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**Writ of Error to Supreme Court.**

NEW JERSEY, SS.

The State of New Jersey to the  
Chief Justice and other Justices 10  
(Seal.) of our Supreme Court of Judi-  
cature, GREETING:

Because in the record and proceedings, and also in the giving of judgment upon the appeal from a certain conviction of William P. Verdon for contempt of Court of the Hudson Court of Quarter Session, said conviction being based upon a certain rule, issuing out of the said Court of Quarter Sessions and directed, among others, to the said William P. Verdon, that he show cause in the said Court why he should not be adjudged guilty of contempt of the said Court of Quarter Sessions for having, with intent to contemn the said Court of Quarter Sessions, caused a certain newspaper, circulating in the said County of Hudson and commonly called the Hudson Dispatch, to publish an article to the effect that in a certain cause named, then and there, in the said Court of Quarter Sessions being tried before the Honorable George G. Tennant, one of the Judges of the said Court, and a jury, application was about to be made for the adjournment of the said trial on the ground that the said Judge was about to be impeached by the Legislature of the State of New Jersey for certain stated acts of the said judge alleged to have been wrongfully and wilfully by him committed in the conduct of the said trial; and said conviction being also based upon certain testimony taken in the said Court 40

*Writ of Error to Supreme Court.*

of Quarter Sessions upon the return of the said rule, to the effect that he, the said William P. Verdon, had caused the publication of the said newspaper article in manner and form aforesaid; and which judgment convicting the said William P. Verdon of contempt of the said Court of Quarter Sessions was reversed and for nothing holden, and the record of the said Court of Quarter Sessions ordered remitted according to the judgment upon the appeal of the said judgment of the Hudson Quarter Sessions, which appeal was in our Supreme Court of Judicature, before you, between the said Hudson Court of Quarter Sessions and the said William P. Verdon, Appellant;

And that in the giving of judgment upon the said appeal, as is said, manifest error hath intervened to the damage of the State of New Jersey, ex rel the Hudson Court of Quarter Sessions, as from the complaint of the said Hudson Court of Quarter Sessions we have information; we being willing in this behalf to correct the error in the said judgment given between the said Hudson Court of Quarter Sessions and the said William P. Verdon, and that speedy justice be done therein,

Command you that if judgment be thereon given, then that you send to our Judges of our Court of Errors and Appeals, in the Last Resort in all Causes, at Trenton on the twentieth day of June, instant, distinctly and openly under your seal, the record and proceedings and judgment aforesaid, with all things touching and concerning the same, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon for correcting that error what of right and according to the law and custom of the State of New Jersey ought to be done.

Witness, our Chancellor and President Judge of our said Court of Errors and Appeals, at Tren-

ton aforesaid, this nineteenth day of June, A. D.  
One Thousand Nine Hundred and Sixteen.

THOMAS F. MARTIN,  
Clerk.

JOHN W. WESCOTT,  
Attorney General of New Jersey.

By GEORGE T. VICKERS,  
Attorney for and of Counsel  
with the Hudson Quarter Sessions.

10

### **Return to Writ of Error.**

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

WILLIAM S. GUMMERE,  
C. J. 20

### **Schedule.**

#### **HUDSON QUARTER SESSIONS.**

On Appeal of WILLIAM P. VERDON, and DISPATCH PRINTING COMPANY, a corporation, from a judgment adjudging them to be in contempt of the Hudson County Court of Quarter Sessions. 30

To the Supreme Court of the State of New Jersey:

William P. Verdon and the Dispatch Printing Company, a corporation, publisher of the Hudson Dispatch, having taken an appeal from a conviction and judgment of the Court of Quarter Sessions, in and for the County of Hudson, adjudging them guilty of contempt of the said Court of

40

Quarter Sessions, we, the Judges of the said Court of Quarter Sessions, do hereby certify and send, pursuant to the statute in such case made and provided, the petition of appeal and all proceedings touching the conviction and judgment aforesaid, as follows:

**Petition.**

**HUDSON COUNTY COURT OF QUARTER SESSIONS.**

10

In the Matter

of

The Review of the Summary Conviction for alleged Contempt of Court of WILLIAM P. VERDON.

On appeal.

20

The petition of William P. Verdon respectfully shows unto this Honorable Court that he was convicted by summary proceedings before the Hudson County Court of Quarter Sessions, consisting of contemptuous conduct before the Grand Jury of the County of Hudson, which conviction took place upon the twenty-second day of January, One thousand nine hundred and sixteen, and was fined two hundred and fifty dollars and ordered committed to the County Jail for thirty days, and thence until the fine is paid.

30

Your petitioner prays that the conviction and judgment, together with the petition of appeal and all proceedings touching the conviction and judgment, shall be forthwith certified to the Supreme Court, in accordance with the statute in such case made and provided.

And your petitioner will ever pray.

WILLIAM P. VERDON.

40

*Petition.*

I, a counsellor at law, of the State of New Jersey, do certify that I am familiar with the above case, and that there is good cause for appeal.

MERRITT LANE.

I, a counsellor at law, of the State of New Jersey, do certify that I am familiar with the above case, and that there is good cause for appeal.

HARLAN BESSON. 10

STATE OF NEW JERSEY, }  
County of Hudson. } ss.:

William P. Verdon, being duly sworn according to law, upon his oath deposes and says that he is the petitioner named in the foregoing petition, and the things therein set forth are true.

WILLIAM P. VERDON.

Subscribed and sworn to before me this } 20  
22nd day of January, A. D. 1916. }

JOHN B. ROSSER,  
Notary Public of New Jersey.

Endorsed.—Hudson County Court of Quarter Sessions. In the matter of the review of the summary conviction for alleged contempt of Court of William P. Verdon. On appeal. Petition. Presented to me January 22nd, 1916.

F. J. SWAYZE, 30

J. S. C.

**Rule.****HUDSON QUARTER SESSIONS.**

December Term, A. D. 1915.

In the Matter

of

10 The Application for a Rule to Show Cause why HADDON IVINS, WILLIAM P. VERDON, and DISPATCH PRINTING COMPANY, a corporation, publisher of the Hudson Dispatch, should not be adjudged in contempt of the Hudson County Court of Quarter Sessions.

20 This Court having been given to be informed and to understand that with respect to certain indictments and the trials thereof, to wit, *the State of New Jersey vs. Edward Mulcahy and Samuel Smith* and *the State of New Jersey vs. Percy A. Hopkins, Edward Costello and Samuel Smith*, still pending undetermined in this Court, and as yet untried and undisposed of, and relating to the judicial conduct of this Court in the trials of the said indictments, and concerning and affecting the same, a certain newspaper publication was made, 30 to wit a publication of and under date of January seventeenth, A. D., One thousand nine hundred and sixteen, at the City of Jersey City, in the County of Hudson, in a certain newspaper called the Hudson Dispatch, in substance and to the effect following, that is to say:

*Rule.*

“To urge deferring of trials pending impeachment charge. Lawyer Doherty to appear before Judge Tennant this morning to make motion—Will then go to Trenton in behalf of Samuel Smith and William P. Verdon to lay criminal procedure before Legislature—Verdon revives Schoenenbaum case to use against Prosecutor—Details of Crefeld Case in regard to Stannard, a plumber, will be used—Republican Legislature friendly to Verdon, indicates a political angle. 10

“Richard Doherty, counsel for Sam Smith, in his trial last week and also counsel for William P. Verdon of Hoboken, whenever the leader needs legal aid, will appear at the Court House, in Jersey City, this morning to make a motion before Judge Tennant that the trials of Mr. Smith, of Percy Hopkins and Edward Costello be deferred on the ground that his clients are to appear later in the day before a Court of Impeachment at Trenton, to lay before such court such matters in connection with the conduct of the Smith trial last week, as they believe to have been improper, to the end that the impeachment of Judge Tennant and Prosecutor Hudspeth will be urged. 20

“Mr. Doherty will contend at the Court House, that the trials should not proceed until the charges to be made before the Court of Impeachment at Trenton are disposed of.

## “UP TO LEGISLATURE.

“The New Jersey Legislature in such cases, acts as the Court of Impeachment, and Mr. Doherty will appear before the Legislature, or before a Legislative Committee, to-night, to begin proceedings. 30

“As the Republicans are in control at Trenton, there is somewhat of a political angle to the situation, for it is natural to believe that Mr. Smith, who is County Chairman in Hudson, to expect a Republican Legislature to listen with ready ear to a plaint that will have the urgent backing of William P. Verdon, especially with two Democrats as intended victims. 40

*Rule.*

## "VERDON INTERESTED.

"Besides the Smith incident, Mr. Verdon himself will have a charge to make against the Prosecutor's office, as a result of the manner in which the Schoenenbaum case was treated before the grand jury.

## "PROCEEDINGS TO-DAY.

10 "This morning, before the trial of Percy A. Hopkins, or of Hopkins, Smith and Edward Costello, can be moved before Judge Tennant, as the plan of the prosecution is, Counsellor Richard Doherty will appear in that court and ask that the trial be deferred.

20 "The reasons he may give for this are contained in a notice that impeachment proceedings are about to be brought and that, as the indictments under which these men are held and are to be tried, are brought into question, the trials should not be held until the question of their authenticity and legality is tried out.

30 "Republican Leader William P. Verdon will also go to Trenton to-day to prepare to have a legislative committee appointed to investigate the Smith charges, that the indictment against him was not legally obtained and to probe the circumstances leading up to that indictment, and seven others obtained at the same time. Other cases which were taken before the Grand Jury are to be included in the list of things which William P. Verdon will ask to have probed, it is said.

"As both houses of the legislature have Republican majorities, it is regarded as likely that there will be some political advantage in getting both houses to listen to propositions of a probe of the Hudson County criminal practice. Mr. Verdon says he can show cause why it should be done.

40 "It is probable that such an investigating committee will be sought in the Assembly. The proposition will be for a thorough probe, with the committee reporting back to the Governor. As the probe will possibly consume

*Rule.*

several months, it is an open question on whether such a committee would be able to complete an investigation before the end of the present session.

"In addition to the charges made by Mr. Smith in the court room last Thursday, that Asst. Prosecutor James W. McCarthy 'framed up' Mr. Smith, and obtained the indictment against him by illegal means and other alleged grounds for the attack on Hudson County criminal procedure have been brought forward. It is now said that Judge Tennant was in error in not discontinuing the trial of Smith as soon as the charge was made that the indictment was defective. It is urged that the trial should have been discontinued then and there until the question could have been threshed out. This may be one of the bases of the proceedings as they apply to Judge Tennant. 10

"Another allegation is that Judge Tennant did not charge the jury in the case as to the legal definition of conspiracy. Lawyer Richard Doherty proffered a request to Judge Tennant that this be done, but Judge Tennant did not comply with the request. The Jury came back into court with a request for this information. 20

"It is also to be alleged that the instructions given by Judge Tennant when it came into court shortly after it retired to consider its verdict erred in some particulars. One of these is that Judge Tennant charged the jury to decide the case 'on the preponderance of evidence,' when he should have, it is held, told them that the accused must be considered innocent until proved guilty. 30

"It is in the conduct of the Grand Jury investigation that the most serious ground, in the view of the movers for the legislative probe, are found for the action they are about to take. It is held that news of the indictment of Smith was published on Friday, January 29th, in a Jersey City paper before the indictment was actually voted. 40

*Rule.*

10 "It will be charged that the indictment presented to the Grand Jury referring to Smith was made out in the name of 'John Doe, alias Schmidt' and that the indictment was not considered by the Grand Jury in any other form. That the indictment was subsequently changed to read: 'Samuel W. Smith, formerly of West Hoboken,' and that this change was not known to all of the grand jurors. This is known to all who attended the trial of Mr. Smith last week.

"It will also be averred that on Tuesday afternoon, February 2nd, several grand jurors moved to reconsider the eight indictments with reference to the 'confessions' of Mrs. Gertrude Wille, pertaining to the alleged giving of 'graft' to protect the Hotel Crefeld, West Hoboken, and that they were informed that the indictments would be held out from the number to be taken into court. They were not held back.

20 "Alleged double-crossing. It was common knowledge at the time that disorder prevailed in the Court House corridors among the grand jurymen after they left Judge Tennant's Court. It is now explained that the cause of that disorder was the objection of some of the grand jurymen to the 'trick played upon them,' as they described it, when the eight indictments they said they had been led to believe were laid aside and left behind in the Grand Jury room turned up in Judge Tennant's hands as among the indictments handed  
30 into court. One of the grand jurors asked Judge Tennant for advice about the very indictments then in the hands of the court, and did not get it. When he learned afterwards that the indictments had been pushed through, he was very indignant.

*"TECHNICAL VIOLATION.*

40 "Among the eight indictments was that one, which may be moved for trial to-day, but which Mr. Verdon declares will not for certain reasons, naming, besides Smith and Percy Hopkins, Edward Costello, Mr. Verdon's

*Rule.*

brother-in-law. It will be alleged that this indictment was sought without calling all the witnesses into the Grand Jury room. This, it will be claimed, violates the law of the matter, requiring that all witnesses with knowledge of the offences charged shall be summoned before the Grand Jury.

## "STANNARD'S PART IN CASE.

"The witness in the case is Edward Stannard, steamfitter, of West Hoboken. It will be alleged that he was in the Prosecutor's office on the Wednesday preceding the Friday on which the indictments were considered by the Grand Jury, in fact, on January 27th, Mrs. Wille was in an adjoining room and, when Stannard was informed that she had quoted him as having told her that Edward Costello was the brother-in-law of Mr. Verdon, Stannard being alleged by her to have been present in the Hotel Crefeld at the time she said Edward Costello called, he denied the story. 10 20

"It will be alleged that Asst. Prosecutor McCarthy then brought the two face to face and Mrs. Wille repeated her story. 'It is a lie' Stannard is alleged to have said, and Mrs. Wille then said, 'Yes, you told it to me in German.' 'Now you hand yourself up,' Stannard will be alleged to have said, 'for I cannot speak one word of German.' Stannard was not called before the Grand Jury.

## "VERDON MAKES STATEMENT.

"Mr. Verdon said last night, 'This question will be threshed out in the proper place, and that place is a Court of Impeachment. I endorse what Mr. Smith said on the witness stand in his trial, and as the charge amounts to an arraignment of the courses of criminal procedure in Hudson County, I intend to do my best to have it investigated.' 'I have been assured that no indictment of Samuel W. Smith was voted in the Grand Jury room. My authority is good enough to encourage me 30 40

*Rule.*

10 to go ahead with the movement for a legislative investigation. The legislative committee can call upon the grand jurors to tell enough of this matter to establish the truth of the charges. Sufficient attention has not been directed to the fact that Mr. Vickers on the stand swore that he made out the indictment of Mr. Smith within twenty-four hours of Tuesday, February 2nd, when a certain newspaper announced that that indictment had been voted on Friday, January 29th. The committee should have no difficulty in establishing the fact that many grand jurors know that no indictment was voted of Samuel W. Smith. The fact of the matter was that those who will be charged with 'framing' this prosecution were really after me but got cold feet. There is a man within the boundaries of this county, who can swear that one of the grand jurors said: 'There is going to be an indictment come up of Verdon, and I want to get him.' That fact in itself speaks volumes.

20 "There was the Schoenenbaum case before the Grand Jury, in which I was the complaining witness, but I was not called into the grand jury room to testify at all. Such a state of affairs is unheard of, and the alleged explanation that calling me into the grand jury room would insure me immunity is all bosh.

30 "As those practices of the Court and the Prosecutor's office are prejudicial to the best interests of the people of Hudson County, the investigation of them is necessary and proper. I have no doubt it will be made."

which said publication, it is alleged, is intended to affect the due and proper administration of justice in the trials of the said indictments in this Court, and to contemn and set at naught the authority and dignity of this Court:

40 And the said publication having been presented to this Court, and this Court being then in session at the Court House, in the City of Jersey City, in the County of Hudson, and having then and there,

*Rule.*

on this seventeenth day of January, A. D., One thousand nine hundred and sixteen, caused to come before it one Frank Byrne, who having thereupon been duly sworn as a witness, and being interrogated with respect to the publication of the said newspaper article hereinabove set forth, the said Frank Byrne did then and there depose and testify in substance and to the effect following, that is to say, that he, the said Frank Byrne, was directed by one Hadden Ivins, an editor of the said Hudson Dispatch to interview one William P. Verdon of the City of Hoboken, for the purpose of eliciting from the said Verdon a statement concerning the judicial proceedings in the matters of the indictments hereinabove referred to, and for the further purpose of publishing the said statement and causing the same to be published in the said Hudson Dispatch; and the said Frank Byrne having then and there also deposed and testified to the effect that he, the said Frank Byrne, did write the said article hereinabove set forth, and that the matters and things therein contained and stated were elicited by him, the said Frank Byrne, from the said William P. Verdon, and that he, the said Frank Byrne, had no other informant or source of information, this Court did thereupon call one Richard Doherty, Attorney and Counsellor at law of the State of New Jersey, he being the same person referred to as Richard Doherty in the said newspaper publication hereinabove set forth, and the said Richard Doherty having been duly sworn as a witness, and having thereupon testified in substance and to the effect following, that is to say, that he did not in any manner whatsoever give out, inspire or suggest to the said William P. Verdon or to any other person the matters and things in the said publication hereinabove set forth contained and stated; and the said Richard Doherty having then and there further

*Rule.*

testified that he, the said Richard Doherty, had not contemplated or intended to apply to this Court for the adjournment of the said causes pending in this Court and hereinabove referred to, for the reasons alleged and set out in the said publication, hereinabove set forth;

10 And this Court having been given to be informed and to understand that the said Haddon Ivins, the said William P. Verdon and Dispatch Printing Company, a corporation, publisher of the said Hudson Dispatch, by their said acts and doings in the premises are guilty of a flagrant breach of the dignity and authority of this Court, and of obstructing and embarrassing this Court in the doing of justice, and are in contempt thereof.

20 It is, on this seventeenth day of January, A. D. One thousand nine hundred and sixteen, ordered that the said Haddon Ivins, and the said William P. Verdon and the said Dispatch Printing Company, by its legal representative, do appear before this Court on Wednesday, the nineteenth day of January, 1916, at 2 P. M., at the Court House, in the City of Jersey City, in the County of Hudson and State of New Jersey, and do show cause, if any they can, why they, the said Haddon Ivins, the said William P. Verdon and the said Dispatch Printing Company, should not be adjudged guilty as of a contempt of the Court of Quarter Sessions of the County of Hudson.

30

FRANCIS J. SWAYZE,  
MARK A. SULLIVAN,  
GEORGE G. TENNANT,

(Seal.) Judges of the Court of Quarter Sessions of the County of Hudson.

40 The said rule having been duly served upon the said William P. Verdon personally, on the Seventeenth day of January, 1916, upon Haddon Ivins

*Rule.*

personally, on the 18th day of January, 1916, and upon the Dispatch Printing Company by exhibiting the said rule to William Reubel, treasurer of the said corporation, who accepted such service in behalf thereof, and by leaving with the said William Reubel a true and exact copy of the said rule on the 18th day of January, 1916;

And the said William P. Verdon having appeared before the Court in his own proper person, on Wednesday, the 19th day of January, 1916, at 2 P. M., at the Court House in Jersey City, in the County of Hudson, together with his counsel Harlan Besson, Esq., and the said Haddon Ivins having appeared in his own proper person at the same time and place with William D. Edwards, Esq., and the Dispatch Printing Company having appeared at the same time and place by its attorney and counsel, William D. Edwards, Esq.,

And the said William P. Verdon, Haddon Ivins and Dispatch Printing Company having each entered a plea of not guilty to the charges contained in the said rule;

And application having been made by the said Harlan Besson, Esq., on behalf of the said William P. Verdon, and by William D. Edwards, Esq., on behalf of Haddon Ivins and Dispatch Printing Company for an adjournment of the hearing of the matter of the said rule until Saturday the 22nd day of January, 1916, and the said hearing having thereupon in pursuance of the said request been adjourned to Saturday, January 22nd, 1916, at 9 o'clock A. M., at which time and place the said William P. Verdon appeared in his own proper person with Harlan Besson, Esq., and Merritt Lane, Esq., as his counsel, and Haddon Ivins appeared in his own proper person with William D. Edwards, Esq., and John Milton, Esq., as his counsel, and the said William D. Edwards

*Rule.*

and John Milton, appearing as attorney and counsel for the said Dispatch Printing Company, and George T. Vickers and Robert H. McCarter, Esq., appearing for and on behalf of the prosecution of the said rule to show cause;

10 And the Court having thereupon taken testimony, a copy of which is hereto annexed as Schedule 1, and made part hereof, and having heard such argument as counsel chose to make and the representations of the said Robert H. McCarter, as amicus curiae, and the Court having duly considered the pleadings, proofs and arguments;

20 And the Court thereupon finding that on the 12th day of January, A. D. 1916, there was tried in the Hudson County Court of Quarter Sessions an issue of traverse joined on an indictment number 130, of the Term of December, A. D. 1914, which indictment had theretofore been found and presented by the grand inquest of the State of New Jersey, in and for the body of the County of Hudson, against Samuel Smith and Edward Mulcahy on a charge of conspiracy, the trial of which said issue was continued until the 13th day of January, A. D. 1916, whereupon the jurors sworn to try the same could not agree upon their verdict and were discharged from further consideration thereof; and the Court further finding that on the 30 14th day of January, A. D. 1916, the Court ordered a new list of jurors to be struck for the re-trial of the issue joined under the said indictment which jury was to be struck on the 24th day of January, A. D. 1916, on which day a time for the trial of the said issue joined was to be fixed by this Court;

40 And the Court further finding that at all the times aforesaid there was pending and undetermined in this Court, and is here still pending and undetermined, a certain other indictment number 129, of the Term of December, A. D., 1914, of the

*Rule.*

said Court, against Percy A. Hopkins, Edward Costello and Samuel Smith, on a charge of conspiracy, on which issue of traverse had been joined previous to the said 12th day of January, 1916, and which issue was still undetermined and yet to be tried in this Court on the 17th day of January, 1916;

And the Court further finding that on said 17th day of January, 1916, in the morning before the hour for the convening of the said Court on that day, there was published in the Hudson Dispatch, a newspaper, published and circulated in the said County of Hudson, a statement, a copy of which is hereto annexed, as Schedule 2, and made part hereof, to the effect that Richard Doherty, Esq., counsel for the said Samuel Smith in the trial of said indictment number 130, and also in the pending trial of said indictment number 129, would on that day apply to the Honorable George G. Tennant, one of the Judges of the said Court of Quarter Sessions, for a postponement of the trial of the issues joined on the said indictments upon the ground that the defendants therein were to appear later on the said 17th day of January, 1916, before the House of Assembly of the State of New Jersey, at Trenton, to lay before the said House such matters in connection with the said indictments as will require the impeachment of the said George G. Tennant and Robert S. Hudspeth, Esq., Prosecutor of the Pleas of the County of Hudson, which statement further set forth that the said William P. Verdon would also appear at Trenton on the said 17th day of January and ask to have a committee appointed to investigate charges made by the said Samuel Smith, that the said indictment was not legally obtained, and to investigate the circumstances attending that indictment and seven other indictments obtained at the same time; that the said William P. Verdon

*Rule.*

was reported to have said that he could show cause for a legislative probe of the administration of the criminal law in Hudson County; that it would be charged that the said indictments against the said Samuel Smith were originally found and made out against one John Doe, alias Schmidt, and that the said indictments were not considered by the grand jury in any other form; that the  
10 said indictments were subsequently altered so as to be against Samuel W. Smith, formerly of West Hoboken, meaning the said Samuel Smith, and that the change in the said indictments was not known to all of the grand jury, and that it would be averred that at the time of the presentment of the said indictments several of the grand jurors moved to reconsider the said indictments, and were informed that said indictments would be held out from the number to be taken into Court, but that  
20 nevertheless the said indictments were presented to the Court, which statement further set forth that the said William P. Verdon had been assured that no indictment against the said defendant Smith was voted by the grand jury, and that the source of such assurance was authentic enough to encourage the said Verdon to go ahead with the movement for the legislative investigation of the administration of the criminal law in Hudson County, as aforesaid, and that the legislative com-  
30 mittee could call enough of the grand jury to establish the truth of the charges concerning the said indictment;

And the Court finding by inspection of the indictments themselves that they were duly endorsed as true bills by the foreman of the grand jury for the term at which they were presented, and were duly presented in open Court by the said grand jury;

40 And it further appearing that the publication

*Rule.*

of the said article at the time and in the manner at which it was published was calculated and intended by the said William P. Verdon and by the said Haddon Ivins and by the said Dispatch Printing Company to effect the administration of justice in the said Court and to prejudice the fair and impartial trial of the said issues joined on the said indictments, which trials were then immediately pending; 10

Thereupon, and after hearing the testimony of J. Francis Byrne, of Richard Doherty and Haddon Ivins as set forth in said Schedule 1 and made part hereof;

And the Court having found that the said William P. Verdon instigated the said publication with the intent aforesaid;

Thereupon this Court did adjudge that the said Haddon Ivins, William P. Verdon and Dispatch Printing Company were guilty of a contempt of the said Court of Quarter Sessions of the County of Hudson; 20

And did further adjudge that the said Haddon Ivins pay a fine of ten dollars and stand committed until the fine is paid, and that the said William P. Verdon pay a fine of two hundred and fifty dollars and be committed to the County Jail of the County of Hudson for the term of thirty days and from thence until the said fine is paid, and that the Dispatch Printing Company pay a fine of two hundred and fifty dollars. 30

All of which we certify and send herewith to the Supreme Court of the State of New Jersey, pursuant to the statute in such case made and provided.

FRANCIS J. SWAYZE,  
MARK A. SULLIVAN,  
GEORGE G. TENNANT,

Judges of the Court of Quarter 40  
Sessions, of the County of  
Hudson.

**Judgment.**

**HUDSON QUARTER SESSIONS.**

In the Matter  
of

10 The Application for a Rule to  
Show Cause why HADDON IVINS,  
WILLIAM P. VERDON, and DIS-  
PATCH PRINTING COMPANY, a  
corporation, publisher of the  
Hudson Dispatch, should not  
be adjudged in contempt of the  
Hudson County Court of Quar-  
ter Sessions.

On rule, etc.

20 Rule to show cause having, on the seventeenth  
day of January, A. D. one thousand nine hundred  
and sixteen, issued out of this Court, directed to  
Haddon Ivins, William P. Verdon and Dispatch  
Printing Company, a corporation, publisher of the  
Hudson Dispatch, ordering that they and each of  
them appear before this Court at the Court House  
in the City of Jersey City, in the County of Hud-  
son and State of New Jersey, on Wednesday, the  
nineteenth day of January, A. D., one thousand  
30 nine hundred and sixteen, at two o'clock P. M.,  
and show cause, if any they could, why they should  
not be adjudged guilty of contempt of this Court,  
because of the publication of a certain newspaper  
article, made, instigated and participated in by  
them on the said seventeenth day of January,  
A. D. one thousand nine hundred and sixteen, in  
the said Hudson Dispatch, a newspaper published  
and circulating in the County of Hudson afore-  
said, which said newspaper article is as follows:

*Judgment.*

“To urge deferring of trials pending impeachment charge. Lawyer Doherty to appear before Judge Tennant this morning to make motion—Will then go to Trenton in behalf of Samuel Smith and William P. Verdon to lay criminal procedure before Legislature—Verdon revives Schoenenbaum case to use against Prosecutor—Details of Crefeld Case in regard to Stannard, a plumber, will be used—Republican Legislature friendly to Verdon, indicates a political angle. 10

“Richard Doherty, counsel for Sam Smith, in his trial last week and also counsel for William P. Verdon of Hoboken, whenever the leader needs legal aid, will appear at the Court House, in Jersey City, this morning to make a motion before Judge Tennant that the trials of Mr. Smith, of Percy Hopkins and Edward Costello be deferred on the ground that his clients are to appear later in the day before a Court of Impeachment at Trenton, to lay before such court such matters in connection with the conduct of the Smith trial last week, as they believe to have been improper, to the end that the impeachment of Judge Tennant and Prosecutor Hudspeth will be urged. 20

“Mr. Doherty will contend at the Court House, that the trials should not proceed until the charges to be made before the Court of Impeachment at Trenton are disposed of.

## “UP TO LEGISLATURE.

“The New Jersey Legislature in such cases, acts as the Court of Impeachment, and Mr. Doherty will appear before the Legislature, or before a Legislative Committee, to-night, to begin proceedings. 30

“As the Republicans are in control at Trenton, there is somewhat of a political angle to the situation, for it is natural to believe that Mr. Smith, who is County Chairman in Hudson, to expect a Republican Legislature to listen with ready ear to a plaint that will have the urgent backing of William P. Verdon, especially with two Democrats as intended victims. 40

*Judgment.*

## "VERDON INTERESTED.

"Besides the Smith incident, Mr. Verdon himself will have a charge to make against the Prosecutor's office, as a result of the manner in which the Schoenenbaum case was treated before the grand jury.

## "PROCEEDINGS TO-DAY.

10 "This morning, before the trial of Percy A. Hopkins, or of Hopkins, Smith and Edward Costello, can be moved before Judge Tennant, as the plan of the prosecution is, Counsellor Richard Doherty will appear in that court and ask that the trial be deferred.

20 "The reasons he may give for this are contained in a notice that impeachment proceedings are about to be brought and that, as the indictments under which these men are held and are to be tried, are brought into question, the trials should not be held until the question of their authenticity and legality is tried out.

30 "Republican Leader William P. Verdon will also go to Trenton to-day to prepare to have a legislative committee appointed to investigate the Smith charges, that the indictment against him was not legally obtained and to probe the circumstances leading up to that indictment, and seven others obtained at the same time. Other cases which were taken before the Grand Jury are to be included in the list of things which William P. Verdon will ask to have probed, it is said.

"As both houses of the legislature have Republican majorities, it is regarded as likely that there will be some political advantage in getting both houses to listen to propositions of a probe of the Hudson County criminal practice. Mr. Verdon says he can show cause why it should be done.

40 "It is probable that such an investigating committee will be sought in the Assembly. The proposition will be for a thorough probe, with the committee reporting back to the Governor. As the probe will possibly consume

*Judgment.*

several months, it is an open question whether such a committee would be able to complete an investigation before the end of the present session.

"In addition to the charges made by Mr. Smith in the court room last Thursday, that Asst. Prosecutor James W. McCarthy 'framed up' Mr. Smith, and obtained the indictment against him by illegal means and other alleged grounds for the attack on Hudson County criminal procedure have been brought forward. It is now said that Judge Tennant was in error in not discontinuing the trial of Smith as soon as the charge was made that the indictment was defective. It is urged that the trial should have been discontinued then and there until the question could have been threshed out. This may be one of the bases of the proceedings as they apply to Judge Tennant. 10

"Another allegation is that Judge Tennant did not charge the jury in the case as to the legal definition of conspiracy. Lawyer Richard Doherty proffered a request to Judge Tennant that this be done, but Judge Tennant did not comply with the request. The Jury came back into court with a request for this information. 20

"It is also to be alleged that the instructions given by Judge Tennant when it came into court shortly after it retired to consider its verdict, erred in some particulars. One of these is that Judge Tennant charged the jury to decide the case 'on the preponderance of evidence,' when he should have, it is held, told them that the accused must be considered innocent until proved guilty. 30

"It is in the conduct of the Grand Jury investigation that the most serious ground, in the view of the movers for the legislative probe, are found for the action they are about to take. It is held that news of the indictment of Smith was published on Friday, January 29th, in a Jersey City paper before the indictment was actually voted.

"It will be charged that the indictment pre- 40

*Judgment.*

sented to the Grand Jury referring to Smith was made out in the name of 'John Doe, alias Schmidt' and that the indictment was not considered by the Grand Jury in any other form. That the indictment was subsequently changed to read: 'Samuel W. Smith, formerly of West Hoboken,' and that this change was not known to all of the grand jurors. This is known to all who attended the trial of Mr. Smith last week.

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"It will also be averred that on Tuesday afternoon, February 2nd, several grand jurors moved to reconsider the eight indictments with reference to the 'confessions' of Mrs. Gertrude Wille, pertaining to the alleged giving of 'graft' to protect the Hotel Crefeld, West Hoboken, and that they were informed that the indictments would be held out from the number to be taken into court. They were not held back.

20

"Alleged double-crossing. It was common knowledge at the time that disorder prevailed in the Court House corridors among the grand jurymen after they left Judge Tennant's Court. It is now explained that the cause of that disorder was the objection of some of the grand jurymen to the 'trick played upon them,' as they described it, when the eight indictments they said they had been led to believe were laid aside and left behind in the Grand Jury room turned up in Judge Tennant's hands as among the indictments handed into court. One of the grand jurors asked Judge Tennant for advice about the very indictments then in the hands of the court, and did not get it. When he learned afterwards that the indictments had been pushed through, he was very indignant.

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*"TECHNICAL VIOLATION.*

"Among the eight indictments was that one, which may be moved for trial to-day, but which Mr. Verdon declares will not for certain reasons, naming, besides Smith and Percy Hopkins, Edward Costello, Mr. Verdon's brother-in-law. It will be alleged that this

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*Judgment.*

indictment was sought without calling all the witnesses into the Grand Jury room. This, it will be claimed, violates the law of the matter, requiring that all witnesses with knowledge of the offences charged shall be summoned before the Grand Jury.

## "STANNARD'S PART IN CASE.

"The witness in the case is Edward Stannard, steamfitter, of West Hoboken. It will be alleged that he was in the Prosecutor's office on the Wednesday preceding the Friday on which the indictments were considered by the Grand Jury, in fact, on January 27th, Mrs. Wille was in an adjoining room and, when Stannard was informed that she had quoted him as having told her that Edward Costello was the brother-in-law of Mr. Verdon, Stannard being alleged by her to have been present in the Hotel Crefeld at the time she said Edward Costello called, he denied the story.

"It will be alleged that Asst. Prosecutor McCarthy then brought the two face to face and Mrs. Wille repeated her story. 'It is a lie,' Stannard is alleged to have said, and Mrs. Wille then said 'Yes, you told it to me in German.' 'Now you hand yourself up,' Stannard will be alleged to have said, 'for I cannot speak one word of German.' Stannard was not called before the Grand Jury.

## "VERDON MAKES STATEMENT.

"Mr. Verdon said last night, 'This question will be threshed out in the proper place, and that place is a Court of Impeachment. I endorse what Mr. Smith said on the witness stand in his trial, and as the charge amounts to an arraignment of the courses of criminal procedure in Hudson County, I intend to do my best to have it investigated.' 'I have been assured that no indictment of Samuel W. Smith was voted in the Grand Jury room. My authority is good enough to encourage me to go ahead with the movement for a legislative investigation. The legislative committee

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10 can call upon the grand jurors to tell enough of this matter to establish the truth of the charges. Sufficient attention has not been directed to the fact that Mr. Vickers on the stand swore that he made out the indictment of Mr. Smith within twenty-four hours of Tuesday, February 2nd, when a certain newspaper announced that that indictment had been voted on Friday, January 29th. The committee should have no difficulty in establishing the fact that many grand jurors know that no indictment was voted of Samuel W. Smith. The fact of the matter was that those who will be charged with 'framing' this prosecution were really after me but got cold feet. There is a man within the boundaries of this county, who can swear that one of the grand jurors said: 'There is going to be an indictment come up of Verdon, and I want to get him.' That fact in itself speaks volumes.

20 "There was the Schoenenbaum case before the grand jury, in which I was the complaining witness, but I was not called into the grand jury room to testify at all. Such a state of affairs is unheard of, and the alleged explanation that calling me into the grand jury room would insure me immunity is all bosh.

"As those practices of the Court and the Prosecutor's office are prejudicial to the best interests of the people of Hudson County, the investigation of them is necessary and proper. I have no doubt it will be made.'"

30 And the said rule to show cause having been duly served upon the said William P. Verdon, personally, on the seventeenth day of January, A. D. one thousand nine hundred and sixteen, upon the said Haddon Ivins, personally, on the eighteenth day of January, A. D. one thousand nine hundred and sixteen, and upon the said Dispatch Printing Company, by exhibiting the said rule to William Rubel, Treasurer of the said corporation, who accepted said service in behalf thereof, and by leaving with the said William

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*Judgment.*

Rubel a true and exact copy of the said rule on the eighteenth day of January, A. D. one thousand nine hundred and sixteen;

And the said William P. Verdon having appeared before this Court in his own proper person on Wednesday, the nineteenth day of January, A. D. one thousand nine hundred and sixteen, at two o'clock P. M., at the Court House, in the City of Jersey City, in the County of Hudson, together with his counsel, Harlan Besson, Esq.; and the said Haddon Ivins having appeared in his own proper person at the same time and place, with William D. Edwards, Esq., as his counsel; and the said Dispatch Printing Company appearing at the same time and place by its attorney and counsel, William D. Edwards, Esq.;

And the said William P. Verdon, Haddon Ivins and Dispatch Printing Company having each entered a plea of not guilty to the charges contained in the said rule.

And application having been made by the said Harlan Besson, Esquire, on behalf of the said William P. Verdon, and by William D. Edwards, Esquire, on behalf of the said Haddon Ivins and said Dispatch Printing Company, for an adjournment of the hearing of the matter of the said rule until Saturday, the twenty-second day of January, A. D. One thousand nine hundred and sixteen, and the said hearing having thereupon, in pursuance of the said request, been adjourned to Saturday, the twenty-second day of January, A. D. One thousand nine hundred and sixteen, at nine o'clock A. M., at which time and place the said William P. Verdon appeared in his own proper person, with Harlan Besson, Esquire, and Merrit Lane, Esquire, as his counsel, and Haddon Ivins appearing in his own proper person with William D. Edwards, Esquire, and John Milton, Esquire, as his counsel, and the said William D. Edwards, Esquire, and

*Judgment.*

John Milton, Esquire, appearing as attorney and counsel for the said Dispatch Printing Company; and George T. Vickers, Esquire, and Robert H. McCarter, Esquire appearing for and on behalf of the prosecution of the said rule to show cause;

And this court having thereupon taken testimony for and on behalf of the prosecution of the said rule to show cause, and on behalf of the said  
10 Haddon Ivins and Dispatch Printing Company, and the said William P. Verdon having elected to stand mute; and the Court having heard such argument as counsel chose to make, and the representations of the said Robert H. McCarter, Esquire, as *amicus curiae*;

And the Court having duly considered the pleadings, proofs and arguments, and the Court thereupon finding therefrom that on the twelfth day of January, A. D. One thousand nine hundred and  
20 sixteen, there was tried in the Hudson County Court of Quarter Sessions an issue of traverse joined on an indictment No. One hundred and thirty of the Term of December, A. D. One thousand nine hundred and fourteen, which indictment had theretofore been found and presented by the Grand Inquest of the State of New Jersey, in and for the body of the County of Hudson, against Samuel Smith and Edward Mulcahey, on a charge of conspiracy, the trial of which said issue was  
30 continued until the thirteenth day of January, A. D. One thousand nine hundred and sixteen, whereupon the jurors sworn to try the same could not agree upon their verdict and were discharged from further consideration thereof;

And the Court further finding that on the fourteenth day of January, A. D. One thousand nine hundred and sixteen, the Court ordered a new list of jurors to be struck for the retrial of the issue joined under the said indictment, which  
40 jury was to be struck on the twenty-fourth day of

*Judgment.*

January, One thousand nine hundred and sixteen, on which day a time for the trial of the said issue joined was to be fixed by this Court;

And the Court further finding that all the times aforesaid there was pending and undetermined in this Court, and is here still pending, a certain other indictment number one hundred and twenty-nine of the Term of December, A. D. One thousand nine hundred and fourteen, against Percy A. Hopkins, Edward Costello and Samuel Smith, on a charge of conspiracy, on which indictment issue of traverse had been joined previous to the said twelfth day of January, Nineteen hundred and sixteen, and which issue was still undetermined and yet to be tried on the 17th day of January, A. D. Nineteen hundred and sixteen;

And the Court further finding that on the said seventeenth day of January, A. D. One thousand nine hundred and sixteen, in the morning, before the hour for the convening of this Court on that day, there was published in the said Hudson Dispatch, a newspaper published and circulating in the said County of Hudson, a newspaper which is hereinabove set forth, to the effect that Richard Doherty, Esquire, counsel for the said Samuel Smith in the trial of the said indictment number one hundred and thirty, and also in the pending trial of the said indictment number one hundred and twenty-nine, would on that day apply to the Honorable George G. Tennant, one of the judges of this Court of Quarter Sessions of the County of Hudson, for a postponement of the trials of the issues joined on the said indictments, upon the ground that the defendants therein were to appear later on the said seventeenth day of January, One thousand nine hundred and sixteen, before the House of Assembly of the State of New Jersey, at Trenton, to lay before the said House such matters in connection with the said indictments as will re-

*Judgment.*

quire and impeachment of the said George G. Tennant and Robert S. Hudspeth, Esquire, Prosecutor of the Pleas of the County of Hudson; which statement further set forth that the said William P. Verdon would also appear at Trenton, on the said seventeenth day of January, and ask to have a committee appointed to investigate charges made by the said Samuel Smith that the

10 said indictment was not lawfully obtained, and to investigate the circumstances attending that indictment and seven other indictments obtained at the same time; that the said William P. Verdon was reported to have said that he could show cause for a legislative probe of the administration of the criminal law in Hudson County; that it would be charged that the said indictments against the said Samuel Smith were originally found and

20 made out against one John Doe, alias Schmidt, and that the said indictments were not considered by the Grand Jury in any other form; that the said indictments were subsequently altered as to be against Samuel Smith, formerly of West Hoboken, meaning the said Samuel Smith, and that the change in the said indictments was not known to all of the grand jurors, and that it would be averred that at the time of the presentment of the said indictments several of the grand jurors moved

30 to reconsider the said indictments and were informed that said indictments would be held out from the number to be taken into Court, but that nevertheless the said indictments were presented to the Court; which statement further sets forth that the said William P. Verdon had been assured that no indictment against the said defendant Smith was voted by the Grand Jury, and that the source of such assurance was authentic enough to encourage the said Verdon to go ahead with the movement for the legislative investigation of the

40 administration of the criminal law in Hudson

*Judgment.*

County as aforesaid, and that the legislative committee could call enough of the grand jurors to establish the truth of the charges concerning the said indictments;

And this Court finding, by inspection of the said indictments themselves, that they were duly endorsed as true bills by the foreman of the Grand Jury for the term at which they were presented, and were duly presented in open Court as true bills by the said Grand Jury; 10

And it further appearing that the publication of the said newspaper article as the same is hereinabove set forth, at the time and in the manner in which it was published, was calculated and intended by the said William P. Verdon, and by the said Haddon Ivins by the said Dispatch Printing Company, to affect the administration of justice in this Court and to prejudice the fair and impartial trial of the said issues joined on the said indictments, which trials were then immediately pending; 20

And the Court having heard the testimony of J. Francis Byrne, of Richard Doherty and Haddon Ivins, and having found that the said William P. Verdon instigated the said publication with the intent aforesaid; and that the said newspaper article was edited, prepared, supplemented and given for publication, and the publication thereof participated in, by the said Haddon Ivins; and that the said newspaper article was published by the said Dispatch Printing Company in its said newspaper known as the Hudson Dispatch as aforesaid, which circulates in the County of Hudson, in the State of New Jersey, all with the intent aforesaid, 30

It is hereby adjudged that the said Haddon Ivins, William P. Verdon and Dispatch Printing Company are guilty of contempt of this Court; 40

*Proceedings of January 27, 1916.*

And it is the sentence of this Court that the said Haddon Ivins pay a fine of ten dollars, and stand committed until the fine is paid; that the said William P. Verdon pay a fine of two hundred and fifty dollars and be committed to the County Jail of the County of Hudson, for the term of thirty days, and from thence until the said fine is paid; and that the said Dispatch Printing Com-  
 10 pany pay a fine of two hundred and fifty dollars.

FRANCIS J. SWAYZE,  
 MARK A. SULLIVAN,  
 GEORGE G. TENNANT,  
 Judges of the Court of  
 Quarter Sessions,  
 of the County of Hudson.

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January 17, 1916.

20 TENNANT J.: Mr. Doherty, will you step before the bar of this Court?

The attention of the Court is called to statements in the public press that it is your intention as an officer of the Court to bring impeachment proceedings before the constitutional body having that power, against this Court and against the prosecutor trying the cases which are now before the Court. Of course, by the judicial process provided by the Constitution, that is the right of  
 30 all parties concerned. I am now, however, asked to fix a date for trial. The Court would not be human if it did not have called to its attention all the newspaper statements regarding what is said to be your attention, and the Court is now confronted with a statement in a newspaper printed in this county in which it is said—and I will read it:

40 “Richard Doherty, counsel for Samuel Smith, in his trial last week, and also counsel for William P. Verdon, whenever the latter

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needs legal aid, will appear at the court house, Jersey City, this morning, to make a motion before Judge Tennant that the trials of Samuel Smith, Percy Hopkins and Edward Costello be deferred on the ground that his clients are to appear later in the day before a court of impeachment at Trenton, to lay before such court such matters in the connection with the conduct of the Smith trial last week as they appear to have been important, to the end that the impeachment of Judge Tennant and Prosecutor Hudspeth will be urged." 10

I assume you have seen the newspaper account?

MR. DOHERTY: No, sir.

JUDGE TENNANT: Well, I will give you an opportunity to look at it. The matter comes before me in a very important way in view of the fact that I am asked to fix a day for trial and you have stated you would be ready on the day I suggested. Now, it is very proper for me to ask, is it your intention to take such a proceeding as stated in the Despatch? 20

MR. DOHERTY: Why, your Honor is answered by the proceedings here in court this morning. I made no such motion. I did not inspire that article, know nothing at all about it, have given out no interviews, nor made any statements relative to impeachment proceedings for publication whatsoever. 30

THE COURT: Do not misunderstand me. The Court has no intention or any right—certainly no intention of suggesting the impropriety of any act that the constitution provides. The only inquiry I made is whether you have made that statement to any newspaper or newspaper reporter, or inspired it in any way. Do you know anything about that? 40

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MR. DOHERTY: No, sir.

THE COURT: Do you know who is?

MR. DOHERTY: No, sir.

THE COURT: Have you any idea?

MR. DOHERTY: No, sir; no conception.

10 THE COURT: That disposes of that matter, gentlemen, I think. There is another matter. I understand, Mr. Burns—Mr. Burns, you are constantly in attendance here in the court house; you are the reporter for the Despatch?

MR. BURNS: Yes, sir.

THE COURT: Did you write this article appearing in this morning's Despatch?

MR. BURNS: Well, am I compelled to answer that question?

20 THE COURT: Yes. The Court will ask you to do that. If necessary, serve you with subpoena and put you under oath, because the Court intends now to find out where that information came from.

MR. BURNS: I do not think that is quite fair to me. I think I ought to be allowed to consult with my superior.

THE COURT: I will give you the right to do that. I will give you the right to consult with counsel, but it must be done at once.

30 MR. BURNS: I ask that I be allowed to consult with my superior before you ask me for information.

THE COURT: The only question is whether you wrote the article or not, because the Court must for the interests of justice, in order to take away what may be intimidation—the Court must wipe that away at once in the interest of justice.

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MR. BURNS: Well, I want to answer you to the full extent of my power.

THE COURT: The only question is whether you wrote the article. You need only answer yes or no to that.

MR. BURNS: Well, we have peculiar ethics in our profession, and that information is usually refused from the newspaper office. I think I ought to be allowed to consult with my editor before I answer that question. 10

THE COURT: I will allow you to consult with counsel, Mr. Walsh, and I will give you opportunity to do that.

MR. VICKERS: Burns.

THE COURT: I beg your pardon, Burns—and I will give you the opportunity to do that.

MR. BURNS: Does that mean that I am allowed to leave the Court room a couple of minutes to go to the telephone? 20

THE COURT: I will give you every courtesy. You may go into my chambers and use the telephone there with the door shut. Mr. Hanlon, you may see that Mr. Burns speaks to a lawyer, and no one else—well, if he wants to talk to his office and have them assign counsel, you may talk to the office for that purpose.

(Mr. Byrne, referred to as Burns, left the room and went into Judge Tennant's Chambers with Mr. Hanlon.) 30

MR. HUDSPETH: May your Honor please, in view of Mr. Doherty's statement to the Court that he did not inspire or suggest that article, and inasmuch as your Honor has proceeded to investigate this very serious situation, I would like your Honor to take up the article which seems to have been the 40

*Proceedings of January 27, 1916.*

genesis of these articles in the same paper last Saturday, and I further suggest that your Honor make the fullest investigation regarding this matter, beginning with the article in the paper last Saturday, as to his source, inspiration and purpose.

10 THE COURT: You need to have no fear of that. The Court intends to go to the bottom of the matter and to find out whether the administration of justice in this county is to be made a laughing stock. Certainly we won't permit that. Mr. Doherty has stated very frankly to the Court now that he is in no way responsible for the statements that are in the paper attributed to him.

MR. DOHERTY: Or any other paper. I haven't the slightest concern.

20 THE COURT: Of course, there is this to be said: The only way it comes before the Court—that if the statement was true that application was to be made to the Constitutional power to impeach this Court, this Court should not set a date for trial until such application is made. Now, when counsel makes that statement there seems to be no reason why the date that we have already discussed should not stand, and that is February 7th, I understand that it is agreeable. It  
30 seemed to be expedient and proper that we should have a clear understanding before definitely fixing that day.

MR. MCCARTHY: There are two days, February 7th and 9th.

THE COURT: Oh, yes, I will hold 7 and 9. The 9th for No. 129. That Mr. Lichtenstein is in. I understand that is satisfactory to him.

40 MR. VICKERS: In that case, then, would

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your Honor excuse the jury, that date having been fixed?

THE COURT: Yes, I think I will do that now.

MR. LICHTENSTEIN: Before your Honor discharges the jury, may I have a word with reference to the Hopkins case?

THE COURT: Yes.

MR. LICHTENSTEIN: As the Prosecutor's 10  
office knows, I have been ready in this case. I was ready when it was called on two other occasions, and unfortunately, the case would not be reached on account of absence of witnesses, or some other reason that the Prosecutor explained. We were ready to proceed with the trial last week, and we are ready this morning. I have sat here in Court and listened to the arguments that have been going on with reference to the other Smith 20  
case, and both juries were in the Court room, and although we are ready and answered ready in that case, I do feel that the atmosphere which is created by reason of so-called commingling of these cases, and the relationship that exists between the two indictments—that it might be considered rather unfair for the defendant Hopkins to be obliged to go on and have this case tried under those circumstances. Both of these juries were in 30  
Court here and heard all these things. Personally I felt that the atmosphere was a bad one so far as he was concerned; that juries are likely, under circumstances of that kind, to draw wrong inferences, although they never intend to at the time; and if the Prosecutor's office feels that I am warranted in making the remarks which I have made, why, they will probably consent to the case being ad- 40  
journd under those circumstances.

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THE COURT: Mr. Prosecutor, the Court would like to see you for a minute.

(Whispered discussion on the Bench between Judge Sullivan and Judge Tennant, Mr. Hudspeth standing before them at the front of the Bench.)

10 MR. LICHTENSTEIN: It was not my intention to ask for an adjournment. I should have asked under the circumstances that this panel of jurors be discharged.

THE COURT: Of course, that means an adjournment.

20 MR. HUDSPETH: May your Honor please, I am acquiescent so far as this motion is concerned by Mr. Lichtenstein, on behalf of his client. I want to say, however, that I have been very desirous ever since the various indictments have been found to try them as expeditiously as possible. In some of the cases there was a motion to quash, and pending that, Mrs. Wille was taken with an appendicitis, after I tried the Mohn case, and was in the hospital for some time and operated upon, and after her return to the jail she was not in condition to try the case. I then set down the several cases some months ago, and because of Mr. Mulcahy's illness, the cases of Smith, Costello, and Mr. Hopkins  
30 were not tried until the Smith case was tried last week; and it is in view of the fact that I want to dispose of them that I have had these cases set down for last week and to-day. But, considering the conditions developed, and the situation now, I do not propose, may your Honor please, to move any of the cases for trial until after the case of the State v. Smith and Mulcahy, which is now on for retrial is tried; and I will consent to the motion of Mr. Lichtenstein.  
40

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THE COURT: Of course, that would mean that we would discharge this panel.

(Mr. Byrne returned to the Court room.)

THE COURT: Now, Mr. Burns, do you want to say anything?

MR. BYRNE: I had my office on the telephone and they advised me that I ought to ask for time in which to engage counsel, consult with counsel. 10

THE COURT: Well, I have already said that I would give you a reasonable opportunity for that. Of course, that does not mean any indefinite period. There are lots of lawyers who would be very glad to advise you, I have no doubt. Unless you get somebody, I shall assign counsel for you.

MR. BYRNE: They advised me from the office that if I would let them know how much time I had they would send counsel. 20

THE COURT: You may advise the office that the Court is waiting now, and it is going to investigate this matter.

MR. BYRNE: I am not trying to get delay.

THE COURT: I am not finding fault with you. I am simply telling you what the Court intends to do. You may go and let them know what the Court intends to do. The Court is going on with this right away. Mr. Hanlon will be there with you. If they want to give you counsel, all right; of not, the Court will assign counsel to you. 30

(Mr. Byrne left the room for the second time.)

THE COURT: Now, bring in those two panels. Of course, the purpose of Mr. Lichtenstein's motion is to discharge this one panel; that is, in the case of Mr. Hopkins.

MR. MCCARTHY: Percy A. Hopkins. 40

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THE COURT: In the other case no such motion is made. That is, the panel that was here last Wednesday. Why shouldn't I do that with the other jurors also.

10 MR. VICKERS: That should not be done to affect the status of this proceeding. These motions are before your Honor. The situation now with regard to whether or not any proceedings will be taken to impeach the Court and office of the Prosecutor is disposed of so far as counsel is concerned. But, it does not dispose of the matter. I do not think, therefore, that the ordinary procedure of that trial should be interfered with more than is necessary. The Court has not set that case for the 9th of February, because of a sufficient reason given to the Court. Now—

20 THE COURT: There is another condition. That jury had been practically—

JUDGE SULLIVAN: How will that interfere with the ordinary course of procedure? Why can't this thing be handled on that day set for the trial of the case, and in the meantime have a new struck jury?

MR. LICHTENSTEIN: Probably Mr. Vickers has in mind that they might hold it over until these motions and things were gone by, say within a week from now.

30 MR. VICKERS: The defendant Smith is not here. While this is only a misdemeanor it seems to me the Court has set down that matter, and it is set down definitely, orders made, and there might be some reason why another jury should not be drawn, or another order granted. I don't think at this time that ought to be done.

40 THE COURT: What is the number of the indictment of State v. Hopkins.

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MR. VICKERS: 127, December.

THE COURT: Well, I will dispose of that first. Because of the motion of counsel in the case of the State v. Hopkins, and for the convenience of the jury, let me say that that is the case in which the panel of the jurors who were here last Wednesday are summoned. You will find on your subpoenas, "State v. Hopkins, No. 127, December term." Jurors 10  
who were summoned here last Wednesday and cannot be required and they may leave the room at this time. The jury which comes to-day for the first time—that is "Hopkins, Costello and Smith—" in that case the jury is to return on the 9th.

MR. DOHERTY: May I suggest that the considerations expressed by Mr. Lichtenstein are just applicable to this case; that the jurors were here and were affected by that same atmosphere that Mr. Lichtenstein considered inimical to his defendants. 20

THE COURT: Why is not that so?

MR. VICKERS: If the defendant makes that motion I think that ought to be done.

THE COURT: I think that should be done in order not to have any suggestion of miscarriage or mistrial. All of the jurors in both cases held over from last week are now here for the first time to-day, are now excused; they will not be required in these trials until further subpoenaed. Their warrants will be mailed by the Clerk. 30

(Mr. Byrne returned to the Court room.)

(Whispered discussion between Judge Tenant, Judge Sullivan and Mr. Vickers.)

(Whispered discussion between Judge Tenant, Judge Sullivan and Mr. Vickers.)

MR. BYRNE: I am obliged to wait a little 40

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while. I understand the Secretary of State is on his way down.

THE COURT: He has counsel, then, coming for you?

MR. BYRNE: I don't know about that, but he himself is coming.

THE COURT: I don't know who the Secretary of State is.

10 MR. BYRNE: Mr. Martin.

THE COURT: What has he got to do with this?

MR. BYRNE: He is advising me what I am to do.

THE COURT: Is he a member of the Bar?

MR. BYRNE: I don't know whether he is or not.

20 THE COURT: He is not a member of the Bar I am told. I wondered what he had to do with this, why should he come. The Secretary of State is not involved I understand.

MR. BYRNE: Well, he is advising me in the matter, and if I am to have counsel it is through him that I will have to get it.

THE COURT: How long will it take for him to come?

MR. BYRNE: He is coming in his auto.

THE COURT: Oh, well, I will wait a little while.

30 (Judges Tennant and Sullivan went into Judge Tennant's chambers. Mr. Hudspeth and Mr. Vickers left the room to go to their office.)

(Judges Tennant and Sullivan returned to the bench.)

THE COURT: Now, Mr. Byrne.

MR. BYRNE: Well, I am ready to answer now.

40 THE COURT: All right. Put your hand on the book.

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*John Francis Byrne—Direct.*

JOHN FRANCIS BYRNE, SWORN.

DIRECT EXAMINATION BY JUDGE TENNANT:

Q. Mr. Byrne, you are a reporter for the Hudson Despatch? A. Yes, sir.

Q. Have been for some little time? A. Yes, sir.

Q. Did you report the proceedings of the trial held in the Hudson County Quarter Sessions last week involving one Samuel Smith? A. Yes, sir. **10**

Q. And I show you a newspaper dated Saturday morning, January 15th, 1915, and I ask you to look at that copy of the Hudson Despatch and ask you if you wrote that article (paper handed to witness). Oh, substantially? A. No, sir.

Q. Do you know who did? A. No, sir.

Q. Do you know who is the publisher of the Hudson Despatch? A. It appears in the paper; that is all the knowledge I have of it. **20**

Q. We would be glad to have you tell us, Mr. Burns? A. The Dispatch Printing Company, 509 Lewis Street, Town of Union, New Jersey.

Q. Is there a city editor of that newspaper to whom you turn in your copy? A. There is a manager.

Q. What is his name? A. Haddon Ivin.

Q. Where does he live? A. He lives in Hoboken.

Q. You were in court, were you not, when the jury in the case referred to came back about eight or half past eight or nine o'clock, or thereabouts, asking for further instructions in the trial? A. Yes, sir. **30**

Q. And did you hear the court instruct the jury as requested? A. Yes, sir.

Q. Were there people in the court room? A. Yes, sir.

Q. Was there a stenographer present? A. There was. **40**

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Q. And you were present, I think you said? A. I was present.

Q. The jury after being so charged where did they go? A. I don't know.

Q. Well, they left the court room, did they? A. Yes, sir.

Q. Did they subsequently return while you were present? A. Yes, sir; they did.

10 Q. Now, during the time the further instructions of the court were given you were present throughout the entire period, were you? A. When the instructions were given?

Q. Further instructions to the jury? A. Well, I—yes, I was, I think; yes.

Q. Referring to the copy of the Hudson Despatch of this morning, January 17th, did you write that article with reference to proceedings for an alleged impeachment? A. Yes; most of it, yes.

20 Q. Will you state from what source you got your information? A. Well, I will do that because the gentlemen has released me; otherwise I should not feel myself permitted to do so. I got that from Mr. William P. Verdon.

Q. Where? A. In Hoboken.

Q. When? A. On Saturday evening—afternoon or evening.

30 Q. Did you give any information to the Hudson Despatch covering the matter contained in the article in the Despatch of Saturday regarding the so-called impeachment proceedings? A. Not one word.

Q. So that you knew nothing of it before—A. Until I got the paper Saturday morning and I read it there.

Q. Can you tell us who was present when Mr.—what was his name? A. Verdon. Mr. William P. Verdon.

40 Q. Gave the information to you on Saturday? A. Why, there was a gentleman present.

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Q. Tell us who it was? A. It was a gentleman who was present here at the trial.

Q. Do you know his name? A. I think the name was Taylor; I don't know the gentleman very well.

Q. Where does he live, do you know? A. I don't know anything at all about him.

Q. Is he in any way connected with the management of the Despatch? A. Oh, no; I don't think he is; I never heard that he was. 10

Q. Do you know what his business is? A. I do not.

Q. Was his name mentioned in the trial in any way, do you recall, while you were here? I mean the trial last week, of course? A. Why, I don't know; I think—I don't know. I want to be perfectly accurate in this thing; I think he was a witness.

Q. Was there anyone else present besides Mr. Verdon and Mr. Taylor? A. There was not; there were some of Mr. Verdon's children came in occasionally, but I don't think they paid the slightest attention to the conversation. 20

Q. How old were they, Mr. Burns? A. Oh, little ones.

Q. How old? A. I can only hazzard a conjecture. I should think about seven or eight or nine.

Q. That was the age of the oldest one? A. Well, there was somebody walked in and walked out, young man about seventeen or eighteen or nineteen; I couldn't tell you exactly; I paid no attention to him, because the matter Mr. Verdon was telling me was so very interesting; I paid no attention to who was coming in or going out. 30

Q. Now, I understand you to say you did write the article in this morning's Despatch? A. The larger part of it.

Q. Substantially as already appears in court? The article referred to the intention on the part 40

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of Mr. Doherty, a lawyer of this bar, an officer of this court, intending to bring impeachment proceedings against the court. Is that the information you got from Mr. Verdon? A. That is part of it.

Q. And the substance of the reasons stated in that interview was given you entirely by Mr. Verdon? A. Oh, yes, certainly.

10 Q. No other person gave you any information about the matter at all? A. Certainly not.

Q. And the only persons present were Mr. Verdon, yourself and Mr. Taylor, and these small children? A. That is so.

Q. When you handed in your copy of the proceedings of that time, at the close of the trial, or while the jury was out, which referred to the judge of the court handing written instructions to the jury while they were still out, did you go to the clerk or the stenographer or seek any information at all as to whether that was a true statement of fact or not? A. You mean in to-day's paper? Reference in to-day's paper?

Q. No, I mean the reference in Saturday's paper, Mr. Burns? A. I didn't write Saturday's.

Q. Well, that portion of the account to which I refer which is contained in the two paragraphs to which I now call your attention. I understand you to say you were in court when the court gave the further instructions. Was that part of the charge? A. I think I misunderstood you. I was in court at 12.22 when the jury came in and got final instructions.

Q. But weren't you in court when the jury came in the first time? A. I was not. I was in court when the jury came in the first time, but I wasn't in court when the instructions were given at the time, because I was waiting for your Honor to come and your Honor didn't come, and I didn't

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realize that the instructions were to be given by you in another place.

Q. The jury went out somewhere about five o'clock? A. Exactly 5.25.

Q. And you understand from the general knowledge of the conduct of the trial that the court had sent for? A. Yes, sir.

Q. At the request of the jury? A. I did. **10**

Q. And you knew when the court came back? A. Well, I knew—

Q. (Interrupting) Weren't you in court when the court got up on the bench and received the jury the first time, Mr. Burns? A. No, sir.

Q. About half past eight or nine o'clock? A. No, sir, any time before 12.22 I was not.

Q. That is all. A. Thank you. Am I still under the surveillance of the court officer? **20**

MR. HUDSPETH: Your Honor has not located where this conversation took place.

THE COURT: I meant to ask that.

Q. Mr. Burns, where was this conversation with Mr. Verdon? A. In his house.

Q. And it was what time Saturday? A. It extended from twenty-five minutes to five, until, let us say—well, it lasted two hours and a quarter.

Q. Where is his house? A. It is in Bloomfield Street. **30**

Q. City of Hoboken? A. I think it is 1218 Bloomfield Street, City of Hoboken.

Q. How did you know how to go there, or why to go? A. I followed instructions. I was assigned there by my editor.

Q. Newspaper? A. Yes.

Q. What were those instructions? A. To call up Mr. Verdon and ask him for an interview. Thereupon I called up Mr. Verdon, and he said, "I will see you at my house if you can come up **40**

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about half past four." I got there about twenty-five minutes to five.

THE WITNESS: Am I relieved?

THE COURT: You need not remain any further.

10 THE COURT: Now, Mr. Prosecutor, the court will ask you to present to the court a rule to show cause for contempt proceedings against William P. Verdon, The Dispatch Printing Company, the publishers of the Dispatch Printing Company named in the evidence already taken, and the man Taylor, who has been mentioned, if you can locate him. One minute. You may eliminate the name of Mr. Taylor at this time. Mr. Burns, there is one other question Judge Sullivan suggests I ought to have answered.

20 Q. You have given us the name of the publisher of the Dispatch. Is there an editor known as a city editor or managing editor or anyone who marks copies or pencils it? A. Why, I told you, Mr. Haddon Ivins.

Q. He is the man does all that work? A. Yes.

Q. He is the man to whom the reporters of the paper turn in their copy? A. Yes.

30 Q. To frame up the—shape up the news of the day? A. Well, I don't know what particular member of the staff that might fall on. Circumstances alter the conditions. But Mr. Ivins is the editor and the man to whom I am responsible directly.

Q. Well, is there any other editor besides Mr. Ivins? A. Well, there is a desk man.

Q. Who is he? A. Mr. Phillip Payne, P-a-y-n-e.

40 Q. What does he do? A. Well, he reads the articles, passing upon some of them, and writes the heads. But whether he passes upon all or how great his authority is I have never had any occasion to know.

*Richard H. Doherty—Direct.*

Q. Do you know to whom you turned in your copy of your interview with Mr. Verdon? A. Why, I haven't any idea, because that matter goes by messenger boy. I could conjecture, but I don't know positively.

Q. Who was it made the headlines in this morning's Dispatch? A. I don't know, because I don't report to the office.

Q. Well, what is your conjecture on that? A. I should suppose that this copy went to Mr. Ivins. It is a very important matter and I don't think it would go to any other. 10

Q. That is the managing editor? A. Yes.

Q. Now, is there anyone else who has anything to do with the editorship, or editing of the paper besides the names given already by you to the Court? A. The editing of the paper? Why, I should say so. Mr. Ivins seems to be supreme there. He is my chief and I deal directly with him on account of being a correspondent at the courthouse. 20

Q. That is all.

MR. HUDSPETH: May your Honor please, in order to properly predicate this rule to show cause upon the acts and the proceedings this morning, I ask that Mr. Doherty be sworn.

MR. BYRNE: Excused.

THE COURT: Yes. Mr. Doherty! 30

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RICHARD H. DOHERTY, SWORN.

DIRECT EXAMINATION BY JUDGE TENNANT:

Q. Mr. Doherty, you are a member of the bar?

A. Yes, sir.

Q. You were counsel for Mr. Samuel Smith in the trial in this courthouse last week? A. I was.

Q. You have already stated to the Court personally this morning that you were not in any way 40

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responsible for the allegation in these two newspapers which I now show you, and know nothing about the alleged proceedings except what you have read in the paper; is that so? A. What do you mean by alleged proceedings?

Q. Impeachment proceedings against the prosecutor and the Court. A. I don't know anything about such proceedings because such proceedings  
10 are not pending.

Q. Well, the statement made by you this morning in the Court which has been taken down by the stenographer, was to the effect that you hadn't commenced any such proceedings that you had no intention of commencing any such proceedings, and that the statement that I read to you in full from the newspaper at the time and which I now point out to you, which stated that you intended to make a motion this morning to have certain trials  
20 postponed because you intended to go before the Court of impeachment—you have already stated to the Court that that was not true; that you knew nothing about it. Was that a fact? A. It is a fact that I never stated that I was going to make an application for an adjournment in respect of any prospective impeachment proceedings.

Q. Didn't you say this morning that you knew nothing of any proceedings of impeachment? A. I know nothing about them.

30 Q. Didn't you say that you knew nothing about them in any way whatsoever, before Judge Sullivan and myself? A. That is what I state now, whether I stated it now or then. I know nothing about any impeachment proceedings.

Q. Is the statement made in the newspaper that it was your intention to go before a court of impeachment a true statement or not? A. Repeat that, please?

40 Question repeated by the stenographer.

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Q. Is the statement made in the newspaper that it was your intention to go to the court of impeachment a true statement or not? A. That is inquiring as to my present intention or my past intention, or future? I should like to have that elucidated.

THE COURT: The stenographer will read the question to you. 10

Q. (Repeated by the stenographer.) Is the statement made in the news papers that it was your intention to go to the Court of Impeachment, a true statement or not? A. It could not have been my intention in the past, because I know nothing about the existence of any Court of Impeachment.

Q. Well, you stated this morning when the Court asked you Mr. Doherty, that it was not your intention then; nor did you know anything about any proceedings to bring about an impeachment. The Court now asks you whether that was a true statement or not? A. It was, and I now know nothing about any proceedings for impeachment. 20

Q. Before the Legislature of the State or otherwise? A. That is the only place of impeachment proceedings could pend.

Q. The Court is asking you? A. Yes, sir; of course, naturally.

THE COURT: Has the prosecutor any questions? 30

MR. HUDSPETH: Only about that article in Saturday's newspaper.

JUDGE SULLIVAN: As I understand your testimony now, Mr. Doherty, and as given this morning, it was not your intention at the time that you applied for an adjournment of the trial that was before this Court this morning—that it was not then your intention to make any application to the House 40

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of Assembly for the initiation of impeachment proceedings with respect to the trial of Samuel Smith?

A. At that time it was not my intention to ask for an adjournment on those grounds—oh, you are inquiring now as to my intention in the future?

10 JUDGE SULLIVAN: I am trying to get your intention at the time you testified, that is all, both now and at the time that you answered Judge Tennant's questions this morning.

Q. (Repeated by the stenographer) As I understand your testimony now, Mr. Doherty, and as given this morning, it was not your intention at the time that you applied for an adjournment of the trial that was because this Court this morning—it was not then your intention to make any application to the House of Assembly for the initiation of impeachment proceedings with respect to the trial of Samuel Smith? A. I won't say that it was not. At the time of that motion I didn't concern myself with my intention at all in that respect.

20

JUDGE SULLIVAN: That is what I understood your answer to be. I think Judge Tennant did, too.

JUDGE TENNANT: Yes.

30 MR. HUDSPETH: I suggest that you have read to Mr. Doherty that you said this morning.

JUDGE TENNANT: Mr. Doherty, there was an application this morning in another trial for postponement, and the Court was trying to fix a day agreeable to the prosecutor and yourself as one of the counsel involved for one of the defendants in that proposed trial, after the 7th and 9th of February had been suggested; and the Court stated that that would discommode other arrangements which

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the Court made. You will recall that the Court left the bench—

A. (Interrupting) Yes, sir.

JUDGE TENNANT: —and went to his chambers?

A. Yes, sir.

THE COURT: (Tennant, J.): Now, when the Court came back do you remember that you were called to the bar of the court and your attention was called to those newspaper statements? 10

A. Yes, sir.

Q. Did you not then state in answer to the Court's question that you knew nothing about these newspaper statements; that it was not your intention to go to the Legislature or to any other place to impeach the prosecutor or Court, or to have them impeached, and that you were in no way responsible for the alleged statements attributed to you as to your intentions in that regard? 20

A. The Court's question of course is composite. I said that I was in no way responsible for the inspiration of that story or any other story relating to contemplated impeachment proceedings, and that I had never given out any statement that it was my intention—

Q. (Interrupting) Didn't you say to the Court that it was not your intention to take any such steps? A. No, sir, I did not. 30

MR. HUDSPETH: I would suggest, your Honor, in order that there may be no confusion in this regard that Mr. Doherty's statement made this morning in answer to the interrogation of the Court be read, so that his mind may be refreshed. It is only fair. 40

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THE COURT: Yes, the stenographer will read to Mr. Doherty, the statement, conversation between the Court and Mr. Doherty before the bar of this Court this morning.

The stenographer read the questions propounded to Mr. Doherty by Judge Tennant and the answers made by Mr. Doherty there-to.

10 Q. Were those questions put to you this morning? A. Why, there is one passage there that might be capable of misconstruction. Your Honor asked me concerning a proceeding referred to in the article. Now, in answering that question I contemplated your Honor referred to the proceeding in court, as to applying for an adjournment on that ground.

20 Q. Well, did you have this morning in your mind any other proceeding that might be brought—that impeachment proceedings might be brought when the Court asked you right before the bar of this court if you knew anything about such proceedings and you answered that you didn't know anything about them at all? A. Why, your Honor was a little indefinite in identifying the proceeding to which your Honor referred. If you meant the proceeding in court by asking for an adjournment on that ground—that is what I had in mind. Now, 30 if your Honor had a different proceeding in mind it was muddled.

SULLIVAN, J: Let me ask you a question, Mr. Doherty.

BY JUDGE SULLIVAN:

Q. You understood the purpose of Judge Tennant's questions this morning. It was in order to enable him to determine whether or not he should adjourn their trials until the 7th, or whatever date 40 it was, in February next. A. No, I didn't; I didn't

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understand that to be the object of the judge's inquiry.

Q. Didn't he state very plainly in his question that the reason that he asked you that was in order that he might then determine whether he should adjourn it until that time? A. If he did I—

Q. That it would be an impropriety for him to say the least, to this morning determine that he would adjourn the trial to that time instead of waiting to see what proceedings you were going to take? Of course he didn't question your right, as stated in his question, to take any proceedings you might think proper. But didn't he state to you that the object of his questions was in order to enable him to determine whether he should adjourn the trial this morning definitely to the 7th and 9th? A. If that was his statement or intention, I missed the point. 10

Q. Wasn't it made perfectly clear to you this morning that the only object the Court had in coming back to the bench and asking you, as then explained to you by the Court, that the Court would not set those cases down for the 7th and 9th of February if it was your intention to ask for the impeachment of the Court or Prosecutor? A. I must confess your Honor didn't make that so plain that I comprehend. 20

Q. Did you have any doubt in your mind, Mr. Doherty? A. Until after hearing the stenographer's minutes reread. 30

MR. HUDSPETH: May I call Mr. Doherty's attention to this question your Honor put to him: That since fixing the date of the 7th and 9th for the two respective cases, and retiring from the bench and returning to his room, his attention was called to this article or he was confronted with this article in the paper regarding the suggested action of Mr. Doherty, counsel for Mr. Smith in relation to 40

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10 impeachment proceedings; that if that were so, there would be a different disposition made of the cases than already made, to wit: setting them down for the 7th and 9th; whereupon the Court proceeded to interrogate Mr. Doherty as to whether or not he had given out that interview or made the suggestion embodied in the interview, or proposed asking if the cases were moved this morning, and thereupon you proceeded to answer. Now, didn't you have in mind, Mr. Doherty, at the time you answered that the Court's purpose was to ascertain whether or not you proposed, as counsel for Mr. Smith, going down to the Legislature and asking for articles of impeachment against the Court and Prosecutor?

20 A. No, I didn't grasp that point of the Court at that time.

BY JUDGE TENNANT:

Q. Will you state what you thought the purpose of the Court was in coming back and making that interrogation in regard to that matter? A. I was unable to fathom.

Q. Why did you answer the Court? A. Because it was a plain, answerable question.

30 Q. You say you were unable to fathom it. If you were unable to fathom it, what did you think was the Court's intention, of the Court's inquiry? A. That the Court wanted to fix responsibility for the publication of that article only.

Q. Didn't the Court explain to you in so many words that the Court would not fix that day for trial, an important case, or any case, if it was the intention of counsel or anyone involved to bring proceedings for impeachment of the Prosecutor or the Court? A. I did not understand the Court to  
40 say it so plainly as to be understood.

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BY MR. HUDSPETH:

Q. Of course you understood and appreciated the seriousness of this proceeding, as an officer of the Court— A. Certainly.

Q. —a lawyer of standing in the community? You know as a lawyer that that article, to which your attention has been called before, in view of the pendency of the Smith case and this trial, is a contempt of court, is it not? A. I do not think you ought to call upon me for any explanation. 10

Q. I want to know what is in your mind, in view of what you now testify. Do you or do you not, as a lawyer, occupying the position that you do in the Smith case, know that that article, if proven, is a contempt of this Court? A. I can only say that you rest under a reciprocal obligation, as prosecutor of the pleas, in respect to such. You should refrain from asking counsel for a defendant to unfold his mind here in court as to what constitutes a contemptuous or non-contemptuous conduct of his client or himself. 20

Q. I want to be fair with you; I have no ulterior purpose. I want to get what is in your mind when you are testifying in this very serious proposition—whether you or William P. Verdon are guilty of this alleged contempt. No, there is no getting away from it. This morning you exonerated yourself absolutely. Now you have not, because you are hedging. A. What contempt do you refer to? 30

SULLIVAN, J.: I do not think that is so. I do not think that is this case at all.

TENNANT, J.: I do not think we will go so far as that now.

MR. HUDSPETH: Well, I will change the form of the question, may your Honor please. I want to get at the proper persons to bring under this rule. It is not fair to bring persons in here unless they are properly brought. 40

*Richard H. Doherty—Direct.*

I supposed, by Mr. Doherty's testimony this morning, he had absolutely exonerated himself.

SULLIVAN, J.: I think he has now, from the newspaper publications, Mr. Prosecutor. I do not see how you can bring Mr. Doherty under any rule with regard to that newspaper publication.

10 MR. HUDSPETH: Oh, no, your Honor misconceives—I beg your pardon. The point is, this morning Judge Tennant's attitude of mind was this: If Mr. Doherty is quoted properly in the article in question, I should not adjourn these cases.

SULLIVAN, J.: Correct.

20 MR. HUDSPETH: If he is quoted properly, to wit: that he is not the party who inspired the article, who had the interview, and had nothing to do with it, then I properly adjourn the cases.

30 SULLIVAN, J.: You misunderstood Judge Tennant. It was not a question of whether Doherty inspired that article or whether he didn't but it is a question whether Mr. Doherty intended to apply for impeachment proceedings. That is different from inspiring the article. He has made the distinction himself, as I take it, that he did not inspire the article, that he did not have anything to do with the writing of it, that he never gave out any statement that would warrant anybody in writing that article. But with regard to his intention of applying for impeachment proceedings, that is a different proposition.

MR. HUDSPETH: Oh, but this morning he positively said, as I recall, if I may call his testimony, that he didn't intend—

JUDGE SULLIVAN: I think that is true.

*Richard H. Doherty—Direct.*

MR. HUDSPETH: There is a doubt as to whether he intended or not.

JUDGE SULLIVAN: I don't think there is any doubt about it now.

MR. HUDSPETH: I will ask the question. I ask that what I have said, if I misconstrued his testimony, be stricken from the record so that I may proceed now to ask him a question to clarify this situation. 10

JUDGE SULLIVAN: The only purpose of the Court this morning, as Judge Tennant and myself were both present on the bench, was to inquire of counsel whether such proceedings were contemplated, because as the Court very clearly and, I think, accurately expressed himself—the Court should not set a case down for trial if counsel intended to do as the article in question intimated, and that was stated to Mr. Doherty, the article in part read to him in the very language of the article as printed in the newspaper. He thereupon, to the full satisfaction of the Court, completely exonerated himself from any responsibility, not only for the publication—that is, at that time—but of any intention to make any such application, and it was on that and for that reason that the Court thereupon set the cases down for trial. I don't think there can be any question of what Mr. Doherty said, Mr. Prosecutor. Judge Sullivan and I both agree on that. 20  
30

MR. DOHERTY: I would like to have that clarified. I ask the stenographer to—

MR. HUDSPETH: That is just the difficulty. We need some clarification of Mr. Doherty's statement this morning, your Honor's purpose and intention, and his statement now. And when I used the term "hedge," I didn't 40

*Richard H. Doherty—Direct.*

use it offensively. I meant his statement was a little different now.

JUDGE SULLIVAN: Suppose you ask him whatever you can to clarify it.

MR. HUDSPETH: Then I ask that whatever I stated a moment ago, as to what I understood to be his testimony, be stricken from the record.

10 Q. Mr. Doherty, this morning when you were interrogated substantially as to whether or not you proposed going to the legislature for the purpose of asking articles of impeachment against the Court, Judge Tennant and the prosecutor, Mr. Hudspeth, because of their conduct in the case of State vs. Smith, was it your purpose and intention so to do? A. At the time when the Court questioned me?

Q. Yes. A. No, sir.  
20 Q. Has your intention changed since that time? A. That is, you are asking whether it is now my intention to do it?

THE COURT: As distinguished from what you said this morning, his question is.

A. I think, my being counsel for the defendants about to be brought to trial on an indictment, that it is not fair on the part of the prosecutor of the pleas to attempt any such exploration of the mind  
30 of counsel.

Q. Mr. Doherty, the Court's purpose this morning in disposing of the cases in question was not to adjourn unless you had said it was not your intention to take such course. A. I am wrong.

Q. I am wrong, am I? A. The Court adjourned these cases definitely, irrespective of that article.

Q. Undoubtedly. The Court adjourned those cases because the prosecutor consented upon your motion. My motion was refused. It was on your  
40 request.

*Richard H. Doherty—Direct.*

Q. In view of what you said? A. Yes.

Q. Then the Court returned to the bench, did it not? A. Yes.

Q. And stated to you that its intention had been called to the article in the newspaper which your attention has now been directed to? A. Yes.

Q. And the court said then, did it not, that it would not have adjourned those cases and made a different disposition of the court's business during that week if it knew that you proposed the going to Trenton and making any such charges, did it not? A. I don't recall the court saying anything like that. 10

Q. You don't recall that? A. Well, if that was the purpose of the court, to get at your intention, I ask you again did you at the time the court interrogated you this morning intend to go to the legislature and ask for articles of impeachment against the court and prosecutor? Yes or no? A. The question is hypothetical, and you have no right to propound any such question to counsel for a defendant awaiting trial in this court. 20

THE COURT: I understand you have already answered that question no, Mr. Doherty?

Q. What was it?

THE COURT: You have already said it was not your intention this morning to seek impeachment? 30

A. In other words, this morning when I applied for adjournment of this case I stated the ground, and that was the only ground upon which I put my motion, and it was the only thing within contemplation.

JUDGE TENNANT: Didn't the court then ask you if you had any other grounds? 40

A. No.

*Richard H. Doherty—Direct.*

JUDGE TENNANT: Didn't the court ask you if there was any other reason for the adjournment than the suggestion that you didn't have a stenographic copy of the minutes of the earlier trial?

A. I don't think so, because I stated to the court that we had no witnesses here, and even the defendant Smith was not here.

10 Q. Mr. Doherty, you heard Mr. Byrne's testimony, the witness who proceeded you, regarding these articles in question? A. I was not very attentive to it.

Q. Did you hear his testimony? A. I was in court at that time.

Q. Did you hear his testimony to the effect—did you hear his testimony given a short while ago to the effect that the article in the Hudson Dispatch headed "TO URGE DEFERRING TRIALS  
20 AWAITING IMPEACHMENT CHARGE" was written by him, Mr. Burns, after an interview with William P. Verdon? A. Yes; I heard that.

Q. And that he got the information from William P. Verdon? A. I heard all his testimony along those lines.

Q. And no one else? A. Yes.

Q. Did you give the information to William P. Verdon that Mr. Verdon alluded to? A. No.

30 Q. Did you have anything to do with it directly or indirectly? A. No.

Q. Did you know that he had given such information as Mr. Burns says that Mr. Verdon gave to him? A. No, sir.

Q. Did you inspire it? A. Certainly not.

Q. Suggest it? A. No, sir.

Q. Have anything to do with it? A. No, sir.

JUDGE TENNANT: Is there anything else, gentlemen?

MR. HUDSPETH: No, sir.

(Witness excused.)

JUDGE TENNANT: Mr. Prosecutor, you may hand up the rule which the Court has already directed and I will sign it at once, and make it returnable forthwith.

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HUDSON COUNTY COURT OF OYER AND TERMINER.

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In re  
Contempt Proceedings  
against  
WILLIAM P. VERDON, HADDON  
IVINS, DISPATCH PUBLISHING  
COMPANY.

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Court House Jersey City N. J.,  
January 22 1916, 9 A. M.  
Before—Justice SWAYZE and Judges TENNANT and  
SULLIVAN.

20

APPEARANCES:

For State: ROBERT H. McCARTER, Esq., and GEORGE T. VICKERS, Esq.

For Mr. Verdon: MERRITT LANE, Esq., and HARLAN BESSON, Esq.

For Mr. Ivins and the Dispatch Publishing Company: WILLIAM D. EDWARDS, Esq., and JOHN MILTON Esq.

30

MR. JUSTICE SWAYZE: Counsel ready to proceed?

MR. LANE: We are ready.

MR. JUSTICE SWAYZE: The Prosecutor is not here? Perhaps he is not going to be here. Well, isn't there anybody here from the Prosecutor?

40

*Colloquy.*

MR. EDWARDS: I ask for a dismissal of the rule, your Honor.

MR. JUSTICE SWAYZE: Well, I do not know where the prosecution is. I thought R. McCarter represented the prosecution.

10 MR. MCCARTER: I understood I was here, may it please your Honors, as I am here cheerfully, by invitation, as *amicus curiæ*. Now I did not know the burden of the prosecution was upon me, but, however, in order that the matter may be proceeded with, I move the rule that has been entered, namely, that these gentlemen should show cause, and this corporation should show cause, why it should not be attached for contempt.

MR. JUSTICE SWAYZE: We deny Mr. Edwards's motion. Now Mr. Lane.

20 MR. LANE: If your Honors please, for all the defendants—before the State proceeds—I have some preliminary motions.

In the first place, I desire to challenge the right of Mr. Justice Swayze and Mr. Judge Sullivan to sit on the hearing of this rule. The contempt, if committed at all, was entirely personal, a libel upon Judge Tennant, and, as I understand the law, the only person that has power to punish for a contempt of that nature is a judge against whom the contempt was committed. That is the first ground upon which I challenge both Justice Swayze and Judge Sullivan.

30

In the second place, I challenge Mr. Justice Swayze because he was not present at the time the preliminary testimony was taken upon which this rule was granted—as a separate and distinct ground, that is, to the first one.

40 MR. JUSTICE SWAYZE: Do you desire us to pass upon that now?

*Colloquy.*

MR. LANE: That is a matter I submit to your Honors.

MR. JUSTICE SWAYZE: We think you misapprehend the measure and the scope of the proceedings. We do not look upon them as a proceeding for any personal contempt of Judge Tennant. In fact, if it were only a personal contempt, I suppose that Judge Tennant, as well as the rest of us, would look on it without any consideration whatever—give it no attention. We look on it as a contempt of the Court, and interference with the administration of justice, if it be anything at all—I do not know anything about that until I hear the facts. We deny—or overrule that challenge to myself and Judge Sullivan. 10

MR. LANE: Your Honor will permit me to note an objection?

MR. JUSTICE SWAYZE: The record will show just what takes place. I decline to seal any bill of exceptions. 20

MR. LANE: I do not know that it is necessary. The appeal, of course, is by appeal under the statute, but if there is necessity for noting an objection, I do not want to lose my rights.

MR. JUSTICE SWAYZE: It may appear that you have duly objected. Whether your remedy is by appeal I do not know.

MR. LANE: In the second place, I move to quash this rule to show cause upon the ground, first, that it is a rule which requires the respondents to show cause why they should not be adjudged guilty of and punished for—or should not be adjudged guilty as of a contempt of the Court of Quarter Sessions of the County of Hudson, upon the ground the Court had no power to make such rule. The practice seems to be settled in this state—there is no case to the contrary that the proper pro- 30 40

## Colloquy.

cedure and the only procedure is the procedure under the course of the common law. First, there must be either a rule to show cause or a notice of some kind that application would be made for a writ of attachment. Upon the return of that rule the respondent may do one of two things; may come in and contest the award of the writ or he may sit quiescent. If the Court, upon the return of the rule, conceived that a contempt has been committed, then a writ goes, and on that writ the man is taken in custody, and then a reasonable length of time is given—under the common law four days. Under our practice, it seems to me to be settled that the Prosecutor must file interrogatories. These interrogatories having been filed, the respondent has a reasonable time to prepare answers, and then comes in court and makes his answer, and as the answer either confesses or denies the contempt he is discharged. There can be no testimony taken in denial of whatever he says. Now I know of no case where that course has not been pursued in this state where that point has been made. Your Honor will of course—has in mind the case of *in re Cheeseman*, in which Mr. Justice Dixon, I think, pointed out that that was the proper procedure, and further pointed out, however, that that procedure, while not being adopted in that case, yet it was—the procedure that was adopted was adopted without the objection of counsel upon any side. Now, in the case of *State v. Doody*, in *State v. Burke*, in the *Hobes* case and in the *Gonzales* case which was the last case upon the subject, and also in the famous *Middlesex County* case, which I do not think ever went to the Supreme Court, but reported in the Law Journal, that was the procedure

*Colloquy.*

adopted, and there is no other. The reason is that inasmuch as it is a case in which the Court is both, jury and accuser, the respondent is under the common law entitled to that absolute right to have specific interrogatories exhibited to him and to a reasonable time to answer those interrogatories, making himself, as a matter of fact, as some of the cases hold, the judge of his own cause in the last instance. **10**

Now in the case of *State v. Gonzales*, the original rule to show cause was in precisely the form that this rule was, and upon the return of that rule I objected to it, and the prosecutor finally elected to change the form of the rule and applied for a writ of attachment. That was in 1910, and Mr. Vickers, representing the State, on that occasion, said: "I know of no proceeding whereby there could be an adjudication of this matter without interrogatories"; and the interrogatories were subsequently exhibited, answers were made, the respondent was adjudged guilty. The Court, in considering his guilt, considered the evidence aliunde the answers and interrogatories, and the Supreme Court, in an opinion at the November Term, 1910, reversed that contempt upon the ground that the answers to the interrogatories were conclusive and that the Court had no right to consider any other testimony. Now I move to quash this rule, but I have no objection to changing the form of it so as to comply with the law. I make the point at this time, because I say that if we are proceeded against in any other way than as I have indicated, we are being deprived of our life and liberty without due process of law under both our own constitution and the Federal constitution. We are being compelled to be a witness against ourselves, con- **40**

*Colloquy.*

trary to the course of the common law, the statutes and the constitution.

MR. JUSTICE SWAYZE: Mr. McCarter or the other side desire to be heard?

10 MR. VICKERS: No, may it please the Court. You are familiar with the situation in the *Gonzales* case. To some extent that is the situation which is desired to be avoided in this case. That it is possible for a man to purge himself of contempt of court by perjury seems to be anomoly. The procedure which was followed in the *Cheeseman* case and that which your Honor has followed in the recent cases in this county, after which this is patterned, seems to me to be the modern procedure, and we decline to amend or ask an amendment of the rule.

The Judges confer.

20 MR. JUSTICE SWAYZE: We overrule the motion.

MR. LANE: Your Honor will note an objection?

MR. JUSTICE SWAYZE: The record will show what takes place.

30 MR. LANE: Now, if your Honors please, I move to quash the rule upon the ground that the testimony which was taken before the Court did not show that there was a contempt of the Court; that it showed, at best, that there was a libel, a vicious libel on an individual, but no attack upon the Court itself, and that the newspaper article, from its reading, is not of such a nature as would tend to embarrass the administration of justice in this county.

Secondly, upon the ground that the preliminary proceedings before this Court were never served upon the respondent.

40 Third. Upon the ground that the rule itself

*Colloquy.*

is of such a nature that it is incapable of being answered. We are not told what Mr. Burns said Mr. Verdon told him; we are merely told that something was said by Mr. Verdon to Mr. Byrnes which formed the basis of this article, but there is no specific statement, either in the rule or in the testimony as to precisely what we said, nothing that would— 10  
I might say nothing that would under the common law take the place of interrogatories.

MR. JUSTICE SWAYZE: We overrule the motion.

MR. LANE: Your Honor will note an objection?

MR. JUSTICE SWAYZE: The record will show what takes place. You may proceed, gentlemen.

MR. VICKERS: We offer in evidence from the files of the court two indictments: No. 129, State v. Percy A. Hopkins, Edward Costello and Samuel Smith; No. 130, against Edward Mulcahy and Samuel Smith. I suppose that it is not necessary to prove them by the clerk of the court? 20

MR. LANE: We have no objection to that.

MR. EDWARDS: No objection.

MR. VICKERS: We offer likewise the records of the court showing that indictment No. 130, on January 13, 1916, was on for trial; that a jury had been drawn; that the case had been submitted to a jury; that there was a disagreement, and that at one o'clock in the morning of that day the jury was discharged. 30

We offer the further record that on the same date, before his Honor, Judge Tennant, an application was made for the handing down of a new struck jury, which application was granted and the time for the striking of the 40

*Colloquy.*

jury set on the 24th day of the present month.

JUDGE SULLIVAN: In what case?

MR. VICKERS: In the same case, in which the jury had disagreed.

10 And further the record as to indictment 129 that on the 27th of December, 1915, a jury was struck, and that the 17th day of January, 1916, was the day set for the trial of that cause; that on the 17th day of January at this court house a jury convened for the purposes of the trial of the case.

MR. LANE: Does that appear by the record, Mr. Vickers?

Mr. Vickers whispers to Mr. Lane.

MR. VICKERS: Now the trial book.

MR. LANE: I thought there was some question about that.

20 MR. VICKERS: I will have to prove it. I do not know.

I offer to prove that the jury was in court, and that on the 17th of January—and that the case was set for trial, and that indictment—(the other indictment now; I do not suppose it is important) that indictment 129 was on for trial and the jury in court. I think the court will take judicial notice of that fact without proof on the subject. It is a fact that appears to the respondents by the testimony and the proceedings adduced.

30

MR. LANE: Well, I object, if your Honors please, at this time to the prosecutor referring in any wise to the testimony which has been previously taken in this case or in relying upon it in any way.

MR. VICKERS: I offer the record.

MR. JUSTICE SWAYZE: One moment. Do I understand Col. Vickers to offer the testimony taken in this matter?

40 MR. VICKERS: No.

*Colloquy.*

THE COURT: I did not so understand.

MR. LANE: Referring to it as having been taken, as I understand it.

MR. VICKERS: I say they have notice of the fact to know that the case was on for trial, and this examination arose out of a motion to adjourn the case.

MR. LANE: You see they are--

MR. JUSTICE SWAYZE: The object being, I suppose, to show that a case was then pending? 10

MR. VICKERS: Then pending.

MR. JUSTICE SWAYZE: Which might be affected by the alleged proceedings of the respondent.

MR. VICKERS: Of the respondent, other than the—

The Judges confer.

MR. JUSTICE SWAYZE: We decline to receive it, if there be any such offer, for the purpose of using it as evidence of what was sworn to in any preliminary hearing. We admit this evidence for the purpose of showing that a trial of the indictment was pending. 20

MR. LANE: So far as everything that Col. Vickers said, I will admit the facts, except that the case was actually set for trial, or a hearing upon the 17th of January. I think as to that fact there is some question. I also want to note, if your Honor will permit me, upon the record that in proceeding in this trial and making the admissions on this kind of evidence I do it over the overruling by your Honors of the objections which I made, because I do not want to put myself in the position which counsel got in in the matter of *In re Cheeseman*. 30

MR. JUSTICE SWAYZE: You must take the situation as it stands. The record will show what you say. 40

*Colloquy.*

MR. VICKERS: Offer the record of 127, *State vs. Percy Hopkins*, which shows that case was on this same day, the 17th day of November, on trial. That is the other case which was on trial with 129, according to the court's calendar.

10 MR. LANE (whispering to Mr. Vickers): This is the record here? That is the item? January 12, case set off to January 17th.

MR. JUSTICE SWAYZE: There seems to be no objection. The evidence will be received.

MR. VICKERS: There is no necessity of marking the indictments?

MR. JUSTICE SWAYZE: Is it desirable, Mr. Lane, that these indictments should be marked? Do not want to deface public records in any way. No need of marking them. The proof will be sufficient identification.

20 MR. VICKERS: Offer the rule to show cause with its return. I mean the proof of the service of the rule. It is part of the records, and we desire to show on the record that it is brought into court.

MR. LANE: That is objected to, if your Honors please, upon the sole grounds that I have made in the motion to quash, as beyond the power of the court to make.

30 MR. JUSTICE SWAYZE: We see no objection to receiving this proof.

MR. LANE: Your Honor note an objection?

MR. JUSTICE SWAYZE: For any purposes for which it is legally competent.

MR. McCARTER: Yes.

MR. VICKERS: Mr. Byrne, be sworn.

*John Francis Byrne—Direct.*

JOHN FRANCIS BYRNE, called.

MR. EDWARDS: Before Mr. Byrne is sworn I desire to call your attention to the position he is in. Mr. Byrne is a reporter of the Hudson Dispatch, and by giving this testimony he may make himself open to punishment for contempt or some criminal action. He should not be asked to incriminate himself. I have no objection at all to Mr. Byrne—neither has Mr. Byrne any objection at all to the testimony. I think there ought to be some immunity granted him if he does testify. 10

MR. JUSTICE SWAYZE: Well, we do not see that we have anything at present to rule upon, Mr. Edwards.

MR. EDWARDS: I only want—

THE COURT: We have your idea lodged in our mind. 20

Witness sworn.

DIRECT EXAMINATION BY MR. VICKERS:

Q. Mr. Byrne, you reside in this county? A. Yes, sir.

Q. Your occupation is what? A. I am a reporter.

Q. For what paper in this county? A. For the Hudson Dispatch at the Court House, for the Bayonne Times at the Court House, and for the Sunday Inquirer for the whole of Jersey City. 30

Q. I show you a newspaper and ask you whether that is the Dispatch to which you refer for which you are reporter? A. Yes, sir.

Q. I call your attention to an item in the Dispatch under date of Monday morning, January 17, 1916, headed, "To urge deferring of trials pending impeachment charge," and ask you whether you wrote that article? 40

*John Francis Byrne—Direct.*

MR. EDWARDS: I object on the ground— on behalf of the witness, on the ground which I stated, to wit—

The Judges confer.

MR. JUSTICE SWAYZE: We overrule the objection.

10 MR. EDWARDS: May I put it in better form? I object on the ground that the witness—that the testimony—as I understand the witness claims that by testifying he may render himself liable to prosecution.

MR. MCCARTER: He hasn't made—

MR. VICKERS: I object to that on the ground that there is no such claim made.

MR. EDWARDS: I understand that Mr. Byrne has requested me to make such a claim.

MR. BYRNE: That is so.

20 MR. EDWARDS: What say?

MR. BYRNE: That is so.

MR. JUSTICE SWAYZE: We adhere to our ruling.

MR. EDWARDS: Exception.

MR. JUSTICE SWAYZE: We think he must answer.

MR. EDWARDS: Note an exception. Does the exception extend to all of the testimony?

30 MR. JUSTICE SWAYZE: The record will show what takes place. You must protect the interests of your client.

MR. EDWARDS: I do not want to encumber the record by constant objection.

MR. JUSTICE SWAYZE: I do not know what may be necessary.

MR. EDWARDS: Well—

MR. JUSTICE SWAYZE: I know the short cuts often prove very long roads.

MR. EDWARDS: I understand that, but I

*John Francis Byrne—Direct.*

do not want—there is no disposition on the part of the—

MR. JUSTICE SWAYZE: I understand that.

MR. EDWARDS: —the Dispatch or Ivins to embarrass this hearing or to raise any technicality whatever except such as we think are necessary to protect ourselves afterwards fairly. We want him to tell the fact.

MR. JUSTICE SWAYZE: You better make 10  
your objections in the regular way. There is no need for re-arguing the matter. We will rule and you will have the benefit of any error we commit.

Question repeated.

A. I wrote part of the article.

Q. Calling your attention to this part of the article: "Richard Doherty, counsel for Samuel Smith in his trial last week and also counsel for William P. Verdon of Hoboken, whenever the leader needs legal aid, will appear at the Court House in Jersey City this morning to make a motion before Judge Tennant that the trials of Mr. Smith, of Percy Hopkins and Edward Costello be deferred on the ground that his clients are to appear later in the day before a court of impeachment at Trenton to lay before such court such matters in connection with the conduct of the Smith trial last week as they believe to have been improper, to the end that the impeachment of Judge Tennant and Prosecutor Hudspeth will be urged." Such part of that article as I have read to you, did you write? 20 30

MR. EDWARDS: Same objection.

MR. JUSTICE SWAYZE: We overruled the objection.

MR. EDWARDS: On behalf of the witness.

MR. JUSTICE SWAYZE: We overruled the objection. 40

A. No, sir.

*John Francis Byrne—Direct.*

Q. Did not write that? A. No, sir.

Q. "Mr. Doherty will contend at the Court House that the trials should not proceed until the charges to be made before the court of impeachment at Trenton are disposed of." Did you write that? A. No, sir.

MR. EDWARDS: Same objection.

10 THE COURT: Yes; the same ruling.

Q. Will you point out what part of the article you did write? A. Shall I mark the paper?

MR. EDWARDS: I make the same objection to that question on behalf—

MR. JUSTICE SWAYZE: Same ruling.

Witness reads newspaper article to himself.

20 A. All below that mark is mine with the exception of minor corrections.

Q. All below the mark on the paper just over the sub-heading "Proceedings to-day" written by the witness. Do you know who wrote the balance of the article? A. I do not.

Q. From whom did you get the information contained in the article which you say you did write?

MR. LANE: I object on behalf of the respondent Verdon, upon the ground that it calls for a conclusion of the witness.

30 MR. EDWARDS: I make the same objection.

MR. JUSTICE SWAYZE: We overrule the objection.

MR. EDWARDS: I make the same objection on the ground the witness—

THE COURT: We overrule the objection.

A. I had an interview with Mr. William P. Verdon and as a result of that interview I included what I gathered from the interview in that article.

40 MR. LANE: I move—

*John Francis Byrne—Direct.*

Q. And all of the matter contained in the article which you say is of your writing is information gathered from Mr. Verdon, is it?

MR. LANE: Objected to as leading and not the witness' testimony.

MR. EDWARDS: We make the same objection as to the witness testifying, on the ground it incriminates himself.

MR. JUSTICE SWAYZE: We overrule Mr. Edwards' motion. I think that Mr. Lane's objection is good. He says it is leading. I think it is leading, don't you? We think it is leading, Mr. Vickers. 10

Q. Was all of the information contained in the article in question below the line which you have indicated as beginning your article obtained by you from Mr. Verdon or was it obtained from other sources? 20

MR. LANE: I object on the same ground.

MR. EDWARDS: Same objection.

MR. LANE: On the ground it calls for the conclusion of the witness.

THE COURT: We overrule both these objections.

A. Well, in that case I must reply that although Mr. Verdon gave me this information he also showed me a scrap book to bring me up to the point where the interview began which contained clippings from other local newspapers, and most of this information had already been printed in those newspapers. 30

Q. This interview took place when? A. On Saturday afternoon.

MR. EDWARDS: This last week.

A. Last week.

Q. On the 15th day of January; is that right? 40

A. Yes, sir.

*John Francis Byrne—Direct.*

Q. Where was the interview? A. At Mr. Verdon's residence in Hoboken.

Q. How did you come to go there? A. I was assigned to interview Mr. Verdon.

Q. By whom? A. By my editor, Mr. Ivins.

Q. That is Mr. Haddon Ivins, the respondent to this rule? A. Yes, sir. I think I should say there that I was first assigned to interview Mr. Doherty,  
 10 but when I called up and told Mr. Ivins that was impossible and suggested I interview Mr. Verdon, that Mr. Ivins then told me to interview Mr. Verdon.

Q. Were you assigned to interview Mr. Doherty for the same purpose that you were assigned to interview Mr. Verdon? On the same subject, I mean. A. I was assigned to interview Mr. Doherty to find out what was new in this particular case, which has attracted a great deal of attention.

20 Q. You mean the Smith case? A. The Smith case.

Q. Now, will you repeat what Mr. Verdon said to you at this time of this interview on the 15th of January?

MR. EDWARDS: I make the same objection on behalf of the witness and move that be extended to this conversation.

THE COURT: Yes.

30 A. Will I repeat what Mr. Verdon said to me from memory?

Q. Can you? A. Two hours and a quarter conversation? I can not.

Q. Was it two hours and a quarter? A. It was less than two hours and a quarter, but over two hours.

Q. By reference to the paper and having in mind your testimony as to minor corrections, will you point out any part of this article that you have  
 40 identified as yours which Mr. Verdon did not give you?

*John Francis Byrne—Direct.*

MR. LANE: I object to that upon the ground that it calls for the conclusion of the witness, and it is not accurately stated from his testimony. You can not get it in in that all-conclusive way.

A. That is a very difficult—

THE COURT: We overrule the objection.

A. I say it is a very difficult thing to do, because I go there and put questions to the man and he answers me and I gather my impressions from that. Wherein I quote him directly, with quotation marks, it is to be assumed, of course, that he said everything that is said there. But in the other part of the article, to say that every idea, every thought contained in this article was obtained from Mr. Verdon—it is impossible to say that; because something might be retained in my mind from the Smith trial. It does not purport to quote Mr. Verdon from beginning to end.

Q. Does the article correctly state the substance of the information given to you with regard to a proposed course of conduct against the judge of the Court of Quarter Sessions?

MR. EDWARDS: May it please the Court, I make that objection; I think the Court should instruct the witness that he is not required to answer in case these answers will incriminate him.

Q. (Repeated by the stenographer.) Does the article correctly state the substance of the information given to you with regard to a proposed course of conduct against the judge of the Court of Quarter Sessions?

MR. LANE: I also object on the ground that it calls for a conclusion of the witness.

*John Francis Byrne—Direct.*

THE COURT: We overrule the objection.

MR. LANE: Objection.

THE COURT: It will appear on the record.

10 Q. (Repeated by the stenographer.) Does the article correctly state the substance of the information given to you with regard to a proposed course of conduct against the judge of the Court of Quarter Sessions? A. The article or facts in the case from beginning to end.

Q. By the facts in the case you mean the information which Mr. Verdon gave to you; is that it?

MR. EDWARDS: I ask the same instruction from the Court.

THE COURT: We decline to give the instruction.

MR. EDWARDS: I ask an objection.

20 THE COURT: It will appear on the record that you objected.

A. Necessarily what I say about the application at Trenton I gathered from what Mr. Verdon told me.

Q. Well, it is not a question of whether you gathered. I want to know whether that truthfully reports the situation that the—or information that Mr. Verdon gave you. A. I told you that it does truthfully report the information that Mr. Verdon gave me.

30 Q. What did Mr. Verdon tell you with regard to going down to Trenton and also with regard to a motion to be made in the Court of Quarter Sessions on Monday, the 17th, with respect to the case of the State against Hopkins, Costello and Smith? A. He told me that he intended to go to Trenton on Monday.

Q. That he did? A. Exactly.

Q. That Mr. Verdon— A. (Interrupting) Yes.

40 Q. Go ahead. A. He told me also, when I asked

*John Francis Byrne—Direct.*

nim, that Mr. Doherty would move for a postponement of the trials.

Q. And the reasons, if any were given? A. As I recall it, he said the reasons were that these impeachment proceedings would be brought.

Q. And the impeachment proceedings against whom? A. Judge George G. Tennant of the Court of Common Pleas.

Q. Anyone else? A. And the Prosecutor. 10

Q. Robert S. Hudspeth? A. Robert S. Hudspeth, of Hudson County; and Assistant Prosecutor George T. Vickers—

Q. Were going to impeach me, too, were you? A. —and James W. McCarthy, of Hudson County.

Q. And did Mr. Verdon tell you who was going down to proceed with this impeachment? A. Yes.

Q. Who? Did he tell you? A. Himself.

Q. He himself was going to do it? So much of the article that refers to—withdraw the question. 20

Mr. Vickers refers to the newspaper formerly examined by the witness.

Q. Now, with the information which you got from Mr. Verdon, what did you do with that?

Mr. Hudspeth examines the same paper.

A. What did I do with it?

Q. Yes. A. Well, it isn't a commodity that you carry away in a sack. 30

Q. Beg pardon? A. I don't understand you.

Q. Yes, you do know what I want, and I don't want any facetiousness about it. What did you do after you saw Mr. Verdon and got this information?

MR. EDWARDS: I make the same objection and ask the same instructions.

THE COURT: We decline to make the instruction, and we overrule the objection. 40

*John Francis Byrne—Direct.*

THE WITNESS: Can I have that question?

Q. (Repeated by the stenographer.) What did you do after you saw Mr. Verdon and got this information? A. I went home and wrote the story.

Q. Having proceeded that far what did you do with the story that you had written? A. Gave it to a messenger boy.

10 MR. EDWARDS: I make the same objection and ask for the same instruction.

THE COURT: We decline to give the instruction and overrule your objection.

MR. EDWARDS: I do not want to interrupt, but right here I think this is important.

THE COURT: Yes; you must protect your client's case.

Q. (Repeated by the stenographer.) Gave it to a messenger boy. (Witness continues.) He took it  
20 to Union Hill.

Q. Where in Union Hill did you direct it to be taken?

MR. EDWARDS: I make the same objection and make the same request.

THE COURT: Same ruling.

A. 509 Lewis Street.

Q. And that is what? A. The Dispatch Printing Company's office.

30 Q. That is your home office—of the newspaper?

A. Yes, sir.

Q. Having sent that to the office of the company, to whom would it go? To whom did you direct it, if any person, in the office? A. It would naturally go to Mr. Ivins, but it might be opened by any one of the desk men.

MR. VICKERS: I am not certain whether I have asked or not—

*John Francis Byrne—Direct.*

Q. What did Mr. Verdon say that Mr. Doherty was going to do on Monday?

MR. VICKERS: My impression is I have already covered it, but—

A. He said he would appear in court and ask for a postponement of the trials.

Q. And Mr. Doherty referred to in your article is the same man who appeared to make the motion for an adjournment then? A. That is so; yes. 10

MR. VICKERS: I think I asked him whether the reasons Mr. Doherty would give then were assigned.

JUDGE SULLIVAN: I don't think that question was asked.

MR. VICKERS: With the Court's permission I will ask it.

Q. What did Mr. Verdon say Mr. Doherty would urge as a reason for the adjournment on Monday, the 17th, if anything? 20

MR. EDWARDS: I make the same objection and ask the same instruction.

THE COURT: Same ruling.

A. Why, the best of my recollection, it was that these impeachment proceedings were to be begun.

MR. VICKERS: That is all.

MR. EDWARDS: We have no questions. 30

MR. VICKERS: Mr. Lane, any questions?

MR. LANE: No.

Witness excused.

*Richard Doherty—Direct.*

RICHARD DOHERTY, sworn.

DIRECT EXAMINATION BY MR. VICKERS:

Q. Mr. Doherty, you are attorney and counsellor at law of the State of New Jersey? A. Yes, sir.

Q. I show you a copy of the Despatch of January 17, 1916, and call your attention to an article which speaks of certain impeachment proceedings to be brought, and mentions your name, and ask you whether you gave to Mr. Verdon the information that on Monday, the 17th of January, 1916, you would appear in the Court of Quarter Sessions before Judge Tennant and there move for the adjournment of certain cases or case known as the State against Smith, for the reasons that you were about to go to Trenton to the Legislature, court of impeachment, and ask for the impeachment of the Court and the Prosecutor of the Pleas? A. I did not give Mr. Verdon that information.

THE WITNESS: Am I needed further, gentlemen?

MR. EDWARDS: You are not through yet, Mr. Doherty. Don't be impatient.

Q. Mr. Doherty, you were Mr. Smith's attorney—Samuel Smith's attorney, in the State against Smith, Samuel Smith? A. Yes, sir.

Q. And on Monday, the 17th of January, you did appear and make a motion to adjourn the trial of the case then pending? A. I will not say that.

MR. EDWARDS: What is that?

A. I won't say that I did.

Q. In the case of the State against Percy A. Hopkins, Samuel Smith and Edward Costello, did you make a motion to adjourn the case? A. I would not term it a motion to adjourn.

MR. VICKERS: That is all.

*Richard Doherty—Direct.*

BY MR. EDWARDS:

Q. Now, what was the condition of those cases on that day—

MR. VICKERS: I object to it as immaterial, incompetent and irrelevant—what the condition of the cases was.

THE COURT: You may answer the question.

A. At the time when the juries were struck in the case of the State against Smith and Mulcahey, also in the case of the State against Hopkins, Smith and Costello, and likewise in the case of the State against Hopkins, Judge Tennant fixed days for the respective trials of those indictments. The trial of the case of the State against Hopkins was fixed by him for January 12th, and he fixed the trial of the case of the State against Hopkins Costello and Smith for January 17th. On January 12th, when the case of the State against Hopkins would have been tried by the provisions of that pronouncement, we were engaged in trying the case of the State against Smith and Mulcahey. He had to start that trial. The matter of the Hopkins case coming up that day was discussed between the prosecutor and Mr. Lichtenstein and myself on the other side, and it was agreed and thoroughly understood that the case of State against Hopkins would be tried on Monday, January 17th, and that the State against Smith, Costello and Hopkins would not be tried that day.

THE COURT: May I interrupt just a minute. Is Justice Minturn here, does anyone know? If there are any counsel here who have motions to make, Judge Minturn will hear them. Justice Parker is ill and cannot come. I cannot hear them for very obvious reasons.

Q. When you appeared in the case of the State

*Richard Doherty—Direct.*

against Hopkins—were you counsel in that case?

A. No; Mr. Lichtenstein alone.

Q. All of this question of the possible impeachment proceedings came out publicly, did it not—publicly in the Smith trial? A. Yes; it was published in papers on Saturday.

Q. (Repeated by the stenographer.) All of this question of the possible impeachment proceedings  
10 came out publicly—

Q. (Interrupting.) The facts.

MR. VICKERS: I think facts ought to be overruled.

THE COURT: Overruled, Mr. Edwards. I do not see how the witness can possibly testify whether all the facts came out.

MR. EDWARDS: That is all.

BY MR. VICKERS:

20 Q. There was no order entered or motion made to adjourn the Hopkins-Costello and Smith case at the time you have referred to? A. You mean when the matter—

Q. (Interrupting.) Was discussed, as you say, or understood? A. No; it was what I would call an oral stipulation between counsel on either side, but in front of the bar of the court.

Q. There was a struck jury in that case and the 17th day had been set for the day of trial; is that  
30 right? A. On the day when the jury was struck Judge Tennant announced that the trial would be called on the 17th.

THE COURT: That is the Smith, Hopkins and Costello case?

MR. VICKERS: Yes.

MR. EDWARDS: In which he was not engaged.

MR. VICKERS: Yes; he was.

*Richard Doherty—Direct.*

THE COURT: Yes. You were in the Smith, Costello and Hopkins case?

A. Yes, sir.

Q. The reason that you won't call that a motion to adjourn, you say, is because you desire to tell this story about the alleged oral stipulation; is that right? A. No. I say it in the interest of strict accuracy.

10

Q. Strict accuracy, yes. Well, then, in the interest of strict accuracy, when you told Judge Tennant at the time of adjournment that this was the only ground that you urged for the adjournment, you didn't mean an adjournment? Did you? A. I regarded that as being more of a protest.

Q. Oh! But when Judge Tennant asked you: "Mr. Doherty, because you have not a written transcript"—you having assigned that—"that is the only reason that you are urging for this adjournment," you thought the Court meant a protest; is that right, in strict accuracy? A. I don't recall Judge Tennant asking me any such question.

20

Q. You know that the jury in the case of the State against Hopkins, Costello and Smith was then in the court room, did you not? A. Yes; they were.

Q. When the Prosecutor of the Pleas moved the case of the State against Hopkins, Costello and Smith you did ask that it go over to another day, did you not? A. No; not that way. The defendants were called and Mr. Smith did not respond, and I explained his absence to Judge Tennant, that he was absent because of the understanding that the case would not be called to trial that day.

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Q. You were then present and consented to the adjourned day then fixed by the Court; isn't that so? A. Why, yes. I came to court for the primary purpose of ascertaining when that case would be

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*Colloquy.*

called to trial, my knowledge being that it would not be called to trial that day, and I have no information when it would be. I was anxious to have any day fixed for it—or satisfied to have any day fixed for the trial.

MR. EDWARDS: No further questions.

Witness excused.

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WILLIAM REUBEL, sworn.

MR. EDWARDS: May it please the Court, so far as Ivins and the Hudson County Despatch are concerned, there is no need of proving the publication of the paper, the printing or anything of that kind.

THE COURT: Is that what you want to prove by this witness?

20

MR. VICKERS: The publication of the paper.

THE COURT: Do I understand Mr. Edwards admits that this newspaper—

MR. EDWARDS: —is published by the Despatch Company and Mr. Ivins is the editor of it; and that it circulates in Hudson County.

THE COURT: All right.

MR. VICKERS: I think Mr. Lane does not admit that which is very important.

30

MR. LANE: I admit it subject to the protest I have already made against proceeding in this way. I do not want to put the State to the trouble of proving an obvious fact.

THE COURT: You may decide whether you will take that admission or not Mr. Vickers.

MR. VICKERS: I will take that admission, if there is no other objection than that.

THE COURT: Very well.

MR. VICKERS: We offer in evidence copy of the paper, The Hudson Dispatch, of Monday

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*Colloquy.*

morning, January 17, 1916, already referred to.

MR. JUSTICE SWAYZE: Has the date of the publication been proved?

MR. VICKERS: The 17th.

MR. JUSTICE SWAYZE: It is admitted, is it?

MR. EDWARDS: It is admitted. I have admitted it. I admit that it is a paper of large and extensive and growing circulation, and that it is owned by this corporation. 10

MR. HUDSPETH: And it sells for one cent.

MR. EDWARDS: It sells for one cent, but is worth more.

MR. JUSTICE SWAYZE: Anything further?

MR. VICKERS: That is all.

MR. LANE: So far as the defendant, William P. Verdon, is concerned, I now move for the discharge of the rule to show cause upon the same grounds I made at the opening of the case; and if your Honor overrule me, then under protest I ask for the discharge of the rule to show cause on the ground that nothing has been shown in the case now that would warrant a writ of attachment for contempt. So far, at this time, I have considered it as an application for a writ of attachment. 20

MR. JUSTICE SWAYZE: You have your motion. We will overrule the motion.

MR. LANE: The defendant, William P. Verdon, then elects, if your Honor please to remain mute. 30

MR. EDWARDS: I call Mr. Ivans.

MR. LANE: I want to say—except that we now offer to purge ourselves, or to attempt to purge ourselves of contempt of court, upon the exhibition to us of written interrogatories in accordance with the course of the common law.

MR. VICKERS: Does counsel mean now? 40

*Colloquy.*

MR. LANE: I mean in accordance with the course of the common law.

MR. JUSTICE SWAYZE: I do not see you are called upon to say anything.

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HADDON IVINS, sworn.

10 MR. EDWARDS: We desire to make a very brief statement of what we propose to prove.

MR. MCCARTER: It hardly seems to be necessary—a statement of what he proposes to prove. Let him prove it.

MR. JUSTICE SWAYZE: I think perhaps we had better hear him—in the nature of an opening.

MR. EDWARDS: That is exactly what I thought.

20 MR. LANE: In order to properly protect myself, I want to put upon the record, that so far as this case is now proceeding on the part of the respondents, the defendant, Verdon, has no part.

30 MR. EDWARDS: May it please the Court, we desire to show, as to the witness, Ivins that this trial was a matter of large public notoriety and interest throughout Hudson County, and especially in the northern part of the county, where the Dispatch is published; that in publishing these articles we simply published them as a matter of news without the slightest intention or thought of reflecting upon the Court or any of the members of the court, and without the slightest thought or intention or interfering with the administration of justice, simply publishing them as a matter of news in which the public in general was interested.

40 MR. VICKERS: May it please the Court, before this proceeds further—

*Colloquy.*

MR. EDWARDS: And also in the nature of, and as though interrogatories were here, and we were purging ourselves of the contempt.

MR. VICKERS: —counsel having stated—Mr. Lane—that so far as this case shall now proceed, the defendant William P. Verdon is considered out of this we therefore ask the Court to halt these proceedings at this time for the purpose of determining the matter against the defendant Verdon; and we move now for an attachment against Verdon on the proof submitted, he having elected to stand mute. Manifestly, he is not entitled to the benefit, could any accrue, of the case which these other respondents are now putting before the Court, and we ask the determination of that proceeding. 10

MR. JUSTICE SWAYZE: Perhaps I don't understand what you desire or what you move for? You move now for a writ of attachment; as I understand it, that is exactly what Mr. Lane desires. Of course we are not going to interfere if counsel are agreed on the procedure. 20

MR. VICKERS: We move for judgment, that this defendant be attached for the purpose of bringing him to judgment before the Court.

MR. JUSTICE SWAYZE: What is the difference between moving for a writ of attachment and moving for judgment in this proceeding? 30

MR. VICKERS: I do not move for a writ of attachment. I ask for an attachment of the defendant; he being corporeally present, here in court, there is no necessity for issuing a writ.

MR. JUSTICE SWAYZE: You mean, I suppose, and you ask us to proceed and adjudge whether he guilty or not?

MR. VICKERS: Yes. 40

*Haddon Ivins—Direct.*

THE COURT: And issue a warrant to lock him up, I suppose?

MR. VICKERS: I assume that is what the Court will do, but I don't want to suggest it in my motion.

MR. JUSTICE SWAYZE: I wouldn't assume much. I don't think we ought to pass upon the case piecemeal. We will hear the evidence.

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## DIRECT EXAMINATION BY MR. EDWARDS:

Q. Where do you reside? A. 1011 Bloomfield street, Hoboken.

Q. What is your occupation? A. Newspaper man.

Q. What position do you hold in the Hudson Dispatch? A. Managing editor.

Q. You have charge of the make-up of the paper?  
A. Well, full charge of the paper, yes.

20

Q. Your attention has been called to the article appearing in the Hudson Dispatch, set forth in the affidavit in this case the article having been published January 17, 1916. Did you have any intention in that article of interfering with the administration of justice? A. No.

Q. Did you have any intention of committing a contempt of the court or— A. No.

Q. —or did you have any intention of reflecting upon the court in that article? A. I never thought of such a thing.

30

Q. Why was that article published? A. Merely as a matter of news.

Q. Had the trial created public comment in the northern part of the county? A. Oh, yes.

Q. Was there a large interest in the trial and its outcome? A. Yes.

Q. And this was one of a series of trials, wasn't it, in which the good name of West Hoboken was involved? A. Yes.

40

*Haddon Ivins—Direct.*

MR. VICKERS: Wait a moment. I object. It contains an unwarranted assumption of fact.

MR. JUSTICE SWAYZE: Overrule the objection.

Q. Had the other newspapers in the county been commenting on this trial?

MR. VICKERS: I object. 10

MR. EDWARDS: We have the newspapers here.

MR. VICKERS: So have we.

MR. JUSTICE SWAYZE: Overrule the objection.

Q. Had the other newspapers in the county been commenting on this trial? A. Yes, all the newspapers had been carrying the story of it.

Q. Did you give—do you remember giving instructions to Mr. Byrne to look this matter up? 20  
A. On Saturday afternoon, yes.

Q. Were they general instructions, or were they instructions of any phase of the case? A. Entirely general. After the evening papers came out he called me up and asked, what about the case?  
BY MR. VICKERS:

Q. Byrne? A. Byrne, yes.

Q. This was within his particular province, wasn't it—court house work? A. Yes.

Q. Was that a common occurrence to call you up and ask you what fields he should cover from day to day? A. Yes. 30

Q. What did you tell him? A. I told him to look out for the court house end. I think he said there had been a conference at the court house. I told him to look out for that end, and see Mr. Doherty and Mr. Verdon and see if there was anything new in the case.

Q. Did you know Mr. Smith, the defendant in this case? A. No, I do not know Mr. Smith. 40

*Haddon Ivins—Cross.*

Q. Have any interest in him whatever? A. No.

Q. Or any—were you acquainted with—you knew of the judge and the prosecutor? A. What is that?

Q. Judge Tennant and Prosecutor Robert S. Hudspeth? A. I know them?

Q. Yes? A. Yes, I have met them.

Q. Had you any desire or intention of intimating  
10 or holding them up to contempt in any way? A. Absolutely not.

Q. Then you published this in the ordinary course of the paper as a news item? A. Strictly as a news item.

## CROSS EXAMINATION BY MR. VICKERS:

Q. You didn't consider whether this would hold  
the Court or the Prosecutor of the Pleas up to  
contempt in the performance of their official duties  
20 when you concluded that this was proper news  
matter, did you? A. Why, no, I must say it didn't  
enter my mind it would interfere with the course  
of justice.

Q. The conference at the court house you have  
referred to; what was that? A. I don't know.  
I think Mr. Byrne said that he had either heard  
of a conference—and that I said, "Look out for  
that end—cover all ends of the story, get a com-  
plete story on it."  
30

Q. The information which you published in the  
paper, this article of the 17th, you received from  
Mr. Byrne, did you? A. From Mr. Byrne, yes.

Q. And you directed that Mr. Byrne go and  
interview Mr. Verdon for the purposes—the pur-  
pose of getting the information regarding it? A.  
I directed him to see all parties involved which  
is the custom in all stories.

Q. The circulation of this paper is throughout  
the county, is it not? A. Yes. I have nothing to  
40 do with the circulation.

*Haddon Ivins—Re-Direct.*

Q. And you saw this article before it was finally published, didn't you? A. Yes.

## RE-DIRECT EXAMINATION BY MR. EDWARDS:

Q. Do you know Mr. Byrne as a reporter for some years? A. Yes.

Q. Has he been on your paper on occasions for some period of time? A. No, I don't think he worked for us for the past two or three months. I think that is the first time he ever worked for me. 10

Q. But you have been on other papers, where he has worked with them? A. I have known him in the newspaper way for several years. I never worked with him before.

Q. Have you found him a reliable reporter, fairly representing the news? A. Yes, I have always.

Q. That has been your experience? A. Know him as a very reliable reporter. 20

Q. Careful man? A. Very careful man.

MR. JUSTICE SWAYZE: Anything further?

MR. EDWARDS: No.

MR. JUSTICE SWAYZE: The case seems to be closed. Do counsel desire to be heard?

MR. EDWARDS: I do not think I have anything further to say, than as I have said in my opening.

MR. LANE: If the Court is going to deal with its judgment, at the time I stated I would have no further participation in these particular proceedings, but I want the offer to appear, to purge ourselves under the law. 30

MR. JUSTICE SWAYZE: Does the Prosecutor or Mr. McCarter desire to be heard?

MR. McCARTER: In these proceedings I appear here because I was told that the Court desired it should be represented. I therefore act in a capacity somewhat different from that which I ordinarily occupy, which is that of an 40

*Colloquy.*

advocate. As a member of the Bar and of this Court, it does seem to me that the time has arrived when the Court should preserve the respect and dignity which lie at the foundation of its existence. If the proceedings are to be interrupted, if indictments that have been found and prosecution of which has been started, have to be forestalled—the trial of the indictments forestalled by threats made in advance that the judge and the prosecuting officer of this county, who are to the best of their ability administering the law, are to be impeached, if counsel are to come here and get delay, that proceedings of that kind may be published in the newspapers in advance of the time, make public declaration that proceedings of that kind are to be had, it seems to me it is time that the courts close up, and that anarchy prevail. Here is a situation of the direct import, as it seems to me as a member of this Court. I have no prejudice, no axe to grind, no fee to make, but as an officer of the Court, it impresses me that an article of this kind, inspired as this seems to be, by one of the respondents, Mr. Verdon, who is a stranger to me, and fathered by a paper of prominence in this community, exercising an influence—that such an article should have been permitted to have been published which says, and intimates more than it says, that the prosecuting attorney of this county, and the judge who presides over the Court of Quarter Sessions on this county, are guilty in the prosecution of their office of crimes of the type which calls for their impeachment of high misdemeanor, of the very worst character of crimes, that the newspapers and men, however great their political power or

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*Colloquy.*

influence, should be made to feel that the time has come when this kind of thing should stop. As I read that article it is an attempt to interfere with the due administration of justice. It is an attempt to terrorize the Court and the prosecuting attorney. It is an attempt to make them pause in the administration of their duties, in order that they may be thereby—shall I say persuaded 10 or bull-dozed, by the threats of proceedings being taken elsewhere to impeach them for something that nobody knew better than those who made the suggestion they were as guiltless of as they were guiltless of murder. That that, without any excuse given on the part of Mr. Verdon, any suggestion made by him, any offer made to extenuate or account for his connection with this thing, it does seem to me that this Court should ad- 20 judge him guilty of contempt, and meet out such punishment as the Court feels is commensurate with the offense.

So far as the newspaper is concerned, it should be made to feel and realize that it has a great function in making public what transpires in the Court. The liberty of the press requires that court proceedings be ventilated and be made public. This court and the Hudson County Court House, are no Star 30 Chambers; but to predict in advance of the progress of a cause, that it will be stayed for the reasons that this article mentions, and to publish broadcast, throughout the county, an article of this character, intimating, if not stating, that the prosecuting attorney and the judge who presides here have been guilty of such an offense that they are worthy to be impeached for their conduct in carrying on a case that just a short time before had been 40

*Colloquy.*

finished is too serious to go unnoticed, and the alleged supposition that it was only amusing news, or news that would be captivating to the community, is no excuse for it.

MR. JUSTICE SWAYZE: Let us have a copy of the newspaper article. We will consider this and reach a conclusion, I hope, very soon.

10 MR. JUSTICE SWAYZE: At the time of the publication of this newspaper article on Monday morning, cases were pending for trial in the court. It is obvious from a reading of the article that those cases, particularly at any rate the Smith and Costello case, were in the mind of the gentleman who wrote the article, the gentleman who was responsible for its publication, and the gentleman who furnished the information. That being so, the article  
20 could have been published for only one purpose, and that purpose must have been either to attempt to terrorize the Court and the Prosecutor or to influence the conduct of the jurors. An attempt of that kind is as gross a contempt of court as I can imagine; and it is not a question of the personal feeling of any judge, for I think we all have overlooked personal attacks upon us—that we cannot consider at all—for when an attempt is made to prevent the proper administration of justice,  
30 we should fail absolutely in our duty if we did not take notice of it.

So far as the Dispatch Printing Company is concerned, I suppose the gentlemen who were responsible for that publication thought they were publishing news. If the publication had been on Tuesday morning, after a resolution had been introduced in the House of Assembly, if that publication had consisted of the affidavit on which the resolution was  
40 founded, and the resolution itself, it would

*Colloquy.*

have been news, but to publish a mere threat by a party apparently interested in a pending cause, of impeachment of a judge and the prosecutor, and to publish it upon grounds that no sensible man could have thought would have justified impeachment, I think renders the newspaper that publishes it guilty of a contempt of the court. The charge in the article—the alleged charge—was that a judge 10 of the court, or perhaps two judges—I don't know who sat—received an indictment handed up by the grand jury, which had never been found. I don't know what a judge is to do—the grand jury comes into court, and is asked if they have any bills, they hand up bills, they are asked if they found them to be true bills, the foreman then says, "Yes," and the foreman endorses each bill as a true bill; the judge 20 would be derelict in his duty if he failed to receive the bills the grand jury hands to him. And the gentlemen who published this article in the newspaper, if they didn't know that, didn't know something which it seems to me everybody, even grown men, ought to know. That being so, we cannot avoid finding the Dispatch Printing Compay guilty of a contempt of Court.

I am sorry to say that we feel also constrained to reach the same result as to Mr. 30 Ivins. Mr. Ivins went further than to merely publish what the reporter sent in to him. He edited it, he or somebody by his direction, because he seems to have been responsible, added to it not only the headlines, but statements above the point indicated by Mr. Byrne. We think that was such a participation in this matter as to make Mr. Ivins guilty of a contempt.

*Colloquy.*

It cannot be said that the Dispatch Printing Company and Mr. Ivins did not have an intent. Perhaps they had no actually formed intent in their minds, but the law is not so impotent that men cannot be held accountable for their acts. I am merely saying they had formed no intent. They intend the consequences of their acts. They intend to do what they do. And in this case we think that was an attempt to influence the administration of justice. We do not propose to county for the old-fashioned trial by jury, under the administration, under the direction, of the judge, trial by newspaper.

As to Mr. Verdon the case is very much plainer. He seems to have been interested in one, at least, of the defendants about to be tried. He gave information to Mr. Byrne, when he must have known that that information would be published.

We think that he intended that it should be published. We look on him as having instigated the publication and as being primarily responsible for it. Of course he did it for only one purpose. That I have already suggested. The very time of the publication of this article is sufficient to show what his object was. The trial the previous week, it is said by one of the witnesses, had been the subject of newspaper comment. There was no reason for this publication on Monday morning except to influence the jury or the Court and prosecutor in the trial that was set for that very day. We therefore find Mr. Verdon guilty of a contempt of court.

Before we proceed to pass judgment, if counsel desire to be heard on the subject we will hear them.

*Colloquy.*

MR. LANE: As to the amount of the fine or imprisonment?

MR. JUSTICE SWAYZE: As to what the punishment should be.

MR. EDWARDS: I have only this to say on behalf of Mr. Ivins and the paper, we claim that we acted in good faith thinking that this was an article on a matter of general notoriety and also a matter in which the public was interested, and we published it without any intention, even legal intention, of interfering with the administration of justice. It may have been a mistake on their part. It appears that Mr. Byrne was a reporter of good standing and a careful man, and there is not any question in the case but what they published was what Mr. Verdon and these other people told him. Now of course if they anticipated what was to be done, or even anticipated the news that became public next day, as far as the administration of justice was concerned it was only, if interfered with at all, upon that one day, because as a matter of fact, the application was made to the judiciary committee, or at least to the Assembly, and the resolution put in and referred to the judiciary committee. I do not know that that is a matter of proof, but it is a matter we all know about and which we think is proper to bring to the attention of the Court. Now Mr. Ivins is a man working on a salary for this newspaper. He was, in a measure, compelled to publish such news items as came to him. As he said, it never entered his head that he was interfering with the administration of justice, and it seems to us it is a long cry to make that—although we, of course, bend to the will of the Court. We think this adjudi-

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*Colloquy.*

10 cation of the Court will be a lesson in this community, and we do not think the ends of justice would be at all advanced by imposing on Mr. Ivins a large fine, or the Hudson Dispatch a large fine. Your Honor must remember this was a matter of great interest in the community, and the newspapers were—and they were in the interest of purity in the community—taking an interest in this case, trying to bring out all the facts. Therefore I think a nominal fine as against Mr. Ivins and as against the Hudson Dispatch would meet all the ends of justice.

20 MR. LANE: If your Honors please the respondents are called to the bar of the Court now for judgment. I suppose in the interests of my client I ought to again note the same objections that I made in the course of the procedure, that have already been noted throughout the trial.

MR. EDWARDS: I would like also—

THE COURT: It may appear on the record.

30 MR. EDWARDS: —to add this one word. I think we have been very frank in this case. We have not attempted in anywise to obstruct the courts of justice. My objection and intimation as to Mr. Byrne was simply to protect the reporter in what I conceive to be his legal rights in the subject, and I have—or we have, by putting Mr. Ivins on the stand, so far as we could, followed the old practice of purging, and we think that we did that in the language of the very cases—we have looked at them carefully, and put in the proofs in view of the decisions in this jurisdiction and others, and I think we should have due advantage taken of that fact.

40 MR. JUSTICE SWAYZE: We agree with Mr.

*Colloquy.*

Edwards that the punishment in the case of Mr. Ivins ought to be light. We think that he may have been misled—thoughtless, as any of us are; his misfortune was that he had too ready access to the columns of the newspaper.

MR. EDWARDS: In the rush of business.

MR. JUSTICE SWAYZE: We think in his case—

Mr. Ivins must come to the bar. 10

Mr. Ivins stood at the bar for sentence.

MR. JUSTICE SWAYZE: The sentence of the Court, Mr. Ivins, on this conviction is that you pay a fine of ten dollars and stand committed until the fine is paid.

As far as the Dispatch Printing Company is concerned the case is different. That company published the article for profit in order to sell its newspapers. I dare say it has made money out of it. We do not propose to impose such a fine as will seem that a newspaper can do this sort of thing and pay a license fee to the county by way of a fine for contempt. The amount has given us very considerable pause. We have no desire to be over severe and yet we must be severe enough to let the newspapers know that this sort of thing must stop. We have reached the conclusion that a fine of two hundred and fifty dollars in the case of the Dispatch Printing Company would suffice for that purpose in this case; but we do not mean to say that that fine might not be made greater if a case of this kind comes before us again. 20 30

In the case of Mr. Verdon—Mr. Verdon.

Mr. Verdon comes to the bar for sentence.

The sentence of the Court in this case is that you pay a fine of two hundred and fifty dollars and be committed to the county jail 40

*Colloquy.*

for the term of thirty days and from thence until the fine is paid.

MR. BOWLEY: Is Mr. Verdon in custody?

MR. JUSTICE SWAYZE: Yes; Mr. Verdon is in custody. If there is nothing further the Court will—

10 MR. LANE: If your Honors please I desire to present to your Honors now an appeal under the 138th and 139th sections of the statutes.

The Court examines statutes.

MR. JUSTICE SWAYZE: Now I will have to ask the Prosecutor to draw up for us the necessary orders.

MR. HUDSPETH: Yes.

20 MR. LANE: I ask your Honor, when your Honor has seen the statute, to fix the bond on appeal provided for. It is under the head of "Courts."

MR. JUSTICE SWAYZE: We think a bond of a thousand dollars would be enough.

30 MR. JUSTICE SWAYZE (referring to copy of a newspaper): Ought to be marked. Somebody ought to take charge of this newspaper. This is the one that Mr. Byrne marked. Let me initial that myself. "In re Verdon et als., January 22, 1916." That will identify it.

Mr. Hudspeth takes possession of the exhibit.

**Stipulation.****NEW JERSEY SUPREME COURT.**


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In the Matter  
of  
The Review of the Summary Con-  
viction for alleged Contempt of  
Court of William P. Verdon.

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It is hereby stipulated and agreed between the attorneys for the respective parties to this proceeding that the testimony taken in open Court on the 17th day of January, A. D. 1916, upon which was based the finding of facts recited in the rule to show cause, heretofore allowed in this proceeding, why the said William P. Verdon and others, should not be adjudged guilty of contempt, shall be included as a part of the return in this proceeding as being a correct record of the testimony taken on that day and of the proceedings taken in open Court.

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And it is further stipulated that if the said testimony and proceedings taken on the 17th day of January, aforesaid, be not recognized by the Supreme Court of New Jersey, as a part of the return in this proceeding, then the argument of this matter shall not be pressed until such time as an application can be made for an additional certification and an additional return including said testimony and proceedings as a part of the return herein.

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HARLAN BESSON,  
Attorney for the Petitioner.  
GEORGE T. VICKERS,  
Assistant Prosecutor of the Pleas.

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**Opinion of Supreme Court.**  
**NEW JERSEY SUPREME COURT.**

February Term, 1916.

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In the Matter

of

10 Appeal of WILLIAM P. VERDON  
from an order adjudging him  
guilty of Contempt of the Hud-  
son County Court of Quarter  
Sessions.

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Argued April 3, 1916; decided May 20, 1916.

On Appeal from a judgment of Contempt of Court.

20 This is an appeal under the provisions of the Act of April 17, 1884 (2 Comp. Stat., p. 1736) providing for the review by this Court of summary convictions for contempt.

The appellant, William P. Verdon, was by the Hudson County Court of Quarter Sessions adjudged guilty of a contempt of that court by reason of certain newspaper publications and was sentenced to pay a fine of two hundred and fifty dollars, and to serve a term of thirty days in the County Jail.

30 The proceeding, which was instituted by the Court of Quarter Sessions, resulted in the issuance by it of a rule to show cause requiring William P. Verdon and others to show cause why they should not be adjudged guilty as of a contempt of the Court of Quarter Sessions of Hudson County.

At the hearing upon the return of this rule Verdon appeared by counsel, who moved the

*Opinion.*

court to proceed against his client by the filing of interrogatories and not by the taking of testimony to try the question of contempt, citing the case of "in re Gonzales," not at that time officially reported. The motion of Verdon's counsel was overruled and witnesses were called and examined by the assistant prosecutor over the objection of counsel for Verdon, who stated that his client stood mute as to any participation in such trial, excepting to say "that we now offer to purge ourselves or to attempt to purge ourselves of contempt of court upon the exhibition to us of written interrogatories, in accordance with the course of the common law," which offer was renewed when Verdon was called to the bar of the court for judgment. At no time were interrogatories exhibited to Verdon, whose conviction of contempt rested wholly upon the testimony of witnesses. The present appeal challenges the legality of the conviction thus had.

Before Justices Garrison, Trenchard and Black.

For the appellant, Harlan Besson, Esq., Merritt Lane, Esq.

For the State, George T. Vickers, Esq.

The opinion of the court was delivered by Garrison, J.:

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 nor enlarged by statute in this State.

What the Common Law of England was at the time at which we derived it from the parent country is thus stated by Blackstone, who wrote at about that period:

"If the contempt be committed in the face of the court the offender may be instantly apprehended and imprisoned at the discretion of the judges without any further proof or

*Opinion.*

10 examination. But in matters that arise at a distance and of which the Court cannot have so perfect a knowledge unless by the confession of the party or the testimony of others, if the judges upon affidavit see sufficient ground to suspect that a contempt has been committed, they either make a rule on the suspected party to show cause why an attachment should not issue against him or in very  
 20 flagrant instances of contempt the attachment issues in the first instance, as it also does if no sufficient cause be shown to discharge; and thereupon confirms and makes absolute the original rule. This process of attachment is merely intended to bring the party into court; and when there he must either stand committed or put to bail in order to answer upon oath to such interrogatories as shall be  
 20 administered to him, for the better information of the Court with respect to the circumstances of the contempt. These interrogatories are in the nature of a charge or accusation and must by the course of the court be exhibited within the first four days and if any of the interrogatories are improper the defendant may refuse to answer it and move the court to have it struck out. If the party can clear himself upon oath he is discharged, but if perjured may be prosecuted for the perjury."

30 Blackstone then alludes to the totally different procedure in courts of equity where, "after the party in contempt has answered the interrogatories such his answer may be contradicted and disproved by affidavits of the adverse party, whereas," he continues, "in courts of law the admission of the party to purge himself by oath is more favorable to his liberty, though perhaps not less dangerous to his conscience; for, if he clears himself by his answers, the complaint is totally dismissed." This "method of examination the delinquent himself upon oath with regard to  
 40 the contempt alleged," he concludes, "has by long

*Opinion.*

and immemorial usage now become the law of the land." (4 Bl. Com., p. 287.)

This accurately states the Common Law of England just prior to the American Revolution, That this immemorial usage underwent no change in its transplanting to the American States is shown by a decision of the Supreme Court of New York while Kent was still Chief Justice. The Court said:

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"The attachment by virtue of which he had been arrested was nothing more than a process to bring him into Court to answer the interrogatories which upon the return of it were to be exhibited against him. This is necessary to be done in every case before the party can be convicted of a contempt. If the answers to the interrogatories show that no contempt has been committed, the party is entitled to his discharge; but if the contempt be admitted, the Court proceed to pronounce such judgment as the circumstances of the case may require."

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*Jackson v. Smith*, 5 Johns, p. 117.

To the same effect is the decision of all courts that proceed according to the course of the Common Law.

Before leaving the Common Law rule it may be well to advert to a matter that must occur to everyone who considers the subject, viz., the mildness, not to say ineffectiveness, of the manner in which contempts were dealt with in the law courts of England as compared with the severity of its criminal law in other respects. That this arose from any special sympathy with this particular offense is not to be thought of, on the contrary, of all criminal offenses, this is probably the very one that the judges have liked to punish in the most effective manner. The course pursued by the Common Law judges was evidently therefore not

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*Opinion.*

from choice but from compulsion and the nature and sources of such compulsion are not far to find. Contempt was a criminal offense and Magna Charta expressly forbade that any person should be tried for a criminal offense unless upon the indictment of the Grand Inquest. In the face of this prohibition there could be no trial by the court. The unwritten constitution of England

**10** likewise provided that no man could be compelled to give testimony against himself and it likewise prohibited one accused of crime from testifying in his own behalf. The net result of these fundamental restrictions was that in the summary proceedings for contempt there could be no trial and hence no witnesses, from which it followed that if the defendant was to be convicted in such summary proceeding it must be upon facts admitted by his own oath, the taking of which was justified

**20** upon the somewhat sophistical ground that the taking of such an oath by the defendant was not the giving of testimony, because if there was not trial there could be no testimony, and hence the defendant was not a witness. For present purposes the significant feature of this Common Law procedure is that it excluded the idea of a trial of the accused either by witnesses against him or by the contradiction of his oath by that of others. As well stated by a recent writer, "the Common

**30** Law mode of proceeding in cases of contempt presents no question of fact to be tried by a jury. The defendant determines by his own answer, under oath, whether he is guilty of that which is charged against them as a contempt of court, and if he fails thereby to purge himself the court may at once impose the punishment" (5 R. C. L., p. 523).

This procedure was obviously not a mere rule of convenience which the judges might follow or

*Opinion.*

not as they saw fit; on the contrary, it was a stern and substantial necessity and hence a matter of substantive law.

In this State our earlier cases prior to the enactment of the statute permitting an appeal to this court uniformly recognize this common law rule by their references to it.

*State v. Fisher*, 1 Hal., p. 305;

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*State v. Doty*, 3 Vroom, p. 403;

*State v. Ackerson*, 1 Dut., p. 109;

*State v. Clark*, 1 Dut., p. 211.

There arose, however, no occasion for its formal restatement.

However, shortly after the passage of the Act of 1884, the case *In re Cheesman* (20 Vroom, p. 115), was before this court in which Mr. Justice Dixon stating the procedure in contempt cases in the courts of law concluded by saying, "the accused, on being brought in, should be either held to bail or committed to answer interrogatories; then that the interrogatories be exhibited and answered; and thereupon according to his answers confess or deny his guilt he should be punished or discharged." Cheesman by affidavit declared the truth of the charge against him before interrogatories were filed, and they therefore were not filed and this irregularity is condoned in the opinion upon the ground that "the appellant never intimated \* \* \* that he was entitled to have an attachment issue or interrogatories filed." This opinion therefore accurately apprehends and states the common law rule that obtains in courts of law in this State. If it be said that this statement of the common law was dictum, it was, nevertheless, the considerate deliverance of a learned judge fresh from a thorough examination of the matter of which he spoke.

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*Opinion.*

Such was the state of our decisions when the case *in re Gonzales* was decided by this Court, Mr. Justice Parker delivering the opinion which the reporter informs me will appear in 88 N. J. L. In that case the answers made by Gonzales to interrogatories exhibited to him by the court were not accepted as conclusive because of a contradiction between such answers and certain testimony that had been taken by the court as the basis for the issuance of a writ of attachment. Gonzales was found guilty of contempt by the Hudson Oyer and in reversing this judgment Mr. Justice Parker said:

“On the whole, therefore, we think that appellant fully and fairly purged himself of any contempt legally implied in the interrogatories, and which was testified to by the Grand Jury Clerk. If his denial was adequate it must be taken as true. We think, therefore, that the finding that the appellant was guilty of contempt necessarily, and from a reading of the decision of the Oyer we should say confessedly, was based on the allegations in the testimony of the Grand Jury Clerk, which were contradicted by appellant, and in the face of such contradiction. But the Court has no right to weigh the evidence, as has just been pointed out. If the contradiction was full and adequate the appellant was entitled to his discharge.”

This decision, which accords full common law force to the defendant's answer to the interrogatories, cannot be reconciled with the proposition that the court may withhold the filing of interrogatories and, against the protest of the accused, proceed to convict him upon evidence that would have been both inadmissible and purgatory if the court were proceeding to exercise its summary jurisdiction in the legitimate way.

Such proposition is in effect an assertion of the

*Opinion.*

right of the Quarter Sessions to try one accused of a criminal offense at special sessions without his consent and as such is open to all of the constitutional objections pointed out by Mr. Justice Depue in *Edwards v. The State* (45 N. J. L., p. 419). In fine, the repugnancy of the common law proceedings in contempt cases to our constitutional guaranties with respect to indictment by a grand jury and to trial by a petit jury is overcome solely by the existence of such arbitrary power as part of the common law which we have inherited, but this protection would not extend to a modern departure therefrom, that at the time of its adoption did violence to these sections of our bill of rights. Excepting it keep within its common law authority no court of law in this State can summarily convict and punish for a criminal contempt any more than it could convict and punish for any other criminal offense without indictment and trial by a petit jury.

*Constitution of New Jersey, Art. 1, Sec. 9.*

*Constitution of New Jersey, Art. 1, Sec. 8.*

The unbroken line of decision by which the rule of the common law has been preserved and handed down to us coupled with the insurmountable constitutional objections to the radical departure therefrom essayed in the present case compel the reversal of the judgment now before us, unless such a result is obviated by any of the following considerations submitted in behalf of the State:

The first of these is that the common law procedure was a mere rule of practice and not one of substantive law. This has already been disposed of both upon historical and constitutional grounds.

The second is that the proceedings of courts of equity in matters of contempt being more effica-

*Opinion.*

cious than the procedure in courts of law should be adopted by the latter. This rests upon the same footing as would the contention that because specific performance was more efficacious than a judgment for damages, the courts of law should adopt the former remedy in preference to its own. The difference between courts of law and courts of equity is nothing more marked than in their methods of remedial redress, which in courts of equity were administered from the earliest period largely, if not wholly, by the process of contempt. This resulted from the fact that equity acted only *in personam*; hence, if a personal decree were not obeyed the only remedy was by a process of contempt to enforce obedience. Contempt was in fact in courts of equity what execution was in courts of law. Blackstone says, "The whole process of the courts of equity in the several stages of a cause, and finally to enforce their decrees, was, 'till the introduction of sequestration, in the nature of a process of contempt.'" Such process of contempt being thus normally a part of the remedy afforded by a court of equity to its suitors, it naturally followed that the issues of fact involved in this phase of the suit were tried as any other issues of fact were tried.

Hence, there arose a practice unknown to the courts of law, which became by long usage inveterate in the courts of equity in which it subsisted side by side with the totally different practice that we have been discussing in the courts of law during the same period. This distinction has been pointed out by every writer and by every decision dealing with the subject.

The continued maintenance of this practice in courts of equity in dealing with contempts that are in their essence not remedial but criminal, trenches upon debateable ground on which we

*Opinion.*

would not enter, first, because it in no wise concerns the question before us, and secondly because it concerns matter respecting which dictum of any sort would be ill advised. Enough has been said to show that courts of law can no more at their will adopt the chancery proceedings respecting matters of contempt than they can in any other matters respecting which the two courts radically differ. 10

Third and lastly, it is said that there are decisions in other jurisdictions holding that the court may dispense with the exhibition of interrogatories or may treat the answers thereto as inconclusive.

Such of the decisions cited as I have examined were either equity cases, or decisions of courts in which law and equity were intermingled, or else arose under constitutional or statutory alterations of the common law. If, however, it were otherwise it would not affect the question in hand, since it is not our judicial habit to ignore decisions of our own courts as to what the common law in this state is, in favor of the decisions of other states at variance therewith. 20

Finding nothing in the matters submitted for our consideration that in any wise militates against the conclusion we have reached, the judgment of the Hudson County Quarter Sessions convicting the appellant of contempt of court is reversed, and for nothing holden. 30

**Judgment of Supreme Court.****NEW JERSEY SUPREME COURT.**


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In the Matter

of

10 Appeal of WILLIAM P. VERDON  
from an order adjudging him  
guilty of Contempt of the Hud-  
son County Court of Quarter  
Sessions.

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Rule.

20 This matter having been argued before the  
court by Harlan Besson and Merritt Lane, of  
counsel with appellant, and George T. Vickers,  
Assistant Prosecutor of the Pleas of the County  
of Hudson appearing for the Court of Quarter  
Sessions of the County of Hudson, and the Court  
having considered the matter:

It is Ordered that the Judgment of the Hud-  
son County Court of Quarter Sessions convicting  
the appellant of contempt of court be reversed  
and for nothing holden, and that the record be  
remitted.

Entered June 1, 1916.

On motion of

HARLAN BESSON and MERRITT LANE,

Attorneys of Appellant.

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**Assignments of Error.****NEW JERSEY COURT OF ERRORS AND APPEALS.**


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THE ATTORNEY GENERAL, ex rel  
Hudson Quarter Sessions,

*Plaintiff-in-Error,*

*v.*

WILLIAM P. VERDON,

*Defendant-in-Error.*

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In Error  
to  
Supreme  
Court.

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Afterwards, to wit.: on the twentieth day of June, A. D. one thousand nine hundred and sixteen, in the New Jersey Court of Errors and Appeals, comes the said Attorney General, ex rel, etc., Plaintiff-in-Error as aforesaid, by George T. Vickers, Attorney, and says that in the record and proceedings aforesaid there is manifest error, to wit.:

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1. Because the Supreme Court reversed the judgment of Hudson Quarter Sessions convicting the defendant-in-error, William P. Verdon, of contempt of the said Hudson Quarter Sessions, when it should have affirmed the same.

2. Because the Supreme Court erroneously adjudged that the proceedings in the said Hudson Quarter Sessions in which the defendant-in-error was adjudged guilty of contempt of the said Hudson Quarter Sessions were improper and without basis in law, whereas the said proceedings and all things therein were properly and lawfully had.

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3. Because the Supreme Court had power lawfully and properly only to review the facts and the law of the said judgment and proceedings of the said Hudson Quarter Sessions by review in

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*Assignments of Error.*

the nature of a trial de novo and to render judgment final thereon, whereas the Supreme Court merely reversed the said judgment of the said Hudson Quarter Sessions and remitted the record thereof to the said Hudson Quarter Sessions.

GEORGE T. VICKERS,  
Atty. for Plaintiff-in-Error.

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ERROR JOINED IN COMMON FORM.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

THE ATTORNEY GENERAL, EX REL  
QUARTER SESSIONS,

*Plaintiff-in-Error,*  
*vs.*

WILLIAM P. VERDON,  
*Defendant-in-Error.*

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In Error to  
Supreme  
Court.

**BRIEF FOR PLAINTIFF IN ERROR.**

This matter comes up upon a writ of error to the Supreme Court, wherein judgment was entered reversing a conviction by the Hudson County Court of Quarter Sessions of William P. Verdon for contempt of court, and directing that the record be remitted to that court (p. 116). 20

The proceedings in the Hudson County Court of Quarter Sessions were as follows:

In the month of January, 1916, there were pending in the Hudson County Court of Quarter Sessions the trials upon two indictments theretofore found against Samuel Smith and others. The trials were of importance and had attracted a great deal of public attention. Smith had already been tried before a jury who had disagreed and been discharged. A day had been fixed for a second trial and a struck jury summoned therefor. In this situation, and while the cause was thus pending, there appeared a publication under date of January 17th, 1916, in the Hudson Dispatch a newspaper with a large circulation in Hudson County. The article in question is printed on pages 7, et seq., of the 30  
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book and there can be no question whatever that its tendency was to and it did in fact hold up the Court of Quarter Sessions and the Grand Jury of Hudson County to public contempt and ignominy and that it was intended to influence the action of that court in connection with the cases then pending before it. This article being brought to the attention of Judge Tennant then sitting in the Court of Quarter Sessions, the testimony was taken under oath of Mr. Byrne, the reporter of the Hudson Dispatch covering the court house work and of Mr. Doherty, the attorney of Smith, to whom reference is made in the publication referred to (see pages 43, et. seq.). This testimony fully established the fact of the publication and the connection of William P. Verdon therewith and upon the basis of this testimony under oath, the court directed the issuance of a rule to show cause, to be directed to the Hudson Dispatch, Haddon Ivins, the editor of the newspaper and said William P. Verdon, requiring them to show cause before the court on January 19 1916, why they should not be adjudged in contempt of court because of this publication. The rule to show cause is very complete, and contains a copy of the publication in question (see p. 6). The rule having been duly served, the respondents, including the said William P. Verdon, appeared personally in court on January 19, 1916, and entered a plea of not guilty to the charges contained in the rule (p. 15, line 20). Application was made on behalf of Mr. Verdon and the others for an adjournment of the hearing of the rule until Saturday, January 22, 1916, and the request was granted. On January 22, 1916 the hearing of the rule was taken up in the presence of all of the respondents with their respective counsel (pp. 63 et seq.). Counsel for Mr. Verdon stated that they were ready

(p. 63, line 33), and thereafter (p. 64, line 20), stated that there were preliminary motions to be made. In the first place the right of Mr. Justice Swayze and Mr. Judge Sullivan to sit with the court was challenged and in the second place, Mr. Justice Swayze was challenged because of his absence at the time the preliminary testimony was taken upon which the rule was granted. Both motions were overruled. Then followed (p. 63, line 30) a motion by counsel for Mr. Verdon to quash the rule to show cause because it required the respondents to show cause why they should not be adjudged guilty of and punished for contempt, whereas the proper practice was a rule to show cause or a notice of some kind that application would be made for a writ of attachment, and upon the further ground that no written interrogatories were being submitted to the respondents. This motion was also overruled. It was followed by other motions of a technical character (p. 68, line 26), which were overruled. These preliminary motions having been disposed of, the evidence in behalf of the state was offered, witnesses being examined and documentary proof introduced. The counsel for Mr. Verdon participated in this examination, upon various occasions offering objections, upon general grounds, to questions propounded (p. 76, line 28; p. 77, line 3; p. 79, line 1). At the conclusion of this testimony (p. 89) the application for the discharge of the rule to show cause was renewed and again denied and counsel for Mr. Verdon then stated:

“The defendant, William P. Verdon, then elects, if your Honor please, to remain mute.”

and again he said (p. 89 line 34):

“I want to say except that we now offer to purge ourselves or to attempt to purge

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ourselves of contempt of court upon the exhibition to us of written interrogatories in accordance with the course of the common law."

Thereupon Mr. Ivins took the stand in his own behalf and by his testimony under oath disclaimed any intention of contemning or reflecting upon the court in the publication of the article. At the conclusion of this testimony the court considering that the contempt had been shown as to  
 10 all of the respondents pronounced the judgment of conviction which is now in the case of Mr. Verdon the subject of review.

An appeal to the Supreme Court was immediately taken by Mr. Verdon under the provisions of the act of 1884 (Compiled Statutes of N. J., p. 1736). This act provides that every summary conviction and judgment by any court inferior in  
 20 its jurisdiction to the Supreme Court, except the Orphans' Court

"shall be reviewable both upon the law and the facts by the Supreme Court."

The second section of the act provides that the Supreme Court

"shall be invested with jurisdiction and required to re-hear the matter of contempt upon which the conviction was founded, both upon the law and upon the facts which shall  
 30 be inquired into and ascertained by depositions or any such other way or manner as the court above shall direct; and it shall be required to give such judgment in the premises as to it shall seem to be lawful and just under all the circumstances of the case to be enforced in such way and manner as it shall order and direct."

A full return of the proceedings was made by the Court of Quarter Sessions to the Supreme  
 40 Court and before the Supreme Court that return

was taken to be full, complete and accurate. No further investigation was made, nor any further testimony produced before the Supreme Court. In fact the chief ground of complaint urged in the Supreme Court against the judgment of the Court of Quarter Sessions and the one which prevailed was that interrogatories had not been propounded to the appellant and that he had not been given an opportunity to purge himself through the answers under oath to written interrogatories of the alleged contempt. No question was made but that the respondent had been in court during the entire proceedings, that he was adequately and fully advised of the nature of the charge against him and that he had ample opportunity to take the stand in his own behalf had he so desired. In fact, Mr. Ivins, another of the respondents, did take the stand, and under oath disclaimed any intentional or wilful contempt of the court.

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The Supreme Court without reflecting in any manner upon the weight of the evidence produced in the Court of Quarter Sessions, or the propriety of its judgment in other respects, based its opinion for the reversal of the judgment of the Quarter Sessions upon the sole ground that interrogatories should have been submitted by the court to the appellant.

The sole point, therefore, fairly and squarely presented to the court upon which this appeal is, whether the Supreme Court was correct in holding that the law of this state required the submission of written interrogatories to the respondent Verdon. In other words, whether admitting that due and ample notice of the charge made was given, that Verdon appeared and pleaded not guilty, that ample opportunity was given to him to be heard in his own behalf under oath, in other words regardless of the fact

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that all of the requirements of actual fairness and impartiality were scrupulously complied with, that nevertheless the respondent Verdon had the right to dictate to the court the manner in which it should proceed to investigate the matter and that the court committed reversible error in refusing to accede to the respondent's dictation as to the manner in which the investigation against him should be conducted.

- 10 The opinion of the Supreme Court proceeded upon the ground that under the ancient common law a respondent in contempt was entitled, as of right, to the submission of written interrogatories which he might answer under oath and purge himself of the contempt charged, being remitted to a prosecution for perjury if his answers were not true but nevertheless having the ability to conclude the court by his answers and to prevent his punishment for contempt.
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**The Judgment of the Supreme Court is without doubt erroneous, since neither under the common law of England, nor under the common law of this State, was there or is there any obligation upon the part of the Court to proceed through the service of written interrogatories.**

- 30 The fallacy of the argument for the respondent and of the opinion of the court below lies in assuming that the common law required the mode of procedure through submission of interrogatories, and in assuming that the cases treating of the right of a respondent to purge himself by his sworn testimony are authority for the insistence that interrogatories are necessary. Whatever may be thought of the ancient and modern cases as to
- 40 the right of a respondent in contempt to purge

himself by his own oath (and we shall discuss these cases hereafter) these authorities by no means require the conclusion that the court must proceed by means of interrogatories. In other words, that the respondent may not purge himself, if able, by his own affidavit or testimony under oath in any other way than through answers to interrogatories. See opinion of Lord Mansfield in *King v. Vaughan*, 2 <sup>Douglas</sup> Dory, 517. In the case at bar the respondent had ample opportunity to take the stand and to give his own testimony under oath. We are not, therefore, now concerned with what would have been the effect had he purged himself under oath. He did not see fit to do so, although given the opportunity. The only question therefore is, whether the common law of this state upholds the respondent in his insistence that he had the right to require of the court the submission of written interrogatories.

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The common law of this State is in accord with the common law as laid down in other States, and by the Supreme Court of the United States to the effect that the mode of procedure in contempt matters lies within the discretion of the court, that the steps taken are not jurisdictional, and that when brought before the court, a respondent has no just complaint, if he has been given reasonable and fair notice of the charge against him and an opportunity to be heard in his own behalf.

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It is not necessary to discuss here the history of contempt proceedings or their general nature and effect. Contempts may be committed in the face of the court or may be constructive contempts committed by means of tampering with the means of justice, through publications holding the court up to ridicule, or otherwise. Contempts committed in the face of the court may be punish-

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ed summarily without any investigation whatever, and upon the court's own knowledge of the occurrence. As to constructive contempts and matters with reference to which the court can have no personal knowledge, an investigation is made, but the investigation is solely for the *better knowledge of the court*. The means of investigation are not important so that the investigation is a fair one, and the respondent be given an opportunity to be heard in his own behalf. Whether the respondent be brought into court by a rule to show cause, writ of attachment or in any other manner, is immaterial.

Thus as Blackstone says in the extract quoted by the Supreme Court (page 108):

“This process of attachment is merely intended to bring the party into court; and when there he must either stand committed or put to bail in order to answer upon oath to such interrogatories as shall be administered to him *for the better information of the court* with respect to the circumstances of the contempt. These interrogatories are in the nature of a charge or accusation.”

There has been no case in this State holding that the submission of interrogatories is jurisdictional and essential. Upon the contrary the authorities indicate otherwise, and the only expression on the subject which we have been able to find of this court has been against that contention. There are, furthermore, instances where our courts have dispensed with interrogatories because of the possession of the requisite proof without them.

Thus in *State v. Clerk of Bergen*, 1 Dutch, 209, the court upheld a conviction of contempt for participating in a rescue from the sheriff, without going through the ordinary course of examination upon interrogatories, stating that no de-

nial on such interrogatories could excuse the defendant.

In *State v. Doty*, 3 Vr., 403, the respondent was brought into court upon a rule to show cause. The court is silent as to the necessity of interrogatories or the effect of the sworn answer of the respondent thereto.

The first case to be decided after the enactment of the statute giving an appeal to the Supreme Court was *In re: Cheeseman*, 20 Vr., 115. That was a proceeding in contempt against the publisher of a newspaper for publishing therein an article intended to cast discredit on the grand jury who had indicted him, the sheriff who summoned the jury, and the Judge who presided at the trial. The conviction was upheld by the Supreme Court, although there had been no affidavit preliminary to the rule to show cause upon the return of which the respondent was adjudged guilty of contempt of court and fined. The report of this case is accompanied by an abstract of a most thorough and able argument made by the counsel of the appellant wherein the entire law of constructive contempt is discussed. With respect to the contention that the proceedings were faulty because of the lack of an affidavit preliminary to the rule to show cause, Mr. Justice Dixon, speaking for the court, said:

“Counsel further contends that the proceedings of the court below should be annulled because there does not seem to have been any affidavit of the facts as a foundation for the rule to show cause. This is not now a sufficient reason for reversal. No doubt the ordinary course of practice in such cases in courts of law is that an affidavit of the facts should first be presented; then, that a rule should be entered requiring the alleged offender to show cause why he should not be attached for contempt; then, if good cause be not shown, that an attachment should issue,

and the accused, on being brought in, should be either held to bail or committed to answer interrogatories; then, that interrogatories should be exhibited and answered; and thereupon, according as his answers confess or deny his guilt, he should be punished or discharged. But the practice has not been uniform. Sometimes a rule to show cause has been allowed without an affidavit, on a mere suggestion; sometimes an attachment has issued without a rule to show cause; sometimes punishment has been inflicted forthwith on the offender's confession when brought in by the writ, without interrogatories; and sometimes, as in *McQuade v. Emmons*, 9 Vroom, 397, the penalty has been imposed on the offender's admissions made under the original rule without either writ or interrogatories. So that these various steps are manifestly not jurisdictional, except to the extent of laying before the Court matters which constitute a contempt, and affording to the party accused a fair opportunity of denying or confessing their truth. In the present case, the appellant, on the return of the rule to show cause, filed his affidavit declaring the truth of all the matters alleged in the rule as the basis for its allowance, and although the consideration of the cause was then adjourned from term to term, yet the appellant never intimated that an affidavit should have been presented before the rule was granted, or that he was entitled to have an attachment issue or interrogatories filed, or that the rule should be discharged for want thereof; and even after sentence was pronounced, he obtained leave to amend his affidavit, but did not complain of any irregularity or illegality in the proceedings. Under these circumstances the objection now made cannot be sustained."

It should be noted that in *McQuade v. Emmons*, there was a disclaimer under oath of any purpose or intention to contemn.

In the court below the foregoing extract from the opinion of Mr. Justice Dixon was cited as author-

ity for the proposition that interrogatories are necessary unless waived by the respondent. It is quite obvious, however, that this is not so. The case does hold that the various steps leading up to a conviction of contempt are not jurisdictional *"except to the extent of laying before the court matters which constitute a contempt and affording to the party accused a fair opportunity of denying or confessing their truth."* That such an opportunity was afforded in the case at bar cannot be denied, and that this opportunity was the extent of the respondent's right is not only the law in this state but has been established by well considered authorities elsewhere. It is further very significant that while a most thorough and exhaustive argument was made on behalf of the appellant in the Cheeseman case, no point whatever was made of the failure to submit interrogatories to him. The only jurisdictional point raised was the right of the court to proceed without the affidavit. Thus in stating his point counsel said (p. 133) :

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"The court below was without jurisdiction and its proceedings, conviction and judgment are void because no affidavit was filed as a condition precedent to its action."

No argument whatever was made with respect to the failure to submit interrogatories.

In *Holt's* case, 26 Vr., 384, Chief Justice Beasley in criticising the proceedings in the court below, said :

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"Thus from first to last the members of the court were the accusers, witnesses and judges; they took no testimony, but convicted the defendant from their own individual knowledge.

"It is not necessary to say that such a course has not in any respect whatever the least semblance of a proceeding in a court of law."

The plain inference is that a proceeding which

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is in all respects a regular and fair proceeding in a court of law is entirely unexceptionable.

In *Re Haines*, 38 Vr., 442, the inference of the court is the same.

In *Re Gonzales*, 3 Gammere, 536, was also relied upon in the court below, but it is quite apparent that it affords no support for the contention that the court must proceed through interrogatories, and in that manner alone. All that was discussed in the *Gonzales* case was the effect of the sworn  
**10** answers of respondent to interrogatories which had been submitted to him. The court made a very careful analysis of the answers to the interrogatories and said:

“Our examination of the interrogatories and of the answers satisfies us that appellant fully and fairly denied all allegations of specific acts that would tend to show him guilty of contempt, and that as to the conclusions embodied in these interrogatories, he was either  
**20** not required to answer them or did answer them in a satisfactory manner.”

It is true that the court also said

“On the whole, therefore, we think that appellant fully and fairly purged himself of any contempt, legally implied in the interrogatories, and which was testified to by the grand jury clerk. If his denial was adequate, it must be taken as true.”

But this language must be read in connection  
**30** with the facts of that case. The contempt there charged was one where the intent or absence of intent to contemn was of the essence of the offense, and was, in this respect, far different from the case at bar where the publication would reasonably and necessarily have to be considered contemptuous regardless of any denial of intent. Obviously the court had no occasion to, nor did it actually say that the procedure by the submission of interrogatories was the only permissible

course for the court to take. Had the respondent in this case gone on the stand and made a full and specific denial under oath, such as was made by the respondent in the Gonzales case, then there might be some reason to urge the applicability of that decision, but in the case at bar the respondent chose entirely to rest upon his view of the law that the court had no right to proceed with the examination of the matter except in the manner indicated by the respondent.

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Most significant is the opinion of Mr. Justice Pitney speaking for this court in *Doland's* case, 3 Robb., 802. It was there decided that an appeal would not lie from proceedings in contempt prior to a conviction. The court took occasion to discuss the practice in contempt proceedings. After referring to the opinion of Mr. Justice Dixon in the *Cheeseman* case, Mr. Justice Pitney continued:

“Nor need we go to the extent of declaring that the alleged contemnor has the right to exculpate himself by his answers to the interrogatories, so that an adjudication of guilt made without the exhibition of interrogatories or contrary to his responses thereto, would be beyond the jurisdiction of the court, as intimated, *arguendo*, in the opinion last cited. The cases referred to by Mr. Justice Blackstone upon this head are authorities to the effect that the courts of law in ordinary cases *would not*, rather than that they could not lawfully, fine or imprison for contempt of court, without according to the accused the opportunity of exculpating himself by making response to interrogatories. It is true he does plainly say (4 Bl. Com., 288) that the method of examining the delinquent himself upon oath, with regard to the contempt alleged, has, by long and immemorial usage, become the law of the land. But the cases he refers to hardly bear him out in declaring this to be the invariable practice, nor warrant the conclusion that the courts of law have no power to punish for contempt contrary to the

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sworn denial of the accused on the return of the attachment."

In this state of our authorities, decisions of other courts dealing with this subject are helpful and should be considered. They show conclusively that it is not now considered a part of the common law by those courts which have considered the matter, that a person brought up upon contempt may, by his own oath, purge himself there-  
 10 of regardless of the other evidence produced before the court and the just inference to be deduced from his alleged contemptuous acts or words.

The courts invariably hold that whatever may have been the ancient common law rule, that it has not been in effect in this country.

*Jackson v. Smith*, 5 Johns, p. 117, is cited by the Supreme Court as an authority to the contrary, and it is further stated by the court below  
 20 that the decisions of all courts that proceed according to course of the common law are to the same effect. A careful examination of the authorities shows the contrary to be the fact. What was said by the court in *Jackson v. Smith* was obviously not meant to establish that interrogatories were necessary and indispensable. The court was merely referring to the usual practice in contempt proceedings and the language "This is necessary to  
 30 be done in every case before a party can be convicted of a contempt" should be considered, in view of the point before the court, which was, whether a person against whom an attachment for contempt has issued, has been *convicted* thereof. The court held that he had not been convicted since the attachment was merely a process to bring him into court, and that further proceedings were necessary before a conviction could be had. That  
 40 was all that was decided by the court and it is quite obvious that the court had no intention of

attempting to lay down the essentials of the process in contempt. It is very clear that this decision is no authority for the proposition that answers to interrogatories, or the denial of the respondent under oath are absolutely conclusive upon the question of contempt. In fact, the contrary was held by Chief Justice Kent in the earlier case of *People v. Freer*, 1 Caines 518. That was an attachment against the respondent for the publication in a newspaper of remarks concerning a criminal trial. With reference to the publication the court said. 10

“It appeared to be intended to prejudice and influence the public mind against the court, before which the trial was held, and to intimidate and influence this court in deciding on the motion pending before it, for a new trial in the cause.”

It was further said,

“Publications scandalizing the court, or intending unduly to influence, or over-awe their deliberations, are contempts which they are authorized to punish by attachment; and, indeed, it is essential to their dignity of character, their utility and independence, that they should possess and exercise this authority.” 20

Upon the coming in of the attachment, the respondent admitted himself to have been the publisher of the remarks in question and under oath disclaimed any intentional disrespect or contempt. It was held that while the respondent's statement under oath was entitled to consideration, that it could not amount to a justification. The respondent was therefore found guilty and fined for his contempt. The court said: 30

“We cannot but perceive that the disavowal of any bad intent will not do away the pernicious tendency or effect of publications reflecting on judicial proceedings which are before us.” 40

In *Huntington v. McMahon*, 48 Conn. 174 at p. 200 the court said,

10 “It is further claimed that the respondents, having been examined as witnesses under oath, and having testified that they acted in good faith and intended no disrespect to the court, thereby purged themselves of the contempt, and that no further proceedings could thereafter be had against them except a prosecution for perjury. That may be the practice in some jurisdictions, but we agree with the Supreme Court of New Hampshire, that the better practice is to receive other testimony and settle the whole question of contempt in one proceeding. *State v. Matthews*, 37 N. Hamp. 450. And such we understand to be the practice in this state.”

*In re Perkins*, 100 Fed. 950, the court said,

20 “The question of whether a party answering a charge of contempt, whether by rule or otherwise, was guilty of a willful contempt, or has properly purged himself, thereof, is a question for the court in the exercise of a sound judicial discretion.”

In *In re Chadwick*, 67 N. W. 1071, it was said by the Supreme Court of Michigan, p. 1077,

30 “It is next insisted by the respondent that he purged himself of the contempt by his answers, both to the petition and to the interrogatories, by stating that he intended no charge of improper conduct on the part of the presiding judge, and that the subsequent proceedings were, therefore, beyond the jurisdiction of the court. Where the language is susceptible of two interpretations or constructions, and the party charged asserts under oath that he did not intend the article to be construed as alleged in the innuendoes, he is purged of the contempt; but if the publication is fairly susceptible of but one construction, and its purport is to defame and degrade the court in the eyes of litigants and the public, his denial of any intended wrong does not  
40 operate to purge him of the contempt.”

To the same effect it was said by the Supreme Court of Nebraska in *Emery v. State*, 111 N. W. 374, p. 375,

“Lastly, it is claimed that, upon the filing of his answer under oath denying the allegations of the complaint the accused should have been immediately discharged, and the state remitted to a prosecution for perjury. While authorities may be found which seem to support this theory, yet, in cases where the act complained of is in itself a contempt of court, a denial of its commission raises an issue of fact for trial, and does not entitle the accused to an acquittance. Indeed, the practice is well established in this jurisdiction that, in a proceeding to punish one for a constructive contempt, a complaint under oath must be filed against him, an attachment must be issued thereon, and, on the return thereof, the defendant may answer the complaint; and, if his answer be a denial of the acts charged, the issue thus raised must be tried and determined upon evidence, as in other cases. Indeed, to hold that a mere denial, by which such an issue is raised, of itself amounts to an acquittance, would render every contempt proceeding, no matter how well founded, absolutely nugatory. *Brady v. District Court Polk County*, (Iowa) 102 N. W. 114; *People v. Wilson*, 64 Ill. 195, 16 Am. Rep. 528.”

In *Coleman v. State*, 113 S. W. (Tenn.) the respondent was charged with contempt of court for having approached a juror in a pending cause. Before any testimony was offered the respondent filed a sworn answer or return to the attachment for contempt, in which he proceeded to purge himself thereof. As the court said,

“In the court below when the above testimony was offered, the plaintiff in error objected to the introduction of evidence on the ground that by the above mentioned sworn answer he had purged himself of the contempt, if he had been guilty of any, and that witnesses could not be introduced to inquire into

the matter. It is now assigned for reversal that the circuit judge committed error in declining to sustain this objection and in subsequently hearing the evidence above set forth."

The court said that whatever the common law rule may have been, "in this state the common law rule has fallen into desuetude."

10 *U. S. vs. Shipp*, 203 U. S. 565 was quoted with approval and followed by the Supreme Court of Tennessee.

In *O'Flynn v. State*, 43 South. (Miss.) 82, respondent was charged with constructive contempt of court.

20 "After they had filed their answer denying the allegations of the petition, and over the protest of the contemnors, the court proceeded to take testimony for the purpose of proving the charges against the appellants, alleged in the petition as constituting the contempt. Objection was made by appellants to the hearing of any testimony on this motion in proceeding for contempt, which was overruled by the court, whereupon the appellants excepted."

The court said further

30 "The main complaint in this record is that the court had no right to take testimony to prove that charges alleged in the petition, after appellants had answered under oath denying the charges. It is contended that the answer under oath of the contemnors entitled them to a discharge, and that the matter could not be inquired into further. It seems to have been the ancient common-law rule, now wisely departed from by most modern authorities, that where a person was charged with constructive contempt of court, and made answer to the contempt proceedings on oath, if by his oath he cleared himself of the contempt, he was discharged. Under these older cases, no testimony  
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prove the answer under oath, but it must be taken as true and the contemner discharged; the only recourse being that he might be subsequently prosecuted for perjury, if he swore falsely. We do not feel warranted in following these older cases upon this subject, and see no reason why a court should be precluded from questioning the truth of the answer made in a proceeding of contempt against a party, by taking testimony to prove that the answer is untrue. To hold this would be to hamper the courts in the administration of the law. We adhere to the rule which is adopted by the Supreme Court of the United States in a very recent case on this subject—the case of the *United States v. Shipp, et al.*”

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The Supreme Court of the United States has in no uncertain terms pronounced its dissent from this alleged doctrine of the ancient common law. *In re Savin*, 131 U. S. 267 is the leading case directly passing upon the question of the necessity of interrogatories. As already pointed out, most of the cases which discuss this subject view it from the angle of the effect of the sworn answers to the interrogatories or of any other statement in denial under oath by the respondent, but in *In re Savin* the question of the necessity of the submission of interrogatories was directly involved and decided. That was a proceeding against respondent for constructive contempt of court for having attempted to influence a witness not to testify in a pending case. Upon a conviction it was said in the course or argument by counsel of the appellant:

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“Even if the court had jurisdiction to summarily punish for the matters set out in the judgment, yet the judgment is void on account of the departure by the court from the mode of procedure in criminal contempt cases, established by the common law courts from time immemorial a mode always followed in England and in this country, except when a different mode is prescribed by statute.

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"This mode was to reduce the charge to writing of some kind, (an affidavit, order to show cause, interrogatories, etc.) specifically designating and setting out the facts constituting the alleged contempt. Then to serve a copy on the defendant and give him the opportunity of answering the charge, and then if he fully and explicitly denied the charge under oath, to dismiss the proceedings and not permit the answer to be contradicted by the testimony of others.

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"In this case no writing specifically setting out the facts constituting the alleged contempt was ever served upon the defendant. When he called for interrogatories they were denied him. The whole proceeding was oral, and the judgment was based on the testimony of witnesses contradicting the testimony of defendant denying the charge."

The court, by Mr. Justice Harlan, said:

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"Where the contempt is committed directly under the eye or within the view of the court, it may proceed 'upon its own knowledge of the facts, and punish the offender, without further proof, and without issue or trial in any form.' Ex parte Terry, 128 U. S. 289, 309; whereas, in cases of misbehavior of which the judge cannot have such personal knowledge, and is informed thereof only by the confession of the party, or by the testimony under oath of others, the proper practice is, by rule or other process, to require the offender to appear and show cause why he should not be punished."

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The court in overruling the objection that the court below had had no jurisdiction because of the denial of the motion made by respondent's attorney for the service of interrogatories said:

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"It is, however, contended that the proceedings in the District Court were insufficient to give that court jurisdiction to render judgment. This contention is based mainly upon the refusal of the court to require service of interrogatories upon the appellant, so that, in

answering them, he could purge himself of the contempt charged. The court could have adopted that mode of trying the question of contempt, but it was not bound to do so. It could, in its discretion, adopt such mode of determining that question as it deemed proper, provided due regard was had to the essential rules that obtain in the trial of matters of contempt."

Discussing *Randall v. Brigham*, 7 Wall., 523,  
Justice Harlan continued:

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"The Court, after observing that the informalities of the notice did not touch the question of jurisdiction, and that the plaintiff understood from the notice received the nature of the charge against him, said:

"He was afforded ample opportunity to explain the transaction and vindicate his conduct. He introduced testimony upon the matter, and was sworn himself. It is not necessary that proceedings against attorneys for malpractice, or any unprofessional conduct, should be founded upon formal allegations against them. Such proceedings are often instituted upon information developed in the progress of a cause; or from what the Court learns of the conduct of the attorney from its own observation. Sometimes they are moved by third parties upon affidavit; and sometimes they are taken by the Court upon its own motion. All that is requisite to their validity is that, when not taken for matters occurring in open court, in the presence of the judges, notice should be given to the attorney of the charges made, and opportunity afforded him for explanation and defense. The manner in which the proceeding shall be conducted, so that it be without oppression or unfairness, is a matter of judicial regulation.' So in the present case, if the appellant was entitled, of right, to purge himself, under oath, of the contempt, that right was not denied to him; for it appears from the proceedings in the District Court, made part of the petition for habeas corpus, not

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only that he was informed of the nature of the charges against him by the testimony of Flores, taken down by a sworn stenographer at the preliminary examination, but that he was present at the hearing of the contempt, was represented by counsel, testified under oath in his own behalf, and had full opportunity to make his defence.

The analogy of the *Savin* case to the case at bar is apparent. It is in all respects similar with  
 10 the exception that in the *Savin* case the respondent after his motion for submission of interrogatories had been denied, went on the stand and testified under oath. The respondent in this case did not choose to take the stand and make his denial under oath. He had the opportunity, however. With respect to the necessity of interrogatories, the *Savin* case is on all fours with the case at bar.

20 In the later case of *U. S. v. Shipp*, 203 U. S., 563, the Court still further announced its dissent from the alleged ancient rule of the common law. It was a proceeding against a sheriff for contempt of court in having permitted a man in his charge convicted of murder, but whose execution had been stayed by the Supreme Court, to be taken from the jail and lynched. The Court said:

30 "Another general question is to be answered at this time. The defendants severally have denied under oath in their answer that they had anything to do with the murder. It is urged that the sworn answers are conclusive, that if they are false the parties may be prosecuted for perjury, but that in this proceeding they are to be tried, if they so elect, simply by their oaths. It has been suggested that the Court is a party and, therefore, leaves the fact to be decided by the defendant. But this is a mere after-thought to explain something not understood. The Court is not a party. There is nothing that affects  
 40 the judges in their own persons. Their con-

cern is only that the law should be obeyed and enforced, and their interest is no other than that they represent in every case. On this occasion we shall not go into the history of the ~~nation~~ <sup>Section</sup>. It may be that it was an intrusion or perversion of the canon law, as is suggested by the propounding of interrogatories and the very phrase, purgation by oath (juramentum purgatorium). If so, it is a fragment of a system of proof which does not prevail in theory or as a whole, and the reason why it has not disappeared, perhaps, may be found in the rarity with which contempts occur. It may be that even now, if the sole question were the intent of an ambiguous act, the proposition would apply. But in this case it is a question of personal presence and overt acts. If the presence and the acts should be proved there would be little room for the disavowal of intent. And when the acts alleged consist in taking part in a murder it cannot be admitted that a general denial and affidavit should dispose of the case. The outward facts are matters known to many and they will be ascertained by testimony in the usual way. The question was left open in *Ex parte Savin*, 131 U. S., 267, with a visible leaning toward the conclusion to which we come, and that conclusion has been adopted by state courts in decisions entitled to respect. *Huntington v. McMahon*, 48 Connecticut, 174, 200, 201; *State v. Mathews*, 37 N. H., 450, 455; *Bate's case*, 55 N. H., 325, 327, *Matter of Snyder*, 103 N. Y., 178, 181; *Crow v. State*, 24 Texas, 12, 14; *State v. Harper's Ferry Bridge Co.*, 16 W. Va., 864, 873. See *Wartman v. Wartman*, *Taney*, 362, 370; *Cartwright's case*, 114 Massachusetts 230; *Eilenbecker v. Plymouth County*, 134 U. S., 31. Whether or not Rev. Stat., Sec. 725, applies to this Court, it embodies the law so far as it goes. We see no reason for emasculating the power given by that section, and making it so nearly futile as it would be if it were construed to mean that all contemnors willing to run the slight risk of a conviction for perjury can escape." 40

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In *People v. Wilson*, 64 Ill., 195, which was a proceeding in contempt, growing out of a publication reflecting upon the Supreme Court with reference to a case pending before it, and there was a denial under oath of any intent to contemn, the Court said:

10 "It need hardly be said that we cannot accept as a reason for discharging the rule, the disclaimer in the answer of any intentional disrespect or any design to embarrass the administration of justice. The meaning and intent of the respondents must be determined by a fair interpretation of the language they have used. They cannot now escape responsibility by claiming that their words did not mean what any reader must have understood them as meaning."

In *State v. Matthews*, 37 N. Hamp., 450, the Supreme Court of New Hampshire in a careful opinion citing many authorities said:

20 "In some jurisdictions it seems to have been holden, that if the respondent, by his affidavit and answers to interrogatories, discharged himself of the contempt, no further proceedings can be had against him upon the attachment, and no proofs can be introduced by the prosecutor in opposition thereto; but that if perjury be apparent, he may be recognized to answer for that offence. \* \* \*

30 "The better and more sensible rule, however, is apprehended to be, in accordance with the practice in this state, that proofs upon both sides, including the answers of the respondent himself, are taken, and the Court thereupon determine, from a consideration of the whole evidence, the guilt or innocence of the accused."

In *Bates* case, 55 N. H., 325, the Court said:

40 "The procedure is various in different jurisdictions; and I apprehend that the discretion of the Court is very broad and will seldom be revised upon writ of error or appeal. So

essential is it to the maintenance of the dignity of the Court and the supremacy of the law that the offense should be punished summarily and with little delay."

Speaking with reference to the procedure, the Court said that the design of a writ of attachment or rule to show cause was merely to bring the party charged with the contempt into court. It was said:

"The attachment should be substantially like an indictment, at least to the extent of giving the respondent sufficient information concerning the nature and the particulars of the offense charged; and the rules of evidence and the presumptions of law applied in criminal cases should be observed." 10

Of the many other cases in other jurisdictions, reference may further be made to

*Kirk v. U. S.*, 192 Fed. (C. C. A., 9th Cir.), 273; 20  
*Crow v. State*, 24 Tex., 12;  
*Territory v. Murray*, 15 Pac., 145;  
*In re Schartz*, 85 Pac. (Nev.), 352;  
*Wise v. Chanly*, 67 Iowa, 73;  
*State v. Simmons*, 1 Ark., 265;  
*Hughes v. People*, 5 Colo., 436-453;  
*Matter of Snyder*, 103 N. Y., 178-181;  
*In re Hummell*, 9 Watts, 416;  
*Witter v. Lyon*, 34 Wisc., 564, 577; 30  
*People v. Pendleton*, 64 N. Y., 622.

With particular reference to the trial in the Sessions, it is only necessary to say further in the language of Justice Holmes in *Patterson v. Colorado*, 205 U. S., 454:

"It only remains to add that the plaintiff-in-error had his day in court and opportunity to be heard."

In conclusion, therefore, it is most respectfully 40

submitted that neither the authorities in this state or elsewhere lend the slightest countenance to the contention that a respondent in contempt has the right to insist upon the Court investigating the matter by the means of written interrogatories and in that way alone. All that he is entitled to is a fair trial. The mode of the trial is within the discretion of the Court and an Appellate Court will not interfere with the exercise of that

**10** discretion in the absence of abuse resulting in unfairness to the respondent. Not only is there no support in the cases for the argument of the necessity of interrogatories, but the modern view seems unquestioned that it is not proper to put it within the power of the respondent by his own oath regardless of the other testimony to purge and acquit himself of the contempt. There is no reason whatever in our present rules of evidence or practice why this anomalous situation should

**20** be permitted to continue, if in fact, it ever truly existed. That the common law itself changes with changed conditions, that modern circumstances require adaptation and enlargement of the common law is undoubted (*Nordenfeld v. Maxim-Nordenfeld Co.*, 1894, A. C., 535, opinion by Lord Watson). Nor can the greatest solicitude for the freedom and protection of the individual suggest any reason for a principle of this

**30** character under the present state of the law in this jurisdiction. All proceedings in contempt of inferior courts are subject to review both on the law and the facts by the Supreme Court, which court may conduct further investigation and may make such order in the premises as to it shall seem just. With this full and complete review possible in the Appellate Court, there seems no sensible reason for holding that the respondent is entitled to anything more than a fair trial in the court of first instance, the mode of trial being

**40** left to the discretion of that court.

It is, therefore, submitted that the judgment of the Supreme Court should be reversed and the proceedings in the Hudson County Court of Quarter Sessions affirmed.

GEORGE T. VICKERS,  
 Asst. Prosecutor of the Pleas,  
 County of Hudson,  
 Attorney for and of Counsel  
 with the Attorney-General, ex rel.,      10  
 Hudson Quarter Sessions,  
 Plaintiff-in-Error.

ROBERT H. MCCARTER,  
 of Counsel for Plaintiff-in-Error.

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# NEW JERSEY COURT OF ERRORS AND APPEALS.

THE ATTORNEY GENERAL, *ex rel.*  
Hudson Quarter Sessions,  
Plaintiff-in-error,

*v.*

WILLIAM P. VERDON,  
Defendant-in-error.

10

In Error to  
Supreme  
Court.

## Introduction.

20

This writ of error brings up for review, a judgment of the Supreme Court, reversing the conviction of William P. Verdon for constructive contempt by the Hudson County Quarter Sessions. The opinion of the Supreme Court expressing the Court's reasons for reversal was rendered by Mr. Justice Garrison, 97 Atl., p. 783, C. B., p. 106, &c. The refusal to exhibit interrogatories against Verdon, the alleged contemnor, when application had been made therefor, caused the reversal of the conviction. 30

## Statement.

Verdon's appeal to the Supreme Court was taken pursuant to the provisions of an act providing for the review of convictions and judgments for contempt, approved April 17th, 1884, 2 Compiled Statutes of New Jersey, page 1736, Sections 40

138 and 139, which provide for a review by this Court both upon the law and the facts.

The proceedings were instituted by the Quarter Sessions of the County of Hudson by testimony taken in open Court before Judges Tennant and Sullivan, sitting at Hudson, pages 32 to 63 of the record.

10 It appeared that although there was no cause before that Court, the Court arbitrarily called to the bar Richard Doherty, Esq., an attorney at law and certain conversations were had between Judge Tennant and Mr. Doherty, which appear from pages 32 to 42 of the record.

20 The Court thereupon, again arbitrarily, called to the bar Byrne, a reporter of the "Hudson Dispatch" and after a colloquy between the Court, Mr. Doherty and Mr. Byrne and the representatives of the State from pages 32 to 42, Mr. Byrne was sworn on page 43, and thereupon testified that he was a reporter of the "Hudson Dispatch" and that he was responsible for the article appearing in the rule to show cause, page 44, and his testimony so far as it may be said to affect the respondent is concerned, is as follows, pages 44-48:

30 "Q. Will you state from what source you got your information? A. Well, I will do that because the gentleman has released me; otherwise I should not feel myself permitted to do so. I got that from Mr. William P. Verdon.

\* \* \*

40 "Q. Substantially as already appears in Court. The article referred to the intention on the part of Mr. Doherty, a lawyer of this bar, an officer of the Court, intending to bring impeachment proceedings against the Court; is that the information you got from Mr. Verdon? A. That is part of it.

"Q. And the substance of the reasons stated

in that interview was given you entirely by Mr. Verdon? A. Oh, yes, certainly.

\* \* \*

“Q. How did you know how to go there (referring to his going to Verdon’s house) or why to go? A. I followed instructions; I was assigned there by my editor.

\* \* \*

“Q. What were these instructions? A. To 10  
call up Mr. Verdon and ask him for an inter-  
view. Thereupon I called up Mr. Verdon and  
he said I will see you at my house if you can  
come up about half-past four. I got there  
about twenty-five minutes to five.”

The Court after hearing the testimony of Byrne directed the prosecutor to present a rule to show cause for contempt proceedings against William P. Verdon, The Dispatch Printing Company, a corporation, publisher of the “Hudson Dispatch,” and even went so far as to include the man Taylor who had merely been mentioned as having been present at the time the statement was given by Verdon. It then, however, corrected itself and omitted Taylor’s name (p. 48). 20

He (Doherty) merely testified that he had not in his mind at the time the article was published the intention to take proceedings looking toward an impeachment and after the conclusion of Mr. Doherty’s testimony, the following occurred: 30

“*Judge Tennant*: Mr. Prosecutor you may hand up the rule which the Court has already directed and I will sign it at once and make it returnable forthwith.”

Mr. Doherty was then sworn and testified that he was not responsible for the statements made; 40

that he was going to take proceedings looking toward an impeachment of the presiding judge in the case of the State against Samuel Smith.

The attitude of the Court assumed upon this preliminary hearing can be no better expressed than by a recitation of a part of the testimony on pages 41-42, where the following occurred:

10       “Mr. Byrne: I am obliged to wait a little while; I understand the Secretary of State is on his way down.

      “‘The Court: He has counsel then coming for you.

      “‘Mr. Byrne: I don't know about that, but he himself is coming.

      “‘The Court: I don't know who the Secretary of State is.’”

20       And by the direction of the Court on page 48 to bring in as a party to these contempt proceedings the man Taylor, who it was testified had merely been a witness to the conversation between Verdon and the reporter Byrne.

      After this testimony was taken before Judges Sullivan and Tennant and after the direction had been given to the Prosecutor by *Judge Tennant* to draw the rule and that *he* would sign it, in some way or another, not disclosed to the respondent,  
 30       there was brought into the case the Justice of the Supreme Court presiding in the County of Hudson. And thereupon on the 17th day of January, 1916, a rule to show cause signed by the three Judges, Justice Swayze and Judges Tennant and Sullivan, was made, reciting the fact that upon the same day there had been published an article in the “Hudson Dispatch,” a copy of which appears  
 40       in the rule and that such publication had been presented to the Court and that the Court had caused to come before it Frank Byrne, who was sworn as

a witness and that said Frank Byrne, "did then and there depose and testify in substance and to the effect following, that is to say, that he, the said Frank Byrne, was directed by one Haddon Ivins, an editor of the said 'Hudson Dispatch,' to interview one William P. Verdon of the City of Hoboken, for the purpose of eliciting from the said Verdon a statement concerning the judicial proceedings in the matters of the indictments hereinabove referred to, and for the further purpose of publishing the said statement and causing the same to be published in the said 'Hudson Dispatch'; and the said Frank Byrne having then and there also deposed and testified to the effect that he, the said Frank Byrne, did write the said article hereinabove set forth, and that the matters and things therein contained and stated were elicited by him, the said Frank Byrne, from the said William P. Verdon, and that he, the said Frank Byrne, had no other informant or source of information, this Court did thereupon call one Richard Doherty, attorney and counsellor at law of the State of New Jersey, he being the same person referred to as Richard Doherty in the said newspaper publication hereinabove set forth, and the said Richard Doherty having been duly sworn as a witness, and having thereupon testified in substance and to the effect following, that is to say, that he did not in any manner whatsoever give out, inspire or suggest to the said William P. Verdon or to any other person the matters and things in the said publication hereinabove set forth, contained and stated; and the said Richard Doherty having then and there further testified that he, the said Richard Doherty, had not contemplated or intended to apply to this Court for the adjournment of the said causes pending in this Court and hereinabove

referred to, for the reasons alleged and set out in the said publication, hereinabove set forth;”

“And this Court having been given to be informed and to understand that the said Haddon Ivins, the said William P. Verdon and Dispatch Printing Company, a corporation, publisher of the said ‘Hudson Dispatch,’ by their acts and doings in the premises *are guilty* of a flagrant breach of the dignity and authority of this Court, and of obstructing and embarrassing this Court in the doing of justice, and are in contempt thereof;”

10 It was thereupon ordered that they should upon the 19th day of January, 1916, at two o’clock in the afternoon, appear and “show cause, if any they can, why they, the said Haddon Ivins, the said William P. Verdon and the said Dispatch Printing Company, *should not be adjudged guilty as of a contempt of the Court of Quarter Sessions of the County of Hudson.*”

20 From the final opinion of the Court we glean that as a matter of fact upon the 17th day of January, 1916, application for the impeachment of Judge Tennant and the Prosecutor of the Pleas was actually presented to the Legislature based upon the facts stated in the article.

On the return of the rule to show cause Verdon appeared, accompanied by counsel, and there-  
 30 upon because of the shortness of the time allowed, applied for an adjournment, which was granted, until Saturday, the 22nd day of January, at nine o’clock in the morning. Nothing was done upon the 19th so far as the record shows, although the return of the Court, is to the effect that the respondents pleaded not guilty. Of course, this plea of not guilty amounted to nothing. There was no indictment, no criminal charge and the plea of  
 40 guilty or of not guilty is unknown except there be an indictment or criminal charge.

Upon the 22nd day of January, 1916, there was a hearing before Justice Swayze and Judges Sullivan and Tennant and the proceedings before the Court are made a part of the return.

From this it appears that the respondent, Verdon, from the onset insisted that he was entitled to have exhibited to him interrogatories and be permitted to make answers thereto either confessing his guilt or purging himself, and that this insistence was overruled. That certain testimony was taken before the Court, to wit, that of Byrne, the reporter, who merely testified that he wrote certain parts of the article; that he was assigned to get an interview from Verdon; that he could not tell what Verdon told him but that the article expressed his inferences from what was told him. There was no suggestion that Verdon had solicited an interview; the evidence was to the contrary; nor was there any suggestion that Verdon had done, upon request, more than tell the reporter what he intended to do and which in fact he subsequently did.

Upon the conclusion of the testimony the respondent Verdon again demanded the right to be served with interrogatories and offered to purge himself in accordance with the law, which right was denied and he thereafter participated in no wise in the cause.

Upon the conclusion of the testimony the respondent Verdon was found guilty of a contempt, the Court, Mr. Justice Swayze, *inter alia* stating:

“As to Mr. Verdon the case is very much plainér. He seems to have been interested in one, at least, of the defendants about to be tried. He gave information to Mr. Byrne when he must have known that information would be published. We think that he intended that it should be published. We look on him as hav-

ing instigated the publication (although the evidence was to the effect that the reporter went *to him* for information and that he gave information *only* of such acts as he was about to perform to which he did) and as being primarily responsible for it. Of course, he did it for only one purpose. That I have already suggested. The very time of the publication of this  
10 article is sufficient to show what his object was. The trial the previous week it is said by one of the witnesses had been the subject of newspaper comment. There was no reason for this publication on Monday morning except to influence the jury or the Court and the prosecutor in the trial that was set for that very day.” (In other words, because a man makes a statement as to what he intends to do,  
20 to wit, to exercise his right to petition the Legislature and thereafter does it and it so happens that the time of the publication of his intention fits in with an intent to interfere with the administration of justice, a guilty intent is inferred rather than an innocent intent to exercise his rights and without proof as to whether the charges made were false or true.)

30 Mr. Justice Swayze also said:

“If the publication had been on Tuesday morning after a resolution had been introduced into the House of Assembly, if that publication had consisted of the affidavit on which the resolution was founded and the resolution itself, it would have been news, but to publish a mere threat by a party apparently interested in a pending cause of impeachment of a  
40 Judge and the prosecutor and to publish it upon grounds *that no sensible man could have*

*thought would have justified impeachment*, I think renders the newspaper that publishes it guilty of a contempt of the Court. The charge in the article—the alleged charge—was that a Judge of the Court, or perhaps two Judges, I don't know who sat, received an indictment handed up by the Grand Jury, which had never been found, I don't know what a Judge is to do—the Grand Jury comes into Court and is asked if they have any bills; they hand up bills; they are asked if they found them to be true bills; the foreman then says 'yes' and the foreman endorses each bill as a true bill; the Judge would be derelict in his duty if he failed to receive the bills the Grand Jury hands to him, and the gentlemen who publishes this article in a newspaper if they didn't know that, they didn't know that which seems to me everybody, *every grown man ought to know.*"

The Court loses sight of the fact that the charge made by Verdon in the article was not that the learned Judge received indictments in the ordinary way. It went much further than that. It was to the effect that the Court and the prosecutor had *guilty* knowledge that the indictments had not been found. *If* the statements made in the article were true, then unquestionably the prosecutor and the Court *were* subject to impeachment. The lower Court adjudicated, while the resolution looking toward an investigation was pending in the House of Assembly, that the charges were ill founded. However ill founded they may be, or however ridiculous they might appear, it was not the province of the Court of Quarter Sessions to determine that one of its Judges and the prosecutor of the pleas should *not* be impeached.

The respondent Verdon, upon his remaining silent was sentenced to pay a fine of two hundred and fifty dollars and to serve tirty days in the County Jail.

This judgment was afterwards reversed by the Supreme Court and it is the judgment of the Supreme Court reversing his conviction which the plaintiff-in-error now seeks to set aside.

10

### POINTS.

I.—The plaintiff-in-error is not entitled to a writ in this case.

II.—The refusal to exhibit interrogatories against Verdon in the Quarter Sessions was a gross violation of his rights.

20

III.—The testimony taken before the Quarter Sessions on final hearing did not warrant the judgment of conviction.

IV.—The judgment of the Supreme Court is correct and should be affirmed.

30

### POINT I.

The plaintiff-in-error is not entitled to a writ in this case.

It is contended that the Attorney General who prosecutes the writ of error at the relation of the Hudson County Quarter Sessions, has no right to prosecute the writ because the Court of Errors and Appeals cannot take jurisdiction of the subject matter.

40

At common law no right to a writ of error ex-

isted where the contempt proceeding was merely to punish contemptuous conduct.

Encyc. of Pl. & Pr. Vol. 4, at page 809, says:

“No branch of the law regulative of the procedure in contempt of court is apparently more inharmonious than that which deals with the right of the contemnor to an appeal or a writ of error. At common law no such right existed; and the decisions following the common law—in many instances the earlier ones—proceeding presumably upon the theory that every contempt is peculiarly and primarily an offense against the court in which it is committed, and that the issuance of process *vel non* is discretionary with such court, lay down the rule broadly and stringently that neither appeals nor writs of error will lie from adjudications in contempt.”

10  
20

In the same work it is also stated:

“Where proceedings on contempt are for the punishment only of the party charged, a common rule of criminal law obtains that there is no appeal from a judgment of acquittal.”

See 4 Encyc. of Pl. & Pr. at page 811.

Cyc in dealing with the same question under the topic “Contempt,” 9 Cyc 61, says:

30

“At common law the exercise by a court of competent jurisdiction of the power to punish for contempt cannot be reviewed. Every court is the exclusive judge of a contempt committed in its presence or against its process. The common-law rule has been changed, however, in some jurisdictions by constitutional or statutory provisions authorizing a review.”

40

In New Jersey, however, by statutory enactment *an appeal* from both the law and facts is provided by the provisions of the act of April 17, 1884 (2 Comp. Stat. 1737). The act providing for such appeal invests the court with jurisdiction to re-hear the matter of contempt, both upon the law and the facts, and to give such judgment in the premises as shall to it seem to be lawful and just under all circumstances of the case. See *Adler v. Turnbull*, 57 N. J. L., 62; 30 Atl. 319.

It has already been held in the case of *State v. Hart*, 88 N. J. L., p. 48, that the State is not entitled to a writ of error. In this case it was stated by Mr. Justice Swayze:

“If we look beyond the ancient English practice we find that in the practice of our own State, without question or exception as far as we know, it has been taken for granted by bench and bar that the State was not entitled to a bill of exceptions or to a review by writ of error of an error in law by the trial judge. Cautious trial judges have always resolved doubtful questions in favor of the State, in order that there might be a review that otherwise could not be had.”

It is perceived that the procedure in the Supreme Court on this appeal did not contemplate a writ of error to the Court of Errors and Appeals. There is no bill of exceptions. There is no form of record which would set forth testimony or proceedings such as is contemplated in the common law record ordinarily reviewed by a writ of error. It is fundamental that the taking out of a writ of error is the commencement of a new suit in which the assignments of error are pleadings that must be based either upon common errors of record or

upon errors which have been reserved by bill of exceptions or on matters *dehors* the record brought up on *certiorari*. The procedure in contempt is not adapted to any such practice. There are no pleadings. The common law only recognized the commencement of the proceeding, either by rule to show cause why an attachment should not issue, or, if the offense was particularly flagrant, by the issuance of an attachment directly; and when the attachment issued (if good cause was not shown why it should not issue), then the party on its return was held either in custody or upon recognizance to answer interrogatories which were required to be exhibited against him in four days. At the common law no appeal or writ of error was recognized from such proceedings and it is only because of the statute above mentioned that the right arose in New Jersey.

The matter of appeals from contempt proceedings has been discussed in the opinion of Mr. Justice Depue in *Dodd v. Una* (Ct. of Errors & Appeals) 13 Stewart, 714. Mr. Justice Depue *inter alia* said:

“The proceeding for contempt is of two kinds: (1) To punish contemptuous conduct in the presence of, or with respect to the authority or dignity of the court. (2) As a method of affording relief *inter partes*.

An adjudication of a contempt of the class first mentioned is not appealable or reviewable upon the merits. \* \* \*

See also 62 N. J. Eq. 737

Numerous authorities are quoted in the briefs of counsel for the appellant in the case of *Dodd v. Una*, *supra*. See pages 687 to 95 inclusive.

It is beyond argument that the Court of Errors

and Appeals would have had no right to review the contempt proceedings in the Quarter Sessions, were it not for the fact that the statute of 1882 conferred a right of appeal on the Supreme Court, and it is contended, that the mere fact, that the Supreme Court acquired a right to entertain an appeal by virtue of the provisions of this statute, did not confer any additional jurisdiction on the Court of Errors. What  
 10 jurisdiction would the Court of Errors have? Would it be strictly confined to questions of law or would the Court have power to adjudicate the facts, or in what fashion would this jurisdiction be exercised? Certainly the proceedings are not adapted to the taking of a writ of error. The removal of the case into the Supreme Court was by appeal and not by writ of error. The procedure by writ of error is  
 20 not adapted to bring the record into this Court. Testimony ordinarily is brought up by means of the bill of exceptions. How would the testimony come into the Court of Errors without a bill of exceptions?

The text in 6 Ruling Case Law, Topic, "Contempt", at p. 538, section 51, sets forth:

30 "The general rule at common law did not permit a proceeding for contempt to be revised by a higher court upon an appeal or writ of error; and, following this rule the courts of many states deny the right of appeal in such cases."

In the case at bar it is contended that the judgment of the Supreme Court was final and dispositive and the writ in the case at bar should be dismissed.

40

## POINT II.

The refusal to exhibit interrogatories against Verdon in the Quarter Sessions was a gross violation of his rights.

The plaintiff-in-error assails the reasoning of Mr. Justice Garrison in his opinion reversing the Quarter Sessions because it is charged that there was no necessity to exhibit interrogatories against Verdon and that it was not a violation of his substantive rights to refuse to do so. 10

Mr. Justice Garrison in his clear and logical statement of the rule concerning the exhibition of interrogatories and the reason for it has covered the ground so thoroughly that it is difficult to conceive upon what ground the plaintiff-in-error hopes to demonstrate its fallaciousness. Mr. Justice Garrison in discussing the practice followed, quotes Blackstone with approval as follows: 20

“If the contempt be committed in the face of the court the offender may be instantly apprehended and imprisoned at the discretion of the judges without any further proof or examination. But in matters that arise at a distance and of which the Court cannot have so perfect a knowledge unless by the confession of the party or the testimony of others, if the judges upon affidavit see sufficient ground to suspect that a contempt has been committed, they either make a rule on the suspected party to show cause why an attachment should not issue against him or in very flagrant instances of contempt the attachment issues in the first instance, as it also does if no sufficient cause be shown to discharge; and thereupon confirms and makes 40

absolute the original rule. This process of attachment is merely intended to bring the party into court; and when there he must either stand committed or put to bail in order to answer upon oath to such interrogatories as shall be administered to him, for the better information of the Court with respect to the circumstances of the contempt. These  
 10 interrogatories are in the nature of a charge or accusation and must by the course of the court be exhibited within the first four days and if any of the interrogatories are improper the defendant may refuse to answer it and move the court to have it struck out. If the party can clear himself upon oath he is discharged, but if perjured may be prosecuted for the perjury."

20 4 Bl. 287.  
 See 97 Atl. at pp. 783-784.

In stating the reason for the rule the learned Justice further said:

30 "Before leaving the Common Law rule it may be well to advert to a matter that must occur to everyone who considers the subject, viz., the mildness, not to say ineffectiveness, of the manner in which contempts were dealt with in the law courts of England as compared with the severity of its criminal law in other respects. That this arose from any special sympathy with this particular offense is not to be thought of, on the contrary, of all criminal offenses, this is probably the very one that the judges have liked to punish in the most effective manner. The course pursued  
 40 by the common law judges was evidently

therefore not from choice but from compulsion and the nature and source of such compulsion are not far to find. Contempt was a criminal offense and Magna Charta expressly forbade that any person should be tried for a criminal offense unless upon the indictment of the Grand Inquest. In the face of this prohibition there could be no trial by the court. The unwritten constitution of England likewise provided that no man could be compelled to give testimony against himself and it likewise prohibited one accused of crime from testifying in his own behalf. The net result of these fundamental restrictions was that in the summary proceedings for contempt there could be no trial and hence no witnesses, from which it followed that if the defendant was to be convicted in such summary proceeding it must be upon facts admitted by his own oath, the taking of which was justified upon the somewhat sophistical ground that the taking of such an oath by the defendant was not the giving of testimony, because if there was not trial there could be no testimony, and hence the defendant was not a witness. For present purposes the significant feature of this common law procedure is that it excluded the idea of a trial of the accused either by witnesses against him or by the contradiction of his oath by that of others. As well stated by a recent writer, 'the common law mode of proceeding in cases of contempt presents no question of fact to be tried by a jury. The defendant determines by his own answer, under oath, whether he is guilty of that which is charged against them as a contempt of court, and if he fails thereby to purge himself the court may

at once impose the punishment' (5 R. C. L., p. 523)."

In support of the rule as stated by Mr. Justice Garrison, it is proposed to discuss some of the authorities which recognize its existence as the correct rule of procedure in common law contempts.

10 The practice is discussed in 3 Hawkins, P. C., p. 272. After a preliminary discussion of those situations in which a rule to show cause why an attachment for contempt should not issue and when an attachment should issue directly the text goes on to say:

20 "And the person attending the Court upon such a rule to answer it, or appearing upon an attachment, be apparently guilty, the Court will generally commit him immediately, in order to answer interrogatories, to be exhibited against him in relation to such contempt. But if there be any favorable circumstances to extenuate or excuse the offence, or if it appear doubtful whether the party be guilty of it or not the Court will generally in their discretion suffer the party, having first given notice of his intention to the prosecutor, to enter into a recognizance to answer such interrogatories; and if no such interrogatories be exhibited within four days after such recognizance, will discharge the recognizance upon motion; yet if the party do not make such motion, and the interrogatories be exhibited after the four days, the Court will compel him to answer them.

30

40 "But in all the cases above mentioned, if the party fully purge himself upon oath, in his answer to such interrogatories of the whole matter charged upon him, the Court will discharge him of the contempt, and leave the

prosecutor to proceed against him for the perjury, if he thinks fit."

See also Viner's Abridgment, Vol. 5, Topic, "Contempt," Star page 452, Section 16.

See also *United States v. Dodge* (Oct. Terms), 1814, 2 Gallison, Star page 313.

The practice in contempt proceedings as discussed by Tidd in an edition with American notes by Asa I. Fish, Volume 1, Star page 482, the text says: 10

"When the party has been taken upon the attachment, the court, upon motion by his counsel, will make a rule, that unless his adversary exhibit interrogatories against him in four days, which must be in term time, he shall be discharged." 20

In the *Encyclopædia of Evidence*, Volume 3, at page 440, Section 3, Topic, "Contempt," it is said:

"After contemnor is in court \* \* \* he may demand that interrogatories be filed for him to answer, \* \* \* .

"Under the strict common law rule, the contemnor in a court of law answered the charge of contempt on oath, and if by his oath he purged himself of the contempt he was discharged, \* \* \* . In the court of law his answer was held to be conclusive, without considering the weight of evidence, or the credibility of what was sworn in the answer, though he was liable to be subsequently prosecuted for perjury should his answer have been false." 30

In the case of *State v. Matthews*, 37 New Hamp- 40

shire, at page 454, Mr. Justice Fowler in delivering the opinion of the Court said:

10        “A proceeding for contempt is a distinct and independent matter, as much so as a new suit, and requires distinct notices of proceedings to be given. After an attachment issues, the proceedings are to be regarded and entitled as of a criminal character. *Ex parte Langdone*, 25 Vt. 680; *U. S. v. Wayne, Wallace*, 134; *Tenney’s Case*, 23 N. H. (3 Foster), 162.

20        “After the respondent appears upon a rule to show cause, or is brought up on attachment, he may submit his contempt to the court upon his own answer in the form of an affidavit, *or he may demand of the prosecutor to file interrogatories for him to answer*. The usual course when the alleged misconduct is denied, is for the Court to allow the prosecutor to file interrogatories intended to elicit a full statement of all the facts and circumstances of the alleged contempt. These may be filed in Court, and the respondent’s answer thereto taken by the Clerk and reported by him to the Court, who may proceed in a summary manner to decide the question of the guilt of the accused; or, a master or commission may be

30        appointed, before whom the interrogatories may be filed, and who will take down and report to the Court the respondent’s answers thereto, with such other testimony as either the respondent or the prosecutor may desire to have taken.”

40        *Heming v. Tyler*, 1 Johns Case, 31.  
           *People v. Brown*, 6 Cowen, 41.  
           *People v. Ball*, 5 Cowen, 415.  
           *Hollingworth v. Duane, Wallace* 78.

The Court is also requested to examine the cases of *Rex v. Edwards*, 4 Burr. 2105 at 2106 (1767). Also, *Long v. Elways*, Mosely's Reports, 250 (1729) and *Rex v. Read*, Vern & Scri Reports, 295.

In the case of *Hollingsworth v. Duane*, United States Circuit Court, Eastern District of Pennsylvania, May Sessions 1801, the defendant, Duane, was charged with publishing an article concerning a pending cause which it was charged was contemptuous. Upon appearing before the Court the question of the practice was brought up and disposed of by Griffith, *J*, in the following opinion:

“The mode of proceeding in this case is very clear of difficulty. The prosecution has proved by an affidavit, that the paper was published at the office of the defendant, and that he is the editor. The editor is called on to show cause why an attachment should not go against him for it, as a contempt of the Court. On this rule he may controvert the fact by affidavits; he may explain; or palliate; he may contend on any legal ground that the Court ought not to award an attachment; in short, he may defend himself in person or by counsel, as he is advised. At this time, no question can be made about interrogatories. The prosecutor must prove, and he has already proved the publication. When the defendant has made his defense, we shall discharge the rule, if on any grounds, we think an attachment ought not to go. But if we are of opinion that the fact on which the rule is taken, is not sufficiently answered or excused, and that in point of law a contempt has been incurred, we shall direct an attachment to issue. When

this is done, and the defendant brought in upon attachment, he may submit his contempt without interrogatories, to the Court, or he may demand of the prosecutor to file interrogatories, stating the questions on which the contempt turns; and if on his oath, he gives such answers as purge him from criminality, he must be discharged, and the prosecution falls to the ground. This right to demand interrogatories is in his favor; he is not obliged to ask for them, nor can the Court force them upon him. If he will not pray interrogatories, the matter of contempt being proved by the affidavit or other testimony of the prosecutor, to the satisfaction of the Court they will give judgment against the offender being in custody on the attachment."

Wallace Cir. Rep. U. S. (1872) 78.

One of the earliest contempt cases in the United States was that of *Respublica v. Oswald* in the Supreme Court of Pennsylvania (July 12, 1788) Dallas's Rep. In that case there was a cause pending in the courts between one Brown and Oswald in which Brown sought to recover damages for libel against Oswald. During the pendency of this cause Oswald caused to be published matter concerning the cause which it was contended was contemptuous. Application was made for a rule to show cause why an attachment should not issue against Oswald. Upon the hearing of the rule it was decided that an attachment should issue and after the Court had arrived at this decision, M'Kean, *C. J.*, asked the defendant Oswald:

"Will the defendant enter into a recog-

nizance to answer interrogatories or will he answer gratis?"

It will be observed from reading this case that the practice is exactly as contended by counsel for the defendant-in-error, that is to say, upon the return of the rule, cause having been shown an attachment issues to answer interrogatories.

In the sentence pronounced by Tilghman, *C. J.*, 10  
in the case of *U. S. v. Duane*, U. S. Cir. Ct., May Sessions, 1801, the Court said among other things:

"You were then informed, that if you wished to answer interrogatories it was your right and your privilege to have them exhibited by the prosecutor; and that if, by your answer on oath, you cleared yourself of the contempt, it would be received as the truth, notwithstanding the evidence that had been produced against you and you would be discharged from all further proceedings." 20

In the case of *Thomas v. Cummings* (Sup. Ct. Pa. 1791) 1 Yeats 40, the following is reported:

"The defendant having been brought in by attachment for a contempt during the last term, and having entered into recognizance with security for his appearance on the second Monday of this term (1 Bac. 182) to answer to interrogatories to be exhibited against him within the first four days of the term, agreeably to the rule of the Court, now appeared in proper person, and having answered to the interrogatories upon oath, and purged himself of the contempt, was discharged by order of the Court." 30 40

In Archbald's Practice of the Court of King's Bench under the chapter, "Attachment", Star page 338 at Star page 342, the necessity of interrogatories in contempt proceedings is discussed. The text writer says:

10 "Upon the defendant's being bailed or committed, the court, upon application, will grant a rule that unless the prosecutor exhibit interrogatories against him in the crown office, within four days, the defendant shall be discharged. And if the interrogatories be not exhibited within the time limited by the rule, the defendant may move to be discharged out of custody, or (if he be out on bail) that his recognizance be discharged. The prosecutor, however, may exhibit his interrogatories at any time before the motion is actually made."

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2 Hawkins C. 22 section 1.

30 "These interrogatories must be exhibited in all cases, excepting the case of an attachment for non-payment of money, which is in the nature of a civil execution; see 4 T. R. 316; but in all other cases the interrogatories alone contain the charge against the defendant, the attachment being but process to bring him in to answer to the charge when exhibited. Therefore, the defendant cannot come in and confess the contempt, before the interrogatories are filed; for until they are filed there is no charge in court against him to which he can plead. 4 Burr. 2105, 1 W. Blackstone, 637. The case of an attachment for a rescue, indeed, depends upon different grounds; for there the sheriff's return of the rescue is in itself a conviction, and not traversable. 4 Burr.

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2129, 1 W. Blackstone 640. Yet even in that case, it is the invariable practice of the court to put the defendant to answer interrogatories, unless the prosecutor consent to his confessing the contempt without them. 5 T. R. 362.”

The force of the language used by Archbald in that interrogatories must be exhibited because they are the pleadings, is of special interest. If no interrogatories were filed what would the issues in such a proceeding be, but the defendant be subject to a sort of inquisition with no latitude except that which lay in the discretion of the court to control the subject matter of his examination. The attachment has been spoken of by Archbold as merely the process to bring the defendant in contempt proceedings before the court and after he was before the Court, it was necessary to file the interrogatories in order to apprise him with what he was charged. 10 20

The right of the defendant in contempt proceedings to have interrogatories exhibited against him, and to answer them, and by his answers either convict or purge himself *is a substantive right and not a mere matter of procedure.*

Mr. Justice Garrison in delivering the opinion of the Supreme Court, said on this point: 30

“In fine, the repugnancy of the common law proceeding in contempt cases to our constitutional guaranties with respect to indictment by a grand jury and to trial by a petit jury is overcome solely by the existence of such arbitrary power as part of the common law which we have inherited, but this protection would not extend to a modern departure therefrom that at the time of its adoption did 40

violence to these sections of our Bill of Rights. Excepting it keep within its common-law authority, no court of law in this state can summarily convict and punish for a criminal contempt any more than it could convict and punish for any other criminal offense without indictment and trial by a petit jury. Const. N. J., Art. 1, Section 9; Const. N. J., Art. 1, Section 8.

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Verdon's Appeal, 97 Atl. at p. 785.

The question of the proper procedure is also discussed by the Supreme Court, in *Reinhardt v. Lance*, 14 Vr., page 320, *in re Haines*, 38 Vr., 442, *in re Holt's Case*, 26 Vr., 384, referred to the *arbitrary* nature of the power to punish for contempt and the fact that it should be sparingly exercised and then only in *strict* accordance with the established practice.

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In 4 Encyc. of Plead. and Prac., 770, and cases cited, it is said:

“It also naturally follows from the criminality attaching to contempt of Court that the proceedings to redress the same should be *strictly* pursued.”

That the established practice, to wit, the right to answer interrogatories, is substantive, is settled.

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Rapalje on Contempt, Section 119, says:

“Upon this subject Blackstone says: ‘It cannot have escaped the attention of the reader that this method of making the defendant answer upon oath to a criminal charge is not agreeable to the genius of the common law in any other instance, and seems, indeed, to have been derived to the Courts of Queen's Bench

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and Common Pleas, through the medium of the courts of equity. For the whole process of the courts of equity in the several stages of a cause, and finally to the enforcement of their decrees, was, until the introduction of sequestrations, in the nature of a process of contempt, acting only *in personam* and not *in rem*. And there, after the party in contempt has answered the interrogatories, such his answer may be contradicted and disproved by affidavits of the adverse party; whereas, in the Courts of law the *admission of the party to purge himself by oath is more favorable to his liberty, though perhaps not less dangerous to his conscience; for if he clears himself by his answers, the complaint is totally dismissed. The doctrine thus laid down is still the rule followed by Courts which proceed according to the course of the common law, those Courts uniformly holding that if one accused of a constructive contempt fully answers all the charges, on his oath, he must be discharged; the answer must be taken as true and extrinsic evidence cannot be received to impeach it.*"

United States *v.* Dodge, 2 Gall. (U. S.), 313.

Buck *v.* Buck, 60 Ill., 105.

Burke *v.* State, 47 Ind., 528.

Haskett *v.* State, 51 Ind., 176.

Jackson *v.* Smith, 5 Johns, 117.

Thomas *v.* Cummings, 1 Yates Pa., 1.

State *v.* Earle, 41 Ind., 464.

4 Encyc. of Plead. and Prac., 795, and cases there cited.

And in the case of *In re Moore*, 63 N. C., 397, it is said:

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10 “The rule rests on sound reason. In this proceeding, as the Court is judge in its own case, in the first instance, where a case is made out in the judgment of the Court, *the party in the last instance is allowed to try himself*. His intention is locked within his own breast, is known to himself alone, and he is permitted to purge himself by his own avowal. He cannot be convicted, if he is innocent, as he may be by false evidence before the jury. For the Court does not try him, he tries himself.”

In the case of *King v. Vaughan*, 2 Doug., 517, 99, English Reprint, page 329, Lord Mansfield said:

20 “If the defendant by his affidavit, fully denies the charge on which the rule for the attachment was granted that is sufficient; the weight of the evidence, or the credibility of what is sworn, is never considered; but if the defendant is hardly enough to swear falsely, he is left to be punished by indictment.”

In *King v. Simms*, 12 Modern, page 511, 88 English Reprint, page 1484, it is said:

30 “If one brought in for contempt deny all upon oath he is, *of course*, discharged of the contempt, for if he has foresworn himself, he must be prosecuted for perjury.” Citing:

3 Hawkins, P. C., 7 Ed., Chap. 22, Sec. 1.

In *Jackson v. Smith*, 5 Johns. Common Law Reports, page 117, it is said:

40 “The attachment by virtue of which he had been arrested, *was nothing more than a process to bring him into Court to answer*

*the interrogatories* which upon the return of it were to be exhibited against him. *This is necessary to be done in every case before the party can be convicted of a contempt.* If the answers to the interrogatories show that no contempt has been committed, the party is entitled to his discharge; but if the contempt be admitted, the Court proceed to pronounce such judgment as the circumstances of the case may require.” 10

It is a cardinal rule in proceedings for a criminal contempt that the answer of the respondent cannot be traversed and must be taken as true. If false, the Government is remitted to a prosecution for perjury.

- 4 Blackstone Commentaries, 287.
- In the Matter of Pitman, 1 Curtis, 186.
- United States *v.* Dodge, 2 Gall., 313. 20
- State *v.* Earle, 41 Ired., 464.
- Burke *v.* State, 47 Ired., 528.
- People *v.* Few, 2 John., 290.
- In re* Moore, 63 N. C., 397.
- Nomes *v.* Cummings, 1 Lester, 40.

In the case of *Oster v. The People*, Ill. Supreme Court, 56 L. R. A., 463, it appeared that in proceedings before the Court facts were developed 30 which indicated that a contempt had been committed, and the Court allowed an attachment against the respondent, and upon his being brought into Court, he filed an answer which denied the contempt. The Court, however, considered the testimony upon which it had awarded the original attachment. The Supreme Court of Illinois reversing the judgment said that:

“The proceeding was criminal, not reme- 40

dial, in character, and in criminal contempts alleged to be committed out of the presence of the Court, if the contemnor's answer is sufficient to acquit of the charge he must be discharged." Citing:

- Crook *v.* People, 16 Ill., 534.  
 Buck *v.* Buck, 60 Ill., 105.  
 4 Encyc. of Plead. & Prac., 795.  
 10 People *v.* Diedrich, 141 Ill., 665; 30 N. E., 1038.

If by his answers on oath *to the interrogatories* he purges himself from criminology he must be discharged.

3 Amer. & English Ency., 1st Ed., page 793.

20 See, also:

- Wilson *v.* State, 57 Ind., 71.  
 Welch *v.* People, 30 Ill. Appeals, 399.  
*Ex parte* Van Hook, 3 City Hall Records, 64.  
 Commonwealth *v.* Snowden, 1 Brewst., 218.

30 In the Matter of Pitman, 1 Curtis (U. S.), 186, the rule is thus expressed:

"One of the most important privileges accorded by the law to one proceeded against as for a contempt, is the right to purge himself if he can by his own oath. *So rigid is the common law as to this that it does not allow the sworn answers of the respondents to be controverted as to matter of fact by any other evidence.*"

40 In Saunders *v.* Melhuish, 6 Modern, 73, 87 Eng. Reprint, 832, Holt, Chief Justice, said:

“When one is put to answer interrogatories for a fact fully proved against him he ought to answer in custody; but where it is anything doubtful, the course is to put him to answer, that is, to bind him by recognizance to answer. And in either case, if they purge themselves upon oath they are discharged, but they may be prosecuted for perjury if they swear false. *And if the interrogatories be not exhibited in four days by the course of the Court they are discharged.*” Citing: 10

2 Jones, 178.

3 Burr., 1329, Douglas, 498.

2 Hawkins' P. C., Chap. 22, Sec. 1.

In a common law proceeding for constructive contempt as distinguished from a suit in equity if the defendant denies in his affidavit or answers on oath the facts alleged to be contemptuous and thus purges himself he will be discharged and no other evidence is admissible. 20

Early *v.* People, 117 Ill. Appeals, 608.

McSwane *v.* Foreman, Ind., 1906; 78 N. E. Rep., 630.

Bearing in mind the fact that the law is well settled not only by the cases hereinbefore set forth, but by the cases hereinafter referred to in this State that the respondent is compelled, contrary to the course of the common law, to be a witness against himself, it is elemental *that the method in which he shall be compelled to be a witness against himself is of substance.* 30

Under the common law as stated by Holt, Chief Justice in Saunders *v.* Melhuish, *supra*, a person accused of contempt is entitled to the exhibition of interrogatories and unless those interrogatories 40

are exhibited within four days after he has been brought up under the attachment, he must be discharged.

To the same effect is Rapalje on Contempt, Section 119, and Blackstone.

And this is the law of New Jersey.

In *State v. Fishler*, 1 Hal., 305, it is said:

10       “Fishler was called upon to answer interrogatories upon an attachment for contempt, and the question arose as to whether he should make his answers *ore tenus* or in writing.”

It was held that he should make his answers *ore tenus*, and thereupon he read his answers, as appears by the report, from a paper previously prepared.

20       In *State v. Doty*, 3 Vr., 403, where the proceedings were had before the Supreme Court itself, Chief Justice Beasley, Justice Woodhull, Vredenburg and Depue sitting with him, it appears that the proceedings were by interrogatories. The recital preceding the opinion says:

“The defendant being interrogated stated under oath.”

30       In *State v. Clark*, 1 Dut., 211, the Court said:

“A rescue is deemed an offence of such a nature \* \* \* that the Court \* \* \* will punish \* \* \* without going through the *ordinary* course of his being *examined on interrogatories* as no denial on such interrogatories will excuse him.” Citing:

*Rex v. Elkin*, 4 Burr., 2129.

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In Holt's case, 26 Vr., page 384, the conviction was set aside without an examination of the merits because the procedure was not proper.

*In re Haines*, 38 Vr., 442, the conviction was set aside and the Court said:

“The proper procedure for proceedings to adjudge one in contempt is to grant a rule to show cause on affidavits or proof in open Court of facts which justify the rule.” 10

*In re Cheesman*, 20 Vr., 115, Justice Dixon said:

“No doubt the ordinary course of practice in such cases in Courts of law is that an affidavit of the facts should first be presented; then, that a rule should be entered requiring the alleged offender to show cause, why he should not be attached for contempt; then, if good cause be not shown, that an attachment should issue, and the accused, on being brought in, should be either held to bail or committed to answer interrogatories; then that the interrogatories be exhibited and, answered; *and thereupon according as his answers confess or deny his guilt he should be punished or discharged.*” 20

It is true that although this course of procedure was not adopted in that case it was because, as indicated on page 143, the respondent had waived his rights. The Court said: 30

“In the present case, the appellant, on the return of the rule to show cause, filed his affidavit declaring *the truth* of all the matters alleged in the rule as the basis for its allowance, and although the consideration of the cause was then adjourned from term to term, 40

10 yet the appellant never intimated that an affidavit should have been presented before the rule was granted, or that he was entitled to have an attachment issue *or interrogatories filed*, or that the rule should be discharged for want thereof; and even after sentence was pronounced, he obtained leave to amend his affidavit, but did not complain of any irregularity or illegality in the proceedings. *Under these circumstances the objection now made cannot be sustained.*"

The practice of exhibiting interrogatories finds support even in the court of chancery of this State.

Jewett, Receiver *v.* Ringer, 27 Eq., 271.

20 In the famous Middlesex County Contempt Case, Reported in 27 N. J. L. J., 1904, where there was a flagrant contempt of Court, it appears from an examination of the case that the proceedings were upon interrogatories, page 346.

The latest case upon the subject is that of, In the Matter of the Appeal of George Gonzales from an order adjudging him guilty of contempt of the Hudson Oyer, decided at the June Term, 1910, which is reported in 88 N. J. L. p. 536.

30 The hearing was before Justice Parker and Bergen, the opinion by Justice Parker. It appears from the opinion that the proceedings were by interrogatories. The conviction was reversed upon the ground that the Court in considering the case considered not only the interrogatories and the answers thereto, but the testimony taken on the allowance of the rule to show cause. The Court, however, considering the interrogatories, said:

40 "On the whole, therefore, we think that ap-

pellant fully and fairly purged himself of any contempt, legally implied in the interrogatories, and which was testified to by the Grand Jury Clerk. If his denial was adequate, it must be taken as true. *In re Cheesman*, 20 Vr., at page 143; 4 Blackstone, 287; 2 Archb. Prac., 7th Ed., 1272, and cases cited, 9 Cyc., page 44."

Indeed, in the Gonzales case the original proceedings were in accordance with the procedure here taken and upon objection of the respondent was changed. Mr. Vickers, representing the State, in that case said:

"I know of no proceedings whereby there could be an adjudication of this matter without interrogatories" (p. 9 of the State of the Case).

Upon principle the right to have definite interrogatories submitted so that they may be definitely answered is substantive.

We may look for further authority in the historical origin of "contempt proceedings." Not long ago, defendants in criminal actions were precluded from testifying for themselves. Wigmore on evidence treats this question in Volume 1, Section 577 and including 579. Proceedings in contempt differ entirely from the proceeding of trial by jury preceded by an indictment. The habit of answering interrogatories exhibited against the respondent in contempt is also in conflict with the well established rule that a person could not be required to give testimony for himself, and was in fact precluded by legal inhibition from so doing. It is perceived therefore that the proceedings adopted in contempt were similar to those which were known in the early English law as *canonical*

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*purgation.* Reeves in his History of the English Law discusses the subject of purgation in the following language:

10 "If a reus, who was suspected of a crime, could not be convicted on proof, he was not therefore to be absolved, but was required to make out his innocence by canonical purgation. This was so called because imposed by the canons, and to distinguish it from the vulgar purgation, which consisted in the ordeal, and had been reprobated long since by the clerical law. Canonical purgation was, when a person made out his innocence by his own oath, swearing that he was not guilty, and the oaths of compurgators, swearing that they believed him to speak truth. This was to be directed by the judge who heard the cause in which he was defamed, and by no other. The judge directed purgation, either at the instance of the party who was to be purged, or to satisfy himself respecting the suspicions under which the reus labored. The judge might, if he pleased, though he was not bound to, enjoin purgation, even where the infamia did not arise from very probable conjectures. See 4 Reeves History of English Law, p. 92.

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30 *See Also 2 Pollock & Maitland Hist p. 656 etc*  
This process of purgation was also followed in what was known as trial by wager of law. This is described in Blackstone's Commentaries in Book 3 at page 342, etc. The following excerpt from Blackstone is of interest:

40 "The manner of waging and making law is this. He that has waged, or given security, to make his law, brings with him into court eleven of his neighbour's: a custom, which we find particularly described so early as in the

league between Alfred and Guthrun the Dane; for by the old Saxon constitution every man's credit in courts of law depended upon the opinion which his neighbours had of his veracity. The defendant, then standing at the end of the bar, is admonished by the judges of the nature and danger of a false oath. And if he still persists, he is to repeat this or the like oath: "hear this, ye justices, that I do not owe unto Richard Jones the sum of ten pounds, nor any penny thereof, in manner and form as the said Richard hath declared against me. So help me God." And thereupon his eleven neighbours, or compurgators, shall avow upon their oaths, that they believe in their consciences that he saith the truth; so that himself must be sworn *de fidelitate* and the eleven *de credulitate*." 10

It is to be noted, that the manner of a respondent, in contempt, clearing himself of the contempt is always spoken of as "purging himself of contempt." It is suggested that this procedure had its origin in the canonical purgation which existed during the reign of Edward IV and which is referred to in Reeves' History of the English Law. 20

Contempt in addition to being an offense against the dignity of the Court was also a crime at the common law and punishable as such with the usual formalities of substance, that is to say indictment by grand jury and trial by petit jury, with all the requisites of such trial. It must have been with some difficulty that the common law judges thought out a proceeding by which they could punish a defendant in contempt without violating his right to have his case considered by a grand jury and by a petit jury. There seems to be every indication that they hit upon this 30 40

see 6.R.C.L. p. 4  
Sec. 43, note 1

scheme of *canonical purgation* or a proceeding somewhat similar to it by which the respondent in contempt could be brought before the court and compelled to submit to the humiliation of either denying his contempt in which he stultified himself in the eyes of the community or by admitting it and thereby laying himself open to the punishment of the law. It would undoubtedly be  
 10 a keen humiliation to any one who had spoken contemptuously of a court and endeavored to interfere with its process to be required to come before that court and to deny his intent to act contemptuously and to deny the very things which he had published broadcast concerning the Court.

It is contended that inasmuch as the judges of the English common law period prior to the existence of New Jersey as a State and as part of the United States, hesitated to adopt any  
 20 method of procedure other than that by exhibiting interrogatories and going through the process known as purgation, so much the more should the judges of our courts hesitate to do so. In fact it is contended that any change made in the procedure which existed prior to the existence of this state would be a violation of the constitutional rights of a respondent in contempt. If ~~the~~ <sup>crime</sup> ~~of~~ <sup>is</sup> contempt has been  
 30 actually committed the criminal procedure provides an effectual remedy for imposing an ample and proper punishment. It is not the concern of the Court to punish directly such offenders without the interposition of the machinery of the criminal law. It is contended that the purpose of this proceeding is to compel the contemnor to stultify himself before the public thus laying himself open to a prosecution by the  
 40 regular processes of the criminal law and to

minimize his interference with the courts in the transaction of their business.

The proceeding which the court attempted to use against Verdon, tends to open the way for a dangerous precedent which it would require a popular upheaval to destroy.

Turning to the brief submitted by the plaintiff-in-error and considering the authorities therein cited, it is contended that nothing is shown in them to justify the reversal of the Supreme Court. 10

The first case relied on is the opinion of Lord Mansfield in *King v. Vaughn*, 2 Douglas, 517. This opinion is set forth *in toto* and an examination of this opinion will demonstrate without argument the futility of endeavoring to use this as a reason for reversing the Supreme Court:

“Lord Mansfield stated the practice of the Court to be, that, if the defendant, by his affidavit, fully denies the charge, on which the rule for an attachment was granted, that is sufficient; the weight of the evidence, or the credibility of what is sworn, is never considered; but if the defendant is hardy enough to swear falsely, he is left to be punished by indictment. In Chancery, he said, they proceed differently: they examine the defendant on interrogatories, and also examine witnesses on both sides, and then decide upon the truth of the charge.” 20 30

The procedure in *King v. Vaughn*, *supra*, is explained by the language of Griffith, J., in *Hollingworth v. Duane*, Wallace p. 78, also in the opinion of the Court in the case of *State v. Matthews*, 37 N. H. 450 at p. 454. *see this brief*

It is to be observed that in the cases last mentioned, the court in both instances spoke of the 40

right to have interrogatories exhibited and the fact that the respondent might file an affidavit should he choose to do so. Apparently in the case of *King v. Vaughn*, the respondent chose to file an affidavit for the purpose of purging himself but he had the right to have interrogatories exhibited, so that he might purge himself as in trial by purgation.

10 There has been a tendency in modern jurisprudence to regard many matters of procedure as mere technicalities of no substance but merely intended to delay or thwart justice. Many of these technicalities are in fact the bulwarks of our liberty. To brush them aside as of no consequence is likely to lead to many abuses. It is but a short step from a disregard of technicalities in matters of procedure to the rule of the Cadi at the Gate.

20 If the contempt proceeding is construed to be a trial, in the legal sense of the term, then it would be entirely improper under our constitution to try the defendant without a jury and an indictment. Mr. Justice Garrison in delivering the opinion of the Supreme Court distinguishes a contempt proceeding from a trial by quoting from 6 Ruling Case Law at page 523, the text of which states:

30 "The common-law mode of proceeding in cases of contempt presents no question of fact to be tried by a jury. The defendant determined by his own answer, under oath, whether he is guilty of that which is charged against him as a contempt of court, and if he fails thereby to purge himself the court may at once impose the punishment."

40 It is contended that any deviation from the

course of common-law procedure which existed prior to the adoption of our constitution and prior to the existence of New Jersey as a State and a part of the United States, would be a transgression of our constitutional interdict requiring a trial by jury preceded by an indictment by a grand jury. Blackstone treats of contempt under the chapter head of summary conviction distinguishing them from greater offenses. An examination of all judicial precedents will indicate that the amount of punishment inflicted in contempt proceedings is trivial and that it has been the policy of the law to look to the machinery of criminal law for the punishment of contempt in its criminal aspect. 10

Counsel for plaintiff-in-error has cited several Federal cases in his brief in support of the view that the Supreme Court erred in requiring the exhibition of interrogatories. These cases, it is contended, have no application to the situation at bar. The Federal Courts derive their existence from the Federal Constitution, article 3, section 1, which provides as follows: 20

“The judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and inferior Courts shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.” 30

Under the sub-head “Judiciary, chapter 12, Revised Statutes of the United States, section 725, the jurisdiction of the Federal Courts in contempt matters is regulated as follows: 40

10 “The said Courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority: provided, that such power to punish contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said court in their official transactions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree or command of the said courts.”

20 In the Shipp case, 203 U. S. at 575, Mr. Justice Holmes, speaks of this section, saying:

“it embodies the law so far as it goes.”

The language of the statute conferring power on these courts to punish for contempt is important because it gives the power to punish at the discretion of the Court.

30 In the Shipp case, *supra*, the contempt proceedings were against persons who had succeeded in taking from the custody of lawful authorities, while an appeal on *habeas corpus* proceedings were pending, the body and person of a negro then under sentence of death and murdering him by lynching. But even at the common law this would have amounted to a rescue and as it is said in Archbold's Practice, volume 2, at star page 343:

40 “The case of an attachment for a rescue, indeed, depends upon different grounds; for

there the sheriff's return of the rescue is in itself a conviction, and not traversable." 4 Burr 2129, 1 W. Blackstone, 640.

Whatever may have been the practice in the Federal Courts, their rules have no application in the Courts of New Jersey. It has been held invariably by the New Jersey Courts according to the general rule stated by Chief Justice Hornblower, in *Van Winkle v. Alling*, 2 Harrison 446: 10

"It has more than once, recently, been decided that the rules of practice of the court of King's Bench, recognized here, at the time of our revolution, are in force, and regulate the practice of this court, except so far as they have been superseded by Acts of the Assembly."

Mr. Justice Garrison in the case of *Ocean City Hotel Co. v. Sooy*, 80 N. J. L. at 41, said among other things: 20

"And in *Florence v. Shumar*, 5 Vroom, 455, Mr. Justice Depue said that 'the rules of practice of the Court of King's Bench which were in force at our revolution regulate the practice of this Court except so far as altered by act of the legislature or superseded by the rules of this Court or inconsistent with the nature of our judicial institutions.' " 30

The rule laid down by Archbold, Tidd and Viner's Abridgment and in numerous other authorities which have been cited in this brief, was the correct rule of procedure in the Court of King's Bench and according to the rules of that Court. There has been no act of the legislature to change those rules and it is perceived that they are still 40

controlling and that the Quarter Sessions of Hudson County had no right to transgress these rules in a matter of substance and substitute some new proceeding in conformity with the Courts of another jurisdiction.

The respondent should not have been compelled to come into Court and answer such a rule to show cause as was asked in this case.

10 There is nothing definite about the allegations in the rule. It is merely set forth that a certain man deposed and testified in substance and to the effect as follows, to wit, that he saw the respondent and got from the respondent a statement concerning judicial proceedings pending. There is nothing to show what the respondent actually told the newspaper reporter. The newspaper reporter having asked the respondent for information, he was entitled to give him information as to what  
20 he intended to do and he is not responsible for the inferences drawn therefrom by the newspaper reporter.

The rule to show cause cannot in any respect be considered as a substitute for interrogatories. It is impossible to answer.

Nor can the testimony taken by the Court upon the final hearing be considered as in the nature of interrogatories.

30 Again, the reporter merely testified as to his inferences from what the respondent told him (p. 78). He was asked:

“Will I repeat what Mr. Verdon said to me, from memory?”

“Q. Can you? A. Two hours and a quarter conversation; I cannot.”

And on page 179:

40 “I say it is a very difficult thing to do be-

cause I go there and put questions to the man and he answers me and I gather my impression from that.

“Wherein I quote him directly with quotation marks it is to be assumed of course that he had said everything that is said there. But in the other part of the article, to say that every idea, every thought that is contained in this article was obtained from Mr. Verdon— 10  
it is impossible to say that because something might be retained in my mind from the Smith trial. It does not purport to quote Mr. Verdon from beginning to end.”

Timely objection was taken to the course of procedure, page 64, etc.

The respondent did not in any wise participate in the trial so as to waive his rights.

It is insisted that Verdon was deprived of a right 20  
guaranteed to him by the Constitution and laws of this State and by the Constitution of the United States in the procedure adopted by the quarter sessions. *See Art 10, Sec 1, N.J. Con*

Lastly, upon this point, assuming for a moment that the method of procedure is not jurisdictional, but bearing in mind the language of Mr. Justice Dixon speaking for the Supreme Court in the Cheesman case that the *ordinary* practice in such 30  
cases in courts of law, is that an affidavit of the facts should first be presented, then that a rule should be entered requiring the alleged offender to show cause why he should not be attached for contempt; *then*, if good cause be not shown, *that an attachment* should issue, and the accused, on being brought in, should be either held to bail or committed to answer interrogatories; then that the interrogatories be exhibited and answered; 40  
and thereupon according as his answers confess

or deny his guilt he should be punished or discharged, and the language of this Court in *Reinhardt v. Lance*, 14 Vr., page 311; *In re Haines*, 38 Vr., 442, *Holt's Case*, 26 Vr., 384, and cases from foreign jurisdictions heretofore cited that the power to punish for contempt where the Court itself is both accuser and judge is an arbitrary power and should be exercised in strict accordance with the forms of procedure, what is the excuse  
 10 "when the ordinary practice" is brought to the attention of the Court at the institution of the proceedings and objection is made by the respondent upon the ground that the ordinary procedure is not being adopted so far as he is concerned, for a departure from that ordinary procedure, particularly in a case like this where the alleged contempt was a statement that the respondent was  
 20 going to exercise his constitutional right to petition the Legislature for an impeachment of a member of the Court.

It is contended that in consideration of the authorities and the arguments set forth above, the judgment of the Supreme Court reversing the Quarter Sessions is correct and should be affirmed.

### POINT III.

30 The testimony taken before the Quarter Sessions on final hearing did not warrant the judgment of conviction.

I have considered with some detail the testimony given before the Court upon the preliminary hearing. All that can be considered is that of Byrne, page 43, and Mr. Doherty, page 49, and as heretofore referred to that only goes to the effect that  
 40 the information as to what Verdon was going to do

was derived from Verdon, and that at the time of the publication of the article Mr. Doherty had no intention of applying for an adjournment of the so-called Smith case.

There was no testimony before the Court as to what Verdon told Byrne. Assuming that everything that is recited in the article was told to Byrne by Verdon it results in this only, that upon inquiry made by the newspaper reporter to Verdon he said that he was going to apply to the Legislature to impeach the Judge presiding at the trial of the State against Smith, and the prosecutor, upon the ground that the indictment against Smith was *a frame up*; that it had been obtained by illegal means. That Judge Tennant ought to have discontinued the trial immediately upon the charge having been made that the indictment was defective. That the Judge refused upon proper request to charge the jury as to the legal definition of conspiracy. That thereafter the jury came in and asked for the instructions; that the Judge improperly charged the jury in that he said they might convict upon a preponderance of proof; that the indictment as originally returned referred to Smith as John Doe, alias Schmidt, and was subsequently changed to read Samuel W. Smith, formerly of West Hoboken; that the Grand Jury in considering the indictment did not intend to indict Samuel W. Smith. That prior to the indictments being handed up several grand jurors had moved for a reconsideration and were informed that the indictment would be held out from the number to be taken into Court so that there may be a reconsideration; that when the grand jurors came into Court instead of the agreement being carried out the indictments were handed up and that one of the grand jurors asked Judge Tennant for advice about the particular indictment which Judge

Tennant refused. That one of the indictments was obtained without the State calling into the Grand Jury room certain witnesses of which it had knowledge, who if called into the Grand Jury room would have demolished the case of the State. That because of these facts and others referred to in the article the prosecutor and the Court were subject to impeachment, and that the respondent Verdon intended to make application to the Legislature to investigate it and that because of such publication counsel for Smith would move on the succeeding Monday for an adjournment of the case.

10 There was no proof before the Court that any of these statements were false. No proof that the respondent did not intend in good faith to take the action he said he was going to take. No proof that he made the remarks for the purpose of interfering with justice. On the contrary the proof was to  
20 the effect that the statement was elicited from him by the newspaper reporter at the newspaper reporter's own insistence.

As a matter of fact the proof before the Court was that the case of the State against Smith was not in fact set for trial on the Monday referred to.

Is there a presumption from these facts that the statement was made *by the respondent to the newspaper reporter for the purpose* of interfering with  
30 the administration of justice?

The situation might well have been different if respondent had sought the newspaper reporter and had sought the publication of this article. (He did not.) He merely told what he was going to do. There was *no proof adduced or statements or admissions by respondent that he intended in any wise to interfere with the administration of justice.*

At most the proof showed that there was, if the statements were not true, a vicious libel com-  
40 mitted upon the Court. *But no proof whatever*

that the libelous statements were made for the purpose of interfering with the administration of justice.

The testimony before the Court was even more meager (if the term may be excused) than the preliminary testimony.

Byrne was absolutely unable to state the conversation between Verdon and himself.

He testified, page 78:

10

“Will I repeat what Mr. Verdon said to me from memory?”

“Q. Can you? A. Two hours and a quarter conversation, I cannot.”

And on page 79:

“I say it is a very difficult thing to do, because I go there and put questions to a man and he answers me and I gather *my impression* from that. Wherein I quote him with quotation marks it is to be assumed that he had said everything that is said there. But on the other hand part of the article, to say that every idea, every thought that is contained in this article was obtained from Mr. Verdon it is impossible to say that because something might be retained in my mind from the Smith trial. It does not purport to quote Mr. Verdon from beginning to end.”

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The only matters to which Byrne testified definitely, were that Verdon told him, page , that he intended to go to Trenton on Monday with respect to the case, and that Mr. Doherty would move for a postponement of the trials, and the reason why he would so move was that impeachment proceedings would be brought against the Judge and the Prosecutor and that

40

he was going down to Trenton to proceed with the impeachment.

Mr. Doherty stated that as a matter of fact the case of the State against Smith was not on for trial on Monday, January 17th. He denied that he had told Verdon that he would appear and ask for an impeachment or that he was going to Trenton to ask for impeachment.

10 Did this testimony warrant the language used by Mr. Justice Swayze in determining the case:

20 “It is obvious from a reading of the article that those cases, particularly at any rate, the Smith and Costello cases, were in the minds of the gentleman who wrote the article, the gentleman who is responsible for this publication and the gentleman who furnished the information. That being so, the article could have been published for only one purpose and that purpose must have been either to attempt to terrorize the Court and the prosecutor or to influence the conduct of the jurors.”

30 Might not the respondent have been convinced that the charges made in the statement (and there is no proof to the contrary) were true and might not he have thought that he was actually exercising a constitutional right to endeavor to obtain redress of grievances. Has it been proven that Verdon said anything more to Byrne than that because of facts which he (Verdon) believed true and which in his mind warranted impeachment, that he was going to ask impeachment? Must a person, who thinks that a Court ought to be impeached, wait, until after trials have been concluded before that Judge, before asking im-  
40 peachment? If that be so, when could impeach-

ment be asked; for it might be said with equal force that *so long as a Judge is a Judge the threat to impeach for judicial conduct would be an interference with the administration of justice.*

This article was not published *during the progress* of a trial. The trial had been concluded and no day set for a re-trial. If the respondent believed the facts stated, it was his duty to take steps looking toward an impeachment *before* the cases should be retried or not to take any steps at all. 10

Is the statement of the Court on page 107, warranted?

“As to Mr. Verdon, the case is very much plainer. He seems to have been interested in one at least of the defendants about to be tried. He gave information to Mr. Byrne when he must have known that information would be published. We think that he intended that it should be published. We look on him as having instigated the publication, and as being primarily responsible for it. Of course, he did it for only one purpose. That I have already suggested. The very time of the publication of this article is sufficient to show what his object was. The trial the previous week, it is said by one of the witnesses, had been the subject of newspaper comment. There was no reason for this publication on Monday morning except to influence the jury or the Court and the prosecutor in the trial that was set for that very day.” 20 30

In the first place, according to the evidence of Mr. Doherty, the only evidence before the Court (page 85) the trial was *not* set for that very day. 40

In the second place, the time of the publication of the article could have had no influence upon the guilt or innocence of Verdon inasmuch as he *had no control* over the publication. In the third place, there was no evidence that Verdon instigated the publication. The evidence was to the contrary, to wit, that *without* invitation from him, the newspaper reporter went to him, interviewed him and got the information as to what he was going to do, the respondent believing that he was exercising his right of free speech. Therefore, in the fourth place, there could have been no inference that his "only" purpose was to influence the trial of this cause. The Court seems to have assumed, and it is only upon such assumption that it could have reached the result it did, that the respondent did not in fact believe the statements contained in the article; that he did not intend in good faith to take proceedings before the Legislature; that in some way or another he induced the newspaper reporter to have this interview with him so that the newspaper reporter might get this information and might publish it on a day fixed known to him so that either the Court, prosecutor and jurors might be influenced or intimidated. There was no evidence whatever before the Court upon which any such conclusion could be based.

Before the respondent can be called upon to answer interrogatories there must be proof of his guilt sufficient to convict if established.

*In re Haines*, 38 Vr., 442.

That *intent* is the gravamen of the crime is fundamental. No matter what statements are contained in the article, if *in the mind of the respondent* there was not an intent to commit contempt there could be no conviction. Even if

there had been evidence before the Court of an intent to commit contempt of the respondent, upon the exhibition of interrogatories had disavowed such intent upon oath, he must have been discharged.

Rapalje on Contempt, Section 121, says:

“The better, but as we shall see, not the unanimous opinion, is that upon a rule to show cause why a party should not be punished for contempt, the actual intention of the party is material, and if the respondent disavows upon oath any intention of committing a contempt, the rule will be discharged.” 10

Matter of Moore, 63 N. C., 397.

*In re Walker*, 82 N. C., 95.

The Court's attention is directed to the case of *McClatchy v. Superior Court*, 119 Calif., 413. 20 An examination of the opinions in this case will indicate that a very offensive article had been published of and concerning a Judge presiding at a trial which article dealt with his personal conduct. It is recommended that the Court examine carefully the concurring and dissenting opinions filed in this case, having particular reference to the language of Chief Justice Beatty, who said, among other things, at page 422:

“The facts alleged and found in the proceedings against the petitioner do clearly establish a malicious libel, but they do not in my opinion constitute a contempt of Court.” 30

In the case of *In re Moore*, 63 N. C., 397, it appeared that certain members of the North Carolina bar published a signed newspaper article in these words:

“The Judges of the Supreme Court, singly 40

or *en masse*, moved from that becoming propriety so indispensable to secure the respect of the people, and throwing aside the ermine, rushed into the mad contest of politics, under the excitement of drums and flags.”

10 A rule to show cause why the defendant should not be punished for contempt, the defendant admitted that his purpose was to express his disapprobation of the conduct of certain individuals occupying high judicial stations, but he disclaimed any intention to commit any contempt of the Supreme Court or of impairing the respect due to its authority. The Court held that in this class of cases, wherein the intention to injure constitutes the gravamen of the offense, a disclaimer of such intention is a complete defense. The Court said:

20 “The rule rests on sound reason. In this proceeding, as the Court is Judge in its own case in the first instance, where a case is made out in the judgment of the Court, the party in the last instance is allowed to try himself. His intention is locked within his own breast, is known to himself alone, and he is permitted to purge himself by his own avowal. He cannot be convicted, if he is innocent, as he may be by false evidence before the jury. For the Court does not try him, he tries himself.”

30

In *Ex parte Biggs*, 64 N. C., at page 202, an attorney had published in respect to a charge of a Grand Jury that it was “almost identically similar with the one delivered here six months since with this important exception, his Honor seems to have somewhat deserted the profane poetical masters and confined most of his quota-

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tions to the Holy Scriptures—a happy omen if it is possible to believe anything happy in such a character.”

The attorney was disbarred by the lower Court, but upon appeal the judgment was reversed. The answer of the attorney was that as an attorney and counsellor in the Court he had ever been respectful, both in his deportment and language, and he disavowed having ever entertained any intention of committing contempt or any purpose to impair or destroy its authority in respect thereto. The Court said:

“The proceeding is one of a peculiar nature of necessity. The Court is to some extent a judge in its own case; hence when the respondent submits to try himself and a disavowal is made on oath the Court accepts it and is not allowed to call in question the truth or sincerity of the disavowal.”

The respondent having disavowed any criminal intention, the rule to show cause was discharged.

In the case of the *People v. Few*, 2 Johns., 290, there was a clear contempt of Court not only with respect to the dignity of the Court *but also with respect to the administration of justice*. A cause was pending and with respect to that cause certain citizens caused to be published a resolution that they considered it (the prosecution) to be an unwarrantable attempt to suppress and destroy one of our dearest and most valuable privileges, that of assembling together openly and publicly; of discussing freely the conduct of public men and public measures; etc., \* \* \* and that, therefore, such prosecution evinces an intolerant spirit, unbecoming the chief magistrate of a free state, disgraceful in a free government, and insulting to the feel-

ing of every citizen who was present at that meeting.

A rule to show cause having been awarded why an attachment should not issue, the respondent answered by affidavit and admitting the publication, *disclaimed any intention to commit contempt*. The Court said:

10        “The defendants have, by affidavits, negatived any intentional disrespect to, or contempt of this Court, *or any intention to influence or affect the course of justice*, in the decision of the cause in question.”

In *Percival v. State*, 45 Neb., 741, 64 N. W., 221; *Rosebury v. Same*, 47 Neb., 630, 66 N. W., 630, it was said of one publishing the following:

20        “Justice without equity. Sentences adjusted to fit the man. One party to a crime gets five years’ sentence in the penitentiary while another gets the benefit of a pull. Persons who were around the criminal section of the District Court yesterday afternoon witnessed a striking example of what it is to be possessed of a pull. These same persons were given an example of how easy it is for a man to keep out of the penitentiary if the pull  
30        is worked for all it is worth.”

But who denied in his verified answer to the rule entered against him to show cause that the language was susceptible of a contemptuous interpretation, or that he intended to bring the Court into contempt was erroneously committed. The Appellate Court said:

40        “Where an answer to a rule to show cause why one should not be attached for contempt negatives under oath any intentional disre-

pect to the Court *or purpose to obstruct its process*, the rule should be discharged.”

*In re Walker*, 82 N. C., 95.

*Early v. People*, 117 Ill. App., 608.

*Anderson v. Ind. Dredge Forging Co.*,  
72 N. E., 277, 34 Ind. App., 100.

And in the case of *In re Perkins*, 100 Fed., p. 950, there was a clear contempt of Court. An officer of the Court writing to the United States Commissioner said:

“Your pert card to hand. I will have to tell my self-adopted boss. Study your official duties and let your warrants come through the proper channel.”

He disclaimed any contempt or disrespect to the Commissioner, stating that he had written the postal card under a stress of feelings. He did, as the Court said “in short purge himself of contempt.”

But mere libels on a judge as a man and an officer printed in a newspaper are not contempts. Thus a newspaper article, *published during the sitting of a Court, pending the trial before that Court of a prisoner indicted for murder, charging the presiding judge with being an abettor of the murderer, is not a contempt of the Court*, but a mere libel upon the functionary, \* \* \* (*Rapalje on Contempt*, Sec. 56).

These cases are referred to for the purpose of making two points:

1. That if the respondent had been given the opportunity to answer upon oath specific interrogatories he might, although admitting that he gave some or *all* of the information contained in the article to the reporter, have purged himself

of the contempt by disclaiming any attempt to interfere with the administration of justice, and I refer particularly to the case of the People *v.* Few, *supra*, where the alleged contempt was one somewhat similar to that alleged in this case, and

2. That where the language, as in this case may be claimed is susceptible of two interpretations, under the testimony before the Court, where it may well be that the respondent in good faith merely stated what he intended to do and which he subsequently did as appears by the language of the Court in its adjudication, then the ordinary rule in criminal cases must apply and unless there is evidence to the contrary the Court must assume an *innocent* intention and inasmuch as under the case of in *re* Haines and in *re* Holt, there must be *proof which would warrant a conviction*, before there can be an *attachment* for contempt, there was no evidence before the Court which warranted a conviction.

#### POINT IV.

The judgment of the Supreme Court is correct and should be affirmed.

Respectfully submitted,

HARLAN BESSON,  
Of Counsel with Defendant-in-Error.

NOTE: In preparing this brief the writer has liberally quoted both the language and authorities used in the brief submitted in the Supreme Court by the writer and Mr. Merritt Lane formerly of counsel with William P. Verdon.

## New Jersey Court of Errors and Appeals

THE ATTORNEY GENERAL, *ex rel.*,

QUARTER SESSIONS,

*Plaintiff-in-Error,*

*vs.*

WILLIAM P. VERDON,

*Defendant-in-Error.*

*In Error to  
Supreme  
Court.*

### Reply Brief for Plaintiff-in-Error.

Under permission given by the court at the oral argument, we desire to file the following short answer to the brief for the defendant-in-error:

**There is no doubt of the jurisdiction of this court.**

In point I of his brief, counsel for the defendant-in-error argues that this court is without jurisdiction to review the alleged error committed by the court below. The authorities cited under this head of the brief do not support that contention. Such of these authorities, as deal with the question of contempt, treat of the right to appeal generally, independent of statute. They hold that where a court has jurisdiction, there can, at common law, be no review of its adjudications in contempt. That is not disputed. It was the law in this state prior to the act of 1884 providing for the review of proceedings in contempt of inferior courts.

*State v. Hart*, 88 N. J. Law, p. 48, is not in point.

Even prior to the act of 1884, however, and still at the present time, some review was pos-

sible on certain grounds, such as want of jurisdiction, by writ of certiorari from the Supreme Court to the inferior tribunal.

A recent example of this practice is found in the case of *Croasdale v. Atlantic Quarter Sessions*, 3 Gummere, 506. This court in an opinion not yet reported, has affirmed the judgment of the Supreme Court in the Croasdale case upon the opinion of Justice Parker in the Supreme Court.

The plaintiff-in-error argues that proceedings in contempt are not such as may be subject to bills of exception and writs of error. This court has held, however, that this is not necessary, and our decisions and statutes leave no question of the right of this court to proceed in the present case.

In the early case of *Taylor v. Griswold*, 2 Green 253, which involved a writ of error to remove a judgment of the Supreme Court entered in a summary proceeding to determine a contested election under the provisions of the act to prevent fraudulent elections by incorporated companies, a motion was made to dismiss the writ of error. In answer to the motion, counsel for the plaintiff-in-error argued:

“The proceeding, it was true, was summary, but it was made so by the act. The Supreme Court had original jurisdiction of the matter and the legislature never intended to deprive the aggrieved party of the right of review in this court. The language of the constitution creating this court was broad enough to give it jurisdiction in the matter. It was not necessary there should be a technical judgment.”

The court unanimously refused to dismiss the writ of error.

The entire subject is discussed by Chief Justice Beasley in the leading case of *Eames v. Stiles*, 31 N. J. Law, 490. That was a writ of error to remove into the Court of Errors and Appeals an order of the Circuit Court for Essex County denying a motion to set aside an award made upon a submission to arbitrate and confirming the award. A motion was made to dismiss the writ of error for want of jurisdiction in this court. The motion was denied. The Chief Justice said:

“An examination of the past judicial action of this court on this subject evinces, that it has been the immemorial practice to exercise a supervisory cognizance over a class of cases which, in technical strictness, were not removable by writ of error. It is evident that this process has performed in this court from an early date, a two-fold office; that is to say, all the functions of a writ of error at common law, and in addition, many of those of a certiorari. This fact is clearly marked in the ancient and present practice of this court. The unreported case of *Wood v. Stille*, decided in 1800, May 23d, and to be found in the minutes of this court, page 112, is an instance in point. The facts were these: a sheriff had returned his execution, together with his proceedings in transferring, with the assistance of two freeholders, to the plaintiff, in satisfaction of his judgment, a tract of land belonging to the defendant. This had been done by virtue of the act of the legislature of the 23d March, 1786, and the Supreme Court, on motion, had set aside the proceedings of the sheriff and the freeholders. This order having been brought to this court by writ of error, was reversed, and the action of the sheriff and freeholders in all things reinstated and affirmed. That the

distinguished lawyer, Mr. Richard Stockton, was the attorney of the plaintiff-in-error, is an additional assurance that the proceeding was correct according to the practice of those days. In the case of *The State v. The Justices of Middlesex*, Coxe 244, the Supreme Court having set aside the proceedings of an election held for fixing the location of a court house, the decision was moved to this court by writ of error and was here reversed. A number of unreported decisions of a similar character will be found quoted in the note to *Taylor v. Griswold*, 2 Green 253.

Among the more recent cases is that of *Stansbury v. Squier*, 2 South. 861, in which this court reviewed a judgment of amercement against a sheriff, rendered in the Supreme Court. The same course was pursued in *Woodruff v. Chapin*, 3 Zab. 555, in which, on motion, the priority of executions had been settled. So this court by the same method has supervised the decisions of the Supreme Court on proceedings to lay out highways. *Matter of Highway*, 1 Harr. 345. And the same power has been exercised in a multitude of other cases of statutory origin, where the action of the inferior court was summary and in which there was no formal judgment. *Engle v. Crombie*, 1 Zab. 614; *Hawkins v. State*, *Ib.* 630; *Townley v. Rutan*, *Ib.* 674; *State v. Jersey City*, 5 Dutcher 445; *State v. City of Hoboken*, *Ib.* 475; *Taylor v. Griswold*, 3 Green 253.

From an examination of the cases the Chief Justice stated his conclusion to be:

“From the cases above cited, it is clear that it is not a requisite to the right of revision in this court, that the decision alleged to be erroneous should have sprung from a

proceeding in the course of the common law. This ancient test is not applicable to a writ of error in this court. The only requisites are, that the decision of the inferior court is final, and has not proceeded from a matter resting in discretion."

The provisions of the "Act Respecting Writs of Error" are very broad (Compiled Statutes of N. J., Vol. 2, p. 2207). Section 3 of the act provides:

"That errors happening in the Supreme Court shall be heard, rectified and determined by the Court of Errors and Appeals."

A broader statement could scarcely be imagined.

Section 4 of the act provides:

"That it shall and may be lawful for the attorney general in behalf of this state, or for any party, his legal representative or other person who may be damnified or aggrieved by any judgment rendered or to be rendered in the Supreme Court, to sue forth a writ of error to be directed to the Justices of the said Supreme Court, commanding them to cause the record of such judgment and all things concerning the same, to be brought before the Court of Errors and Appeals."

There is no question but that this act extends to all causes, whether civil or criminal (*State v. Holmes*, 7 Vr. 62).

In *State v. Meyer*, 36 Vr. 233, this court held that in addition to the right under the common law, these sections of the act gave jurisdiction to this court of a writ of error by the Attorney General or Prosecutor of the Pleas to a judgment of the Supreme Court reversing a convic-

tion in a criminal cause in the Court of Quarter Sessions. Justice Dixon, speaking for this court in that case, after referring to these sections of the act, said:

“Effect cannot be given to this language without including criminal cases, and making the right of the attorney general, on behalf of the state as clear as that of the defendant.”

The fact that the act of 1884 providing for a review of contempt proceedings does not provide for an appeal to or writ of error from the Court of Errors and Appeals is not important. Such a review has already been provided for in the act respecting writs of error. A further statement of the right was unnecessary. Numerous examples may be referred to of a review by the Court of Errors and Appeals of a judgment of the Supreme Court with respect to matters as to which jurisdiction is conferred upon the Supreme Court by statutes mentioning no further review in the Court of Errors and Appeals. Thus the act respecting writs of error provides:

“That all errors happening in any court of common pleas shall be heard, rectified and determined by the Supreme Court, which is hereby declared to have jurisdiction of the same.”

The jurisdiction of this court to review judgments of the Supreme Court entered upon error to the Common Pleas has never been doubted (*Harris v. D. L. & W. R. R. Co.*, 53 Vr. 456).

So also it has never been questioned that this court will review a judgment of the Supreme Court entered upon a writ of certiorari under section 11 of the Certiorari Act which permits the Supreme Court to determine disputed questions of fact, as well as of law, upon proceed-

ings to review any assessments or other order or proceeding touching any local or public improvement or to review the proceedings of any statutory tribunal.

It is very clear, therefore, that this court has jurisdiction of the present writ of error. In view of our constitution, it would have been very doubtful whether the legislature could, when providing for a review by the Supreme Court, have deprived this court of its appellate jurisdiction in the premises, but it is sufficient to say that the legislature did not attempt to do so. Not only under the common law, but also under the legislative declaration found in the act respecting writs of error, this court has full jurisdiction.

In answer to point 2 of the brief of defendant-in-error, we have nothing to suggest in addition to our main brief, except to accentuate a suggestion made during the oral argument of this cause. The act providing for a review of convictions and judgments for contempt says that the Supreme Court shall "re-hear the matter of contempt upon which the conviction was founded both upon the law and upon the facts which shall be inquired into, and ascertained by depositions or in such other way or manner as the court above shall direct." If, for the sake of argument, it be admitted that under the common law the respondent in contempt had the right to purge himself, under his own oath, so as to preclude further investigation, is it not very clear that this common law principle was abrogated by the statute in question. Since how could there be any review "upon the facts" to be ascertained by depositions or in any other way in a cause where the respondent was to retain the right to end the proceedings by his own oath regardless

of the other testimony. The statute in question clearly contemplates a decision upon conflicting testimony both in the court below, and in the Supreme Court. In other words, as we argued in our brief, at common law, and *a fortiori* under this statute, the respondent is entitled only to a fair trial.

A considerable portion of the brief of the defendant-in-error is taken up with a discussion of the testimony, and an attempt to show that the conclusion of the Quarter Sessions was not supported by the evidence before the court. It is not necessary for us to discuss in detail this evidence. The record is short and speaks for itself. Counsel for the defendant-in-error seems to have the view that no conviction for contempt could be had unless there was a design to interfere with the administration of justice. That is altogether a too narrow view. Any publication which holds up a court to hatred, contempt or abuse is sufficient to call for action. That the publication in question not only had a tendency to interfere with the administration of justice but also held up the court to contempt, is incontrovertible. Through the testimony of most unwilling witnesses, not only the publication of the article, but the connection of the respondent Verdon therewith, which he did not see fit to explain or qualify by his own testimony, was fully established.

It is again most respectfully submitted that the conviction of the respondent in the Court of Quarter Sessions was altogether legal and proper, and that the judgment of the Supreme Court should be reversed.

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GEORGE T. VICKERS,

*Of Counsel with Plaintiff-in-Error.*



