

0731

BOX:

400

FOLDER:

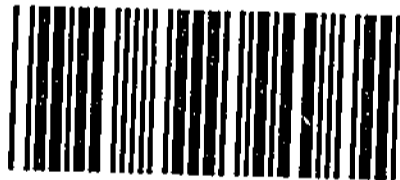
3716

DESCRIPTION:

Meakim, Alexander

DATE:

06/19/90



3716

0732

BOX:

400

FOLDER:

3716

DESCRIPTION:

Fitzpatrick, Edward J.

DATE:

06/19/90



3716

0733

BOX:

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FOLDER:

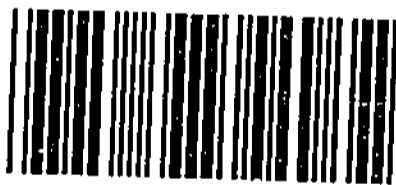
3716

DESCRIPTION:

Koch, Joseph

DATE:

06/19/90



3716

Witness

R. M. E. Melling

Levi D. Rappaport

James Brady

This indictment is returned with that in the above case against same defendant as to where they were acquitted on the ground of variance between the proof and the indictment. It was practically disposed of that verdict cannot be reversed and to clear the record I recommend its dismissal.
~~Not from a~~
~~over July 14~~
~~Nov 27 1896~~

J. P. Delaney
Dist Atty

Counsel,

Filed

19
day of *April* 189*6*
by *Levi D. Rappaport*
for *Levi D. Rappaport*
vs *Levi D. Rappaport*
et al.

THE PEOPLE

vs.

Alexander Mackin
Edward J. Fitzpatrick
and Joseph Koch

filed July 15. 1896

JOHN R. FELLOWS,

Dec. on account of
Dis. of Dist Atty
C. C. Johnson

A TRUE BILL

for trial (entered in the Minutes)

Wm. H. Haggan

Ordered to the

SUPREME

of the COUNTY of NEW YORK

for trial (entered in the Minutes)

Ordered to the

SUPREME

of the COUNTY of NEW YORK

for trial (entered in the Minutes)

Ordered to the

0735

N. Y. SUPREME COURT
General Term--First Judicial Department.

-----X
The People of the State of New York,
Appellants

Against

Alexander Meakim, Joseph Koch and
Edward T. Fitzpatrick,
Respondents

NOTICE OF ARGUMENT

Sirs:-

PLEASE TAKE NOTICE that the appeal from the judgment of the respondents on the demurrer to the indictment in the above entitled action will be brought on for Argument before this Honorable Court, at a General Term thereof, to be held at the County Court House in the City of New York on the ~~6th day of March~~ *first Monday of April May* 1893 at the opening of the Court on that day, or as soon thereafter as counsel can be heard. *April*

Dated, the ~~10th~~ *25th* day of ~~February~~ *March* 1893.

Yours &c.

De Lancey Nicoll
District Attorney
Attorney for Appellants
32 Chambers St. N. Y. City.

To *Donohue Newcombe & Cardozo*

Attorneys for Respondents
96 Broadway N. Y. City.

H. J. Dittenhoefer & E. J. Johnson
of Counsel for Respondents
96 Broadway N.Y. City
170 Broadway N.Y. City

0736

N. Y. SUPREME COURT
General Term

4

The People of the State of New
York,

Appellants

Against

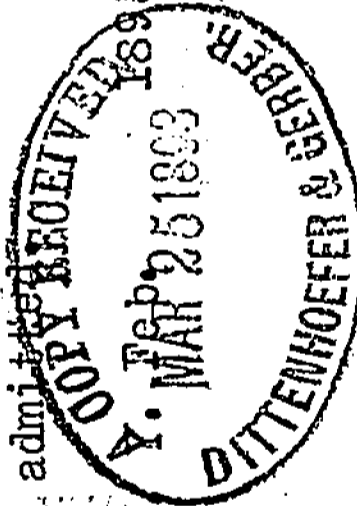
Alexander Meakim, Joseph Koch,
and Edward T. Fitzpatrick,
Respondents

NOTICE OF ARGUMENT

De Lancey Nicoll,
District Attorney
Attorney for Appellants
32 Chambers St. N. Y. City.

Put admission in
why one copy
Due service of the within is
hereby admitted

Dated N. Y. Feb 25 1893.



0737

District Attorney's Office:

City & County of
New York.

Nov. 19/1892

People

Commr's of Excise

To be served:

1) Donohue Newcomb
& Cardozo - 96 Broadway

served
Judge Donohue
at
46 D. Wap
Fri. Nov 18/1892
1. P. M.

2) Alexander Meekins
Produce Exchange

served
Nov 28/1892
at
34 E. 22

3) Joseph Koch -
54 Bond St. - or 332 Bowery

served
Joseph Koch
at
49 Bond St
Sat Nov 14
10. A. M.

4) Edward T. Fitz
Watson - 258 Henry St.

served
Tuesday Nov 23
at
258 Henry St

Please make memorandum
of time & place of service

0738

COURT OF APPEALS.

THE PEOPLE,
Respondent,

-vs-

ALEXANDER MEAKIM et al,
Appellants.

April 26th, 1892

The defendants were indicted under Section 117 of the Penal Code, which provides as follows: "A public officer, or person holding a public trust or employment, upon whom any duty is enjoined by law, who wilfully neglects to perform the duty, is guilty of a misdemeanor. This and the preceding section do not apply to cases of official acts or omissions, the prevention or punishment of which is otherwise specially provided by statute." The indictment alleges that on the 29th day of March 1889, at the City of New York, a license in due form of law, to sell strong and spirituous liquors, ale, wine and beer, to be drank on the premises there situate, was duly granted and issued to Henry Ahrens by the Board of Excise of the City and County of New York, which license was in full force and effect for one year thereafter; that on the 6th day of January 1890, the defendants were commissioners of excise for the city and county of New York; that at that date one Welling, a resident of the city, duly made a complaint in writing to the defendants as such commissioners that Ahrens carried on the

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business of selling intoxicating liquors on election day November 5th, 1889, within one-fourth of a mile of the polling place, in violation of law; that on the 13th day of January thereafter the defendants as such commissioners summoned Ahrens before them; that in pursuance of such summons he appeared before them on the 18th day of February; that on that day there was a hearing and inquiry upon and into the allegations and charges, and evidence was taken and the case finally submitted for their action and decision; that it was their duty to act upon and decide the complaint and the questions arising thereon within a reasonable time; that nevertheless they as such commissioners unlawfully, willfully neglected and omitted to perform their duty and act upon and decide the complaint and the questions arising thereon within a reasonable time; but on the contrary for an unreasonable time thereafter, and until the finding of the indictment, unreasonably and designedly failed and intentionally omitted to decide the complaint and the questions arising thereupon, by reason whereof the license granted to Ahrens expired pending and without such action, determination and decision, against the form of the statute in such case made and provided. The defendants were arraigned upon the indictment and interposed a plea of former acquittal of the crime charged against them. Upon the issue formed by this plea the case was brought to trial, and under the direction of the court the jury found in favor of the plaintiffs. Thereupon the defendants made a motion in arrest of judgment upon the verdict. That motion was denied, and from the order denying the same the defendants appealed to the

General Term and from affirmance there to this Court.

George F. Danforth and A. J. Dittenhoefer, for Appellants.

Henry B. B. Stapler, for Respondent.

Earl Ch. J.

Upon a motion in arrest of judgment the only objections which a defendant can take are to the jurisdiction of the Court over the subject of the indictment, and that the facts stated do not constitute a crime. Code of Cr. Pro. Secs. 331, 467; People vs. Budenseick, 103 N. Y. 487.) It cannot be questioned that the Court had jurisdiction of the subject of the indictment, and therefore the only question which needs our attention is whether the facts alleged constitute a crime.

It is provided in Section 8 of Chapter 549 of the Laws of 1878, which amends prior acts, as follows: "The Board of Excise of any city, town or village, may at any time, and upon the complaint of any resident of said city, town or village, shall summon before them any person or persons licensed as aforesaid; and if they shall become satisfied that any such person or persons has or have violated any of the provisions of this act, or of the acts hereby amended, they shall revoke, cancel and annul the license of such person or persons, which they are hereby empowered to do, and where necessary, to enter upon the premises and take possession of and cancel such license. Upon an inquiry, the said Board, or the party complained of, may summon and the said Board may compel the attendance of witnesses before them and examine them under oath."

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The indictment against the defendants was for unlawfully neglecting to perform their duty upon the complaint made to them under this section. The alleged violation of the Excise Law by Ahrens was on November 5th, 1889. The complaint to the defendants was made on the 3th day of January 1890. The hearing upon the complaint was on the 13th day of February, 1890, when the case was finally submitted to them. It was then clearly their duty to decide the matter thus submitted. It is not expressly provided in the statute that they shall proceed and make a determination of the matter within any particular time; and indeed there is no express provision that they shall make any determination whatever. But that they shall is necessarily implied in the statute, and what is necessarily implied is just as much a part of the statute as if it were specially written therein. They were bound to receive the complaint and entertain it, and to summon the person licensed. They had authority to summon witnesses and hear evidence, and if they became satisfied of a violation of the law by the person summoned, then they were bound to revoke, cancel and annul his license. If they could, after entertaining the complaint and hearing the evidence, entirely omit to make any decision, they could always frustrate the law with impunity. Where public officers are clothed with jurisdiction to hear complaints and take evidence with a view to some action in which individuals or the public are interested, they are from the nature of the case bound to make a determination, and if they do not make it they violate the

duty imposed upon them by law. Here the case was finally submitted to the commissioners more than a year before the indictment was found, and they made no determination thereon permitting Ahrens' license to expire by its own limitation. That it is a public duty imposed by the statute upon commissioners of excise in such a case to make a determination and decision, was expressly decided by us in *People ex rel Welling* against these defendants (123 N. Y. 660), affirming the same case reported in 50 Hun. 626.

The learned counsel for the defendants contends that they were not liable to indictment under Section 117 of the Penal Code, by reason of the provision therein contained that that and the preceding section "do not apply to cases of official acts and omissions, the prevention or punishment of which is otherwise specially provided for by statute;" and he claims that the prevention or punishment of the alleged offense of the defendants is otherwise provided for. We will notice separately the grounds upon which he bases this claim.

In Section 109 of the New York Consolidation Act, (Laws of 1882), it is provided that the Commissioners of Excise shall "be removed for any neglect or malfeasance in office in the same manner as provided by law for the removal of Sheriffs." His argument is that the removal provided for by this section is a punishment and that therefore the neglect of official duty charged to the defendants can be thus punished. The question is whether the removal of the commissioners of Excise under that provision is a punishment within the meaning of Section 117 of the Penal Code; and we

we are clearly of the opinion that it is not. It is true that it is provided in Section 3 of the Penal Code that a crime is an act or omission prohibited by law, and punishable upon conviction by death, or imprisonment, or fine or "removal from office" &c. But these are punishments imposed only after a conviction for a crime, and there are a number of cases specified in the Penal Code where removal from office follows a conviction of a public officer for a crime. Sections 42, 45, 53, 54, 72, 707 & 708). Section 707 contains a general provision that a sentence to a state prison for any term less than life, forfeits all the public offices held by the person sentenced. It is provided in Section one article six of the constitution that a public officer impeached shall be removed from office, but it is further provided that the party impeached is still liable to indictment and punishment according to law, thus showing a distinction between a mere removal from office and a punishment for an offence on account of which the removal was made. The simple removal of an officer from office is not a punishment for crime unless it is a removal in consequence of a conviction for a crime. It cannot be said that a determination made in a civil proceeding in office is in any proper sense a conviction of such of a crime; Nor can it be said that the provision for removal from office contained in Section 109 is a provision in any proper sense for the punishment of the officer removed. His removal simply deprives him of the office which he is unworthy to hold, and he may be removed and thereafter punished for any malfeasance

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or criminal violation of the law committed while in office. It would be against the policy of our laws as shown by numerous acts of the Legislature that a public officer guilty of a misdemeanor in office suffer only by removal from his office, and a Legislative intent requiring such a result should be found expressed in very clear and precise language.

But a further claim is made under the same clause of Section 117 that other provision for the punishment of these defendants for the crime charged against them, is found in Section 2090, of the Code of Civil Procedure, in which it is provided that, "where a final order awards a peremptory mandamus directed to a public officer, board or other body, commanding him or them to perform a public duty, enjoined upon him or them by special provision of law, if it appears to the Court that the officer, or one or more members of the board or body, have, without just excuse refused or neglected to perform the duty so enjoined, the Court besides awarding to the relator his damages and costs, as prescribed in this article, may, in the same order impose a fine, not exceeding Two Hundred and Fifty Dollars (\$250.) upon the officer, or upon each member of the board, who has so refused or neglected. The fine when collected must be paid into the treasury of the state; and the payment thereof bars any action for a penalty incurred by the person so fined, by reason of his refusal or neglect to perform the duty so enjoined." It will be observed that special provision is made as to the effect of the imposition and payment of the fine, to wit: that it shall bar any other action for

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a penalty not any other punishment for crime, nor any indictment for the crime. Under that section there is no conviction of a crime, and probably there could not be without violating the constitutional rights of a public officer. It is exclusively a civil proceeding, a civil remedy for a refusal or neglect to perform a public duty imposed upon a public officer. He cannot be imprisoned or sentenced under that section, and none of the consequences follow from the imposition of a fine there imposed which may follow a conviction for a crime. But even if the fine imposed under that section could be regarded as a punishment for a crime, the proceeding under that section is not exclusive. The fine is only imposed as incidental to the civil remedy; and if it be assumed that a mandamus could have been obtained against these defendants on behalf of the people to compel them to make a determination upon the complaint made to them, and that they could have been fined in that proceeding, and that if such a proceeding had been instituted and they had been fined and had paid the fine, those proceedings could have been set up as a bar to this indictment, it is a sufficient answer to say that no such proceeding was instituted, and that therefore these defendants can have no defense to this indictment upon that section.

Still further, the prevention or punishment contemplated in Section 117, must be "otherwise specially provided by statute." Some force must be given to the word "specially". It is not enough that the prevention or punishment is in some other way provided by statute, but it

must be "specially" provided. The provision contained in Section 2090 for the imposition of a fine is general and not special. It is as general as Section 117. What undoubtedly is meant by this clause in section 117 is where the prevention or punishment is specially provided for a particular case. If there had been any particular provision for the prevention or punishment of the particular offense charged against these defendants in the indictment, then then Section 117 would not have been applicable. It is provided in section 14 of the Penal Code that "a person convicted of a crime declared to be a felony, for which no other punishment is specially prescribed by this Code, or by any other statutory provision in force at the time of the conviction and sentence, is punishable by imprisonment for not more than seven years, or by fine of not more than one thousand dollars, or by both;" and in section 15 it is provided that "a person convicted of a crime declared to be a misdemeanor, for which no other punishment is specially prescribed by this code, or by any other statutory provision in force at the time of the conviction and sentence, is punishable by imprisonment in a penitentiary, or county jail, for not more than one year, or by a fine of not more than five hundred dollars (\$500). or by both". To take a case out of these general provisions it is needful to find some provision of law specially prescribing the punishment for the particular crime under consideration.

But there is a still broader view to be taken of the point which we are now considering which ought not to be overlooked. The sections of the Penal Code and of the Code

of Civil Procedure referred to, do not provide for alternative punishments. A public officer offending by a neglect to discharge his public duties, may be proceeded against and punished under both sections without violating his constitutional rights by putting him twice in jeopardy for the same offense.

The mandamus proceeding is purely a civil remedy, and the fine therein imposed is, at most, the imposition of a penalty; and so it is spoken of in the case of *The People ex rel Grabutt vs. The Rochester &c. R. R. Co.*, 76 N. Y. 294, and it is well settled that the law may provide for the recovery in a civil action of a penalty and for a criminal proceeding by indictment against the party for the same offense. In *People vs. Stevens* (13 Wend. 341) it was held that where a statute creating an offense imposes a specific penalty, and also declares that the offense shall be a misdemeanor, punishable by fine and imprisonment, the offender is subject to indictment in like manner as he would have been had the offense been a misdemeanor at common law. Sutherland, J., writing the opinion, said: "It is undoubtedly competent for the Legislature to subject any particular offense both to a penalty and a criminal prosecution. It is not punishing the same offense twice. They are but parties of one punishment. They both constitute the punishment which the law inflicts upon the offense. That they are enforced in different modes of proceeding, and at different times, does not affect the principle. It might as well be contended that a man was punished twice when he was both fined and imprisoned which he may be in most misdemeanors". In *Blatchley vs.*

Moses (15 Wend.215), that case was approved, and it was there held that an indictment for selling spirituous liquors without license as a tavern-keeper, is no bar to an action for the penalty given by the statute in such cases. In *Lawyer vs. Smoth* (1 Denio 207), the action was on the statute (1 R. S. 696, Sec.1), giving treble damages to the party injured against one who negligently sets fire to his own wood, and it was held that the action was penal in its nature and as to two-thirds of the recovery that it was wholly penal. The same statute made the act for which treble damages could be recovered, a misdemeanor punishable by fine and imprisonment and yet it was not doubted that the penalty could be recovered and the guilty party also punished for a misdemeanor. There is a class of actions in which punitive damages may be recovered by a plaintiff for the purpose of punishing the defendant, and the punishment of a defendant by a civil action in that way has never been held a bar to an indictment where the acts complained of were also, either at common law or by statute a misdemeanor. (*Childs vs. Drake*, 2 Met. (Ky. 146). By Section 8 of the Code of Civil Procedure, a court of record has power to punish for a criminal contempt a person guilty of certain acts mentioned, and Section 143 of the Penal Code the same acts are declared to be misdemeanors, and are made punishable as such. These provisions have been embodied in our law for a long time, (2 R. S. 207 -208); and it has never been supposed that a punishment under either law was a bar to a proceeding under the other. (Bishop on Crim. Law Sec. 1067).

Indeed it is provided in Section 13 of the Code of Civil Procedure as it was also provided in the Revised Statutes, that punishment for a contempt in a civil proceeding "does not bar an indictment for the same offense, but that when a person who has been so punished is convicted on such an indictment, the court in sentencing him must take into consideration the previous punishment."

It is a general rule that the recovery of punitive damages or a penalty in a civil action, or the imposition of a fine in a civil proceeding does not bar a criminal punishment of the person for the same act. (Bishop on Criminal Law. *supra*.)

We have not exhausted the discussion on this interesting point. We have, however, gone far enough to show that the remedy provided in Section 2090 is no bar to an indictment under section 117 of the Penal Code, and nothing in conflict with this was decided in *People ex rel Garbutt, supra*. There Judge Rapallo said: "This power of the Court granting the mandamus, to fine for past neglect was intended to obviate the necessity of a criminal prosecution under the statute which constitutes such a neglect a misdemeanor, and to enable the Court awarding the mandamus to dispose of the whole matter in one proceeding". He did not say that the power of the Court granting the mandamus to fine for past neglect stood in the way of a criminal prosecution. It is quite true that generally in a mandamus proceeding a sufficient punishment could be imposed; and

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whatever punishment by way of fine might there be imposed would be taken into account by any Court in measuring its punishment upon a conviction of the same person for a misdemeanor under section 117. Ordinarily, the punishment inflicted in the mandamus proceedings would end the whole matter; and that is what Judge Rapallo had in mind.

Our conclusion therefore is that the objections to the order appealed from are untenable, and that it should be affirmed.

"All concur, except Marnard, J., not voting."

A Copy.

H. E. Sickels,

Reporter, per.

COURT OF GENERAL SESSIONS OF THE PEACE,

Of the City and County of New York.

.....

The People of the State of New York,)
 --against--)
 ALEXANDER MEAKIM,)
 EDWARD T. FITZPATRICK, and)
 JOSEPH KOCH.)

.....

The Grand Jury of the City and County of New York,

by this Indictment, Accuse ALEXANDER MEAKIM, EDWARD
 T. FITZPATRICK and JOSEPH KOCH, of a Misdemeanor, commit-
 ted as follows:

Heretofore, to wit: on the twenty-ninth
 day of March, one thousand, eight hundred and eighty-nine,
 at the City of New York, in the County of New York afore-
 said, a certain license, in due form of law, to sell strong
 and spirituous liquors, ale, wine and beer to be drank on
 the premises there situate, known as number Two Hundred
 and Fifty-eight (258) Avenue A, for and during the period
 of one year then next ensuing, was duly granted and issued
 to Henry Ahrens, by the Board of Excise of the City and
 County of New York, which said license was at all of the
 the time of the commission of the misdemeanor herein alleged,
 times herein mentioned, in full force and effect, and in no-

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wise annulled, rescinded, cancelled or revoked, or in any manner impaired or affected; and the said premises were, at all the times aforesaid, a place duly licensed by the said Board of Excise for the sale of strong and spirituous liquors, ale, wine and beer, in quantities less than five (5) gallons at a time, to be drank upon the said premises.

A n d on the sixth day of January, one thousand eight hundred and ninety, and at all of the times thereafter herein mentioned, the said Alexander Meakim, Edward T. Fitzpatrick and Joseph Koch, all late of the City and County aforesaid, were Commissioners of Excise of the City and County of New York, duly appointed, qualified and acting as such, and, as such Commissioners of Excise, constituted and composed the Board of Excise of the City and County of New York.

A n d on the said sixth day of January, one thousand eight hundred and ninety, at the City and County aforesaid, one, RICHARD W. G. WELLING, a resident of the said City, duly presented to, and laid before, the said Board of Excise, so being then and there constituted and composed, as aforesaid, a certain complaint in writing, wherein and whereby he, the said Richard W. G. Welling, on behalf of the CITY REFORM CLUB of the City of New York, alleged, charged and complained in substance and to the effect following, that is to say: that on the fifth day of November, one thousand eight hundred and eighty-nine, which was the day designated by law for the holding of a

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general election throughout the State of New York and the said City and County of New York, and on which day there was a general election so had in the said City and County, the same being a day during which the sale of intoxicating liquors, ale, wine and beer was prohibited by law within one-quarter of a mile of a polling place, a certain saloon situate at number two hundred and fifty-eight (258) Avenue A, in the said City, the same being the premises hereinabove referred to, and being ^{the} place so licensed as aforesaid, the same being within one-quarter of a mile of a polling place where such election was being had, was open for business between the hours of six o'clock, A. M., and four o'clock, P. M., of said day, and the business of selling intoxicating liquors, ale, wine and beer, as aforesaid, during said times, was therein carried on, in violation of the law.

A n d afterwards, to wit: on the thirteenth day of January, one thousand eight hundred and ninety, at the City and County aforesaid, the said Board of Excise, so constituted and composed as aforesaid, upon the said complaint of the said Richard W. G. Welling duly summoned before them the said Henry Ahrens, being the person so licensed, as aforesaid, to sell strong and spirituous liquors, ale, wine and beer, to be drank on the said premises; and, pursuant to and in obedience to the said summons, the said Henry Ahrens did, on the eighteenth day of February, one

thousand eight hundred and ninety, at the City and County aforesaid, appear before the said Board of Excise, so constituted and composed, as aforesaid, and, on the said eighteenth day of February, one thousand eight hundred and ninety, at the City and County aforesaid, proceedings were duly taken by the said Board of Excise, so constituted and composed, as aforesaid, upon the said complaint, and a hearing and inquiry upon and into the truth of the allegations and charges therein contained, and of the questions arising thereupon, was then and there duly had, and evidence was then and there taken and heard, in due form, by and before the said Board of Excise, so constituted and composed, as aforesaid, touching and concerning the truth of the allegations and charges of the said complaint, and, on the said last-mentioned day, the said complaint and evidence and questions were then and there finally submitted to, and were before, the said Board of Excise, so constituted and composed, as aforesaid, for its action, determination and decision.

A n d thereupon, the said complaint and evidence and questions having been so finally submitted to, and being so before, the said Board of Excise, so constituted and composed, as aforesaid, there became, and was enjoined by law upon the said Alexander Meakim, Edward T. Fitzpatrick and Joseph Koch, and each of them, so being such Commissioners of Excise, as aforesaid, and so constituting and composing the said Board of Excise, then and there, a duty

to act upon, determine and decide the said complaint and the questions thereupon, within a reasonable space of time thereafter.

N e v e r t h e l e s s , they, the said Alexander Meakim, Edward T. Fitzpatrick and Joseph Koch, and each of them, so being such Commissioners of Excise, as aforesaid, and so constituting and composing the said Board of Excise, well knowing the premises, at the City and County aforesaid, unlawfully did wilfully neglect and omit to perform the said duty so by law enjoined upon them, and each of them, as aforesaid, and unlawfully did wilfully neglect and omit to act upon, determine and decide the said complaint and the questions arising thereupon, within a reasonable space of time after the same had been so finally submitted to, and were so before, them as such Board of Excise, as aforesaid; but, on the contrary, for an unreasonable space of time thereafter, to wit: from thence until the day of the finding of this indictment, at the City and County aforesaid, did, unreasonably and designedly, fail, and intentionally omit, to decide the said complaint and the questions arising thereupon, by reason whereof the said license so granted and issued to the said Henry Ahrens, as aforesaid, expired pending, and without, such action, determination or decision: against the form of the statute in such case made and provided, and against the peace of the People of the State of New York, and their dignity.

D e L a n c e y N i c o l l ,

District Attorney.

0757

May 16/92 for trial

Witnesses:

R. W. [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Counsel.

Filed

day of

18

April 91

all Pomer acquitted.

May 16, 1892 all file a demurrer.

THE PEOPLE

vs.

B

Alexander MacArthur

Edward J. Fitzpatrick

W. Joseph [illegible]

John R. [illegible]

District Attorney

Ordered to the Court of the County of New York, for trial (entered at the minutes) May 16, 1892

Foreman

May 25, 1892

Demurrer allowed

N. Y. SUPREME COURT
General Term--First Judicial Department.

THE PEOPLE OF THE STATE OF NEW YORK,
Appellants

THE PEOPLE OF THE STATE OF NEW YORK,
Appellants

NOTICE OF ARGUMENT

Sirs:-

PLEASE TAKE NOTICE that the appeal from the judgment of the respondents on the demurrer to the indictment in the above entitled action will be brought on for Argument before this Honorable Court, at a General Term thereof, to be held at the County Court House in the City of New York on the first Monday of May 1893, at the opening of the Court on that day or as soon thereafter as counsel can be heard.

Dated, the day of April 1893.

Yours &c.

De Lancey Nicoll

District Attorney

Attorney for Appellants

32 Chambers St. N.Y. City.

To Donohue, Newcombe & Cardozo.

NEWCOMB & CALOZO,
Attorneys for Respondents

96 Broadway N.Y. City.

A. J. Dittenhoefer.

of Counsel for Respondents

96 Broadway N.Y. City.

Edgar M. Johnson Esq.

of Counsel for respondents

120 Broadway N.Y. City.

Due service of a
copy of the within
notice is hereby
admitted
dated NY April 1893

Dorothy Hancock
Landay
for deposit

NY Supreme Court
General Term

THE PEOPLE OF THE STATE OF NEW
YORK.

Appellants

against

Alexander Mackin, Joseph
Koch & Edward J. Fitzpatrick

original

Notice of Argument

DE LANCEY NICOLI,
DISTRICT ATTORNEY,

No. 32 CHAMBERS ST.,

NEW YORK CITY.

Due service of a copy of the
within is hereby admitted

Dated NY. April 1893.

Dorothy Hancock
for deposit

0759

0760

Copy

CITY AND COUNTY OF NEW YORK, ss:

Alfred Hering of 83 Covert Street, Brooklyn, N. Y., being duly sworn, deposes and says: On the 12th day of November, 1894, I personally served the annexed notice of argument in the case of the People of the State of New York, Appellants, against Alexander Meakim, Joseph Koch and Edward T. Fitzpatrick, Respondents, upon Charles Donohue, Esq., the attorney for the said respondents, and upon each of the said respondents, individually, by personally delivering to and leaving a copy thereof with a clerk then in charge of the office of the said attorney, in the "Mail and Express" Building, at the corner of Fulton Street and Broadway in the City of New York, during office hours, the said attorney being absent therefrom, and by delivering another copy thereof personally to the said Joseph Koch, whom I personally know to be one of the respondents above named, by leaving a copy thereof with a clerk in charge of the office of the said Edward T. Fitzpatrick, in the Criminal Court Building in the City of New York, ^{during office hours} the said Fitzpatrick being absent therefrom; and by leaving another copy thereof with a clerk in charge of the office of the said Alexander Meakim at the Stewart Building in the said city, during office hours, the said Meakim being absent therefrom.

Sworn to before me this :
12th day of November, 1894 :
John A. Lindsay
Commissioner of Deeds,

Alfred Hering

City and County of New York.

Edward T. Fitzpatrick
Respondents.

0761

2257

IN THE COURT OF APPEALS OF THE STATE OF NEW YORK.

ON AN APPEAL FROM THE FIRST JUDICIAL DISTRICT.

THE PEOPLE OF THE STATE OF
NEW YORK,

Appellants
Respondents.

against

Alexander Medwin, Joseph
Woods, and Edward T. F. Kiptrich
Appellants.

Appeal from a judgment of the Supreme Court, General Term, First Department, affirming a judgment of the Court of Sessions of the City and County of New York, rendered on a conviction for a
summons to an
indictment.

Sir,
Friend,

PLEASE TAKE NOTICE, that the appeal in the above action will be brought on for argument, ~~and a motion made to dismiss the same~~ before the Judges of this Court, at a term thereof to be held at the Capitol in the City of Albany, on the *26th* day of ~~November~~, 189*4*, at the opening of the Court on that day, or as soon thereafter as counsel can be heard. And the ~~respondents~~ *appellants* claim this to be a preferred cause on the ground that it is an appeal in a criminal cause.

Dated the *12th* day of ~~November~~, 189*4*.

Yours, etc.,

JOHN R. FELLOWS,

District Attorney,
New Criminal Court Building,
32 CHAMBERS STREET, NEW YORK CITY.

To *Charles Donohue*, Esq.,

Respondents.
Attorney for Appellants.

To GORHAM PARKS, Esq.,

Clerk of the Court of Appeals, State of New York, Albany, New York.

and to
Alexander Medwin,
Joseph Woods, and
Edward T. F. Kiptrich
Respondents.

Court of Appeals.

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondents.

against

Alexander Macdonald,
vs. L. R. Rensselaer,

Appellant.

Notice of Argument for Appeal.

and of Service of same.

JOHN R. FELLOWS,

District Attorney,

No. 32 CHANCERY STREET,
NEW YORK CITY.

To Charles Condit, Esq.,

Respondent,
Attorney for Appellants

"Midwayers" Building,
Brooklyn, N. Y. City.

To GORHAM PARKS, Esq.,

Clerk Court of Appeals,

ALBANY, NEW YORK.

Due to the Respondents.

Due service of a copy of the within notice is
hereby admitted.

Dated, N. Y.,

189

Attorney for Appellant.

0762

0763

N.Y. SUPREME COURT,
General Term. First Department.
City and County of New York.

-----X
The People of the State of New York,
Appellants

Against

Alexander Meakim, Joseph Koch, and
Edward T. Fitzpatrick.
Defendants & Respondents
-----X-

Sirs:-

Please take notice that the People of the State
of New York hereby appeal to the Court of Appeals from
the Judgment and order of the General Term of the
Supreme Court, First Department, entered in the office of
the Clerk of said Court on the 21st day of October
1893, affirming the judgment of the Court of Oyer and
Terminer sustaining the demurrer interposed by the de-
fendants to the indictment herein.

Dated, December 29th, 1893.

Yours &c.,

DeLancey Nicoll,
District Attorney.

To

Joseph Koch, :
Alexander Meakim, and : Defendants & Respondents
Edward T. Fitzpatrick :
:

To Charles Donohue, Esq.
Atty. for Respds.
96 Broadway, N.Y.

To Henry D. Purroy Esq.
Clerk of the City and County of New York.
and
John F. Carroll, Esq.
Clerk of the Court of Oyer and Terminer.

The enclose of a
copy of the within
notice is hereby
admitted

Dated N.Y. Dec 29 1898

LeDowson
for Deft

N.Y. Supreme Court

General Term
First Department

THE PEOPLE OF THE STATE OF NEW

YORK.

Appellants

against

Alexander Mackin
et al

Respondents

Notice of Appeal

DE LANCEY NICOLL,

DISTRICT ATTORNEY,

No. 32 CHAMBERS ST.,

NEW YORK CITY.

0764

0765

At a Court of Oyer and Terminer, held in and for the City and County of New York, at the New Court House, in the City of New York, on the day of December, 1894.

PRESENT:-

HON. GEORGE L. INGRAHAM,

JUSTICE.

-----X
THE PEOPLE OF THE STATE OF NEW YORK, :
Appellants, :
: :
-against- :
: :
ALEXANDER MEAKIN, JOSEPH KOON and :
EDWARD T. FITZPATRICK, :
Respondents, :
-----X

ON READING AND FILING the Mandate of the Court of Appeals, of the State of New York, and the appeal in the above entitled matter by the people, by which it appears that the Judgment of the General Term, Supreme Court, in and for the first department, affirming the Judgment of the Court of Oyer and Terminer, in and for the City and County of New York, was in all things affirmed, on Motion of C. Donohue, for respondents, and

IT IS ORDERED AND ADJUDGED, that the said Judgment of the Court of Appeals of the State of New York in the above entitled action, be made the Judgment of this Court, and that the said Judgment stand in all things affirmed.

(A true extract from the minutes.)

(Seal.)

JOHN F. CARROLL,
Clerk of Court.

Notice of Entry.

The within is a copy of an

order this day duly entered and
filed herein in the office of the clerk
of the city and county
of New York.

Dated N. Y. Dec.

Chas. Donohue,
Attorney for Repetto.
Mail and Express

~~NEW YORK~~ BUILDING,
203
No. 88 BROADWAY,
NEW YORK

To

Esq. Jno. R. Fellows
District Atty

Court of Ulster & Dutch
County
The People of the
State of New York
vs.
J. R. Repetto.

Alexander Meekins
vs.
J. R. Repetto.
J. R. Repetto, Plaintiff.
J. R. Repetto, Defendant.

Order of Notice of
Entry.

Chas. Donohue,
Attorney for Repetto.
MAIL AND EXPRESS
BUILDING,
203
No. 88 BROADWAY,
NEW YORK

(copy)
New York
Jno. R. Fellows
District Atty

0767

District Attorney's Office.

PEOPLE

28.

Meakin & sons

Served copy on
Bo Celis (Lans
Clerk) Dec 29
at 1³⁰ Pm.

On Beha Donohue
personally at
96 B'wy at ~~200~~
2 o'clock Pm Dec-
ember 29

GYPB.

Gave Reilly 3 copies
to be served per-
sonally on Dfts -

Served personally on A. Mea-
Kin Jan. 3/94 at my office
at 2 Pm. GYPB

0768

Court of General Sessions of the Peace
OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK,

against

Alexander Macdonald,
Edward S. Fitzgerald
and Joseph Rodin

Indictment Number One

The Grand Jury of the City and County of New York, by this

Indictment accuse Alexander Macdonald, Edward S. Fitzgerald
and Joseph Rodin of a Misdemeanor,
of the crime of

committed as follows:

Heretofore, to wit:

On the sixth day of January
1890, and at all the times herein mentioned,
after the 3^d day of July 1889.
The said Alexander Macdonald, Edward S. Fitzgerald
and Joseph Rodin, all late of the City
and County of New York, were Commissioners of
Excise of the City and County of New York,
duly appointed, qualified and acting as such,
and as such Commissioners of Excise constituted
and composed the Board of Excise of the City
and County of New York.

And therefore, to wit: on the 29th
day of March, 1889, at the said City and County
of the City & County of New York
The (said) Board of Excise, duly appointed and named
to one Henry Adams a certain license in due
form of law, to sell strong and spirituous
liquors, ale, wine and beer, to be drunk on
the premises where situate the same as member

Duly appointed

Two-hundred-and-eighty-eight Avenue A,
and during
the period of one year then next ensuing,
which said license was at all the times herein
mentioned in full force and effect, and in no
wise annulled, rescinded, cancelled or revoked
by the said Board of Excise, or in any manner
impaired or affected, and the said premises
were at all times duly licensed by the said Board
of Excise for the sale of strong and spirituous
liquors, ale, wine and beer, in quantities less
than five gallons at a time to be drawn
upon the said premises.

And afterwards, to wit: on the said
sixth day of January, 1890, at the City and
County of Nassau, one Richard W. F. Wetling,
a resident of the said City, duly presented to
the Clerk of the City of New York, N. Y.,
and said before the said Board of Excise a
certain complaint in writing, wherein and whereby
the said Richard W. F. Wetling on behalf
of the City of New York of the City of New
York, alleged, charged and complained, in
substance, and to the effect following, that
is to say: That on the eighth day of November,
1889, which was the day designated by law
for the holding of a general election throughout
the State of New York, and the said City
and County of New York, and on which
day there was a general election held in
the said City and County, the same being

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a day during which the sale of intoxicating liquors, wines, etc and beer was prohibited by law within one quarter of a mile of a polling place, a certain saloon situate at number two-hundred-and-fifty-eight Avenue A in said City, the same being the premises herein above referred to, and during the place so licensed as aforesaid, the same being within one quarter of a mile of a polling place where such election was being had, was open for business between the hours of six o'clock, A.M. and four o'clock, P.M. of said day and the business of selling intoxicating liquors, wines, etc and beer as aforesaid, during said times, was therein carried on, in violation of the law.

And afterwards, to wit: on the 13th day of January, 1890, at the City and County aforesaid, the said Board of Excise, upon the complaint of the said Richard W. Bellamy duly summoned before them the said Henry Adams, being the person so licensed as aforesaid to sell strong and spirituous liquors, etc, wine and beer to be drunk on the said premises, and pursuant to and in obedience to the said summons the said Henry Adams did on the eighteenth day of February, 1890, at the City and County aforesaid, appear before the said Board of Excise, and on the said eighteenth

day of February, 1890, at the City and County of Nevada, proceedings were duly taken, by the said Board of Excise upon the said complaint, and a hearing and inquiry upon and into the truth of the allegations and charges therein contained, and of the questions arising thereupon, was then and there duly had, and evidence was then and there taken and heard in due form try and before the said Board of Excise, touching and concerning the truth of the allegations and charges of the said complaint, and on the said last mentioned day the said complaint and evidence and questions, were then and there finally submitted to and were before the said Board of Excise, for its action, determination and decision.

And thereupon, the said complaint and evidence and questions having been so finally submitted to, and being so before the said Board of Excise as aforesaid, there became and was assigned by law upon the said Alexander Macdonald, Edward T. Fitzgerald and Joseph Wada, and each of them, as being such Commissioners of Excise as aforesaid, and so constituting and composing the said Board of Excise, then and there, a duty to act upon, determine and decide the said complaint and the questions arising thereupon

within a reasonable space of time thereafter.

Nevertheless they the said Alexander Meadrim, Edward T. Fitzpatrick and Joseph Hahn, and each of them, so being such Commissioners of Excise as aforesaid, and so constituting and composing the said Board of Excise, well knowing the members of the City and County aforesaid, unlawfully did unlawfully neglect and omit to perform the said duty so by law assigned upon them and each of them as aforesaid, and unlawfully did unlawfully neglect and omit to act upon determine and decide the said complaint and the questions arising thereupon within a reasonable space of time after the same had been so finally submitted to and were so before the said Board of Excise as aforesaid; but on the contrary, for an unreasonable space of time thereafter, to wit: from thence until the day of the finding of this indictment, at the City and County aforesaid, did and yet do unreasonably and designedly fail and intentionally omit to decide the said complaint and the questions arising thereupon, by reason whereof the said license so granted and issued by the said Board of Excise to the said Henry Ahrens expired pending and without such action, determination or decision by the said Board of Excise; against the form of the Statute

0773

in such case made and provided, and against
the peace of the People of the State of
New York, and their dignity.

John A. Feltows,

District Attorney.

0774

Witnesses
A. W. S. Melling
George O. Delapfield
Frederick Brady

No. 12 Bailed
by Frederick O. Shields
50 Clinton Place

No. 2 & 3 Bailed
by John J. McElrath
1865-2 & Avenue

Deft 2 & 3
Apr 20/91
270

Counsel
Filed 19 day of April 1880
vs. Pleader Not legally with leave to
1- do

THE PEOPLE

Alexander Mackin
Edward J. Fitzpatrick
Joseph Koch

JOHN R. FELLOWS

District Attorney
Announced July 18/90
do overruled Dec 30/90
(Martin)

A TRUE BILL

Flannery Higgins
Apr 7 for 1st time
Park II April 1910
all tried and acquitted
at the ground of rehearing
between the first and
the indictments

0775

Court of General Sessions of the Peace
OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK,

against

Alexander Macdaim,
Edward T. Fitzpatrick
and Joseph Rodin.

The Grand Jury of the City and County of New York, by this

Indictment accuse Alexander Macdaim, Edward T. Fitzpatrick,

and Joseph Rodin of a Misdemeanor,

of the crime of

committed as follows:

Heretofore, to wit:

on the 26th day of April,
1889, and at all the times herein mentioned
the said Alexander Macdaim, Edward T. Fitzpatrick
and Joseph Rodin, all late of the City and
County of New York, were Commissioners of
Excise of the City and County of New York
duly appointed, qualified and acting as
such, and as such Commissioners of Excise
constituted and composed the Board of
Excise of the City and County of New York.

And on the day and in the year aforesaid,
at the City and County aforesaid, the
said Board of Excise duly granted and issued
to one William Smith, a certain license in due
form of law, to sell strong and signature
liquors, ale, wine and beer, to be drunk
on the premises there situate, to-wit:

number four-hundred-and-twenty-three East South Street, for and during the period of one year then next ensuing, which said license was at all the times therein mentioned in full force and effect and in no wise annulled, rescinded, cancelled, or revoked, by the said Board of Excise, or in any manner impaired or affected, and the said premises were a place duly licensed by the said Board of Excise, for the sale of brandy and spirituous liquors, of wine and beer, in quantities less than five gallons at a time, to be drunk upon the said premises.

And afterwards, to wit: on the twenty-seventh day of January, 1890, at the City and County of New York, one Richard W. F. Welling, a resident of the said City, duly presented to and laid before the said Board of Excise, a certain complaint in writing, wherein and whereby he the said Richard W. F. Welling, on behalf of the City Reform Club of the City of New York, alleged, charged and complained, in substance and to the effect following, that is to say: that on the 27th day of November, 1889, which was the day designated by law for the holding of a general election throughout the State of New York, and the said City and County of New York,

x

and on which day there was a general election so made in the said City and County, the same being a day during which the sale of intoxicating liquors, wine, ale and beer was prohibited by law within one quarter of a mile of a polling place, a certain saloon situate at number four hundred and twenty three East Tenth Street in said City, the same being the premises hereinabove referred to, and being the place so licensed as aforesaid, the same being within one quarter of a mile of a polling place where such election was being had, was open for business on said day, and the business of selling intoxicating liquors, wine, ale and beer as aforesaid, during said time was therein carried on in violation of the law.

And afterwards, to wit: on the third day of February, 1890, at the City and County aforesaid, the said Board of Excise, upon the said complaint of the said Richard W. F. Walling, duly summoned before them the said William F. Felt, the being the person so licensed as aforesaid to sell strong and spirituous liquors, ale, wine and beer to be drunk on the said premises, and pursuant to and in

obedience to the said summons, the said
 William Fair did on the eight
 day of February, 1890, at the City and
 County aforesaid, appear before the
 said Board of Excise, and on the said eighth
 day of February, 1890, and also on the
 seventeenth day of February, 1890, at the
 City and County aforesaid, proceedings were
 duly taken by the said Board of Excise
 upon the said complaint, and a hearing
 and inquiry upon and into the truth of
 the allegations and charges therein
 contained, and of the questions arising
 thereupon was duly had, and evidence was
 taken and heard in due form by and
 before the said Board of Excise, touching
 and concerning the truth of the allegations
 and charges of the said complaint, and on
 the said seventeenth day of February, 1890,
 the said complaint and evidence and questions
 were then and there finally submitted
 to and were before the said Board of
 Excise for its action, determination and decision.

And thereupon, the said complaint
 and evidence and questions having been
 so finally submitted to and being so
 before the said Board of Excise as aforesaid,
 there became and was assigned my law
 upon the said Alexander McAdams, Edward

S. F. Kappakinda and Joseph Koda, and each of them, as being under Commissioners of Excise as aforesaid, and as constituting and composing the said Board of Excise, then and there, a duty to act upon, determine and decide the said complaint and the questions arising thereupon, within a reasonable space of time thereafter.

Nevertheless, they the said Alexander Meadain, Edward S. F. Kappakinda and Joseph Koda, and each of them, as being under Commissioners of Excise as aforesaid, and as constituting and composing the said Board of Excise, well knowing the premises, at the City and County aforesaid, unlawfully did willfully neglect and omit to perform the said duty so by law enjoined upon them and each of them as aforesaid, and unlawfully did willfully neglect and omit to act upon, determine and decide the said complaint and the questions arising thereupon, within a reasonable space of time after the same had been so lawfully submitted to and were so before the said Board of Excise as aforesaid; but on the contrary for an unreasonable space of time thereafter, to wit: from thence until the day of the finding of this indictment, at the City and County aforesaid, did

0780

not so unreasonably and designedly slight
and intentionally omit to decide the said
complaint and the questions arising
therefrom, by reason whereof the said
license so granted and issued by the said
Board of Excise to the said William
Tait expired pending and without such
action, determination or decision by the said
Board of Excise; against the form of
the Statute in such case made and pro-
vided, and against the peace of the People
of the State of New York, and their
anxiety.

John B. Edwards,

District Attorney

0781

Court of General Sessions of the Peace
OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK,

against

Alexander Meadain,
Edward T. Fitzpatrick
and Joseph Koch

Indictment Number Two

The Grand Jury of the City and County of New York, by this

Indictment accuse Alexander Meadain, Edward T. Fitzpatrick

and Joseph Koch of a Misdemeanor,

of the crime of

committed as follows:

Heretofore, to wit:

on the twenty seventh day
of January, 1890, and at all the times herein
mentioned, the said Alexander Meadain, Edward
T. Fitzpatrick and Joseph Koch, all late
of the City and County of New York, were Com-
missioners of Excise of the City and County
of New York, duly appointed, qualified and
acting as such, and as such Commissioners
of Excise constituted and composed the Board
of Excise of the City and County of New York.
And therefore, to wit: on the 25th
day of April, 1889, at the City and County
of New York, the said Board of Excise duly granted
and issued to one John F. Schenck, a
certain license in due form of law, to sell
strong and signified liquors, ale, wine and
beer to be drunk on the premises known

as number three-hundred-and-twenty-eight Third Avenue, for and during the period of one year then next ensuing, which said license was at all the times herein mentioned in full force and effect, and in no wise annulled, rescinded, cancelled or revoked by the said Board of Excise, or in any manner impaired or affected, and the said premises were at all times duly licensed by the said Board of Excise for the sale of strong and spirituous liquors, ale, wine and beer, in quantities less than five gallons at a time, to be drunk upon the said premises.

And afterwards, to wit: on the said twentieth day of January 1890, at the City and County aforesaid, one Richard W. Rydholm, a resident of the said City, duly presented to and laid before the said Board of Excise a certain complaint in writing, wherein and whereby the said Richard W. Rydholm, on behalf of the City Reform Club of the City of New York, alleged, charged and complained in substance and to the effect following, that is to say: that on the 25th day of November, 1889, which was the day designated by law for the holding of a general election throughout the State of New York and the said City and County of New York, and on which day there was a general

section so made in the said City and County,
 the same being a day during which the
 sale of intoxicating liquors, wines, ale and
 beer was prohibited by law, within one
 quarter of a mile of a polling place, or
 certain saloon situate at number three
 hundred and twenty eight Third Avenue in
 said City. The same being the premises
 hereinabove referred to, and being the place
 so licensed as aforesaid, the same being
 within one quarter of a mile of a polling
 place where such section was being made,
 was open for business on said day, and
 the business of selling intoxicating liquors,
 wines, ale and beer as aforesaid, during said
 time was therein carried on in violation of
 the law.

And afterwards, to wit on the 6th
 day of February, 1890, at the City and County
 aforesaid, the said Board of Excise, upon the
 said complaint of the said Richard W. Fy
 Welling, duly summoned before them the
 said John F. Schenck, being the person
 so licensed as aforesaid to sell strong and
 signitures liquors, ale, wine and beer, to be
 drunk on the said premises, and pursuant
 to and in obedience to the said summons
 the said John F. Schenck did on the twenty
 eighth day of February, 1890, at the City

and County of said, appear before the said Board of Excise, and on the said last mentioned day proceedings were duly taken by the said Board of Excise upon the said complaint, and a hearing and inquiry upon and into the truth of the allegations and charges therein contained, and of the questions arising thereupon, was then and there duly had, and evidence was then and there taken and heard in due form, by and before the said Board of Excise, touching and concerning the truth of the allegations and charges of the said complaint, and on the said twenty eighth day of February 1899, the said complaint and evidence and questions, were then and there finally submitted to and were before the said Board of Excise for its action, determination and decision.

And thereupon, the said complaint and evidence and questions having been so finally submitted to, and being so before the said Board of Excise as aforesaid, there became and was assigned by law upon the said Alexander Macdonald, Edward T. F. Lynde and Joseph H. H. and each of them, so being such Commissioners of Excise as aforesaid, and so constituting and comprising the said Board of Excise, then and there, a duty to act upon, determine and decide the said

complaint and the questions arising thereupon within a reasonable space of time thereafter.

Nevertheless they the said Alexander Meddum, Edward T. Fitzgerald and George H. Haden, and each of them, as aforesaid, and as Commissioners of Excise as aforesaid, and as confederates and accomplices the said Board of Excise, well knowing the premises, of the City and County aforesaid, unlawfully did wilfully neglect and omit to perform the said duty so by law enjoined upon them and each of them as aforesaid, and unlawfully did wilfully neglect and omit to act upon, determine and decide the said complaint and the questions arising thereupon within a reasonable space of time after the same had been so lawfully submitted to and were so before the said Board of Excise as aforesaid, but on the contrary, for an unreasonable space of time thereafter, to wit: the space of forty six days, and until the fifteenth day of April, 1890, unlawfully and wilfully did unreasonably and designedly fail and intentionally omit to decide the said complaint and the questions arising thereupon; against the form of the Statute in such case made and provided, and against the peace of the People of the State

0786

of New York, and their dignity.

John R. Bellows,

District Attorney.

0787

BOX:

400

FOLDER:

3716

DESCRIPTION:

Mitchell, Maggie

DATE:

06/25/90



3716

0788

If thereas!

Geo. A. Clark

376. 376

Counsel,

Filed 25

day of June 1890

Pleas,

Chas. A. Clark

THE PEOPLE

Grand Larceny, first Degree. [Sections 528, 530, — Penal Code.]

vs. 26/ 1890

RD I

Maggie Mitchell

JOHN R. FELLOWS,

Dist. Atty.

2 July 1890

A TRUE BILL.

Chas. A. Clark

Foreman.

Jan 1 1890

0789

CITY AND COUNTY } ss.
OF NEW YORK,

POLICE COURT, 2 DISTRICT,

of No. 115 1/2 Leavenworth Street, aged 25 years,
occupation Police man being duly sworn deposes and says

that on the 19 day of June 1890
at the City of New York in the County of New York

that George Robert Clark a
witness for the People against
one Maggie Mitchell charged
by him with Larceny (felony).
that said Clark is only a transient
resident of the City and liable
to remove therefrom without
the said Mitchell and a deputy
asked that he be placed under
bonds for his appearance when
called for that

George T. Leason

Sworn to before me this

of June 1890 day

John J. Mc

Police Justice

0790

Police Court—

2nd District.

Affidavit—Larceny.

City and County } ss.:
of New York,

of No. 127 Leharlton Street, aged 25 years,
occupation Miner being duly sworn

deposes and says, that on the 17 day of June 1888 at the City of New
York, in the County of New York, was feloniously taken, stolen and carried away from the possession
of deponent, in the night time, the following property, viz:

Four hundred and thirty dollars

the property of Deponent

and that this deponent
has a probable cause to suspect, and does suspect, that the said property was feloniously taken, stolen,
and carried away by Maggie Mitchell

from the fact that deponent
was escorted by the Deponent
on the public street at about the
hour of 3.30 A.M. of said date
and solicited for immoral purposes
that he accompanied her to
127 West 3rd Street (rear) and there
occupied a room. That immediately
before entering said room deponent
examined his money and knew
he had it in his trousers pocket.
That while laying in a bed with
his trousers upon his person said
amount of money was abstracted

Sworn to before me, this

188

Police Justice.

0791

✓ From his pocket by the defendant who
 was accompanying the red with him.
 That the defendant stated she was
 going for water, left the room and
 did not return that defendant then
 missed his money and further
 says that no other person but the
 defendant was in the room from
 the time he last saw his money
 and the time he missed it.
 Defendant further says that the defendant
 abandoned her clothes in said room
 and did not return for the same.
 Defendant further says that shortly
 after he was robbed the occupants
 of said premises hastily retired
 away therefrom.

George Robert Clark

Sworn to before me this }
 19th day of June 1894 }

W. H. Gann

John Justice

0792

Sec. 198—200.

CITY AND COUNTY }
OF NEW YORK, } ss.

District Police Court.

Maggie Mitchell being duly examined before the under-
signed according to law, on the annexed charge; and being informed that it is *her* right to
make a statement in relation to the charge against *her* that the statement is designed to
enable *her* if *she* see fit to answer the charge and explain the facts alleged against *her*
that *she* is at liberty to waive making a statement, and that *her* waiver cannot be used
against *her* on the trial.

Question. What is your name?

Answer.

Maggie Mitchell

Question. How old are you?

Answer.

35 years

Question. Where were you born?

Answer.

MS

Question. Where do you live, and how long have you resided there?

Answer.

185 Prince St. 5 mos

Question. What is your business or profession?

Answer.

Domestic

Question. Give any explanation you may think proper of the circumstances appearing in the
testimony against you, and state any facts which you think will tend to your
exculpation?

Answer.

I am not guilty
Maggie Mitchell
mark

Taken before me this

June 19

188*8*

Police Justice.

John A. Kane

It appearing to me by the within depositions and statements that the crime therein mentioned has been committed, and that there is sufficient cause to believe the within named Agnes Law

~~guilty thereof~~ I order that She be held to answer the same and She be admitted to bail in the sum of Five Hundred Dollars, and be committed to the Warden and Keeper of the City Prison, of the City of New York, until She give such bail.

Dated June 19th 1890

Police Justice.

*I have admitted the above-named.....
to bail to answer by the undertaking hereto annexed.*

Dated.....18

Police Justice.

There being no sufficient cause to believe the within named.....
..... guilty of the offence within mentioned. I order h to be discharged.

Dated 18

Police Justice.

0794

BAILED,

No. 1, by _____

Residence _____ Street.

No. 2, by _____

Residence _____ Street.

No. 3, by _____

Residence _____ Street.

No. 4, by _____

Residence _____ Street.

Police Court

960 District.

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Geo. R. Clark

vs.

Baggie Mitchell

2 _____

3 _____

4 _____

Dated *June 19* 18*90*

Hogan Magistrate.

Lee Officer.

Precinct.

Witnesses *William Pugh*

No. *127* *Charlton* Street.

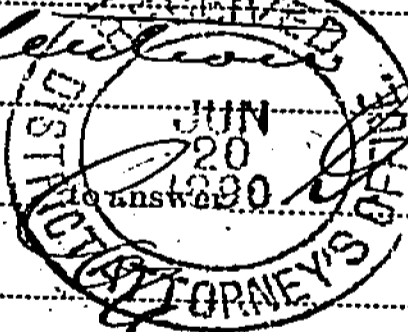
Officer Nelson

No. *15* *Prescott* Street.

Captain in House

No. *of* *Delaware* Street.

\$ *1000*



0795

COURT OF GENERAL SESSIONS OF THE PEACE, OF THE CITY AND COUNTY
OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK,
against

Maggie Mitchell

THE GRAND JURY OF THE CITY AND COUNTY OF NEW YORK, by
this indictment, accuse *Maggie Mitchell*
of the CRIME OF GRAND LARCENY IN THE *2nd* DEGREE,
committed as follows:

The said *Maggie Mitchell*, —

late of the City of New York, in the County of New York aforesaid, on the *seventeenth*
day of *June*, in the year of our Lord one thousand eight hundred and
ninety —, at the City and County aforesaid, with force and arms, in the
month time of the same day, divers promissory notes for the payment of money, being
then and there due and unsatisfied (and of the kind known as United States Treasury
Notes), of a number and denomination to the Grand Jury aforesaid unknown, for the
payment of and of the value of *four hundred and thirty*
dollars; divers other promissory notes for the payment of money, being then and there due
and unsatisfied (and of the kind known as Bank Notes), of a number and denomination
to the Grand Jury aforesaid unknown, for the payment of and of the value of
four hundred and thirty —
dollars; divers United States Silver Certificates of a number and denomination to the Grand
Jury aforesaid unknown, of the value of *four hundred and thirty*
dollars; divers United States Gold Certificates of a number and denomination to the
Grand Jury aforesaid unknown, of the value of *four hundred and thirty*
dollars; divers coins of a number, kind and denomination to the Grand Jury aforesaid
unknown, of the value of *ten dollars*.

of the goods, chattels and personal property of one *George Robert Clark*, on the person
of the said *George Robert Clark*, then and there being found,
from the person of the said *George Robert Clark*,
then and there feloniously did steal, take and carry away, against the form of the
Statute in such case made and provided, and against the peace of the People of the State
of New York and their dignity.

JOHN R. FELLOWS, District Attorney.

0796

BOX:

400

FOLDER:

3716

DESCRIPTION:

Mitchener, Charles

DATE:

06/23/90



3716

0797

Witnesses

Ed Valley

Counsel,

Filed

23

day of

June 1890

Pleads,

THE PEOPLE

vs.

VIOLATION OF EXCISE LAW

(Keeping Open on Sunday.)
[III Rev. Stat. (7th Edition), Page 1089, Sec. 6.]

Charles Mitchener

*Complainant to the
of Special Agents*

John R. Fellows

JOHN R. FELLOWS,

District Attorney.

A True Bill.

Wm. H. Haggins

Foreman.

0798

Court of General Sessions of the Peace,

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK,

against

Charles Mitchener

The Grand Jury of the City and County of New York, by this indictment,
accuse *Charles Mitchener*
of the CRIME OF KEEPING OPEN ON SUNDAY a place licensed for the SALE OF STRONG
AND SPIRITUOUS LIQUORS, WINES, ALE AND BEER, committed as follows:

The said *Charles Mitchener*
late of the City of New York, in the County of New York aforesaid, on the
twenty-second day of *July* in the year of our Lord one
thousand eight hundred and *Eighty-eight*, the same being the first day of the
week, commonly called and known as Sunday, being then and there in charge of, and
having the control of a certain place there situate, which was then duly licensed as a
place for the sale of strong and spirituous liquors, wines, ale and beer, with force
and arms, at the City and County aforesaid, the said place so licensed as aforesaid,
unlawfully did not close and keep closed, and on the said day the said place so licensed
as aforesaid unlawfully did open and cause and procure, and suffer and permit to be open,
and to remain open, against the form of the Statute in such case made and provided,
and against the peace of the People of the State of New York and their dignity.

JOHN R. FELLOWS,

District Attorney.

0799

BOX:

400

FOLDER:

3716

DESCRIPTION:

Moger, Benjamin

DATE:

06/12/90



3716

0000

BOX:

400

FOLDER:

3716

DESCRIPTION:

Munn, Mary

DATE:

06/12/90



3716

0001

Witnesses:

E. J. Gerry
Capt. [redacted]
Mamie Munn

Counsel,

Filed 12 day of June 1890

Pleads,

66 *George J. [redacted]*
THE PEOPLE
vs.

Benjamin S. Mager
and
Mamie Munn

abduction
(Sec 282, Penal Code)

JOHN R. FELLOWS,
District Attorney.

A TRUE BILL.

Charles Higgins
Foreman.

June 25/90
Chas. J. [redacted]
Pls. [redacted]
No. 1. Sentence suspended
" 2 Ten 3 yrs P.S.M.

0802

Police Court, District.

City and County } ss.
of New York, }of The 3rd Precinct Police Street, aged 45 years,
occupation Police Captain being duly sworn, deposes and says,
that on the 10th day of June 1890, at the City of New

York, in the County of New York,

Benjamin N. Moger (nowhere)
did unlawfully attempt to take
and detain a female named
Mamie Munn, unlawfully against
her will with the intent to compel
her the said Mamie by force, menace
and duress to marry him said Benjamin
N. Moger

Sworn to before me }
this 12th day of June 1890 } Joseph B. Carlin
W. T. Munnally }
Police Justice

0003

Sec. 198-200.

District Police Court.

CITY AND COUNTY } ss.
OF NEW YORK, }

Benjamin Moyer being duly examined before the undersigned according to law, on the annexed charge; and being informed that it is *h* ^{is} right to make a statement in relation to the charge against *h* ^{is}; that the statement is designed to enable *h* ^{is} if he see fit to answer the charge and explain the facts alleged against *h* ^{is} that *h* ^{is} is at liberty to waive making a statement, and that *h* ^{is} waiver cannot be used against *h* ^{is} on the trial.

Question. What is your name?

Answer. *Benjamin Moyer*

Question. How old are you?

Answer. *62 Years*

Question. Where were you born?

Answer. *New York*

Question. Where do you live, and how long have you resided there?

Answer. *Orange New Jersey. 40 Years*

Question. What is your business or profession?

Answer. *Mason*

Question. Give any explanation you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation?

Answer. *I am not guilty*

Ben Moyer

Taken before me this

day of *June* 1892

Wm. M. Moyer

Police Justice.

0004

It appearing to me by the within depositions and statements that the crime therein mentioned has been committed, and that there is sufficient cause to believe the within named Clement

guilty thereof. I order that he be held to answer the same and he be admitted to bail in the sum of Five Hundred Dollars, and be committed to the Warden and Keeper of the City Prison, of the City of New York, until he give such bail.

Dated June 12 1899 H. M. Mahon Police Justice.

I have admitted the above-named _____
to bail to answer by the undertaking hereto annexed.

Dated _____ 18 _____ Police Justice.

There being no sufficient cause to believe the within named _____
_____ guilty of the offence within mentioned. I order he to be discharged.

Dated _____ 18 _____ Police Justice.

0805

BAILED,

No. 1, by

Residence

Street.

No. 2, by

Residence

Street.

No. 3, by

Residence

Street.

No. 4, by

Residence

Street.

Police Court---

939 District.

THE PEOPLE, &c.,

ON THE COMPLAINT OF

Joseph B. Eastman

vs.

Benjamin Moger

2.

3.

4.

Officer

Dated

June 11 1890

M. Mahan Magistrate.

Supt Eastman's Officer.

3 Precinct.

Witnesses

No. Street.

No. Street.

No. Street.

\$ 500 to answer H. S.



300 bail & June 17 9 am

0007

TORN PAGE

COURT OF GENERAL SESSIONS
OF THE PEACE
IN THE DISTRICT
IN THE CITY OF NEW YORK

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Augustine Wilson
a/k/a
Mary Munir
100 E 23 St
Born in U.S.

AFFIDAVIT.

Magistrate

Dated

1 July

1890

Randolph A. Hartin Justice.

Wilson Officer.

Disposition

Committed to
the Missionary Sisters
of the Third Order
of St. Francis
143 W 31 St

0000

*The New York Society for the
Prevention of Cruelty to Children*

100 EAST 23D ST. (COR. FOURTH AVE.)

New York, June 16th 1895.

Court of General Sessions of the Peace in and for the
City and County of New York.

*The People
against
Mary Ann*

Notice of Prosecution.

*To the District Attorney of the
City and County of New York,*

*Sir: This Society is interested in the prosecution of
the above defendant, and is familiar with the facts of the
case. It respectfully requests that before sending the papers
to the Grand Jury, fixing the day of trial, consenting to
any postponement thereof, or to any reduction of bail, or
final disposition of the charge, you will duly notify me as
its President and Counsel, so that I may confer with you
in regard thereto. This request is made pursuant to the
statute (Laws of 1886, Chapter 30, Section 1), and in
furtherance of the ends of Justice.*

I have the honor to remain, with great respect,

Elbridge T. Gerry,

President, &c.

0009

N. Y. GENERAL SESSIONS

THE PEOPLE



CRUELTY TO CHILDREN

Admission

NOTICE OF PROSECUTION

BY THE SOCIETY.

ELBRIDGE T. GERRY,

President, &c.

0810

Police Court, / District.

City and County } ss.
of New York,The 3rd Precinct Police Street, aged 41 years,
occupation Police Officer being duly sworn, deposes and says,
that on the 10 day of June 1890, at the City of New

York, in the County of New York,

Mary Minn. (now Mrs.) did unlawfully
take and detain a female named
Mamie Minn. unlawfully against
her will with the intent to compel her
the said Mamie by force, menace and
duress to marry another person. to wit
one Benjamin J. Moyer

Sworn to before me }
this 12th day of June 1890 } Joseph D. Eakin

W. T. Munn
Police Justice

0811

Sec. 198-200.

District Police Court.

CITY AND COUNTY }
OF NEW YORK, } ss.

Mary Munn being duly examined before the under-
signed according to law, on the annexed charge; and being informed that it is *h* *er* right to
make a statement in relation to the charge against *h* *er*; that the statement is designed to
enable *h* *er* if *he* see fit to answer the charge and explain the facts alleged against *h* *er*
that *he* is at liberty to waive making a statement, and that *h* *er* waiver cannot be used
against *h* *er* on the trial.

Question. What is your name?

Answer. *Mary Munn*

Question. How old are you?

Answer. *29 Years*

Question. Where were you born?

Answer. *Ireland*

Question. Where do you live, and how long have you resided there?

Answer. *Orange New Jersey 15 Years*

Question. What is your business or profession?

Answer. *Domestic*

Question. Give any explanation you may think proper of the circumstances appearing in the
testimony against you, and state any facts which you think will tend to your
exculpation?

Answer. *I am not guilty*

Mary Munn
Munn

Taken before me this

day of

11
1893

Police Justice.

08 12

It appearing to me by the within depositions and statements that the crime therein mentioned has been committed, and that there is sufficient cause to believe the within named Clemonius

guilty thereof, I order that he be held to answer the same and he be admitted to bail in the sum of Five Hundred Dollars, and be committed to the Warden and Keeper of the City Prison, of the City of New York, until he give such bail.

Dated June 12 1890 W. J. Brainerd Police Justice.

I have admitted the above-named _____
to bail to answer by the undertaking hereto annexed.

Dated _____ 18 _____ Police Justice.

There being no sufficient cause to believe the within named _____
_____ guilty of the offence within mentioned. I order he to be discharged.

Dated _____ 18 _____ Police Justice.

0813

BAILED,

No. 1, by

Residence Street.

No. 2, by

Residence Street.

No. 3, by

Residence Street.

No. 4, by

Residence Street.

Police Court---

939 District.

THE PEOPLE, &c.,

ON THE COMPLAINT OF

Joseph B. Eakin's
vs.
Mary Munn

2.....

3.....

4.....

Offence *Abduction*

Dated *June 1* 18*90*

M. Munn Magistrate.

Capt Eakin's Officer.

3 Precinct.

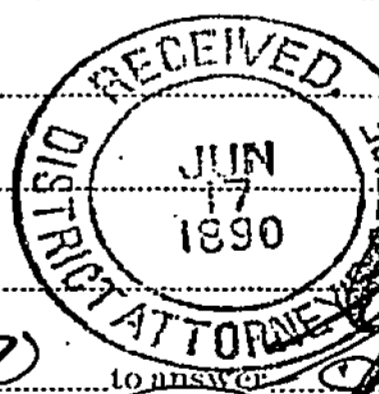
Witnesses.....

No. Street.

No. Street.

No. Street.

\$ *500* to pay of *C. S.*



500 bail 4 June 12 9 am

0814

*The New York Society for the
Prevention of Cruelty to Children*

100 EAST 23D ST. (COR. FOURTH AVE.)

New York, June 16th 1890

Court of General Sessions of the Peace in and for the
City and County of New York.

*The People
against
Benjamin Moyer*

Notice of Prosecution.

To the District Attorney of the
City and County of New York,

Sir: This Society is interested in the prosecution of the above defendant, and is familiar with the facts of the case. It respectfully requests that before sending the papers to the Grand Jury, fixing the day of trial, consenting to any postponements thereof, or to any reduction of bail, or final disposition of the charge, you will duly notify me as its President and Counsel, so that I may confer with you in regard thereto. This request is made pursuant to the statute (Laws of 1886, Chapter 80, Section 1), and in furtherance of the ends of Justice.

I have the honor to remain, with great respect,

Elbridge T. Gerry,
President, &c.

08 15

N. Y. GENERAL SESSIONS

THE PEOPLE.



CRUELTY TO CHILDREN

NOTICE OF PROSECUTION
BY THE SOCIETY.

ELBRIDGE T. GERRY,
President, &c.

08 16

STENOGRAPHER'S MINUTES.

per District Police Court.

THE PEOPLE, &c., IN COMPLAINT OF

Joseph P. Caruso

VS.

Benjamin M. Wozar
Mary Munn

BEFORE HON.

A. F. J. G. G. G.

POLICE JUSTICE,

June 12 188*8*

APPEARANCES:

For the People,

For the Defence,

188

INDEX.

WITNESSES.

Direct Ex.

Cross Ex.

Re-Direct.

Re-Cross.

Joseph P. Caruso
Mamie Munn
Mary Munn

A. C. Sullivan

Official Stenographer.

0817

Third District
Police Court

Joseph P. Ennis } Charged with
Mary ^{agot} Murin } Abduction
Before Hon
Samuel J. McMan
Police Justice
June 12th 1890

Joseph P. Ennis the complainant
and being duly sworn deposes and
says

By the Court

Q You are captain of the 3rd Precinct
Police Department City?
A Yes Sir

Q On the 10th day of June, 1890 did
you see the prisoners?

A Yes Sir I did

Q State who occurred?

A I saw Mary Murin and this defendant
the old gentleman walking
across the square in front of the
Hall. He had hold of his two

0818

47

fingers of the left hand, and were
 swinging their hands, and they
 attracted my attention, the little girl
 was walking along side of
 them, and they came along the
 East side of the City hall and
 they stopped, she does a great deal
 of talking, and she stood with
 her arm on the fence, I cannot
 say what they were saying, but
 she left him and went into the
 station house, and after she was
 in there a minute or two the
 little girl fell across her in, and
 they were in there 20 or 30 minutes
 talking to the sergeant, and the
 little girl and her had an
^{and the little girl said I won't}
 altercation of some kind, and
 she went away for a few minutes
 and finally she went and talked
 to Ben, and I went to the station
 house to see what they were in there
 for ^{and the sergeant said that they}
 were looking for a sign to

0819

48

marry her daughter, and I went
out and by this time the three of
them, had moved around to the
Mayor's office, and Ben was
leaning on the railing that had
the lamps in front of it. And the
woman went up the front steps
and went to the Mayor's office
and she asked the officer there
if she could get her daughter
married, I heard her say that,
I then said to the officer how that
woman there, and I said to the
latter girl are you here to marry
anybody and she said I won't
and ran away. and I asked
next to Ben who was standing
near that railing and I said to
him are you here to marry ^{the} girl
and he said I am willing I can
take care of her, and I said is
that what you are here for and
he said yes, and I said come
with me, and they both ran

0020

49

varied from that story from that evening, and in the conversation with Ben he stated that he came in to marry her.

I was then in the presence of the prisoner Henry Munn.

Answer:

Mr. Gerry:

I should like to have the case against Mager reopened and this statement of Captain Eganis annexed as additional testimony in that case. I want the Captain's evidence as taken now to apply to the first case.

Mr. Cowan:

I object to it, the case of Mager having been completed and closed. I object and I withdraw from the room.

By the Court:

I now inform you Mr. Cowan that that case has been reopened; and you can remain.

and proceed with the case?

Mr. Conant

No Sir I withdraw from the room. the case having been closed

By the Court

I will set all the statements that apply to Ben in this case be taken as testimony in the other case

By the Court (To defendant)

You are entitled to be represented by an attorney in this case and you need not answer any questions that will criminate you?

Do you have any statement that you wish to make in connection with the complaint made against you?

I have no statements to make, I have nothing to say I didn't see the man to marry her, the man told me to go to the Mayor's office

Q which man did Ben?

A No sir some gentleman in the
prison office.

Q Did Ben want to marry the girl
then?

A No sir.

Q Why did you go to the engineer's office
to make the enquiry there?

A I didn't know what kind of a
place it was.

Q Why did you go there?

A I wanted to find out

Q What did you want to find out

A Whether he could or not.

Q Whether you could or not what?

A Marry her.

Q What was your object in finding
out whether you could or not?

if you didn't want your daughter
to marry this man?

Q I didn't want her to marry this
day in a year or 2 perhaps.

Q Have you anything further to
say?

0023

Amosii

Case Closed

Dependant held to bail for
total in sum of \$500. Success



0024

Third District }
Police Court }

Joseph D. Perkins }
a get }
Benjamin W. Roger }
L. F. M. Mahon
Police Justice
July 12/1890

Appearances
Hon. Eldridge T. Gerry, Judge
John Coman Esq. In the Dept.

No parties being present
the examination proceeded.

Joseph D. Perkins the complainant
being witnesses being duly sworn
deposes and says

Capt. Examined on his affidavit
by Mr. Coman Dept. Counsel

I Captain you here sworn here
that Benjamin W. Roger did
unlawfully attempt to take
and detain a female named
Mary Mann, unlawfully

against her will with intent
to compel her said Mary Munn
by force, and menace to
marry him is that so?

A From his own statements to
me yes Sir

Q What statement did he make
to you?

A He stated that he was there for
the purposes of marrying that
girl.

Q Did you see him exercising
any control over the girl?

A Nothing more than in company
with her mother.

Q Her mother was present?

A Yes Sir.

Q Had he charge of the girl?

A Yes Sir.

Q Do you know what he did especially
what act he did unlawfully
and by force?

A Only by his own statements to
me.

0826

What was his statement?

A That he was there to marry the girl.

What was all?

Yes Sir

And the mother had control of the girl and was with the girl

Yes Sir

And in charge of her?

Yes Sir

And all that he said was, that he was there to marry the girl?

Yes Sir

And did you hear him address any words to the girl?

A Only to me

What was your opinion of him if he was there to marry the girl?

Yes Sir

By Mr. Gerry

And you present in court this morning before the magistrate when the defendant was here

0027

Present ?
Dyes in

J. Ridgum being the defendant states
that he had met this girl and her
mother in New Jersey, that they
lived in the same house, he living
on one floor and she on another
and that for years past he and
the mother of this girl had
talked over a contemplated
marriage between the girl and
himself, and that on the day in
question he had met the mother
and the girl in a depot in
Newark; and that their intention
had been first to visit the aunt
of the girl residing in New Jersey
and that he had purchased
rail road tickets from Newark
to New York, and thereupon came
with the mother and the girl
to New York City, and proceeded
to the City Hall Park where he
remained until his arrest.

Ayes si

Q you heard that testimony?

Ayes si

Q That is you heard the defendant make that statement in Court?

Ayes si

Q Did you hear him further state that he didn't remember whether he had asked the girl to marry him, and finally stated that he had? Did you hear him say that?

A I heard him say that he would not swear if he did or did not.

By Mr. Cowan

Q This statement that you heard the defendant make, at least these admissions or statements that you heard the defendant make in court this morning as to his acquaintances with the mother from the time they lived together and have talked with each other about

0029

morning the girl, you under
stood all occurred in New Jersey
didn't you?
Ayes Sir...

J

Maria Munn entered as a
witness for the people being
duly sworn & sworn and
says:

By the Court

Q How old are you now?
A My mother says I will be 14
years old on the 8th of August
Q Do you know what will become
of you if you tell a lie?
A Yes Sir.

Q Do you go to Sunday school or
Church?

A Yes sometimes I go.

Q What will become of you if you

0830

7
Q What is your name?

A Go to hell.

Q Where do you reside?

A Lone Street

Q Where is that?

A Orange St

Q Do you go to school?

A Yes Sir

Q By Mr. Gerry.

Q How old are you now?

A My mother says I was 14 years
old the 8th of August next.

Q What is the name of your mother?

A Mary Munn.

Q Is this your mother now in court?

A Yes Sir

Q Do you know the prisoner who is
standing up at the bar?

A Yes Sir

Q By Mr. Moyer?

A Yes Sir

Mr. Roman

The case requires that
he call the defendant and

not the prisoner
 Mr. Gentry, I have no objection to
 that. I return you for the
 instruction.

Q Do you know the defendant at
 the bar Mr. Moger?

Answer

Q Benjamin T. Moger?

Answer

Q How long have you known him?

A Young as 4 years.

Q Have he ever asked you to marry him?

A Yes he did once.

Q When did he ask you to marry him?

A In March.

Q March this last year.

A No in May it was.

Q This last May?

Answer

Mr. Roman

I object to it on the ground
 that this conversation with the
 girl and the defendant asking
 him to marry her occurred in

New Jersey And I want to strike it
out.

By the Court

Motion Denied

McComan

Exception

By Mr. Gerry?

Q What did he say to you?

A He said "Maurice would you
like to marry me" And I said "No."

Q Go on?

A That's all that he said.

Q Did he ever take you on his lap?

A No sir.

Q Did he ever kiss you?

A No sir.

Q Was that the only time that
you were asked to marry him?

A Yes sir.

McComan

Subject to the form of the
question, I ask that it be
together with the answer stricken
out. The testimony is that
that this man asked her how

he would like to marry him
and the Commodore puts the
question, "is that the only time
that he asked you to marry
him, I submit the question is
improper and ask that it be
stricken out

By the Court.

Strike it out.

Q Would you again talk to you on
the subject of marriage?
A No sir.

Q Do you remember the day when
you came to New York?
A Yes sir.

Q Did your mother say anything about
you coming here that morning?
A No sir she said she was going to
Belleville to see my aunt.

Q What is the name of your aunt?
A Mrs. Reilly.

Q Where does she live?

A At Woodside near Belleville.

Q Is that in New Jersey?

0034

A I don't know

Q It is the other side of the river
isn't it?

Answer:

Q What time of day was it that
she first spoke to you about
going to your aunt's?

A About 11 o'clock

Mr. Connel

Subject to any conversation
between the girl and her mother

Mr. Gerry

I have not asked her that -
I asked whether she spoke to her
I want to fix the time when
they started here.

Q You say it was 11 o'clock in
the morning?

Answer:

Q Did you have a talk with your
mother about marrying this
dependant?

A I don't know what you mean
Q about marrying this man

Q About worrying this man
Ben?

A He didn't tell me she was
coming here to have me worry
him.

Q What did she say in regard to your
Aunt?

A Ben said if he didn't have any
work he would go to see Aunt
Reily at work.

Q And what else?

A That's all that he said.

Q Did you go in the horse car at
the same time with Ben?

A No Sir we got in first, and then
he got in.

Q You got in the horse car and then
he got in?

A Yes Sir.

Q Did you get on at the same place?

A No Sir we got on near Shivers
and we got on Corner Centre
Street.

Q Then you went down in the horse

0036

13

Can together to where?

A Murrel Street

Q After you got out at Murrel Street
what was done, did you get
out of the house car?

A Yes Sir

Q Did you all get out of the house
car?

A Yes Sir

Q Did Ben buy any tickets for
you?

A He bought 2 tickets

Q Who were the tickets for?

A One for him and one for my
mother

Q Did he buy any for you?

A No Sir

Q Did they charge anything for you?

A Yes they charged me with half
fare.

Q Who paid for the half fare ticket?

A Ben.

Q Do you remember how much it was?

A No Sir. He got 32 cents change.

out of a fifty cent piece.

Q That would be about twenty cents for your fare to New York?

A Yes sir.

Q Did you then get in the cars and go all together?

A Yes sir.

Q And where did you go in the cars together?

A The steam cars.

Q Yes.

A Up to Jersey City.

Q Then what did you do, cross the ferry?

A Yes sir.

Q In a ferry boat?

A Yes sir.

Q All three of you together?

A Yes sir.

Q Then what did you do when you crossed on this side to the ferry?

A Came up here to the city hall.

Q What was paid when you were

0030

15

together if anything by anybody?

A Nothing

Did you mother Ed Ben have any conversation on the subject of your marriage?

A I don't know.

Q Okey, you do know, now recall do you remember any conversation which was had between your mother and Ben at the time you came to the city hall park about your getting married?

A Ben and my mamma were standing out there and mamma went into the police station and mamma says is the square in, and the man said what do you want of him, and my mamma says I want to get my daughter married and he said go up to the mayor's office and see the mayor. I was Ben in the office with you?

A nosa he stood outside
 of Right near the door?
 A Cucho suddenly I think
 By McComan

of Midyungo in the office and
 then the conversation?

Ayes si
 of In the police office underneath
 the City hall?

Ayes si

By McGerry

of And you were there with your
 mauna?

Ayes si

of Then what happened?
 A I didn't want my mother to come
 in here, and I didn't want
 to marry him.

of You heard what your mother
 said?

Ayes si

of And you didn't want to
 marry him?

A nos si

0840

Q McComan

Q Was Ben inside?

A No sir

Q Was outside?

A Yes sir

Q What did you say to your mother
you didn't want her to go in
there, didn't you tell your mother
you didn't want to marry
him; didn't you tell your mother
anything when you were there
on coming out?

A When?

Q When she went in enquiring
about the squire

A No sir I didn't say anything

Q Didn't you mother bring you in
there?

A Yes sir

Q Didn't she shake her of your
hand?

A Yes sir

Q And Ben was not in there at
all?

18

Aioosi

By Mergory

Q When you were going over there
did your mother and Ben
have a conversation going over
on the steam cars?

A They were sitting in one seat
and I was sitting in the other.

Q Did you hear what they said?

A No Sir I was in the back of them
Q And they two were together in
the front seat?

Ayes Sir

Q You didn't hear what they said
but they talked awhile coming
over didn't they?

Ayes Sir

Q When Ben asked you to marry
him was your mother present?

A Yes Sir

Q When Ben spoke to you about
marrying you was your
mother present in May?

A She was down stairs

0042

And you were alone with him?
Ayes si

By McComan
Where was it?
A up stairs

Of New York?
A no si

Of Orange?
A yes si

Of New Jersey?
A yes si

By McGerry
Did your mother ever talk to you
about marrying Ben?
A yes she asked me
McComan

Subject to it, as far
as Ben is concerned it is
incompetent, Ben was not
present and if he was it
happened in another state
McGerry

Question not drawn
McGerry

0043

Q Immediately on coming out of
the office what was done then?
Mr Comant

Q which office?
Mr Gerry

Q The police office you were in
and enquired for the squire
what happened next?

A We went to the Mayor's office
and he was not there.

Q Did Ben go with you?
A Yes sir.

Q Where was Ben all this time?
A On the sidewalk.

Q Did you go to the Mayor's office
inside of the building?

A Yes sir.

Q And you left Ben outside?
A Yes sir.

Q And your mother was arrested
while she was at the head
of the stairs going into the
Mayor's office?

A Yes at the door, the policeman

0844

asked her what she wanted
Mr. Conner

No questions for her

Mary Munn called as a
witness on the part of the
people being duly sworn
deposes and says
By the Court.

You are one of the
Co Defendants in this case,
and you are charged here on the
Complaint of Joseph J. James
a captain of the 3d Precinct
police New York City with abduc-
ting your child. And I am now
going to inform you of your
rights. And I will not permit
you to answer any questions
that will tend to criminate
yourself.
What is your name?

0045

A Mary Mum

Q where do you reside?

A Crang New Jersey.

Q what is your age?

A 29 years.

Q what is your occupation?

A going out by the dogs work

By Mulberry.

Q are you a married woman?

A Yes.

Q and what is the name of your husband?

A Isaac Mum

Q how long with him at the present time?

A Now.

Q How long is it since you ceased to live with him as man and wife?

A He died so anything from 10 to 15 years.

Q what business was he in?

A He was driving the orange cars when I married him.

Q Horse come?
 Answer

Q How many children have you
 Mrs Mann?

A I have two now, and two which
 I buried, I buried a boy 3 weeks
 old. and one of ^{years} ~~months~~ of age
 when I buried the child 7 months
 old he stayed away 4 years
 and came back and stayed
 2 years.

Q She goes away from you and then
 comes back and stays awhile
 and then goes away again?

Answer

Q How long since he lived with
 you?

A The 5th of February, he came
 around and stayed 4 weeks
 and 2 days.

Q You have seen little Mammie
 here?

Answer

Q She is your daughter?

0047

Ayesa

Q How old is she?

A 14 years old the 5th of August.

Q Past August?

Ayesa

Q So that she is not quite 15 years old now?

A Yes

Q Was she Baptized any where?

Ayesa

Where?

A In Orange

Q Whereabouts in Orange? Do you know the church?

A Yes

Q What church?

A St John's

Q Protestant or Catholic?

A Catholic her father is Protestant

Q St John's Catholic Church?

Ayesa

Q Does he recall the name of the priest of the church?

A Yes the priest of that Church is

24

not there now I don't think

Q You don't know the name of the
guest there now do you?
A Yes sir.

Q What is it?

A Walter Flemming

Q That is in Orange New Jersey?
A Yes sir.

Q Do you know the defendant there?
A Yes sir.

Q How long have you known him?

A Several I guess. I knew his wife

Q You knew his wife?

A Yes sir.

Q She died a number of years
ago?

A No sir. 3 or 4 years ago I took

care of her when she was sick

Q How long have you lived in the
same house with Ben?

A I guess only 5 years.

Q What business are you engaged in
Mrs. Mann?

A Going out and doing housework

25

by the dog, house cleaning, washing
 Red Ironing

Q Did you have any conversation
 with Ben on the subject of his
 marrying your daughter?
 A No but the father did.

Q Were you present when they had that
 conversation?

A Yes Sir

Q Would you tell me what that
 conversation was, what took place
 between the defendant and
 your husband, the father of the
 child? in regard to his marrying
 this girl's daughter?

A He said he was willing to let
 Barbara be; and he would make a
 good husband for her.

Mr. Conant

Q This happened in Jersey?

A Yes Sir

By Mr. Gerry

Q How long ago was that?

A The last time he was there.

Q when was that?

A The 5th of February

Q what did Ben say in reply to it?

A I cannot say

Q did you recollect anything that he said?

A No sir there was a post man came around with a letter and I see ^{it} taken.

Q By the Court

Q speak a little louder, if you were outside you could be heard for four or five blocks. And here is a gentleman four or five feet from you that cannot hear you now try and speak a little louder.

By the Court

Q Was that the only conversation you remember taking place between the defendant and the father of this girl on this subject?

A I cannot tell you sir, what took place between them.

Q How the defendant was spoken

27

to you on the subject of marrying
this girl?

Absaida said she did not know whether
he would or not unless that we
were satisfied, the father and
mother.

Q Go on?

A I went to see the lawyer about it
and he said as long as the
parents were satisfied the man
could marry her.

Q What was the name of the lawyer?

A Lawyer Fields

Q Where is his place?

A Orange

Q And what did he say?

A He said that any man could
marry them as long as the parents
were satisfied.

Q Did you ask the girl if she
wanted to marry him?

A Yes and she said she was willing
to marry him.

Q Did she say she was?

Yes, and she said she used Ben
 whenever they were after together?

A Goshu she was at school

of she was to school until quite
 recently, she was to school until
 my boy died with diptheria
 and she was not let in
 school after the child died, and
 she had it and I had the doctor
 for her

Of the day in question you
 met the defendants in the cor.
 did you not?

A which cor.

Of the horse cor in New York.

Yes I came down, I wanted to go
 down to see my aunt in Bellville
 and instead of going to my
 aunt we came down here.

Of and you met him in the train?

A 'no su' on the horse cor

Of you got out at the most street
 station did you not?

Yes su

0053

29

Q and did you suggest coming to
New York or did he?

A He asked us if we would like
to come.

Objected to
Q Did the defendant suggest
coming to New York?

A I don't know what you mean by
that.

Q Did Mr. Moyer suggest coming
to New York?

A We all three came down together
and we went in the place to
get the tickets.

Q You stated you were going to
your aunt's?

A Yes sir.

Q Where does she live?

A Belleville and we changed our
minds and came here.

Q Who do you mean by we?

A I didn't want to go I changed my
mind because I had not
been there is so long a time.

Q Did you communicate that fact
that you didn't want to go to your
Aunts to Mr. Moyer?

A Yes, I did.

Q Would he propose that you come on here
to New York?

A Yes, he came down here to
New York.

Q You stated to him in the horse car
that you were going to your Aunts.
A Yes, I was afraid to go to my
Aunts because I was not there
for such a long time.

Q Did you tell Moyer that?

A Yes, he knew all about it, he
knew she would come.

Q He bought the tickets to go to
New York?

A Yes, it is not the first time that
we came to New York, we came
over to the Brooklyn Bridge once
and when we came here the
first time I had the misfortune to
go in there to the station house.

Q He brought you over and paid the fare?

A Yes the chief was sick and although it would do her good.

Q He paid your fare and bought the tickets?

A Yes certainly.

Q And then when you got to New York you came to the City Hall and did you

A Yes that is the way we go to Brooklyn.

Q He came up with you to the City Hall?

A I don't know what Hall it is, some place.

Q The place where you were arrested?

A Yes Sir.

Q And he came up with you to that building?

A Yes Sir.

Q Now in the way over did he take to you about marrying this girl I am speaking when you and Mr. Moyer sat together in the car

3 1/2

and Mammie sat back of you
the seat behind you?

A No Mammie and I got on the
same seat.

Q Coming from New York here?

A In the horse car dog as usual?

Q In the steam car.

A No I didn't sit with him.

Q Are you certain about that?

A I forget that, the men don't be
allowed to sit in the women's
car, I went in the smoking car
and I was put out of it, I thought
I could sit there.

Q You got in the steam car with
Mogor and Mammie?

A Yes sir.

Q And do you mean to say you
got in the smoking car?

A Yes and I had to go back in the
other car.

Q And they put Mammie out?

A Yes sir.

Q And Mammie sat with you or

0057

603

o moyer ?

Awit me

Where did Mr Moyer go ?

As he went in the morning car
he had a cigar in his mouth
I do you mean to tell me that you
were in one car and he was in
the other coming from Newark to
New York City ?

Answer

If you are certain about that ?
Answer, I think so, I know I was
in one car and the gentleman
sat in another car

I had no conversation with
Mr Moyer on the subject of marrying
your daughter ?

Answer

By your way over here ?

Answer

I don't ask you what it was, I simply
ask you had any such conversa-
tion or any conversation ?

Answer

Q Did he say anything to you about
marrying your daughter on the
way over here.

A No sir.

Q Did he at any time on that day
have any conversation with
you on that subject?

A No sir.

Q What did he say about ~~the~~ want
to know what you said?

A He didn't say anything to me
Q Did he know what you went in the
police office for?

A I cannot tell you that?

Q Did you tell him that you were
going in the police office to find
the square?

A I guess I did, I said I was go down
and find out the square, and
see what he will say.

Q Then he had spoken to you about
marrying the girl?

A He did know, when my husband
was there.

35

Q I am speaking about the day when you came to New York, when you were arrested, did he have any conversation with you about marrying 'Minnie'?

A He said he didn't care if he did or not?

Q I want to know what he said about it?

A He said he didn't care whether he would or not, he said he would go to the Brooklyn Bridge if I wanted to go and I would take 'Minnie' along and I said yes

Q What was your maiden name before you were married?

A Mary O'Connor

Q Do you remember your husband's name?

A Strass

Q He has no middle name has he?

A No sir

Q Did Mr. Moyer ever to your recollection pay to you that he had a conversation

with your husband and that he
advised you should marry
Mamie to him. Is that right?

Yes I remember that

Q. When was that conversation?

A. I cannot remember the day of
the month

Q. About how long ago?

A. The last time he came was the
15th of April and only stayed 4
weeks and 2 days, he only stayed
2 weeks at home, and he was out
of town, and he was trying to get
a job on the cars

Q. Did you ever hear your husband
tell Moyer that he could have
Mamie if he wanted to?

Objection to

Mr. Gentry

By the Court. Question withdrawn.

Q. Was this in the presence of the
defendant?

Yes Sir

Q. Did you ever hear your husband

137

Tell Moger that he could have Marie
if he wanted to?

Ayes.

When did he tell him that?

When he was home

What did Moger say?

As he said he didn't know he wanted
to see what ^I Moger said.

That is what Moger said?

Ayes, he knew my man didn't

take care of the children, I had to
support them; I had to support the
children myself, the father done
nothing for them.

And did Moger talk with you about
it afterwards?

As he told me what Moger said and
I had him pay it myself.

Moger said what on that occasion
As he said he didn't know he would
see.

Did he talk to you afterwards about
it?

A yes, only one night my husband

88

Came in at 2 o'clock, and detained
him to stop and not to fight
and quarrel in the house that
it was a shame, he wanted to
cut my throat.

Q When you went to the city hall into
the Mayor's office was Manning
with you or was she outside?
A Outside.

Q Was she with the defendant Moyer
A She was away from Moyer.

Q How far from him?

A I cannot tell you a good way
there was a railing there and
she was outside of the railing
He was standing near the railing
and then he went away, the
report was all around that my
child was married, and every body
was asking me if my child
was married to Moyer. Ed said
no.

Q Who reported it
A My husband.

39

By Mr. Corran

Q I understood you to say that you
and Moyer came to New York that
day to see the Brooklyn Bridge?
A Yes sir

Q And you went into the Squire's office
A Yes - No.

Q You went into some place?
A Yes to enquire

Q About what?

A I wanted to see the Squire to know
whether I could have my daughter
married over to him

Q You wanted to know whether it
was legal to have her married

A Yes I didn't go in for the purpose
of having him marry her, I asked
the gentleman if there was a
Squire there, and I wanted to know
if I could get her married over
and the gentleman told me to
go to the Mayor's office and speak
to him, and I done so and the
gentleman came out and asked me

Q Your purpose was not to get them
married?

A Yes Sir

Q But to see whether they could get
married?

A Yes I didn't go in to get them
married, I wanted to see if it was
proper for them.

Q And you asked for the squire?

A Yes and they told me to go to the
mayer and I did, and didn't
see any body

Q You had full charge of your daughter
that day?

A Yes Sir

Q She was under your control and
custody?

A Yes Sir

By Mr Gerry

Q Did you tell Mr Mayer what you
were going in there for?

A Yes I said I would go in and see
I didn't want them to get married
that day. I wanted to know from

541

the squire if they could get married
 and you told Moger that?
 Ayee si

and what did he say to that?
 He said he would come

and then went outside ^{the} knowing
 what you were going inside for?
 Ayee si

and did you talk this matter all over
 in the corro with Moger?

A No. I did not

when did the idea first come to
 your mind to go to the squire's
 office to find out if they could
 get married or not?

When we came from the ferry boat
 of Did you say anything to Moger
 about it?

When we came over board I did
 go in and see what the squire
 says about it

Why did you go into the Moger's
 office, when you once had been
 told that she could marry ^{etc} ~~the~~

a girl at the age of 14 years.

A Howed him

Q That isn't an answer to my question
a Jersey lawyer named Treeds
told you that if the girl was
14 years of age she could be
married with the consent of
her parents?

A No he didn't say so

Q What did he say?

A He took about and read it, and
said if the parents are satisfied
any ^{single} lawyer can marry them

Q I told you that why did you
come to New York and go to the
Mayor's office and make the
same inquiry?

A I thought I would ask
why?

A I don't know

Q Why didn't the marriage take
place in New Jersey?

A I didn't want her to marry the
day I met there, I only wanted

to know if I could have been married
 if you had been told once you
 I could?

A I didn't bother my head afterwards
 if did you ever apply to any body in
 New Jersey to marry them?

A only to the squire and he said
 he could not until he saw a
 lawyer.

if when was this?

A I didn't go to marry them; when
 I was passing I was talking to
 the squire.

if what is his name?

A Mr. Sherman.

if where does he live?

A East Orange and he said he would
 not marry them.

if did the girl go with you?

A No Sir.

if did Moyer go with you?

A No Sir I was coming up from
 East Orange.

if and you talked to him and he

0058

44

He said he would not marry them
A He said he would not like to do
the job on account of her father
not being at home

Q In other words he would not
marry them until he saw the
father?

A I suppose so?

Q Did you tell him how old Marnie
was?

A He knows her.

By Mr. Conner

Q Squire Sherman knew Marnie?
A Yes Sir

Q And he would not do the job
unless the father was home?

A Yes Sir

Q Do you know how old the defendant
is?

A Yes

Q How old?

A He is 62 years

By the Court

Came for the people

43-

Mr. Cornman

I move to dismiss the Court
pleaunt upon the testimony adduced
by the people's witnesses, on the
ground there is no proof at all
that the defendant had any
control, or exercised any
authority, or used any violence
or did any act or took any
steps towards obtaining possession
of the girl,

By the Court

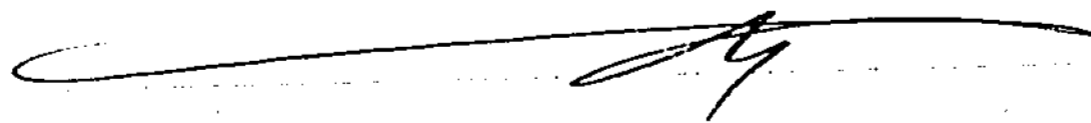
Motion Denied

Criminal Exception

Mr. Cornman, we waive further
Examination.

By the Court

Defendant held to
Answer in sum of \$500.00



On motion of Mr Gerry, the testimony of Capt Joseph P. Eganis taken in the case of Joseph P. Eganis against Mary Munn was admitted in evidence by the Court, as the ^{further} evidence and testimony of Joseph P. Eganis against Benjamin Moger and made part of the record in the case, and which is as follows.

Joseph P. Eganis the complainant being duly sworn deposes and says

By the Court

Q You are captain of the 3^d Precinct police New York City?

A Yes Sir

Q On the 10th of June 1890 did you see the prisoner?

A Yes Sir I did

Q State what occurred?

A I saw Mary Munn and the defendant, this said gentleman walking across the square

0071

489 a

in front of the hall, she had hold
of his two fingers of the left hand
and were swinging their hands
and they attracted my attention,
the little girl was walking alone
along side of them. and they came
along the East side of the city
hall, and they stopped, she done
a great deal of talking and
he stood with his arm on the
fence, I cannot say what they
were saying, but she left him
and went into the station house
and after she was in there a minute
or two, the little girl followed her
in, and they were in there 2 or
3 minutes talking to the sergeant
and the little girl and her had
an altercation of some kind and
the little girl said I won't, and
she went away for a few minutes
and finally she went and talked
to Ben, and I went to the station
house to see what they were in

0872

48 a

there for the sergeant said that
they wanted were looking for a
quire to marry her daughter
and I went out, by this time
the three of them had moved
around to the Mayor's office,
And Ben was leaning on the
railing that had the lamps in
front of it, And the mother went
the front steps and went to the
Mayor's office, And she asked the
officer there if she could get her
daughter married, I heard her say
that. I then said to the officer
heard that woman there, and I
said to the little girl are you here
to marry anybody and she said
I won't, and ran away. And I
walked over to Ben who was stand-
ing near the railing and I said
to him are you here to marry
this girl, and he said I am
willing I can take care of her
And I said is that what you

0073

49^a

are here for And he said yes, and I
said come with me, And they
have not varied from that story
from that evening, And in the
Conversation with Ben he stated
that he came over to marry her.
Was this in the presence of Mary
Mum?
A 91000

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COURT OF GENERAL SESSIONS OF THE PEACE
IN AND FOR THE CITY AND COUNTY OF NEW YORK.

The People

v.

BRIEF FOR THE PEOPLE.

Mary Munn and Benjamin T. Moger

HISTORY OF THE CASE.

The prisoners are indicted under Penal Code § 282 subdiv. 3, for taking and detaining, on June 10th, the daughter of the defendant Munn, Mamie aged 14 years, unlawfully against her will, with the intent to compel her by force, menace or duress to marry the other defendant Benjamin T. Moger.

The parties all reside in Orange, New Jersey. The defendant Moger is a man 62 years of age, a bricklayer by business and the recipient of a pension from the U. S. Government, with some little money in bank. The defendant Mary Munn is the mother of Mamie, and some time ago together with her husband conceived the idea of marrying the child to the defendant Moger. Moger had a conversation with the father on the subject, and then offered to marry the child. The child declined and refused, and Mrs. Munn then first went to a lawyer in Orange, who advised her that the child could be married with the consent of her parents if she was 14 years old. She then went to a justice of the peace, who declined to marry the parties unless the father was present and consented. Later on June 10th Moger met the defendant Munn and the child on the horse-cars in Newark. They were then on their way to see an aunt of Mrs. Munn, but after conversation with Mrs. Munn Moger purchased tickets for all three to New York City. They arrived

in New York City and walked up to the City Hall, Mrs. Munn holding Moger by two fingers of one hand and the little girl with the other. On arriving at the City Hall Police Station, Mrs. Munn entered the station and inquired for a squire. On being interrogated as to what she wanted of a squire, she replied that she wanted to marry her daughter to Moger who was remaining outside with the child. She went upstairs and was then arrested. Both she and Moger have admitted that their object in coming to the City was for the purpose of marrying the child to Moger. The child states that she did not want to marry Moger and so told him. The defence of the woman was that she only went into the Police Office to get advice as she had previously done in New Jersey.

It will be observed that by the Laws of 1887 chap. 24, the Revised Statutes have been so amended that the age of consent on the part of a female to marriage is sixteen; so that the taking in reality of the child by both Moger and Mrs. Munn was for an illegal purpose in itself, apart from the refusal of the child to consent to marry the defendant; and had such a marriage been celebrated, even with the consent of the child, it would have been none the less illegal, and the magistrate performing the ceremony would have been liable to indictment for a misdemeanor.

EVIDENCE FOR THE PEOPLE.

MAMIE MUNN. - Believes she is about 12 years old. Lives with her mother in Orange, N.J. Her mother is the defendant Mary Munn. Her father and mother separated some years ago, at which time they were living in East Orange. Her mother soon after fitted up a little candy store, and one day her father came there

and took what money her mother had and bursted up things generally. Her mother then moved to Orange where she went out by the day to scrub and wash. About six years ago the defendant Moger came to board with her mother. He is a bricklayer and has steady work, and has some money in the bank, and is miserly. He was in the War and got wounded for which he draws a pension as witness believes. One day last February while witness was ironing, her mother came to her and said, "Mamie, Ben draws his pension in a few days, and you had better marry him." Witness refused to marry him, and soon after Moger asked her to marry him and she again refused. Afterwards her father told Moger that he could have her. Witness heard no more about it until she came to New York on June 10th. On June 10th Moger and witness' mother told witness they were going to visit Mrs. Reilly at Belleville, who was witness' mother's aunt. Instead of that, they met in the cars, got out at Newark at the Market Street Station, and Moger purchased tickets for them for New York and paid half fare for witness, and came on with witness' mother and herself to New York and walked up with them to the City Hall. There witness' mother went inside to the Station House, leaving Moger and witness outside. Shortly after they were arrested.

JOSEPH B. EAKINS. - Is Captain of the 3rd Precinct Police, New York City, the Station house of which is in the City Hall. On June 10th, 1890, witness saw Mary Munn and this defendant, this old gentleman, walking across the square in front of the hall; she had hold of his two fingers of the left hand, and were swinging their hands, and they attracted my attention; the little girl was walking alone alongside of them, and they came along the east side

of the City Hall and they stopped, she done a great deal of talking, and he stood with his arm on the fence, I cannot say what they were saying, but she left him and went into the station house, and after she was in there a minute or two the little girl followed her in, and they were in there 2 or 3 minutes talking to the sergeant, and the little girl and her mother had an altercation of some kind, and the little girl said, I wont, and she went away for a few minutes and finally she went and talked to the defendant Moger, and I went to the station house to see what they were in there for, and the sergeant said that they were looking for a squire to marry her daughter. Witness went out and by this time the three of them had moved around to the Mayor's office, and Moger was leaning on the railing with the lamps in front of it. The mother went up the front steps and went to the Mayor's office, and she asked the officer there if she could get the daughter married, - I heard her say that. Witness then said to the officer, Hold that woman there, and I said to the little girl, Are you here to marry anybody, and she said, I wont, and ran away. Witness walked over to Moger who was standing near the railing, and said to him, Are you here to marry the girl, and he said, I am willing; I can take care of her; and witness said, Is that what you are here for, and he said Yes. Witness said, Come with me. They have not varied from that story from that evening, and in the conversation with the defendant Moger he stated that he came over to marry her.

Witness heard the defendant state in court upon his examination, on June 12th, that he had met the girl and her mother in New Jersey. They they lived in the same, he living on one floor and she on the other. That for two years past he and the mother had

talked over a contemplated marriage between the girl and himself. That on June 10th he met the mother and girl in the depot in Newark, and that their intention was first to visit an aunt of the mother in Belleville, but that afterwards defendant purchased R. R. tickets for all three for New York, and that they came on to New York and proceeded to the City Hall, where he remained until his arrest.

The defendant Mrs. Munn stated to witness that she does not live with her husband Horace. That she came to New York to get her daughter married to Moger. That her husband called on her a few days ago and asked her if Mamie was married to Moger, and she said No; he said that it was the talk of the whole neighborhood that she was, and that the best thing to do was to take her to New York and get them married.

Witness heard the woman talking with the sergeant, learned what she wanted and went upstairs to head her off. She was in the City Hall corridor. Witness asked what she wanted, and she replied, To marry her daughter. Witness said, That child? and she said Yes; it is all right, I have her father's consent. While speaking to her, the child Mamie said, I wont, I wont, and ran down the steps. She went and stood by the defendant Moger who was leaning on the iron railing. Witness went up to Moger and asked him if he wished to marry the child, and he said, Yes I am willing to marry her. Witness then gave the defendant Moger his opinion about the matter, and Moger asked if he were liable to get into any trouble about it. Witness told him that they might not hang him. Witness then brought him and the girl and Mrs. Munn into the house, where they repeated their object in coming to New York was to marry Mamie, while Mamie said she did not want to

marry the old man.

SERGEANT PETER RYAN. - Is Sergeant in the Municipal Police attached to the 3rd District Police Court. The defendant Mary Munn came to him on June 10th followed by the child Mamie, between 3.30 and 4 P.M., and asked where she could find the squire. Witness asked her what for, and she replied, To marry my daughter. Witness said, Well you can find the Mayor or some Alderman upstairs to marry her, and she went out. Shortly after she and Moger and the child were brought in by Capt. Eakins, and she replied in answer to questions, that they had come to New York to marry her daughter to Moger. He said he was willing to marry her, and the girl said she did not want to marry Moger.

AUGUSTINE J. WILSON. - Is an Officer of The New York Society for the Prevention of Cruelty to Children. On Saturday, June 14, the defendant Mrs. Munn voluntarily said to witness: I came to New York to see about marrying Mamie to the old man. It was my husband who first suggested marrying Mamie to him. Moger and I have been living in the same house for the past five years, he occupying one floor and I the other. He is now sober and steady, while my husband drinks. My husband deserts me for months and years, and half kills me when he returns. I have been arrested twice for drinking. I have a son now in the state Reform School for stealing a watch. I was born in Ireland, and have been here since

On the same day the defendant Moger stated voluntarily to witness: I do not exactly remember what I have said, but it was old man Munn who first spoke to me about marrying Mamie. I used

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to drink hard a few years ago, but now am a total abstainer and janitor of the Temperance Lodge, and earn \$2.75 a day, and have some money in the bank. I have no children and have been a widower for four years.

HENRY E. STOCKING. - Is Assistant Superintendent of The New York Society for the Prevention of Cruelty to Children. Defendant Mrs. Munn stated to witness on June 12th that she came to New York for the purpose of marrying her daughter Mamie to Moger. Before coming she consulted a minister who refused to marry Mamie on the ground that she was too small and too young. Mrs. Munn also saw a lawyer who told her that she had a right to have the child married if she desired. Also stated that some time ago her husband came to her to borrow \$5. as a deposit in order to obtain a situation on a horse-car line in Orange. That he then went away for four weeks when he came back and wanted \$5. more, and was told to borrow it from the old man, meaning Moger. Her husband and Moger are very intimate. One day her husband said to Moger, Why dont you marry Mamie? You have my consent to marry her. The husband then spoke to his wife and said to her that the best thing she could do was to take them to New York and get them married. Mrs. Munn's maiden name was O'Connor.

REV. H. P. FLEMING. - Is Rector of St. John's Roman Catholic Church, Orange, N.J., and will produce the following certificate:

St. John's Church, Orange, N.J., June 15'90

This is to certify that according to the Register of Baptisms kept in St. John's Church Orange N.J. for the year 1878 under date of Sept. 29th, there was baptized Mary daughter of Horace and Mary Munn, born on the 8th of August same year.

H. P. FLEMING,
Rector.

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REV. FRANCIS A. MASON. - Resides in Orange, N.J. Defendant Mrs. Munn sent for witness not long since and requested him to marry the child Mamie to Moger. Witness refused on the ground of the child's youthfulness. Mrs. Munn has a bad reputation.

MARSHAL WILLIAM MC CHESNEY. - Resides at No. 26 North Centre Street, Orange, N.J. Knows that Mrs. Munn has a bad reputation for drinking and fighting.

PATRICK CONROY. - Resides in Orange, N.J. Is connected with the Police Department of Orange as sergeant and detective. Has known the defendant Moger for thirty years, as a working man and a soldier. Moger is a mason by trade and has worked around Orange for years, ever since the close of the War. In the War he served in a New Jersey regiment. Witness does not think that Moger gets a pension. He is a temperance man and belongs to the Temple of Honor, a temperance organization. He is an inoffensive, peaceable man, and witness does not think his mental condition strong by any means. Moger has lived in the same house with Mrs. Munn, who has done cooking for him and otherwise cared for him. Mrs. Munn has a husband but he has not lived with her for years. When the husband comes there, as he does occasionally, he stays in the house with the woman and Moger also stays there as usual. Mrs. Munn's reputation is not good. She has been in the county jail on a charge of being drunk and disorderly, - there have been several times complaints against her for such charges. She is known as having a quarrelsome disposition. Witness knows that she is supported by the township of East Orange, which pays her rent in Orange; her children having been born in East Orange

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and she having been married there and it being her husband's residence. The authorities prefer to pay her board to live in Orange. Witness knows the husband very well; he does not live with his wife and could not do so on account of her quarrelsome habits. She is all the time quarreling and fighting and does not behave herself. Witness does not consider her character good by any means. Witness once arrested her son George, 11 years old, who is now in the N. J. Reform School. His offence was thieving. Witness had him before the courts two or three times before that. Witness cannot say anything in the woman's favor, nor anything injurious to Mr. Moger.

WILLIAM H. LATIMER. - Resides in Orange, N.J. Is in the gentlemen's furnishing business. Knows Moger but does not know Mrs. Munn. Has known Moger about 20 years, as a citizen and as a peaceable and respectable man. Did not know his wife. Has understood that the man had a great deal of trouble in his family affairs. Does not know that he has any children. Has understood that Moger's wife used opium, and that she was a great deal of care, and that he had a great deal of care upon his mind for years. For the past seven years witness has known Moger as a member of the G.A.R. Post, and he has always been a respected member. Two or three years ago, not longer, Moger was taken sick and the Post looked after him, in fact he has been more or less care to the Post ever since he has belonged to it, and they all look upon him as a man not thoroughly capable of looking out for himself. Witness knows nothing about his relations with the defendant Mrs. Munn, in fact did not know that he lived in the house with her. At the time Moger was taken sick and came under the

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care of the Post, he also belonged to the Temple of Honor, a temperance organization, and the Post thought it only proper that such organization should be held responsible for a portion of the expense. It was ascertained at that time that his life was insured for about \$1,000 in some temperance assessment association, payable in case of death to this organization; therefore of course there could not have been any children. Witness thinks that there is some insurance carried at the present time, which would furnish the motive for the defendant Mrs. Munn's seeking to bring about this marriage - in order to get control of the money. This supposition on the part of witness is shared by other respectable citizens of Orange, and has been mentioned to him. Mrs. Munn being a married woman, of course could not get control of the money unless by some such means as this of marrying her daughter to Moger, who is a feeble man, in fact it was expected some three or four years ago that he would pass away; and the idea in having him enter the Soldiers' Home was that he would there have good care. Witness has no doubt that the woman's object in marrying her daughter to Moger was to get control of this insurance money, in the belief that he would pass away in a short time. Witness understands that her reputation is such that there is nothing she would not do to get the money.

0005

N. Y. GENERAL SESSIONS

THE PEOPLE

AGAINST

Charly Chun

and

Benjamin J. Moya

Abduction

PENAL CODE, § 160.50

BRIEF FOR THE PEOPLE.

0006

COURT OF GENERAL SESSIONS OF THE PEACE OF THE CITY AND COUNTY
OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK,

against
Benjamin J. Moger
and Mary Munn

THE GRAND JURY OF THE CITY AND COUNTY OF NEW YORK, by this

indictment, accuse *Benjamin J. Moger and*
Mary Munn —
of the crime of *Abduction.*

committed as follows:

The said *Benjamin J. Moger*
and Mary Munn, both —
late of the City of New York, in the County of New York aforesaid, on the

tenth day of *June,* in the year of our Lord one thousand
eight hundred and ninety —, at the City and County aforesaid,

and detain
did feloniously take one Mamie Munn,
a female of the age of fourteen years,
unlawfully, against her will, with the
intent, to compel her the said Mamie Munn,

0007

by force, menace and duress, to marry
him the said Benjamin J. Moger; against
the form of the Statute in such case made
and provided and against the peace and
dignity of the said People

John R. Hellous

~~Attorney~~

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BOX:

400

FOLDER:

3716

DESCRIPTION:

Moloney, William

DATE:

06/23/90



3716

0009

Witnesses
W. J. McAllister

Counsel,

Filed *23* day of *June* 1890

Pleads, *Not Guilty*

THE PEOPLE

vs.

B

William Moloney

Assault in the First Degree, Etc.
(Sections 217 and 218, Penal Code.)

W. J. McAllister
John R. FELLOWS,
July 1, 1890, District Attorney.

A True Bill.

Charles Haggan Foreman.
July 1, 1890
Spec'd & Committed of
John Haggan
S. J. of *1890* *1890*

0890

Police Court— / District.

City and County { ss.:
of New York, }

Edward McAllister

of No. 52 Oliver Street, aged 29 years,
occupation Master being duly sworn

deposes and says, that on the 16 day of June 1880 at the City of New
York, in the County of New York,

he was violently and feloniously ASSAULTED and BEATEN by

William Mallory (now here)
who cut and stabbed deponent
in the back, with a knife
he held in his hand

with the felonious intent to take the life of deponent, or to do him grievous bodily harm; and without
any justification on the part of the said assailant

Wherefore this deponent prays that the said assailant may be ~~apprehended~~ and bound to answer
for the above assault, etc., and be dealt with according to law.

Sworn to before me, this

17 day
of June 1880

Edward McAllister

John J. Morris Police Justice.

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Sec. 198-200.

CITY AND COUNTY }
OF NEW YORK, } ss.

District Police Court.

William Mallay being duly examined before the undersigned according to law, on the annexed charge; and being informed that it is *his* right to make a statement in relation to the charge against *him*; that the statement is designed to enable *him* if he see fit to answer the charge and explain the facts alleged against *him* that he is at liberty to waive making a statement, and that *his* waiver cannot be used against *him* on the trial.

Question. What is your name?

Answer. *William Mallay*

Question. How old are you?

Answer. *37 years*

Question. Where were you born?

Answer. *United States*

Question. Where do you live, and how long have you resided there?

Answer. *52 Oliver Street 3 months*

Question. What is your business or profession?

Answer. *Laborer*

Question. Give any explanation you may think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation?

Answer. *The complainant seized hold of my Wife by her hair of her head pulling her out of her Room down stairs I interfered and was struck by one of the two men that was in company of the complainant and I saw the complainant I was in danger of being badly beaten*

Wm. Moloney

Taken before me this

day of

June

1890

17

John J. Thompson

Police Justice

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It appearing to me by the within depositions and statements that the crime therein mentioned has been committed, and that there is sufficient cause to believe the within named.....

.....
guilty thereof, I order that he be held to answer the same and he be admitted to bail in the sum of Five Hundred Dollars,..... and be committed to the Warden and Keeper of the City Prison of the City of New York, until he give such bail.

Dated June 17 1890..... Police Justice.

I have admitted the above-named.....
to bail to answer by the undertaking hereto annexed.

Dated..... 18..... Police Justice.

There being no sufficient cause to believe the within named.....
..... guilty of the offence within mentioned. I order he to be discharged.

Dated..... 18..... Police Justice.

0093

BAILED,

No. 1, by Edward Mc Namara

Residence 1318 - 10th Avenue

No. 2, by _____

Residence _____ Street.

No. 3, by _____

Residence _____ Street.

No. 4, by _____

Residence _____ Street.

Police Court---

955 District.

THE PEOPLE &c.,
ON THE COMPLAINT OF

Edward Mc Namara
vs. 52 Oliver

Officer Mallay

2 _____

3 _____

4 _____

Dated June 17 1890

Gorman Magistrate.

Peter D Carter Officer.

4 Precinct.

Witnesses para officii

No. Charles Lane 52 Oliver Street.

Wm Connelly 54 Oliver St.

Annie Crane 52 Oliver St.

No. Dr. Wright 6 Chambers St. Hospital.

Officer Connelly 4th Precinct

No. _____ Street.

\$ 500 to answer

Cam

Attorney

The People
 vs. William Moloney, { Court of General Sessions. Part I
 Before Judge Martine July 1. 1890.
 Indictment for assault in the first degree.
 Edward McAllister sworn. I live at 52 Oliver St.
 and am a waiter on a steamship. I am from
 Cuba a month. On the 16th of June I lived at
 52 Oliver St. I occupied a furnished room in the
 second floor. I do not know the defendant and
 his wife, I have seen his wife; she says she did
 washing one or two days for Mrs. Crane, the lady
 who runs the furnished room house; she lives
 on one floor below. I saw the defendant on the
 16th of June. I saw him going up to his room.
 Before that I was lying in my bed. This was
 between five and six o'clock in the afternoon.
 I heard the cry of murder from the top floor
 and I went up the second time I heard it;
 it was in a woman's voice. Then I got up Mr.
 Moloney's door was open, the door of his room
 is at the head of the stairs; his wife was sitting
 in a chair at the door. I could not see him be-
 cause he was sitting on the bed it seemed;
 the bed is back from the door. As I came in
 it looked as though dishes were broke and tea
 grounds were on the floor. I asked them what
 was the matter. I did not see anybody hurt.
 I told him if he would not stop I would speak
 to the Landlady for them to be put out of the

0895

house. I saw Moloney sitting on the side of the bed. I said, "Is that your wife?" He said, "Yes." That is the only conversation I had with the man in my life. I turned around and went down stairs. I was in my stocking feet at the time. I went into my room to put on my shoes, and in the mean time she had gone down stairs ahead of me. It is quite a long hall and I went out in the hall. There was a trunk at Mrs. Crane's door at the foot of the stairs, and Mrs. Moloney was sitting on the trunk. She made some remark as I went by that I did not pay attention to. I was going out, and I felt a punch in the back (pointing to the place) I felt a blow and did not know I was cut. I turned around and I saw the defendant with a knife in his hand and I ran out of the hall. I don't know that I could tell the knife if I saw it; all I saw was the blade. Mrs. Crane was in her room at the time I saw her. I ran down the stoop into the liquor store next door, and there I felt I was bleeding when I put up my hand. I saw the defendant after that when the officer arrested him in Oak St., about five minutes after. I had no conversation with the defendant at all. An ambulance came in ten or fifteen

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minutes afterwards with the Surgeon. He put four or five stitches in the wound. I went home. I did not go to the Hospital that day, but afterwards went four or five times to the Chamber St. hospital where the wound was dressed every morning. The bandages are still on. I was supposed to go this morning but did not go. I have had no talk since with the defendant. I never struck his wife or pulled her hair or laid a hand on her.

Cross Examined: I have been a waiter on the steamship Santiago. I came home four weeks ago last Friday. I was not known as what is called a "bouncer" at 52 Oliver St. I have heard what a "bouncer" is - a man who is called upon to throw people out in the street. I have not ever thrown people out in the street, but have learned when people insult me to take my own part. I have had fights the same as any boy would have, but I have never had any quarrels at 52 Oliver St. and never put anybody out of there. I never saw the defendant before the 16th of June or his wife; he had no grudge against me. I did not cross the threshold of his door on the afternoon in question. I only went up stairs when I heard the cry of murder. The only conversation I ever had with the defendant was when I asked him was that his wife.

After I was stabbed I went to the station house and I have taken the horse cars to the hospital every day, the Madison St. car go right by the door.

Annie Crane sworn. I live at 52 Oliver St. with my parents, my mother leases the house; we live on the first floor. I know McAllister and Moloney and his wife; they live on the top floor. I recollect the day Mr. McAllister was stabbed. On the 16th of June between five and six o'clock Mr. Moloney and his wife had some words and I heard the cry of murder. I opened the door and stepped into the hall. Mr. Moloney came down, she sat on the trunk by our door. Mr. McAllister a few minutes after walked down and he walked to the front with his hands on his side. Mr. Moloney came running down stairs with a knife in his hand behind him and I halloed to him (McAllister) that he (Moloney) had a knife. McAllister went to turn around but before he had time enough to turn around Mr. Moloney had him stabbed in the back. I saw the knife, the knife now shown me is the one. I did not see McAllister lay his hand on Moloney or his wife; she sat on the trunk

by the door. Mr. Moloney was coming down and McAllister got stabbed; he ran down the stoop and Moloney ran after him again; he says, "I will kill you" to him; he ran after him outside. Moloney ran around Oak St., and that is all I know about it. I know Mr. Connolly; he was not in the house at the time; he was outside. I did not see Moloney after he was arrested. I know Charles Lane, he lives in that house. I had no talk with Moloney afterward. I saw McAllister cut Moloney; he gave him a punch with the knife in the back. I called before he got near him. McAllister went to turn round and he had the knife in him. McAllister ran in the liquor store and Moloney ran around the corner.

Cross Examined. Nobody has spoken to me about this case. I got a summons to come here. I did not appear as a witness in the Police Court at the Tomb. My mother told me to tell nothing only what I saw. McAllister lives in my mother's house now. I asked him in the hall - (for I see him every day -) was his back getting better? He said "a little". That is all the conversation he had with me. I did not express my sorrow. I did not speak to any one about what

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had happened but my mother. I did not tell the officer what I had seen. I don't know how I happened to get summoned. I saw the knife in Moloney's hand. I could not see the handle, but when he struck the stairs I saw the handle. I could not tell you how long Moloney and his wife had been living in that house. I never interfere with any of the tenants up stairs. I think they have been living there three or four months. His wife is a scrubbing woman. I know she goes out to work. I had heard no quarrel between Moloney and McAllister before I saw the stabbing in the hall - only the cry of murder. During the time they lived in that house I never saw them fight together. I have seen Asst. Dist. Atty. Parker in his office, he got my name and address and sent for me. I never saw the man who gave me the summons last night before.

^{you} Mr. Connolly, sworn and examined.

I live at 54 Oliver St., and am a laborer. On the 16th of June I saw Mrs. Moloney running out coming down the stoop after McAllister; it was about half past five o'clock in the evening. He had a knife in his hand; the knife now shown me is the one.

0900

McAllister ran into the liquor store next door. Moloney ran down the street. I went in and saw McAllister. I saw blood on his hand and I saw blood on his back and I saw the cut too. I ran after Moloney and caught him opposite No. 42 Oak St. on the street; he had the knife in his hand. I don't recollect whether it was open or not. I told him to stand and officer Connell came down and I left him in charge of the officer. I don't know anything about what took place in the house at all.

Cross Examined. Annie Crane is not my sister. When I left the liquor store Moloney was turning the corner of Oak and Oliver St. The station house is No. 9 Oak St.; he was going towards Oak St. I told him to stand and he did so. Moloney did not try to stab me during the time I was after him; the policeman was coming up after him. I said to Officer Connell, "I leave him in charge of you, he has stabbed a man round in Oliver St." Moloney did not say anything. From where I stood with Moloney I could see the policeman coming. I do not know whether or not Moloney saw the policeman coming. He did not try to get away; he stood

perfectly still.

Charles Lane sworn and examined. On the 16th of June I lived at 52 Oliver St. and occupied a room with McAllister. I am a ship mate of his. I heard the cry of "murder" from the top floor. I was in the room with him. He went out of the room. I don't know where he went, he came back and put his shoes on. I saw nothing of the occurrence in the hall below. I stayed in my room and looked out of the window. I saw Moloney running down the street and McAllister chasing him. I did not see anything in Moloney's hand. I did not see Moloney caught by Connolly. In the mean time Moloney's wife was Town ahead of McAllister and sat on the trunk. I saw her go down. I held her in the entry with the expectation that some officer would come

Cross Examined. McAllister and I have been shipmates together. I have been in the Court room during the trial, but I could not hear what McAllister said. I would not like to see Moloney sent to prison. I have not spoken to anyone about the case. I went to the Hospital and asked him how he felt. I did not know I was to be a witness until I was subpoenaed. I saw the District Attorney (Parker) in his office and told him about it.

Michael J. Connell, sworn and examined
I am an officer attached to the Fourth precinct
and were so on the 16th day of June. I was
on duty at half past five that afternoon. I ar-
rested the defendant in Oak St. between
James and Oliver Sts; the boy Connolly
had hold of him. I had no talk at all
with the defendant. I asked him where the knife
was. He says, "here it is," handing it to me.
It was closed. I had no more talk with him.
Officer Carter was there at the time. The defend-
ant was searched at the station house;
no other knives were found on him.
It is about a square from 52 Oliver St.
to the place where I arrested him.

Cross Examined. It is probably two squares from
where I arrested him to the station house
on the same street. I cautioned the parties
who were around the defendant. I says, "No
thumping don't lick this man." Mr. Con-
nolly was one of the men. Mr. Larie was
not there; there was a crowd there of
probably fifty persons. I told them not to
thump or strike the defendant and they
did not. The defendant went with me to
the station house; he did not offer any resis-
tance at all. I did not ask him why he
stabbed the complainant; he gave me the
knife.

0903

Peter S. Carter, sworn and examined. I am an officer attached to the Fourth Precinct on special duty. I was going down through Oak St., about the time of the arrest of the defendant. I did not hear any conversation the officer had with him. I went right along to the station house. Officer Connell handed me the knife, he had taken it off the defendant. I had no conversation with the defendant since.

The case for the Defence.

Mary Ann Moloney sworn. I live in 23 Cherry St.; the defendant is my husband; on the 16th of June last I lived at 52 Oliver St. I had been out to my day's work. I cleaned offices in ⁵¹⁵ Broadway; on the 16th of June I came home pretty late after my day's work and went to my room. I had words with my husband. I did not cry "murder." It was only about his not working that I got fighting with him. I got arguing with him. It was so hard for me to be working every day. This man (the complainant) ran up and caught me by the hair of the head and said, "Can I sleep?" I said, "I do not think I am disturbing you." McAllister dragged me down stairs by the hair of the head. The little money that the boss gave me I had in my bosom.

0904

and when he got down he took it out of my bosom. - \$1.50. I had not a place to put myself and my child that night. God knows I am telling the truth. I am not afraid of my husband. It is only my own tongue, that I should keep my tongue still. He could not get work. I used to be tormented to pay my way. I heard what McAllister swore to here. If I was dying this minute, it is God's truth what I have said. I did not see my husband stab McAllister. I was down on the stairs when this occurred. A gang gathered round him to strike him when they had me down. This was between five and six o'clock, it was five o'clock when I left the office. I have never been convicted of any offence.

Cross Examined. My husband had been out of work six months altogether. He used to work for Mr. Morgan, the ice cream man in Centre St. Last year, and he did not do much since. He has not a bad temper, but it was my tongue. I am a hard working woman and have always been industrious. Your husband is a sweet-tempered man, is he? Yes, he is pretty nice, of course he has a temper as well as me. On this day he had been trying to get work, he was looking at an advertisement in the paper. It is

0905

not my husband who starts the quarrels. I started the quarrel on this day. I am not putting all the blame upon myself to save my husband now on trial. McAllister came up - I don't like to make use of the expression he used before a lot of gentlemen - he said, "You bloody son of a b to me; he was on the landing at the time; he caught me by the hair of the head without saying a word to me and he kicked me, so that I was laid up for a week. He stole my money from me too, \$4.50. The crowd then gathered round my husband. I hallooed murder when McAllister caught me by the hair of the head. Lane and the little girl must have made a mistake when they swore that they heard the cry of murder in my room. McAllister also gave me a smash in the face, as well as the other things he did. I was laid up for a week. I did not go to the Hospital. A neighbor let me in that night. I had not a cent to pay my way when my husband was locked up. My poor Annie took convulsions, and I had to stay up with the child. If I had kept my tongue still it would not have occurred. I made

no complaint against McAllister for robbing me. I was not able to stir for a week. I told the lady who let me in that night. I know nothing about the stabbing. McAllister dragged me down two flights of stairs. I suppose my husband stabbed him for doing this to me. My husband was in the room when McAllister first came up; he was sitting on the side of the bed. I was quarrelling with my husband about ten minutes, but no blows were struck. I did not cry "Murder" or anything like that.

William Moloney sworn. I have never been convicted of any crime; the last witness is my wife; on the 16th of June I lived in 52 Oliver St. in this city. I used to work along shore. I had no steady work. I worked five years for Mr. Morgan, the ice cream man. I came home on this evening about a quarter to six o'clock and my wife was sitting at the end of the table, and the room door was open. I had bought the "News", and I was looking over it. She reminded me that tomorrow was the rent day. She says, "you be sure and have the money." I said, "All right; I will fix it with Mrs. Crane." McAllister came in, and he caught my wife by the hair of the head; she landed

at the foot of the stairs before I could hardly realize what happened. The two men who are witnesses against me, I thought of calling them to my assistance - the curly-headed man and Connolly. I always took him to be Mr. Crane's son. I was at the foot of the stairs, I could not tell in the excitement when they were calling me to close the door; the door has a spring lock, and if it was closed I would be laid out. In defence of my wife I did have to pull my knife. I did it with no intention of killing him, because if I had murder in my heart I would not run towards the station house. Before this my wife had some words with me and Mr. Allister came to our room. He took my wife by the hair of the head from the end of the table where she was sitting in the room and flung her down stairs, and he kept dragging her until she screamed. He took her so quick that he was at the foot of the stairs before I could realize what was up. I went for him. I saw that the two young men were inclined to corner me as well as her, to hold me. They said, "we will go for you now. they thought to shut the door. I surely thought

0908

my life was in danger when I pulled the old Knife out of my pocket. I stabbed McAllister. I did not aim any particular place; it seems it caught him in the hip; she was knocked down within two feet of me. I stabbed him. I did not think it was any of his business to meddle with a man's wife. I was struck behind the ear before I was stabbed. Tell the jury that I stabbed McAllister for interfering with my wife - for taking her out of the room and beating her. I saw him kick her the time I stabbed him, but just before that the other fellow struck me a blow (convulsed stood up) that is the fellow who struck me a blow in the neck. Annie Crane was not there at all at the time, she was inside her mother's house. I did not chase McAllister into the liquor saloon. I wanted to go to the police station to report that my wife was in danger, and on the way to the station house I met a police officer. I was locked up five or six days and was bailed out. Since this trouble occurred I have lived at 404 Pearl St. I have attended this Court every time the case was called. I have never been convicted of an offence in the wide world. Since I came out on bail I did not want to have anything to do with those people. My

wife lived at 62 Cherry St. I did not work much until this trial came up.

Cross Examined. I worked along shore, but not steadily.

Some days I work fifteen hours and another day I might not work an hour; that is what I mean by not steady work. Sometimes I take a few glasses of beer and other times none at all. I do not get drunk often. I never did pull my wife with a cotton hook when I was drunk. This whole thing is a put up job to try to send my children and her on the street and put me away. The little girl was not in the hall when she said she saw me stab that man from behind. She could not be on the landing without my seeing her. It is my idea that she is trying to send me to State prison. I heard everything my wife testified to on the stand. I could not get hold of McAllister quick enough when he caught her by the hair of the head. The whole business happened in less than two seconds. Don't you know as matter of fact that it is false that he touched your wife? O, my God, if it is, may I never leave this chair; may God strike me dead on the chair where I sit if that man did

0910

not do as I tell you. She screamed, and everybody in the house seemed to side with him; he is what is commonly called a "bouncer" - his business is to bounce people. I have seen him when I came in late at night from work. Not three weeks ago I saw him and his gang in the rear building beat a man into sensibility; he is a pretty dangerous man. He called my wife some vile names while he was beating her. I don't know what spite he had against her before that. I never spoke a word to him and did not know his name. I was intending to leave there. My wife was not sitting on the trunk, she was lying down. I heard my wife swear on the stand that she was sitting on the trunk when she saw me running out of the house. She was mistaken; she was so excited that she probably did not know what she was saying; she was mistaken in that they were not such fools as to leave the trunk in that hallway. My wife has a little girl going on to seven years of age. I left my wife in the hall with these men to go to report this thing in the station house. I did not run away because I had stabbed the man and wanted to escape. I did not run after McAllister. I did not go to the

0911

door of the saloon where he was. I have heard Connolly and Lane testify to that, but it is false. I did not run out after McAllister at all. I heard the little girl swear so, but it is false. I never told anybody about McAllister stealing the money from my wife's dress. I told nobody about his dragging her by the hair of the head down two flights of stairs until I heard her say so on the stand. I told the Police Magistrate, and he said if he could find my wife he would hear the case at two o'clock. I told the Police Justice that he dragged her down two flights of stairs. My wife was sick from the beating; so she could not attend in the afternoon. I had no intention of hurting the man at all. My wife did not halloo "murder" upstairs and made no row. The complainant came up to our room and without any cause made an attack. The policeman arrested me, and what he testified to on the stand is true. I guess Connolly saw my wife being pulled down stairs by the hair. I am living apart from my wife this last week only. I wanted to get away from the locality of the South ward. My wife is in 52 Cherry St; it is about three or four

0912

blocks. Is it not a fact that you have frequently assaulted and beaten your wife and treated her badly? No sir.

Redirect Examination. I had a lawyer when I was before Justice McMahon. This trouble occurred on the evening of the 16th of June between six and seven o'clock, and I was brought before Justice McMahon the next morning. I had no lawyer there. I was asked certain questions there, and I gave this answer about the occurrence: "The complainant seized hold of my wife by the hair of her head, pulling her out of her room down stairs. I interfered and was struck by one of the two men that was in company of the complainant and I cut the complainant. I was in danger of being badly beaten."

Joseph M. Morgan sworn. I live 382 Broome St. I am in the ice cream business at 213 and 215 Centre St. I know the defendant about six or seven years; he has worked for me four or five summers, but in the winter time I did not have any work for him. Do you know his character for peace and quietness? Yes. What is it, good or bad? I know him to be a hard working honest man. I never saw him have a fight. I do not think he is a fighter. The man has worked for you, from your knowledge of the

0913

man by reason of the fact that he has been working for you this length of time, tell us if you know, what is his general reputation for peace and quietness in that community is it good or bad? It is good.

Cross Examined: By Mr. Parker. Do you know his general reputation for peace and quietness in the community in which he lives? No sir, I do not. You don't know anything about him where he lives or what his reputation is for peace and quietness? No sir; all I know is where he worked for me. You know that he worked for you, never assaulted you or assaulted anybody in your presence or to your knowledge, is not that about it?

Yes sir. He worked all right for you while he worked for you? Yes sir. That is all you can say, is it? That is all.

After a brief absence the jury returned to the court room and rendered a verdict of guilty of assault in the second degree.

Judge Martine sentenced the defendant to imprisonment in the State Prison for the period of four years and six months.

09 14

Testimony in the
case of
Jm. Moloney

filed June

1890

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09 15

Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK,

against

William Moloney

The Grand Jury of the City and County of New York, by this indictment, accuse

William Moloney
of the CRIME OF ASSAULT IN THE FIRST DEGREE, committed as follows:

The said

William Moloney
late of the City of New York, in the County of New York aforesaid, on the
sixteenth day of *June* in the year of our Lord
one thousand eight hundred and *ninety*, with force and arms, at the City and
County aforesaid, in and upon the body of one *Edward McAllister*
in the Peace of the said People then and there being, feloniously did make an assault
and *him* the said *Edward McAllister*
with a certain *knife*

which the said *William Moloney*
in *his* right hand then and there had and held, the same being a deadly and
dangerous weapon, then and there wilfully and feloniously did strike, beat, cut, stab and
wound;

with intent *him*, the said *Edward McAllister*
thereby then and there feloniously and wilfully to kill, against the form of the statute in
such case made and provided, and against the peace of the People of the State of New York
and their dignity.

SECOND COUNT—

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said
William Moloney
of the CRIME OF ASSAULT IN THE SECOND DEGREE, committed as follows:

The said

William Moloney
late of the City and County aforesaid, afterwards, to wit: on the day and in the year
aforesaid, at the City and County aforesaid, with force and arms, in and upon the body of
the said *Edward McAllister* in the peace of
the said People then and there being, feloniously did wilfully and wrongfully make
another assault; *him* the said
Edward McAllister
with a certain *knife*

which the said *William Moloney*
in *his* right hand then and there had and held, the same being a weapon and
an instrument likely to produce grievous bodily harm, then and there feloniously did
wilfully and wrongfully strike, beat, cut, stab and wound, against the form of the statute in
such case made and provided, and against the peace of the People of the State of New York,
and their dignity.

John L. Galloway,
District Attorney