

NEW JERSEY COURT OF ERRORS AND APPEALS.

Francis E. Croasdale
Prosecutor
Appellant.

vs.

The Court of Quarter Sessions
of the County of Atlantic,
Defendant
Respondent

ON CERTIORARI.

BRIEF OF PROSECUTOR.

The return to the writ of certiorari allowed by the Supreme Court in this matter brought before said Court certain proceedings before the Atlantic County Court of Quarter Sessions instituted to punish prosecutor for an alleged contempt.

It is the contention of the prosecutor that the Atlantic County Court of Quarter Sessions never acquired jurisdiction and that the Supreme Court should have ordered such proceedings quashed, instead of sustaining them and dismissing prosecutor's writ of certiorari as it did.

FACTS.

Prosecutor is a resident of the City of Atlantic City, in the County of Atlantic and State of New Jersey, and is, and for a number of years has been a citizen of the State of New Jersey, and of the United States, and is and has been continuously the editor of the Atlantic City Daily Press, a newspaper printed, published and circulated in Atlantic City, Atlantic County, New Jersey, since October 1, 1914.

On the sixth day of August, nineteen hundred and fifteen, said prosecutor was served with an order to show cause in the matter of an alleged contempt in the Atlantic County Court of Quarter Sessions. (State of the case, page 6.)

(Attention is called to the fact that said original order from Quarter Sessions requiring prosecutor to appear and show cause why an attachment should not be entered against him was served on prosecutor in Atlantic City on the sixth day of August, nineteen hundred and fifteen, at twenty-five minutes after eight o'clock at night (State of case, p. 8, top), and commanded prosecutor to appear at Mays Landing, sixteen miles distant, at nine-thirty o'clock in the morning of the seventh day of August, nineteen hundred and fifteen, which was the next morning.)

On said sixth day of August, nineteen hundred and fifteen, said prosecutor was at the same time also served with a copy of an affidavit upon which said proceedings were based. (State of case, p. 4.) It is admitted that prosecutor wrote the editorial in said affidavit mentioned.

(Attention is called to the fact that the only allegation of contempt in said jurisdictional affidavit is a statement "that a newspaper, published and circulated in Atlantic City, in said County, and State and elsewhere in said County and State, and known as Atlantic City Daily Press contained upon the editorial page of said paper, on the fifth day of August, A. D. one thousand nine hundred and fifteen, an editorial or article" more fully set forth in the State of the case at page 4.

The next day, after the publication of said editorial, the Judge of the Court of Common Pleas, acting as a Court of Quarter Sessions, issued the rule to show cause against prosecutor, set forth in full in the State of the case at page 6. There is not even an allegation of a publication in the place where the Court regularly sits, the nearest definite allegation as to the place of publication being sixteen miles distant).

(Attention is also called to the fact that the stand taken by prosecutor in said editorial in substance simply urged that an investigation be made of a charge of rape that had been preferred against a magistrate of the county).

On the seventh day of August, nineteen hundred and fifteen, prosecutor appeared before the Atlantic County Court of Quarter Sessions, in obedience to the command of said rule to show cause, referred to above, and said hearing was as per transcript of stenographer's notes annexed to return. (State of the case, p. 14, et seq.)

(Attention is especially called to the following facts with respect to said hearing:

1. No other alleged contempt beyond the publication of the editorial as aforesaid was touched upon or suggested by the Judge of the Atlantic County Court of Quarter Sessions or his attorney.

2. Neither allegation, proof or suggestion appeared that prosecutor had been guilty of any contempt whatsoever in the presence of said Atlantic County Court of Quarter Sessions.

3. That the charge which prosecutor urged be investigated is set forth in said testimony, on page 19 of the State of the case.

4. That when the court first rested (State of the case, page 22) attorney for prosecutor moved for a dismissal because it appeared that there was no charge pending before the Court at the time the editorial appeared; that the article related solely to a certain case which had not been brought before the Court in any way at all, and that under the law no penalty could be inflicted without such proof.

5. That the Judge (not his counsel) who was then presiding over the trial against this prosecutor himself said (State of the case, p. 22, line 30) "Very well, then we will recall Mr. Brown" (the Assistant Prosecutor of the Pleas), and proceedings were reopened, and additional testimony supplied, the Judge himself, (State of the case, p. 32) having himself sworn by the clerk and testifying against this prosecutor.

6. That it appears by the Judge's own statement (State of the case, p. 22, line 20; id. p. 32, lines 25-32; p. 38, line 32, to p. 39, line 18) that he had already ordered an investigation when said Editorial appeared, urging him to order one and that said editorial urged the authorities of the county to do no more than they claim in said testimony, that they had already quietly done.

7. That this prosecutor had no inkling that an investigation had been ordered until the fact came out upon his hearing in open court. (State of the case, p. 39, lines 10-20).

8. That the Judge himself admitted that the fact of an investigation having been ordered had not been disclosed when he said (State of the case, p. 32, lines 25-32): "There are a number, if I may be permitted to say so, there are a number of matters that I necessarily know about and reporters ask me about, that I am obliged to evade, and be as nice to them as I can without telling them what I know."

Upon said seventh day of August, nineteen hundred and fifteen, said Court made a rule that an attachment issue, forthwith, against this prosecutor, which rule is fully set forth in the State of the case, at p. 9.

(Attention is here called to the fact that although the law appears to be that the only purpose of the allowance of a writ of attachment is to compel the appearance of the defendant in court, for a trial, in this case the Judge before ordering the issuance of the writ of attachment pronounced the defendant guilty, in advance of the return of said writ of attachment when he said, in part, (State of case, p. 40, line 36, etc.): "I am thoroughly convinced that this article was written

for the express purpose of holding the Court in contempt and injure its good name and bring it in disrepute", and the Court then (after some other comment) ordered that an order be entered directing an attachment to be issued against this prosecutor, to be made returnable on the twenty-fifth day of August, nineteen hundred and fifteen.

Writ of attachment (State of the case, p. 10) issued on said seventh day of August, nineteen hundred and fifteen, and was served upon the prosecutor personally by the Sheriff of the County of Atlantic, and by direction of the Judge of said Court, the said Sheriff accepted the recognizance of this prosecutor without surety, for his appearance on the return day of said writ (August 25, 1915).

Prosecutor admits, (although it does not appear from the return) that on the eleventh day of August, nineteen hundred and fifteen, there was personally served on this prosecutor the interrogatories set forth in the State of the case, p. 42.

Before the return day, of the writ of attachment, the attorney for this prosecutor was notified, by said Judge, that because of his illness he would continue the matter until August 30, 1915, which was done. (State of the case, p. 12).

Before August 30, 1915, proceedings had been arrested by allowance of rule to show cause, preliminary to allowance of this writ, and accordingly matter was again continued to September 29, 1915. (State of the case, p. 13).

What disposition the lower court made of the matter on September 29, 1915, does not appear. The return to the writ, made on October 22, 1915, (State of the case, p. 48), shows no further order.

ARGUMENT.

First Point.

The Atlantic County Court of Quarter Sessions has only such summary power to punish for contempt as existed in its English prototype, namely, to punish only for contempts committed *in facie curiae*, and has no power to punish summarily for contempts committed *extra curiam*.

"Melius est petere fontes quam sectari rivulos."

The only statutory provision which counsel has, by careful search, been able to find, which might be construed as conferring power on this court re contempt is as follows:

Criminal Procedure Act. (Revision of 1898).

Section 1 (2 Comp. Sts. (1910) p. 1820).

Which reads in part:

"The judge for the time being of the inferior court of common pleas of any county in this state shall constitute a court of quarter sessions in and for such county; which court shall be a court of record;" (etc.)

We must be careful not to conclude from the fact that our Courts of Quarter Sessions are Courts of Record, as the statute in fact says, that therefore they, have powers in contempt as extensive as those entrusted to the Supreme Court. The Courts have a different origin, are modeled after different courts in England, and are of different dignity. Our courts of Quarter Sessions have such powers as have been lawfully conferred upon them and no others. *All courts of record do not have equal power at common law over contempt.* We must study the origin of the court.

Mr. Keasbey, in "Courts and Lawyers of New Jersey," Vol. 2, p. 557, says:

"The Constitution makes no mention of the Court of Quarter Sessions, and the statute constituting the court contains no description of the jurisdiction except in specifying the crimes over which it is not to have cognizance. The jurisdiction is based upon the common

law, and upon the statutes defining offences cognizable by the justices in their sessions. *The jurisdiction of the Quarter Sessions is in fact the jurisdiction of the justices of the peace in their quarterly sessions.* The Sessions of the Peace, says Hawkins in his 'Pleas of the Crown', is a court of record holden by two or more justices of the peace, where one is of the quorum, at a certain day and place before appointed to hear and determine in pursuance of their commission of any causes or matter therein contained."

And the same authority (at page 568) says:

"The office of justice of the peace was the first judicial office recognized and established in the Province, and the justice was made the judge of the court for the trial of small causes for a limited amount. The justices assembled in the Quarter Sessions of the County Courts became the Court of Quarter Sessions for the trial of such criminal causes as were not reserved to the Oyer and Terminer, and they had in themselves and in those courts all the powers of the justices of the peace as their powers were established in England."

The development, nature and jurisdiction of Quarter Sessions in England were identical with their evolution in these Provinces, Colony and State. For a long time, as a matter of fact, it will be recalled, that our judicial system was under the control of England.

Blackstone gives a clear picture of the nature of such courts in both England and America when he wrote about the time of the separation (Book 4, p. 271):

"The court of general quarter sessions of the peace is a court that must be held in every county once in every quarter of a year, which, by statute 2 Hen. V., c. 4, is appointed to be in the first week after Michaelmasday, the first week after the Epiphany, the first week after the close of Easter, and in the week after the translation of St. Thomas the Martyr, or the seventh of July. It is held before two or more justices of the peace, one of which must be of the quorum. *The jurisdiction of this court, by statute 34 Edw. III, c. 1, extends to the trying and determining all felonies and trespasses whatsoever, though they seldom if ever try*

any greater offense than small felonies within the benefit of the clergy; their commission providing that, if any case of difficulty arises, they shall not proceed to judgment but in the presence of one of the justices of the court of king's bench or common pleas, or one of the judges of assize. And therefore murders and other capital felonies are usually remitted, for a more solemn trial, to the assizes."

Note how, in this State, even to this day, murder trials are required to be held before Oyer and Terminer where the president judge is a Supreme Court Justice.

It was held in the case of *Engeman vs. State*, 54 N. J. L. 247 that even the common pleas in this State is one of the inferior courts which it is in the power of the legislature to alter or abolish.

And in the New Jersey Digest (Title Contempt, columns 2011 and 2012) note that the Quarter Sessions case of *State vs. Keeper of Jail of Camden County*, 5 N. J. L. J. 184 is classified under the title "Inferior Courts." This case is cited for the proposition that

"The court of quarter sessions being a court of record, has power to fine and imprison for contempt."

But note that the facts show that it was a case of a deliberate contempt *in open court during the trial of a case and in the actual presence of the court.*

In this case, according to the non-official and admittedly rough report of the New Jersey Law Journal "Parker J., held that the Court of Quarter Sessions being a court of record, had power to fine and imprison for contempt, and *if the contempt was in the face of the court*, a rule to show cause was not necessary, but the offender might be instantly apprehended and imprisoned by the civil (?) order and direction of the court. It was a power inherent in the court, necessary to its existence, and while it should be used with discretion and sparingly, yet when the occasion required, it should be asserted and exercised."

The Editor of the Law Journal also reports above case under the title "Cases Before The Inferior Courts" thereby indicating the view in his mind that a Court

of Quarter Sessions is an inferior court. The dictum above might be subject to a construction that the Court of Quarter Sessions has power to punish for a contempt *out of the presence of the Court*, but the question as to distinction was neither discussed, argued nor briefed.

In our leading case of *Rinehart vs. Larce*, 43 N. J. L. 312, Mr. Justice Depue said in part:

"The object of the demurrer is to raise the question whether a justice of the peace sitting in the court for the trial of small causes has power to commit for a contempt committed in the presence of the court while engaged in the trial of a civil cause." (Note that the statute made the Small Cause Court a "court of record".)

"It must be conceded that the plaintiff's conduct, as averred in the plea, was outrageously improper, and that if he so misconducted himself he deserved the punishment he received. But we must not, by our disapprobation of the plaintiff's conduct, or by the justice of the punishment he received, be led away from the real question in issue—the power of a justice of the peace to commit for contempts when sitting in the court for the trial of small causes. If the power in question resides in the class of judicial officers to which the defendant belongs, it is a power which may be exercised for a less flagrant offence, and followed by an imprisonment for a year, or a longer term, as well as for a single day, without its exercise being subject to revision or review, except in mere matters of form.

"The power to commit at discretion and for a discretionary term of imprisonment is a transcendent prerogative power.

"The power which the courts in Westminster Hall", said Wilmot, C. J., "have of vindicating their own authority, is coeval with their first foundation. * * * I have carefully examined to see if I could find out any vestiges or traces of its introduction, but can find none. It is as ancient as any other part of the common law." *Rex v. Almon*, Wilmot's Opinions 254. It seems to have had its foundation on the theory that contempt in

the presence of, or of the authority of, the king's courts, was a contempt of the royal authority itself.

"At common law the power to punish, by fine or imprisonment, contempts, even such as were committed *in facie curiae*, was given to courts of record only. In 30 Eliz. it was resolved that if any contempt or disturbance to the court be committed in any court of record, the judges might set upon the offender a reasonable fine; but that courts which are not of record cannot impose a fine or commit to prison. Griesley's case, 8 Co. 75; Godfrey's case, 11 Co. 43 b. None but courts of record can either fine or imprison; hence, when any new authority is constituted with power to fine and imprison, the persons invested with such authority become a court of record. Groenvelt v. Burwell, 1 Comyn 79. Mr. Hawkins expressly lays it down that only such courts as are courts of record may fine or imprison for contempts in the face of the court. 3 Hawk. 5, pp. 14, 15. All courts of record are the king's courts, in right of his crown and royal dignity, and therefore every court of record has authority to fine or imprison for contempt of its authority; but the courts not of record — or those, at least, in which the common law is administered—are of inferior dignity, and in a less proper sense the king's courts, and therefore are not entrusted by the law with the power to fine or imprison, unless by the express provision of some act of parliament. 3 Steph. Com. 383, 384.

"Expressions are frequently used in the books distinguishing between superior and inferior courts, which are erroneously cited in support of the power of inferior courts, not of record, to commit for contempt. This classification of courts of record is made by Sir Matthew Hale. He says: 'The courts are of two kinds: 1. Courts of record; 2. Not of record. First. Of courts of record there is this diversity, viz.: 1, supreme; 2, superior; 3, inferior.' The latter he styles inferior courts of record. Hale's Analysis of the Law 35, 36; This distinction is commented on by counsel and by Erle, C. J., and Willes, J., in *In re Fernandez*, 10 C. B. (N. S.) 3, 27-41, and concerns only the question as to the power summarily to punish contempts committed *extra curiam* as well as *in facie curiae*, and the form and contents of the process of commitment.

In re Sheriff of Middlesex, 11 A. & E. 273; Ex parte Pater, 5 B. & S. 299. It has no pertinency to the power of inferior courts, which are not courts of record, to commit for either cause.

"I do not find in the English cases any judicial adoption of a principle so broad, as that power to fine or imprison for contempts is necessarily inherent in every court of justice, without regard to the grade or constitution of the court. The claim by Sir William Blackstone of such a power as resulting from the first principle of judicial establishments was made only in behalf of the supreme courts of justice, as an inseparable attendant upon every superior tribunal. 4 Bl. Com. 286. The passage so often quoted from the opinion of Chief Justice Wilmot in Rex v. Almon. supra, that such a power is a necessary incident of every court of justice, whether of record or not, was manifestly designed to have no broader application. The Chief Justice cites Sparks v. Martyn, 1 Vent. 1, which was an application to the King's Bench for a prohibition to restrain the Court of Admiralty from enforcing an attachment for a contempt for taking a ship and taking the sails from it, from an officer who was executing the process of the court against the ship. The King's Bench denied the prohibition, saying that the Court of Admiralty may punish one that resists the process of the court, and may fine and imprison for a contempt to the court acted in the face of the court, though it be no court of record. The High Court of Admiralty was among the most ancient of the English courts. 'The admiral and Court of Admiralty have been time out of mind, and so it was said in the time of Richard I.' Com. Dig., 'Admiralty,' A. Its jurisdiction was civil and criminal. On the criminal side it had cognizance of piracy and of murder, and all felonies committed on the high seas. As a criminal court it possessed most extensive powers, including the power to pronounce sentence of death. Com. Dig., 'Admiralty' E. As a civil court, by the custom of the court, it had power to amerce the defendant for his default, at its discretion, and to make execution thereof upon his goods, and for want of goods to take his body. 2 Bac. Ab. 746; the case of The Admiralty, 13 Co. 52. Inasmuch as its proceed-

ings were according to the method of the civil law, for that reason it was not considered as a court of record. 3 Bl. Com. 69. But it had, by its constitution, the essential attribute of a court of record—power to fine and imprison—and, in the magnitude of its jurisdiction, was on an equality with the courts at Westminster Hall. The court had all the qualities of a court of record, except that its procedure being regulated by its own peculiar laws and usages, its sentences, for technical reasons, were not considered as its record.

“It is entirely clear that among courts proceeding according to the common law, the power of summarily, punishing contempts depended upon whether or not the court was a court of record. The most recent English case on the subject, was argued and decided upon that assumption. *Queen v. Lefroy*, L. R., 8 Q. B. 134. This court, in *Ex parte Kerrigan*, 4 Vroom 345, decided that the power resides only in such courts as were courts of record recognized in the common law, and that it did not pertain to other courts, simply because they had judicial functions to perform.”

Let us examine very carefully the case of *Queen vs. Lefroy*, L. R. 8 Q. B. 134, cited by Mr. Justice Depue.

The *Queen vs. Lefroy*.

Court of Queens Bench—1873. L. R. 8 Q. B. 134.

The solicitor for a plaintiff in a county court in England wrote a letter to the local newspaper, accusing the judge of the county court of “arbitrary and tyrannical abuse of power” and calling one statement he had made “a monstrosity” and “an untruth”. (Statement abbreviated.)

Held:

That the judge had no power to proceed against the solicitor for contempt of court; although the matter was still pending.

This case is cited by Odgers in *Digest of the Law of Libel and Slander* as authority for the proposition that “An *inferior court of record* can only commit for contempts committed *in open court in facie curiae*. The judge or coroner must at the moment be actually discharging his duty; and the words employed or act

done must either be pointedly and personally disrespectful to the judge or coroner himself; or else amount to a serious obstruction of the course of justice."

In the argument in the Lefroy case above, counsel endeavoring to sustain the contempt charges quoted as follows from an earlier case of *Rex vs. Clement* (4 B. & Ald. 218, at p. 233), Holroyd, J.: "It is perfectly clear, as to the Courts of Westminster, that contempts may not only be in the face of the court, but that they may be committed out of the court. . . . Courts inferior to the Courts of Westminster may clearly fine and imprison for a contempt, if they are courts of record, as the Court of Quarter Sessions and the Court of Oyer and Terminer." And counsel suggested that the *Clement* case "was a case of a contempt committed out of court, by publishing, contrary to the order of the Court an account of prosecutions pending in the court of gaol delivery for Newgate, and cited other cases.

But Cockburn, C. J. replied: "*All the cases cited were cases of contempt in court; or, if not, the court was a Superior Court of Record.*"

And in delivering the opinion of the Court in the Lefroy case the Chief Justice said:

"The rule must be made absolute. I think that *the judge of the county court has no authority to punish for contempt not committed in the face of the court.* It is perfectly true that it is laid down by authority, and reason shows the correctness of the rule, that *all courts of record have power to fine and imprison for any contempt committed in the face of the court; for the power is necessary for the due administration of justice, to prevented the court being interrupted. But it is quite another thing to say that every inferior court of record shall have power to fine or imprison for contempts of court when that contempt is committed out of court, as the writing or publication of articles reflecting on the conduct of the judge. There are other remedies for such proceedings.* The power to commit for contempt is fully gone into by Blackstone and Hawkins; but though this power is recognized in the superior courts, *it is nowhere said that an inferior*

court of record has any power to proceed for contempt out of court; and there is an obvious distinction between the superior courts and other courts of record. In the case of the superior courts at Westminster, which represent the one supreme court of the land, this power was coeval with their original constitution, and has always been exercised by them. These courts were originally carved out of the one supreme court, and are divisions of the aula regis, where it is said that the king in person dispensed justice, and their power of committing for contempt was an emanation of the royal authority, for any contempt of the court would be a contempt of the sovereign. But it is a very different matter with respect to the county courts and similar inferior courts. No case is to be found in which such a power has ever been exercised by an inferior court of record, or, at all events upheld by a decision of the superior courts. Finding, therefore, this distinction, that the superior courts have exercised the power from time immemorial, and that no such power has ever been known to be exercised by an inferior court, that would be sufficient to dispose of this case".

Mellor, J. said: "I am of the same opinion. I entirely agree with the Lord Chief Justice on both points. The superior courts at Westminster have for all time had this power. In 2 Hawkins P. C. (8th ed.) p. 1, 2, c. 1, it is said the jurisdiction of the one supreme court was introduced after the conquest, in which the grand justiciary acted as viceroy; and out of this court was erected the courts of Queen's Bench, Common Pleas, and Exchequer; and therefore the foundation of the authority of these courts, as to contempts committed in court and contempts out of court having a tendency to affect the administration of justice, was that they were part of the great court or aula regis. *The authority of the inferior courts of record has no such foundation; the matter stands on quite a different footing as to them; and no instance has been found where this power has been assumed or justified by any decision, otherwise than for contempt committed in the face of the court"*

Quain, J. said: "I am of the same opinion. As soon

as it is ascertained that no case can be found in which imprisonment or fine has been inflicted by an inferior court of record for contempt not in the face of the court, it follows that the rule must be made absolute. .

“But no authority is to be found for the existence of any such power in an inferior court of record. The superior courts have always had the power of proceedings for contempt not committed in court. They had it, as Wilmot, C. J., points out, by immemorial usage. There were also many inferior courts of record, but no single instance is to be found of the exercise of this power by them. In 4 Blackstone’s Commentaries, p. 283, this immemorial power is expressly confined to the superior courts: “To this head of summary proceedings may also be properly referred the method, immemorially used by the superior courts of justice, of punishing contempts by attachment and subsequent proceedings thereon.” (The judge then proceeds to give other quotations in all of which the power of punishing for acts out of court is referred to only in connection with the term superior courts.)

In the earlier case of *Ex parte Pater*, 5 B. & S. 299—1864, (Kings Bench).

Cockburn, C. J., (at p. 308) had said: “The Quarter Sessions, being a *Court of Record*, has attached to its jurisdiction, as inherent in it, the power to punish for contempt. But as it is a *Court of inferior jurisdiction*, this Court (the King’s Bench) has authority to intervene and prevent any usurpation of jurisdiction by it, if it treats conduct as a contempt which there is no reasonable ground for so treating, this court may interfere to protect the party upon whom the power to commit or fine for contempt has been improperly exercised.”

Note that the opinion in *Ex parte Pater* was written by Cockburn, C. J., the same justice who later decided the *Lefroy* case, *supra*, showing that when he wrote the *Lefroy* case, he must have had in mind his previous decision classifying Quarter Sessions as an *inferior court of record*.

Counsel endeavoring to sustain proceedings against

prosecutor rely, doubtless, on

In *Re Cheeseman*, 49 N. J. L. 115—1886.

Oyer & Terminer. Syllabus (in part):

“The *superior* courts of this state, modeled after the English courts of Common Law, have authority to punish summarily for any words uttered by speech, by writing or by printing, outside of the regular course of litigation, which are designed to bring contempt upon the courts in the exercise of their judicial functions, or to pervert in a pending cause the due administration of justice.

“The jurisdictional facts necessary to legalize a conviction for contempt in the superior courts of law are, first, that matters constituting a contempt should appear to the court to be true; secondly, that the party charged with the contempt should have a fair opportunity to confess or deny those matters; thirdly that he should confess their truth...” (all else matters of practice only, etc.)

Note: When the Court wrote the opinion in *re Cheeseman* and referred to the power of the “*superior*” courts *re* publications out of court, it used a technical term and adhered to a well known distinction. Counsel in argument in *re Cheeseman* at page 120, had cited the case of *Rex vs. Lefroy*, 8 Q. B. 134, (*supra*) which expressly limited the power to punish for constructive contempts committed by publications out of court to *superior courts of record*.

And further note that In *re Cheeseman* was before *Oyer & Terminer*, which, even in England, (unlike Quarter Sessions) was a “*superior court of record*.”

In *re M’Aleece*, 7 Ire. R., C. L. 146.

Mr. Wm. M. Clevenger, in his “*Courts of New Jersey*” (page 65), says:

“In the early history of the state, most of the criminal business was conducted in the Supreme Court; but later, special writs of *Oyer and Terminer* were issued for the trial of felonies in the different counties when considered necessary, and regularly for the yearly circuit courts, this being in accordance with the law and

custom of England where commissions were issued to the Justices to hold the assizes, etc. Nixon's Dig. (4th Ed.) 1069, et seq. Formerly, this court was known as the Court of Oyer & Terminer & General Gool Delivery, but in 1898, by the codification of the criminal procedure act, the name of the court was changed to Court of Oyer & Terminer. P. L. 1898, p. 867, sec. 3."

In the matter of Peter Kerrigan. 33 N. J. L. 344-1869.

(Re Power of Recorder).

Bedle, J. said, in part: "To punish by a commitment for contempt is a power belonging only to judges of certain courts, and does not arise from the mere exercise of judicial functions. The power is great, and its exercise without review, where there is jurisdiction, and hence our duty to be careful not to extend it beyond the recognized bounds of the common law. The recorder did not commit in default of sureties to keep the peace, or to answer before the oyer or sessions, but his commitment was in execution by way, of punishment. That power, so far as it may be exercised by judicial officers, is an incident to a court, belonging alike to courts of civil and criminal jurisdiction, but not extending, at the common law, below such as are courts of record recognized in the common law. The general doctrine of the English law is, that *all courts of record* may fine or imprisonment for contempts *in the face of the court*. (Citing authorities.)

"That includes the courts of Westminster, the courts of Nisi Prius, Oyer and Terminer, Quarter Sessions, and others of the grade of courts of record in the course of the common law. To this rule there may be an exception in the Court Leet, so far as punishment by imprisonment is concerned, the usual mode of punishment in that court being by fine, and therefore the power to imprison for contempts in that court has been questioned. But without discussing the exceptions, it is sufficient to say that the rule is generally as stated, and is not extended to the county courts of England, or any below the grade of courts of record. And as early as Griesley's case, already cited, (during 30th Eliza-

beth) it was resolved, in the Common Pleas, that courts which are not of record cannot impose a fine, or commit to any prison, for contempts. A power to fine or imprison in such cases, although necessary for the proper discharge of the duties of a court not of an inferior jurisdiction, and for the maintenance of its independence and dignity, should not belong to all persons, bodies, or tribunals, who may have a judicial duty to perform. The common law, wisely, did not recognize it in courts below those of record; and we would be doing violence to the liberty of the citizen to encourage its existence in any of our own courts, except those that, in their very nature, or from analogy to their English models, or in their constitution, are courts of record, with jurisdictions not beneath the character of those so treated in the common law."

And note the limitation imposed by Mr. Justice Bedle when he said that all courts of record may fine or imprison for contempts "*in the face of the court.*"

Second Point.

If the Atlantic County Court of Quarter Sessions has no lawful right to punish for the contempt alleged in this case, why should this prosecutor not have relief at this time?

Why should he be subjected to continued annoyance and oppression if the lower court is exceeding its powers?

The case of *State vs. Hunt*, 1 N. J. L. 332—1795, was a "*Certiorari to Justices of the Sessions of Hunterdon County.*"

This Court in this case sustained a certiorari of an indictment found in the sessions although Hunt had not yet even pleaded to it.

In *Hinchman vs. Cook*, 20 N. J. L. 271-1844, Chief Justice Hornblower pointed out the distinction between certiorari as in effect a writ of error and certiorari used at common law to restrain special or summary proceedings unauthorized by law. He said in part (page 272): "The certiorari therefore in this case must be considered as a proceeding in the nature of a

writ of error, which always brings up the whole record, and can never be brought until after final judgment; whereas, a Certiorari at the common law, goes to special and summary tribunals, and brings up the whole, or any part of their proceedings, according to the command and exigency of the writ. And such writ may be issued before the *inferior jurisdiction* has consummated its authority."

In *Mairs vs. Sparks*, 4 N. J. L. 429-1817, the Court also said:

"A rule has been obtained to show cause why the writ of certiorari should not be set aside upon the ground that it was allowed and issued before judgment given. The facts seem to be that this was an action of forcible entry and detainer, tried at Salem; that as soon as the verdict was rendered and judgment pronounced, and before it was recorded, Crane, attorney for the defendant, presented to the justice this writ—the judge who gave the allocatur living many miles distant."

Kirkpatrick, C. J., in sustaining the practice said in part: "It is the constant practice, under certain circumstances, to make the allocatur so that the party may have it in his possession when judgment is rendered, and it is necessary that it should be so. In many cases it is the only way in which an execution and a change of possession can be prevented, no matter how illegal the proceedings may have been."

The same principle was re-affirmed in *Mairs vs. Sparks*, 5 N. J. L. 606—1819.

In *Hoxsey vs. Paterson*, 39 N. J. L. 489-1877, it was decided that "The rule that a certiorari will not be allowed before a final decision is reached in the inferior tribunal, is confined to cases where the office of the writ is in the nature of a writ of error."

Dixon, J., in the opinion of Errors & Appeals, said, in part: "But within the narrower limits by which the opinion of the Supreme Court is confined, I think sufficient grounds appear for not dismissing the writ. The rule applied by that Court is, that "It is not a proper use of the writ of certiorari to intercept and remove

for review the steps in a procedure preliminary to a decision or final resolution therein, except when the court issuing the writ can continue the proceedings to completion." But this rule is not one of universal force. Its operation is properly confined to those cases where the office of the writ is in the nature of that of a writ of error, and when, therefore, its allowance is governed by similar principles. *But in other cases, it is a discretionary writ, in the absence of any statute requiring it to be granted, and the time for its allowance, as well as other circumstances, is subject to that legal discretion.* Where the object is to review municipal action, especially if that action is said to be beyond the corporate power, it is a frequent practice for the writ to go, while yet the final step that completes the injury is but threatened. State, Danforth, pros. v. City of Paterson, 5 Vroom 163; State, Coar, prosecutor, vs. Jersey City, 6 Vroom 404; State, Gaines, pros. vs. Hudson County Avenue Commissioners, 8 Vroom 12."

The case of Mowery vs. Camden, 49 N. J. L. 106, 6 Atl. 438—1886, is strongly in point. Here there were proceedings to enforce a city ordinance on a defective complaint.

Certiorari was allowed before conviction.

Dixon, J., said, on this point: "The insufficiency of the complaint being thus manifest, the defendant nevertheless contends that the certiorari was premature because allowed before conviction, and for that reason should now be dismissed. The rule on this subject is stated by Chief Justice Hornblower in Hinchman vs. Cook, 20 N. J. L. 272, to be that "a certiorari, at the common law, goes to special and summary tribunals, and brings up the whole or any part of their proceedings, according to the command and the exigency of the writ; and such writ may be issued before the inferior jurisdiction has consummated its authority. But a writ of error, or a certiorari substituted by statute for that writ cannot go for part only of the record, nor before final judgment." The same rule was enunciated by the court of errors in Hoxsey vs. Paterson, 39 N. J. L. 489, and is therefore settled. The theory adopted in this state, as I understand it, is that, when

a certiorari is used as a statutory substitute for a writ of error, it cannot legally issue until after final judgment below. When the object is to remove a cause to be continued in this court, a certiorari in criminal matters, and a habeas corpus cum causa in civil matters, is the appropriate writ, although some times in the latter class certiorari has been used. *Chandler vs. Monmouth Bank*, 9 N. J. L. 101. When the purpose is to review the proceedings of a special tribunal on complaint of irregular procedure in matters legally brought within its jurisdiction, a certiorari may legally issue before final decision, but ordinarily should not be allowed until then, for haply the tribunal may correct the error in time. When the design is to reverse the proceedings of special tribunals in matters not legally brought within their jurisdiction, then the writ of certiorari may legally, and ordinarily should, be allowed when asked for, either before or after final decision, because each step in such proceedings is an unlawful vexation of the party prosecuted, against which this writ is his sole protection. The discretion of this court in the allowance and dismissal of the writ, and now also with regard to costs on final judgment, affords an adequate safeguard against any abuse.

“Under the rule laid down in *Hinchman vs. Cook and Hoxsey vs. Paterson*, *ubi supra*, the legality of the issuance of the present writ is clear. It was allowed, not as a statutory writ of error, but, by the common law power of the court, to inquire into the acts of a special and summary tribunal which was proceeding against the prosecutrix upon a complaint that gave it, and could give it, no legal authority to proceed. In a proper sense it may be said that the magistrate had not acquired legal jurisdiction over the cause. The case was only colorably, not really, under his jurisdiction. In view of the fact that the proceedings, if carried on to a conviction, threatened an immediate and unlawful imprisonment of the prosecutrix, for which, however, the law, according to *Grove vs. Van Duyn*, 44 N. J. L. 654, would give no redress, I do not think discretion was improvidently exercised in allowing the writ at the threshold.”

Third Point

Criticism of Opinion of Supreme Court.

The Supreme Court, in its opinion, (State of the Case, page 58) says:

"Such power has in fact been exercised in more than one case removed into this court, and apparently without challenge as to jurisdiction. In 1893 the Camden Quarter Sessions undertook to punish a newspaper libel summarily, and on appeal pursuant to the statute the conviction was set aside solely for faulty procedure. In *re Holt*, 55 N. J. L. 384. The same court attempted to punish disobedience of a state subpoena in 1902, and the same course was pursued. In *re Haines*, 67 N. J. L. 442. In neither case was there any suggestion either by counsel or the court that jurisdiction of the subject matter was wanting."

In the *Holt* case the Supreme Court said, in part: "On this occasion we have no concern with any part of the transaction except such as relates to the course of procedure that was adopted." And the court then proceeded to point out various defects in procedure and set aside the conviction. It did not in any way discuss the question of jurisdiction.

And in the *Haines* case the Court did not discuss the question of jurisdiction, but commenced its opinion with these words: "The order in this case adjudging the defendant in contempt must be set aside for several reasons." And the court then proceeded to set aside the conviction.

We do not see how we are to assume that the Court would have sustained jurisdiction had the question been fairly raised before it. We do not believe that a finding that certain fatal defects in procedure existed should be construed as a finding that no other defects existed.

In the case at bar, the Supreme Court did not seriously attempt to refute the contention of prosecutor that at the time of the Revolution, our Courts of Quarter Sessions had no jurisdiction to

punish except for contempts committed in the face of the court, or "in facie curiae." And it admitted that "it is true that in the development traced" by it "there appears to be no contempt power conferred expressly by statute." (State of case, p 57, line 32.)

On May 20, 1916, (six weeks after the filing of the Supreme Court opinion in this case) there was filed in the same Court an opinion in the matter of the appeal of William P. Verdon from an order adjudging him guilty of contempt of the Hudson County Court of Quarter Sessions. Mr. Justice Garrison begins the Verdon opinion as follows:

"The power of the Court of Quarter Sessions to punish contempts of court is derived wholly from the common law, which has been neither altered or enlarged by statute in this State." And he then proceeds to quote Blackstone to show "What the Common Law of England was at the time at which we derived it from the parent country," etc.

If we take the language of the Verdon case as correct, and it is later than our Croasdale opinion, how can the Supreme Court sustain its decision in the Croasdale case?

The Croasdale opinion bases the jurisdiction of Quarter Sessions in this case on two grounds:

First: On the admitted fact that our Legislature has, from time to time, conferred additional jurisdiction upon Quarter Sessions Courts over various offences, but by no act whatsoever purporting to confer jurisdiction in contempt.

Second: On the admitted fact that our Legislature has also insisted upon additional qualifications upon the part of proposed judges of such courts.

Let us bear in mind that, frankly, it is the duty of a court to declare, not to make the law—"jus dicere, non facere." And that the question is not whether it would be desirable for the Legislature to confer such power, but whether the Legislature has actually conferred it. And the Supreme Court has twice—in its opinion in the Croasdale and also

in the Verdon case—admitted its inability to find such a statute.

The Supreme Court calls attention to the fact that our Legislature has, from time to time conferred jurisdiction upon Quarter Sessions to try, inter alia, rape, polygamy, arson, burglary, robbery, forgery, perjury and subornation of perjury. Are we to adopt such a line of reasoning as to hold that when the Legislature said "rape" it meant "contempt"? Is "contempt" included in the word "polygamy," or "arson" or "burglary" or "robbery" or "forgery" or "perjury" or "subornation of perjury"? Why impute to the Legislature an intent which it never had?

Are we to hold that when a Legislature requires additional qualifications upon the part of a Judge, would he thereby increase the jurisdiction of the court? If a Supreme Court Justice presided in a District Court, and as a District Court Judge, would he thereby increase the jurisdiction of the District Court? (P. L. 1855, p 17; P. L. 1898, p. 560.) If not, how has the jurisdiction of Quarter Sessions been increased by the fact that a Supreme Court Justice may sit in Quarter Sessions?

When our Legislature, in the various acts referred to, used words showing a perfectly clear and plain meaning and intent why should we infer that it meant anything else? And, if we attempt such an excursion in this instance, where are we to end except in a quagmire of doubt and uncertainty?

Is it not much better to hold that the Legislature understood the use of words; that when it said "rape" it meant "rape" and not "contempt"? And is it not still true, in the words of Coke, that "The known certaintie of the law is the protection of all?"

SUMMARY

1. The distinction at common law between the power of Superior and Inferior Courts of Record over contempts extra curiam still exists in New Jersey.

2. The proceedings against prosecutor, being quasi criminal, are to be strictly construed.

3. It appears that the Quarter Sessions had only a colorable, not a real jurisdiction.

4. It is respectfully suggested that this Court should order that the order of the Atlantic County Court of Quarter Sessions awarding an attachment and the writ of attachment itself be reversed, set aside and for nothing holden.

Respectfully submitted,

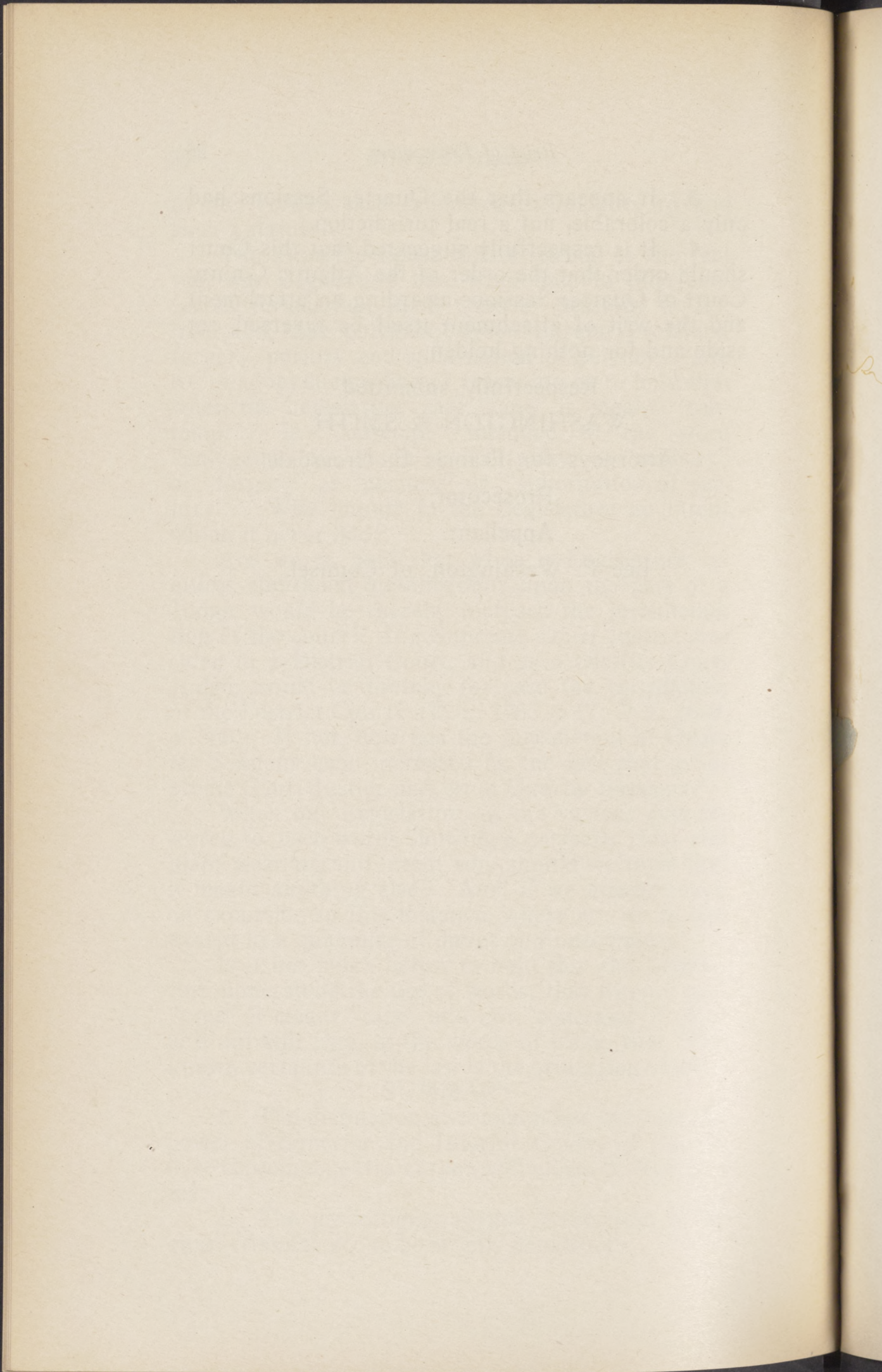
WASHINGTON & SMITH,

Attorneys for Francis E. Croasdale,

Prosecutor,

Appellant.

Lee F. Washington, of Counsel.



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[ENDORSED]

NEW JERSEY SUPREME COURT

10	In the matter of contempt in the Atlantic County Court of Quarter Sessions by Francis E. Croasdale.	}	ON CERTIORARI WRIT
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20	<p style="text-align: center;">LEE F. WASHINGTON</p> <p style="text-align: center;">Attorney for Francis E. Croasdale, Prosecutor. 539-40-41 Guarantee Trust Bldg., Atlantic City, N. J.</p>
----	--

I hereby allow the within writ
for the Court. Let it be sealed.

30	<p>C. G. GARRISON</p> <p><i>Justice of the Supreme Ct. for the Court.</i></p>
----	---

RETURN.

(Filed October 23, 1915)

*To the Honorable, The Justices of the Supreme Court of
Judicature of New Jersey:*

In obedience to the command of the within writ, the matter of the contempt in the Atlantic County Court of 10 Quarter Sessions by Francis E. Croasdale, whereof mention is made within, and all things touching and concerning the same, together with a transcript of testimony taken before me and interrogatories, to the Justices of the Supreme Court, at Trenton, within specified, at the time and place within mentioned, I, C. C. Shinn, Judge of the Court of Quarter Sessions, under my seal and hereunto annexed, send as within I am commanded.

C. C. SHINN, *Judge.* [SEAL.] 20

In Testimony Whereof, I, Edwin A. Parker, Clerk of the Court of Quarter Sessions of the County of Atlantic, have hereunto subscribed my name and affixed the seal of the said Court this twentieth day of October, A. D. one thousand nine hundred and fifteen.

EDWIN A. PARKER, *Clerk,* [SEAL.]

ATLANTIC COUNTY COURT OF QUARTER
SESSIONS

In the matter of contempt in
the Atlantic County Court of
Quarter Sessions by Francis
10 E. Croasdale. } AFFIDAVIT

STATE OF NEW JERSEY, }
ATLANTIC COUNTY, } ss. :

Henry S. Scull, of full age, on his oath says that he is a resident of Linwood, in the county and State aforesaid; that a newspaper published and circulated in Atlantic City in said County and State and elsewhere in said County and State and known as Atlantic City Daily Press contained upon the editorial page of said paper, on the fifth day of August, A. D., one thousand nine hundred and fifteen, an editorial or article of which the following is a true
20 copy:

WEEKS' CASE SHOULD BE PROBED.

“Notwithstanding the surprising statements of Judge Shinn and Prosecutor Moore that they do not intend to take any cognizance of the charges preferred against Magistrate Weeks unless they are put in the form of a warrant, and an arrest made, the Grand Jury should investigate this matter without fail.

“If Magistrate Weeks is guilty as charged, he is unfit
30 to hold the responsible office of a public magistrate and the people of Atlantic County are entitled to be protected against him.

“If Judge Weeks is not guilty, if somebody has made an affidavit against him that is false and if someone has procured an affidavit with the idea of punishing the magistrate for personal or political reasons, then the people responsible for this offense ought to be indicted and punished. The practice of going about getting affidavits to

injure someone's character is a highly dangerous practice and ought to be stopped by the authorities, notwithstanding the statements of Judge Shinn and Prosecutor Moore that they do not propose to take cognizance of the affidavit.

"Not to investigate such an affair is preposterous. Whether the affidavit is bona fide and truthful or a deliberate lie—and it must be one or the other—it represents a grave offense against the public and should by all means be investigated. Magistrate Weeks, if he is innocent as he says, ought to demand an investigation, for by reason of 10 the affidavit, even though no action is taken thereon, his reputation has been injured and if it has been wantonly injured someone ought to be punished.

"The Press trusts that Judge Shinn will come around to this view of the matter and order an investigation of the Weeks case when the Grand Jury convenes. The public is vitally concerned whether the affidavit is truthful or fraudulent; if truthful, a public magistrate of this county should be stripped of his official power, if fraudulent, the magistrate ought to be publicly vindicated and the people 20 who falsely swore to the affidavit and helped to procure it ought to be punished.

"If the authorities of this county absolutely ignore such a case they certainly are not doing their full duty."

Deponent further says that upon the said editorial page, said page being marked "8" of the issue of August 5, 1915, it is announced that F. E. Croasdale is the Editor of said paper.

Deponent further says that said article or editorial as is verily believed by deponent, was intended, among other 30 things, to bring reproach upon the good name of the Court, and to bring said Court into disrepute.

Subscribed and sworn to before me this sixth day of August, A. D., 1915.

HENRY S. SCULL.

MARTIN E. KEFFER,
Notary Public of New Jersey.

[ENDORSED]

8-6-15. Served on Deponent at hour of 8.25 P. M.

D. S. BROWN.

Filed August 7, 1915, at 9.30 A. M.

EDWIN A. PARKER, *Clerk.*

10 ATLANTIC COUNTY COURT OF QUARTER
SESSIONS

<p>In the matter of contempt in the Atlantic County Court of Quarter Sessions by Francis E. Croasdale.</p>	}	<p>ORDER TO SHOW CAUSE</p>
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20 It appearing to the Court that Francis E. Croasdale is the editor of Atlantic City Daily Press, a newspaper published and circulated in the City of Atlantic City, in the County of Atlantic and State of New Jersey, and elsewhere in said County and State; that on the fifth day of August, A. D., 1915, the said Francis E. Croasdale as editor of said newspaper caused to be published therein a certain editorial or article of which the following is a true copy:

30 "WEEKS' CASE SHOULD BE PROBED.

"Notwithstanding the surprising statements of Judge Shinn and Prosecutor Moore that they do not intend to take any cognizance of the charges preferred against Magistrate Weeks unless they are put in the form of a warrant, and an arrest made, the Grand Jury should investigate this matter without fail.

"If Magistrate Weeks is guilty as charged, he is unfit to hold the responsible office of a public magistrate and the people of Atlantic County are entitled to be protected against him.

“If Judge Weeks is not guilty, if somebody has made an affidavit against him that is false and if someone has procured an affidavit with the idea of punishing the magistrate for personal or political reasons, then the people responsible for this offense ought to be indicted and punished. The practice of going about getting affidavits to injure someone’s character is a highly dangerous practice and ought to be stopped by the authorities, notwithstanding the statements of Judge Shinn and Prosecutor Moore that they do not propose to take cognizance of the affidavit. 10

“Not to investigate such an affair is preposterous. Whether the affidavit is bona fide and truthful or a deliberate lie—and it must be one or the other—it represents a grave offense against the public and should by all means be investigated. Magistrate Weeks, if he is innocent as he says, ought to demand an investigation, for by reason of the affidavit, even though no action is taken thereon, his reputation has been injured and if it has been wantonly injured someone ought to be punished. 20

“The Press trusts that Judge Shinn will come around to this view of the matter and order an investigation of the Weeks case when the Grand Jury convenes. The public is vitally concerned whether the affidavit is truthful or fraudulent; if truthful, a public magistrate of this county should be stripped of his official power; if fraudulent, the magistrate ought to be publicly vindicated and the people who falsely swore to the affidavit and helped to procure it ought to be punished.

“If the authorities of this county absolutely ignore such a case they certainly are not doing their full duty.” 30

Deponent further says that on said date said newspaper was published and circulated in said Atlantic City and elsewhere.

It is, therefore, on this sixth day of August, A. D. 1915, ordered that the said Francis E. Croasdale show cause at the Court House at May’s Landing, New Jersey, on Saturday, the seventh day of August, instant, at 9.30 o’clock in the forenoon, or as soon thereafter as the matter can be heard, why he should not be attached for contempt of Court

by reason of said publication. Let the above rule be entered on the minutes.

C. C. SHINN, *J.*

8-6-15. Served on Deponent at hour of 8.25 P. M.

D. S. BROWN.

10 STATE OF NEW JERSEY, }
ATLANTIC COUNTY, } *ss.:*

David S. Brown, of full age, being duly sworn on his oath, says that on the sixth day of August, A. D. one thousand nine hundred and fifteen he served true copies of the affidavit and rule to show cause hereto attached upon Francis E. Croasdale by showing him the originals, informing him of their contents and delivering to him copies thereof.

DAVID S. BROWN.

20 Sworn and subscribed to before me this 7th day of August, A. D. 1915.

ARTHUR WRIGHT, [SEAL]
Notary Public.

[ENDORSED]

Filed August 7, 1915, at 9.30 A. M.

EDWIN A. PARKER, *Clerk.*

ATLANTIC COUNTY COURT OF QUARTER
SESSIONS

In the matter of contempt in
the Atlantic County Court of
Quarter Sessions by Francis
E. Croasdale. } RULE THAT
ATTACHMENT ISSUE

10

Upon hearing the testimony in open Court under the rule of this Court made in the above cause, wherein Francis E. Croasdale was directed to appear and show cause why he should not be attached for contempt, and upon hearing the argument of counsel therein, and having duly considered the same; it is, on this seventh day of August, A. D. 1915, ordered by the Court that the said Francis E. Croasdale be attached for contempt, and that an attachment do issue, forthwith, against the said Francis E. Croasdale. 20

Done in open Court.

C. C. SHINN, *J.*

[ENDORSED]

Filed and entered Aug. 11th., 1915, at 9 A. M., in Book of Quarter Sessions. Judgments No. 8, page 74.

30

EDWIN A. PARKER, *Clerk.*

WRIT OF ATTACHMENT

ATLANTIC COUNTY, ss.:

[SEAL.] THE STATE OF NEW JERSEY to the Sheriff of the County of Atlantic,

GREETING:

10 We command you, that you attach Francis E. Croasdale, so that you have him before our Judge and our Court of Quarter Sessions of the County of Atlantic, at Mays Landing, on the twenty-fifth day of August, instant, to answer unto us for certain trespasses and contempts by him lately done and committed against us, in our said Court, and have you then and there this writ.

Witness, Clifton C. Shinn, Judge of the Court of Quarter Sessions of the County of Atlantic, and the seal of said Court, at May's Landing, on this seventh day of August
20 in the year one thousand nine hundred and fifteen.

EDWIN A. PARKER, *Clerk.*By BURTON A. GASKILL, *Deputy Clerk.*

[ENDORSED]

30 Duly executed within writ of attachment for contempt August 11th., 1915, by taking Francis E. Croasdale into custody, and the said Francis E. Croasdale having signed a recognizance in the value of Five Hundred Dollars, before me, I have released the said Francis E. Croasdale from custody. At the time of executing said writ of attachment I served a Rule that attachment issue and interrogatories upon the said Francis E. Croasdale.
Sheriffs Fees \$5.98.

JOSEPH R. BARTLETT, *Sheriff.*

STATE OF NEW JERSEY, }
COUNTY OF ATLANTIC. } ss. :

Joseph R. Bartlett, Sheriff of Atlantic County, being duly sworn according to law, on his oath, says that on the eleventh day of August, nineteen hundred and fifteen, he executed the within writ by taking Francis E. Croasdale into custody, and the said Francis E. Croasdale having signed a recognizance in the value of Five Hundred Dollars, before me, I have released the said Francis E. Croasdale from custody. 10

At the time of executing said writ of attachment I served a rule that attachment issue and interrogatories upon the said Francis E. Croasdale.

JOSEPH R. BARTLETT, *Sheriff.*

Sworn and subscribed before me this twelfth day of August, nineteen hundred and fifteen. 20

MELVIN A. ABBOTT, [SEAL]
Notary Public of New Jersey.

[ENDORSED]

Filed Aug. 12, 1915, at 9 A. M.

EDWIN A. PARKER, *Clerk.* 30

ATLANTIC COUNTY COURT OF QUARTER
SESSIONS

10	ATLANTIC COUNTY COURT OF QUARTER SESSIONS, <i>Prosecutor,</i> <i>vs.</i> FRANCIS E. CROASDALE, <i>Defendant.</i>	}	CONTEMPT PROCEEDINGS ORDER OF CONTINUANCE
----	---	---	--

This matter coming on to be heard before the Court on this 25th day of August, 1915, in the presence of G. Arthur Bolte, of counsel with the prosecutor, and Lee F. Washington, of counsel with the defendant, and sufficient reason for an adjournment appearing;

It is, on this 25th day of August, 1915, Ordered, that the hearing in the above cause be continued from the 25th day of August, instant, to the 30th day of August, instant, at the same hour and place.

C. C. SHINN, *J.*

Filed and entered Sept. 18th, 1915, at 8.00 A. M.

EDWIN A. PARKER, *Clerk.*

ATLANTIC COUNTY COURT OF QUARTER
SESSIONS

ATLANTIC COUNTY COURT OF QUARTER SESSIONS, <i>Prosecutor,</i>	}	CONTEMPT PROCEEDINGS	10
<i>vs.</i>		ORDER OF CONTINUANCE	
FRANCIS E. CROASDALE, <i>Defendant.</i>			

This matter coming on to be heard before the Court on this 30th day of August, 1915, in the presence of G. Arthur Bolte, of counsel with the prosecutor, and Lee F. Washington, of counsel with the defendant, and sufficient reason for an adjournment appearing: 20

It is, on this 30th day of August, 1915, Ordered, that the hearing in the above cause be continued from the 30th day of August, instant, to the 29th day of September, 1915, at the same hour and place.

C. C. SHINN, J.

[ENDORSED]

30

Filed and entered Sept. 18th, 1915, at 8 A. M.

EDWIN A. PARKER, *Clerk.*

*Return—Testimony
Henry S. Scull—Direct*

ATLANTIC COUNTY COURT
OF QUARTER SESSIONS

In the matter of contempt in the Atlantic County Court
of Quarter Sessions by Francis E. Croasdale.

May's Landing, New Jersey.
August 7, 1915.

TESTIMONY

Before HON. C. C. SHINN, *Judge.*

APPEARANCES:

G. ARTHUR BOLTE, Esq., *for the Court.*
LEE F. WASHINGTON, Esq., *for the Defendant.*

HENRY S. SCULL, sworn.

DIRECT EXAMINATION

BY MR. BOLTE:

Q. Mr. Scull, you are a resident of the County of Atlantic?

A. Yes, sir.

Q. And the business that you are in takes you to Atlantic City, doesn't it?

A. Yes, sir.

Q. On or about the fifth day of August did you purchase an Atlantic City Daily Press?

A. Yes, sir.

Q. Have you the copy of that paper with you?

A. I have, yes.

Q. Where did you purchase it?

A. At Mr. Glenn's stand in the Bartlett Building, news-stand.

Q. And were there at that time other papers, copies of the Atlantic City Press there?

A. Yes, sir.

Q. Will you please produce the copy that you have with you?

10

(Paper produced.)

Q. I call your attention to an editorial in the paper headed "Weeks case should be probed." Did you at that time read that article?

A. I did, yes sir.

MR. BOLTE: I believe that Mr. Washington for 20 his client will admit that Mr. Croasdale is the editor of the Atlantic City Press?

MR. WASHINGTON: Not necessary to prove it.

MR. BOLTE: I offer that paper in evidence, if the Court pleases.

(Paper admitted in evidence and marked Exhibit P1.)

No cross examination.

W. ELMER BROWN, JR., sworn.

30

DIRECT EXAMINATION,

BY MR. BOLTE:

Q. Mr. Brown, you are the Assistant Prosecutor of the County of Atlantic?

A. Yes, sir.

Q. Do you know of an affidavit, the date of it, in a matter that is connected with Justice Weeks?

A. I saw that affidavit.

Q. Do you know when it was when you first saw it?

A. I do not recall the day. It was the day that Cunningham and Boss had the hearing, the afternoon of that day, I think about a week ago.

Q. Did Mr. Moore see it?

A. Mr. Moore could not have seen it.

Q. Where was Mr. Moore?

10 A. He is down in North Carolina on his vacation.

Q. He has been ever since this matter came out?

A. Since before this matter came out.

Q. Do you know whether Mr. Moore made any statements in reference to this case that you know of?

A. I know of no statement that Mr. Moore has made.

Q. You are associated with him there in the office, aren't you, together?

A. Yes, sir.

20

CROSS EXAMINATION

BY MR. WASHINGTON:

Q. Mr. Brown, you are the Assistant Prosecutor, are you not?

A. Yes, sir.

Q. And in charge of Mr. Moore's office when he is not there?

A. I am, sir.

30 Q. Do you recollect having had a conversation about last Monday with Mr. Thomas of the Press with respect to what the Prosecutor's office proposed to do in connection with the affidavit that had been presented to the office?

MR. BOLTE: Just a moment, Mr. Brown. Personally I don't think that makes a particle of difference, but I think this is perfectly satisfactory, ought to go in, and ought to be in in full. Of course the article refers to Prosecutor Moore.

A. I recall having a conversation with Mr. Thomas.

I don't recall the date, in which he inquired about this matter for the Press.

Q. At that time the affidavit was in your possession in the office, was it not?

A. No, sir.

Q. Where was it?

A. I couldn't say. The affidavit has never been in my possession.

Q. How do you know then that it has not been in the 10 possession of Mr. Moore?

A. Mr. Moore is in North Carolina and I know they don't know where he is. I couldn't tell you his address myself.

Q. Was there or was there not at that time any proceedings pending in the Prosecutor's office with respect to this case?

A. Just what do you mean by proceedings?

Q. Was there any complaint before your office with respect to Magistrate Weeks at the time you had the con-20 versation with Mr. Thomas?

A. There was not. You mean, I presume, an official complaint made before a magistrate?

Q. Was there any—we won't quibble about what you might call it—had the matter with respect to alleged charges against Magistrate Weeks been brought to the attention of the Prosecutor's office at that time?

A. I had seen and read the affidavit.

Q. I understood you to say that the office had not had any affidavit at that time?

A. I said I had seen the affidavit but it had never been in my possession. 30

Q. When I asked you a while ago when the affidavit was there, why didn't you state you had seen it?

A. You asked me if the affidavit was in the office at the time I had the conversation with Mr. Thomas. It was not. The affidavit was in my hands, I presume about three minutes in all.

Q. When was the affidavit first presented to you?

A. I should say about a week ago. I am not sure as to the day.

Q. By whom?

A. I think the man's name is Martz, or some such name. He is a Justice of the Peace in Pleasantville.

Q. When Mr. Martz referred the matter to you did he state what he wished done?

A. He asked me for advice as to what he should do in case a complaint should be made.

Q. What did you tell him?

10 A. I told him the charges on which the Justice and the Constable, both, may be held, if the complainant made that complaint before him.

Q. Did you state at that time that no cognizance would be taken of the matter unless they were put in the shape of a warrant?

A. Did I what, sir?

Q. Did you state at that time to Martz that the Prosecutor's office would pay no attention to the matter unless it were put in the shape of a warrant?

20 A. No, sir, I made no such statement as that. I told Mr. Martz at that particular time, in that particular stage of the case that I would take no open step in the matter until this woman made a sworn complaint before the magistrate.

Q. Well, I understood you to say that an affidavit was presented—

A. I didn't say I would never do that.

30 Q. Just wait one minute, I understood you to say that an affidavit at that time was handed to you by the magistrate, apparently sworn to before him by the woman. What was the objection to that affidavit?

A. That, if you will let me explain—

Q. Just answer the question, please.

A. I can't answer that question until I have an opportunity to explain.

(Question repeated.)

A. The objection at that time was that no complaint was before the Prosecutor's office in any shape or form. The affidavit had been taken—for what purpose I didn't know—

it had been placed in the hands of the magistrate. The magistrate came to me and said that there was a probability that this woman would want to make a criminal complaint against both Weeks and Speece and I then advised the magistrate as a matter of law what complaints he might take in case they should want to do that. There was no complaint made to the magistrate or made to the Prosecutor's office. That affidavit was not presented in any shape or form to the Prosecutor's office as a complaint. 10

Q. Do you have that affidavit with you?

A. I don't. It is not in my possession.

Q. Do you have a copy of the affidavit?

A. I do not, sir.

THE COURT: Here it is, Mr. Brown. It has just been handed to me.

(Mr. Washington reads the affidavit as follows: "I, Mrs. A. W. Boss, of Baltimore City, Maryland, do solemnly swear that one Speece, a constable of Atlantic County, did criminally assault me by force in a bedroom at the house of one Butler Boyd, at eleven o'clock A. M. August first, nineteen hundred and fifteen in Pleasantville, New Jersey. I do further solemnly swear that one Weeks did twice forcibly commit a criminal assault upon me between the hours of seven forty-five and nine twenty-five o'clock p. m. of August first, nineteen fifteen and that said assault was against my will and committed by force.

MRS. A. W. BOSS. 30

Sworn and subscribed before me second day of August,
1915

DAVID D. MARTZ,
Justice of the Peace for Atlantic County,
New Jersey.

Q. When that affidavit was presented to you, couldn't you understand from reading it that it charged Mrs. Boss or it was a charge by Mrs. Boss that Judge Weeks and

Butler Boyd were both guilty of an assault upon her and charging her with the commission, and that the affidavit charged both of them with the commission of a crime?

A. This is an affidavit to that effect.

Q. Now if that was an affidavit charging the magistrate with the commission of a crime and was presented to you by a magistrate sworn to in the usual manner, why didn't you consider it the duty of the Prosecutor's office
10 to see whether or not there had been a violation of the law?

A. I said at that time that that was not made as a complaint to the Prosecutor's office. It was explained to me by the magistrate that he was called out—I forget whether it was in morning or afternoon—and asked to take that affidavit by, I think it was the City Clerk of Pleasantville, and I,—he brought the affidavit in to me. Now he simply asked for my advice as to what he should do in case a criminal complaint was made before him. That was not even a
20 criminal complaint before the magistrate in an official way.

Q. In what way did it—was it, do you mean?

A. He simply took it as an affidavit. That was my understanding of the matter.

Q. Isn't it sworn to by the complainant before the magistrate and doesn't it charge the commission of two separate crimes?

A. Surely.

Q. Then why didn't you consider it the duty of the Prosecutor's office to find out whether or not a crime had
30 been committed?

A. Because, as I told you, I didn't consider it the duty at that particular time. I understood in the first place that the criminal complaint would be made probably on that very day, and that I instructed the magistrate to send the papers immediately through to our office. I didn't at that particular time consider it a proper complaint on which we could act, at that particular day.

BY MR. BOLTE:

Q. You expected the complaint to come in, didn't you?

A. Absolutely, been looking for it every day.

Q. That would come through the magistrate in the regular channel?

A. Yes, sir.

Q. There was never any intent on your part not to follow this matter up and prosecute it and investigate it?

MR. WASHINGTON: Mr. Bolte, I suggest you let the witness testify. He ought to know what his intentions were. 10

THE COURT: It is leading, Mr. Bolte.

Q. Had you consulted anybody about it at all?

A. You mean had I interviewed any person connected with it?

Q. Yes.

A. I have.

Q. Whom did you interview in regards to it? 20

A. I have interviewed Butler Boyd, the colored man who runs the boarding house where Mrs. Boss is supposed to have stayed.

MR. WASHINGTON: The testimony is objected to. I don't see what possible relevancy it has at this time.

Q. You did take some action?

A. I have, sir.

THE COURT: You are attempting to prove by this witness, Mr. Washington, there was an absolute failure on the part of the Prosecutor's office to take any steps. 30

MR. WASHINGTON: I can't understand, if your Honor please, what difference it makes what steps the Prosecutor's office takes at this time. It is the contention of the defendant at the particular time that the editorial was printed they had told him they would not proceed, and I do not see how it alters the case at this time that they had said that they would not do their duty.

Q. Did you state to anyone that you would not proceed with it?

A. No, sir, I did not. I told Mr. Thomas, at the time, that the matter had not officially come before our office. That is the statement I made to Mr Thomas.

THE COURT RESTS

10 MR. WASHINGTON: If your Honor please, I would like at this time in the first place to move for a dismissal of the charges on the ground that by the testimony of the witnesses offered by Mr. Bolte that it appears that there was no charge pending before the Court at that time and that the article relates solely to a certain case which had not been brought before the Court in any way at all, and that under the law no fine or imprisonment or any punishment whatever could be inflicted in the absence of such a document.

20 THE COURT: Suppose the Court had ordered an investigation of this matter, Mr. Washington; would that alter the situation any?

MR. WASHINGTON: In the absence, if your Honor please, of any proof to such extent I do not see that that comes into it. There is no proof, and we have got to assume, for that matter, that it was not done, in the absence of proof.

30 THE COURT: Very well, then we will recall Mr. Brown.

W. ELMER BROWN, JR., Recalled.

DIRECT EXAMINATION

BY MR. BOLTE:

Q. Had you a conversation with Judge Shinn in reference to this matter, Mr. Brown?

A. Immediately after seeing the affidavit, sir.

Q. And what was the conversation in regards?

A. I went over the situation with Judge Shinn, as I have related it in answer to the question. Told him the circumstances under which it came to me, and who brought it, the affidavit, what the affidavit contained, who the affiant was, and the person complained against went over the situation thoroughly.

Q. What did the Court direct you to do? 10

A. He said that the—it was his opinion, and in fact ordered an investigation made.

Q. And you acted on that direction?

A. I acted, sir.

Q. That was that same day, was it?

A. That was the same day, within an hour after I saw the affidavit.

BY MR. WASHINGTON:

Q. Now, what day was that? 20

A. That I don't recall, sir, I said about a week ago, although I don't recall the exact day. It was either the very last of last week or the first of this; I am not sure which. I don't know even the date of the affidavit.

MR. WASHINGTON: Now, if your Honor please, I want to renew my motion for an acquittal on the grounds that the publication must relate to a pending cause, and that no cause was pending before this Court at the time that the article was publ shed. 30

THE COURT: The motion will be denied.

AUBREY L. THOMAS, sworn:

DIRECT EXAMINATION

BY MR. WASHINGTON:

Q. Mr. Thomas, where do you reside?

A. Atlantic City.

Q. And you are connected with the Atlantic City Press?

A. Yes, sir.

Q. In what capacity?

A. Reporter

Q. Did you, after the second day of August, 1915, have any conversation with Mr. Brown, the Assistant Prosecutor, with respect to an affidavit that you understood
10 had been taken by Mrs. Boss before David D. Martz, Justice of the Peace?

A. Yes.

Q. Now will you just tell us whether or not you can fix the time when you had the conversation, or if there were more than one conversation when they were?

A. Why there was only one that I can remember. I think there was only one. I may have said something some other day about it. It was either Monday or Tuesday; I don't know which, of this week.

20 Q. Is there any other method by which you can determine, from copies of your papers, when that was?

A. Why not exactly. I am rather of the impression it was Monday, because I think the story was left out the following day, and didn't get in until the day following.

Q. Now just tell the Court, if you will, what that conversation was with Mr. Brown?

A. Well, I went, as much as I can recall, I went there to see Mr. Brown, and I asked him whether he was considering any action in the case and he said no, that the
30 matter had not become, come before him yet in his official capacity. There had been no complaint made to the office, and until that was done it was just as though it had not been before him at all, or he didn't know anything about it.

Q. Did you discuss with him the nature of the complaint?

A. I don't really remember whether we did or not. I think we did say something about it.

CROSS EXAMINATION

BY MR. BOLTE:

Q. Mr. Thomas, you never saw Mr. Moore?

A. No, I didn't see Mr. Moore.

Q. Mr. Moore never stated to you that he would not take any action, did he?

A. No, sir. I haven't seen Mr. Moore in two weeks, 10
I guess.

Q. And as a fact Mr. Moore is out of town, and you knew that, didn't you?

A. I don't know whether I knew it at that time. I knew it a couple of days after, anyway.

Q. And didn't you some time prior to that, wasn't there an article in the paper, one of the papers, Mr. Moore was going away on his vacation?

A. No sir, we are requested to keep that out.

Q. You were requested to keep it out?

20

A. Yes.

Q. You knew that he was going?

A. No, I didn't know that he was going. I knew that he had gone.

Q. And your memory, as far as this particular—you have a great many interviews, don't you, in a day's time?

A. Not a great many, just depends.

Q. Quite a few?

A. Somewhat.

Q. And you make no notations of them?

30

A. Always.

Q. Have you the notations with you?

A. No, I have not.

Q. You destroy them, don't you?

A. As soon as we write our story, to get rid of that.

Q. And you dismiss them from your mind, don't you?

A. Well, we dismiss them to a certain extent, not entirely.

Q. In other words the recollection of things that transpire usually is rather hazy?

A. Oh, by no means.

Q. No means hazy?. Now, do you remember, was anything further said on that day between you and Mr. Brown in reference to this case?

A. I don't think there was. I really don't think there was.

Q. Not sure?

A. No I don't say that. I just say I don't think there was.

10 Q. You are not sure, are you, Mr. Thomas?

A. I am not absolutely sure.

Q. Did he state to you that he never would take any action?

A. Oh, no.

Q. Didn't state that?

A. No.

Q. Didn't state that the Prosecutor's office was not, was closed to this transaction at all?

A. No.

20 Q. And whatever conversation, whatever you did say with Mr. Brown, he never, he did never state that he never would take any action on the proposition, and so far as Mr. Moore is concerned you didn't have any conversation?

A. I didn't have any conversation with Mr. Moore at all, no.

Q. And do you know whether the information Mr. Croasdale received in this matter he received from you?

A. I don't know that from my knowledge.

Q. You don't know that?

30 A. No.

Q. Do you know whether his editorial was written on the stories that you brought in?

A. No, I don't know that from positive knowledge.

Q. Well, you discussed it with him, didn't you?

A. I don't think—I don't remember whether I did or not. He reads all the stories when they come in.

Q. He reads them all?

A. Yes.

Q. And then writes his editorial on what he gathers from those stories?

- A. I don't know about that.
- Q. Your work was connected with the Prosecutor's office, weren't you? That was one of the places you interviewed?
- A. Yes.
- Q. Did you have any conversation with anyone else in regards to it?
- A. Yes, quite a number of people.

10

BY MR. WASHINGTON:

- Q. Mr. Thomas, the conversation with Mr. Brown was reported by you to Mr. Croasdale, was it, or was it not?
- A. I don't think so. I think I came in and wrote my story.
- Q. Except as it appeared in your articles you did not personally report it to him?
- A. No, I don't think so.

20

WALTER B. CREIGHTON, sworn.

DIRECT EXAMINATION

BY MR. WASHINGTON:

- Q. Mr. Creighton, what is your business?
- A. Newspaper business, editor of the Evening Union.
- Q. And that is connected with the Atlantic City Press, 30 is it not?
- A. It is.
- Q. Did you have, after your paper was informed of the affidavit taken by Mrs. Boss, did you have any conversation with Judge Shinn with respect to the step which the Court intended to take in this matter?
- A. I did.
- Q. When was that?
- A. On the third, my paper shows, on the third of August.

Q. Was the conversation on the third or before the third?

A. On the third.

Q. You are positive the statement was on the third?

A. If I may look at my paper, August third, morning of August third.

Q. Where was that conversation?

A. I called Judge Shinn on the telephone at his office.

10 Q. With whom did you talk?

A. Judge Shinn.

Q. What conversation did you have with respect to the steps to be taken in the case?

A. I asked Judge Shinn whether he had heard anything about the case and Judge said no, but he had heard talk about it on the street, but it had not been brought to him in an official way.

Q. Did you have any conversation as to whether or not the Court was arranging to do anything in the matter?

20 A. No, I thought that closed the incident, if he had not heard of it in an official way, of course he told me he had only heard it on the street, and not in an official way, and I was satisfied then.

Q. Did you ask him what the Court proposed to do?

MR. BOLTE: I object to that and insist that Mr. Creighton can give the conversation he had that day.

THE COURT: I will permit the freest rein in this, Mr. Bolte.

30

MR. BOLTE: The proper method of examination is to ask just what exactly what he did ask.

THE COURT: Yes, I think that is true, but in fairness to Mr. Croasdale I want to give free rein in the matter.

Q. Mr. Creighton, did you ask the Court what it proposed to do in the matter?

A. Judge Shinn told me that he had not heard of the

matter except on the street, and I concluded that he—he told me he had only heard of the matter on the street, and not in an official way, and he may have added, until he did hear of it in an official way he would not take any action; perhaps he did.

THE COURT: What was that, Mr. Creighton?

A. Until you heard of it in an official way you would not take any action; I think that closed our conversation. 10

Q. You say he may have added?

A. I am almost sure the Court added that, said that he would not take any action until it was brought to him in an official way.

CROSS EXAMINATION

BY MR. BOLTE:

Q. Mr. Creighton, isn't that the truth of the matter, 20 that you practically concluded? It is your own conclusion on it?

A. On second thought, no. I think Judge Shinn added that; I am almost certain he did.

Q. You are not positive, though, are you?

A. To a reasonable degree I am positive, yes.

Q. When you first testified you knew that that was the important part of it, Mr. Creighton? You appreciated that part was the important part, didn't you?

A. Not necessarily, no. I related the conversation as 30 I recalled, at least I thought that was about all that Judge Shinn said to me on that day.

Q. Now your first testimony was, Mr. Creighton, as I recall it, that Judge Shinn, that you called him up and that he stated to you that he had not, that he had heard of the matter on the street, but not in his official capacity, and that you concluded the rest of it.

A. I may have asked Judge Shinn, yes, sir, that brought that up.

Q. Didn't your testimony first—

(Former testimony repeated.)

Q. Do you wish to change that now, Mr. Creighton?

A. I think that covers it, he said he would not take any action until he had heard of it officially; that was it; that was the testimony or the conversation.

Q. Do you mean to correct your testimony, that first part that has been read there, to read as you state it now?

10 A. Do not, no, sir.

(Former testimony repeated.)

A. Now, what is the question, Mr. Bolte?

Q. Do you want to change your testimony to read—I call your attention particularly to the question asked by Mr. Washington, whether Judge Shinn had stated anything about whether he would not take any action, and you said, you answered no, and you as a matter of fact said he had not heard of it in an official way, and you thought that closed it.

20

A. Well, I am reasonably sure the Judge said until he had heard of it in an official way he could not take any action.

Q. Now the question I asked you about, you said in your testimony there that you concluded that because he had not heard of it in an official way that therefore he would take no action? Was that your conclusion?

A. Well I—as I recall the testimony, Mr. Bolte, he said that he would not take any action until he had heard it in an official way, until the matter had been brought to him officially, that is—now I recall, that is about what he said, that is how I concluded.

30

Q. Then you want to change that testimony?

A. I think I would be, like to change it to that.

Q. It wasn't your own conclusion that he wouldn't do it?

A. I will have to say now, because I believe he said it, because I believe he did say it now, that closed the conversation.

Q. That is all the conversation you had with him?

A. As I recall it.

Q. Did you ever have any interviews with him afterwards to see whether the matter had been brought to him by Mr. Brown or anybody else, and that he had ordered an investigation?

A. Haven't talked to Judge Shinn since.

Q. You don't know of anyone else that has, do you?

A. No.

Q. On your newspaper?

A. Not on that matter.

Q. That was on the third, wasn't it?

A. That was on the third, August third.

Q. And this article was published on the fifth in the Press?

A. I don't know that. I don't know the date of that editorial.

Q. There is really no connection between you and the Press, Mr. Creighton, except you are both published there in one building, is there? 20

A. That is about all.

Q. And they may be owned, certain people be interested in both papers?

A. That is it.

Q. But so far as you and Mr. Croasdale working together you don't, do you?

A. No.

Q. Your news is absolutely distinct from his and his absolutely distinct from yours? 30

A. That is the idea.

Q. His editorials are absolutely distinct from yours and your editorials are absolutely distinct from his?

A. Yes, sir.

Q. The investigations you make you make for your own paper?

A. Yes.

Q. An investigation he makes he makes for his?

A. Yes, sir.

CLIFTON C. SHINN, SWORN.

THE WITNESS: I don't recall whether I had my conversation with Mr. Creighton or what reporter it was, nor do I recall whether it was over the telephone or whether it was in my office. Someone either came in person to the office or called up on the telephone and asked about the Weeks case. My reply was that the matter was not
10 before me formally at that time, and until it did come before me formally I didn't see that there was anything I could do, that when it did come before me formally it would be treated the same as all other cases that I have to deal with. That is my recollection of the conversation. I will be glad to submit myself to any other examination on your part, Mr. Washington.

BY MR. BOLTE:

20 Q. You never refused to take any action on it, did you, Judge?

A. I did not.

Q. And at all times were open and willing that it should be treated as all criminal matters in the law should be treated?

A. Yes. When Mr. Brown called my attention to the matter I instructed him to make such an investigation as to him seemed best. There are a number, if I may be permitted to say so, there are a number of matters that I necessarily know about and reporters ask me about that I am
30 obliged to evade and be as nice to them as I can without telling them what I know.

Q. Now in other words, this matter, so far as being told that, when you were, had and would receive the same treatment as any other criminal matter that came before you?

A. Absolutely, and I thought I made that plain to whichever reporter it was who consulted me about it.

NO CROSS EXAMINATION

FRANCIS E. CROASDALE, SWORN.

DIRECT EXAMINATION

BY MR. WASHINGTON:

Q. Mr. Croasdale, did you write the article entitled "Weeks Case Should be Probed" that has been offered in evidence?

10

A. I did.

Q. Now will you just explain to His Honor where you got your information on which you based that affidavit or that editorial?

A. I based the editorial from reading news articles relating to conversations with the Common Pleas Judge and the Prosecutor's office in regard to the case.

Q. Will you tell us what articles these articles were? Do you have copies of them here?

A. Yes, as I recall.

20

Q. Will you just refer to the different articles so that we may have them?

A. The first article appeared in the Evening Union on Tuesday, August third, relating to a conversation with Judge Shinn.

Q. Now will you read that article, please.

MR. WASHINGTON: I would like to set his position, if your Honor please, before the Court. I don't know whether that would be strictly admissable.

30

Q. Read that article, if you will, please?

A. The second paragraph, I suppose that is all you want read?

Q. Read the entire article, if you will?

A. "Neither County Judge, C. C. Shinn, or Prosecutor Elmer Brown, acting in the absence of Prosecutor Moore have heard from Mrs. Imogene Boss, wife of a prominent Baltimore man, who, with Thomas F. Cunningham, are charged jointly with a statutory offence, up until two o'-

clock this afternoon. Judge Shinn said at his office today that he had heard of the case in an informal way only and that until the matter should be presented before him in the form of affidavits that he withheld any comment." The rest of the article is simply about the case.

Q. Now will you read the next article to which you said you addressed yourself.

10 A. The next article on which I based the editorial was in the Press of Wednesday morning, August fourth, and it reads as follows: "That neither Judge Shinn nor the Prosecutor's office will take any cognizance of the charges which Mrs. Imogene Boss of Baltimore has made against Magistrate Weeks and Constable Speese of Pleasantville unless they are arrested and the case is brought before them in the **usual** way was the word which came from those officials yesterday." The rest of the article is about the case.

Q. Now on what day did that appear?

20 A. On Wednesday, August fourth.

Q. Was that article written by you?

A. No, by one of our reporters; as I recall, Mr. Thomas.

Q. Did you have anything at all to do with that article until after it had come out, with the preparation of the article or the printing of it?

A. Yes, I write the headlines and edit the copy.

Q. But the body of the article was written by Mr. Thomas?

30 A. Yes.

Q. When was the editorial in question written by you?

A. It was written on Wednesday night. . . .

Q. That was what day?

A. August fourth.

Q. Had you at that time read the article in the Press that you have just referred to on the morning of the fourth and the article in the third, and the article in the Union of, I believe you said the second, was it not, or was that the third?

A. That was the third.

CROSS EXAMINATION

BY MR. BOLTE:

Q. Mr. Croasdale, all the article in the Union said in reference to Judge Shinn was that until the matter should be presented before him in the form of affidavits he would withhold any comment. That is all the article stated, wasn't it? 10

A. That is right.

Q. There is nothing in that article that states that Judge Shinn would not act?

A. Nothing in the article that states he would not act until it was presented before him in the form of affidavits.

Q. There is nothing in there, is there? The only thing that the article states that he would withhold comment; is that the only part is in the affidavit?

A. The article states that "Judge Shinn said at his office today that he had heard of the case in an informal way only and that until the matter should be presented before him in the form of affidavits he would withhold any comment."

Q. There is nothing there that states anything in regard to action, was there?

A. Nothing more than what the article states.

Q. And don't you consider that it is proper that the Judge of the Court, Common Pleas Court in a criminal matter shall withhold comment? Don't you think it is the proper thing for a judge to do who sits as the arbitrator and the interpreter of the law and who passes out sentence? Don't you think it is the proper thing for a man holding that position to withhold comment on a criminal case? 30

A. Absolutely, but I don't call comment on the case a statement as to whether he is going to investigate it or not. That is not comment on the facts in the case.

Q. In this article here, though, there is nothing that states that it would not be investigated, are there?

A. Not in that particular article.

Q. Is it your conception of the law that it is the duty of the Judge to investigate cases?

A. I think it is the duty of the Judge and Prosecutor's office together to take cognizance of any charges of that sort against a magistrate to the extent of having them investigated.

Q. Didn't you know that it is the duty of the Prosecutor's office to investigate these matters and that it is the duty, that the judge shall in a criminal matter be absolutely impartial and try a case as to facts that are presented before him both from the State's side and from the defence and that he stands between the State and the people?

A. That is correct except that when the Grand Jury is charged by the Court he has that privilege to mention certain things that come to his attention that he thinks should be investigated.

Q. There was never any statement on his part that he would not do that, was there?

20 A. There was a statement, according to the article that I read in the Press of the morning of August fourth that he would take no cognizance of the matter, neither he nor the Prosecutor's office until there was a warrant sworn out.

Q. That was an article in the Press. Now Mr. Thomas wrote that and Mr. Thomas has testified that his conversation was with Mr. Brown, the Assistant Prosecutor of Mr. Moore's office, and that the article stated that neither Judge Shinn nor Prosecutor Moore, naming him in person, would take any action; isn't that correct?

30 A. Well, I consider naming the Prosecutor, you should always name the principal officer; he is responsible for the office, for his assistant.

THE COURT: Was there any—didn't Mr. Thomas say that he had no conversation with me?

MR. WASHINGTON: He said so, Your Honor.

Q. The investigation that is to be made is not an investigation in your mind by the court, is it, that the duty is upon the court to make an investigation?

A. No, it is an investigation by the Grand Jury, proper officials.

Q. And you have been around courts a long time, haven't you, Mr. Croasdale, in the newspaper capacity.

A. Yes, sir.

Q. And you know that it is the duty of the Prosecutor to present the testimony to the Grand Jury?

A. Yes, sir.

Q. And that he uses his detectives, and so forth, to investigate matters? 10

A. Yes, sir.

Q. And that he presents them to the Grand Jury?

A. Yes, sir.

Q. You also know that after such an investigation that frequently he presents this matter to the court? You know that from the charges made by the Judges of the Supreme Court here?

A. Yes, sir.

Q. That they tell the Grand Jury that certain matters have been presented to them by the Prosecutor? 20

A. Yes, sir.

Q. And that they ask the Grand Jury there to investigate?

A. Yes.

Q. Now there was no, so far as you personally knew, there was never any intimation on Judge Shinn's part that he would not perform his duty and present the matter to the Grand Jury if called upon to do so by the Prosecutor, was there? 30

A. I have already stated that I based the editorial on what I read from the newspapers and not from personal knowledge.

Q. I ask you further was there ever anything in the newspapers which stated that Judge Shinn would not present it to the Grand Jury?

A. Yes, as I have already stated, it was an article in the Press August fourth stating that Judge Shinn and Prosecutor Moore would take no further cognizance of the case unless it was presented in the form of a warrant.

Q. And what was the basis of your article entirely?

A. Yes, sir.

Q. And on that you based the proposition that Judge Shinn's statement was surprising?

A. That is correct; yes.

Q. And wrote this entire editorial on that statement?

A. That is correct.

10 BY THE COURT:

Q. Mr. Croasdale, you feel justified in writing editorials which assail the good name and integrity of the court without first knowing the facts?

A. No, sir.

Q. Don't you think before writing such an editorial as you did write you should have known more about the facts by inquiry from me, for instance?

A. I don't think that editorial, no.

20

BY MR. WASHINGTON:

Q. Mr. Croasdale, what do you mean by the statement that you don't think that editorial? What do you mean by that?

A. Because I don't think that editorial was any reflection on the court. I considered it more of a helpful suggestion in the idea of what the people would expect in a case of that kind where there is an affidavit but no warrant.

30 Q. Is there anything in that article reflecting on the court?

A. In my opinion there is not.

BY THE COURT:

Q. You intimated that the court was not doing its duty, did you not, Mr. Croasdale?

A. I intimated that the court would not be doing its duty unless it ordered the investigation.

Q. Well after knowing from the testimony here today

that the court had ordered an investigation, what have you to say?

A. That nothing appears here today as to what time the court ordered the investigation. If the court has ordered the investigation I think it is a very good thing.

Q. I am not asking for your opinion, Mr. Croasdale. I have had that.

BY MR. WASHINGTON:

10

Q. Mr. Croasdale when were you first informed that the Court had ordered an investigation?

A. Today.

Q. From the testimony in Court?

A. Yes.

BY MR. BOLTE:

Q. Mr. Croasdale, the reference to, when you referred to the statement and you used the word "surprising statement" did you consider that was helpful to the court, Mr. Croasdale, in telling what the people would expect, Mr. Croasdale?

A. Yes, in order to acquaint him with the fact that it was surprising in the opinion of the people.

Q. Now whom had you seen to whom it was surprising?

A. I don't recall that I talked to anybody that said it was surprising.

Q. From the opinion of what people did you form it then? You say in the opinion of the people; now I would like to know who the people were who moulded that opinion?

A. I talked about it to our Pleasantville correspondent who was over in Pleasantville and knew the situation over there; and I talked about it, as I recall, to different people, as I do about lots of topics; I don't know just who they were.

Q. Can't you name one of them?

A. No, I can't say that I can.

BY THE COURT:

Q. You didn't talk to me about it, did you, Mr. Croasdale?

A. No, sir.

Q. Don't you think that it would have been fair to me to have acquainted yourself with some of the facts in connection with my actions?

A. I had already taken pains to do that. I had sent
10 a man down to see you and the evening paper had done the same thing. I can't call in person upon everybody myself. It would be a very nice thing if I could do it; I will agree to that.

Q. I didn't make any such statement according to my testimony as you have credited me with in the paper. I am not responsible—I don't think that is proper at this time.

MR. WASHINGTON: Go ahead, Your Honor.

20

THE COURT: I was about to say that I am not responsible for the newspaper reporters furnishing my conversation and saying things or attributing to me things in the newspaper which I never said. That is proved in this case as well as in other cases.

MR. WASHINGTON: Your Honor asked as to the conversation with Mr. Thomas and he tells me he did not cover the question of conversation with you but he tells
30 me that the conversation with you is as you recollect it.

TESTIMONY CLOSED

THE COURT: The liberty of the Press, of course, is a very, very important thing, but there is a difference between the liberty of the press and the deliberate misrepresentation of what one may say, whether it be the court or a private individual. I am thoroughly convinced that this article was written for the express purpose of holding the court in contempt and injure its good name and to bring

it in disrepute. Mr. Croasdale says that his effort was to aid and advise the court. If that be true it was his clear duty to ascertain all of the facts in connection with the matter, which he was writing the editorial on. Had he come to see me he would have been straightened out on all of the material facts. Had he have seen Mr. Brown he could have got the information from him that would have put an entirely different phase on the whole story. Instead of doing that he relied upon newspaper articles which were written by his reporters and, I am sorry to say, that so far as my own conversation is concerned with these reporters that there has been a misrepresentation, the facts were twisted. I didn't say any such things as were imputed to me. The words were manufactured by the reporters as coming from my mouth which never did come from my mouth. There are matters which the court necessarily knows of that are under investigation that if made public would defeat the ends of Justice and it is very important that when questioned about these matters that the court decline to have anything to say about them and that is what I endeavored to do in respect to the Weeks and Speese case. I feel that Mr. Croasdale should have taken more precautions. It seems to me from reading the editorial that there is an intimation that there is some ulterior, secret or hidden purpose that I was not doing what I should have done and, in view of those circumstances, as I feel about the matter, an order will be entered directing an attachment to be issued against Mr. Croasdale to be made returnable on the twenty-fifth day of this month at the court house.

30

I certify that the foregoing is a true and correct transcript of the stenographic notes of testimony taken by me in the above entitled cause.

A. K. LITTLEFIELD,
Acting Official Stenographer.

ATLANTIC COUNTY COURT OF QUARTER
SESSIONS

THE STATE <i>vs.</i> FRANCIS E. CROASDALE.	}	ATTACHMENT FOR CONTEMPT OF COURT
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10

Interrogatories to be administered of Francis E. Croasdale concerning an alleged contempt by him, committed against the said Court.

Q. Are you editor of Atlantic City Daily Press?

Q. Where is said paper published?

Q. What has been the average daily circulation of said paper since October 1, 1914?

20 Q. Is it offered for sale at news stands in Atlantic City and elsewhere?

Q. Is it delivered by carriers in Atlantic City and elsewhere?

Q. Have you been editor of said paper since October 1, 1914, and are you still the editor thereof?

Q. Your attention is directed to an editorial entitled "Weeks' Case Should be Probed," which appeared in the issue of said paper of August 5, 1915 and you are asked if you wrote the same?

30 Q. Was it published in said paper on said last mentioned date?

Q. How many copies of said paper were circulated in Atlantic City and elsewhere on said last mentioned date?

Q. What investigation did you make regarding the truth of the statements alleged to have been made by the Court with respect to the subject matter of said editorial?

Q. If your last preceding answer is that you based your editorial on news stories or articles in the Atlantic City Daily Press and The Evening Union, do not the stories therein contained differ very materially as to what the Court has said?

Q. Attach full copies of the stories which appeared in the Atlantic City Daily Press and The Evening Union upon which you based said editorial.

Q. If there is a material difference in said stories why did you take one to be true and not the other?

Q. Why did you not inquire of C. C. Shinn, Judge of the Court, and ascertain which story, if either, correctly stated the facts?

Q. Are the Atlantic City Daily Press and The Evening Union owned and published by The Press-Union Co., a 10 corporation of New Jersey?

Q. Have you any connection with The Evening Union or Press-Union Co., and if so what?

Q. Did you or any one for you interview Charles S. Moore, Prosecutor of the Pleas of Atlantic County, respecting the "Weeks Case?"

Q. Do you know whether Mr. Moore was in Atlantic City or any other place in the State of New Jersey at the time the alleged interview with him took place? 20

Q. Did you endeavor to verify the statements which you, in said editorial, allege to have been made by Mr. Moore, and if so, how?

Q. Do you write all of the headlines for the news articles appearing in the Atlantic City Daily Press?

Q. Do you write all of the editorials appearing in the Atlantic City Daily Press?

Q. Do you write the articles which appear in the news columns of the Atlantic City Daily Press? 30

Q. Were you the editor of the Atlantic City Daily Press on October 23, 1914, and on that date in column one of the editorials did there appear an editorial headed "A Disappointing Decision," and if so, attach to your answer a copy of said editorial?

Q. Were you the editor of the Atlantic City Daily Press on October 23, 1914, and on that date in column two of the editorials did there appear an editorial headed "Making a Monkey of Justice," and if so, attach to your answer a copy of said editorial?

Q. Were you the editor of the Atlantic City Daily Press on October 31, 1914, and on that date in column two of the editorials did there appear an editorial headed "Costly Result of Judicial Obstinacy," and if so, attach to your answer a copy of said editorial?

Q. Were you the editor of the Atlantic City Daily Press on October 31, 1914, and on that date in the news column, page one, third column, did there appear a news article headed "Ruling of Judge Shinn Compels 634 Voters to Journey Twenty Miles," and if so, attach to your answer a copy of said article?

Q. Were you the editor of the Atlantic City Daily Press on October 29, 1914, and on that date in column two of the editorials did there appear an editorial headed "Judge Shinn's Error an Injury to the Public," and if so, attach to your answer a copy of said editorial?

Q. Were you the editor of the Atlantic City Daily Press on December 11, 1914, and on that date in column two of the editorials did there appear an editorial headed "The Prosecutor's Bills," and if so, attach to your answer a copy of said editorial?

Q. Were you the editor of the Atlantic City Daily Press on December 10, 1914, and on that date in column two of the editorials did there appear an editorial headed "A Government by Prosecutors," and if so, attach to your answer a copy of said editorial?

Q. Were you the editor of the Atlantic City Daily Press on December 10, 1914, and on that date in the news column on the first page, sixth column, did there appear an article headed "Declares Moore's Sleuths Did Not Want Evidence," and if so, attach to your answer a copy of said news article?

Q. Were you the editor of the Atlantic City Daily Press on December 9, 1914, and on that date in column two of the editorials did there appear an editorial headed "Moore's \$2600 Folly," and if so, attach to your answer a copy of said editorial?

Q. Were you the editor of the Atlantic City Daily Press on March 16, 1915, and on that date on the first page did there appear a news article in the seventh column

headed "Judge C. C. Shinn Boosts Salaries," and if so, attach to your answer a copy of said news article?

Q. Were you the editor of the Atlantic City Daily Press on April 22, 1915, and on that date in the first column of the editorials did there appear an editorial headed "Courtesy Out of the Question," and if so, attach to your answer a copy of said news article?

Q. Were you the Editor of the Atlantic City Daily Press on April 21, 1915 and on that date in the news column of the first page, columns seven and eight did there appear an article headed "Judge Shinn Must Issue Transfers in Atlantic City Now," and if so, attach to your answer a copy of said news article? 10

Q. Were you the editor of the Atlantic City Daily Press on April 20, 1915 and on that date in the news columns seven and eight of the first page did there appear an article headed "Judge Shinn Wrong in Appointment of Probation Officer," and if so, attach to your answer a copy of said news article? 20

Q. Were you the editor of the Atlantic City Daily Press on April 17, 1915 and on that date in column one of the editorials did there appear an editorial headed "Timely Interference," and if so, attach to your answer a copy of said editorial?

Q. Were you the editor of the Atlantic City Daily Press on April 15, 1915 and on that date in the news columns of the first page, fourth column, did there appear a news article headed "Hold up Pay on Appointments of Judge C. C. Shinn," and if so, attach to your answer a copy of said news article? 30

Q. Were you the editor of the Atlantic City Daily Press on May 5, 1915 and on that date in column two of the editorials did there appear an editorial headed "Judge Shinn and Politics," and if so, attach to your answer a copy of said editorial?

Q. Were you the editor of the Atlantic City Daily Press on May 6, 1915, and on that date in the news columns on the first page, sixth and seventh columns did there ap-

pear an article headed "Scull Must take the Examination," and if so, attach to your answer a copy of said news article?

Q. Were you the editor of the Atlantic City Daily Press on June 29, 1915, and on that date in the news columns of the first page, first column, did there appear an article headed "Shinn Refuses Bond of Weloff," and if so attach to your answer a copy of said news article?

Q. Were you the editor of the Atlantic City Daily Press on June 23, 1915 and on that date in the news columns of the first page, eighth column, did there appear a news article headed "Grand Jury May Have Looked up Singer Charges," and if so, attach to your answer a copy of said news article?

Q. Were you the editor of the Atlantic City Daily Press on June 19, 1915, and on that date in column one of the editorials did there appear an editorial headed "Up to the Prosecutor," and if so, attach to your answer a copy of said editorial?

20 Q. Were you the editor of the Atlantic City Daily Press on July 31, 1915, and on that date in the news columns of the first page, sixth column, did there appear an article headed "Moore Appoints New Detective," and if so, attach to your answer a copy of said article?

Q. Were you the editor of the Atlantic City Daily Press on July 21, 1915, and on that date in column two of the editorials did there appear an editorial headed "Throwing the Sand," and if so, attach to your answer a copy of said editorial?

30 Q. Were you the editor of the Atlantic City Daily Press on July 20, 1915 and on that date in the news columns of the first page, fifth column, did there appear a news article headed "Moore Mum on Resignation Talk," and if so, attach to your answer a copy of said news article?

Q. Were you the editor of the Atlantic City Daily Press on July 19, 1915 and on that date in column two of the editorials did there appear an editorial headed "Moore Should Resign Too," and if so, attach to your answer a copy of said editorial?

Q. Were you the editor of the Atlantic City Daily Press on July 17, 1915 and on that date in column two of the editorials did there appear an editorial headed "Unfair to Judge Shinn," and if so, attach to your answer a copy of said editorial?

Q. Were you the editor of the Atlantic City Daily Press on July 17, 1915 and on that date on page one of the news articles, fifth column, did there appear a news article headed "Certiorari in Boat House Case," and if so attach to your answer a copy of said news article? 10

Q. Were you the editor of the Atlantic City Daily Press on July 16, 1915 and on that date in the news columns of the first page, column five, did there appear a news article headed "Shinn Coup May Close a Saloon," and if so, attach a copy of said news article to your answer?

Q. Were you the editor of the Atlantic City Daily Press on July 14, 1915 and on that date in column two of the editorials did there appear an editorial headed "A Vicious Prosecuting System," and if so, attach to your answer 20 a copy of said editorial?

Q. Were you the editor of the Atlantic City Daily Press on July 9, 1915 and on that date in column two of the editorials did there appear an editorial headed "Judge Shinn's License Stand," and if so, attach to your answer a copy of said editorial ?

Q. Were you the editor of the Atlantic City Daily Press on July 8, 1915 and on that date in the news columns of the first page, sixth column, did there appear a news 30 article headed "Cole is Counsel for Judge Shinn," and if so, attach to your answer a copy of said news article?

Q. Were you the editor of the Atlantic City Daily Press on July 3, 1915 and on that date in column two of the editorials did there appear an editorial headed "More Excise Buncombe," and if so, attach to your answer a copy of said editorial?

Q. Were you the editor of the Atlantic City Daily Press on July 2, 1915 and on that date in the news columns of the first page, fourth and fifth columns, did there ap-

pear a news article headed "City Backs up Weloff," and if so, attach to your answer a copy of said news article?

Q. Were you the editor of the Atlantic City Daily Press on July 1, 1915 and on that date in the news columns of the first page, first column, did there appear a news article headed "Saloon Keepers Held as Hostages," and if so, attach to your answer a copy of said news article?

10 Q. Were you the editor of the Atlantic City Daily Press on August 6, 1915, and on that date in the news columns of the first page, first column, did there appear a news article headed "Commissioners to Clip the Wings of Judge Shinn," and if so, attach to your answer a copy of said news article?

Q. Were you the editor of the Atlantic City Daily Press on August 7, 1915 and on that date in the news columns of the first page, third column, did there appear a news article headed "Judge Shinn Has Editor of Press up For Contempt," and if so, attach to your answer a copy of said news article?

20 Q. Were you the editor of the Atlantic City Daily Press on August 9, 1915 and on that date in the news columns of the first page, sixth and seventh columns, did there appear a news article headed "Judge Shinn Rules Against Editor of Press in Contempt Proceedings," and if so, attach to your answer a copy of said news article?

Q. Were you the editor of the Atlantic City Daily Press on August 9, 1915 and on that date in column one of the editorials did there appear an editorial headed "Contempt of Court," and if so, attach to your answer a copy
30 of said editorial?

[ENDORSED]

In the matter of contempt in the Atlantic County Court of Quarter Sessions by Francis E. Croasdale.
Affidavit, Order to Show cause, etc.
Filed Oct. 22, 1915.

WM. C. GEBHARDT, *Clerk*,
Filed October 17, 1915.

(Filed October 17, 1915)

NEW JERSEY SUPREME COURT

In the matter of contempt in
the Atlantic County Court of
Quarter Sessions by Francis
E. Croasdale.

ON CERTIORARI

REASONS

The order for attachment and all other proceedings in the matter of an alleged contempt in the Atlantic County Court of Quarter Sessions by Francis E. Croasdale are illegal, erroneous and unlawful, for the following reasons:

1. Because the affidavit upon which alone the rule to show cause was based, contains no charge of the commission by the said Francis E. Croasdale of a contempt punishable summarily before the Atlantic County Court of Quarter Sessions in that the article written by the said Francis E. Croasdale was not a contempt.

2. Because the affidavit upon which alone the rule to show cause was based, contains no charge of the commission by the said Francis E. Croasdale of a contempt punishable summarily before the Atlantic County Court of Quarter Sessions in that no act whatsoever is alleged to have been committed by the said Francis E. Croasdale in the face of or in the presence of the Atlantic County Court of Quarter Sessions, which is a jurisdictional requisite, before the Atlantic County Court of Quarter Sessions can be contemned or can proceed to punish summarily for contempt.

3. Because the Atlantic County Court of Quarter Sessions is without jurisdiction because no allegation, proof or evidence whatsoever was made or produced charging the said Francis E. Croasdale with any alleged contemptuous word, conduct, or act whatsoever committed in the face of or in the presence of the Atlantic County Court of Quarter Sessions.

4. Because the said proceedings are in divers other respects irregular, illegal, oppressive and unjust to the said Francis E. Croasdale.

LEE F. WASHINGTON, *Attorney for*
Francis E. Croasdale, Prosecutor.

[ENDORSED]

NEW JERSEY SUPREME COURT

In the matter of contempt in
 10 the Atlantic County Court of }
 Quarter Sessions by Francis E. } ON CERTIORARI
 Croasdale. } REASONS

LEE F. WASHINGTON,
Attorney for Francis E. Croasdale,
Prosecutor.

20 539-40-41 Guarantee Trust Bldg.,
 Atlantic City, N. J.

Service ackd. Oct. 16, 1915.

G. ARTHUR BOLTE,

C. L. COLE,

Attys.

30

(Filed April 3, 1916)

NEW JERSEY SUPREME COURT

November Term, 1915.

Francis E. Croasdale,

Prosecutor.

vs.

The Court of Quarter Sessions
of the County of Atlantic.

10

Submitted December 4, 1915; decided April 1916

The Court of Quarter Sessions, as now constituted, is a tribunal having power to punish summarily for contempt committed either in or out of its presence.

20

On Certiorari.

Before Justices Parker, Minturn and Kalisch.

For the Prosecutor, Lee F. Washington.

For the Defendant, Clarence L. Cole and G. Arthur Bolte.

The opinion of the Court was delivered by PARKER, J.

On August 6, 1915, the Atlantic County Court of Quarter Sessions made a rule on prosecutor to show cause why he should not be attached for contempt in causing the publication in his newspaper of an editorial article criticising the alleged inaction of the county prosecutor and of the Quarter Sessions in a criminal matter. This rule was based on the usual preliminary affidavit, and on its return testimony was taken in open court pro and con, and subsequently the rule was made

30

absolute and an attachment awarded and issued. At this stage of the proceedings prosecutor sued out the present writ of certiorari. The award of a writ before the termination of the proceedings is supported by the fact that the attack is on the jurisdiction of the Court over the subject matter. See *Palese v. Lane*, 95 Atl. 126; *Mowery v. Camden*, 49 N. J. Law, 106, 109.

The question whether there was in fact and law a contempt is not submitted for our consideration in the present proceeding. The point made, and the only point is, that the Court of Quarter Sessions has no power to punish summarily for contempts not committed in its presence.

Counsel argues, and with much force, that under the English law, the power to punish contempts not in the face of the court was confined to the superior courts of record and did not extend to the inferior courts; that the court of Quarter Sessions was an inferior court and had no such power; and that our own court of Quarter Sessions is founded on its English prototype and has the same limitations on its jurisdiction in matters of contempt. We think, however, that the argument loses its force, in view of the many changes that the court of Quarter Sessions has undergone since the Revolution, and which changes have amounted to the practical erection of a new court, both in jurisdiction and personnel.

The English court of Quarter Sessions in the time of Blackstone was held before two or more justices of the peace, one of whom must be of the quorum. 4 Blk. 271. These justices of the quorum were originally selected for special qualifications, but by Blackstone's time practically all were of the quorum. 1 Blk., 351. The requirement of one justice of the quorum therefore lost most, if not all, of its real significance, and in this aspect it is fair to say that as a practical matter the

Quarter Sessions could be held before any two or more justices of the peace. Its jurisdiction extended theoretically to all felonies and trespasses whatsoever, but it seldom if ever tried any greater offence than small felonies within benefit of clergy; any case of difficulty requiring, by the express terms of the King's commission, the presence of a justice of the King's bench or common pleas, or a judge of assize. 4 Blk. 271. Such a court was properly denominated an inferior court, and lacked the power to deal summarily with extraneous acts of contempt. Odgers, L. & S. 511; 1 Gabbett, Criminal Law, 287; 2 Bish. New Criminal Law, Section 263. Our own courts of Quarter Sessions in the time of Paterson's Revision (1799) and Elmer's Digest (1838) may, for the sake of argument, be conceded to have been of this character. They were held by the Justices of the peace of the county, or any three of them. (Pat. 130 Sec. II; Elm. Dig. 449) Their jurisdiction embraced all crimes, with the following important exceptions; treason, murder, manslaughter, sodomy, rape, polygamy, arson, Burglary, robbery, forgery, perjury and subornation of perjury, and crimes punishable with death; indictments for which, if found in the Sessions, were required to be tried in the supreme court, or in the oyer and terminer, or general gaol delivery. Ib. It is hardly necessary to remark that the criminal offences remaining within the jurisdiction of the sessions were of a minor character; and it may well be conceded that such a court, composed of a minimum of three justices of the peace, and restricted in jurisdiction to the minor crimes and misdemeanors, was an "inferior court," and while evidently endowed with jurisdiction to deal summarily with contempts committed in its presence (State v. Keeper &c. 5 N. J. L. J. 184) may have lacked that jurisdiction with respect to contempts outside of court, except disobedience of process.

But with the increase of population and wealth in the early part of the last century, there was constantly growing tendency to elevate the county courts, both in personnel and jurisdiction. The Common Pleas, then consisted of an indefinite number of judges, appointed by the council and assembly under the constitution of 1776, Art. XII. The justices of the peace seem to have been usually selected as judges, (see P. L. 1885, p. 75) and when the judges all attended court the bench was often
10 not large enough to hold them. See briefs of counsel in *Schalk v. Wrightson*, 58 N. J. L. 65, 69; also *Gray v. Bastedo*, 46 N. J. L. at p. 459. The Orphans' Court consisted of these same judges, or any three of them. Elm. 360 Sec. V. The Quarter Sessions, as already observed, consisted of the justices of the peace of the county, or any three or more of them, *ex officio*. Elm. 449, *supra*. Soon the personnel of the Orphans' Court and the Sessions was identified with that of the Common Pleas, and the later legislation affected all three courts
20 alike. The first step was to reduce the maximum number of judges of the Common Pleas to five, appointed by senate and assembly in joint meeting, and with a term of five years. Const. 1844, Art. VI, Sec. VI; C. S. XLIII.

Next, in 1846, the revised Quarter Sessions act (R. S. 223) provided that the judges for the time being of the Court of Common Pleas, or any three or more of of them, should constitute a court of general Quarter sessions of the peace in and for the county. Sec.
30 2.

In 1855, by an act to reorganize the courts of law (P. L. p 17) the justices of the supreme court were made *ex officio* judges of the Pleas, Orphans' Court, and Quarter sessions (Sec. 4) and have ever since so remained.

At this time, then, the court of Quarter Sessions in each county consisted of not more than five judges

appointed by the joint meeting, who were customarily laymen, and the Supreme Court justices holding the circuit for the county *ex officio*. Act of 1855, Sec. 5. But his presence was not legally necessary; and the manifest desirability of having at least one trained lawyer always on the bench of this court shortly led to the addition of a "law judge" in the principal counties, and ultimately in all counties. Such a judge was provided in Essex County in 1859 (P. L. p. 421); Hudson, 1868 (p. 363); Union, 1868 (p. 580); Middlesex, 1869 (p. 105); Mercer, 1869 (p. 306); Monmouth, 1869 (p. 681); Passaic, 1871 (p. 925). An abstract of these acts will be found as a foot note to Rev. 1877, pp. 270, 271. By a constitutional amendment of 1875 the appointment of Common Pleas judges was transferred to the governor, with the advice and consent of the Senate. Art. VII, Sec. II, par. 1 as amended; C. S. XCVIII; the failure to strike out the old clause in paragraph 2 being apparently an oversight.

In 1878 the number of lay judges in counties having a law judge was reduced to two, (P. L. p. 315). In the same year a law judge was provided in Morris County (p. 533); similar action was had later as to Hunterdon, 1880 (p. 397); Somerset, 1885 (p. 414); Cumberland, 1889 (p. 492); Atlantic, 1889 (p. 495); and Gloucester, 1891 (p. 547). See G. S. 1895 p. 1124 note.

In 1894 a general act provided for a law judge in all counties of the second class. P. L. p. 173; G. S. 1038.

After a futile attempt in 1895 to abolish the courts of Common Pleas, Orphans' Court, Oyer and Terminer and Quarter Sessions (P. L. p. 323, 647, 807; *Schalk v. Wrightson*, 58 N. J. L. 50, 78) the legislature abolished all the lay judges in every county, continued the law judges in office, provided for the appointment of a law judge in all counties where there was then no law judge, and that such law judge or the justice of the Supreme

Court, or both, might thereafter hold the Common Pleas, Quarter and Special Sessions, and Orphans' Court. P. L. 1896 p. 149. This act was upheld in *Kenny v. Hudseth*, 59 N. J. L. 320, affirmed Id. 504. Thus stands the law at the present day as to judges of the Common Pleas, (P. L. 1900, p. 332, C. S. 1725, pl. 91) who are ex-officio judges of the Quarter Sessions, P. L. 1898 p. 866; C. S., 1820; P. L. 1900, p. 356, Sec. 33; C. S. 1716 pl. 52. The Acts creating a law judge in the several individual counties generally if not uniformly required that he should be admitted to the bar; usually, that he should be a counselor at law; and in some cases that he should be a counselor of three years standing. It is true that there appears to be no such specific requirement of the law of 1900; but the whole trend of the legislation for many years has been toward the elimination of the lay element and the substitution of trained legal skill on the county bench. A glance at the General Statutes of 1895, pp. 1033, et seq., especially pp. 1035, 1036, will make this phase of the legislative policy sufficiently plain.

It appears, then, that in the course of less than half a century from a court composed exclusively of justices of the peace, the court of Quarter Sessions has been developed into a criminal court with no lay element on its bench, in which the justices of the Supreme Court are by law qualified to sit, and in which, on occasion, they actually do sit.

A corresponding development has taken place in the matter of jurisdiction. It will be recalled that from the criminal jurisdiction laid down in general terms, the graver criminal offences were specifically excepted; but most of the exceptions have been eliminated. In 1874, by legislative revision of that year, the exceptions were reduced to treason, murder and manslaughter. Rev. 1877, p. 270, Sec. 23. And in 1898, the exception of manslaughter was also eliminated. P. L. 866, Sec. I;

C. S. 1820. Since that time the court of Quarter Sessions have had jurisdiction to try, and at this time do try almost exclusively, indictments for every kind and degree of crime except treason and murder. It is obvious that by the statutory enlargements of jurisdiction, the standing and importance of the court have enormously increased. In 1884, Chief Justice Beasley, speaking for the Court of Errors and Appeals, characterized the Quarter Sessions as "one of the established courts of this state exercising a general jurisdiction" and added. ¹⁰ "The records and judgments of such a tribunal are to be treated in the same manner as the records and judgments of the County Circuit Courts are to be treated." *Schomp v. Thompkins*, 46 N. J. L. 608, 612.

Taking these two forms of development together—jurisdiction and personnel—it is apparent that the court of Quarter Sessions as now constituted is a very different tribunal from that of 1799, and while still an "inferior" court in the sense that it does not rank with the Supreme Court or Court of Chancery, it is for working ²⁰ purposes the principal criminal court of the county. The increasing calls of appellate work on the justices of the Supreme Court having compelled their abstention in large measure from engagements at nisi prius and assize, the work of the Oyer and Terminer, where the presence of a supreme court justice is necessary, is greatly reduced, and the bulk of the criminal trials are held in the Sessions. That court may now be said to rank equally with the Oyer except in two particulars: It may not try indictments for treason or murder; and the pres- ³⁰ ence of a supreme court justice is not necessary, though he may participate.

Now, it is true that in the development traced above, there appears to be no contempt power conferred expressly by statute; but this in our view is unimportant. No statute confers such power on the Court of Errors

and Appeals, or the Supreme Court. There are such statutes relating to the Court of Chancery, C. S. 435, Sec. 69; 442, Sec. 82; 448, Sec. 102. There is none as to the circuit courts, which are plainly "inferior" in the sense above specified; nor as to the Oyer and Terminer, which, though plainly inferior in the same sense, was treated by this court as a "superior tribunal" so far as outside contempts were concerned. In *re Cheesman*, 49 N. J. L. 115, 142. The same classification should be

10 accorded to the Quarter Sessions, composed of the same judges and having (except as to two crimes only) the same jurisdiction. The fact that a Supreme Court justice is not necessarily present does not alter the case; for if he be present, the constitution of the court is the same as that of the Oyer; and it will not do to say that the Sessions would have full summary power over outside contempts when composed of two statutory judges or of the Supreme Court justice alone, and be without

20 that power when composed of the "law judge" sitting alone.

Such power has in fact been exercised in more than one case removed into this court, and apparently without challenge as to jurisdiction. In 1893 the Camden Quarter Sessions undertook to punish a newspaper libel summarily, and on appeal pursuant to the statute the conviction was set aside solely for faulty procedure. In *re Holt*, 55 N. J. L. 384. The same court attempted to punish disobedience of a state subpoena in 1902, and the same course was pursued. In *re Haines*, 67 N. J. L. 442.

30 In neither case was there any suggestion either by counsel or the court that jurisdiction of the subject matter was wanting.

Our conclusion is that the court of Quarter Sessions as now constituted is a tribunal having power to punish summarily contempts either in or out of its presence, and the writ of certiorari is therefore dismissed with costs.

(Filed April 4, 1916)

NEW JERSEY SUPREME COURT.

Francis E. Croasdale,

Prosecutor,

vs.

Atlantic County Quarter
Session Court,

Respondent.

ON CERTIORARI

RULE FOR
JUDGMENT

10

This cause being regularly on the list at the November term 1915 and having been submitted on brief by both sides and the court having read and considered said briefs together with the state of the case and being of the opinion that the proceedings under review should be affirmed and the writ dismissed. 20

IT IS on this fourth day of April, 1916, on motion of C. L. Cole, of counsel with the respondent

ORDERED that the writ be and the same is dismissed with costs.

Entered Apr. 4, 1916.

On motion of C. L. Cole,

Atty. for Respd't.

30

A true copy.

WM. C. GEBHARDT,

Clerk.

Notice of Appeal

(Filed April 18, 1916)

NEW JERSEY SUPREME COURT.

Francis E. Croasdale,

Prosecutor,

vs.

ON CERTIORARI.

10 The Court of Quarter Ses-
sions of the County of At-
lantic.

NOTICE
OF APPEAL

Defendant.

To Clarence L. Cole and G. Arthur Bolte, Esqs.,
Attorneys of the Court of Quarter Sessions
of the County of Atlantic:

20 TAKE NOTICE that the prosecutor appeals to the
Court of Errors and Appeals from the whole of the judg-
ment entered in the above stated cause in our New Jer-
sey Supreme Court.

Dated, April 17, 1916.

WASHINGTON & SMITH,

Attys. for Prosecutor.

(Endorsed)

NEW JERSEY SUPREME COURT.

Francis E. Croasdale,
Prosecutor,

vs.

The Court of Quarter Ses-
sions of the County of At-
lantic,
Defendant.

ON CERTIORARI.

NOTICE
OF APPEAL.

10

WASHINGTON & SMITH,

Attys. for Prosecutor.

20

Due and legal service of the within hereby acknowl-
edged.

C. L. COLE,
Atty.

(Filed April 18, 1916)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10	Frances E. Croasdale, Prosecutor, Appellant, vs. The Court of Quarter Ses- sions of the County of At- lantic, Defendant, Respondent.	}	ON CERTIORARI. GROUNDS OF APPEAL
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20 To Clarence L. Cole and G. Arthur Bolte, Esqs.,
Attorneys of the Court of Quarter Sessions
of the County of Atlantic:

TAKE NOTICE that the prosecutor-appellant, in his appeal to the Court of Errors and Appeals from the whole of the judgment entered in said cause in our New Jersey Supreme Court, hereby states the following grounds of appeal:

30 1. Because the Supreme Court erred in sustaining the jurisdiction of the Court of Quarter Sessions of the County of Atlantic in the proceedings brought up from said Court of Quarter Sessions of the County of Atlantic by the writ of certiorari.

2. Because the Supreme Court erred in that said Supreme Court dismissed the writ of certiorari which brought up the proceedings before the Court of Quarter Sessions of the County of Atlantic, against the objection by this prosecutor before said Supreme Court that said

Court of Quarter Sessions of the County of Atlantic had no jurisdiction, because the affidavit upon which alone the rule to show cause allowed by said Atlantic County Court of Quarter Sessions was based contained no charge of the commission by the said Francis E. Croasdale of a contempt punishable summarily before the Atlantic County Court of Quarter Sessions in that no act whatsoever was alleged to have been committed by the said Francis E. Croasdale in the face of or in the presence of the Atlantic County Court of Quarter Sessions, which was a jurisdictional requisite before the Atlantic County Court of Quarter Sessions could be contemned or could proceed to punish summarily for contempt. 10

3. Because the Supreme Court erred in that said Supreme Court dismissed the writ of certiorari which brought up the proceedings before the Court of Quarter Sessions of the County of Atlantic, against the objection of this prosecutor that said Atlantic County Court of Quarter Sessions was without jurisdiction because no allegation or proof or evidence whatsoever was made or produced charging the said Francis E. Croasdale with any alleged contemptuous word, conduct or act whatsoever committed in the face of or in the presence of the Atlantic County Court of Quarter Sessions. 20

4. Because the Supreme Court erred in divers other respects in sustaining the jurisdiction of said Atlantic County Court of Quarter Sessions and in dismissing said writ of certiorari.

WASHINGTON & SMITH,

Attorneys for Prosecutor-Appellant.

(Endorsed)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Francis E. Croasdale,

10

Prosecutor,
Appellant,

vs.

The Court of Quarter Ses-
sions of the County of At-
lantic,Defendant,
Respondent.

ON CERTIORARI.

GROUND
OF APPEAL.

20

WASHINGTON & SMITH,

Attys. for Prosecutor-Appellant,

537-540 Guarantee Trust Bldg.,

Atlantic City, N. J.

Due and legal service of the within hereby acknowl-
30 edged.

C. L. COLE,

Atty.

