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## Procedure on Appeal

Marcellus S. Whaley

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of inference that if the lower court didn't have jurisdiction the State may appeal on that ground.

At page 71 interesting language relative to the probability of such an inference appears. Justice Bonham declared:

With his usual thoroughness and lucidness Mr. Justice Marion reviews the authorities bearing on the question and concludes his interesting opinion with the following observations: "Without attempting here to lay down a definite rule as to the extent of the State's right of appeal in criminal cases, in view of the express terms of the statute (Section 93, Criminal Code), and in the light of prior adjudications of this Court, we are clearly of the opinion that the State has no right of appeal from an order of a magistrate granting a new trial in a criminal prosecution, where, as in the case at bar, the jurisdiction of the magistrate as to ordering the new trial is not in question, and where the order was predicated, at least in part, upon the magistrate's judgment as to the weight and sufficiency of the evidence adduced at the trial. See *State v. Nicholas*, 2 Strob., 278; *State v. Lewis*, 4 Strob., 47."

It is true that in the instant case, the appellant contends that the magistrate had no jurisdiction to issue his order dismissing the charge. But the order of Judge Belinger, from which the appeal comes to us, expressly holds that the magistrate did have jurisdiction.

### PROCEDURE ON APPEAL

At this point it may be helpful to young practitioners to have before them suggestions as to procedure on appeal to the Supreme Court. Every step is important from the preparation of the proposed case for appeal which becomes the Transcript of Record on through the Briefs for each side. Before beginning the first step, the following sections of the Code of 1952 and their respective annotations should be carefully studied: 7-1 to 7-20, 7-401 to 7-430, and 10-209, 10-217, and 10-218. Rules of the Supreme Court 1 through 29 should also be carefully studied.

Besides paying particular attention to Supreme Court Rules 1 to 7, it is very worthwhile to use as a guide a printed transcript of record of a case handled by an older and careful

attorney. Even then, one should check it with the Rules and Code Sections.

A gentle reminder at this point recalls a duty a trial attorney owes not only to his client but also to himself and to the appellate court; namely, to carefully read the Rules of that court, all pertinent sections of the Code, together with their annotations, and to bring both up-to-date by way of the latest supplement to the Code. Special attention is called to the 1955 cumulative supplement to Supreme Court Rules 1, 4, 7, 8, and 17.

Transcript of Record or Return :

In the Transcript of Record each one of the numbered headings from 2 to 12 as listed below should be put, capitalized, in the middle of the page on which it comes. For example index should be

### INDEX

and statement should be

### STATEMENT.

A motion for a directed verdict should be

### MOTION FOR DIRECTED VERDICT.

By using capitals in the center of the page for a heading or topic it gives it emphasis and also makes it stand out separately from any other heading or topic.

1. **TITLE** page on front. (Sup. Crt. Rule 2.) A form for title page is as follows :

### STATE OF SOUTH CAROLINA

In The Supreme Court

*Appeal From Hitchin County*

Hon. J. Robert Martin, Jr., Presiding Judge

**FIELDS F. NORRIS, Appellant,**

*Against*

**ROY BRYANT, TAFT CHAPPELL, POINSETT LUMBER  
AND MANUFACTURING COMPANY, AND ONE 1942  
MODEL FIVE TON FORD TRUCK, with logging trailer,**

Motor No. 489953, 1945 S. C. Tag No. 50072, and S. C.  
GRANT, Respondents.

### TRANSCRIPT OF RECORD

Amigel Wade  
Hitchin, S. C.

John Curling, Jr.  
Hitchin, S. C.

Attorneys for Appellants

Harmsworth & Harmsworth  
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W. L. Amwell  
Hitchin, S. C.

Attorneys for Respondents

#### 2. INDEX of contents, inside of front page.

The following is a rather complete index taken from the Transcript of Record in the foregoing *Norris* case and may be found helpful in preparing a case for appeal.

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3. **STATEMENT** showing briefly when case began; when tried, whom before, whether jury used; result of trial; result of any later motions, if any; giving of notice of appeal. Historical statement only with admitted or undisputed facts added.
4. **PLEADINGS** next, in their proper order, omitting formal parts, if pertinent.
5. **EXHIBITS**, if any, in their numerical order, if pertinent.
6. **TESTIMONY** in the order taken, comes next. Watch Sec. 7-425 of Code. Only testimony pertinent to the exceptions should be included, and must be in question and answer form; if exception is as to nonsuit or direction of verdict, probably all the testimony will have to be included.
7. Any **MOTIONS** made before verdict rendered, will come next in proper order, *if* they, or any of them, are pertinent to any of the exceptions.
8. The **JUDGE'S CHARGE**, if pertinent to any exception.
9. Any **MOTIONS** coming after the verdict is rendered will be next, as, for example, a motion for a new trial, with the grounds thereof (but only such grounds should be inserted as are pertinent to the exceptions).
10. **NOTICE OF APPEAL.**
11. **EXCEPTIONS.**
12. **APPENDIX.** If the trial judge has to pass an order settling the case for appeal, the respondent may appeal by exceptions. Both the appeal of the respondent and the order of the trial judge settling the case, should be in the **APPENDIX**, and in the **INDEX** there should be a sub-index under **APPENDIX**, showing the matters set forth in the **APPENDIX** and the pages on which same may be found.
13. **AGREEMENT** of counsel, form of which may be as follows:

#### AGREEMENT

We, the undersigned counsel in this case, hereby agree that the foregoing shall constitute the transcript of Record for Appeal to the Supreme Court.

Attorneys for Appellant

Attorneys for Respondent

**NOTE:** Indent and single space when possible all substantial quotations in Transcript of Record and Briefs