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New Jersey Court of Errors and Appeals.

JOEL M. JOHNSON and ALBERT SMITH
vs.
THE STATE OF NEW JERSEY.

1
On Error to Supreme Court.
State of the Case.

This case comes before the court on a writ of error to the Supreme Court (prout the said writ), returnable June Term, A. D. 1859, to bring before this court the proceedings in said Supreme Court upon a writ of error from the Supreme Court to the Court of Oyer and Terminer and General Jail Delivery in and for the county of Bergen (prout a copy thereof returned to this court, and on file), returnable to the February Term, A. D. 1856, of the Supreme Court. To this latter writ of error, the following return was made to the said Supreme Court, to wit :

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3
At a Court of Oyer and Terminer and General Gaol Delivery, holden at New Barbadoes, in and for the county of Bergen, on Tuesday, the fifth day of December, of the term of December, A. D. 1854, before Elias B. D. Ogden, Esq., one of the Justices of the Supreme Court of Judicature, and Garret S. Demarest, Jacob I. Zabriskie, and Albert Terhune, Esqs., Judges of Inferior Court of Common Pleas in and for the said county, according to the form of the statute in that case made and provided, by the oaths of John Huyler, Jacob C. Terhune, Richard Terhune, Jacob Van Riper, Samuel Demarest, James Cadmus, Garret J. Hopper, Jacob T. Banta, John Halsted, Abraham Dater,

Garret Coborn, George T. Beickell, James Bartow, David D. Haring, Cornelius J. Haring, John C. Westervelt, George C. Demarest, Paul R. Paulison, Stephen S. Berdan, James C. Demarest, and George Ester, good and lawful men of the county of Bergen aforesaid, duly summoned, and then and there sworn and charged to inquire in behalf of the State of New Jersey, in and for said county of Bergen, it is presented in manner and form following, to wit :

“Bergen Oyer and Terminer and General Gaol Delivery, December Term,” A. D. 1854.

Bergen County, to wit. The Grand Inquest of the State of New Jersey, in and for the body of the county of Bergen, upon their oaths present, That Susan Ann Smith, Albert Smith, Maria Smith, Joel M. Johnson, and Richard Van Winkle, late of the township of Franklin, in the said county of Bergen, wickedly devising and intending one William W. Packer, not only of his credit and good name name unjustly to deprive, but also to obtain and acquire to themselves of and from the said William W. Packer divers sums of money, and large amounts of property and other valuable things, on the fifth day of October, in the year one thousand eight hundred and fifty-four, with force and arms, at the township aforesaid, in the county aforesaid, and within the jurisdiction of this court, did amongst themselves unlawfully conspire, combine, confederate, and agree to extort, obtain, and procure of and from the said William W. Packer, large sums of money, and a large amount of property, and security for a large sum of money, for their own use; and in order to extort, obtain, and procure the same, did corruptly and unlawfully conspire and agree together falsely to charge, and cause to have falsely charged, the said William W. Packer before one of the Justices of the Peace of the said county, on and by the oath of the said Susan Ann Smith, with having got the said Susan Ann Smith, she then being a single woman, with child, of a bastard, and to procure the issuing of a warrant thereupon by such Justice of the Peace for the arrest of the said William W. Packer, and when the said William

W. Packer should be so arrested and under duress of imprisonment, to extort, obtain, and procure from him, the said William W. Packer, the said money, property, and security for money, for their use, by offering to receive the same for the suppression and compromise of the said charge, and for the liberation of said William W. Packer from arrest and imprisonment under such warrant; and the jurors aforesaid, upon their oath aforesaid, say that the said Susan Ann Smith, Albert Smith, Joel M. Johnson, Maria Smith, and Richard Van Winkle, the defendants, in furtherance of their conspiracy, afterwards, to wit, on the day and year aforesaid, at the township and in the county aforesaid, did before one James V. Jeralemon, then being one of the Justices of the Peace in and for said county, falsely charge, and cause and procure the said Susan Ann Smith upon and by her oath, falsely to charge that the said William W. Packer was the father of the bastard of which she then alleged herself to be with child, and which she then alleged was likely to be born a bastard, and chargeable upon the township of Franklin, in the said county, and that upon the said charge the said defendants procured a warrant to be issued by the said James V. Jeralemon, Justice of the Peace as aforesaid, by virtue of which said warrant the said defendants afterwards arrested, and caused and procured to be arrested, the body of the said William W. Packer, and him held in custody, and while so under arrest and in custody, then and there did unlawfully, wilfully and deceitfully endeavor to obtain, extort, and procure of and from the said William W. Packer, a large sum of money, security for a large sum of money, and property and things of great value, as and for a consideration or recompense to them for compromising and suppressing the said charge, giving up the further prosecution thereof, and releasing the said William W. Packer, and then and there the said defendants did unlawfully, wilfully, and fraudulently obtain, extort, and procure from the said William W. Packer, and cause him to make, execute, and deliver, a bond or obligation under the hand and seal of the said William W.

Packer, bearing date the fifth day of October, in the year last aforesaid, to the said Albert Smith, in the penal sum of two thousand dollars, upon condition that the said William W. Packer should pay to the said Albert Smith on the first day of May, next ensuing the date thereof, the sum of one thousand dollars, also a certain mortgage dated the day and year last aforesaid, executed given by the said William W. Packer, on lands of him the said William W. Packer, situate in the township of Franklin aforesaid, to the said Albert Smith, to secure the payment of the said bond, which bond and mortgage were given as the consideration or price for suppressing and compromising said charge, and releasing said William W. Packer from arrest; that the said bond and mortgage were taken and received by the said defendants from the said William W. Packer for their use, to the great perversion and obstruction of justice and the due administration of the laws, to the evil example of all others in like cases offending, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government, and dignity of the same.

And the jurors aforesaid, upon their oaths aforesaid, do further present, that the said defendants on the fifth day of October, in the year eighteen hundred and fifty-four, with force and arms, at the township aforesaid, at the county aforesaid, and within the jurisdiction aforesaid, wickedly intending to extort, obtain, and procure of and from the said William W. Packer, a large sum of money, property of great value, and securities for the payment of a large sum of money, for their own use, and in order to extort, obtain, and procure the same, did corruptly, unlawfully, and falsely conspire and agree to charge and cause to be charged the said William W. Packer, on and by the oath of the said Susan Ann Smith, to be taken and sworn by the said Susan Ann Smith, before one of the justices of the peace of the said county, with having got the said Susan Ann Smith with child of a bastard, which would when born, be chargeable on the said township of Franklin as a pauper, and to cause and procure the arrest of the said

William W. Packer, and thereby to put the said William
 W. Packer in constraint, and in fear of public infamy and
 disgrace, and of liability to secure and indemnify the said
 township of Franklin from the support of such bastard
 child when born, and to extort, obtain, and procure from
 the said William W. Packer, the said sum of money prop- 16
 erty, and security for money for their use, by offering to
 receive the same as a consideration or price for the sup-
 pression of the said charge, and liberating him from arrest,
 and indemnifying the said William W. Packer from the
 pretended liability for the support of such bastard when
 born. That the said defendants in furtherance of their said
 conspiracy, afterwards, to wit on the day and year last
 aforesaid, at the township in the county and within the 17
 jurisdiction aforesaid, did falsely, corruptly, and willfully
 present, and caused and procured to be presented, to one
 James V. Jeralemon, then being one of the justices of the
 peace in and for said county, a certain writing, purporting
 to be the voluntary examination of the said Susan Ann
 Smith, taken on the oath of the said Susan Ann Smith,
 before the said justice of the peace, by which writing it
 was charged and declared, that the said Susan Ann Smith
 was then with child, and that the said child was likely to 18
 be born a bastard, and to be chargeable to the said town-
 ship of Franklin, and that the said William W. Packer
 was the father of the said child; and the said defendants
 falsely and corruptly caused and procured the said Susan
 Ann Smith to make oath, before the said justice of the
 peace, that the statements and charges in the said writing
 was true; that the said defendants then and there procured
 a warrant to be issued by the said justice of the peace, for
 the arrest of the said William W. Packer, and put into
 the hands of said defendants, under and by virtue of which 19
 said warrant the said defendants afterwards, to wit on the
 day and year last aforesaid, arrested, and caused and pro-
 cured to be arrested, the body of the said William W.
 Packer, and him then held in custody, and while so under
 arrest and in custody, then and there did unlawfully, will-

fully, and deceitfully endeavor to obtain, extort, and procure from the said William W. Packer, a large sum of money, property of great value, and securities for the payment of a large sum of money, as and for a consideration or recompense to them for the compromising and suppression of the said charge, saving him, the said William W. Packer, from any public disrepute, liberating him from custody under said warrant, and indemnifying him from any liability for the support of said bastard child when born; and the said defendants then and there unlawfully, willfully, and fraudulent did obtain, extort, and procure from the said William W. Packer, and cause him, the said William W. Packer, to make, execute, and deliver to the said Albert Smith, a certain bond or writing, obligatory under the hand and seal of the said William W. Packer, dated the fifth day of October, of the year last aforesaid, by which the said William W. Packer bound himself to the said Albert Smith, in the penal sum of two thousand dollars, the said bond by virtue of a condition thereunto written, to be void if the said William W. Packer should pay to the said Albert Smith, on the first day of May, next ensuing the date thereof, the sum of one thousand dollars, and also a certain mortgage of the same date, given by the said William W. Packer, upon land and real estate of the said William W. Packer, situate in the said township of Franklin, to secure to the said Albert Smith, payment of the sum of money mentioned in the conditions of the said bond, which said bond and mortgage were given to the said Albert Smith, by the said William W. Packer, as a composition of and agreement to suppress the said charge, saving the said William W. Packer from public scandal and disrepute, liberating him from custody under said warrant, and indemnifying him from the said pretended liability; and that the said bond and mortgage were taken and received by the said defendants for the use and benefit of said defendants, to the perversion and obstruction of justice and the due administration of the laws, to the evil example of all others in like cases offending, contrary to

the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

Whereupon the said Joel M. Johnson, Susan Ann Smith, Albert Smith, Maria Smith, and Richard Van Winkle being publicly called came not; and therefore it is 24
commanded to the sheriff of the said county, that he take the said Joel M. Johnson, Susan Ann Smith, Albert Smith, Maria Smith, and Richard Van Winkle, and have them here to answer &c., if &c., and if not, then &c.

And afterwards, to wit, on the ninth day of December, in the year of our Lord one thousand eight hundred and fifty-four, being as yet of the term of December aforesaid, held at New Barbadoes aforesaid, in and for the county of 25
Bergen, before the justices and judges aforesaid, *cometh* the said Joel M. Johnson, Susan Ann Smith, Albert Smith, Maria Smith, and Richard Van Winkle, under the custody of Abraham B. Haring, Esquire, sheriff of the county of Bergen, in whose custody in the gaol of the county aforesaid they had been before committed for the cause aforesaid, being brought to the bar here in their proper persons by the sheriff aforesaid, to whom they were also here committed, and now here touching the premises in the indictment 26
above specified and charged upon them, being asked in what manner they will acquit themselves thereof, they say that they are not guilty thereof; and of this they put themselves upon the country; and Manning M. Knapp, Esq., prosecutor of the pleas for the said county of Bergen, who prosecutes for the State of New Jersey in this behalf, doth the like.

Therefore, let a jury thereupon come, to wit, on the first Tuesday of April, in the year of our Lord one thousand 27
eight hundred and fifty-five, at New Barbadoes in said county of Bergen, before the court of Oyer and Terminer, and General Gaol Delivery in and for the county of Bergen, of good and lawful men of the county of Bergen aforesaid, by whom the truth of the matter may be better known, and who are not of kin to the said Joel M. Johnson, Susan

Ann Smith, Albert Smith, Maria Smith, or Richard Van Winkle, to recognize upon their oaths whether the said Joel M. Johnson, Susan Ann Smith, Albert Smith, Maria Smith, and Richard Van Winkle, or either of them, be guilty of the conspiracy in the indictment aforesaid above specified, or not guilty; and the same day is given to the said Manning M. Knapp, who prosecutes for the State in this behalf, and to the said defendants.

Afterwards, that is to say, at a court of Oyer and Terminer and General Gaol Delivery holden at New Barbadoes aforesaid, on the tenth day of April, being as yet of the term of April, A.D. eighteen hundred and fifty five, before the Honorable Henry U. Green, Chief Justice of the said Supreme Court, and Albert K^t Terhune, and Jacob J. Brinkerhoff, and others their fellow judges of the court of Common Pleas of the county of Bergen, here cometh as well the said Manning M. Knapp, Esq., prosecutor aforesaid, who prosecutes as aforesaid, as the said Joel M. Johnson, Susan Ann Smith, Albert Smith, Maria Smith, and Richard Van Winkle, in their proper persons according to the condition of their recognizance, &c.; and the jurors of the said jury by the sheriff of the county aforesaid for this purpose empaneled and returned, to wit, Samuel Hopper, James Westervelt, Henry Prentice, William Brinkerhoff, John R. Clahis, Andrew M. Hopper, Peter M. Holdrom, John M. Terhune, Jacob Christie, Jr., John R. Snyder, Peter P. Perry, and Nicholas Ackerman, being called came, who being chosen, tried, and sworn to speak the truth of and concerning the premises, upon their oaths say, that the said Susan Ann Smith, Maria Smith, and Richard Van Winkle, are not guilty in manner and form as they are charged in the said indictment; but that the said Joel M. Johnson and Albert Smith are guilty of the conspiracy aforesaid, on them above charged in form aforesaid, above supposed against them; and the court here not being fully advised what judgment to give in the premises, a further day is given to the parties aforesaid.

Afterwards, that is to say, at a court of Oyer and Ter-

miner, and general gaol-delivery, holden at New Barbadoes aforesaid, on the first Tuesday of September, of the term of September, A. D. eighteen hundred and fifty-five, before Elias B. D. Ogden, Esq., one of the associate Justices of the Supreme Court of Judicature, and Albert J. Terhune, Jacob J. Zabriskie, and Jacob J. Brinkerhoff, Esq., Judges of the Court of Common Pleas, of the county of Bergen aforesaid, here cometh as well the said Manning M. Knapp, Esq., prosecutor as aforesaid, who prosecutes as aforesaid, as the said Joel M. Johnson and Albert Smith, in their proper persons, according to the conditions of their recognizances, and the court here not yet being fully advised what judgment to give, a further day is given to the parties aforesaid afterwards; that is to say, at a court of Oyer and Terminer and general goal-delivery holden at New Barbadoes aforesaid, on the first Tuesday of December, of the term of December, A. D. eighteen hundred and fifty-five, before the Hon. Elias B. D. Ogden, Esq., one of the justices of the Supreme Court of Judicature, of the State of New Jersey, and Jacob J. Brinkerhoff, Jacob J. Zabriskie, and others, their fellow Judges of the Court of Common Pleas, of the county of Bergen aforesaid, here cometh as well the said Manning M. Knapp, Esq., prosecutor as aforesaid, who prosecutes as aforesaid, as the said Joel M. Johnson and Albert Smith, in their proper persons, according to the conditions of their recognizances, by themselves and their pledges in that behalf heretofore made, it was demanded of them, the said Joel M. Johnson and Albert Smith, if they know, or have anything to say, why the court here ought not to proceed to judgment against them, who nothing further say unless as they have before said. Whereupon all and singular, the premises being seen, and by the court here fully understood, it is considered that the said Joel M. Johnson, for the offense aforesaid, pay a fine of two hundred and fifty dollars, and that the said Albert Smith pay a fine of one hundred dollars, and that they stand committed until the fine and costs of this prosecution be fully paid.

And now at this day, to wit, the seventh day of February, as yet of the term of December, A. D. 1855, before the Court of Oyer and Terminer, and general goal-delivery holden at new Barbadoes aforesaid, in and for the county of Bergen aforesaid, before the Hon. Elias B. D. Ogden, Esq., Justice as aforesaid, and Jacob J. Zabriskie, Albert J. Terhune, and others, Esqs., Judges of the Court of Common Pleas, of the County of Bergen, according to the form of the statute in that case made and provided, cometh the said Joel M. Johnson and Albert Smith, by A. B. Woodruff, their attorney in open court, and presenteth to the said court, a certain writ of the said State, issued out of the Supreme Court of Judicature, of the said State, called a writ of error, commanding that the said indictment, with all things touching and concerning the same, be certified and sent to the said Supreme Court to proceed thereon, &c., and the same are thereupon certified and sent accordingly.

E. B. DAYTON OGDEN,
Pres. Judge.

SAMUEL H. BERRY.

38 *State of New Jersey,* } ss.
Bergen County,

I, Garret G. Ackerson, clerk of the county of Bergen, and clerk of the Court of Oyer and Terminer and general goal-delivery, in and for said county, do hereby certify the foregoing to be the record of the proceeding had in the said court in the above-stated indictment.

39 [L. s.]

Witness my hand and seal of said county and court, this 15th day of February, A. D. 1856.

GARRET G. ACKERSON, *Clerk.*

[L. s.] New Jersey, to wit, the State of New Jersey to the Judges of the Court of Oyer and Terminer and general jail delivery, in and for the county of Bergen, greeting:

Because, in the record and proceedings, and also in the giving of judgment in a certain indictment which was before you in our said Court of Oyer and Terminer and general jail delivery, between the State of New Jersey and Joel M. Johnson, Albert Smith, Susan Ann Smith, Richard Van Winkle, and Maria Smith, defendants, for conspiracy, manifest error hath intervened, to the great damage of the said Joel M. Johnson and Albert Smith. We being desirous that the error, if any there be, should in due manner be corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be thereupon given, then you send to our Justices of our Supreme Court of Judicature, distinctly and openly under your seal, the record and proceedings of the indictment aforesaid, with all things concerning the same and this writ, so that they may have them on the first Tuesday of February next, at Trenton, that therein may be done what of right ought to be done. 40

Witness Henry W. Green, Esq, Chief Justice of our Supreme Court at Trenton, the fourteenth day of January, A. D. eighteen hundred and fifty-six. 41

WILLIAM M. FORCE, *Clerk.*

A. B. WOODRUFF, *Attorney.*

The records and proceedings of the indictment whereof mention is within made, with all things concerning the same, we, the Judges of the Court of Oyer and Terminer and general gaol delivery, of the county of Bergen, do certify and send to the Justices of the Supreme Court of Judicature, at Trenton, within specified, at the day and place within contained in a certain schedule to this writ annexed as within, we are commanded. 43

PER CURIAM.

GARRET G. ACKERSON, *Clerk.*

The assignment of errors for the reversal of the judgment in said Court of Oyer and Terminer and general jail delivery, filed in the said Supreme Court, was as follows, to wit :

44 Of the term of February, A. D. eighteen hundred and fifty-six.

SUPREME COURT, NEW JERSEY.

45	JOEL M. JOHNSON and ALBERT SMITH vs. THE STATE OF NEW JERSEY.	}	<i>On Error to the Oyer and Terminer of Ber- gen County.</i> <i>Assignment of Errors.</i>
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And thereupon afterwards, to wit, on the fourth Tuesday of February, in the year of our Lord eighteen hundred and fifty-six, before the Justicet of the Supreme Court of Judicature, of the State of New Jersey, came the said Joel M. Johnson and Albert Smith, by Absalom B. Woodruff, 46 their attorney, and say that in the record and proceedings aforesaid, and also in the said indictment, and also in the giving of judgment aforesaid, there is manifest error in this, to wit :

1. For that it does not appear in and by the said record, at what term of the court, and in what year the grand jury presented the said indictment against the said Joel M. Johnson and Albert Smith.
- 47 2. For that it does not appear by the said record that the said indictment was presented on the *oath* of the grand jurórs presenting the same.
3. For that it does not appear by said record that any indictment was legally presented against the said Johnson and Smith, at the term of December, in the year of our Lord eighteen hundred and fifty-four.

4 For that it appears by the first count of the said indictment, that said Joel M. Johnson and Albert Smith, together with Susan Ann Smith, Maria Smith, and Richard Van Winkle, in furtherance of the conspiracy in that count charged, did falsely charge, and caused and procure the said Susan Ann Smith upon and by her oath, falsely to charge that the said William W. Packer was the father of a certain bastard child, as in that count alleged ; and it further appears by said first count, that the said Joel M. Johnson and Albert Smith, if guilty of the conspiracy, were in the prosecution or furtherance thereof, guilty of subordination of perjury ; and that the conspiracy thereby became merged in the felony in said count alleged. 48

5. For that the said first count does not charge the said Joel M. Johnson and Albert Smith with any crime under the laws of this State. 49

6. For that it does not appear by the said record that the said indictment was found, or presented in any particular year ; and it does not appear in English by the said record, as is required by law, in what year the said indictment was found, or presented, by the grand inquest of the State of New Jersey, in and for the body of the county of Bergen.

7. For that it does not appear in and by the said record and proceedings, that the second count of said indictment was presented on the oath of said grand inquest. 50

8. For that the facts alleged in the said second count of said indictment do not constitute, under the laws of this State, any crime for which a party can be legally indicted, or criminally punished.

9. For that the only crime charged in the said second count against said Johnson and Albert Smith is the agreement to procure a greater amount of money from said William W. Packer than they were entitled to receive. 51

10. For that it does not appear by said second count either that Joel M. Johnson and Albert Smith entered into any agreement or conspiracy to do any illegal act, or to accomplish any legal object by any unlawful means.

11. For that it does not appear in and by the said record and proceedings that any venire, or process for impanneling a jury to try the said Joel M. Johnson, Susan Ann Smith, Albert Smith, Maria Smith, and Richard Van Winkle, was ever issued.

52 12. For that it appears in and by the said record and proceedings that the precept to summon the jury which tried the said Joel M. Johnson, Susan Ann Smith, Maria Smith, Albert Smith, and Richard Van Winkle only authorized the sheriff aforesaid to impannel a jury to try Joel M. Johnson, Susan Ann Smith, *Mary* Smith, Albert Smith, and Richard Van Winkle.

53 13. For that it appears in and by the said record and proceedings that the jury, impaneled as aforesaid, were impaneled "to recognize upon their oaths whether the said Joel M. Johnson, Susan Ann Smith, Albert Smith, *Mary* Smith, and Richard Van Winkle, or either of them," were guilty of the conspiracy in the indictment, or not guilty; whereas there are two distinct and different conspiracies charged in the said indictment.

54 14. For that the said record and proceedings do not show how much money the said Joel M. Johnson and Albert Smith were entitled to receive from the said William W. Packer, and does not show how much more money than they were legally entitled to they did receive, but charges them in general terms with extorting money from said Packer.

55 15. For that the said record and proceedings do not show that the said jury were sworn to speak the truth of and concerning the matters charged in said indictment; and for that it does not appear that the said jurors who found the said verdict were legally sworn.

16. For that by the said indictment the said Joel M. Johnson and Albert Smith are charged with two distinct conspiracies, and by the said record and proceedings it does not appear of which one they were convicted.

17. For that it does not appear in and by the said record and proceedings that the said court of Oyer and Ter-

miner and General Jail Delivery, or any other court, pronounced any judgment against the said Joel M. Johnson and Albert Smith, or against either of them, upon the said verdict.

18. For that in and by the the said record and proceedings it appears that it was considered that the said Joel M. Johnson should pay a fine of two hundred and fifty dollars, and that the said Albert Smith should pay a fine of one hundred dollars, and that they stand committed until the fine and costs of a certain prosecution should be fully paid; and it does not appear in and by the said record by whom or by what tribunal, if any, it was so considered, or what the said last-mentioned fine was, or the amount thereof. 56

19. For that it appears in and by said record and proceedings that the said Joel M. Johnson was sentenced or adjudged to pay not only a fine of two hundred and fifty dollars, and to stand committed until the last-mentioned fine and the costs of the prosecution were paid, but also to stand committed until a certain fine of one hundred dollars imposed on said Albert Smith was paid. 57

20. For that it appears in and by said record and proceedings that the said Albert Smith was sentenced or adjudged to pay not only a fine of one hundred dollars, and to stand committed until the last-mentioned fine and the costs of the prosecution were paid, but also to stand committed until a certain fine of two hundred and fifty dollars imposed upon said Joel M. Johnson was paid. 58

21. For that the said court of Oyer and Terminer and General Jail Delivery had no legal authority or power to pass or give the sentence or judgment which it appears by the said record and proceedings was passed and given against the said Joel M. Johnson and Albert Smith. 59

22. For that it does not appear in and by the said record and proceedings into whose custody or to what place the said Joel M. Johnson and Albert Smith, or either of them, was to be committed until the said fine or fines and costs were paid.

23. For that the said court of Oyer and Terminer and

General Jail Delivery, on the trial of said Joel M. Johnson and Albert Smith, admitted illegal evidence, although its admission was objected to by said Joel M. Johnson and Albert Smith, on behalf of the State, and also rejected legal evidence offered on behalf of said Joel M. Johnson and Albert Smith.

24. For that the said court of Oyer and Terminer on the said trial allowed the State to give evidence, although it was objected to, that said William W. Packer was of a timid disposition.

25. For that judgment upon the said indictment ought to have been given in favor of said Joel M. Johnson and Albert Smith, and it was given against them; and for that the said judgment is in other respects informal, illegal, and not warranted by law.

And thereupon the said Joel M. Johnson and Albert Smith pray that the judgment aforesaid, for the errors aforesaid, and other errors, as well in the bill of exceptions as in the record and proceedings aforesaid, may be reversed, annulled, and held for nothing, and that they may be restored to all things which they have lost on occasion of the same.

A. B. WOODRUFF,

Attorney for Joel M. Johnson and Albert Smith.

New Jersey, ss:

Joel M. Johnson and Albert Smith put in their place Absalom B. Woodruff, their attorney, to prosecute the writ of error aforesaid.

The case came on for argument at the June term, A. D. 1856, of said Supreme Court, on the following state of the case, or abstract of pleadings:

SUPREME COURT NEW JERSEY.

 JOEL M. JOHNSON and ALBERT SMITH

vs.

THE STATE OF NEW JERSEY.

 } *In Error to the Ber-*
gen Oyer and Ter-
miner.
 } *Abstract of Plead-*
ings.

64

The writ of error in the above cause is brought to reverse the judgment of the Court of Oyer and Terminer and General Jail Delivery rendered against the plaintiffs in error upon the record and proceedings following, to wit :

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(The same as hereinbefore set forth.)

Whereupon the said Joel M. Johnson, Susan Ann Smith, Albert Smith, Maria Smith, and Richard Van Winkle, being publicly called, came not, and therefore it is commanded to the sheriff of the said county that he take the said Joel M. Johnson, Susan Ann Smith, Albert Smith, Maria Smith, and Richard Van Winkle, and have them here to answer, &c., if, &c., and if not, then, &c.

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And afterwards, to wit, on the ninth day of December, in the year of our Lord one thousand eight hundred and fifty-four, being as yet of the term of Decembor aforesaid, held at New Barbadoes aforesaid, in and for the county of Bergen, before the Justice and Judges aforesaid, cometh the said Joel M. Johnson, Susan Ann Smith, Albert Smith, Maria Smith, and Richard Van Winkle, under the custody of Abraham B. Haring, Esquire, sheriff of the county of Bergen, in whose custody in the gaol of the county aforesaid, they had been before committed for the cause aforesaid, being brought to the bar here in their proper persons by the sheriff aforesaid, to whom they were also here committed, and now here touching the premises in the indictment above specified and charged upon them, being asked in what manner they will acquit themselves thereof, they

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say that they are not guilty thereof, and of this they put themselves upon the county, and Manning M. Knapp, Esq., prosecutor of the pleas for the said county of Bergen, who prosecutes for the State of New Jersey in this behalf, doth the like.

68 Therefore let a jury thereupon come, to wit, on the first Tuesday of April, in the year of our Lord one thousand eight hundred and fifty-five, at New Barbadoes, in said county of Bergen, before the Court of Oyer and Terminer and General Gaol Delivery in and for the county of Bergen, of good and lawful men of the county of Bergen aforesaid, by whom the truth of the matter may be the better known, and who are not of kin to the said Joel M. Johnson, Susan Ann Smith, Albert Smith, Maria Smith, or Richard Van Winkle, to recognize upon their oaths whether the
69 said Joel M. Johnson, Susan Ann Smith, Albert Smith, Mary Smith, and Richard Van Winkle, or either of them, be guilty of the conspiracy in the indictment aforesaid above specified, or not guilty, and the same day is given to the said Manning M. Knapp, who prosecutes for the State in this behalf, and to the said defendants.

Afterwards, that is to say, at a Court of Oyer and Terminer and General Gaol Delivery, holden at New Barbadoes aforesaid, on the tenth day of April, being as yet of the term of April, A. D. eighteen hundred and fifty-five, before the Honorable Henry U. Green, Chief Justice of the said Supreme Court, and Albert J. Terhune, and Jacob J. Brinkerhoff and others, their fellows, Judges of the Court of Common Pleas of the county of Bergen, here cometh, as well the said Manning M. Knapp, Esq., prosecutor as aforesaid, who prosecutes as aforesaid, as the said Joel M. Johnson, Susan Ann Smith, Albert Smith, Maria Smith, and
70 Richard Van Winkle, in their proper persons, according to the conditions of their recognizance, &c., and the jurors of the said jury by the sheriff of the county aforesaid, for this purpose empannelled, and returned, to wit, Samuel Hopper, James Westervelt, Henry Prentice, William Brinkerhoff, John R. Clahis, Andrew M. Hopper, Peter M.
71

Holdrom, John M. Terhune, Jacob Christie, Jr., John R. Snyder, Peter P. Perry, and Nicholas Ackerman, being called, come, who being chosen, tried, and sworn to speak the truth of and concerning the premises, upon their oaths say, that the said Susan Ann Smith, Maria Smith, and Richard Van Winkle, are not guilty in manner and form as they are charged in the said indictment, but that the said Joel M. Johnson and Albert Smith are guilty of the conspiracy aforesaid on them above charged in form aforesaid above supposed against them, and the court here not being fully advised what judgment to give in the premises, a further day is given to the parties aforesaid. 72

Afterwards, that is to say, at a Court of Oyer and Terminer and General Gaol Delivery, holden at New Barbadoes aforesaid, on the first Tuesday of September, of the term of September, A. D., eighteen hundred and fifty-five, before Elias B. D. Ogden, Esq., one of the Associate Justices of the Supreme Court of Judicature, and Albert J. Terhune, Jacob J. Zabriskie, and Jacob J. Brinkerhoff, Esqs., Judges of the Court of Common Pleas of the county of Bergen aforesaid, here cometh, as well the said Manning M. Knapp, Esq., Prosecutor as aforesaid, who prosecutes as aforesaid as the said Joel M. Johnson and Albert Smith, in their proper persons, according to the conditions of their recognizances, and the court here not yet being fully advised what judgment to give, a further day is given to the parties aforesaid, afterwards, that is to say, at a Court of Oyer and Terminer and General Gaol Delivery, holden at New Barbadoes aforesaid, on the first Tuesday of December, of the term of December, A. D. eighteen hundred and fifty-five, before the Honorable Elias B. D. Ogden, Esquire, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and Jacob J. Brinkerhoff, Jacob J. Zabriskie and others, their fellow Judges of the Court of Common Pleas of the county of Bergen aforesaid, here cometh, as well the said Manning M. Knapp, Esq., prosecutor as aforesaid, who prosecutes as aforesaid as the said Joel M. Johnson and Albert Smith in their proper persons, 73
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76 according to the conditions of their recognizance by themselves, and their pledges in that behalf heretofore made, it was demanded of them; the said Joel M. Johnson and Albert Smith, if they know or have anything to say why the court here ought not to proceed to judgment against them who nothing further say, unless as they have before said. Whereupon, all and singular, the premises being seen and by the court here fully understood. It is considered that the said Joel M. Johnson, for the offence aforesaid, pay a fine of two hundred and fifty dollars, and that the said Albert Smith pay a fine of one hundred dollars, and that they stand committed until the fine and costs of this prosecution be fully paid.

77 On the trial of the cause, after the State had given evidence tending to prove the facts charged, and after having proved that William W. Packer was greatly excited and frightened during his interview with the defendants on the day the bond and mortgage were executed by the said William W. Packer, the following questions were asked Jacob Ackerman, a witness on behalf of the State, were objected to by defendants, and allowed by the court below.

78 Q. What is William W. Packer's temperament and disposition; is he a timid man, and easily frightened, or a resolute man?

A. I should think he was rather a timid man; that is my opinion.

Q. Is he a man of much self-reliance, or one easily persuaded?

A. I think he is a man that could be easily persuaded. The plaintiffs in error have filed the following

79 *Reasons for Reversal of the Judgment rendered against the Plaintiffs in Error.*

(Being the same as hereinbefore printed.)

A. B. WOODRUFF,

Attorney for Plaintiffs.

M. M. KNAPP,

Attorney for Defendants.

And the said Supreme Court, at the November Term, A. D. 1857, of said Court, affirmed the judgment below of the said Court of Oyer and Terminer and General Jail Delivery in and for said county of Bergen. The opinion of said Supreme Court, in giving said judgment, is found in 2 Dutcher's R. 319. 80

The original state of the case, or Abstract of the Pleadings, signed by the Attorneys of the respective parties, is lost or mislaid, and no record of its having been filed in said Supreme Court can be found.

At the February Term, 1859, of said Supreme Court, an application for a re-argument of the case was made, and denied by said court.

At the November Term, 1859, of said Court, the following rule was granted by said Supreme Court :— 81

NEW JERSEY SUPREME COURT.

November Term, 1859.

JOEL M. JOHNSON, and ALBERT SMITH	}	<i>In Error.</i>
<i>vs.</i>		
THE STATE.		

82

It being alleged that a paper, purporting to set forth a copy of the record of the judgment in the court below, in the above stated cause, and to contain a statement of the evidence on the part of the State as objected to by the defendants, and admitted by the court upon the trial ; and also, an assignment of errors, or reasons assigned for the reversal of said judgment ; the whole being in the nature of a state of the case, was made out by the plaintiffs in 83

error, and signed by their attorney, and also by the prosecutor of the pleas, in behalf of the State. And that the said paper, together with copies of the same were used on the argument of the case before this court, and that the said original paper has been lost or mislaid, and is not found in the files of said court, or elsewhere. It is ordered that the said State, or the said prosecutor in its behalf, do show cause on the first day of the next term, why a copy of said paper, or state of the case, should not be filed in the office of the clerk of this court, with the other papers in the cause, and that the plaintiffs be at liberty to take affidavits in support of this rule, if need be.

On motion of

A. T. WOODRUFF,
Atty for plffs. in Error.

November 28th, 1859.

A true copy from the minutes.

CHAS P. SMITH, *Clerk.*

In pursuance of which rule, evidence was taken establishing that a certain paper marked "Exhibit P, No. 1, Wm. Gledhill, Comr." (and being the same as the foregoing "Abstract of Pleadings, or state of the case"), was a true copy of the original paper, so lost or mislaid, in the nature of a state of the case. (prout the said evidence on file.) Whereupon (an agreement also having been filed, made by the respective attorneys concerning the same), (prout the same on file,) the following rule was granted by said Supreme Court, at the February Term, 1860, of said Court.

NEW JERSEY SUPREME COURT.

87

February Term, 1860.

JOEL M. JOHNSON and ALBERT SMITH	} <i>In Error.</i>
<i>vs.</i>	
THE STATE.	

88

On reading the affidavit of John M. Hone and Absalom B. Woodruff, taken under a rule of this court, of the last term, and a written agreement signed by Absalom B. Woodruff, attorney of the plaintiff, and M. M. Knapp, prosecutor of the pleas of Bergen county. It is ordered that that the said affidavits and agreement be filed, and that a certain paper, purporting to be a copy of the statement of the evidence on part of the State, as objected to by the defendants, and admitted by the court upon the trial. And also, an assignment of errors, or reasons assigned for the reversal of said judgment, the whole being in the nature of a state of the case, and signed by the attorneys of the respective parties, and which paper is now marked Exhibit P, No. 1, Wm. Gledhill, Comr., be also filed with the other papers in this cause, instead of the original, which has been lost, according to the within agreement, above referred to.

On motion of

A. B. WOODRUFF,
Atty. of the Plffs. in Error.

A true copy from the minutes.

CHAS. P. SMITH, *Clerk.*

And the said case now comes before this court upon the record, the said paper in the nature of a state of the case, and the other proceedings aforesaid, and upon the following reasons assigned in this court for the reversal of the said judgment in said Supreme Court, and the said judgment in the said Court of Oyer and Terminer and general gaol delivery in and for said county of Bergen, to wit:—

COURT OF ERRORS AND APPEALS,
IN THE LAST RESORT, &c.

92 JOEL M. JOHNSON and ALBERT
SMITH

vs.

THE STATE OF NEW JERSEY.

*In Error to Supreme
Court.
On Indictment for Con-
spiracy, &c,
Assignment of Errors.*

93 And thereupon the said Joel M. Johnson and Albert Smith, by Absalom B. Woodruff, their attorney, came before the said Court of Errors and Appeals, and say that in the record and proceedings aforesaid, and also in the said indictment, and also in the giving of judgment aforesaid, there is manifest error, in this to wit:

1. For that it does not appear in the English language in and by the said record, at what term of the court, and in what year the grand jury presented the said indictment against the said Joel M. Johnson and Albert Smith.

94 2. For that it appears by the first count of the indictment that said Joel M. Johnson and Albert Smith, together with Susan Ann Smith, Maria Smith, and Richard Van Winkle, in furtherance of the conspiracy in that count charged, did falsely charge and cause and procure the said Susan Ann Smith, upon and by her oath, falsely to charge that the said William W. Packer was the father of a cer-

tain bastard child, as in that count alleged. And it further appears by the said first count, that the said Joel M. Johnson and Albert Smith, if guilty of the conspiracy were in the prosecution or furtherance thereof, guilty of subornation of perjury, and that the conspiracy thereby became merged in the felony in said count alleged. 95

3. For that the said second count in the said indictment does not charge the said Joel M. Johnson and Albert Smith with any crime under the laws of this State.

4. For that the facts alleged in the said second count of the indictment, do not constitute under the laws of this State, any crime for which a party can be legally indicted, or criminally punished.

5. For that it does not appear by said second count, that Joel M. Johnson and Albert Smith entered into any agreement or conspiracy, to do any illegal act, or to accomplish any legal object by any unlawful means. 96

6. For that it does not appear in and by the said record and proceedings, that any venire or process for empanelling a jury to try the said Joel M. Johnson, Susan Ann Smith, Albert Smith, Maria Smith, and Richard Van Winkle, was ever issued.

7. For that it appears in and by the said record and proceedings, that the precept to summon the jury that tried the said Joel M. Johnson, Susan Ann Smith, Maria Smith, Albert Smith, and Richard Van Winkle, only authorized the sheriff aforesaid, to empanel a jury to try Joel M. Johnson, Susan Ann Smith, Mary Smith, Albert Smith, and Richard Van Winkle. 97

8. For that it appears in and by the said record and proceedings, that the jury empanelled as aforesaid, were empanelled to recognize upon their oaths, whether the said Joel M. Johnson, Susan Ann Smith, Albert Smith, Mary Smith, and Richard Van Winkle, or either of them, were guilty of the conspiracy in the indictment, or not guilty, and were not legally sworn to speak the truth concerning the matters charged in said indictment. 98

9. For that it does not appear by the said record and

proceedings, that the jury that rendered the verdict against said Joel M. Johnson and Albert Smith, were sworn to try them for the conspiracies charged in said indictment.

99 10. For that the said record and proceedings do not show how much money the said Joel M. Johnson and Albert Smith were entitled to receive from the said William W. Packer, and does not show now much more money than they were legally entitled to, they did receive, but charges them in general terms with extorting money from said Packer.

100 11. For that by the said indictment, the said Joel M. Johnson and Albert Smith are charged with two distinct conspiracies; and by the said record and proceedings, it does not appear of which one they were convicted; and for that judgment is rendered on both counts, when one of them does not legally charge the said Johnson and Albert Smith with any indictable offence.

12. For that it does not appear in and by said record and proceedings, by what authority or tribunal, the judgment against the said Joel M. Johnson and Albert Smith was pronounced.

101 13. For that it does not appear by said record and proceedings, whether the said Joel M. Johnson was sentenced to pay a fine of two hundred and fifty dollars and to stand committed until that fine and the costs of prosecution were paid, or whether he was sentenced to pay that fine, and to stand committed until the fine imposed on him and Albert Smith both, and the costs of the prosecution were paid. And for that it does not clearly appear by said record, what the sentence imposed upon the said Joel M. Johnson and Albert Smith was.

102 14. For that the said Court of Oyer and Terminer had no legal right to pronounce the sentence or judgment given against said Joel M. Johnson and Albert Smith.

15. For that it does not appear in and by the said record and proceedings, into whose custody, or to what place the said Joel M. Johnson and Albert Smith, or either of them, was to be committed, until the fine and costs were paid.

16. For that the said Court of Oyer and Terminer and General Jail Delivery on the trial of said Joel M. Johnson and Albert Smith, admitted illegal evidence on behalf of the State, although its admission was objected to by said Joel M. Johnson and Albert Smith; and also rejected legal evidence offered on behalf of said Joel M. Johnson and Albert Smith. 103

17. For that the said Court of Oyer and Terminer on the said trial allowed the State to give evidence, although it was objected to, that said William W. Parker was of a timid disposition.

18. For that the judgment given by the Court of Oyer and Terminer is in other respects illegal, and not warranted by law; and the said Supreme Court, notwithstanding the errors in said record and proceedings affirmed the judgment given against said Joel M. Johnson and Albert Smith. 104

19. For that the said Supreme Court erred in deciding that the greater part of the errors assigned on said record in said Supreme Court, fell within the provisions of the act of the third day of April, A. D. eighteen hundred and fifty-five (Nixon's Digest, 188 and 189), as the said act was not in force when the trial of said indictment took place.

20. For that the said Supreme Court erred in deciding that the error assigned in said Supreme Court "upon the admission of testimony, could only be presented on a bill of exceptions; as none was prayed or sealed, or could be under the act of 2d April, 1855 (Nixon, 188), § 44, that point could not be considered as raised," in said Supreme Court, inasmuch, amongst other reasons, as the said act was not in force when the trial occurred. 105

21. For that the said Supreme Court affirmed the judgment given by the said Court of Oyer and Terminer and General Jail Delivery without the States having joined in error, and without any legal authority to affirm the said judgment. Whereas the said Supreme Court should have reversed the judgment and discharged the said Joel M. Johnson and Albert Smith from the said indictment. 106

22. For that the judgment of the said Supreme Court was not warranted by the record and proceedings before them, but should have been ; that the judgment of the said Court of Oyer and Terminer and General Jail Delivery be
107 reversed, and for nothing holden.

And thereupon the said Joel M. Johnson and Albert Smith pray that the judgment aforesaid of said Court of Oyer and Terminer and General Jail Delivery, and also the judgment aforesaid of said Supreme Court, for the errors aforesaid may be annulled, reversed, and held for nothing, and that they may be restored to all things which they have lost on occasion of the same.

A. B. WOODRUFF,

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Attorney for Joel M. Johnson and Albert Smith.

A true copy.

THOS. S. ALLISON,

Clerk.

The Defts have joined in error -

The foregoing state of the case is agreed upon by the attorneys - subject to such amendment as may be suggested by either party & allowed by the Judge who tried the cause or took cognizance of the matter to be amended -

*M. M. Knapp
Proc. of the Pleas of Bergen.*

*A. B. Woodruff
Atty for Johnson & Smith -*