

57 *The Clerk's table*

NEW JERSEY SUPREME COURT,
November term, 1857.

JAMES P. DONNELLY } *In error to the Monmouth*
v. } *Oyer and Terminer on in-*
THE STATE, } *dictment for murder.*

A writ of error in the above stated cause having been allowed and issued returnable to the present term of this court, and application having been made on behalf of the plaintiff in error by his counsel, Joseph P. Bradley, William Pennington, and Joseph W. Scott, that a writ of *habeas corpus* do issue to the sheriff of the county of Monmouth to bring the said James P. Donnelly before the court (that he may assign errors in person, and be present at the hearing of the said cause); and William L. Dayton, the attorney general, in behalf of the state, consenting that the application be now heard and decided without prejudice, as if the writ of error were actually returned, and the return thereof perfected; and the court having heard the arguments of counsel, and taken time to advise thereon until this ninth day of November; and the court being of opinion that the plaintiff in error may lawfully assign errors by his attorney and counsel, and that his personal presence in court is not necessary for the purpose aforesaid, nor upon the hearing of the said cause, and the prisoner being in fact represented by his attorney and counsel, and there being no suggestion that the plaintiff in error is unwilling to be so represented, or that his rights will be in any wise prejudiced thereby or by reason of his not being present in person before this court—It is ordered, that the motion for the writ of *habeas corpus* be denied.

On motion of

WILLIAM L. DAYTON,
Att'y General.

A true copy from the minutes.

CHAS. P. SMITH, *Clk.*

NEW JERSEY SUPREME COURT,
November term, 1857.

JAMES P. DONNELLY } *In error to the Monmouth*
 v. } *Oyer and Terminer on in-*
THE STATE, } *dictment for murder.*

It is ordered by the court, that so much of the recital in the assignment of errors as avers that the court did "refuse to make order for the removal of the said James P. Donnelly before them, and did adjudge that the said James P. Donnelly do assign his errors by his counsel learned in the law, and also so much of the said assignment as recites that "day is given for that purpose until the twelfth of November, in the year aforesaid," be stricken out, as not being in accordance with the facts.

And it is also ordered, that so much of the said assignment as assigns for error that the court, in and by the said charge, did invade the province of the jury by arguing the facts of the case before the jury against the said James P. Donnelly; and also, that part of the said assignment which assigns for error that the said court, in and by the said charge, did give a partial view of the evidence against the said James P. Donnelly, and omitted the circumstances in his favor, be stricken out.

On motion of

WILLIAM L. DAYTON,
Att'y General.

A true copy from the minutes.

CHAS. P. SMITH, *Clk.*

Pleas before the Justices of the Supreme Court of the State of New Jersey, at Trenton, of the term of November, in the year of our Lord 1857.—Witness HENRY W. GREEN, esquire, Chief Justice.

CHARLES P. SMITH, *Clk.*

NEW JERSEY, *ss.*—The State of New Jersey sent their writ from their Chancellor to the Court of Oyer and Terminer and General Jail Delivery in and for the county of Monmouth, in the words following, that is to say:—
[*Pro ut* the writ and the return thereto.]

Afterwards, to wit, on the first Tuesday of November, in the term of November, A. D. 1857, before the Justices of the Supreme Court of New Jersey, at Trenton, comes the said James P. Donnelly, by Amzi C. McLean, his attorney, and by William Pennington, Joseph P. Bradley, and Joseph Warren Scott, his counsel, and says—that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, that at the trial of the said indictment before the said Court of Oyer and Terminer and General Jail Delivery the said court did exclude and overrule the evidence offered in behalf of the said James P. Donnelly which was lawful and admissible in the law, and there is also error in this, that the said court did admit and allow evidence to be given against the said James P. Donnelly on the said trial which was illegal and inadmissible in the law, and there is error also in this, that the charge of the said court to the jury was contrary to law; and there is also error in this, that the verdict of the jury is repugnant, inconsistent, and void; and there is also error in this, that judgment was given against the said James P. Donnelly, whereas judgment should have been given in his favor: wherefore the said James P. Donnelly, by his said counsel, prays judgment, and that the judgment aforesaid, for the errors aforesaid and other errors

found and being in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that the said James P. Donnelly may be restored to all things which he has lost by occasion of the said judgment, and that the court here may proceed to examine the record and proceedings aforesaid.

And hereupon William L. Dayton, attorney general of the State of New Jersey, who for the said state in this behalf prosecutes, present in his proper person, for the said State of New Jersey saith, that neither in the record and proceedings aforesaid, nor in the giving of the judgment aforesaid, is there any error, and he prays that the Supreme Court of the State of New Jersey, now here, may proceed to examine, as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed.

But because our said court was not then advised what judgment to give of and upon the premises, a day was therefore given to the parties aforesaid there, until the twenty-first day of November, in the term of November aforesaid, to hear their judgment thereon, for our said court were not then advised thereof, &c.

At which day, before our said Supreme Court, came as well the said James P. Donnelly, by his attorney and counsel aforesaid, as the said William L. Dayton, who prosecutes for our said state, in their own proper persons; whereupon all and singular the premises being seen, and by our said court here fully understood, and as well the record and proceedings aforesaid and the judgment given in form aforesaid as the matters aforesaid for error assigned being diligently examined and inspected, and mature deliberation being thereupon had, it appears to our said court that there was no error either in the record and proceedings aforesaid or in giving the judgment aforesaid.

Therefore it is considered by our said court, that the judgment aforesaid, in form aforesaid given, be in all things affirmed and stand in full force and effect, the said causes and matters so for error assigned as aforesaid in

any wise notwithstanding, and that the said record and proceedings of the said Court of Oyer and Terminer and General Jail Delivery be remitted to the said court, that the judgment of said court may be done thereon according to law.

Judgment signed this twenty-first day of November, in the year of our Lord one thousand eight hundred and fifty-seven.

[Original assignment of errors in the Supreme Court.]

NEW JERSEY SUPREME COURT,
November term, 1857.

JAMES P. DONNELLY	} <i>In error to the Oyer, &c.,</i> } <i>of Monmouth, on indictment</i> } <i>for murder.</i>
v.	
THE STATE,	

Afterwards, to wit, on the first Tuesday of November, in the term of November, in the year of our Lord one thousand eight hundred and fifty-seven, before the Justices of the Supreme Court of New Jersey, at Trenton, come William Pennington, Joseph P. Bradley, and Joseph Warren Scott, esquires, the counsel of the said James P. Donnelly, and pray the court in his behalf, that a writ of *habeas corpus ad subjiciendum*, &c., may be issued to the sheriff of the county of Monmouth, requiring and commanding the said sheriff to have the body of the said James P. Donnelly before the said justices here forthwith, [in order that he, the said James P. Donnelly, may assign his errors of and upon the premises, and submit

himself to the judgment of the court here, &c.,] but the said justices disallow the said writ, and [refuse to make order for the removal of the said James P. Donnelly before them, and adjudge that the said James P. Donnelly do assign his errors by his counsel learned in the law, and day is given for that purpose until the twelfth day of November, in the year aforesaid, in this same term, at Trenton aforesaid, at which day and place] thereupon the said counsel, on behalf of the said James P. Donnelly, state and show to the court here, that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, that at the trial of the said indictment before the said Court of Oyer and Terminer and General Jail Delivery, the said court did exclude and overrule evidence offered in behalf of the said James P. Donnelly which was lawful and admissible in the law; and there is also error in this, that the said court did admit and allow evidence to be given against the said James P. Donnelly on the said trial which was illegal and inadmissible in the law; and there is also error in this, that the charge of the said court to the jury was contrary to law; [and there is also error in this, that the said court, in and by their said charge, did invade the province of the jury by arguing the facts of the case before the jury against the said James P. Donnelly; and there is also error in this, that the said court, in and by the said charge, did give a partial view of the evidence against the said James P. Donnelly, and omitted the circumstances in his favor;] and there is also error in this, that the verdict of the jury is repugnant, inconsistent, and void; and there is also error in this, that judgment was given against the said James P. Donnelly, whereas judgment should have been given in his favor; wherefore the said James P. Donnelly, by his said counsel, prays judgment, and that the judgment aforesaid, for the errors aforesaid and other errors found and being in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that the said James

P. Donnelly may be restored to all things which he has lost by occasion of the said judgment, and that the court here may proceed to examine the record and proceedings aforesaid.

WM. PENNINGTON,
JOS. P. BRADLEY,
J. W. SCOTT.

[Assignment of errors in the Court of Errors and Appeals.]

NEW JERSEY COURT OF ERRORS AND APPEALS,
Of November 27th, 1857.

JAMES P. DONNELLY	}	<i>In error to the Supreme Court.</i>
v.		
THE STATE,		

And the said James P. Donnelly, by Amzi C. McLean, his attorney, comes and says, that in the record and proceedings aforesaid, and also in the giving of judgment, there is manifest error in this—

1. That at the trial of the said indictment before the said Court of Oyer and Terminer and General Jail Delivery of the county of Monmouth, the said court did exclude and overrule evidence offered in behalf of the said James P. Donnelly which was admissible in the law. [*Pro ut* the first bill of exceptions.]

2. And there is also error in this, that at the said trial the said court did admit and allow evidence to be given against the said James P. Donnelly which was illegal and inadmissible in the law. [*Pro ut* the second, third, fourth, fifth, sixth, and seventh bills of exceptions.]

3. And there is also error in this, that the charge of the said court to the jury was contrary to law. [*Pro ut* the remaining bills of exceptions.]

4. There is also error in this, that the said court, in and

by their said charge to the jury, did invade the province of the jury by arguing the facts of the case to the jury against the prisoner at the bar, and gave a partial view of the evidence against him, and omitted the circumstances in his favor.

5. And there is also error in this, that the Supreme Court struck out from the assignment of errors made before them the last above mentioned errors herein fourthly enumerated, and refused to hear the same argued.

6. And there is also error in this, that the verdict of the jury is repugnant, inconsistent, and void.

7. And there is also error in this, that the said Supreme Court refused to grant to the said James P. Donnelly a writ of *habeas corpus* to bring him before the said Supreme Court to assign his errors in the premises and be present at the argument of the cause in the said court, although he, the said Donnelly, by his counsel, applied for the said writ of *habeas corpus* upon the return of the writ of error from the court below to the said Supreme Court.

8. And there is also error in this, that the said Supreme Court tried the said cause upon the said writ of error, and heard the same in the absence of the said James P. Donnelly, notwithstanding the said Donnelly, by his counsel, applied to the said Supreme Court for process to enable him to be present at the said trial and hearing.

9. And there is also error in this, that judgment was given against the said James P. Donnelly, whereas judgment should have been given in his favor: wherefore the said James P. Donnelly prays judgment, and that the judgment aforesaid for the errors aforesaid, and other errors found and being in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing; and that the said James P. Donnelly may be restored to all things which he has lost by occasion of the said judgment; and that the court here may proceed to examine the record and proceedings aforesaid.

AMZI McLEAN, *Att'y,*

WM. PENNINGTON, *Counsel,*

JOS. P. BRADLEY, *Counsel.*