

STATE OF NEW-JERSEY.

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IN THE COURT

OF

ERRORS AND APPEALS.

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GEORGE HOWE,

*vs.*

CORNELIUS W. LAWRENCE.

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A. C. M. PENNINGTON, *for Plaintiff.*

BENJAMIN WILLIAMSON, *for Defendant.*

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**C A S E .**

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ISRAEL SACKET, BOOK AND JOB PRINTER,

1848.

STATE OF NEW-JERSEY.

IN THE COURT

ERRORS AND APPEALS.

GEORGE HOWE,

CORNELIUS W. LAWRENCE,

A. C. HARRINGTON, for Plaintiff,

BERNARD WILLIAMS, for Defendant.

CASE.

ESTABLISHED BOOK AND JOB PRINTERS.

1848

IN THE COURT

Errors and Appeals

OF THE

State of New-Jersey.

GEORGE HOWE

vs.

CORNELIUS W. LAWRENCE.

*Writ of Error to the Supreme Court.*

NEW-JERSEY ss. :—*The State of New-Jersey* to the Justices of the SUPREME COURT of Judicature of the State of New-Jersey, GREETING : Because in the record and proceedings, and also, in the giving of judgment, in a certain cause, in our said Court, before you, between George Howe, plaintiff, and Cornelius W. Lawrence, defendant, in a plea of trespass, manifest error hath intervened to the great damage of the said plaintiff, as by his complaint we are informed. We, being willing, that the error, if any there be, should, in due manner, be corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, that if judgment be thereupon given, then, without delay, you distinctly and openly send under your seal, the record and proceedings aforesaid, with all things touching the same, to our Court of Errors and Appeals, in the last resort in all causes of law, to be holden at Trenton, on the fourth Tuesday of January, instant, that the record and proceedings aforesaid, being inspected, we may cause to be done therefor, for correcting that error, what of right and according to the laws of the State of New Jersey,

ought to be done. WITNESS, the Honorable OLIVER S. HALSTED, our Chancellor, at Trenton aforesaid, the fifteenth day of January, in the year of our Lord eighteen hundred and forty-eight.

SAML R. GUMMERE, *Clerk*.

A. C. M. PENNINGTON, *Att'y*.

Presented in open Court and return ordered, January 17th, 1848.

HENRY W. GREEN, *Ch. Just*.

*Answer of Supreme Court.*

5 The Answer of the Justices of the Supreme Court 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, in a certain Schedule to this writ annexed, as within we are commanded.

HENRY W. GREEN. [L. s.]

NEW-JERSEY SUPREME COURT.

As yet, of the term of April, in the year of our Lord one thousand eight hundred and forty-seven.

6 Witness, HENRY W. GREEN, Esquire, Chief Justice.  
J. WILSON, *Clerk*.

*Essex County*, ss.—George Howe puts in his place Alexander C. M. Pennington, his Attorney, against Cornelius W. Lawrence, in a plea of trespass.

*Essex County*, ss.—Cornelius W. Lawrence puts in his place Benjamin Williamson; his Attorney, at the suit of George Howe, in a plea of trespass.

7 *Essex County*, ss.—Cornelius W. Lawrence, the defendant in this suit, was summoned to answer George Howe, the plaintiff therein, of a plea of trespass, and thereupon the said plaintiff, by Alexander C. M. Pennington, his Attorney, complains, for that the said defendant, on the seventeenth day of December, in the year one thousand eight hundred and thirty-five, at New-York, to wit, at Newark, in the said County of Essex, with force and arms, &c., did blow up by gunpowder, burn and destroy divers goods, wares and merchandizes of the said plaintiff, to wit: Fifty cases prints, one thousand pieces prints, ten cases vestings,  
8 five hundred pieces vestings, ten cases shawls, fifteen hun-

dred shawls, and other goods, wares and merchandizes of great value, to wit, of the value of ten thousand dollars, there then being at New-York, to wit: at Newark aforesaid, whereby the said goods, wares and merchandizes, being of the value aforesaid, then and there became and were wholly lost to the said plaintiff, at New-York, to wit: at Newark aforesaid; to the damage of the said plaintiff of ten thousand dollars, and therefore he brings suit, &c.

*Plea of Justification.*

And the said defendant, by Benjamin Williamson, his Attorney, comes and defends the force and injury, when, &c. And as to blowing up by gunpowder, burning and destroying the said fifty cases prints, one thousand pieces prints, ten cases vestings, five hundred pieces vestings, ten cases shawls, fifteen hundred shawls, and other goods, wares and merchandizes in the said declaration mentioned, says, that the said plaintiff his action aforesaid, ought not to have and maintain against him, the said defendant, because he says, that at the time of the committing the said supposed trespasses in the said plaintiff's declaration mentioned by him, the said defendant, to wit, on the the seventeenth day of December, in the year one thousand eight hundred and thirty-five, the citizens of the City of New-York, in the State of New-York, were, and for a long time previous thereto, to wit: from the year sixteen hundred and eighty-six, had been a body politic and corporate, by the name and style of "The Mayor, Aldermen and Commonalty of the City of New-York," and from thence hitherto have continued and remained, and still continue and remain such body politic and corporate as aforesaid, by the name and style aforesaid.

And the said defendant further says, that heretofore, to wit: on the seventh day of April, in the year 1830, the people of the State of New-York, represented in Senate and Assembly, did pass a public act, entitled, "An Act to amend the Charter of the City of New-York," which said act was afterwards, to wit: on the day and year last aforesaid, signed and approved, to wit: by William L. Marcy, the then Governor of the State of New-York, duly elected, qualified and acting as such Governor.

And the said defendant further says, that the aforesaid act, among other things, provided as follows, viz.: "The annual election for charter officers shall commence on the second Tuesday in April, and the officers elected shall be sworn into office on the second Tuesday in May thereafter."

"The first election for charter officers after the passage of this law, shall take place on the second Tuesday in April, one thousand eight hundred and thirty-one." And the said

- 13 defendant further says, that certain officers in and for said City, to wit: a Mayor and Aldermen, were provided for by, to wit: three several charters granted to said City, heretofore, to wit: one by Thomas Dongan, then being Lieutenant Governor and Vice-Admiral of said City of New-York and its dependencies, under and by the authority of James the Second, then King of England, Scotland and Ireland, to wit: on the twenty-second day of April, in the year 1686, in which said Charter so as aforesaid made, it was, amongst other things, by the authority of the said King granted, "that for the better government of the said City, liberties and precincts thereof, there shall be forever hereafter, within the said City, a Mayor and six Aldermen, and six Assistants;" from the making of which said Charter so as aforesaid, up to the time of the commencement of this suit, the aforesaid grant has remained in full force and effect, and in no wise abrogated or annulled; during all which time, there have been in said City, certain charter officers; called Mayor and Aldermen.
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- And the said defendant further says, that under and by virtue of the aforesaid act of the Legislature, so as aforesaid passed on the day and year aforesaid, afterwards, to wit: on the second Tuesday of April, in the year 1836, a Mayor, being a "charter officer;" and divers, to wit: sixteen Aldermen, being "charter officers;" were elected by the qualified electors of the said City, for the term of one year from and after the second Tuesday of May thereafter. And afterwards, to wit: at an election held in said City for Mayor and Aldermen and other officers, to wit: on the second Tuesday of April, in the year 1835; the said act still being in full force and unrepealed, the said defendant received a majority of the votes given of the qualified voters of the said City of New-York, over any other person, and was duly
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elected Mayor of said City for the term of one year from and after the second Tuesday of May, then next ensuing, to wit: until the second Tuesday of May, in the year 1836. And the said defendant was sworn into his said office of Mayor, and entered upon the duties thereof, to wit, on the said second Tuesday of May, in the year 1835, and continued in such office and performed the duties thereof for and during the aforesaid term for which he was elected, during all which time, he continued to be and was the Mayor of said City.

And the said defendant further says, that heretofore, to wit: on the day and year aforesaid, one Edward Taylor, a citizen of said City, then residing in a certain portion thereof, called and known as the Second Ward, received a majority of all the votes given in said Ward by the qualified electors thereof, for Alderman thereof, at an election then held in said City for Mayor and Aldermen, and was duly elected Alderman thereof for the term of one year from the second Tuesday of May, next ensuing; and afterwards, to wit: on the second Tuesday of May, in the year 1835, aforesaid, he, the said Edward Taylor, was sworn into office as Alderman in and from and of the said City, from the Second Ward, of and in said City, and afterwards, to wit: on the day and year last aforesaid, he, the said Edward Taylor, entered upon the duties of his said office, and exercised, and continued to exercise the same for and during the full term of one year thereafter, to wit: to the second Tuesday of May, in the year 1836, during all which time he continued to be and was such Alderman as aforesaid, of and from the Second Ward of and in said City.

And the said defendant further says, that heretofore, to wit: on the said second Tuesday of April, in the year 1835, one Egbert Benson, a citizen of said City, residing in a certain portion thereof, called and known as the Third Ward, received a majority of all the votes given by the qualified voters thereof, at an election then and there held for Mayor and Aldermen of said City, for Alderman of said Ward, and was duly elected such Alderman as aforesaid. And afterwards, to wit: on the second Tuesday of May thereafter, he, the said Egbert Benson, was sworn into office as Alderman from the Ward last aforesaid, of and in said

City. And afterwards, to wit: on the day and year last aforesaid, he, the said Egbert Benson, entered upon the duties of his said office, and exercised and continued to exercise the same for and during the full term of one year thereafter, to wit: to the second Tuesday of May, in the year 1836, during all which time he continued to be, and was an Alderman in and of the City aforesaid.

21 And the said defendant further says, that heretofore, to wit: on the 9th day of April, in the year 1813, the people of the State of New-York, represented in Senate and Assembly, did pass an act entitled "An Act to reduce several Laws relating particularly to the City of New-York, into one Act," in which said act it was among other things, provided and enacted as follows, viz.: "That when any building or buildings in the City of New-York shall be on fire, it shall be lawful for the Mayor, or in his absence, the Recorder of the City, with the consent and concurrence of any two of the Aldermen thereof, or for any three of the Aldermen, to direct and order the same, or any other building which they may deem hazardous and likely to take fire, or to convey the fire to other buildings, to be pulled down or destroyed." And afterwards, to wit, on the 22 21 day of said month in the last year aforesaid, the act aforesaid so as aforesaid passed, was presented to the Council in said State duly elected, chosen and appointed to revise and consider all bills which were passed by the Senate and Assembly of the State of New-York aforesaid, which said Council was under and by virtue of the Constitution of the said State charged with the revision and consideration of all laws passed as aforesaid—and the act aforesaid passed as aforesaid, was by the said Council considered and approved, to wit, on the day and year last aforesaid, and then there became and was a law. And the said defendant further says, that the provision of the aforesaid act as above stated, from thence hitherto has remained, and still remains in full force and effect, and unrepealed.

23 24 And the said defendant further says, that heretofore, to wit: on the seventeenth day of December, in the year 1835, at the City and County aforesaid, certain buildings were on fire, to wit: numbers forty-four and forty-six, in a street called Exchange Place, in the aforesaid City of New-York.

And the Defendant further says, that near to the said buildings, so as aforesaid on fire, at the place and on the day and year aforesaid, was a certain other building commonly called a store. And the said defendant further says, that he, the said defendant, then being Mayor as aforesaid, and the said Edward Taylor and Egbert Benson, then still being Aldermen of and in the said City as aforesaid, were present when the buildings aforesaid were on fire as aforesaid, and then and there the aforesaid building, commonly called a store, was, by the said defendant, then still being Mayor of the said City of New-York, and said Edward Taylor and Egbert Benson, then still being Aldermen of and in the said City, and by each of them deemed and believed hazardous and likely to take fire; and he, the said defendant, did, with the full consent and concurrence and approbation of each and both the aforesaid Aldermen, cause and procure the aforesaid building, commonly called a store, to be blown up and destroyed. And the said defendant says, that the said fifty cases prints, one thousand pieces prints, ten cases vestings, five hundred pieces vestings, ten cases shawls, fifteen hundred shawls, and other goods, wares and merchandizes of the said plaintiff, as in said declaration mentioned, were in the aforesaid building, commonly called a store, at the time when he, the said defendant, as Mayor as aforesaid, with the consent, approbation and concurrence of each and both the aforesaid Aldermen, of, in and for the City aforesaid, caused the said building to be blown up with gunpowder and destroyed, to wit: on the day and year aforesaid, at the City, County, and State of New-York, and within the jurisdiction of the State of New-York, and for the reason aforesaid, the aforesaid goods, wares and merchandizes in said plaintiff's declaration mentioned, were blown up by gunpowder, burned up and destroyed by said defendant, as it was lawful for him to do, as Mayor of the City of New-York, as aforesaid; which are the same supposed trespasses in the introductory part of this plea mentioned.

And this he, the said defendant is ready to verify; wherefore he prays judgment if the said plaintiff ought to have and maintain their aforesaid action against him, the said defendant.

*Plea of the Statute of Limitations.*

And for a further plea in this behalf, as to the said supposed trespass in the said declaration mentioned, the said defendant, by leave of the Court here, for this purpose first had and obtained, according to the form of the statute in that case made and provided, saith, that the said plaintiff ought not to have or maintain their aforesaid action thereof against him; because he saith, that he, the said defendant, was not guilty of the said trespass, in the said declaration mentioned, or of any part thereof, in manner and form as the said plaintiff have above thereof complained against him, at any time within six years next before the commencement of this suit, and this the said defendant is ready to verify; wherefore he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him.

*Demurrer to First Plea.*

And the plaintiff as to the plea of the defendant by him firstly above pleaded, saith, that the same and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude the plaintiff from having or maintaining his aforesaid action thereof against the defendant, and that the plaintiff is not bound by law, to answer the same, and this the plaintiff is ready to verify. Wherefore, by reason of the insufficiency of the said plea in this behalf, the plaintiff prays judgment and his damages by him sustained, on occasion of the committing of the said grievances, to be adjudged to him, &c.

*Replication to Second Plea.*

And the plaintiff as to the plea of the defendant by him secondly above pleaded, saith, that the plaintiff ought not to be barred from having and maintaining his aforesaid action thereof, against the defendant, because the plaintiff saith, that at the time when the said several causes of action in the declaration of the plaintiff mentioned, and each and

every of them accrued, the defendant was not resident in this State, but resided in the State of New-York; and that the defendant has not been resident in this State for the term of six years, nor for so great a term as six years, since the time when the said several causes of action in the said declaration mentioned, or any of them accrued, and before the commencement of this suit, to wit: at Newark aforesaid: and this the plaintiff is ready to verify. Wherefore he prays judgment and his damages by him sustained on occasion of the committing of the said grievances, to be adjudged to him, &c.

And the said defendant saith, that his said plea by him firstly above pleaded, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law to bar and preclude the said plaintiff from having and maintaining his aforesaid action thereof against him, and this, he, the said defendant, is ready to verify and prove; wherefore, inasmuch as the said plaintiff hath not answered the said plea, nor in any manner denied the same, the said defendant prays judgment, and that the said plaintiff may be barred from having or maintaining his aforesaid action thereof against the said defendant, &c.

*Rejoinder to Replication.*

And the said defendant, as to the said replication of the said plaintiff, to the said second plea of the said defendant, saith, that the said plaintiff ought not by reason of anything by him in that replication above alleged, to have or maintain his aforesaid action against the said defendant, in respect of the said supposed trespasses in the introductory part of the said second plea and in the said declaration mentioned, because he saith, that the said several supposed trespasses in the plaintiff's declaration mentioned, were committed in the State of New-York, and out of and beyond the jurisdiction and limits of this State, and that the said several causes of action thereon, in the said declaration mentioned, accrued

in the State of New-York, and not in this State, and the said defendant in fact further saith, that at the several times  
 36 when the said several supposed trespasses were committed, and the said several causes of action accrued thereon, and during all the intervening time, and for a long time after, as well the said plaintiff as the said defendant were not resident in this State, but resided in the State of New-York, or some other of the States of the United States of America, and the plaintiff as well as the said defendant have ever since resided,  
 37 and still do reside out of and beyond the jurisdiction and limits of this State, and that at the several times when the said supposed trespasses were committed, and the said causes of action accrued thereon, the said defendant had not, nor has he since had, nor has he now any rights or credits, moneys or effects, goods or chattels, lands or tenements whatsoever within the jurisdiction of this State. And so the said defendant, in fact saith, that at the said several times when the said causes of action on the said several supposed trespasses in the plaintiff's declaration mentioned accrued, they did not accrue to the said plaintiff and they had not cause of action thereon within the jurisdiction and limits of this State: and this the said defendant is ready to verify,  
 38 wherefore as before, he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against the said defendant in respect of the said supposed trespasses in the introductory part of the said second plea, and in the said declaration mentioned, &c.

*Demurrer to Rejoinder.*

And the said plaintiff as to the said rejoinder of the said defendant to the replication of the said plaintiff to the plea of the said defendant by him secondly above pleaded, saith,  
 39 that the same and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude him, the said plaintiff, from having or maintaining his aforesaid action thereof against the said defendant, and that he, the said plaintiff, is not bound by law to answer the same, and this, he, the said plaintiff, is ready to verify: Wherefore, by reason of the insufficiency of the said rejoinder in this behalf, the said

plaintiff prays judgment and his damages by him sustained, on occasion of the committing the said trespasses, to be adjudged to him, &c.

And the said plaintiff, according to the form of the Statute in such case made and provided, states and shows to the Court here, the following causes of demurrer to the said rejoinder, that is to say: **FIRSTLY**, for that the said rejoinder of the said defendant attempts to put in issue to be tried by the country, mere inference and matter of law, viz.: whether the causes of action on the several supposed trespasses in the declaration mentioned, accrued in the State of New-York, and not in this State, and whether the plaintiff had cause of action thereon, within the limits and jurisdiction of this State, after stating and setting forth all facts and circumstances requisite to be alleged. **SECONDLY**, that the averments in the said rejoinder as follows, to wit: "and that the said several causes of action thereon in the said declaration mentioned, accrued in the State of New-York, and not in this State," and "and so the said defendant in fact saith, that at the said several times when the said causes of action on the said several supposed trespasses in the plaintiff's declaration mentioned accrued, they did not accrue to the said plaintiff, and he had not cause of action thereon within the jurisdiction and limits of this State," are argumentative, and that no certain and sufficient issue can be taken thereon.

And also, for that the said rejoinder is in other respects uncertain, informal and insufficient, &c.

*Joinder in Demurrer to Rejoinder.*

And the said defendant saith, that his said rejoinder by him above rejoined, and the matters therein contained, in manner and form as the same are above rejoined and set forth, are sufficient in law to bar and preclude the said plaintiff from having or maintaining his aforesaid action thereof against him, the said defendant. And the said defendant is ready to verify and prove the same when, where, and in such manner as the said Court here shall direct and award: Wherefore, inasmuch as the said plaintiff hath not answered the said rejoinder, nor hitherto in any manner denied the same, the said defendant prays judgment,

and that the said plaintiff may be debarred from having or maintaining his aforesaid action thereof against the said defendant, &c.

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*Continuance and Judgment on Demurrers.*

And now at this day, to wit, the first Tuesday of October, in the year of our Lord, eighteen hundred and forty-seven, before the Justices of the Supreme Court of the State of New Jersey, at Trenton, come the parties aforesaid by their attorneys aforesaid. And because our said Supreme Court, now here, are not yet advised what judgment to give of and upon the premises, a day is further given to the parties aforesaid, before our said Court at Trenton aforesaid, until the first Tuesday in January next, to hear judgment thereupon. At which day, before our said Supreme Court at Trenton, aforesaid, come the parties aforesaid, by their Attorneys aforesaid: whereupon, all and singular the premises aforesaid being understood, and mature deliberation being thereupon had, it appears to the said Court here, that the said first plea, by the said defendant in manner and form aforesaid pleaded, and the matters therein contained, and also, the said rejoinder by the said defendant, in manner and form aforesaid rejoined, and the matters therein contained, are and each of them is sufficient in law to bar and preclude the plaintiff from having or maintaining his aforesaid action thereof, against the said defendant.

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*Judgment.*

Therefore, it is considered that the said George Howe take nothing by his said writ, but that he and his pledges to prosecute be in mercy, &c., and that the said Cornelius W. Lawrence do go thereof, without day, &c. And it is further considered by the Court here, that the said Cornelius W. Lawrence do recover against the said George Howe, the sum of twenty-seven dollars and eighty-five cents, for his costs and charges by him, about his defence in this behalf, laid out and expended by the Court here, adjudged to the said defendant, and with his assent, according to the form of the statute in such case made and provided, and that he have execution thereof, &c.

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Judgment signed this twenty-fifth day of January, in the year of our Lord, one thousand eight hundred and forty-eight.

HENRY W. GREEN.

I, James Wilson, Clerk of the Supreme Court of New Jersey, do hereby certify, that the foregoing is a true transcript, from the records of said Court, of the judgment and proceedings in the above stated cause.

Witness my hand and the seal of said Court,  
[L. s.] at Trenton, this twenty-fifth day of January, in the year of our Lord, eighteen hundred and forty-eight.

JAMES WILSON, *Clerk.*

*Assignment in Errors.*

State of New Jersey,

Court of Errors and Appeals.

GEORGE HOWE,

*vs.*

CORNELIUS W. LAWRENCE.

And afterwards, to wit, on the twenty-fifth day of January, in the year one thousand eight hundred and forty-eight, before the Court of Errors and Appeals of the State of New Jersey, at Trenton, comes the said George Howe, plaintiff, by Alexander C. M. Pennington, his Attorney, and says, that in the record and proceedings aforesaid, and also in giving of judgment as aforesaid, there is manifest error in this, to wit: that the declaration and pleadings aforesaid, and the matters therein contained, are sufficient in law for the said George Howe to have and maintain his aforesaid action thereof, against the said Cornelius W. Lawrence. There is also error in this, to wit: that, by the record aforesaid, it appears

that the judgment aforesaid, in form aforesaid given, was given for the said Cornelius W. Lawrence, against the said George Howe, whereas, by the law of the land, the said judgment ought to have been given for the said George Howe, against the said Cornelius W. Lawrence. And the said

51 George Howe prays, that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, &c.

A. C. M. PENNINGTON,  
*Attorney.*

*Joinder in Error.*

STATE OF NEW-JERSEY,  
COURT OF ERRORS AND APPEALS.

52 CORNELIUS W. LAWRENCE. }

*ads.* }

GEORGE HOWE,

And hereupon, afterwards, to wit, on the twenty-fifth day of January, in the year one thousand eight hundred and forty-eight, the said Cornelius W. Lawrence, by Benjamin Williamson, his Attorney, freely comes here into Court, and says, that there is no error in the record and proceedings aforesaid; and he prays, that the said Court may proceed to examine as well the record and proceedings aforesaid, as the

53 matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

BENJAMIN WILLIAMSON,  
*Attorney.*