ordinarily no answer to the ejectment is filed, but, if so, it is practically without exception sham or frivolous and can be stricken on motion and a summary judgment entered. Having in mind the expense and delay incident to recovering *mesne profits,* it is probably better practice, and it can, of course, be done, to waive these damages and costs and enter a summary judgment when striking out the answer. A writ of possession then issues to the Sheriff of the county and he places the mortgagee in possession. It must be noted that this remedy is equally effective as against the owner, or any subsequent emcumbrances in possession.

GILBERT D. CHAMBERLAIN.*

POWER OF THE LEGISLATURE TO PUNISH FOR CONTEMPT. — The power to punish for contempt was an inherent and component authority of the High Court of Parliament in England, where the King with his nobles dispensed all kinds of justice, including the making of laws.[1] It is obvious that in a constitutional government with separation of powers, if this power is carried over at all, it cannot have the broad scope accorded to it in its former setting.[2]

The legislatures of the United States and the several states are not courts of judicature. They are law-making bodies, and their powers are limited by their respective constitutions to that purpose only.[3] But this does not mean that they shall not possess and exercise those auxiliary and incidental powers found necessary to the proper performance of their function under a constitutional government, and to be implied from those expressly granted.

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1. Kilbourn v. Thompson, 103 U.S. 168, 184-6 (1881).

2. *Ibidem.* McGrain v. Daugherty, 273 U.S. 135, 164 (1927); Jurney v. MacCracken, 294 U.S. 125 (1935); Anderson v. Dunn, 6 Wheat. (U.S.) 204, 5 Law Ed. 242 (1821). Annotation—79 Law Ed. 809. Marshall v. Gordon, 243 U.S. 521 (1917).

3. United States Constitution, Articles I, II, III. New Jersey Constitution (1844) Article III. *Supra,* note 1. *In re* Hague, 104 N.J.Eq. 31, 144 Atl. 546 (Chan. 1929), *aff'd,* 104 N.J.Eq. 369, 145 Atl. 618 (E. & A. 1929). *In re* Gunn, 50 Kan. 155, 32 Pac. 470 (1893). Anderson v. Dunn, *supra,* note 2.

Among these necessary powers, none perhaps is quite so important and indispensable as the power to summon witnesses and documents, and to enforce attendance through the power of the legislature to hold in contempt those who flaunt its rightful demands, and to elicit testimony from these witnesses relative to correcting legislation already in force and found to be defective; and as a basis for the enactment of future legislation, which function is the legislature's and its alone.[4] From an early time in the United States this power has been exercised by the various legislatures, including the Congress of the United States, and this right of the legislature recognized by the courts.[5]

The apparent contrariety of the decisions on this subject has not been so much in the denying of the right, as in different interpretations of different courts, in determining when any particular exercise of the power has been legitimately employed.[6] This power is a limited power, to be sure. It may be exercised only in aid of the legislative function; not for the purpose of examining into the criminality of acts of the citizen, or for other reasons not directly connected with and necessary to legislation.[7] The right of judicial review of the exercise of this

4. United States Constitution, Art. I. N. J. Constitution, Art. IV (1844). McGrain v. Daugherty, *supra*, note 2. Jurney v. MacCracken, *supra*, note 2. Annotation, *supra*, note 2, at pp. 809-10. *Ex Parte* Battelle, 207 Cal. 227, 277 Pac. 725 (1929). Lowe v. Summers, 67 Mo. App. 637 (1897). Wilkens v. Willet, 1 Keyes (N.Y.) 521 (1864). Burnham v. Morrissey, 14 Gary (Mass.) 226 (1859). *Ex Parte* Parker, 74 S.C. 466, 55 S.E. 122 (1906). *In re* Gunn, *supra*, note 3, 19 L.R.A. 519. People v. Keeler, 99 N.Y. 463, 2 N.E. 615 (1885). *In re* Hague, *supra*, note 3, and Greenfield v. Russel, 292 Ill. 392, 127 N.E. 102 (1902).*In re* Hague, 105 N.J.Eq. 134, 147 Atl. 220 (Ch. 1929) and People v. Webb, 5 N.Y. Supp. 855 (1889). State v. Brewster, 89 N.J.L. 658, 99 Atl. 338 (E. & A. 1916). Anderson v. Dunn, *supra*, note 3, referring to the right of the legislature to hold in contempt says: "The necessity of self-defense is as incidental to legislative as to judicial authority." Marshall v. Gordon, *supra*, note 2. *In re* Chapman, 166 U.S. 661 (1897).

5. McGrain v. Daugherty, *supra*, note 2. Jurney v. MacCracken, *supra*, note 2. Anderson v. Dunn, *supra*, note 2.

6. *Supra*, note 1. *In re* Hague, *supra*, note 3. *In re* Hague, *supra*, note 4. *In re* Kelly, 123 N.J.Eq. 489, 198 Atl. 203 (E. & A. 1938), *aff'd sub nomine*, McRell v. Kelly, 124 N.J.Eq. 350, 1 Atl. (2nd) 966 (E. & A. 1938). Marshall v. Gordon, *supra*, note 2. Annotation, *supra*, note 2, at pp. 809-10.

7. Anderson v. Dunn, *supra*, note 2, at p. 231—where it is said, "The least

power of the legislature was early accorded and has remained in force ever since, as a guarantee of the constitutional rights of the citizen.[8]

While the scope of the legislative function embraces all legislation, with the growth and complexity of our civilization the law-making function has assumed an ever greater role. Because of this complexity of our social and economic set-up, more and more legislation has become necessary; and for the very same reason the individual knowledge of the law-makers on the subjects requiring legislation is necessarily more meagre. With this situation, still on the rise, the necessity for expert testimony bearing on the subject for legislation, becomes the more apparent.[9] It has been the experience of legislative bodies that some sort of compulsion is necessary to elicit the required information, and to have it presented in usable form.[10] To assist the legislature in securing this end, the United States and the several states have enacted legislation in aid of this inherent right in the legislature.[11] One state,

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possible power adequate to the end proposed"; Marshall v. Gordon, *supra,* note 2; *In re* Hague, *supra,* note 4; *In re* Chapman, *supra,* note 4, p 667.

8. *Supra,* note 1; People v. Keeler, *supra,* note 4; McGrain v. Daugherty, *supra,* note 2; *In re* Hague, *supra,* note 3; *In re* Chapman, *supra,* note 4.

9. In McGrain v. Dougherty, *supra,* note 2, it is said: "A legislative body cannot legislate wisely or effectively in the absence of information respecting the condition which the legislation is intended to effect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it."

10. "Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain what is needed. All this was true before and when the Constitution was framed and adopted. In that period the power of inquiry—with enforcing process was regarded and employed as a necessary and appropriate attribute of the power to legislate—indeed, was located as inhering in it. Thus there is ample warrant for thinking, as we do, that the Constitutional provisions which commit the legislative function to the two houses are intended to include this attribute to the end that the function may be effectively exercised."—*Ibidem.* Annotation, *supra,* note 2, at pp. 809, 810, 817; Anderson v. Dunn, *supra,* note 2, at p. 233; Marshall v. Gordon, *supra,* note 2, at pp. 537-8; People v. Keeler, *supra,* note 4, p. 625.

11. "An Act More Effectually to Enforce the Attendance of Witnesses on the Summons of Either House of Congress and Compel Them to Discover Testimony." 11 Stat. at L. 333, Chap. 19, now U. S. Revised Statutes, sec. 102, U.S.C. Title 2, sec. 192; 2 N.J.C.S. sec. 68 now N.J.R.S. 52:13-1 to 13; other

Texas, has placed such a provision in its constitution.[12]

This specific authorization by statute or otherwise, in no way militates against the inherent right of the legislature to enforce the attendance of witnesses and to hold them in contempt for failure to obey the legislature's command. The legislation is in aid of and in addition to that unquestioned right.[13] It merely makes the refusal to appear and testify,—the contempt—punishable as a misdemeanor by the courts, where it was thought that the punishment of which the legislature was capable was inadequate. The legislature cannot commit a contemner for a period longer than the life of the particular legislature.[14]

There are numerous instances where the courts have refused to recognize the right of the legislature to punish in particular instances, but those were situations in which the court failed to see that the investigation, or proceedings, in which the contempt of the witness occurred, were in aid of the legislative function.[15] Where the contempt consisted of the writing of scurrilous, slanderous letters to the committee conducting the investigation, while the court recognized that this was vexatious to the members thereof, it could not see how this act obstructed the legislative process.[16] Again where the subject-matter of the investigation had already come under the jurisdiction of the courts, and where the courts alone could afford relief, the court refused to hold in contempt the witness refusing to give testimony.[17] But where the contempt was committed in an investigation properly initiated by the legislature, though at the time the witness was adjudged guilty by the legislative body, the obstruction occasioned by his contempt had been removed, the court nevertheless, refused to discharge him, thereby

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states having similar statutes making refusal to testify a misdemeanor: Cal., N.Y., Ohio, S.C., Wis., cited in Annotation, *supra*, note 2.

12. Annotation, *supra*, note 2.

13. Jurney v. MacCracken, *supra*, note 2. Lowe v. Summers, *supra*, note 4. *In re* Chapman, *supra*, note 4. People v. Keeler, *supra*, note 4. *Contra*: *Ex Parte* Gray, 64 Tex. Cum. Rep. 311 (1911), cited in Annotation, *supra*, note 2. Power to punish for contempt enumerated in Constitution.

14. Jurney v. MacCracken, *supra*, note 2. *In re* Hague, *supra*, note 4.

15. *In re* Hague, *supra*, note 4. *In re* Kelly, *supra*, note 6.

16. Marshall v. Gordon, *supra*, note 2.

17. *Supra*, note 1.

vindicating the authority of the legislature.[18] So that now, past contempts, though their obstruction to the legislative process may have ceased, are subject to punishment, if they were committed in the course of a proper investigation conducted by the legislature, in vindication of its authority.[19]

The wording of the resolution under which the investigation is conducted by the legislature, or the statute under which the contempt is found, as the case may be, is clung to by the courts in numerous instances as the magic which raises the inquiry into the plane of proper legislative investigation, or damns it as an attempted usurpation of the judicial function.[20] There is a presumption, however, raised by many courts, as to the legitimacy of the investigation, though the language of the resolution be ambiguous, if the subject under inquiry can possibly come within the proper sphere of legislative authority.[21] Nor do the better courts require that the purpose of the investigation be categorically set down in the empowering resolution, so long as the subject under inquiry is a proper subject-matter for legislation.[22] The courts should, and many of them do, accord to a co-ordinate branch of the government the decency of the presumption of the legality of their proceedings.[23]

Coming now to a consideration of this subject-matter in New Jersey, and to the application of the principles above enumerated to the reported cases dealing therewith, in this state, we find, with cer-

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18. Jurney v. MacCracken, *supra*, note 2.

19. *Ibid.*

20. *Supra*, note 1, p. 192. *In re* Hague, *supra*, note 3. *In re* Chapman, *supra*, note 4.

21. McGrain v. Daugherty, *supra*, note 2, pp. 179-180—"Nor do we think it a valid objection to the investigation that it might possibly disclose crime or wrongdoing on his (the Attorney General's) part." (The Dept. of Justice was the subject of the investigation.) "Nor does the political cost of the investigation or personal rancor, provided a legitimate object can be made out, invalidate it." Anderson v. Dunn, *supra*, note 2; People v. Keeler, *supra*, note 4, p. 628. *Contra*: *In re* Hague, *supra*, note 4; *In re* Kelly, *supra*, note 6.

22. McGrain v. Daugherty, *supra*, note 2. *In re* Chapman, *supra*, note 4, p. 667.

23. *Ibid.* People v. Keeler, *supra*, note 4, p. 670.

tain aberrations, a conformity in approach and ruling, with the authorities above cited.[24]

In New Jersey there is a statute, conforming in essential respects with the Federal statute and those of numerous states making the refusal to appear and testify in a legislative investigation, and to bring papers also summoned, a misdemeanor punishable in the courts of law.[25] But, as has been held by the United States courts and the courts of those states having a similar statute, this in no way abridges the inherent right of the legislature itself to punish for contempt, but is merely in addition to and in aid of this power in the legislature.[26]

The first of a series of cases dealing with the right of the legislature, or committee thereof, to adjudge in contempt a witness refusing to appear and testify, or failing to bring summoned papers, is *In re Hague*.[27] In the case before the Vice-Chancellor, while he recognized the right of the legislature, and its power, to obtain information upon any subject upon which it has power to legislate, with a view to its enlightenment and guidance, as essential to the performance of its legislative functions, and an undoubted right; nevertheless, it was manifest to him that the legislative committee had exceeded its rightful authority and had entered upon a "fishing expedition" into the personal and family affairs of the citizen, which was no part of the legislative function, and as such came within the bar of *Kilbourn v. Thompson*.[28] The Joint Resolution itself, the Vice-Chancellor held, was too broad in its terms—" 'To make a survey of all questions of public interest;' and 'to investigate violations of law;' and 'to investigate the conduct of any state official, state department, commission, board or body, * * * ' "—and was therefore an unlawful exercise of the legislative power.

In addition, the Vice-Chancellor found fault with the form of the investigation;[29] namely, in the appointment of a joint committee

24. State v. Brewster, *supra,* note 4. *In re* Hague, *supra,* note 3. *In re* Hague, *supra,* note 4. *In re* Kelly, *supra,* note 6.

25. R.S. 52:13-1 to 13.

26. *Supra,* note 13.

27. *Supra,* note 3.

28. *Ibid. Supra,* note 1.

29. The Vice Chancellor attempts to distinguish State v. Brewster, *supra,*

to conduct the investigation. While he concedes the authority of either house, or either house acting through its own committee, to "investigate matters within the scope of legitimate inquiry for the purpose of acquiring information for proposed legislation," it does not follow, he says, that they may do so jointly; nor under a statute,[30] making refusal to appear and testify a misdemeanor, may they act in joint session to punish the alleged contemner for the alleged contempt of such joint committee, or the legislature, which the joint committee represents. "Such action," says the Vice-Chancellor, "is untenable in law, and my research has failed to reveal any precedent to justify such a proposal."

The Vice-Chancellor deemed it "unnecessary to refer to or comment upon the cases cited by counsel for the respondent,[31] for the reason that they are inapplicable to the case at bar. They relate to action taken by a *house* of the legislature (and Congress) for action by such *house*. The case at bar is not such." He then distinguishes the case of *Kilbourn v. Thompson*,[32] as not contrary to the holdings of the above cases, and therefore, they are not disturbing to his holding in the instant case. Of *Kilbourn v. Thompson*,[33] the Vice-Chancellor says: "The limitations placed upon the power of either house of Congress, in that case, apply with equal force to the senate and general assembly of the State of New Jersey." It would therefore appear that the rule of the foregoing United States Supreme Court cases equally applied as regards the legislature of New Jersey.

On the appeal of this case to the New Jersey Court of Errors

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note 4, holding that when a witness appears in obedience to a summons, issued by a committee of the legislature, he cannot attack the committee's power to issue it, on the ground that the resolution therein was never legally adopted and therefore, it is open now for the court to determine the legality of the resolution's adoption, since the rule of Pangborn v. Young, 32 N.J.L. 29 (S.C. 1866), holding that once a public act has been certified by the Secretary of State, a court may not look behind this to determine its authenticity, does not apply in favor of resolutions merely. However, see language of State v. Brewster, *supra*.

30. 2 C.S. 2241, R.S. 52:13-1 to 4.

31. McGrain v. Dougherty, *supra*, note 2; Anderson v. Dunn, *supra*, note 2; People v. Keeler, *supra*, note 4; Burnham v. Morrissey, *supra*, note 4; *In re* Chapman, *supra*, note 4; Marshall v. Gordon, *supra*, note 2.

32. *Supra*, note 1.

33. *Ibid.*

and Appeals,[34] it was affirmed "for want of a majority for reversal." Certain stated questions were ordered to be voted on separately. By unanimous vote the court held that the Joint Resolution under which the joint committee operated, was, when taken as a whole, a valid exercise of the legislative power, "even if some one or more of the inquiries suggested therein may be unlawful"; that the subpoena ordering the attendance of the petitioner before the committee, was lawfully issued, and lawfully required his attendance "notwithstanding the assumed inclusion therein of illegal requirements for the production of documents"; that it was lawful to order a warrant for the arrest of the petitioner and to bring him before the legislature; that the warrant, commanding the arrest of the petitioner, and that he be brought before the bar of the senate and assembly "to answer as and for a contempt in refusing to obey the said subpoena", by its language, contemplated penal action against the petitioner on account of such alleged contempt. The court was evenly divided on the questions (a) whether it was within the power of the senate and general assembly to inflict such punishment; (b) whether it was competent for the legislature to direct the arrest of petitioner under conditions which might involve his imprisonment for six days before he could be brought before the legislature in session. Six voted for and six voted against the reversal of the decree, and it was mechanically affirmed.

The 1929 Legislature of New Jersey, undaunted by the failure of its predecessor to successfully conduct this investigation, sought to remedy the defects found by the courts in the proceedings of the 1928 Legislature, amended the resolution and proceeded anew in its investigation. The amended resolution recited the same objects, named a new joint committee but added " 'for the purpose of obtaining information relative thereto as a basis for such legislative action as the senate and general assembly may deem necessary and proper.' " Upon the refusal of Mr. Hague to answer the questions propounded, the joint committee reported that fact to the legislature, which called a joint session, subpoenaing the alleged contemnor to appear before it, which he did, and upon his continued refusal to answer the questions again submitted to him by the joint session, it adjudged him in contempt, caused a

34. 104 N.J.Eq. 369.

warrant for his arrest to be issued and directed that he be confined until he was willing to answer them. He was discharged on *habaes corpus,* and in *In re Hague,*[35] the same Vice-Chancellor as in the previous case gave his reasons for the discharge, affirmed 9 N.J.Misc. 89, (May 1930) now reported in 123 N.J.Eq. 475. The Vice-Chancellor considered his decision in the previous case dispositive of this case, in his court; adding that the succeeding legislature had no power to renew or amend the old resolution which had expired with the ending of the legislature which had adopted it. He reiterated his belief that a joint committee had not the power to conduct investigations, though either house acting separately might have, within the proper sphere of legislative investigation; that the petitioner could not be hailed before the bar of the joint session, as there was no such bar; and again that the investigation violated the right of the citizen to protection in his private affairs.[36]

On appeal to the Court of Errors and Appeals of New Jersey,[37] the court ignored the objection raised by the Vice-Chancellor as to the irregularity of the proceedings (the joint committee, and arraignment before "the bar of the senate and general assembly"), and based its affirmance of the decree (one dissent) on the illegal exercise of the legislative power of investigation. It held the inquiry to be outside the jurisdiction of the legislature (Art. III N. J. Constitution) and judicial in its nature, quoting from *Kilbourn v. Thompson, supra,* " 'No person can be punished for contumacy as a witness before the legislature unless his testimony is required in a matter into which the legislature has jurisdiction to inquire.' "

It is obvious that the decision in the second *Hague case*[38] was based upon the particular facts before it; namely, that the *questions* asked of the witness were for the purpose of showing that he "was a party to the criminal conspiracies," and while "within the scope of the resolution which directed an investigation" amounted to an inquiry

35. *Supra,* note 4, and *aff'd,* 9 N.J.Misc. 89, now reported in 123 N.J.Eq. 475, 150 Atl. 322 (E. & A. 1930).

36. *In re* Hague, *supra,* note 4.

37. *Ibid.*—on appeal.

38. *Ibid.*

into matters "strictly judicial in their nature."[39] The court said: "In refusing, therefore, to answer these *questions,* relating as they did to matters, inquiry into which was outside of the jurisdiction of the legislature, Hague was exercising a legal right, and this being so the legislature was without power to punish him for such refusal * * * ."[40]

The impropriety of the *questions* asked was the basis for the affirmance of the decree discharging the petitioner.

This case (the second *Hague* case) was decided just a year after the first *Hague* case. The writer of the opinion in the present case, the Chief Justice, and all the remaining justices (except one appointed in the interim) had voted, as to the resolution in the first case, (which was the same resolution as in the second case in all essentials); that "even if some one or more of the inquiries suggested therein may be unlawful * * *," "the resolution taken as a whole" was "a valid exercise of legislative power"; and that the subpoena was lawfully issued and lawfully required the petitioner's attendance before the committee "notwithstanding the assumed inclusion therein of illegal requirements for the production of documents"; and the order of the warrant for the arrest of the petitioner, which brought him before the legislature, was lawful. The very same court who had sat and decided the first *Hague* case deemed it totally unnecessary to distinguish or even refer to its prior decision. The inevitable inference is that they saw nothing inconsistent in the two decisions.

If, as was decided in *In re Hague,*[41] a resolution calling for an investigation which is otherwise properly within the jurisdiction of the legislature to conduct, is not rendered unlawful by the inclusion of "some one or more of the inquiries suggested therein (which) may be unlawful," which ruling has not been expressly overruled since, where does the case of *In re Kelly,*[42] fit into the warp and woof of the judicial pattern?

In the *Kelly case* the proceedings were perfectly regular. The committee was of one house;[43] its empowering resolution properly adopted;

39. So recognized in, *In re* Kelly, *supra,* note 6.
40. *Supra,* note 37.
41. *Supra,* note 3.
42. *Supra,* note 6, dissenting opinion, concurred in by Parker, Wells, JJ.
43. In 1929, as a result of the rebuff in the two Hague cases, due, in part,

no question raised of the existence of the statute under which the warrant for arrest of the contemners was issued; or of the holding over of the committee after the life of the legislature appointing it.[44]

The terms of the Resolution were more or less broad; not unlike those of the Joint Resolution in the first *Hague* case. They provided: " 'to make a survey of all questions of public interest, including a survey of the finances and expenditures of the State, counties, and municipalities, to investigate violations of law and the conduct of any State, county or municipal commission * * * ; to investigate the alleged fraudulent and illegal conduct at the general election * * * (specifying instances of the alleged illegality, to be investigated); to investigate alleged fraudulent and illegal conduct on the part of the County Board of Elections and on the part of the District Board of Elections at said general election; *to ascertain whether the duties of such officials, departments, commissions, boards, bodies and of such County Board of Elections and of such District Boards of Election have been or are being lawfully and properly discharged, * * * . Said committee shall report the result of its survey and investigation, together with such recommendations as may seem to be advisable, as a basis for such legislative action as the General Assembly may deem necessary and proper, to the present or subsequent session of the General Assembly.*' "[45]

What could be more appropriate or competent for the legislature

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at least, to the attempt to conduct the investigation by a joint committee of the two houses, and to adjudge the witness in contempt by a joint session, the legislature of New Jersey passed an act, P.L. 1929, c. 1, now R.S. 52:13-5 to 13, authorizing the conduct of legislative investigations by joint committees; the issuing of warrants for arrest of contemners by a joint session; validating a commitment beyond the life of the particular legislature, in addition to the powers under R.S. 52:13-1 to 4.

44. *In re* Kelly, *supra,* note 6.

45. *Ibid.,* 492-3. The Young Committee, the committee appointed by the 1938 General Assembly of the Legislature of New Jersey, under this resolution, whose proceedings precipitated this case, *In re* Kelly, made its report toward the end of December, 1938, reported in *Newark Evening News,* Tuesday, December 20, 1938, in which they recommended revision of the existing election laws now in force in the state of New Jersey. They made twelve recommendations, all dealing with the improvement of election machinery an unquestioned subject for legislation, since the present system itself is wholly constituted by statute.

to investigate than the conduct of elections? As Mr. Justice Case says in his dissent,[46] "The elections constitute an essential and an exceedingly fertile subject of legislation." Did the inclusion of subjects without the jurisdiction of the legislature to investigate, in the resolution, invalidate those properly within its purview? *In re Hague*[47] holds not. Did the *questions* asked of the witnesses involve matters of a criminal nature, therefore, amounting to a judicial inquiry, within the bar of the second *Hague* case?[48] We submit that they did not. The first witness was asked: " 'Q. Did you tally the votes in the third ward of the ninth district of the evening of November 2d, 1937? A. I refuse to answer that on advice of my counsel.' " The second witness was asked: " 'Q. Were you the inspector in the third ward, ninth district, in Jersey City, on November 2d, 1937 A. I refuse to answer on advice of my counsel.' " The third witness was asked: " 'Q. Were you the member of the election board of the third ward, ninth district, Jersey City, on November 2d, 1937, who read the ballots? A. I refuse to answer on advice of counsel. That goes for all.' "[49]

Upon the refusals as above, the committee issued warrants arresting the witnesses as for a contempt, in the manner and form, by the statute provided,[50] who were committed on a warrant issued by the common pleas judge, sitting as a committing magistrate, to await action by the Essex grand jury.[51] As Mr. Justice Case says, in his dissent in this case: "The specific questions come squarely within my conception of what the assembly was entitled to ask and to have answered. They were clearly introductory and they in nowise constituted an inquiry into crime."[52]

What is the justification for assuming that had these questions been answered, they would have been followed by ones concerning subjects beyond the pale of legislative inquiry?[53]

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46. McRell v. Kelly, *supra*, note 6.
47. *Supra*, note 3.
48. *Supra*, note 4, on *aff.*
49. *In re* Kelly, *supra*, note 6.
50. N.J.R.S. 52:13-1 to 4.
51. *In re* Kelly and McRell v. Kelly, *supra*, note 6.
52. *Ibid.*
53. *Ibid.*

The second *Hague case*,[54] relied upon by this court, as the foundation of the *Kelly* decision, fails strikingly to furnish that support. Nor does the first *Hague case*,[55] furnish such support.

PLEADINGS—AMENDMENTS UNDER PRACTICE ACT OF NEW JERSEY—EXTENT AND TIME.—The New Jersey Practice Act of 1903 as amended by the Practice Act of 1912 attempts to make the common law rules of pleading more liberal insofar as the power to amend a pleading in concerned.[1] To prevent the failure of justice because the pleader has made mistakes in form[2] or has mistaken the proper remedy or procedure,[3] the court may in its sound discretion allow an amendment to the pleadings so that the real question in controversy may be determined. In addition to its powers of amendment the court may, upon terms, before or at the trial, permit the statement of a new or different cause of action in the complaint or counterclaim.[4] The difficulty that the courts have found in applying the statutes arises out of the necessity of determining what the real question in a controversy is and whether or not a requested amendment states a new and different question. This problem is particularly acute when to allow the amendment would permit the pleader to circumvent the statute of limitations.

As in many other legal problems, here, too, is a situation where the rule of law has been well formulated and frequently repeated, but great difficulty is found in applying the rule to individual cases. The courts in this state have held that if the identity of the transaction forming the cause of action is preserved, if the gist of the action or the subject of controversy remains the same, the amendments are per-

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54. *Supra*, note 48.
55. *Supra*, note 3.

1. The pertinent statutory references are to be found in R.S. 1937, 2:27-130 to 2:27-133, 2:27-157, 2:27-158; P.L. 1903, Chap. 247, secs. 123-126; P.L. 1912, Chap. 231, secs. 23-24.

2. R.S. 1937, 2:27-157; P.L. 1903, Chap. 247, sec. 126.

3. R.S. 1937, 2:27-158; P.L. 1912, Chap. 231, sec. 23.

4. R.S. 1937, 2:27-132; P.L. 1912, Chap. 231, sec. 24.