsel, filed a bill of exceptions, which is hereby allowed and sealed accordingly.

ERWIN E. MARSHALL,

Judge.

Subpœnas above referred to received in evidence and marked Exhibits "P1" and "P2."

30 Mr. Devlin: I offer the laws of 1914 with that resolution.

Mr. Collins: That was the joint resolution that was spoken of and was held out for a few minutes?

The Court: Yes.

Mr. Collins: I object, as not authorizing the issuance of any subpœnas under the general law against the defendants, there being no joint committee on appropriations existing at the time the resolution was passed.

The Court: The resolution will be admitted.

Mr. Collins: Exception.

Whereupon, the defendants, by their counsel, filed a bill of exceptions, which is hereby allowed and sealed accordingly.

ERWIN E. MARSHALL,

Judge.

A recess was here taken until 1:45.

10

After Recess.

RICHARD A. PORTER, recalled.

Direct examination by Mr. Devlin:

Q. Mr. Porter, you have before you the full minutes and the transcription of the committee that met that day, on December 5th? A. I have.

20

Q. Who were the members of that committee present that day? A. Senators Hennessy, Smalley, Assemblymen Fiske, Ramsay, Mount and Leonard.

Mr. Collins: I think Ramsey is a Senator.

The Witness: Senator Ramsey, Senators Hennessy, Ramsey and Smalley, Assemblymen Fiske, Mount and Leonard.

Q. After Mr. Brewster and Scott failed to appear before that committee, will you turn to the minutes of that committee and tell me if the committee took any action on it?

30

Mr. Collins: Objected to as irrelevant and immaterial.

The Court: I will admit the question.

Question repeated.

Mr. Devlin: These are the minutes of December 5th?

The Witness: These are the minutes of the public hearing, December 5th, 1914.

Mr. Collins: I object further on the ground that they are not the minutes, simply a stenographic note of what has been supposed to take place.

The Court: What are they, Mr. Porter?

10

The Witness: The paper which I have here is a stenographic transcript of the proceedings before the public hearing in the matter of the investigation of the State Road Department by the Appropriations Investigating Committee of the Legislature of 1914, Senate Chamber, Trenton, December 5th, 1914, Book No. 6.

Mr. Collins: It is a note of what took place and has never been approved by the committee.

20

Mr. Devlin: What better proof of the proceedings can you have than that?

The Court: Mr. Porter, did you make a transcript of everything that transpired at the meetings of this committee?

The Witness: I made a transcript of everything that transpired at the public hearings of the committee, and this was one of the public hearings.

The Court: And not all the testimony was entered on the regular minutes?

30

The Witness: The regular minutes are a different proposition as I understand it.

Mr. Collins: The regular minutes don't take in the testimony then?

The Witness: I had nothing to do with any executive section of the committee. I simply took the proceedings of the public hearings, and this is a transcript of the public hearing before this committee on December 5th, 1914.

The Court: I will admit it.

Mr. Collins: Exception.

Whereupon, the defendants, by their counsel, filed a bill of exceptions, which is hereby allowed and sealed accordingly.

ERWIN E. MARSHALL,
Judge.

A. (Witness reading): "Mr. Fiske: Mr. Chairman, 10
I move the adoption of this resolution:

"Whereas, by order of this committee, George M. Brewster and Walter Scott have been summoned to appear and testify before it on the 5th day of December, A. D. one thousand nine hundred and fourteen, at eleven o'clock in the forenoon, in the City of Trenton, by summons in writing, duly served upon each of them, respectively, together with the witness fees and mileage allowed by law, and

"Whereas they have refused and neglected to obey 20
said summons,

"Resolved, that the President of the Senate of this State is hereby requested, by warrants under his hand, to order the Sergeant-at-Arms of the Senate to arrest said George M. Brewster and Walter Scott and bring them before this committee to testify at its next sessions or a subsequent session; and that the chairman of this committee is authorized and directed to make application to said President of the Senate, on behalf of 30
this committee, for the issue of such warrants."

"The motion was duly seconded by Mr. Leonard, and on a yea and nay vote unanimously carried."

No cross-examination.

Mr. Devlin: I don't want to keep the defense, but I will state that I am waiting now on Mr. Kite. I have asked him to produce the minutes of the Appropriations Committee of the Legislature for the last twelve years, of which he has

been Secretary, to establish the fact that this Committee, that each Committee has met and acted jointly, to establish the custom in the Legislature. Now, with the understanding that I will offer this, I will rest, if that is satisfactory to the Court, but I want the case opened for those books to go in.

10 Mr. Collins: I would rather wait until they come. You asked an admission from Mr. Mackay, which he gave. I would like to have it stated, in the admission of Mr. Mackay, that this consultation which you had with the gentlemen authorizing you to appear down at Trenton was in Bergen County.

Mr. Mackay: That is correct.

Mr. Devlin: I guess that is true. I won't dispute that.

20 Mr. Collins: And I suppose we might as well agree, at Hackensack, Bergen County. We might just as well agree when the Legislature adjourned. It must have been about April, 1914.

30 Mr. Devlin: In the minutes it appears that the President of the Senate declared the 138th Legislature of New Jersey adjourned *sine die*, and then on the minutes of the Senate it states that upon the announcement of the Speaker, the House adjourned the present 138th Legislature without day. That was, also on April 9th, 1914.

The Court: That fixes the date of the adjournment pretty clearly, I guess.

Mr. Devlin: If Judge Collins will admit that the Committees have been acting this way for years in the past, for twelve years, that will be satisfactory to me.

Mr. Collins: I admit, subject to my objection to relevancy, which I press, that the two Com-

mittees of the Houses have met, as they did on the minutes offered in evidence, the minutes of the Appropriations Committee of January 26th, 1914, down to their adjournment *sine die* in April. I don't admit they have ever done anything of the character it is supposed that the Committee decided to do in June, 1914.

The Court: I don't believe their minutes 10 would show that.

Mr. Collins: They don't. This is a new departure. I suppose on the question of relevancy your Honor will overrule me.

The Court: That is overruled.

Mr. Collins: Exception.

Whereupon, the defendants, by their counsel, filed a bill of exceptions, which is hereby allowed and sealed accordingly.

ERWIN E. MARSHALL, 20
Judge.

State Rests.

DEFENDANT'S CASE.

Mr. Collins: Now, I offer in evidence, if the Court please, the rules of the Senate and the General Assembly and the joint rules of the both 30 Houses of the Legislature of the year 1914. I understand my friend, the Prosecutor, will desire to object.

Mr. Devlin: I object to the rules going in.

The Court: I will hear your reasons, Mr. Devlin.

Mr. Devlin: On the ground that no Court has any jurisdiction over anything of a Legislative character.

The Court: The Court will allow the rules to be offered.

Mr. Devlin: Exception.

The Court: I didn't know the State took any exception.

Mr. Collins: We may use these?

Mr. Devlin: Is that the 1914 Manual?

10

Mr. Collins: Yes.

Mr. Devlin: What pages are you going to put in?

Mr. Collins: From pages 69 to 90 inclusive.

Rules above referred to received in evidence.

GEORGE M. BREWSTER, being duly sworn on behalf of himself, testified as follows:

20 Direct examination by Mr. Collins:

Q. Mr. Brewster, are you the defendant in one of these indictments? A. Yes, sir.

Q. And were you, in 1914, and still are you a resident of the County of Bergen, and engaged in business there as the President of the George M. Brewster Construction Company? A. Yes, sir.

Q. Were you out of the County of Bergen between December 2d and December 5th, 1914, inclusive? A. No, sir.

30

Cross examination by Mr. Devlin:

Q. You were served with a subpoena in the County of Bergen?

Mr. Collins: Objected to as not cross examination.

The Court: Objection sustained.

Q. Why didn't you come in response to a subpoena served upon you by a legislative committee?

Mr. Collins: Objected to as not cross examination.

The Court: Objection sustained.

Mr. Devlin: I submit this defendant has offered himself for examination.

Mr. Collins: I will withdraw the objection.

Q. (Question repeated.) A. I was served with a 10 paper and I referred it to my attorney, Mr. Mackay.

Mr. Collins: William B. Mackay here present?

The Witness: Yes, sir; and he told me I didn't have to come if I didn't want to, and I told him I was very busy and I didn't want to go if I didn't have to. He said I didn't have to come, and that is the reason I didn't come.

Q. Isn't the reason you didn't want to come because 20 you have been doing contract work in Bergen County, building roads, in which the State furnished some of the money? A. No, sir.

Q. Was that the only reason you had for not coming? A. Yes, sir; that is the only reason.

Q. Because your counsel— A. Yes, sir; and I was busy at the time. It was on Saturday when I had my payroll to make out, and it was a busy day.

Q. That is the only reason? A. Yes, sir.

Q. What is your business? A. Contracting busi- 30 ness, teaming and trucking.

Q. How long have you been in the contracting business? A. About twenty-two years.

Q. Built many roads in Bergen County? A. Yes, sir.

Q. Many roads that the State has aided? A. Yes, sir.

Q. Your company has received contracts for building roads that contained about three hundred thousand dollars of the State money?

Mr. Collins: Objected to as not cross examination.

The Court: Objection sustained.

10 Q. Isn't the reason that you didn't come to Trenton because of the fact that you didn't want to show up to the public how this money had been expended and the kind of work that was given for it? Isn't that the reason? A. No, sir.

Q. Isn't it the reason, isn't it true, that you didn't want to permit your dealings with the State to be seen? A. No, sir.

Q. When did you get this subpoena to appear on the 5th of December? Did you read this subpoena? A. Yes, sir.

20 Q. You say you didn't come because it was Saturday, that was the day? A. Yes, sir; I said I referred to my counsel and he told me I didn't have to go if I didn't want to.

Q. And you said you didn't go because Saturday was the day you made up your payroll? A. Yes, sir.

Mr. Collins: That wasn't the fact; he consulted counsel.

30 Q. Well, this subpoena commanded you to lay aside all and singular business and excuses and personally be and appear before the Joint Appropriations Committee of the Senate and General Assembly of the State of New Jersey, who were by Joint Resolution No. 7 of the said Senate and General Assembly of the State of New Jersey, approved April 9th, one thousand nine hundred and fourteen, authorized and empowered to make investigations of the financial needs of the Department of Education, Department of Public Roads, the institutions under the Department of Charities and Corrections, or other departments and commissions, and of any new source of public revenue, on Saturday,

the fifth day of December, A. D. 1914, at 11:00 o'clock in the forenoon of said day at the Senate Chamber, State House, in the City of Trenton and State of New Jersey, to testify all and singular what you know concerning the said matters under inquiry.

“And that you diligently search for, so that you have and bring with you then and there before the said Committee the following things:

“Stock book or the book which exhibits the names of the persons to whom shares of stock of the corporation have been issued and which will show who are the owners of stock in the corporation at the present time. The stock transfer book or book which will show the record of transfers of stock from the date of incorporation down to the present time. The minute book of the corporation or other book or record which will show the minutes of the various meetings of the corporation or its Board of Directors since the date of incorporation thereof to date. The ledger, cash book, journal or other books of account of the corporation from the date of incorporation down to the present time. The bank book or bank books or the corporation from the date of incorporation thereof to date. Any book or books which will exhibit the system of cost accounting kept by the corporation in connection with its various contracts for road building and road repairs in Bergen County and especially the account of the corporation in connection with the contracts for the building of the first, second and fifth sections of the Franklin Turnpike, Paramus or Arcola Road, Essex Street, Terrace Avenue and Market Street in Bergen County.”

You knew what they wanted you for?

Mr. Collins: I object to that; he said he read it.

The Court: Objection sustained.

Q. After you read that subpoena why didn't you go

or send word to the Committee that you would go on another day when less busy?

Mr. Collins: Objected to as not calling for any fact. It is argumentative.

10 Mr. Devlin: He has given a reason for not coming. I am going to ask him if that were his reason on Saturday, why he didn't send word to the Committee that he was busy and would come the next day.

Mr. Collins: Objected to as not cross examination and irrelevant.

The Court: I can't see the relevancy of that question, Mr. Devlin, I will overrule it.

20 WALTER SCOTT, being duly sworn on behalf of himself, testified as follows:

Direct examination by Mr. Collins:

Q. Mr. Scott, you are the defendant in the other of the two indictments being tried here? A. I am, sir.

Q. Were you, during the year 1914, and are you still a resident of the County of Bergen? A. I am.

30 Q. In the month of December, 1914, I think you were Secretary of the George M. Brewster Construction Company? A. Yes, sir.

Q. Were you out of Bergen County between the second of December and the fifth of December inclusive, for the year 1914? A. I was not, sir.

Cross examination by Mr. Devlin:

Q. You were served in Bergen County with your subpoena? A. I was, sir.

Q. A similar subpoena to that which I just read to Mr. Brewster?

Mr. Collins: Objected to. The subpœna to Mr. Brewster did not specify any corporation whatsoever.

The Court: I don't think you should refer to it as a similar subpœna.

Mr. Devlin: I mean the body of the subpœna.

A. I didn't read Mr. Brewster's; I only read my 10
own.

Q. I mean your own. A. It requested me to bring the books and papers and bank books and check books and everything else pertaining to the Brewster Construction Company. I believe that is what the body of it contained.

Q. And it requested you also, didn't it, that you bring any books or book which would exhibit the system of cost accounting kept by the corporation in connection with its various contracts? A. Yes, I said any 20
books pertaining to the Brewster Construction Company.

Q. For road building and road repairs in Bergen County, and especially the account of the corporation in connection with the contracts for the building of the first, second and fifth sections of the Franklin Turnpike? A. Yes, sir.

Q. And the Paramus or Arcola Road, Essex Street, Terrace Avenue and Market Street in Bergen County. Is that right? A. Yes, sir. 30

Q. Why didn't you come down in answer to that subpœna? A. When that subpœna was served on me I called up Sheriff Brewster and told him I had been served with a subpœna and told him what it contained. He said, "All right, I will take care of it," and after that he told me—

Q. Don't mind what he told you.

Mr. Collins: Oh, yes, he is answering the question.

A. He told me I didn't have to go.

Q. You noticed that that subpoena was served not on Brewster, but on you? A. Yes.

Q. How did you come to think that Brewster had anything to do with your going? A. Because he told me Attorney Mackay said it wasn't necessary for us to go down.

10 Q. That is the only reason? A. That is the only reason I had; yes, sir.

Q. Was that the only reason? A. That is the only reason, sir.

Q. You didn't think, or did you not realize the subpoena was to you and not to Mr. Mackay or Mr. Brewster? A. I realized whom it was to, because it was addressed to me.

Q. Then why didn't you come without consulting either Brewster or Mackay? A. Just for the simple reason I told you.

20 Q. That is the only reason? A. I am employed by Mr. Brewster as Secretary, and therefore I had to take my orders from him relating to the Company.

Q. Notwithstanding that the Legislative Committee ordered you, you had to take orders from him? A. Yes.

Q. You realized that this subpoena came to you? A. I know what it read.

30 Q. "Hereby command and summon you." Notwithstanding that command from the Legislative Committee it was your notion that Mr. Brewster was to be considered first? A. Yes, that is what I did.

Q. And Mr. Mackay second? A. Well, I don't know anything about Mackay.

Q. Isn't the reason that you didn't appear and bring those books because you didn't want to disclose to this Legislative Committee the true dealings between your Company and the State in the building of these roads named in the subpoena? A. No, sir; because there is nothing to hide.

Q. If there wasn't anything to hide, why didn't you bring the books and come to Trenton? A. For the reason I told you.

Q. Because you were told not to? A. I was told I didn't have to go.

Q. You seemed to think Mr. Brewster had more authority than the Legislative Committee to tell you to go? A. He had to me; yes, sir. 10

Q. And also Mr. Mackay? A. I had nothing to do with Mr. Mackay.

Q. Mr. Brewster is the President of the Company of which you are Secretary? A. Yes, sir.

Q. And that was the reason you took his orders? A. Yes, sir.

Redirect examination by Mr. Collins:

Q. William B. Mackay was attorney and counselor-at-law of this State, you knew that? Yes, sir; but he told me I shouldn't say anything as to what somebody else told me. That is the reason I left Mr. Mackay out. 20

Q. Mr. Brewster told you he consulted with Mr. Mackay, as counsel, and he was informed by Mr. Mackay that it was not necessary for either of you to go? A. Yes, sir.

Mr. Collins: That is all.

30

Defendant rests.

Mr. Collins: I move for a direction of the verdict in favor of the defendants. I move respectively for the direction of a verdict and acquittal. Your Honor will understand that the motions are several, for each defendant, on the ground that the evidence is not sufficient to support a conviction; on the ground that it has

not been proven that there was any Joint Appropriations Committee of the Legislature of 1914; on the ground that there is no evidence that any such committee ever authorized the issuance of a subpœna or summons to either defendant; on the ground that the paper writings served on the respective defendants were beyond the authority of the Statute and the defendants were not bound to respond thereto; on the ground that there is no competent evidence of any offense having been committed by either of the defendants in Mercer County, and this Court has no right to submit the case against either defendant under the indictment for an offense committed elsewhere; on the ground that the Court has no jurisdiction for an offense committed elsewhere than in Mercer County; on the ground that there is no evidence in the case that the alleged committee ever designated Trenton as the place of sitting for December 5th, 1914, as required by the alleged resolution of 1914, found in the laws of 1914, page 639; on the ground that there is no evidence that the defendants or either of them, were ever served with a subpœna or summons under an alleged Resolution No. 2, of the Laws of 1914, page 639; the indictment stating they were served under Resolution No. 7; on the ground that the evidence shows that the defendants respectfully determined, on the advice of counsel, in the County of Bergen, not to attend before the supposed committee alleged in the indictment, who had issued the supposed subpœna or summons, and they were not in Mercer County between December 2d and 5th, inclusive, 1914, and therefore did not respectively commit any offense in Mercer County; on the ground that the subpœnas were broader than the Statute resolution of 1914, the Statute on which the indictment is based, the resolution of 1914, in that it required the production of books and papers; on the ground that there was no authority to compel the attendance of witnesses after the adjournment of the Legislature, which had taken

place in April, 1914, and on the ground that the Act of 1895, on which the indictment is based, was not intended to reach beyond the then existing Legislature.

The Court: The Court will overrule the motion to direct a verdict for the defendant.

Mr. Collins: Exception.

Whereupon, the defendants, by their counsel, filed a bill of exceptions, which is hereby allowed and sealed 10 accordingly.

ERWIN E. MARSHALL,
Judge.

CHARGE.

Gentlemen of the Jury: George M. Brewster and Walter Scott are being tried on two several indictments 20 charging them with willful refusal to obey summonses issued by a Legislative Committee of this State. The Legislature, on April 9th, 1914, passed a joint resolution wherein it empowered its Joint Appropriations Committee to make investigation of the financial needs of certain departments in the State government. The resolution in question appears in the Statute Book as follows: "Joint resolution authorizing the Committee on Appropriations of the Legislature of 1914 to inquire 30 into the financial needs of the Department of Education, Department of Public Roads, the institutions under the Department of Charities and Corrections or other departments or commissions, and into any new sources of public revenue.

"Whereas, it has been made evident to the Joint Committee on Appropriations of the Legislature of 1914 that there is a constant growth of the financial needs of the established departments and institutions of the State, as shown by requests for increased appropriations from year to year, these demands having

particular relation to the Departments of Education and Public Roads, and to the institutions under the administration of the Department of Charities and Corrections, and

10 "Whereas, it is desirable that there should be an investigation undertaken, with more deliberation than is possible during the legislative session of the question of new sources of the State revenue, and of possible curtailment of expenditures in certain directions; therefore,

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

20 "1. The Joint Appropriations Committee of the Legislature for the year 1914, be and they are hereby authorized and empowered to make investigation of the financial needs of the Department of Education, the Department of Public Roads, the institutions under the Department of Charities and Corrections or other departments or commissions, and of any new sources of public revenue, and to report to the next session of the Legislature. The said Committee shall have power to issue subpoenas for the attendance of witnesses.

"2. The said Committee shall have power to sit after the adjournment of the Legislature at any place in this State which they may designate.

30 "3. The sum of \$3,000.00, or so much thereof as may be necessary, be and the same is hereby appropriated for the purpose of carrying out the provisions of this joint resolution."

As appears by a reading of this resolution, the Legislature empowered the Committee to issue subpoenas for the attendance of witnesses, and also empowered the Committee to sit after the adjournment of the Legislature and to report at the next session.

The State has produced witnesses to show that the defendants, Brewster and Scott, were duly summoned to appear as witnesses before such Committee and that they willfully neglected or refused to appear, and that

such willful neglect or refusal was in violation of the statutory law of this State which has been quoted here a number of times during the course of this trial, and perhaps need not be repeated at this time, excepting the last section of the Act of 1895, which I will read, "That if any witness summoned to appear before any such committee," such committee there referring to a joint committee, a standing committee or a special committee of the Legislature as provided in a preceding section, "who shall willfully refuse or neglect to appear, or who shall refuse to be sworn or examined shall be guilty of a misdemeanor." 10

There has been evidence offered here of meetings of this Committee, so called Joint Committee of the Legislature, one of which was held in the City of Trenton on the fifth day of December, 1914, and it was at this meeting to be held on the fifth day of December, 1914, that these two defendants were subpoenaed to appear. 20 It appears that on the return day of the subpoenas neither of the defendants appeared, but Mr. Mackay, who it is admitted was the attorney of both defendants, appeared before the committee and challenged the right of the committee to compel the attendance of witnesses, and stated to the Committee that he had advised his clients that they were not obliged to appear.

The crime defined by the statute is the willful refusal to appear in obedience to the summons at the place named therein, or to be sworn or affirmed. The crimes 30 does not rest on the mental conclusion of the defendants that they will not obey, but on the fact that they did not appear at the place designated or refused to be sworn, and it isn't complete until they failed to present themselves as required in the summons, that they may be sworn, and also their refusal to be sworn, which is an element of the offense charged in these indictments.

If they offended against the law, that is to say, if,

being duly summoned to appear before a joint legislative committee, they willfully refused or neglected to appear in obedience to the summons, a verdict should be found against both defendants. The burden of proof is upon the State, and if upon such proof there be a reasonable doubt with regard to either of the accused, he is entitled to the benefit of that doubt.

10 There have been a number of requests to charge handed up by the counsel for the defendants, which I will pass upon at this time.

The first request is, "The evidence does not warrant a finding that there was a joint appropriation committee of the Legislature of 1914." I refuse to charge this request.

20 "Two. There is no evidence that any such committee ever authorized the issuance of subpoenas or summons to either defendant." I decline to charge this request.

"Three. The paper writings served on the respective defendants were beyond the authority of the statute and the defendants were not bound to respond thereto." I refuse to charge that request.

Four. There is no evidence of any offense having been committed by either defendant in Mercer County, and this Court has no right to submit the case against either defendant, under the indictment, for an offense committed elsewhere." I refuse to charge this request.

30 "Five." The Court will charge you this, "The Court has no jurisdiction over an offense committed elsewhere than in Mercer County." That request is charged.

"Six. If the defendants respectively determined, on the advice of counsel or otherwise, in the County of Bergen not to attend before the supposed committee alleged in the indictment to have issued the supposed subpoenas or summonses and were not in Mercer County between December second and fifth, 1914, they did not respectively commit any offense in Mercer County." I decline to charge this request.

"Seven. If the defendants respectively acted in good faith, on the advice of counsel, and honestly believed that they were not compelled to attend at Trenton, they cannot be convicted of willful neglect and refusal to appear in obedience to the alleged summons served." I decline to charge that advice of counsel would excuse the defendants from appearing.

"Eight. There is no evidence in the case that the al- 10
leged committee ever designated Trenton as the place of sitting for December 5th, 1914, as required by the alleged resolution, Laws of 1914, page 639." I will charge that.

"Nine. There is no evidence that the defendants, or either of them, ever were served with a subpœna or summons under an alleged resolution No. 2 of the Laws of 1914, page 639." I decline that request.

"Ten. The respective indictments are not sufficient to support a conviction." I decline to charge that re- 20
quest.

"Eleven. That the defendants were not requested to produce the books and papers of the Geo. M. Brewster Construction Company." I decline to charge that request.

You may retire.

Jury Retired.

Mr. Collins: I except to your Honor's refusal to charge respectively requests Nos. 1, 2, 3, 4, 6, 9, 10 30
and 11 and to your response to No. 7. You modified that to some extent.

Whereupon the defendants, by their counsel, filed a bill of exceptions, which is hereby allowed and sealed accordingly.

ERWIN E. MARSHALL,
Judge.

Mr. Collins: I except to your Honor's statement, I think that is your Honor's language, I may not have

it right, that the State has produced proof that the defendants were duly summoned and that they willfully neglected and refused to appear. I except to whatever language was used.

Whereupon the defendants, by their counsel, filed a bill of exceptions, which is hereby allowed and sealed accordingly.

10

ERWIN E. MARSHALL,
Judge.

Mr. Collins: And I also except to your Honor's charge that absence of the defendants amounts to a refusal to be sworn.

The Court: I will allow your exceptions.

Whereupon the defendants, by their counsel, filed a bill of exceptions, which is hereby allowed and sealed accordingly.

20

ERWIN E. MARSHALL,
Judge.

ORDER.

I, Erwin E. Marshall, Judge of the Court of Quarter Sessions of the County of Mercer, do hereby return the stenographic minutes taken at the trial of both of the above causes as a part of the return to both writs of error so that the same may be made up and included in the entire state of the case on appeal.

30

ERWIN E. MARSHALL,
Judge.

New Jersey Supreme Court.

<p>THE STATE OF NEW JERSEY, <i>Defendant in Error,</i> vs. GEORGE M. BREWSTER and WALTER SCOTT, <i>Plaintiffs in Error.</i></p>	}	<p>In Error.</p>	<p>10</p>
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SPECIFICATION OF CAUSES.

To Martin P. Devlin, Esq., Prosecutor of the Pleas,
 and Attorney for Defendant in Error.

The following is a specification of the causes in the record relied upon by the defendants, plaintiffs in error George M. Brewster and Walter Scott, in the above stated cause for relief or reversal: 20

1. The alleged committee was bound to designate a place of meeting, and there is nothing in the evidence showing that the alleged committee ever designated Trenton, New Jersey, as the place for holding its hearings.
2. The alleged Committee had adjourned *sine die* after the adjournment of the Legislature, and before the defendant was subpœnaed, and therefore was without power to reorganize.
3. The subpœna served on the defendant recited that he was subpœnaed by virtue of Joint Resolution No. 7, whereas in fact there was no such joint resolution in the Laws of 1914. 30
4. There was no Joint Appropriations Committee of the Legislature of 1914.
5. The alleged offense could not have been committed in Mercer County, because the defendant was not in that County at the time of the service or at any time afterwards.

6. The Court should have rendered a verdict of acquittal at the close of the entire case.

WILLIAM B. MACKAY, JR.,
Attorney and Counsel for Plaintiff in Error.

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New Jersey Supreme Court.

THE STATE OF NEW JERSEY, <i>Defendant in Error,</i> <i>vs.</i> GEORGE M. BREWSTER, <i>Plaintiff in Error.</i>	}	In error.
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RULE ON REVERSAL.

20 This cause having been duly argued at the November Term, 1915, of this Court by William B. Mackay, Junior, of Counsel for the plaintiff in error, and Martin P. Devlin, of Counsel for the defendant in error, and the Court having considered the same and finding error in the record and proceedings in the Mercer County Quarter Sessions,

It is therefore ordered and adjudged, that the judgment of the Mercer County Quarter Sessions, removed by writ of error in this cause, be reversed, and that the
 30 record be remitted to the Mercer County Quarter Sessions to be proceeded with in accordance with this judgment and the practice of said Court.

Entered April 8th, 1916.

THOMAS W. TRENCHARD,
J. S. C.

On motion of
 MARTIN P. DEVLIN,
Prosecutor of the Pleas.

I, William C. Gebhardt, Clerk of the Supreme Court

of the State of New Jersey, do certify that the foregoing is a true copy of a rule entered in the minutes of the Court in the above stated cause.

In testimony whereof I have set my hand and the seal of said Court at Trenton, [L. s.] this fourteenth day of April, A. D. nineteen hundred and sixteen.

WM. C. GEBHARDT, 10
Clerk.

New Jersey Supreme Court.

THE STATE OF NEW JERSEY, }
Defendant in Error, } In error.
vs. }
WALTER SCOTT, }
Plaintiff in Error. } 20

RULE ON REVERSAL.

This cause having been duly argued at the November Term, 1915, of this Court by William B. Mackay, Junior, of Counsel for the plaintiff in error, and Martin P. Devlin, of Counsel for the defendant in error, and the Court having considered the same and finding error in the record and proceedings in the Mercer County Quarter Sessions, 30

It is therefore ordered and adjudged, that the judgment of the Mercer County Quarter Sessions, removed by writ of error in this cause, be reversed, and that the record be remitted to the Mercer County Quarter Sessions to be proceeded with in accordance with this judgment and the practice of said Court.

Entered April 8th, 1916.

THOMAS W. TRENCHARD, J. S. C.

On motion of
MARTIN P. DEVLIN,
Prosecutor of the Pleas.

I, William C. Gebhardt, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule entered in the minutes of the Court in the above stated cause.

In testimony whereof I have set my hand and the seal of said Court at Trenton,
 [L. s.] this fourteenth day of April, A. D. nine-
 10 teen hundred and sixteen.

WM. C. GEBHARDT,
 Clerk.

—
 New Jersey Supreme Court.

STATE OF NEW JERSEY,	<i>Defendant in Error,</i>	}	
	vs.		
20 GEORGE M. BREWSTER,	<i>Plaintiff in Error.</i>	}	On Error from Mercer County Court of Ses- sions.
	—		
STATE OF NEW JERSEY,	<i>Defendant in Error,</i>		
	vs.		
WALTER SCOTT,	<i>Plaintiff in Error.</i>		

30

OPINION.

(Filed Mar. 6, 1916.)

Sections 63 and 64 of the Evidence Act, C. S. Vol. 2, 2239, conferring upon any joint, standing or special committee the power to summon witnesses, limits that power to the committee, and they must exercise their judgment as to what persons shall be summoned as witnesses in investigating the matters delegated to the committee by the Legislature, and a subpoena caused to

be issued by the chairman of the committee, or any other member of the committee, without the authority of the committee is a nullity, and the person summoned is not bound to appear in response to a summons or subpoena so issued.

Argued November Term, 1915, before Chief Justice Gummere and Justices Swayze and Bergen.

William B. Mackay, Jr., and Gilbert Collins, for 10 plaintiffs in error.

Martin P. Devlin, for defendant in error.

The opinion of the court was delivered by Bergen, J.

Each of the above-named defendants were separately indicted, but as the same questions were involved they were tried together, and were argued in like manner in this court. The indictments charge the defendants with refusing to obey a "summons and writ of subpoena" alleged to have been issued by the joint appropriation committee of the legislature of the State of New Jersey for the year 1914, commanding them to appear before said joint committee to testify in a matter then under investigation by it. That the summons or the subpoena was served on the defendants does not appear to be disputed. The defendants were convicted in the Court of Quarter Sessions of Mercer County and have appealed from the judgments entered thereon. 20 30

The first point made by the appellants is that there was no joint appropriations committee of the legislature of the state for the year 1914, as charged in the indictment. If by this it is intended that the rules of the two houses of the legislature do not provide for a joint committee on appropriations the claim made by the defendants is correct, but this is not sufficient, under the facts shown in this proceeding, to require a

reversal of these judgments. The facts show that each house has a committee on appropriations, and that they do not meet and act separately, but on the contrary they meet and act as a joint committee. The resolution authorizing the investigation provided, "that the joint appropriations committee of the legislature for the year 1914 be and they are hereby authorized and empowered to make investigations" of the financial need of certain departments of the state therein named, and to report to the next session of the legislature. This, we think, was the appointment of the persons constituting the two committees acting jointly as a special committee to make the investigation, and constituted the committees of the two houses as the committee to make the investigation.

The next point is that the plaintiffs in error were not compellable to attend at Trenton on the day named in the summons, because (a) no place of meeting was ever designated by the committee. (b) The committee never authorized the issuing of summons to the plaintiffs in error. The powers of a committee of this character is to be found in sections 63 and 64 of the act entitled "An act concerning evidence (Revision of 1900)" C. S. Vol. 2, 2217, 2239. Section 63 provides that any joint committee of the legislature, or any standing committee of either house, or any special committee which shall have been, by resolution, directed to enter upon any investigation or inquiry, the pursuit of which shall require the examination of witnesses, shall have power to "summon before them such persons as they may deem necessary and proper, to testify in the matter under investigation." Section 64 provides, that any such committee shall have power to compel the attendance before them "of such person or persons as they may deem necessary and proper, to testify in the matter under investigation." This statute clearly shows that the power to summon witnesses is given alone to the committee and not to any member

thereof acting alone. In other words, the statute intends that the persons deemed necessary and proper to testify in the matter under investigation, shall be determined by the judgment of the committee and not that each member of the committee shall alone determine the necessity for the attendance of a particular person to testify. The evidence in this case is undisputed that the meeting of the committee, which these 10 defendants were subpoenaed to attend, was not held on a day fixed by the committee, but on a day fixed by the chairman of the committee, and this, we think, was irregular because the powers delegated by the legislature were not given to a single member of the committee, but to the committee as a whole, but aside from this, the chairman had no power to order the issuing of a summons for the attendance of witnesses unless he was authorized to do so by the action of the committee. The persons whom the committee are entitled 20 to subpoena are such which the pursuit of the investigation "shall necessitate," and that is, a *quasi* judicial function to be exercised by the committee and not by the chairman, otherwise if each member of the committee exercised his own judgment, persons might be summoned to attend to testify to matters which the pursuit of the investigation, in the judgment of every other member of the committee, might not be necessary as not being within the matters which the committee deemed they were authorized to investigate. The power 30 to require witnesses to neglect their business and to come from all parts of the state to Trenton to testify is very great, and should only be exercised within the lines laid down by the statute, which plainly limits the exercise of that power to the committee as a whole, and it is not delegated by the legislature to the chairman or any other member of the committee, and this seems to be a wise limitation, but whether wise or not, the legislature has so ordained. The trial court was requested to charge "there is no evidence that any such

committee ever authorized the issuance of subpœna or summons to either defendant," and also "the paper writings served on the respective defendants were beyond the authority of the statute and the defendants were not bound to respond thereto." Both of these requests were refused, and in this we think there was error, because there was no evidence that the committee
10 ever authorized the issuance of the subpœna or summons. They were issued on the determination alone of the chairman, and without any statutory authority, and the defendants were not bound to respond thereto. For this error, the judgment in each of the above-stated causes will be reversed and new trial awarded.

EXHIBIT P 1.

20 New Jersey, ss.

The State of New Jersey to Walter Scott, Secretary Brewster Construction Company, Hackensack, New Jersey.

Greeting: We hereby command and summon you to lay aside all and singular businesses and excuses, and personally be and appear before the Joint Appropriations Committee of the Senate and General Assembly of the State of New Jersey, who were by joint resolution No. 7, of the said Senate and General Assembly
30 of the State of New Jersey, approved April ninth, one thousand nine hundred and fourteen, authorized and empowered to make investigations of the financial needs of the Department of Education, Department of Public Roads, the institutions under the Department of Charities and Corrections, or other departments and commissions and of any new source of public revenue, on Saturday, the fifth day of December, A. D. nineteen hundred and fourteen, at eleven o'clock in the forenoon of said day, at the Senate Chamber, State House, in the City of Trenton and State of New Jer-

sey, to testify all and singular what you know concerning the said matters under inquiry.

And that you diligently search for, so that you have and bring with you then and there before the said Committee the following things:

Stock book or the book which exhibits the names of the persons to whom shares of stock of the corporation have been issued and which will show who are the 10 owners of stock in the corporation at the present time. The stock transfer book or book which will show the record of transfers of stock from the date of incorporation down to the present time. The minute book of the corporation or other book or record which will show the minutes of the various meetings of the corporation or its board of directors since the date of incorporation thereof to date. The ledger, cash book, journal or other books of account of the corporation 20 from the date of incorporation down to the present time. The bank book or bank books of the corporation from the date of incorporation thereof to date. Any book or books which will exhibit the system of cost accounting kept by the corporation in connection with its various contracts for road building and road repairs in Bergen County and especially the account of the corporation in connection with the contracts for the building of the first, second and fifth sections of the Franklin Turnpike, Paramus or Arcola Road, Essex Street, Terrace Avenue and Market Street in Bergen County. 30

Witness the hand of Charles O'Connor Hennessy, Chairman, affixed by direction of the said Committee and attested by the Clerk, the 2d day of December, A. D. nineteen hundred and fourteen.

CHARLES O'CONNOR HENNESSY,
Chairman.

Attest:

EDWARD J. HART,
Clerk.

(Endorsed) :

In re investigation by the Joint Appropriations Committee of the Senate and General Assembly of the State of New Jersey.

Summons (Deuces Tecum) to Witness.

Exh. P-1. April 26, 1915.

10

EXHIBIT P 2.

New Jersey, ss.

The State of New Jersey to George M. Brewster, Tenafly, New Jersey.

Greeting: We hereby command and summon you to lay aside all and singular businesses and excuses, and personally be and appear before the Joint Appropriations Committee of the Senate and General Assembly of the State of New Jersey, who were by joint resolution No. 7, of the said Senate and General Assembly of the State of New Jersey, approved April ninth, one thousand nine hundred and fourteen, authorized and empowered to make investigations of the financial needs of the Department of Education, Department of Public Roads, the institutions under the Department of Charities and Corrections, or other departments and commissions and of any new source of public revenue, on Saturday, the fifth day of December, A. D. nineteen hundred and fourteen, at eleven o'clock in the forenoon of said day, at the Senate Chamber, State House, in the City of Trenton and State of New Jersey, to testify all and singular what you know concerning the said matters under inquiry.

And that you diligently search for, so that you have and bring with you then and there before the said Committee the following things:

Stock book or the book which exhibits the names of the persons to whom shares of stock of the corporation have been issued and which will show who are the

owners of stock in the corporation at the present time. The stock transfer book or book which will show the record of transfers of stock from the date of incorporation down to the present time. The minute book of the corporation or other book or record which will show the minutes of the various meetings of the corporation or its board of directors since the date of incorporation thereof to date. The ledger, cash book, 10 journal or other books of account of the corporation from the date of incorporation down to the present time. The bank book or bank books of the corporation from the date of incorporation thereof to date. Any book or books which will exhibit the system of cost accounting kept by the corporation in connection with its various contracts for road building and road repairs in Bergen County and especially the account of the corporation in connection with the contracts for the building of the first, second and fifth sections of the Frank- 20 lin Turnpike, Paramus or Arcola Road, Essex Street, Terrace Avenue and Market Street in Bergen County.

Witness the hand of Charles O'Connor Hennessy, Chairman, affixed by direction of the said Committee and attested by the Clerk, the 2d day of December, A. D. nineteen hundred and fourteen.

CHARLES O'CONNOR HENNESSY,
Chairman.

Attest:

EDWARD J. HART,
Clerk.

30

(Endorsed):

In re investigation by the Joint Appropriations Committee of the Senate and General Assembly of the State of New Jersey.

Summons (Deuces Tecum) to Witness.

Exh. P-2. April 26, 1915.

New Jersey Court of Errors and Appeals.

STATE OF NEW JERSEY,
Plaintiff and Plaintiff in Error,
 vs.
 GEORGE M. BREWSTER,
Defendant and Defendant in Error. } In Error.

10

ASSIGNMENT OF ERRORS.

(Filed April 20, 1916.)

Afterwards, to wit, on the twentieth day of April, in this same term, before the Judges of the said Court of Errors and Appeals, in the last resort in all causes, comes the said the State of New Jersey by Martin P. Devlin, Prosecutor of the Pleas of the County of Mercer, 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 in form aforesaid was given for the said George M. Brewster against the said State of New Jersey, whereas, by the law of the land, judgment ought to have been given for the said State of New Jersey against the said George M. Brewster.

20 2. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that: the alleged committee was bound to designate a place of meeting. There is nothing in the evidence shown that the alleged committee ever designated Trenton, New Jersey, as the place for holding its hearings.

30 3. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that: the committee never authorized the issuance of summons to the defendants in error.

4. There is also error in that the Supreme Court reversed the judgment of the Quarter Session for the reason that: the committee never authorized the issuance of summons to the defendants in error. This said reason was not raised in the Specification of Causes served and filed by the defendants in the Supreme Court in the above-stated cause.

5. There is also error in that the Supreme Court 10 reversed the judgment of the Quarter Sessions for the reason that: there is no evidence that any such committee ever authorized the issuance of subpœna or summons to either defendant.

6. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that: there is no evidence that any such committee ever authorized the issuance of subpœna or summons to either defendant. This said reason was not raised in the Specification of Causes served and filed 20 by the defendants in the Supreme Court in the above-stated cause.

7. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that: the paper writings served on the respective defendants were beyond the authority of the statute and the defendants were not bound to respond thereto.

8. There is also error in that the Supreme Court 30 reversed the judgment of the Quarter Sessions for the reason that: the paper writings served on the respective defendants were beyond the authority of the statute and the defendants were not bound to respond thereto. This said reason was not raised in the Specification of Causes served and filed by the defendants in the Supreme Court in the above-stated cause.

And the said plaintiff in error prays that the judgment aforesaid may be reversed, annulled and for nothing holden, and that the said State of New Jersey may

be restored to all things that it has lost by occasion of the said judgment, etc.

MARTIN P. DEVLIN,
*Prosecutor of the Pleas of
Mercer County, for the State.*

10 Due and legal service of the Assignment of Errors is hereby acknowledged this — day of April, 1916.

*Attorney and of Counsel for
Defendant and Defendant in Error.*

New Jersey Court of Errors and Appeals.

20 THE STATE OF NEW JERSEY,
Plaintiff and Plaintiff in Error, }
VS. } In Error.
GEORGE M. BREWSTER,
Defendant and Defendant in Error. }

JOINDER.

(Filed April 26, 1916.)

30 And hereupon, afterwards, to wit, on the twenty-seventh day of April, nineteen hundred and sixteen, the said George M. Brewster, by William B. Mackay, Junior, his 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, as the matters aforesaid assigned for errors, and that the judgment aforesaid, in manner aforesaid, in all things be affirmed, etc.

WILLIAM B. MACKAY, JR.,
*Attorney and of Counsel with
Defendant and Defendant in Error.*

New Jersey Court of Errors and Appeals.

STATE OF NEW JERSEY, <i>Plaintiff and Plaintiff in Error,</i> vs. WALTER SCOTT, <i>Defendant and Defendant in Error.</i>	}	In Error.
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10

ASSIGNMENT OF ERRORS.

(Filed April 20, 1916.)

Afterwards, to wit, on the twentieth day of April, in this same term, before the Judges of the said Court of Errors and Appeals, in the last resort in all causes, comes the said the State of New Jersey by Martin P. Devlin, Prosecutor of the Pleas of the County of Mercer, 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 in form aforesaid was given for the said Walter Scott against the said State of New Jersey, whereas, by the law of the land, judgment ought to have been given for the said State of New Jersey against the said Walter Scott.

20

2. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that: the alleged committee was bound to designate a place of meeting. There is nothing in the evidence shown that the alleged committee ever designated Trenton, New Jersey, as the place for holding its hearings.

30

3. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that: the committee never authorized the issuance of summons to the defendants in error.

4. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that: the committee never authorized the issuance of summons to the defendants in error. This said reason was not raised in the Specification of Causes served and filed by the defendants in the Supreme Court in the above-stated cause.

10 5. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that: there is no evidence that any such committee ever authorized the issuance of subpœna or summons to either defendant.

20 6. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that: there is no evidence that any such committee ever authorized the issuance of subpœna or summons to either defendant. This said reason was not raised in the Specification of Causes served and filed by the defendants in the Supreme Court in the above-stated cause.

7. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that: the paper writings served on the respective defendants were beyond the authority of the statute and the defendants were not bound to respond thereto.

30 8. There is also error in that the Supreme Court reversed the judgment of the Quarter Sessions for the reason that: the paper writings served on the respective defendants were beyond the authority of the statute and the defendants were not bound to respond thereto. This said reason was not raised in the Specification of Causes served and filed by the defendants in the Supreme Court in the above-stated cause.

And the said plaintiff in error prays that the judgment aforesaid may be reversed, annulled and for nothing holden, and that the said State of New Jersey may

be restored to all things that it has lost by occasion of the said judgment, etc.

MARTIN P. DEVLIN,
*Prosecutor of the Pleas of
Mercer County, for the State.*

Due and legal service of the Assignment of Errors is hereby acknowledged this — day of April, 1916. 10

*Attorney and of Counsel for
Defendant and Defendant in Error.*

New Jersey Court of Errors and Appeals.

<p>THE STATE OF NEW JERSEY, <i>Plaintiff and Plaintiff in Error,</i> vs. WALTER SCOTT, <i>Defendant and Defendant in Error.</i></p>	}	<p>In Error. 20</p>
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JOINDER.

(Filed April 26, 1916.)

And hereupon, afterwards, to wit, on the twenty-seventh day of April, nineteen hundred and sixteen, the said Walter Scott, by William B. Mackay, Junior, his 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, as the matters aforesaid assigned for errors, and that the judgment aforesaid, in manner aforesaid, in all things be affirmed, etc. 30

WILLIAM B. MACKAY, JR.,
*Attorney and of Counsel with
Defendant and Defendant in Error.*





