

0436

BOX:

340

FOLDER:

3214

DESCRIPTION:

Baker, Joseph

DATE:

02/21/89



3214

Messages: *Love and Blessings*

David Grubbs

Counsel, *Michael J. Kelly*
 Filed *21* day of *February* 1889

Pleads, *Not guilty*

THE PEOPLE

52.

Grand Larceny *3rd* degree. [Sections 528, 536 — , Penal Code].

JOHN R. FELLOWS, 46

District Attorney.

Plant 12 University of the District of Columbia
Dept. of Biology, 4400 Reservoir Road, N.W., Washington, D.C. 20008

A TRUE BILL

For Rent
10/11/18
Foreman.

Foreman

Mr. March 28.

[illegible]

5

0437

0438

Police Court—

District.

Affidavit—Larceny.

City and County } ss.:
of New York,

3rd
of No. *406 Fifth* Street, aged *31* years,
occupation *Composer* being duly sworn

deposes and says, that on the *5th* day of *February* 188*9* at the City of New
York, in the County of New York, was feloniously taken, stolen and carried away from the possession *and*

person of deponent, in the *night* time, the following property viz:

*Good and lawful money of the
United States to the amount
and value of thirteen (13)
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 *Joseph Baker, now*

*here, for the reasons following,
to wit: That while deponent
sat at a table in a room
in the rear of the liquor saloon
on the south east corner of
the Bowery and First Street, at
about the hour of 3^{1/2} o'clock
on the morning of said day,
the said deponent watched
said money from deponent's
hand and ran out of the
room. That deponent was
counting said money at the
time the deponent seized*

Sworn to before me, this

188*9*

Notary Public.

0439

it and ran away, and when
deponent attempted to follow
the defendant the other men
caught hold of deponent and
prevented deponent from leaving
the room in pursuit of the
defendant.

Sworn to before me this (Lawrence Evans
7th day of February 1889

J. M. Patterson
Police Justice

It appearing to me by the within depositions and statements that the crime herein 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
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 1889
I have admitted the above named
to bail to answer by the undertaking hereto annexed.
Dated 1889
There being no sufficient cause to believe the within named
guilty of the offence within mentioned, I order he to be discharged.
Dated 1889
Police Justice.

Police Court, District,

THE PEOPLE, &c.,
on the complaint of

Offence—LARCENY.

1
2
3
4

Dated 1889

Magistrate.

Officer.

Clerk.

Witnesses,

No.

Street,

No.

Street,

No.

Street,

No.

to answer Sessions.

0440

Sec. 193-200.

3 District Police Court.

CITY AND COUNTY }
OF NEW YORK, } ss.

Joseph Baker being duly examined before the under-
signed 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.

Joseph Baker

Question. How old are you?

Answer.

26 years of age

Question. Where were you born?

Answer.

New York

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

Answer.

300 Borey, 2 months

Question. What is your business or profession?

Answer.

Bar-Tender

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

Josef Baker

Taken before me this

7th

day of *November* 188*9*

John J. McQuinn

Police Justice

0441

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.....

Joseph Baker
guilty thereof, I order that he be held to answer the same and he be admitted to bail in the sum of *Fifteen* 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 *Feb. 10* 188*9* *J. M. Batterson* Police Justice.

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

Dated.....188..... 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.....188..... Police Justice.

0442

BAILED,

No. 1, by _____

Residence _____ Street.

No. 2, by _____

Residence _____ Street.

No. 3, by _____

Residence _____ Street.

No. 4, by _____

Residence _____ Street.

4 216
Police Court--- District.

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Insurance Co.
406 6th St
Joseph Baker

1 _____
2 _____
3 _____
4 _____

Dated February 7 1889

J. M. Patterson Magistrate.

Michael Biser Officer.

14 Precinct.

Witnesses Jacob Bender

No. 96 East 10 Street.

No. 62 7th 8 Street.

No. 27 03rd Street.

No. 97 1st Street.

\$ 1500. to am. G. S.

Comd

0443

The People
vs.
Joseph Baker.

{ Court of General Sessions, Part I.
Before Judge Gildersleeve.

Friday, March 22, 1889.

Indictment for grand larceny.

Lawrence Evers sworn and examined.

I am a compositor on the New York Herald; on the 5th of February last about half past three o'clock in the morning I was in a saloon on the corner of First Street and the Bowery, my friend Bender and I met the defendant at the opposite corner, he made himself acquainted with us, we did not know him at the time, he asked us across the way to take a drink and we went over with him, we were sitting in the back room at a table and after I was there about ten minutes there was a sort of commotion in the back room and Bender left to go to the bar-room but I stayed in the back room, there were several more people in the back room and some of them left and accompanied Bender into the front room. At that time I thought it was not very safe there and so I took thirteen dollars I had in my vest pocket and counted the money and attempted to put it another pocket, in a safer place and just at the very moment I counted it the defendant snatched the money from my hand and made for the front room, I tried to follow him and was knocked down twice by two men whom I did not know and had not seen before. I am quite sure that Baker is the man who took my money, I have not the least doubt of it, there was thirteen dollars in the roll of bills when I counted it.

Cross Examined. I believe the defendant was arrested two days after this occurrence. I went to the

0444

Herald office to draw my money about four o'clock in the afternoon, I did not work that evening, I met Bender in the officer and we started uptown, I am not quite certain as to the hour when we got to First Street and the Bowery, it was between two and four o'clock in the morning, I had no watch with me, After we left the Herald office the first place I stopped in was in Pearl Street, the headquarters of the German Typographical Union, I had three or four beers there with Bender, I remained there about an hour and a half or two hours, we then went to Reimer's hotel 475 Pearl Street, and stayed there with friends about three hours, Bender and I drank beer there, perhaps three or four glasses, we then went in several places where we were acquainted in going up; sometimes we would drink and sometimes take a cigar, I should judge I smoked that night about six or seven cigars and by the time we got to First Street and the Bowery we had taken a quantity of drinks, I admit I was slightly intoxicated but not oblivious. I am a married man, I am not certain whether Bender is or not, I believe we had one or two drinks with Baker, I should judge we remained half an hour with him in the saloon where we first met him and he afterward invited us to go across the street and we went into a saloon on the opposite corner; the defendant was not drunk, I think Langhurst is the name of the proprietor of the saloon, there is an entrance to it on the Bowery and on First Street, we went in on the side entrance to the back room and sat down, I think we had one beer and two women came in there and sat down and spoke to us, I did not invite them to drink but I think they did; they were gone

0445

four or five minutes before I missed the money, I do not think I was in the back room over ten or fifteen minutes; there was no other person in the back room beside these women and Baker and Bender. When I heard the commotion so far as I noticed two or three of the others followed Bender into the front room. During all this time the defendant might have been away for a second or so but he was with me most of the time, I haven't a doubt but he took the money when I was attempted to put it into my fob pocket; when I attempted to leave the room two men assaulted me and knocked me down, I do not know that the Defendant spoke with these two men before he left the room. I had never been in that particular saloon before. I took my money out of my pocket in the vest to put it in my fob pocket after the women had gone out of the room. As near as I can recollect I had taken no more than twelve beers between four o'clock in the afternoon and the time of the occurrence. I had about seventeen dollars when I left the office. Bender was not in the back room at the time the money was taken from me.

Jacob Bender sworn and examined.

I remember having seen the defendant on the morning of the 5th of February, I am a compositor employed in the Herald office, I was accompanying my friend home, he live in Sixth Street and I live further up on Third Avenue; we dropped into a saloon corner of First Street and the Bowery and drank a glass of beer and met Baker there, he became familiar with us and invited us over to the other

0446

corner, we sat down in the back room and some beer was ordered, I don't know who paid for it, I saw there was some trouble brewing and I thought it was time for me to get out and so I got up and left the back room. When I was on the point of leaving the room and got out in the bar-room this defendant sprung before me and tried to induce me to sit down again, tried to push me back towards the back room. Of course he done a little job on me during the time which is probably not in the case, he was trying to get me back, he said, "sit down Pa. it is all right, no wrong, no harm", and as I told him to keep his hands out of my pocket, I told this Baker repeatedly and while I was telling him there was some other men that began to punch me with their fists from the side and from the rear; it did not last long, hardly as long as it does me to tell it and then I was let loose, I went to get out and then the bar-keeper refused to open the door which was locked and I did not go in the back room again, I did not see my friend again until I met him out on the street, I was the first to go out of that door after it was opened, and no one else came out until my friend did, then he told me that he had been robbed also. I left the prisoner behind me in the room, he had been drinking some but he appeared to be knowing what he was doing, Evers drank probably more than I did because I took more cigars, he was not so intoxicated that he could not take care of himself. After I had demanded of the bar-keeper to open the door he said that my friend had broken some glasses in the rear room and the damage must be settled before I could get out. I have known Evers three years or more, he is acquainted with the bar-keeper in the place where we stopped.

0447

before we went into the place where we were robbed. I do not always go home with the complainant, we had never been in the last saloon before but we had been in the first saloon several times before this occurrence. I left the Herlad office with thirty dollars in my pocket, we went down to Pearl Street and into Reimer's hotel and other places, I might have smoked ten cigars, I do not remember exactly how many glasses of beer I took, I was sober enough to remember the incidents of the whole night. There were two women came into the back room while we were there. I had the bar-tender arrested and he was discharged. I was a witness in Part II of the General Sessions last month when this case was tried before. I did not then say anything about the attempt of the prisoner to rob me because I was given no opportunity. After my friend and I got out of the place we met a policeman and gave him notice of the robbery and he insisted upon us going down to the Police Station at the corner of First Avenue and Fifth Street and told us to give the information there.

Joseph Baker sworn and examined in his own behalf, testified: I am twenty-six years old and up to the present charge against me I have never been arrested. I attend bar in the summer time and in the winter I drive a truck. For the last six or seven years I have worked in the summer for Stratten and Henderson, who keep a pavilion on Coney Island and I have worked for Mr. Conklin, truckman, four years, I have also worked for Mr. Alcott, a restaurant keeper, I lived 300 Bowery, I

0448

remember the morning of the 5th of February when I saw the complainant and his friend, on that evening I went to Tony Pastor's and on the corner of First Street and the Bowery I bought a cigar, it was after one o'clock when I met these two gentlemen and one of the gentlemen said to me, how do you do, and we engaged in conversation and one of them asked me to drink and we went across the way, there were four or five men standing talking to the bar-keeper and we went in to the back room and sat down, I got up and went to the urinal and when I came back there were two women sitting in company with these two men, there was five glasses of beer on the table at that time, I saw the tallest one of these gentlemen hugging and kissing one of the women and I got up and walked out about my business, there was no trouble for me to get out of the door, I went home and the next morning went to work, I left the complainant and his friend in the saloon, I did not aid or assist in any larceny or robbery that night of these men.

The ~~next~~ ⁸afternoon I came into the place and the bartender told me there was a detective looking for me, I asked him what the trouble was and he said he would be here at seven o'clock. I said very well, tell him if he comes here before me I will meet him; I met him there at seven o'clock and he did not arrest me. No. 300 Bowery is the Rapid Transit hotel.

Henry Hamburg, the manager of Stratton and Henderson's pavilion testified that the defendant was employed with them for three season and that he found him honest.

William A. Hearn also manager for Mr. Olcott testified to the defendant's good character.

0449

Robert Fair , who is engaged in the horse-shoeing business for eleven years testified that he knew the defendant four years and that his character for honesty was good.

The Jury rendered a verdict of guilty and the defendant was sentenced to the Elmira Reformatory.

Handwritten notes in the left margin, including the word "Horse" and various illegible scribbles.

0450

Testimony in the
case of
Joseph Baker
filed Feb. 1889

0451

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

THE PEOPLE OF THE STATE OF NEW YORK,

against

Joseph Baker

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

Joseph Baker
of the CRIME OF GRAND LARCENY IN THE *first* DEGREE,
committed as follows:

The said

Joseph Baker

late of the City of New York, in the County of New York aforesaid, on the *fifth*
day of *February* in the year of our Lord one thousand eight hundred and
eighty-*nine*, at the City and County aforesaid, with force and arms, in the
night 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 *thirteen*

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 *thirteen*
dollars; divers United States Silver Certificates of a number and denomination to the Grand
Jury aforesaid unknown, of the value of *thirteen*

dollars; divers United States Gold Certificates of a number and denomination to the
Grand Jury aforesaid unknown, of the value of *thirteen*

dollars; divers coins of a number, kind and denomination to the Grand Jury aforesaid
unknown, of the value of *five dollars*

of the goods, chattels and personal property of one *Lawrence Everson*
the person of the said Lawrence Everson then and there being found,
from the person of the said Lawrence Everson
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.*

0452

BOX:

340

FOLDER:

3214

DESCRIPTION:

Barbary, Philip

DATE:

02/06/89



3214

0453

BOX:

340

FOLDER:

3214

DESCRIPTION:

Mazzocki, Frank

DATE:

02/06/89



3214

Witnesses;

David Smith

Counsel,

Filed

Pleaded,

6 day of July 1889

21

THE PEOPLE

vs.

Philip Barbary
and
Frank Maggiori

Burglary in the Third degree.
and Petit Larceny.

[Section 498, 506, 528 & 537.]

JOHN R. FELLOWS,

District Attorney.

A True Bill.

J. P. Robertson
July 6/89 Foreman.

Robert
Pleaded Guilty
Each House of Deputies

0454

0455

Police Court— / District.

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

Albert Cassano

of No. 255 Washington Street, aged 24 years,

occupation Fruit dealer being duly sworn

deposes and says, that the premises No 235 Washington Street,

in the City and County aforesaid, the said being a three story brick

building, the cellar of of which

and which was occupied by deponent as a fruit store

and in which there was at the time a ~~man~~ being, by name

were BURGLARIOUSLY entered by means of forcibly breaking the

hasp and staple used in fastening the

door leading into said cellar removing

the lock and entering said cellar

on the 27th day of January 1889 in the day time, and the

following property feloniously taken, stolen, and carried away, viz:

A quantity of oranges and lemons

of the value twenty five cents

the property of Albert Cassano Sr and in case of deponents

and deponent further says, that he has great cause to believe, and does believe, that the aforesaid

BURGLARY was committed and the aforesaid property taken, stolen, and carried away by

Philip Barbary & Frank Marzocchi

(both now here) who were in company with each other

and acting in concert

for the reasons following, to wit: that on said day the door leading

into said cellar was securely locked and

fastened and said property was therein. That on the

26th January, 1889 deponent securely locked and

fastened the door leading into said

cellar and deponent is informed by

Daniel Smith (now here) that he Smith

saw the defendants in said cellar and

found the door had been broken open

0456

on Sunday 28th January, 1888. Deponent
has since missed said property.

Sworn to before me
this 28th day of January 1888

Albert Casanova.

W. A. Holden

Police Justice

Police Court District.

THE PEOPLE, & c.,
ON THE COMPLAINT OF

vs.

Degree.

Burglary

Dated

188

Magistrate.

Officer.

Clerk.

Witnesses:

Committed in default of \$ Bail.

Bailed by

No.

Street.

0457

CITY AND COUNTY }
OF NEW YORK, } ss.

Daniel Smith
aged 55 years, occupation Watchman of No.

238 Greenwich Street, being duly sworn deposes and
says, that he has heard read the foregoing affidavit of Albert Cassano Jr.
and that the facts stated therein on information of deponent are true of deponents' own
knowledge.

Sworn to before me, this 29
day of January 1888

W. C. Webb

Daniel Smith

Police Justice.

0458

Sec. 198-200.

District Police Court.

CITY AND COUNTY }
OF NEW YORK, } ss.

Philip Barbary 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.

Philip Barbary

Question. How old are you?

Answer.

14 years

Question. Where were you born?

Answer.

Italy

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

Answer.

25 Pell St. 7 years

Question. What is your business or profession?

Answer.

Nothing

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

Answer.

I am not guilty

Philip^{his} Barbary
mark

Taken before me this

28

day of

January 1888

Wm. H. McCall

Police Justice.

0459

Sec. 198-200.

District Police Court.

CITY AND COUNTY }
OF NEW YORK, } ss.

Frank Mazzocchi

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. *Frank Mazzocchi*

Question. How old are you?

Answer. *15 years*

Question. Where were you born?

Answer. *New York*

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

Answer. *23 Pell Street. 8 years*

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 may think will tend to your exculpation?

Answer. *I am not guilty*

Frank Mazzocchi

Taken before me this

28

day of

1888

Wm. J. Justice

Police Justice.

0460

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.....

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

Dated *Jan 28* 188 *9* *Shaw* Police Justice.

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

Dated.....188.....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.....188.....Police Justice.

0461

Police Court---

171 District.

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Alfred Bassano
686 Washington St
Philip Barbary
Frank Mazzoni

Officer *Purgatory*

BAILED,

No. 1, by _____

Residence _____ Street.

No. 2, by _____

Residence _____ Street.

No. 3, by _____

Residence _____ Street.

No. 4, by _____

Residence _____ Street.

3 _____

4 _____

Dated *Jan 28th* 1889

Wilde Magistrate.

Drummond Officer.

2 Precinct.

Witnesses *Samuel Smith*

No. *238 Greenwich* Street.

Charles M. Gardner

No. *100 Bay 2nd* Street.

No. _____ Street.

\$ *1000* to answer _____

Ch *Purgatory*

0462

Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK

Philip Barbary and
Frank Mazzocchi

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

Philip Barbary and Frank Mazzocchi

of the CRIME OF BURGLARY IN THE THIRD DEGREE, committed as follows:

The said

Philip Barbary and
Frank Mazzocchi, both

late of the *Third* - Ward of the City of New York, in the County of
New York, aforesaid, on the *twenty-seventh* day of *January* in the year of
our Lord one thousand eight hundred and eighty-*nine*, with force and arms, at the Ward,
City and County aforesaid, a certain building there situate, to wit: the *store* of one

Albert Cassano, the elder

feloniously and burglariously did break into and enter, with intent to commit some crime therein,
to wit: with intent, the goods, chattels and personal property of the said

Albert Cassano, the elder

in the said *store* then and there being, then and there feloniously and burglariously
to 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.

0463

SECOND COUNT—

AND THE GRAND JURY AFORESAID, by this indictment further accuse the said
Philip Barbary and Frank Mazzocki
of the CRIME OF *Petit* LARCENY committed as follows:

The said *Philip Barbary and Frank Mazzocki*, both
late of the Ward, City and County aforesaid, afterwards, to-wit: on the day and in the year aforesaid,
at the Ward, City and County aforesaid, in the *day*-time of the said day, with force and arms,

*twenty oranges of the value
of one cent each, and
five lemons of the value
of one cent each*

of the goods, chattels and personal property of one *Albert Cassano, the elder*

in the *store* of the said *Albert Cassano, the elder*

there situate, then and there being found, in the *store* aforesaid, 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*

0464

BOX:

340

FOLDER:

3214

DESCRIPTION:

Trudel, Frederick

DATE:

02/15/89



3214

0465

BOX:

340

FOLDER:

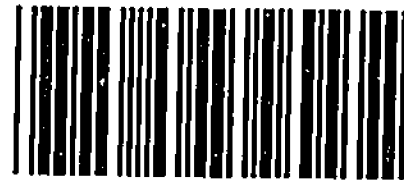
3214

DESCRIPTION:

Barbour, Joseph

DATE:

02/15/89



3214

Witnesses:

John O'Connell
Off. John Carr.

113 J. L. Taylor

Counsel,
Filed 15 day of Feb 1889
Pleads, *Not guilty.*

Grand Larceny Second degree.
[Sections 528, 534 Penal Code].
THE PEOPLE
18 months back
Joseph E. Barbour
18 months back
Sunderland Grindel

JOHN R. FELLOWS,
District Attorney.

A True Bill.

John R. Fellows
Foreman.

Fast II February 1889
But Plead Guilty. 9. R. 2. 1889

See env. - *Chaffin*
Sentenced on another
incarceration — 20

0466

0467

Police Court

District.

Affidavit—Larceny.

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

John O'Connell
of No. 56 West 4th Street, aged 49 years,
occupation Butler being duly sworn
deposes and says, that on the 2nd day of February 1889 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 day time, the following property, viz:

One Overcoat One Mourning
Suit of clothes one Dress Suit of
Clothes one Dress Coat one fancy
vest one Scarf. And one silk
Umbrella.

Together of the value of Seventy
Dollars. (\$70.00)

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 Joseph C. Barbours and

Fredrick Trudel (both now here)
from the fact that on Monday Night
February 4th 1889. Deponent missed
said property from said premises.
Deponent is informed by Augustine Dujin
the keeper of said house. that the said
defendants came together and in company
with each other to her house on the 1st day
of February 1889. And engaged a room
from her, and slept in her house on said
night and at the hour of 7 o'clock Am
February 2nd 1889. they left said premises
together and did not return.
Deponent is further informed by Officer

Sworn to before me this

188

Police Justice.

0468

John Carey of the 16th Precinct Police that the said defendants admitted and confessed to him in the presence and hearing of Officer George Logan of the 16th Precinct Police that they did take said property. and told him the office where they had used a portion of said property. he the officer went to the place designated by the said defendants and there found a pair of pantaloons and a vest. Dependent further says that he has since seen said pair of pantaloons and vest as recovered by said officer and fully identifies them as his property. and charges the said defendants with having feloniously taken stolen and carried away ~~the~~ said property.

Sworn to before me
This 7th day of Feb'y 1889 } John O'Connell

Daniel C. Sullivan
Police Justice

0469

Sec. 108—200.

2 District Police Court.

CITY AND COUNTY } ss.
OF NEW YORK, }

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

Question. What is your name?

Answer.

Question. How old are you?

Answer.

Question. Where were you born?

Answer.

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

Answer.

Question. What is your business or profession?

Answer.

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 guilty of the charge &
Joseph E Barbour

Taken before me this

day of

188

Police Justice.

0470

Sec. 198-200.

CITY AND COUNTY } ss.
OF NEW YORK, }

2 District Police Court.

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

Question. What is your name?

Answer.

Fredrick Trudel

Question. How old are you?

Answer.

17

Question. Where were you born?

Answer.

U.S.

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

Answer.

106 St 1st Ave 2 mos

Question. What is your business or profession?

Answer.

Hall Boy

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
Fred Trudel

Taken before me this
day of *Feb*

188

Police Justice.

0471

CITY AND COUNTY }
OF NEW YORK, } ss.

aged 28 years, occupation Augustine Drignon
House Keeper of No.

50 West 48th

Street, being duly sworn deposes and

says, that he has heard read the foregoing affidavit of

John O'Connell

and that the facts stated therein on information of deponent are true of deponents' own
knowledge.

Sworn to before me, this

day of

February 1893

Augustine Drignon

Samuel C. Berry

Police Justice

0472

CITY AND COUNTY }
OF NEW YORK, } ss.

aged _____ years, occupation John Carey Police Officer of No. _____

16th Precinct Police Street, being duly sworn deposes and

says, that he has heard read the foregoing affidavit of John O'Connell

and that the facts stated therein on information of deponent are true of deponents' own knowledge.

Sworn to before me, this 7

day of July 1889

Sam'l C. Bully

Police Justice.

John Carey

0473

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

Joseph E. Barker and Frederick Muddel

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

Dated *Feb 7* 188*5* *Sam'l C. Smith* Police Justice.

I have admitted the above-named

to bail to answer by the undertaking hereto annexed.

Dated 188 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 188 Police Justice.

0474

BAILED,

No. 1, by _____

Residence _____ Street.

No. 2, by _____

Residence _____ Street.

No. 3, by _____

Residence _____ Street.

No. 4, by _____

Residence _____ Street.

Police Court--- District.

THE PEOPLE, &c.,
ON THE COMPLAINT OF

John O'Connell
50 West 4th
Joseph W. Barban
Frederick Thudal

3. _____
4. _____

Dated Feb 7 1889

Magistrate.

Officer

16 Precinct.

Witnesses Augustin Drujon

No. 50, W. 4th Street.

Basil N. Vassiliades

No. 50 Church Street.

Alex. Madan

No. 204 E. 1st St. Street.

Alex. P. Mills 204 E 2nd St.

\$ 15000 to answer

Can

95

0475

Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK,

against

Joseph E. Barbour
and
Frederick Trudel

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

Joseph E. Barbour and Frederick Trudel
of the CRIME OF GRAND LARCENY IN THE second DEGREE, committed
as follows:

The said

Joseph E. Barbour and
Frederick Trudel, both
late of the City of New York, in the County of New York aforesaid, on the
day of February in the year of our Lord one thousand eight hundred and
eighty-nine, at the City and County aforesaid, with force and arms,
one overcoat of the value of
fifteen dollars, one coat of
the value of eight dollars, one
vest of the value of two dollars, one
pair of trousers of the value of five
dollars, one other coat of the value
of fifteen dollars, one other
vest of the value of three dollars, one pair of trousers
of the value of seven dollars, one other coat
of the value of twelve dollars, one other vest
of the value of three dollars, one scarf of
the value of fifty cents, and one umbrella
of the value of three dollars
of the goods, chattels and personal property of one

John O'Connell

then and there being found, 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.

0476

SECOND COUNT—

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said

Joseph E. Barbour and Frederick Trudel
of the CRIME OF CRIMINALLY RECEIVING STOLEN PROPERTY committed as follows:

The said *Joseph E. Barbour, and Frederick Trudel*, both 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, one overcoat of the value of fifteen dollars, one coat of the value of eight dollars, one vest of the value of two dollars, and one pair of trousers of the value of five dollars, one other coat of the value of fifteen dollars, one ^{other} vest of the value of three dollars, one other pair of trousers of the value of seven dollars, one other coat of the value of twelve dollars, one other vest of the value of three dollars, one scarf of the value of fifty cents, and one umbrella of the value of three dollars — of the goods, chattels and personal property of one *John O'Connell*

by a certain person or persons to the Grand Jury aforesaid unknown, then lately before feloniously stolen, taken and carried away from the said *John O'Connell*

unlawfully and unjustly, did feloniously receive and have; the said *Joseph E. Barbour and Frederick Trudel*

then and there well knowing the said goods, chattels and personal property to have been feloniously stolen, taken and carried 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.

0477

BOX:

340

FOLDER:

3214

DESCRIPTION:

Barbour, Joseph

DATE:

02/18/89



3214

0478

BOX:

340

FOLDER:

3214

DESCRIPTION:

Trudel, Frederick

DATE:

02/18/89



3214

Witnesses:

Off John Carey

~~Off John Carey~~

Counsel,

Filed

day of

188

Pleads

THE PEOPLE

vs.

Joseph E. Barbour
(2 cases)

and

Frederick Tindal
(2 cases)

JOHN R. FELLOWS,

District Attorney.

A True Bill.

John R. Barbour
Foreman

July 10/89

John R. Barbour
Foreman

July 20/89

0479

0480

Police Court

District.

Affidavit—Larceny.

City and County } ss.:
of New York,

of No. 45 East 20th Street, aged 28 years,
 occupation Teacher of music being duly sworn
 deposes and says, that on the 21st day of January 1889 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 day time, the following property, viz:

Two full suits of clothes. one coat
two vests one pair of pantaloons and
one umbrella. together of the value of
seventy five dollars

(\$75.00)

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 Joseph E. Barbour. and
Fredrick Trudel. (both now here)

from the fact that on the 19th day of
January 1889 the said defendants came
together and in company with each other
came to the above mentioned premises and
hired a furnished room. and on Monday
Morning January 21st 1889 at about
the hour of 8 o'clock they left, and in
about thirty minutes after they left
said premises, deponent discovered that
said property was missing.
Deponent is informed by Officer John
Carey of the 16th Precinct Police. that on
the 5th day of February 1889 he arrested the said

Sworn to before me this 21st day of January 1889

Police Justice

0481

defendants together in a house on West 21st St. on suspicion of having committed a larceny. and that when he the Officer searched the said defendants he found in the possession of Barbours a pawn ticket representing a suit of clothes. which had been pawned in the pawn office of John Simpson at no 175 Bway on the 21st day of January 1889. and that the said defendants admitted and confessed to him the said Officer in the presence and hearing of Officer George Logan. of the 16th Precinct Police that they had taken said property from the premises no 45 East 20th St.

Deponent further says that he has since seen said suit of clothes. so represented by said pawn ticket which was found in the possession of Barbours and fully and positively identified said suit of clothes as his property.

Wherefore deponent charges the said defendants with being together and acting in concert with each other and feloniously taking stealing and carrying away said property.

Sworn to before me } Arthur D. Mayo
this 7th day of February 1889 }

Sam'l A. Bull
Police Justice

0482

CITY AND COUNTY }
OF NEW YORK, } ss.

aged _____ years, occupation John Carey Police Officer of No. 101

101 Street, being duly sworn deposes and says, that he has heard read the foregoing affidavit of Arthur D. Mayo and that the facts stated therein on information of deponent are true of deponents' own knowledge.

Sworn to before me, this

day of July 1887

Sam'l C. Bailey

Police Justice

John Carey

0483

Sec. 198-200.

21 District Police Court.

CITY AND COUNTY OF NEW YORK, ss.

Fredrick Rudel

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.

Fredrick Rudel

Question. How old are you?

Answer.

17 years old

Question. Where were you born?

Answer.

Chicago Ill.

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

Answer.

106th St Cor. 1st Ave. Mrs

Question. What is your business or profession?

Answer.

Hall boy

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
Fred Rudel.*

Taken before me this
day of July 1889

Police Justice.

0484

Sec. 198—200.

2 District Police Court.

CITY AND COUNTY OF NEW YORK, ss.

Joseph E. Barbour 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.

Question. How old are you?

Answer.

Question. Where were you born?

Answer.

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

Answer.

Question. What is your business or profession?

Answer.

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 guilty
Joseph E. Barbour

Taken before me this

day of

188

John J. Sullivan Police Justice.

0485

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

Joseph E. Barbour and Frederick Pudel

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

Dated *Feb 7* 188 *9* *Sanicelli* Police Justice.

I have admitted the above-named

to bail to answer by the undertaking hereto annexed.

Dated 188 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 188 Police Justice.

0486

BAILED,

No. 1, by _____

Residence _____ Street.

No. 2, by _____

Residence _____ Street.

No. 3, by _____

Residence _____ Street.

No. 4, by _____

Residence _____ Street.

Police Court--- 2216 District.

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Arthur D. Mayo

vs.

Joseph E. Barboon
Frederick Smad

3.

4.

offense

Lawrence (Belmont)

Dated

Feb 7

188

Magistrate.

Carey and Logan

Officer.

Precinct.

Witnesses

Off John Carey

No.

16th Precinct

Street.

Basil D. Vassiliadis

No.

16th Precinct

Street.

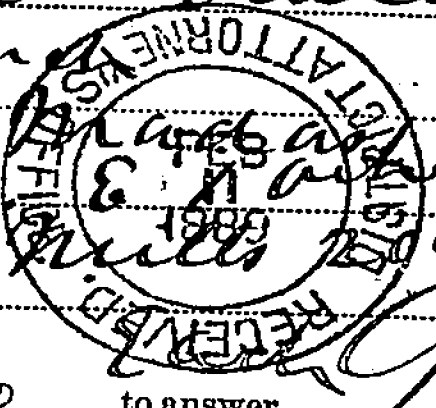
No.

Alex D. Smith

Street.

\$ 15.00

to answer



Carey

0487

Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK,

against
Joseph E. Barbour
and
Frederick Trudel

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

Joseph E. Barbour and Frederick Trudel
of the CRIME OF GRAND LARCENY IN THE *second* DEGREE, committed
as follows:

The said *Joseph E. Barbour and*
Frederick Trudel, both
late of the City of New York, in the County of New York aforesaid, on the *twenty-first*
day of *January* in the year of our Lord one thousand eight hundred and
eighty-nine, at the City and County aforesaid, with force and arms,
two coats of the value of
twelve dollars each, two
vests of the value of five
dollars, each, two pair of trousers
of the value of seven dollars
each pair, one other coat of the
value of ten dollars, two other
vests of the value of three dollars
each, and one other pair of trousers of
the value of seven dollars, and one um-
brella of the value of five dollars
of the goods, chattels and personal property of one *Arthur D. Mayo*

then and there being found, 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.

0488

SECOND COUNT—

AND THE GRAND JURY AFORESAID, by this indictment, further accuse the said

Joseph E. Barbour and Frederick Trudel
of the CRIME OF CRIMINALLY RECEIVING STOLEN PROPERTY committed as follows:

The said

*Joseph E. Barbour, and
Frederick Trudel, both*

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,

*two coats of the value of
twelve dollars each, two
vests of the value of five
dollars each, two pairs of
trousers of the value of seven
dollars each pair, one other
coat of the value of ten dol-
lars, two other vests of the
value of three dollars each, one
other pair of trousers of the value
of seven dollars, and one umbrella
of the value of five dollars*
of the goods, chattels and personal property of one *Arthur D. Mayo*

by a certain person or persons to the Grand Jury aforesaid unknown, then lately before
feloniously stolen, taken and carried away from the said

Arthur D. Mayo

unlawfully and unjustly, did feloniously receive and have; the said

*Joseph E.
Barbour and Frederick Trudel*

then and there well knowing the said goods, chattels and personal property to have been
feloniously stolen, taken and carried 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.

0489

BOX:

340

FOLDER:

3214

DESCRIPTION:

Barnes, James

DATE:

02/06/89



3214

Witnesses:

J. W. Burch
D. J. Mahan
E. Morris

On the 23rd inst. and
James Barnes
indict. ready show
that the transaction
was one of a private sale
of the complainant to
the defendant or the
proceeding of a criminal
is accused of a crime
and that the only proper
remedy against
defendant in my mind
action for breach of
contract. I recommend
that this indictment be
dismissed.

There is an entire
absence of proof to
sustain the allegation
of the indictment.
Just. Burch
and 15/89
D. J. Mahan
E. Morris

Counsel,

Filed

Pleas,

day of

1889

THE PEOPLE

vs.

NA

James Barnes

JOHN R. FELLOWS,

District Attorney.

A True Bill.

For Robert
Foreman.
On account of that
Atty. indict. dis.
R.B.H.

(Sections 528 and 580 of the Penal Code.)
Larceny, (MISAPPROPRIATION.)

0490

0491

Blandy & Hatch,
Counsellors at Law,
55 Liberty Street,

Charles Blandy,
Edward L. Hatch,

New York

188

which he desired to make.

If I were driven to the point of trial I should admit every fact that could be testified to by all the witnesses for the prosecution, and shall rely upon the simple circumstances that the articles are removed from the boat under a right vested in us by the express request of Mr. Blunt, and the subsequent pawning of the articles amounted to no more than what is done in the street every day, namely: rehypothecation, which was a mere improper dealing on the part of a bailee with the property, and while it might amount to a conversion it certainly could not be construed into a criminal act.

I beg to call your attention to the Judge's charge which will be found on pages 36, 37 and 38.

You will see by that, that Mr. Blunt denied that in the interview with the defendant when he received \$10 for laying up the boat that he had authorized the defendant to exercise a supervision over the boat, but that question was submitted to the jury under the charge of the Court, and the jury has found a verdict in favor of the defendant.

You will also observe by looking at folio 50, that Mr. Blunt, on cross-examination, substantially admitted the truth of our position, but tried to wriggle out of it in a way which is very evident by perusal.

If, after looking at this case and the question as I presented it to you, namely: that the same matter has been once tried in the civil action, you still insist that we submit ourselves to trial we will do so, but it strikes me that you will be serving the interests of all parties by ordering a dismissal of the indictment.

Very truly yours,

Charles Blandy
per ME

0492

Entd

Blandy & Hatch,
Counsellors at Law,
55 Liberty Street,

Charles Blandy,
Edward L. Hatch,

New York April 5, 1887.

Hon. Randolph B. Martine,

People in re Elmer Barrett,

Dear sir:-

I have had occasion to speak to you about this prosecution heretofore, and now when the case is upon the calendar for trial I think it but proper that your attention should be called to the fact that all the questions involved in the criminal prosecution have already been disposed of in the trial of the civil action, and when you know this, and know that the prosecution of the case rests entirely with you, the complainant having no desire to proceed with it, I think that you will direct that the indictment be dismissed without further anxiety to the boy's parents.

I take the liberty of sending you a printed copy of the case on appeal in the civil action. You will observe, by looking at folios 61, 63, 65 and 67, that after the boat was laid up by the defendant, he notified Mr. Blunt of that fact. Mr. Blunt paid him \$10 for his services in laying up the boat, and then requested the defendant to take the portable articles out of the boat to his house, and at the same time to look after the boat during the time she was laid up in these winter quarters, and later on, each time the defendant called upon Mr. Blunt, he inquired concerning the boat and finally the defendant testified that he took the articles off the boat because he was directed by Mr. Blunt to do so.

The indictment is predicated upon the taking from the boat of an oil lubricator and gauge. These articles were taken off the boat in pursuance of the request of Mr. Blunt to the defendant to do so, and they were deposited in his father's house and there remained for four days, when the boy's necessities drove him to pawning them, which he did for the miserable sum of \$2.

Whatever there was wrong on the part of the boy is confined to the act of pawning.

When the boat sunk Mr. Blunt charged the defendant with stealing the boat, which was a most ridiculous charge, and on which the defendant was at once discharged, and as soon as that charge was brought against the boy he attempted to redeem the lubricator and gauge for the purpose of putting them back in his father's house, but Mr. Blunt had put a stop ticket on them, and he was thus prevented by the act of complainant, making the redress

0493

N. Y. SUPERIOR COURT,

CITY AND COUNTY OF NEW YORK,

GENERAL TERM.

Edmund Blunt,

Appellant,

against

Elmer Barrett,

Respondent.

CASE ON APPEAL.

HENRY J. SCHENCK,

Attorney for Plaintiff and Appellant,

No. 97 Nassau St., N. Y.

CHARLES BLANDY,

Attorney for Defendant and Respondent,

No. 55 Liberty St., N. Y.

NEW YORK.
THE ADAMS PRESS, 55 DEY STREET.
1887.

0494

SUPERIOR COURT²
OF THE CITY OF NEW YORK.

EDMUND BLUNT

vs.

ELMER BARRETT.

3

Suit was commenced February 24, 1885.
Complaint was served February 24, 1885.
Answer was served March 12, 1885.
There has been no change of parties..

4

0495

2
5
SUPERIOR COURT
OF THE CITY OF NEW YORK.

6
EDMUND BLUNT
against
ELMER BARRETT.
Summons with
Notice.

To the above named Defendant :

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the Plaintiff's Attorney within twenty days after the service of this summons, exclusive of the day of service ; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated February 7th, 1885.

HENRY J. SCHENCK,
Plaintiff's Attorney.

Office and Post Office address,
No. 97 Nassau street,
New York City.

8

3
9
SUPERIOR COURT
OF THE CITY OF NEW YORK.

EDMUND BLUNT
against
ELMER BARRETT.

The complaint of the Plaintiff respectfully shows to the Court :

1st. That at all the times hereinafter mentioned the plaintiff was and still is the owner of the steam yacht named "Mascotte."

2d. That about the middle of December, 1884, the plaintiff having ceased using the said yacht for the season, employed the defendant to take the said yacht to a suitable place where she would be above high water mark and put her in winter quarters ; and that thereafter, and on or about the 20th of December, 1884, the defendant reported to and informed plaintiff that he had taken said yacht to the Knickerbocker Club Grounds at Port Morris, in the County of Westchester, had drawn her above high water mark and placed her in winter quarters, and that for such services the plaintiff paid to the defendant, and the defendant accepted, the sum of ten dollars.

3d. Upon information and belief that the defendant did take the said yacht in the neighborhood of the Knickerbocker Club Grounds, but that he did not draw her above high water mark.

4th. That on or about the 15th of January, 1885, the defendant wrongfully took the said yacht from the said basin and carried her to the foot of East One Hundred and Nineteenth street, in the city of New York ; that there he attached the said yacht to a buoy, where she was subjected to the rising and falling of the tide and exposed to danger from swamping, col-

11

12

0496

4

13 lision and otherwise, on part of other vessels, and that subsequently the said yacht was sunk.

5th. Upon information and belief, that at the time of such wrongful taking the defendant resided and still resides in the vicinity of East One Hundred and Nineteenth street, in the city of New York, to which place he wrongfully took the said yacht, as above set forth, and that he removed her as aforesaid for the purpose of using, and that he did wrongfully use her at and from said place until she sunk, as before alleged.

14 6th. That immediately before the said yacht sunk, as aforesaid, she was of the value of two thousand dollars, but that by reason of such sinking her value has been reduced to five hundred dollars; and that, in addition to this, the plaintiff has incurred expense in raising the said yacht.

7th. That by reason of the premises the plaintiff has been damaged in the sum of fifteen hundred dollars.

15 Wherefore, the plaintiff demands judgment against the defendant for the said sum of fifteen hundred dollars, besides the cost of this action.

HENRY J. SCHENCK,
Attorney for Plaintiff,
97 Nassau street,
New York City.

City and County of New York, ss.:

16 Edmund Blunt, being duly sworn, says, that he is the plaintiff herein, and that the foregoing complaint is true to the knowledge of deponent, except as to those matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

EDMUND BLUNT.

Sworn to before me this }
7th day of February, 1885. }

EDWARD CROMWELL,
Notary Public,
Queens Co.

5

SUPERIOR COURT

OF THE CITY OF NEW YORK.

17

EDMUND BLUNT,

Plaintiff,

against

ELMER BARRETT,

Defendant.

18

The defendant, by Charles Blandy, his attorney, answering the complaint herein, respectfully shows to the Court.

First. He admits the matters and things alleged in the first paragraph thereof.

Second. Of the matters and things alleged in the 19 second paragraph of said complaint, he admits "that on or about the 20th of December, 1884, the defendant reported to, and informed plaintiff that he had taken said yacht into the neighborhood of the Knickerbocker Club Grounds at Fort Morris."

Also, "and that for such services the plaintiff paid to defendant, and the defendant accepted the sum of ten dollars."

He denies each and every other matter and thing alleged in said paragraph, 2nd of said complaint. 20

Third. He admits that he took said yacht in the neighborhood of the Knickerbocker Club Grounds.

And he avers that in so placing said yacht he laid her up in the place and manner in which said yachts usually are laid up under similar circumstances and according to his best judgment and ability in that regard.

21 *Fourth.* He admits that on or about the 13th of January, 1885, he removed said yacht from the said Knickerbocker yacht Grounds to the foot of 119th street, and there anchored her and attached her to a buoy where she was subjected to the rising and falling of the tide, and that she subsequently sunk.

22 But defendant denies that he wrongfully took said yacht, or that she was exposed to danger from swamping, collision, and otherwise, on the part of other vessels in the ordinary course of events as was reasonably to be expected.

23 But on the contrary this defendant avers that he had good right and it was a part of his duty towards plaintiff as the custodian of said yacht, to remove said yacht to some safe, convenient place, during nonuser by the plaintiff, and that he removed her from said Knickerbocker Grounds to the foot of 119th street, because she was in danger of being injured by the elements while there, and was in fact, partially injured and that in such removal and in placing her at the foot of 119th street, he used his best, honest judgment in that regard, and anchored her in the usual and ordinary manner in that regard until such times as he could place her in more suitable quarters, and that in so placing her at the foot of 119th street, he had no reason to anticipate in the ordinary course of events that any harm would come to her; and he further avers that the subsequent sinking was an unlooked for and an unusual, and an unexpected circumstances and was due entirely to the elements and not to any fault or wrong on defendant's part.

24 *Fifth.* He denies the matters and things alleged in paragraph 5th of said complaint.

Sixth. He denies the matters and things alleged in paragraph 6th of said complaint.

Seventh. He denies the matters and things in paragraph 7th of said complaint.

Eighth. Defendant denies any knowledge or information sufficient to form a belief as to the other matters and things alleged in said complaint.

Wherefore, the defendant demands that the complaint be dismissed with costs. 25

CHARLES BLANDY,
Defendant's Attorney,
229 Broadway, New York.

City and County of } ss.:
New York.

ELMER BARRETT, the defendant, being duly sworn, 26
says, that he has read the foregoing complaint and knows the contents thereof; that the same is true to the knowledge of the deponent except the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

ELMER BARRETT

Sworn to before me, this 11th }
day of March, 1885.

R. W. Todd,
Notary Public,
N. Y. Co. 27

SUPERIOR COURT.

OF THE CITY OF NEW YORK.

EDMUND BLUNT,

against

ELMER BARRETT.

30 This cause was tried on the 15th and 16th of March 1886, before Mr. Justice Friedman and a jury.

Appearances:

Mr. HENRY J. SCHENCK, for plaintiff.

Mr. CHARLES BLANDY, for defendant.

EDMUND BLUNT, being duly sworn, testified as follows:

31 EXAMINED BY MR. SCHENCK:

I am the plaintiff. I know the defendant. The defendant, at one time, was in my employ, with relation to the management of this boat. He had charge of the boat when I was not there and looked after it. I understood he was an engineer at the time. I am an engineer, duly licensed by the United States Government, and I was an engineer at the times mentioned in the complaint. I ran his boat as engineer. The boat was a steam yacht, a little over forty-one feet long with cabin over all; horizontal boiler, engine and all complete; life preservers, lights, tools, flags and everything—cushions and everything complete.

32 It was in good order and thoroughly equipped as a steam pleasure yacht.

I employed the defendant on October 12, 1884.

When we went out on trips he ran the engine. When we did not go out he kept the boat in order

put up lights at night and took general charge of her. 33

I was captain of my boat when I was on board; at the same time he attended to the engine and boiler as fireman and engineer. I hadn't paid defendant wages up to the time I fully discharged him because I had no use for the boat the latter part of the season; but sometime in the latter part of December, 1884, I sent for him and paid him off in full for laying up the boat; then I considered that he was fully discharged without anything to do with the boat.

I sent a telegram to Mr. Barrett with regard to this boat on the 19th of December, 1884. This is a copy of the telegram. I had some time before that time stopped using the boat for the season. 34

Said telegram is read in evidence without objection and marked Plaintiff's Exhibit No. 1 of this date. It is as follows:

Dec. 19, 1884.

"ELMER BARRETT—S. YACHT MASCOTT.

Foot E. 120th St., N. Y. City. 35

Put boat up at Johnson's for winter at once and be at office Monday.

E. BLUNT."

I next saw Mr. Barrett on the following Monday at my office in Maiden Lane. He came down to report that he could not lay the boat up at Johnson's but that he had taken it to the Knickerbocker Club, which was a better and safer place. I then asked him, "Did you haul the boat up above high water mark? And he said he had. I also asked him how he did it. He said they had a tackle there which they let him use, and the boat was then hauled up above high water mark and there was a watchman there who would look after it during the winter. I then paid him \$10.00 and he went away. I asked him what he had done with the tools on the boat and he said he had taken them to his house for safe keeping. The Knickerbocker Club Grounds were at Port Morris in Westchester County. I have been informed and always un-

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37. derstood it was a place for laying up yachts. I was perfectly satisfied with that arrangement from his description of the place. I next heard that my yacht had got adrift by a high tide and had been found on the rocks near Hell Gate somewhere; two men had towed her back to the foot of 118th street where she sank. I sent up there—I first telegraphed. These men who were down said "Mr. Barrett is not in town himself; he is east working." I didn't believe it and 38 I telegraphed Mr. Barrett asking him if it was true that my yacht had sunk. Receiving no answer I then sent a man up. I think I sent this telegram about the 22d or 23d of January, 1885. The wording of that telegram, as I remember it, was this: "I understand my boat has sunk at 118th street, is it true," or words to that effect. I sent this telegram to Mr. Barrett, the one who had charge of my boat. No reply was received. I sent a man up immediately that night. I did not go myself until several days afterwards. I had the boat raised. When I saw her, she 39 was laying off 118th street. All I could see was about the stack of the boat when I first went up there. She was off 118th or 119th street near Randall's Island. I think the smoke stack was about all I could see, I may have been able to see a little of the pilot house. I saw the boat after she had been entirely raised. She was thoroughly wrecked, a hole knocked in her bow; bulwarks gone; nothing seemed to be left on board the boat; lights all gone and the hold filled in with ice and water, the inside of the boat. I could not 40 see any tools on board she was full of ice.

- Q. What was the value of this boat before she sank?
A. It was worth considerably over \$1,500.
Q. I ask the value?
A. She was worth \$2,000.
Q. I ask the market value.
A. Well, over \$2,000.
Q. And what was her value after she was sunk?
A. Well, nothing; the bulwarks were destroyed and

the hull of the boat was destroyed; all that was left 41 was the engine and boiler and that was good for nothing. They were injured by the water. The boat was worthless except to sell as old material. When I saw the boat after she had been raised, there was no steam gauge on board. There had been a steam gauge on it which was attached to the boiler. There was an oil cup attached to the cylinder. When the boat was raised, the oil cup was not on board when I went on board. The steam gauge and the oil cup were worth \$30 or or \$40. They were firmly secured to the machinery. 42 The material of this oil cup was brass. Thereafter I had a conversation with the defendant with regard to the oil cup and steam gauge. The whole conversation was about what had become of them and he admitted having taken them and pawned them or said he had taken them off and pawned them.

He said in my presence and hearing that he had. He said he had removed the oil cup and steam gauge from the machinery and afterwards pawned them. He said he did this before he had removed the boat from Port Morris. I don't know where the tools are 43 gone. I never got them back. I have heard defendant say he removed the boat from Port Morris to the foot of 118th street. He said this after she was sunk off 118th street in this city. It is a very dangerous place to leave a boat in Winter when the ice is going and no one on board to take charge. I heard Mr. Barrett say after he had removed the boat that he had not been on board after her removal. I heard him say that he had not put any lights on her at 44 night. I heard him say that he had put the boat at the foot of 118th street and there left her without lights, and that she remained there some days and sank. The foot of 118th street was a bad place for the boat, because in winter we are apt to have a great deal of ice floating, and a small boat is apt to get adrift, and may stove a hole in her side. Right alongside there is a lot of rocks, and there are passing boats and passing steamers constantly there. The

45 danger which a boat would incur anchored in that spot in winter is, that she may be run into by other boats. She may drag her anchor and go ashore right by Randall's Island on the rocks, and she may be sunk by the ice.

Cross-examination by Mr. BLANDY:

My business is paints and oils, at 151 Maiden Lane, in this city. I had owned this yacht since about June 1884. I did not buy her new. I bought her in 46 Syracuse for \$800. I ceased using her as a pleasure craft some time in December. I think it was about the first. I went up to Whitestone the last time I used her. The telegram to lay the boat up was afterward on the 19th. From the first to the 19th, the boat was in charge of defendant. I told defendant that he must look out for the boat for me, and once I gave him permission two or three times to take a party of gentlemen out in her. He was not with my permission 47 using her for his own purposes altogether from the first of December to 19th. Only on specified occasions. She was not laid up and her fires were not kept going to my knowledge. I can't tell where she was laid up during those 19 days. I may have seen her once or twice during the 19 days. I saw her at 118th or 119th street. That is at about the point where she sunk. During that period, from the 1st to the 19th, I suppose the boat was used by defendant once for a certain purpose. That purpose was to 48 take a party of gentlemen out shooting. I gave him permission, if they were a responsible party, to take them out and take care of the boat, and what money they paid him he could keep. I did not give Elmer permission to use that boat in any way he might feel disposed to use her during the period from the 1st to the 19th.

From the time I sent this telegram to Elmer, on the 19th of December, up to the time he called on me, I had not seen him nor communicated with him. The

next communication he made to me was that he had 49 laid the boat up at the Knickerbocker Grounds. He said that Johnson wouldn't take it. When Elmer reported to me that the boat had been laid up at the Knickerbocker Grounds, the man who claims to have assisted him in laying it up there was present.

Q. Now, on your direct evidence didn't you say in answer to one of Mr. Schenck's questions, that you sent the telegram to Elmer as soon as you had heard the boat was sunk because he had charge of the boat? 50

A. Because he had charge—had had charge of laying up the boat?

Q. Didn't you say because he had charge of the boat?

A. No.

Q. Didn't you say because he was in charge of the boat?

A. No. If I did it was wrong on my part.

At the request of counsel the stenographer read from his notes, taken on direct examination, as follows: "And you sent that 51" (referring to the telegram) to whom? A. "Mr. Barrett the one who had charge of my "boat?"

Q. I ask you again: having heard it read by the stenographer, if you did not say you sent the telegram of the 23d of January to Mr. Barrett because he had charge of your boat?

A. No, sir; I said he had charge, not he was in charge. The language should have been, he had had 52 charge. I did not suggest to Elmer, when I paid him \$10, that I thought it would be advisable to hip out the boat, which meant the widening of the upper seams. I did not, to my knowledge, tell defendant to see some builders in the neighborhood of where the boat lay and get estimates towards the hiping of the boat. I did not at the time defendant reported to me that she was laying up at the Knickerbocker Grounds,

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53 tell him to see to her. He had no further right to do anything in connection with the boat; the name of this craft was the "Mascott."

Re-direct Examination by Mr. SCHENCK:

A. Up to the time that I ordered this boat to be laid up, she was, as I understand it, at the foot of 119th street, with the exception of that time I gave him permission to take the party of gentlemen out. So far as 54 I know lights were kept on board at night; the law requires lights to be kept on board. I stopped actively using this boat about the first of December, I think it was, and possibly a little earlier. I decided about the 19th to put her in Winter quarters, and not leave her any longer; because I thought it would be dangerous there. After Mr. Barrett reported to me that he had taken this boat to the Knickerbocker Club grounds, and I paid him \$10 for that service, he did not call upon me. I did not hire Mr. Barrett to look after my yacht when she was in winter quarters; if I 55 had I would have employed him, or given him something to do. From what I have heard, I should judge that Port Morris is about a mile or two miles from where the boat was taken to where she sunk. Tools are loose things for tightening nuts, screwing up pipes and doing repairs about the boat. This oil cup was screwed fast to the cylinder of the engine, and the steam gauge was screwed to the boiler. The defendant has not returned to me any of these tools, excepting the flags.

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Plaintiff rests.

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ELMER BARRETT, defendant, sworn:

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Direct Examination by Mr. BLANDY:

I am the defendant. On the 19th of December, 1884, I got a telegraph to lay the boat up at Mr. Johnson's; I went to see Mr. Johnson on the following morning, showed him the telegram that I had received from Mr. Blunt, and he said to his partner, Mr. Ellis, that he didn't know what to make of it; that he didn't authorize any Mr. Blunt to lay his boat up in his yard; 58 but knowing me so many years he said that I could lay her there if I could build the structure to pull her up over the wall, that his own boat lay on his own cradle, and we walked out in the yard, he said, "You can put your boat there if you want to; but it will cost more than the boat is worth to build the structure to raise her up." I then said, I would take the boat and pull her along side of the Sirene along the Swamp. I went there and made an arrangement with a friend of mine to come, and we went on the 20th of December, Saturday, I believe it was a Saturday; I then went over 59 and took the boat and pulled her out alongside of the Sirene and pushed her nose up on the Swamp, and staked her off with three stakes—drove two stakes on the starboard side of her, and I fastened her on two stakes that Mr. Neale had drove to hold his boat; he had four stakes there, and so it was not necessary for me to drive the other two; so I drove two on the starboard side, and fastened on the stakes that Mr. Neale had and on my own stakes that I drove, and then fastened the stays forward; then I left the boat and went to Mr. Blunt's office. I towed the boat to this place with a row-boat. The place in which I put her was not above high water mark. It was a place where yachts of all sizes were ordinarily laid up for the Winter, if they didn't have the structure to pull them up. The land is nothing but sea-grass and marsh there. She was on a line with the Sirene. I went to Mr. Blunt's office with Mr. Moler, and I asked if Mr. 60

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61 Blunt was in and they said not; that Mr. Blunt was not in. There was a fire that day, and I went around to see that in the meantime; passed an hour away, and came back and Mr. Blunt was in; so he asked me in his office and he asked me if I had laid the boat up; I told him yes, that I could not lay her at Johnson's because I could not get her over the stone wall unless I built a structure to pull her up in a cradle; so I had taken her along side of Mr. Neal's boat, and staked her off there in a swampy meadow. He said it was all right. He asked me if she was all right, and I said yes; then I told him that I had her in just the place that the Sirene was; so then he asked me if I had taken all the things out, and I said, No, sir, I had not. "You had better go up and take all the portable things around to your house." He said, "What is your opinion in regard to having this boat hipped out and decked?" I said it would make a good boat of her, and make her more convenient to walk around forward and aft, and she would sail better. He asked Mr. Moller's opinion of it; he said he thought it was very good. He handed me \$10, and asked if that was sufficient for my labor. At that time nothing was said between me and Mr. Blunt in regard to high water mark. He told me to get estimates to have her hipped out and decked, and I told him I would. He said, "Look after the boat; I am going to Syracuse and I will get you a job out there, running two pumps," I think he said, and he would let his firm know when they could have the place for me so I could go out there and he would meet me there. Then it came around a few days after, and I went down—he was to have it by Wednesday, and I went down to see him about my position and he said he had not heard anything. Then he inquired how the boat was, and I told him all right; that was all I think. The next time I saw him was, I think, the week following. I had a little business with him, and I went down to see him about it. Mr. Neale had an engine, or the boys had got an engine—they had discovered an engine be-

longing to Mr. Neale, off 120th street dock, and they 65 raised her and I helped, and then Mr. Neale was not going to give anything for it, and said that he could take it; and that we had no right to raise it. I think Mr. Blunt told me that I could claim salvage, to go up and see Mr. Schenck, his lawyer; I cannot give the date of that interview. He asked me how the boat was? I said she was all right. I visited the boat after I had laid her up, about the Wednesday following, a week. I went over to look how she was, and to see John Crofty, a boat-builder, at the Knickerbocker 66 Yacht Club. I did not see John Crofty, but I saw the boat. She was the same as I left her. Then I went away; and I went, I think it was a Saturday, the next week to see Mr. John Crofty. He was not in; I looked at the boat and she was all right, and I took the steam-guage and the oiler off and took them home. I also took off the flags. I took those things off, because I was directed to by Mr. Blunt to take all the portable things off; that is the customary way when we lay up a boat. I did not take the other portable articles, because I could not carry them; I was on foot, and I 67 had to walk two miles before I could reach a house, and they were the things I could carry easiest, and when a nice day would have come I would have went over to that boat and taken everything off; that was my intention. When I took the oil lubricator and the guage, it was very cold weather. Those articles remained in my father's house about four days, and then I took them out, with a friend of mine, and placed them in a pawn shop. This was on the 30th of December, or somewhere along there. I got \$2.00 on 68 them. I did this because I was short of money, and I thought I would place them there for a few days until I obtained some money from some work I was doing and then I would get them out. I went over again to look at the boat and see Mr. Crofty, and I found that a high tide had shifted her over against the Sirene and that she had stove in her port railing. Nobody

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69 was with me at that time. I went back and met four friends of mine: Anthony Bown, Jim Schott and Frank Dykeman. We went down to Pensely's and got a boat and rowed through the kills to the swamp by the Knickerbocker Yacht Club, at Port Morris, and the four of us concluded if she laid there forty-eight hours more she would have been a wreck, and we waited 'till high tide and got pries and pried her out and brought her through the kills, two men rowing and entered the East River, and anchored her at her old mooring ground at the foot of 119th and 120th streets. The date I brought her down was the 15th of January. I anchored her with her anchor and anchored her to a buoy. That was a good place to leave her. It is inside the channel of passing boats; I was not on board of the yacht again after I left her on this 15th of January until she was raised except the afternoon after I went home to lunch. After I anchored her I went home to lunch, and we came back again, three of us; we shined the brass, painted the end of the boiler; 70 the stack; oiled the machinery and covered her stack so that the rain or anything should not destroy her tubes; put a bag over it, then we left the boat and that was the last time I was on her until the time she was raised, I did not at any time remove any property from the boat beyond the flags and the lubricator and the steam gauge. The other articles of personal property I put in the lockers of the boat and left them on board. Then, after doing what I have said I did, that was the last that I had to do with the boat. After 71 that I went down to see Mr. Blunt to tell him I had removed it and he wasn't in; I don't know if they said he was out of town or not; but I sent the bookkeeper of Swan & Finch to ask if Mr. Blunt was in and he said no, and I went home. It was about the 22d of January, that I called at Mr. Blunt's office, I had nothing to do with the sinking of the boat; transfer tug boat No. 1, so I was informed threw a swell over her and filled her up. I intended to pull her up in 119th street as soon as a Northeast tide would favor us. 72

No Northeast tide favored me from the 15th of January, when I brought her down, to the time she sank. I was doing all these things in connection with the boat because I understood that I was in charge of her, I had taken care of her all along and I had just as much claim on to her then as I did before I laid her up. On each occasion that I saw Mr. Blunt after that, he asked me how the boat was getting along. It was a prudent thing in my judgment to remove the Mascotte as I did. The Sirene became a total wreck. I didn't go down after I made the first attempt to communicate with Mr. Blunt and made a second attempt because I didn't have the car fare and wasn't working, and I didn't like to ask my folks for it. There was no ice running in the Harlem river at or about the time the Mascot sunk. 73 74

Cross-examination by Mr. Schenck:

Mr. Blunt paid me \$12 a week, which pay continued to about the middle of November, 1884, after that he paid me by the trip, but he only took one trip after that. After Mr. Blunt stopped using the boat he told me I might take her out for ducking and shooting. I did use her for that purpose. That was before he ordered me to put her up for the winter. I went off twice, I think, ducking and once towing from White-stone. I was off on a trip of that character when this telegram reached my house. Putting up a boat for the winter means that she is to be put up and not used during the winter season, if you don't want to take her off again. When a man puts up his boat for the winter he puts it up for the purpose of the boat remaining idle during the Winter months, and that is generally done when the owner of a yacht stops using it. The yachting season commences the 30th of May, and the repairing is done now in March. When Mr. Blunt paid me the \$10 he told me to look after the boat, take the portable things off the boat, and get estimates to have her hipiped out and decked. He asked me whether 75 76

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77 I thought it best to have the boat hiped and I said I thought it would. And he asked me to go and get estimates from ship builders. He said to take care of the things and take the portable things off the boat. That is all he said about hiping and decking, to go and get estimates from builders. And then he said he would try and get me a situation in Syracuse. And he told me to get ready, that he would go there and telegraph, and I thought he would do what he could in getting me an immediate situation.

78 Q. You didn't expect to be in Syracuse and still have the boat hiped at the same time?

A. I did expect to go to Syracuse.

Q. Which, did you expect to go to Syracuse or to get the boat hiped?

A. I didn't expect to hip the boat; I expected to get a man.

Q. You expected to go to Syracuse?

A. No, sir.

I went three times before I moved the boat away.

79 On one of those occasions I moved the oil cup and steam gauge; they were screwed on to the engine and boiler. The tools were in the locker they were not firmly attached to the boat. But I removed the steam gauge and oil cup which were firmly attached to the boat and did not remove the things not attached to the boat. What my knowledge of hiping is to hip a boat out from the sides—to widen it, change her shape and put a deck on her. That is a work of some expense. I never saw any builder and I never got an estimate from anybody, but I went to see them.

80 There was a builder up at Port Morris whom I went to see twice and he was not there; his name was John Crofty, he was in Port Morris. On one occasion when I went to see John Crofty I went to see the condition of the Mascot. She had shifted from where I laid her and went over against the Sirene and stove in the Mascot's rail. She had shifted on the sand right up on the swamp. I could not have moved her some distance from the Sirene because I didn't have the truck to run her on

I didn't think it necessary to report to Mr. Blunt the condition of his boat, because I was left in charge of her. I did not consider that she was remaining in winter quarters when I removed her from this place and carried her to the foot of 118th street. I then had taken her out of Winter quarters. I did this on the 15th of January. I went down to inform Mr. Blunt about three days thereafter. I did not write Mr. Blunt saying that I had taken his boat out of Winter quarters because I didn't think it was necessary. I did not take the boat from the Knickerbocker Club Grounds because I proposed to have ship carpenters make an estimate in regard to hiping her. I didn't think anything of the hiping of the boat when I moved her. She was in danger. She was at 118th street about seven or eight days before she sank. During the whole of that period I never went aboard of her but once and that was the same day I anchored her there. I did not have any lights aboard. She was at anchor. Vessels were passing to and fro off in the channel. Vessels were anchored very close to the Mascotte. I then lived in 124th street in this city.

Between the time that I put the boat up at Port Morris and the time that she sank, I saw Mr. Blunt three times. Once I reported to him that I had laid her up. The first time he paid me the \$10.00. On neither of the two last occasions did I tell him that I had not removed the personal property. I had not taken away the personal property because it was too cold. It wasn't too cold for me to take away the lubricator and the steam gauge.

Further direct by Mr. Blandy:

I intended only to leave her off 118th street a few days and when there was a favorable wind move her to the foot of 119th street. Up to that time no ice appeared in the river. I took away the lubricator and gauge and did not take away the other articles because I could carry them easy and they looked to be expen-

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85 sive: if anybody had come aboard the boat they would have taken them first and I had no conveyance to carry cushions or life preservers or pails or tools in my arms.

EDWARD MOLER, called for defendants, sworn:

Direct examination by Mr. Blundy:

86 I live at 428 East 121st street, I know Elmer Barrett I have seen the yacht in question, the Mascotte. I know the Sirenee that has been spoken of. I helped Elmer Barrett to lay up this Mascotte. After she had been laid up I went down with him to Mr. Blunt's office to report the fact.

Q. Will you tell the jury, as best you can, just what took place between Elmer and Mr. Blunt at the time you got that \$10.00.

87 A. I went down on Saturday morning and hauled the boat out, in December about the middle of the month; we hauled the boat out and we went and done the work to the best of our ability. We went down to Mr. Blunt's office and Mr. Blunt was not in at the time and we went down to Water street to a big oil fire and stayed there awhile; came back and Mr. Blunt came in and was very pleasant and asked Elmer if he had laid up the boat and he said yes, and he asked Elmer if \$10.00 would be sufficient and Elmer said yes, and as we got up to go Mr. Blunt asked Elmer his opinion on 88 hipping the boat out, and Elmer, I believe, said he thought it would make the boat a better boat and he turned to me and asked my opinion of it and I told him I thought it would be a big improvement; and we left the office and came up in the train; and Mr. Blunt told him to take the things off and afterwards Elmer asked me about taking the things off. The place where the boat was laid up at the Knickerbocker Grounds was a good place for laying up a boat. Mr. Blunt told

Elmer to take things off, and then I had some conver- 89 sation with Elmer about those things.

Q. What did you hear Mr. Blunt say to Elmer in regard to the charge of the boat?

A. Well, all that I know of, he told him to take care of the things.

Q. Did you hear Mr. Blunt say anything to Elmer in regard to taking charge of the boat, did you hear him say anything on that point?

A. I could not say I heard him say take care of the boat, but the things I am positive.

Q. You are not positive about his saying take charge 90 of the boat?

A. No, sir. He asked Elmer to get an estimate on hipping the boat out. He said an estimate from boat-builders; he didn't name anybody in particular that I know of. In order to do that, it would be necessary to visit the boat. I did not hear Mr. Blunt say anything to Elmer at that time about the boat being placed above high water mark. I did not hear Mr. Blunt ask Elmer whether the boat had been placed 91 above high water mark. At the first conversation between Mr. Blunt and Elmer I stood off a little ways, and what I heard was as we got up to go out. I didn't really take personal part in the conversation.

Cross-examined by Mr. SCHENCK:

We were all three there together in Mr. Blunt's office. I did not sit down; Elmer and Mr. Blunt did. I stood off a little ways by the stove. I believe they were talking about the boat.

Q. You listened to the talk?

A. No; I didn't say a word.

A. You listened to the talk, didn't you?

A. Well, I probably did hear some of the words. I wasn't paying attention to it, though.

Q. You heard Mr. Barrett tell Mr. Blunt it was a good place where he was putting the boat?

A. Yes, sir.

85 sive: if anybody had come aboard the boat they would have taken them first and I had no conveyance to carry cushions or life preservers or pails or tools in my arms.

EDWARD MOLER, called for defendants, sworn:

Direct examination by Mr. Blandy:

86 I live at 428 East 121st street, I know Elmer Barrett I have seen the yacht in question, the Mascotte. I know the Sirenee that has been spoken of. I helped Elmer Barrett to lay up this Mascotte. After she had been laid up I went down with him to Mr. Blunt's office to report the fact.

Q. Will you tell the jury, as best you can, just what took place between Elmer and Mr. Blunt at the time you got that \$10.00.

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Elmer to take things off, and then I had some conver- 89 sation with Elmer about those things.

Q. What did you hear Mr. Blunt say to Elmer in regard to the charge of the boat?

A. Well, all that I know of, he told him to take care of the things.

Q. Did you hear Mr. Blunt say anything to Elmer in regard to taking charge of the boat, did you hear him say anything on that point?

A. I could not say I heard him say take care of the boat, but the things I am positive. 90

Q. You are not positive about his saying take charge of the boat?

A. No, sir. He asked Elmer to get an estimate on hipping the boat out. He said an estimate from boat-builders; he didn't name anybody in particular that I know of. In order to do that, it would be necessary to visit the boat. I did not hear Mr. Blunt say anything to Elmer at that time about the boat being placed above high water mark. I did not hear Mr. Blunt ask Elmer whether the boat had been placed 91 above high water mark. At the first conversation between Mr. Blunt and Elmer I stood off a little ways, and what I heard was as we got up to go out. I didn't really take personal part in the conversation.

Cross-examined by Mr. SCHENCK:

We were all three there together in Mr. Blunt's office. I did not sit down; Elmer and Mr. Blunt did. I stood off a little ways by the stove. I believe they were talking about the boat. 92

Q. You listened to the talk?

A. No; I didn't say a word.

A. You listened to the talk, didn't you?

A. Well, I probably did hear some of the words. I wasn't paying attention to it, though.

Q. You heard Mr. Barrett tell Mr. Blunt it was a good place where he was putting the boat?

A. Yes, sir.

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93 *Re-direct examination by Mr. BLANDY:*

It was a good place, but we had an exceedingly hard winter that winter. That was what damaged Mr. Neil's boat, the Sirene. I saw the Sirene there. I saw what became of the Sirene after the Mascotte had been removed. She sunk. She was leaking when I put her there, and I notified Mr. Neil of the fact, and he didn't pay any attention to it and she sunk. She leaked and it rained. After that, the ice carried the cabin all off of the Sirene, then broke the boiler and cabin, and then she was taken away from there. She was destroyed by the ice.

Re-cross:

I put up the Sirene. She leaked when I put her there, and it was only a question of time when she would fill up and sink. I reported to the owner that she was leaking, but he paid no attention.

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ISAAC N. HEBBARD, called for defendant, sworn.

Direct examination by Mr. BLANDY:

I live at 347 East One Hundred and Sixteenth street. Am a manufacturer and importer of white lead, paints, oils, &c. I know Elmer Barrett. I have known him since he was born. I know his parents. I made the acquaintance of Mr. Blunt after Elmer Barrett was arrested. I accompanied Mr. Barrett, the boy's father, to Mr. Blunt's house on the same Sunday he was arrested. He was arrested on Sunday. The boy was then under arrest. I had some conversation with Mr. Blunt as to the boy's relation to this boat. Mr. Barrett introduced himself to Mr. Blunt, and said he was the father of Elmer Barrett; that he had learned two or three hours since that his son had been arrested. When he had been informed of his arrest he immediately went down to Police Headquarters in Mulberry

street and ascertained that his son was locked up there, and learned from the officer in charge that Mr. Edmund Blunt was complainant, and he called over to see Mr. Blunt to ascertain what Elmer's connection with the boat was and to see if Mr. Blunt could be persuaded to withdraw the charge. Mr. Blunt stated that Elmer had been in his employ as engineer in charge of this boat. My impression is that it was until November, after the yachting season was over. Mr. Blunt paid Elmer whatever wages there was due him and then left the boat in his charge. He said that he told Elmer to use it and to make what money he could out of it. He said that he preferred to have the boat used rather than to have it lay idle; that he told him that he might go to the coal dealer and get coal; that he had been informed that he had used her for a ducking excursion and had made some money out of her. Then some time after that, in December—I think Mr. Blunt stated the middle of December—that he sent word to Elmer to lay the boat up. Soon after he sent this word, Elmer reported at his place that he could not lay her up where Mr. Blunt had directed him at Johnson's yard, but that he had taken her over to Port Morris and beached her at the Knickerbocker Club Grounds. Mr. Blunt stated that he had directed Elmer to take the things off the boat. He stated that he promised to get Elmer a situation; that at that time he had a situation ready for him, a good situation, and that Elmer agreed with him to take good care of the boat. He says he, however, told Elmer that he might take the boat down to Florida if he wanted to and he would assist him with money. He also stated that he had great confidence in Elmer, that he would have signed a bond for him or been security for him; he said that his detectives that he had put on the matter had informed him that the boys, Elmer and some friends of his had, been out on a lark; that they had run the boat on a rock and stove a hole into her and

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101. purposely allowed her to sink for the purpose of
extorting money out of him to raise the boat; but he
himself did not believe that Elmer had been guilty of
anything of the kind; that he had thought the sinking
of the boat was purely an accident. Mr. Barrett said
that he knew nothing of the matter, but he could not
think his son was guilty of anything of that sort; that
he was a poor man, that he was only a clerk, that he
had a very large family to care for and if his son had
been intentionally guilty of doing any wrong to Mr.
Blunt he would in some way or another indemnify
102 him; he didn't know how he could do it but in some
way or another he would indemnify him. Mr. Blunt
said there was another young man that was with Mr.
Barrett on that occasion, his name was Baum, I think.
He said this young man's mother had money and she
should be made to pay. Mr. Barrett stated that he
would like to get his son out of prison, that he had left
the house in great confusion, that his daughter was
lying on the sofa, I think she had fainted dead away,
103 he stated, and his wife was very much agitated and he
could not go home without taking the boy out. "Well,"
Mr. Blunt said; "Oh, no, leave him where he is, it will
do him good." So Mr. Barrett said he could not go
home without taking the boy out. Mr. Blunt said he
knew nothing about the pawning of the articles only
what the detectives had said, that the boys had scuttled
the boat; they had stripped the boat and then scut-
tled her; Mr. Barrett said he could not think that was
possible. "Oh," he said "yes, for I have already
104 found some of the things in a pawn shop on Third
avenue near 115th street." He said all the articles
had been pawned and that he had found a portion of
them in this pawn shop. I think that was the sub-
stance of the first conversation, I had so many conver-
sations with him about it that it is somewhat difficult
to recall the conversations. I met Mr. Blunt the next
morning; I produced the young man, I went bail for
the young man after what Mr. Blunt had stated; I went
with Mr. Barrett over to police headquarters and there

was a judge, they said there would be a judge there or 105
they would send for a judge while we were there at
Mr. Blunt's house, I went over and gave bail
for the young man and then I produced him the
next morning at police headquarters. On the
way over from police headquarters I said to Mr.
Blunt "Now, Mr. Blunt, I have heard what Elmer
Barrett has got to say in reference to this matter, I
find that you have been greatly misinformed and the
statements that you have received are all incorrect." 106
I then stated to him what Elmer Barrett had told me
in reference to bringing the boat down; Mr. Blunt
said that was all right, that was perfectly proper for
him to do so, but why didn't he come and notify me
and tell me that he had removed the boat. That was
the cause of his complaint and that was the only
complaint that he had to make, that he didn't come
and notify him. I said I didn't know as to that; that
subsequently to that, over in the police court, I asked
Elmer Barrett in reference to that, if he had been to
Mr. Blunt, Elmer Barrett told me that immediately 107
after the removal of the boat he went down to notify
Mr. Blunt and I so informed Mr. Blunt that Elmer
claimed he had been to him. Mr. Blunt said, "very
well, if that is so, I will exonerate this young man and
allow the matter to drop and give him just as broad
an exoneration as I have made the charge against
him." He said, "as soon as I get down town, I
will come to your store and let you know
whether he has been to my place of business." He
did so. He came in the store and told me that El-
mer's statement in regard to his having called at his 108
place of business after he had removed the boat, was
correct—that he had been there. We subsequently
discussed the matter in my place of business, and Mr.
Blunt distinctly said that Elmer had charge of this
boat, and that the cause of complaint was, that he did
not come down and notify him—that was the sub-
stance of it. And he also on one occasion said to me,
"I understand you met him on the corner of Fulton

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109 "street and Cliff street," and he said that he was satisfied that Elmer was the bailee, and had charge of the boat. Mr. Blunt came in the store there, and about the same conversation occurred, and he requested me to go to his lawyer, and the matter could be settled, and he wanted to go and look at his boat. I told him I wanted nothing to do with it. I would not go to his lawyer—would not complicate myself, would not have anything to do with it; that I had business enough of my own. He was to my store, I suppose, 110 six or seven times, and, as near as I could judge, he wanted me to be security for the repairs of the boat, and I declined.

In one conversation he stated that he had, in making this charge against the young man, only incurred civil responsibility and not criminal liability. We discussed that matter about his bringing a charge against the young man—that at the time he had stated to me there was nothing in the charge, and that he only made it for the purpose of holding him. He 111 stated to me that, he told this young man's father that was the only reason he made the charge and that was the way the discussion came up in reference to his having made a charge; that he knew there was nothing into it, and I stated to him that he had better drop the thing and exchange a release with the young man, and let the thing drop just where it was, and he refused to do that.

Cross-examination by Mr. SCHENCK:

112 I am not very intimate with defendant. I am intimate with defendant's father. Mr. Blunt and I discussed, on every occasion the question as to whether the defendant was bailee of the boat. I probably used the word "bailee" first. I did not use it for the purpose of conveying to Mr. Blunt the idea that Mr. Barrett, the defendant, had charge of the boat. When I suggested that the defendant was the custodian or bailee of the boat, Mr. Blunt did not con-

tradict me to my recollection. I don't know that he 113 admitted it. Mr. Barrett, Senior, was once, about fifteen years ago, for a short time a, salesman in the firm that I was a member of, but not in my present firm. I was in the employ of Baxter, Bell & Co., some years ago, as a salesman. That firm failed and made an assignment to me. I remember about a suit being brought against me by Alfred T. Baxter. He claimed to be a creditor of two of the members of the firm. That suit was brought before Judge Clement some months ago for trial. I know what the decision was. 114

Q. And were you not held responsible for a large sum of money upon the ground that you had conspired with another party as assignee in defrauding the plaintiff in such suit?

Objected to; objection sustained; exception taken.

Q. You say that Mr. Blunt told you that Barrett had charge of the boat, was that all that he said on that subject? 115

A. At what occasion?

Q. On any occasion.

A. He repeated that thing a number of times.

Q. Now did he say at what particular times, Mr. Barrett had charge of the boat, or had had charge of the boat?

A. He had charge of the boat up to the time it sank.

Q. Did he use that expression—that Mr. Barrett had or had had charge of the boat up to the time it sank; yes or no. 116

A. That he had charge of the boat up to the time it sank?

Q. Yes?

A. I don't know that he did use that particular expression.

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117 FRANKLIN BELL, called for defendant, sworn:

Direct examination by Mr. BLANDY:

I am in the paint business at 252 Pearl street. I know Mr. Blunt slightly. I first met Mr. Blunt at 522 Pearl street. I don't know how long ago it is. I was present on one occasion when some conversation was had between Mr. Hebbard and Mr. Blunt in reference to Elmer Barrett's relation to this boat after she sunk. That was after Elmer Barrett had been arrested. Mr. Blunt told me that Elmer Barrett had complete charge of her at the time she sank. Well, Mr. Blunt, in the conversation, said that at that time Elmer had charge of her.

Cross-examination by Mr. SCHENCK:

I heard Mr. Blunt make the statement that Barrett had charge of her. He was talking about the boat sinking. This was before Mr. Hebbard came in. This conversation was had while Mr. Blunt was waiting for Mr. Hebbard to come into the office. I remained and heard a conversation between Mr. Blunt and Mr. Hebbard. There were several conversations. At some of those conversations Mr. Blunt referred to the time when the boat sank. I don't know that he did always. I suppose he referred to the time when the boat sank a dozen times. I couldn't tell you what he said each time. He talked a great deal. He spoke of this matter fully a dozen times.

Q. I am asking you what he said upon this particular topic with reference to Barrett having charge of the boat when the boat sank, and I ask you if, upon each of those twelve occasions, Mr. Blunt used substantially the same language?

A. No, I don't think he did. I can't say what his language was.

Q. How did he change his language on that topic, and that alone?

A. I had other things to attend to than listening to him all the time.

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Q. Will you answer that question? How did he change the language upon that topic alone? 121

A. Well, at one time he said Barrett had authority to take the boat to Florida if he wanted to.

Q. Is that the time that I referred to as when the boat sank?

A. Well, he was giving the general character of Elmer—

Q. I am not asking you about that. Just leave out the Florida business. What language did Mr. Blunt use on these occasions when he referred to Barrett having charge of the boat when the boat sank? 122

A. I have told you that he said Barrett had complete charge of the boat; that he had given him charge, and he didn't know where it was; that Barrett had laid it up somewhere.

Q. Is that your answer to my question?

A. That is my answer.

Q. That is all you have to say as an answer, is it?

A. It is. I am intimate with Mr. Hebbard. I am not very intimate with Mr. Barrett's father, but I have known him for some years. Mr. Hebbard and I are in business in the same store. 123

WILLIAM B. HOUSTON, called for defendant, sworn.

Direct examination by Mr. BLANDY:

I am bookkeeper for W. N. Baxter & Co. That is the place of business with which the last witness is connected. I met Mr. Blunt there, and I overheard conversation between Mr. Blunt and Mr. Hebbard, or Mr. Blunt and Mr. Bell, upon the subject of Elmer Barrett's relation to the boat. Mr. Blunt called in to see Mr. Hebbard, and they had some conversation, and what I overheard was that Mr. Hebbard told him: "Mr. Blunt, I think you are making a mistake. You are holding yourself both criminally and civilly liable." I think it was that. Then I heard, a little while after 124

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Cross-examination by MR. SCHENCK:

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Direct examination by MR. BLANDY:

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125 that, Mr. Blunt say that Elmer Barrett was in charge of the boat.

Q. At what time?

A. Well, there was another thing. Mr. Blunt called and asked Mr. Hebbard at that time to go up and see his lawyer.

THE COURT—State all that was said in respect to the time defendant had charge of the boat. You say you heard Mr. Blunt say that Elmer was in charge.

126 A. Of the boat.

THE COURT—Give us all that was said in connection therewith as to the time he was in charge. Of course, we all know he was at some time in charge. The question is, whether the conversation related to the time intervening between the laying up of the boat at the Knickerbocker Club House, and the time that she sank?

127 A. Well, I took notice of the conversation that he was in charge of her at that time.

THE COURT—What was said?

A. At the time that she was sunk?

Cross-examination by Mr. SCHENCK:

I mean to say that that was the impression produced upon my mind.

Q. Did you pay any particular attention to the conversation?

128 A. I stood by, yes, sir.

Q. You heard Mr. Blunt say that Mr. Barrett had charge of the boat; didn't you?

A. I think I did, yes, sir.

Q. Did you hear him say anything else in that connection?

A. I think he said something about Elmer, that he thought to let him have the boat and take it to Florida if he wanted to, something like that.

In connection with Mr. Barrett having charge of the

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boat did you hear him say anything else.

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A. That I cannot say.

GEORGE P. BARRETT, called for defendant, sworn:

Direct examination by Mr. BLANDY:

I am the father of defendant, and am Security Clerk in the Mercantile Trust Company. The first time I ever knew Mr. Blunt was on the 25th of January, 1885, Sunday evening; Mr. Blunt told me during the conversation that my son had been in his employ and that he had directed him to lay up the boat, and that he had laid up the boat; that my son had promised to look after this boat for him, and that he had promised to get him a situation on the railroad or some other place. In fact, he said, "I have got a situation I can get him in now." He said to me that he directed him to take charge of the things or the personal property of this boat, and that he had been informed that he sank the boat or scuttled her and stripped her of her brasses; in fact, he said, I have been informed that part of them have been found pawned. I said to him that I couldn't think that was possible that I never knew my son to be guilty of the first indiscretion in his life. He said, it is a fact.

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Q. Now when did you have your next conversation with Mr. Blunt at which anything was said by him as to the boat's being in your son's charge. I don't want anything but that?

A. I think there has never been any conversation about that between Mr. Blunt and myself except that one night, he called at my office last week and I said, "You know he was in the custody of your property," a little conversation I had a week ago to-day—he called to see me when I told him he knew my son was in possession of this property and this boat, &c. That was all; I never had any conversation except that Sunday night, except last Tuesday on that matter, but

132

133 I have on other matters.

Q. There is only one question involved in this case, and I want you to keep your mind on that, and that is, any conversations you may have had with Mr. Blunt, or overheard between Mr. Blunt and Mr. Hebbard and anybody else in which conversation Mr. Blunt made any allusions to the relations Elmer bore to the boat after she was directed to be laid up by that telegram?

134 A. Mr. Hebbard was present on this Sunday night when this conversation occurred between Mr. Blunt himself and myself.

Q. Now were you present at any of the discussions between Mr. Blunt and Mr. Hebbard in the Police Court or any of the other places when you have met where the subject of Elmer's relation to the boat during that period was alluded to?

A. I don't remember that I was ever present when Mr. Blunt and Mr. Hebbard had conversations, I say I have had conversations separate from him with Mr.

135 Blunt.

Q. Have you had any conversations with Mr. Blunt since that interview in Brooklyn, when you discussed with him the relation that your son bore to the boat after she was directed to be laid up?

A. That morning in the Police Court.

Q. What was said?

A. He called me one side from the Justice's railing; he hesitated at first making a charge against him for the grand larceny, for the stealing the boat, and he

136 called me one side, and said, "Mr. Barrett I have concluded to make a charge against your son for grand larceny of this boat and we will adjourn it for a couple of days that I may investigate, and if I find on investigation that he has not stolen the boat, I will make his exoneration just as broad as I have made the charge against him." I begged him not to make the charge; that I didn't want to have any stain on the young man's life; and I told him that I didn't think he could sustain any such charge; that my son

wouldn't be guilty of stealing his property. That was 137 the only conversation I had with Mr. Blunt, when Mr. Hebbard—when we three were together—in reference to the boat.

EDMUND BLUNT, Plaintiff, recalled.

• Direct examination by MR. SCHENCK:

I have heard Mr. Barrett and others testify in this case. I did not at any time tell either of them that I had given the defendant charge of this boat up to the time she sank. Mr. Hebbard kept saying that this 138 young man was bailee of the boat, and I would be liable for heavy damages if I didn't take what his friends would settle with me for. I told him he was not bailee for the boat; that he had been discharged. I never said that Mr. Barrett had charge of the boat after she had been put up in winter quarters. I told Mr. Hebbard that I had been informed that defendant had put the boat up at the Knickerbocker Club and also that he was then paid off. I most certainly believed that the boat had been put there. I told Mr. 139 Hebbard that, from my own knowledge, I couldn't tell where the boat was from seeing it. I told him what Mr. Barrett had told me. I never denied to any one that the boat had been put up at the Knickerbocker Club grounds, or in the vicinity. I never told Mr. Hebbard, or anybody else, that Mr. Barrett had the right to remove the boat from the Knickerbocker Club grounds. I told Mr. Hebbard that defendant had no right to interfere or touch the boat after he was paid off. I did not tell Mr. Hebbard, or anybody else, that 140 after this boat had been put up in Winter quarters, I proposed to defendant or anybody else that she could be taken to Florida. This Florida business was spoken of long before she was put in Winter quarters,—long before, a month before I told defendant that if I could get a proper party that I would employ him, and would let the boat go down there.

TESTIMONY CLOSED.

141

This is not all the evidence that was given upon the trial on the part of either party, but it is all that is deemed necessary to present the questions raised by the exceptions.

CHARGE TO THE JURY.

GENTLEMEN OF THE JURY:

142

This action is founded solely and exclusively upon an alleged wrongful taking of the steam yacht in question from the neighborhood of the Knickerbocker Club Grounds. To recover, the plaintiff must establish a wrongful taking. But for that purpose it is enough if he has established a taking by the defendant without authority and without the color of authority. If the plaintiff has established such a taking, it is immaterial whether the defendant did or did not act with good intentions.

143

Whatever authority the defendant may have had for the use of the yacht prior to December 19th, 1884, was revoked by the order contained in the telegram of that date to put the yacht up at once for the Winter. In consequence of that telegram, the defendant did put up the yacht in the neighborhood of the Knickerbocker Club Grounds; and the plaintiff, upon the report being made to him of that fact, approved of what the defendant had done.

144

Now, unless at that interview the plaintiff not only told the defendant to remove the tools or all the portable articles from the yacht, as the case may have been, but also said something in addition which authorized the defendant to continue in the general charge of the yacht, or from which the defendant could reasonably infer and believe that he was authorized to continue in such general charge, with power to remove her if in his judgment it became advisable, his subsequent removal of the yacht to the vicinity of 119th street was not only without authority, but also without color of authority, and he is liable for the conse-

5 15

quences of such unauthorized interference with plaintiff's property, no matter how good his intentions may have been. 145

In such a case, you will render a verdict for the plaintiff.

If, on the other hand, you should find that from what was said to the defendant at that interview he could and did reasonably infer and believe that he was continued in general charge, with power to remove the yacht if in his judgment it became advisable, and that he acted upon such inference and belief, your verdict must be for the defendant (although he may not have been directly authorized). The same result must follow if he then and there was directly authorized to continue in general charge, with power to change the location. 146

In either such case—that is, if there was either actual or implied authority within the rules laid down by me—it makes no difference whether the defendant was or was not negligent, for the action is not based upon negligence; nor is the defendant to be deprived of a verdict for the reason that he purloined the oil-cup and the steam-gauge. 147

Now, upon the main question in the case—the question of authority—you have the testimony of the plaintiff on the one side and the testimony of the defendant on the other side, as to what occurred at the interview in question. They contradict each other directly and positively. The plaintiff is not corroborated directly by any other witness; while the defendant has produced several witnesses who it is claimed testify to the effect that the plaintiff admitted to them that the defendant had the charge of the boat at the time she sank. Of the precise significance and value of that testimony you are the judges. Upon all this testimony, therefore, namely the testimony of both the parties, and of their witnesses, you will have to say which side has told the truth. 148

The burden of proof is upon the plaintiff, and he must establish by a preponderance of evidence that

05 16

149 the removal of the vessel was without authority and without the color of authority.

But when I say he must establish this by a preponderance of evidence, I do not mean a preponderance of evidence in point of number of witnesses, but a preponderance of such facts and circumstances as carry conviction to your mind.

150 In case you find for the plaintiff, upon the whole issue, you will have to assess the damages to which he may be entitled. These damages you will have to assess upon the principle that the plaintiff is to recover the depreciation of the market value of the yacht caused by her sinking. For that purpose you have a right to consider the market value before the occurrence, and her market value after the occurrence, and the difference between the two is the amount of the injury inflicted upon the boat by defendant's unauthorized act, if that act was unauthorized.

151 You will also, in such case, say whether your verdict is or is not to carry interest, or whether in fixing the amount which you will return, you have already considered and included the question of interest.

You may now retire to deliberate upon your verdict.

152 Mr. SCHENCK: I except to that part of your Honor's charge wherein you say that the burden of proving that the defendant had no authority is upon the plaintiff. And I ask your Honor to charge the jury that by virtue of the telegram of the 19th of December, 1884, the authority of the defendant to take care of the yacht was revoked, and therefore the burden of proof is upon him to show that he subsequently was vested with new authority with regard to taking charge of this craft.

THE COURT: I decline to charge otherwise than I have already charged.

Exception taken by plaintiff's counsel.

The jury then retired, and brought in a verdict for 153 defendant.

Plaintiff's counsel moved the Court to set aside the verdict rendered, and for a new trial on the Judge's minutes, on the following grounds:

First, On each of the exceptions taken by the plaintiff on the trial.

Second, Because the verdict is contrary to the law.

Motion denied. Exception to such ruling 154 taken by the plaintiff.

SUPERIOR COURT,
OF THE CITY OF NEW YORK.

EDMUND BLUNT,
Plaintiff,
against
ELMER BARRETT,
Defendant.

Judgment entered March 19th, 1886. 155

This action having been brought to trial before the Hon. John J. Freedman, and a Jury, and having been tried on the 15th day of March, 1886, and the Jury having rendered a verdict for defendant upon the issues, and the Court having awarded to defendant an extra allowance of 5 per cent. on the amount claimed, 156

Now on motion of Mr. Charles Blandy, attorney for defendant, it is

Ordered and adjudged that the defendant recover Judgment upon the issues and upon the merits, and that he also recover Judgment against the plaintiff for the sum of two hundred and two and fifty seven one hundredth dollars of his costs in that behalf.

157

SUPERIOR COURT,

CITY OF NEW YORK.

EDMUND BLUNT,
Plaintiff and Appellant,

against

158

ELMER BARRETT,
Defendant and Respondent.

Sir: Take notice that the plaintiff and appellant above-named hereby appeals to the General Term of this Court, from the judgment entered in this action on the 19th day of March, 1886, for the sum of two hundred and two 57-100 dollars damages and costs in favor of the said defendant against the said plaintiff, and also from the order denying the motion made by the plaintiff upon the Judge's minutes to set aside the verdict and grant a new trial.

159

New York, March 16th, 1886.

Yours, &c.,

HENRY J. SCHENCK,
Plaintiff's and Appellants' Att'y,
97 Nassau Street,
New York City.

To—

160 CHARLES BLANDY, Esq.,
Attorney for Defendant and Appellant,THOS. BOESE,
Clerk, &c.

5 17



05 18

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

Section 618, Cod. Cr. Pr.

THE PEOPLE, &c.,
vs,

James J. [unclear]

Grand Jurors

being duly sworn, says that he is one of the Assistant District Attorneys of the City and County of New York, and that he believes that the evidence of [unclear] Grand Jurors, who resides at [unclear] Westchester County is material, and that the attendance of said [unclear] Grand Jurors at the trial of the above named defendant is necessary.

[Signature]
Assistant District Attorney.

Sworn before me this *4th*
day of *February* 188*9*
Rufus B. Downing
City Clerk

N. Y. Co.

05 19

Section 618, Cod. Cr. Pr.

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

THE PEOPLE, &c.,

vs.,

James Sanders

James Sanders

James Sanders
being duly sworn, says that he is one of the Assistant District Attorneys of the City and County of New York, and that he believes that the evidence of *William Post*, who resides at *East 100th St., Queens County*, is material, and that the attendance of said *William Post* ^{investigation} at the ~~trial~~ of the above named ~~action~~ before the Grand Jury ~~defendant~~ is necessary.

James Sanders
Assistant District Attorney.

Sworn before me this *24th*
day of *December* 188*9*

Rufus B. Brown
City Judge

N. Y. Co.

0520

J. W. ROBBINS,
ATTORNEY AT LAW.

Office in Treadway Block.

PONTIAC, MICH.

0521

District Attorney's Office,
City & County of
New York.

~~James B. Smith~~

188

James B. Smith

July 12 1888

Wm Post, East Walliston S.D., 2 h.

\$450.

June 16 1888

Dr. Main, 666 Fifth Ave. N.Y., 1 h.

\$300. ³⁰⁰

July 19 1888

Dr. F. H. Hamilton 126 W 46

Anders ~~Smith~~ Eastman, architect

1 h. \$140.

July 12 1888

Wm Post E.W. S.D.,

1 h. \$225.

John H. Weston S.E. 53 & 5th Ave

1 h. 200.

13 15

1 Bussery to John McLeary 93rd St + 9 Ave.

90

~~James B. Smith~~

35

1490.

Wm J. Grand Mamaroneck

at Parkers Tavern.

Morris, with A. Bourne

138 East 25th St.

0522

STATE OF NEW YORK.

-----X
IN THE MATTER

of

JAMES BARNES, a fugitive from the
Justice of the State.
-----X

City and County of New York, ss:

FRED W. BURCH, of the City of Pontiac,
County of Oakland and State of Michigan, being duly sworn
deposes and says. That on the 9th day of June, 1888, at
the said City of New York, this deponent was the owner
and in the possession of the following described personal
property, viz: One pair seal brown Geldings, 5 & 6 years
old, 16 1/2 hands high, weight 2700 lbs. One brown
Gelding six years old, 16 hands high with white face and
white ankles behind, weight 1200 lbs. One Bay brown
Gelding 7 years old, 16 hands and 1/2 inch high narrow
white strip in face and two white ankles behind, weight
1200 lbs.

One bay Gelding 6 years old, 16 hands high with
white face and black points and one dark red roan Gelding
5 years old, 15 3/4 hands high, weight 1100 lbs. with
scar on one hind hoof. All of which horses were at the
time last above mentioned located at a place there known

0523

2

as Hamilton Stables situated at No. 126 West 46th Street in said City of New York. Said horses at said time were worth the sum of \$1800 and upwards.

That this deponent was also the owner and had in his possession at the place last aforesaid one Brewster Spring top buggy with pole of the value of \$125. one set double harness of the value of \$35. That on the said 9th day of June one James Barnes who was then a resident of the said City of New York received of and from this deponent and as this deponent's agent the six horses above described at said Hamilton Stables, No. 126 West 46th Street in said City of New York for the purpose of selling and disposing of said horses in said City of New York to the best interest and advantage of this deponent and at the same time and place the said Barnes agreed and promised this deponent that the said Barnes would report to this deponent at the City of Pontiac aforesaid the sales of said horses as they were made and send this deponent the net proceeds of the same up to the sum of \$1100. That on the said 9th day of June, at No. 126 West 20th Street in said City of New York, said Barnes represented to this deponent that he could sell the said six horses in said City of New York, for at least the sum of \$2,000. and that the said Barnes would be satisfied with one half of all moneys resulting from such sales in excess of the sum of \$1000 as commission for his services in making the

0524

sales of said horses.

That this deponent arrived in said City of New York with said horses on the 4th day of May, 1888, and the expense of keeping and caring for said horses from the said 4th day of May, to the said 9th day of June were about the sum of \$500. which amount said Barnes was paid.

That on the said 9th day of June said Barnes at the request of this deponent advanced to this deponent the sum of \$200. which is all the money which this deponent has received from the proceeds of the sale of said horses. That this deponent has been informed by W. J. Grand who resides at Mamaroneck in said State of New York and believes the same to be true. That said Barnes sold all of said horses prior to August 13th, 1888, as follows:

W. Post, East Williston, Long Island, 3	\$225.
" " " " " "	450.
	<hr/>
	\$675.
Dr. Main, 666 5th. Ave., N.Y. Brown G.	300.
Eastman's Auction Madison Garden, N.Y. Bay G.	140
John H. Watson, S.E. Cor. 53d St. & 5th Ave.	200.

making in the aggregate the sum of \$ 1315.
which said Barnes received from the proceeds of the sale of said horses.

That this deponent never at any time authorized said Barnes to sell the said buggy, pole and harness but left the said buggy together with the pole and said harness with the said Barnes to be used by said Barnes in showing the said horses, and the said Barnes on the said 9th day of

0525

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June agreed with this deponent that he this deponent would leave the said buggy, pole and harness with him the said Barnes in the said City of New York, he the said Barnes would ship or bring the said buggy, pole or harness to the home of this deponent in the said City of Pontiac the first time he the said Barnes went to said City of Pontiac.

That said Barnes first came to the said City of Pontiac subsequent to June 9th, 1883, on or about August 20th, 1883 but did not ship, bring or send the said buggy, pole or harness to this deponent, but as this deponent is informed and believes the said Barnes sold the said buggy and pole to one John Mc Carthy of corner 97th Street and 9th Avenue, City of New York the said Barnes receiving therefor the sum of \$90. That said Barnes has neglected and refused to report to this deponent the sales of any of the said horses or the sale of the buggy and has not paid any part of the proceeds of the sales of the said horses, and said buggy and pole to this deponent but wholly refuses and neglects so to do. And this deponent cannot ascertain what said Barnes did with said set double Harness. That said Barnes has willfully and fraudulently misappropriated the money the proceeds from the sales of the said horses, buggy etc. and cheated and defrauded this deponent thereby to the amount of Eleven hundred dollars.

~~That upon the testimony of deponent and of~~

0526

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~~an indictment a certified copy of which is annexed to this application was duly returned by the Grand Jury of the said County of New York on the 5th day of February, 1933, and a bench warrant issued thereon, which has been returned as appears by said warrant and return hereto annexed.~~

That after the Commission of said crimes and larcenies said James Barnes fled from the Jurisdiction of the State of New York as deponent has good reason to believe for the following reasons. Said Barnes stated to this deponent that he left the State of New York to avoid arrest, and prosecution. That this deponent saw said Barnes in the City of Pontiac, Oakland County and State of Michigan on the 31st day of January, 1933, and deponent believes that he is now in said City of Pontiac.

From the foregoing ~~deponent~~ deponent alleges that said James Barnes has fled from the State of New York and has taken asylum in said City of Pontiac in the State of Michigan where he is now a fugitive from Justice.

Deponent further says that said Barnes is unmarried about forty-five years old, has never had any settled occupation, has followed the race track as driver for the last twenty years and is considered dishonest and tricky wherever he is best known.

This application is made in good faith, for the sole purpose of punishing the accused, and not for the purpose of collecting a debt or for any private purpose whatever, and if the request applied for be granted the

0527

6

criminal prosecution herein shall not be used for any
of said objects.

Fred W. Beach

Sworn to before me this :
5th day of February 1889 :

William H. Beatty

Notary Public (No.

concealed
City and County of New York.

0528

566/89
DISTRICT ATTORNEY'S OFFICE,
City and County of New York.

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Frederick B. Smith
County Clerk,
N.Y.

James B. Smith

Officer of the Court
(Endorsed)

Dated February 4, 1889

Witnesses, Wm. B. Smith

Ray W. Smith, S.D.
No. 100, 1st St.,
Queens Co., Street,

Dr. main

No. 666 1st St.,
Street,

1514 Broadway

No. 100, 1st St.,
Street,

John H. Watson

Sec. 53 & 5 Ave

John H. Watson

93rd St & 9 Ave

Wm. B. Smith

Manhattan

Westchester Co

Barber's Farm

0529

ELLIOT R. WILCOX,

Attorney, Counsellor and Solicitor.

Pontiac, Mich., March 7 1889

Col. Fellows

Dear Sir: I did not
hear definitely what James Barnes
was charged as doing by way
of larceny, in your court & after
waiting as long without hear-
ing as I thought advisable
I have herewith submitted the fol-
lowing affidavits. In the absence
of the knowledge above referred to
they may be some at random
but if you desire more definite
information in any respect I will
gladly supply it; thanking you
for the opportunity thus far given.
There have been at least five
suits commenced in the Circuit
by Bush vs Barnes, all or nearly
all of which must have been
pending at the time the criminal
steps were being taken by Bush &
friends in N.Y. If you desire any
record in them will gladly forward
to you.

0530

ELLIOT R. WILCOX,

Attorney, Counsellor and Solicitor.

Pontiac, Mich., _____ 188

First was an attachment which was discontinued.

Second, was an attachment in assumpsit for value of horse &c the affidavit for which the court held void but the suit remains.

Third, was in assumpsit with the pleadings as yet not completed. 4 Immediately, however, after the 2d attachment a writ by capias for harness & buggy in trover was returned & on motion to dismiss same because the affidavit showed assumpsit more than trover, the writ was dismissed.

Fifth, a suit in Justice Court on promises for the price & value of Buggy & harness sold by J. H. to def. &c.

It is unfortunate for Burch to have such a loss, but I don't see how his pursuing Barnes

0531

ELLIOT R. WILCOX,

Attorney, Counsellor and Solicitor.

Pontiac, Mich., _____ 188

So reluctantly will help him
out, Barnes has also lost
the little he had and if
Burch should accept Barnes
proposition I estimate it would
take Barnes months if not
years to overtake it.

Bpt I will not add to an
already long communication.

Yours Truly
E. Wilcox

0532

District Attorney's Office.

PEOPLE

vs.

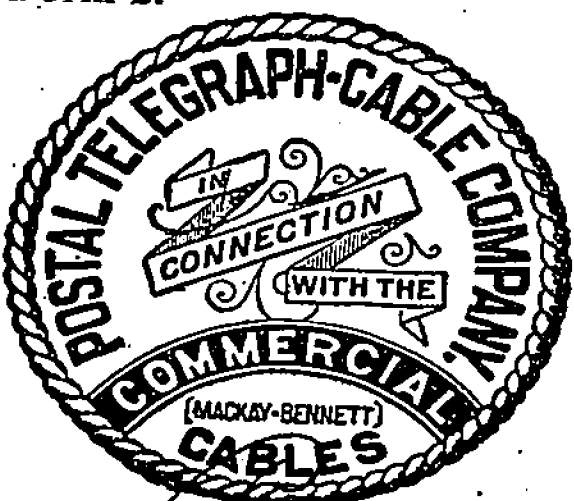
James E. James

On the accompanying
affidavits & papers
which clearly show
that the transaction
out of which the
indictment herein was
procured was one of
absolute sale by the
complainant to the
defendant, and that
the only more legal
remedy against deft
is by civil action for
breach of contract, I
recommend that this
indictment be dismissed.
There is an entire
absence of any proof
to sustain the allegations
of the indictment.

Just S. Lindsay
Deputy
Apr 15/89

0533

Form 2.



TELEGRAM

THIS Company TRANSMITS and DELIVERS messages only on conditions limiting its liability which have been assented to by the sender of the following message.

Errors can be guarded against only by repeating a message back to the sending station for comparison, and the Company will not hold itself liable for errors or delays in transmission or delivery of **Unrepeated Messages**, beyond the amount of tolls paid thereon, nor in any case where the claim is not presented in writing within sixty days after sending the message.

This is an **UNREPEATED MESSAGE** and is delivered by request of the sender, under the conditions named above.

ALBERT E. CHANDLER, Pres't and Gen'l Manager.
HENRY ROSENER, Vice President.

EDWARD C. PLATT, Treasurer.
GEORGE R. WILLIAMSON, Sec'y and Auditor.

NUMBER	SENT BY	REC'D BY	CHECK
17	W	W	2nd

Dated En route Mich Received at **MAIN OFFICE, 187 BROADWAY, NEW YORK.**

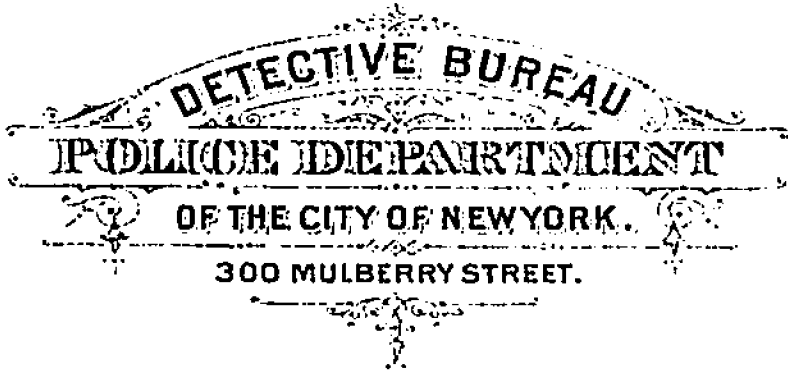
To Col Fellows 3/7 188

I send you affidavits
today
Wm R. Lindberg
E R Willcox

0534

Wm Mac Apr 12 1889
J. R. Fellows Esq
Dear Sir: I
Enclose you further
proofs of the contract
between Fred W. Burd
and James Barnes, in-
cluding three additional
affidavits and the re-
cords of three of the cases
commenced here by Burd
against Barnes all going
to show a conspiracy or
a sale of the property
in N. Y. by Burd to
Barnes. We have also
got a memorandum
and duplicate of sale
of said property to Barnes
by Burd, both in Burd's
hand writing, which we
will photograph and
send you with proof of
identity of hand writing
which latter, with the
enclosed records and affida-
vits constitute our exhibit
showing you have been
permitted to make E. R. M. Co. ex

0535



New York

March 11th, 1889.

John D. Lindsay, Esq.

Assistant District Attorney

New York County, N.Y.

Dear sir:-

I am directed by Thomas Byrnes, Chief Inspector of Police to acknowledge receipt of your favor of 9th inst, requesting return of papers in the matter of James Barnes. Herewith please find the papers referred to.

Respectfully yours,

Frank Pellangini, Jr.
Sergeant of Police.

0536

J. B. Albert,
Law and Real Estate,
171 Broadway,

New York, March 16th 1889.

Mr. Lindsay.

Asst Dist Atty.

My Dear Sir:-

Dear Sir:

The bearer Mr. Weller will show you copy of letter from Col. Fellows in reference to indictment against James Barnes of Mich. If you will please allow him to make a copy of the indictment I can forward to his Atty E. R. Wiley it will be returned a great favor. From my own knowledge of the case I do not doubt but that the counter affidavits which we will submit besides those you already have, will effectually show no criminal act or intent.

Yours Truly,

J. B. Albert

0537

STATE OF MICHIGAN, } ss.
County of Oakland.

I, Fred Wieland Clerk of the Circuit Court of said
county of Oakland, the same being a Court of Record, do hereby certify that Fred S. Lamb Esquire,
before whom the annexed instrument, in writing, was proved or acknowledged, was at the time of taking the same, a Notary
Public within and for said county, duly Appointed and sworn

and authorized by law to take the same, and that I am well acquainted with his handwriting,
and verily believe his signature subscribed to the certificate of proof or acknowledgement to
be genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of the
Circuit Court for said county, at Pontiac, this 7 day of March

A. D. 188 9

Fred Wieland Clerk.

By John Matthews Deputy Clerk.

0538

State of Michigan.

County of Oakland SS.

Uriah D. Hoover being duly sworn says he knows Fred W. Burch and also James Barnes both living in the city of Pontiac Michigan and has known them several years last past. He remembers the occasion of the said Burch shipping a lot of horses to the city of New York on or about the 3d day of May 1888 and that the said James Barnes also shipped a lot of horses at or about the same time. The business of this deponent has always been farming and milling until lately of the last five years he has retired from that business and has resided most of the time in the said city of Pontiac. He further says he met and conversed with the said Burch in the said city of Pontiac he thinks in the month of June 1888, the next day after the said Burch returned from the said city of New York to said Pontiac as he was then informed by said Burch, and I then asked said Burch how he came out on his deal in New York, referring to his horses and stock at that City. In reply the said Burch then told this deponent he had sold out his horses and every thing. He further said his horses got sick and that it was rainy weather which caused him bad luck, but that on the whole he had made a little something in the deal. I saw the said Burch two or three days later than the last conversation and I asked him further who he sold out to in New York? He told me he sold out every thing to James Barnes. He further said he did not take the right kind of horses there and never got more disgusted in his life. I also had further conversation with him of about the same nature.

Subscribed and sworn to before me
his 7th day of March 1889

And S. Lamb
County Public

and for Oakland County.

J. D. Hoover

0539

State of Michigan

County of Oakland SS. Amos Barnes being duly sworn says he is 36 years old and his business is a traveling salesman for R.M. Connable & Co. of Dayton O. His residence is at the city of Pontiac Mich. Knows Fred W. Burch and James Barnes. James Barnes is my brother. I had a conversation with said Fred W. Burch sometime in the month of ^{June} August 1888. shortly after he came home. He told me of its being very rainy weather and that his horses got sick, but that he had sold all out and got out all right. I had several conversations with him of this character and in the month of August of that year in a conversation with said Burch about expecting money from said James Barnes. I asked how or why he was expecting it ~~asked~~ asked him if "Jim" had borrowed it of him? He said no, that he had sold his horses and every thing to him in the city of New York. and ~~stated~~ other matters of the same ~~purpose~~ purpose; Subscribed and sworn to before me this

7th day of March 1889

Fred S. Lamb
Notary Public
In and for Oakland County.

Amos Barnes

0540

State of Michigan,
County of Oakland SS. I know Fred W. Burch and James Barnes
both living in the city of Pontiac Michigan. I am a brother
of James Barnes. I am 58 years of age and have lived in this
county nearly 30 years. Am a farmer, my farm lies near this
city. I had a conversation with the said Fred Burch one or ~~two~~
day after his return from the City of New York, as ^{he} was
then informed by said Burch, being sometime in June 1888 at
Pontiac in front of his father-in-laws' house. He spoke about
the rainy weather and about the horses being sick. I also
asked him how he came out in New York. He said he got out all
right and that he had sold out every thing before coming away
from there. I had another conversation in the ^{12 August} July following
with him. I first told him that James Barnes had sent me a
thousand dollars. He replied He also expected some from James
Barnes, that he had sold out his horses and every thing down there
to said Barnes, and I had further conversation of about the same
purport with him.

Subscribed and sworn to

this 7th day of March 1889

Before me

Fred S. Lamb
Notary Public

William Barnes

In and for Oakland County

0541

State of Michigan,
County of Oakland, SS.

James Barnes being duly sworn says *And hear there*
he lives in the city of Pontiac Mich, has lived there *the last*
28 years, is 48 years of age, He knows Fred W. Burch of the
same place. He says that on or about May third 1888 he shipped
seven horses, and said Burch in the same car shipped six
horses, to the city of New York. That when they arrived
there the weather became wet and that and other changes
or something, caused all of the said horses, *in a short time* to become sick of
what is called strangles and on account of said sickness and
swelled legs and other bad symptoms, *for the time being* became unsalable and much
depreciated in value. That shortly after getting to New York
said Burch and Barnes together bought a buggy and harness at
a cost of 185 dollars with the understanding that it should be
the property of both and be used by both and then be disposed of
to the best advantage to both. That on or about June 1st said
Burch proposed to and did sell all of his interest in all of
the said property to said Barnes, giving as a reason the sick-
ness of said horses and the great expense of their keeping,
and took said Barnes' note towards the payment of the same for
1452.00 dollars due in one day, but that 3 or 4 days thereafter
the said Burch changing his mind, the said Barnes gave back
the property and took back his note. That again on the 9th
day of June 1888 the said Burch sold all his said property
and his interest in the same to said Barnes, again giving
the same reasons, and this time took in part payment therefor
Barnes promissory "note at one day" for 1100. dollars and made
a memorandum of the same in the note book of said Barnes in
said Burches own hand writing which memorandum the said Barnes
is ready and willing to produce in court.
That large expenses were incurred before said sale by Burch,
and for which said Burch was in part liable ~~for~~ and said Burch
had prior to said sale made, with said Barnes, a contract in
writing with an agent to assist in the sale of said horses, and
that said agent had already been employed a month, and there were
various other items of expense for which the said Burch was in
part liable *which* in consideration for the purchase of said horses
harness and buggy, the said Barnes agreed to pay and did pay.
That said Barnes was compelled to dispose of said horses at
a great sacrifice on account of said sickness and disease, as
well as his own sickness while there, and on account of heavy
expenses for keeping and commissions for selling, and ~~that~~ *that* he was
account of the cost of the season for selling horses and that
was engaged

0542

He was engaged in disposing of said property from the time he got to New York on about the 4th day of May 1888 until about the 22nd of August of said year. That his brother Wm Barnes was interested in the lot of horses shipped by this deponent as aforesaid on which there was a loss of about six hundred dollars, and that on the horses ^{and property} bought by this deponent of said Burch there was a loss of about eight hundred dollars. ^{action in question} in the trans-

That this deponent is of small means, is a poor man and saved nothing for himself out of said deal. That he acted honestly without defrauding and without intending to defraud any one. The expenses fees sickness &c consumed the greater share of said property in spite of all the efforts of this deponent and he has saved not one cent but is largely in debt for and on account of said transaction. He would pay if he could but is without property and means. That he brought one horse back here with him and the transportation so stiffened it that it has done nothing all winter. He has used every effort to settle with said Burch but instead of fair treatment from him he has been annoyed by him by law suits in every shape. That said Burch at once after his return here commenced a case of attachment against him and then discontinued the same as this deponent is informed, and then commenced another attachment and levied on the last named horse, next arrested deponent on capias for converting a horse and buggy which was dismissed by the court as this deponent is informed; said first attachment being held void, he commenced another suit in circuit court now pending, and has also sued this deponent in justice court for the price and value of a buggy and harness and in circuit court for the price and value of said horses, and he is also informed that he seeks to arrest him on a criminal charge.

This deponent further says he has tried every way he could to have a peaceable settlement with him, has offered to give him

0543

the horse returned as aforesaid and another note in settlement
that he can do no better. That he has no other property
whatever exceeding one hundred dollars all told and can do no
better than he has offered. He further says he believes the
said Burch is acting viciously about the matter and that ~~he~~
is trying by a great number of suits and threatening criminal
prosecution, to compel this deponent to do what is not in his
power, ~~to~~. That said Burch is in the habit of cursing this de-
ponent and to threaten personal violence and charging with crime
and resorting to numerous suits and denying the possession
of said Barnes note, instead of using some reasonable means
to bring about such settlement. That this deponent is willing
and anxious to do all he can and to turn out and pay all he
owns regardless of exemptions to settle the matter,
and further says not
subscribe and sworn to this 7th
day of March 1889 before me.

Fred S. Lamb
Notary Public
In and for Oakland County

James Barnes

0544

State of Michigan
County of Oakland } ss. James N
Hanger being duly sworn deposes
and says that he is forty one
years of age that he now lives
in the Village of Rochester Michigan
that he is well acquainted with
James Barnes of the City of
Pacine that he has known
him for the past twenty years
that during that time he has been
a resident of and near
the City of Pacine Michigan
and that he knows the said
Ford Burch of said City
and that he had a conversation
with said Burch sometime in
the month of September or
October ¹⁸⁸⁸ and that said Burch
then told him that he sold
his ~~stock~~ ^{pick and shovels} to James Barnes
and that he took his note
for the same

James N Hanger
subscribed and sworn to
before me this 26th day
of March A.D. 1889

Franklin A Crawford
Justice of the Peace

0545

State of Michigan,
County of Oakland SS. Nathan J. Smith being duly sworn says
he lives in the city of Pontiac Michigan that he is a farmer
and has followed that business since his boy hood, is 44 years
old and has known James Barnes of this city during the last
25 years or more, he also knows Fred Burch of the same place
is no ways related to either of them and has no interest in
the matters in controversy between them. He knows of said Burch
and of said Barnes buying horses for the purpose as he was in-
formed of shipping them to the city of New York during the spr-
ing of 1888, he remembers having a conversation with said
Burch after his return from said city and it was as near as
he can remember in the month of August of said year while help-
ing him about building a house and in connection with other

matters said Burch stated to this deponent that said James
Barnes was owing him ~~considerable~~ a little but said not-
ing further at that time, except that it was for some horses
he had sold him, and he did then say it was for horses he had
sold him and this was said in response to inquiries this de-
ponent then made of said Burch as to how he came out on his
New York deal. Afterwards he had further conversation with said
Burch in the said city of Pontiac some time in the month of
October of said year or in the fall of that year and said Burch
told this deponent that he had commenced suit against said Barnes
and went on to explain matters about the same and
said that he sold out his stock in New York to "Jim" and had taken
his note in payment and he said further he intended to have
said Barnes arrested for and this deponent replied that he
did not see how he could have Barnes arrested for he had sold
the ~~note~~ ~~to him~~ ~~and taken his note.~~ ~~Said Burch replied that he had sold~~

Subscribed and sworn to this
26 day of March 1889 before me

Fred S. Lamb
Notary Public
In and for Oakland County,

N J Smith

0546

Calendar Entries

1889

Jan. 10. Simmons issued returnable Feb. 5, 1889
" " Cause entered on calendar
" " Affidavit for writ of garnishment filed
" " writ issued returnable Feb. 5, 1889.
" 12 Summons returned served, and filed.
" " writ returned served, and filed.
S.M.B. 412 " 25 Special motion to set aside writ entered
" " Praceipe for motion filed.
C.R.B. 500 Feb. 8 Appearance of defendant James Barnes entered

CLERK'S CERTIFICATE.

Pontiac Bill Poster Printing House.

STATE OF MICHIGAN, } ss.

COUNTY OF OAKLAND,

I, Fred. Willand

Clerk of the Circuit Court

for the County of Oakland, do hereby certify that the above and foregoing ^{are} ~~is a~~ true and correct ^{copies the} copy of ~~copy~~ ^{summons,}
writ of garnishment, affidavit for writ and copy of calendar entries
entered ^{and filed} in the above entitled cause in said Court
as appears of record in my office. That I have compared the same with the original, and it is a true transcript there-
from, and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court, at the City of
Pontiac, this ^{eleventh} day of ^{April} A. D. 1889.

Fred. Willand CLERK.

0547

* SUMMONS. 77-5-23

(41)

Richmond, Backus & Co., Stationers, 183 Jefferson Avenue, Detroit.

State of Michigan, } ss. The Circuit Court for the County of Oakland
Oakland County. } To the Sheriff of the County of Oakland Greeting:
In the Name of the People of the State of Michigan,

You are commanded to Summon

James Barnes

to be and appear before the Circuit Court of said County, at the Court
House in the City of Pontiac upon the Fifth
day of February 1889, then and there to answer unto

Fred. W. Burch

in a plea of trespass on the case upon persons
to his damage
Two thousand Dollars, which shall then and there be made to appear, and of this Writ
make due return.

WITNESS, the Honorable Joseph B. More Circuit Judge at the City of Pontiac
this 16th day of January in the year of our Lord one thousand
eight hundred and ~~seventy~~ Eighty-nine

Fred. W. Burch

Clerk.

0548

State of Michigan, }
County of Oakland } ss. On this Fourth day of January
A. D. 1889, I hereby certify and return that I served the within Summons upon the within named
James Barnes Defendant
in said County of Oakland by personally delivering to him a true copy hereof
and exhibiting to him this original, under the seal of the Court.

Fees

Martin W. Bloomburg
By Geo. W. Bloomburg Sheriff of said County.
Deputy Sheriff

THE CIRCUIT COURT.

FOR THE

County of Oakland

Fred W. Burch

vs.

James Barnes

SUMMONS.

FILED

Jan 12 1889

John Macdonald
Clerk.

J. M. Robins
Plaintiff's Att'y.

0549

PAYEE IN GARNISHMENT.
STATE OF MICHIGAN.
COUNTY OF OAKLAND.
Paul W. Burch
deposes and says that James B. Burch being duly sworn,
justly indebted to
of Eleven hundred in the sum
upon Express Contract dollars, or thereabouts,
recovery of said demand. That said Dependent and that for the
a suit in the Circuit Court has commenced
and for said County. against said James B. Burch of the Justices of the Peace in
And this Dependent further Says, That he has good reason to believe and does believe that
William B. Burch
has property, money or effects in his hands or under his control, belonging to said
James B. Burch and that the
indebted to the said
and further says not.
Sworn to and subscribed before me this 10th Paul W Burch
day of January A. D. 1889. J. B. Burch
Clerk.

0550

GARNISHMENT.

Pontiac Bill Poster Steam Printing House.

STATE OF MICHIGAN,

SS.

COUNTY OF OAKLAND,

THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND.

To the Sheriff of the County of Oakland, Greeting:

In the Name of the People of the State of Michigan,

Whereas, *Fred W Burch*

as plaintiff, has commenced a personal action, arising upon contract, in the Circuit Court for the County of Oakland, against *James Barnes*

as defendant, by *Summons*

and has filed in the office of the Clerk of said Court, the affidavit of *Fred W Burch*

said plaintiff, stating, amongst other things, that he has good reason to believe, and does believe, that *William H Barnes* has property, money, goods, Chattels, Credits, or effects in his hands or under his control belonging to *James Barnes*

to the said defendant: that said defendant, *is*

justly indebted to the said plaintiff in the sum of *Eleven hundred dollars*

over and above all legal set-offs, and that the said plaintiff, *is* justly apprehensive of the loss of the same, unless a Writ of Garnishment issued to the aforesaid *William H Barnes*

Said Summons; a copy of which affidavit and of the in said action is hereto attached.

Now, Therefore, You are hereby commanded to warn and garnish the said *William H Barnes*

to appear before said Court, on *Tuesday* the *25th* day of *January* A. D. 188*7*, to make disclosure in writing, under oath, to be filed with the Clerk of said Court, touching the liability of said *William H Barnes*

as garnishee of

the principal defendant, as charged in said affidavit, and that said *William H Barnes*

thenceforth pay no money and deliver no property or effects to the said *James Barnes* the

defendant in such action, until discharged.

And of this Writ you shall make due Return to the said Circuit Court, on the *5th* day of *February* 188*9*

Witness, the Hon. *Joseph B. Mott*

Circuit Judge at the City of Pontiac, this *10th* day of *January* one thousand eight hundred and eighty *nine*

Fred Wiland Clerk.

Seal

0551

STATE OF MICHIGAN, } SS.
COUNTY OF OAKLAND,

hereby Certify and Return, That on the Tenth day
of January A. D. 1889, in said County, I served the within Writ upon
William H. Barnes

the garnishee therein named, by showing the same to William H. Barnes
and at the same time delivering to the said William H. Barnes a true copy
of said Writ, to which were attached true copies of the Summons
and affidavit attached thereto.

Dated, January 15th 1889

- FEES: -

Service of Writ, 75-
Mileage, 10
Copies, 25-
\$1.10

Martin W. Bloomburg
Sheriff of said County.

By Geo J. Bloomburg
Deputy Sheriff

The Circuit Court
for Co. of Oakland
vs
James Barnes

vs
James Barnes

Writ of Garnishment
vs
James Barnes

8321

The Circuit Court,
FOR
The County of Oakland.

vs
James Barnes

James Barnes

Writ of Garnishment.

Filed Jan. 12th 1889
John Mathews
Deputy Clerk

Attorney for Plaintiff.

0552

State of Michigan } ss
 County of Oakland } In Justice Court
 Spec. W. Bunch, } Before Franklin Crawford
 as Plaintiff } Justice of the Peace
 James Barnes } in and for said County
 Defendant }

Summons issued January 11th
 A. D. 1889 returnable January 19th A. D.
 1889 at 9 o'clock in the forenoon of said
 day at my office in the City of Pontiac
 in said County. Summons returned
 personally served on the said defendant
 James Barnes at the City of Pontiac in said
 County January 11th A. D. 1889 by Wm
 VanBurskirk Constable. Fees \$45.00

Pontiac Mich January 19th A. D. 1889 at
 9 o'clock A. M. Cause called. The Plaintiff
 appeared by J. W. Robbins his attorney. Plaintiff
 declared upon all the common counts in
 assumpsit and makes an oral statement
 of the particulars of his claim as follows:
 One buggy and one harness sold by
 plaintiff to defendant in June 1888 and
 claims damages three hundred dollars.
 Defendant pleads the general issue.
 Cause by agreement of parties was
 adjourned until Feb'y 13th 1889 at 9
 o'clock A. M. at my said office.
 Feb'y 13th 1889 at 9 o'clock A. M. Cause

Deputy Clerk.

0553

called. Parties present by their respective
attorneys and cause adjourned by
agreement of parties until Feb 18. 1889
at my said office. Feb 18th 1889 at 9
o'clock Am. Cause called. Parties
present by their respective attorneys &
cause ^{continued} by agreement of parties
until March 4. 1889 at 9 o'clock Am.
Mar 4. 1889 at 9 o'clock Am. Cause
called Parties did not appear.

Franklin A Crawford
Justice of the Peace

0554

STATE OF MICHIGAN, }
County of Oakland. } ss.

I, Fred Wieland Clerk of the Circuit Court of said
county of Oakland, the same being a Court of Record, do hereby certify that Franklin A. Crawford Esquire,
before whom the annexed instrument, in writing, was proved or acknowledged, was at the time of taking the same, a Justice
J. H. Peace within and for said county, duly elected and sworn
and authorized by law to take the same, and that I am well acquainted with his handwriting,
and verily believe his signature subscribed to the certificate of proof or acknowledgement to
be genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of the
Circuit Court for said county, at Pontiac, this 11th day of April

A. D. 1889.

Fred Wieland Clerk.
Deputy Clerk.

0555

State of Michigan }
County of Oakland } ss

Fred W Busch being duly sworn deposes and says that James Barnes is justly indebted to him in the sum of one hundred and sixty dollars on thereabouts upon implied contract and that for the recovery of said demand he has commenced a suit before Franklin A Crawford one of the Justices of the Peace in and for said County. And this deponent further says that he has good reason to believe and does believe that William Barnes has property money and effects in his hands or under his control belonging to said James Barnes and that the said William Barnes is indebted to said James Barnes and further says not

Fred W Busch
Sworn to and Subscribed
before me this 11th day
of January A D 1889

Franklin A Crawford
Justice of the Peace

0556

State of Michigan }
County of Oakland } ss

I hereby certify that
the annexed and foregoing is a true
and compared copy of the proceedings
had by and before me in the within
entitled cause so far as same
appear upon my docket and of
the affidavit for garnishment filed
in said cause by the plaintiff
therein.

Dated April 11th 1889

Franklin A Crawford
Justice of the Peace
in and for the County
of Oakland State of
Michigan.

0557

In Justice Court
George F. Cravens

Fred W. Ward
vs James Barnes
also
appellant.
Breach in
Government

Tested by
J. A. Aune

0558

SHERIFF'S RETURN—ATTACHMENT—11-6-68.

(390.)

The Richmond & Packus Co., Stationers, Detroit.

State of Michigan.

County of Oakland

ss.

I do hereby Return, That by virtue of the annexed Writ of Attachment, I have, on this, the Twenty Fifth day of August A. D. 1888, attached the following property, viz:

One bay mare, weight about 950#. Black mane and tail and about six years old

All of which said property was appraised by B. F. Elwood and C. M. Crofoot, two disinterested Freeholders, who were by me first duly sworn to make a true appraisement thereof, and whose appraisal is in writing, signed by themselves and herewith returned; and I do further return that on the Twenty Fifth day of August James Barnes served

the defendant in said attachment named, with a copy thereof, together with a copy of an inventory of said property, duly certified, as I am commanded, by delivering the same to him.

The answer of

S. S. Matthews

Sheriff.

By

Deputy Sheriff.

0559

CERTIFICATE OF ATTACHMENT Deposited with Register—(New No. 3.) (150-3) The Richmond & Backus Co., Stationers, Detroit.

I do hereby Certify, That the annexed is a true copy of a writ of attachment to me directed and delivered, and by virtue of which I did on the 25th day of August A. D. 1888, attach and seize the following described Property real estate situated in the County of Oakland, to wit: of the inventory of said property

One bay mare weight about
950# Black Mare & tail
about six years old

Appraisers' Value.	

Dated this 25th day of August A. D. 1888

J. S. Matthews Sheriff.

0560

State of Michigan }
County of Oakland } ss. Fred W Burch being duly
sworn deposes and says that James Barrs
is indebted to him the said Fred W Burch
in the sum of Eleven hundred dollars
over and above all legal set offs as near
as may be and as near as this deponent can
estimate the same, and that the same is now
due and payable upon an express Contract
and that this deponent has good reason to
believe and does believe that the said James
Barrs has assigned disposed of or is about
to assign or dispose of or conceal his property
in some portion thereof with intent to defraud
his creditors

Subscribed and sworn
to before me this 24th day } Fred W Burch
of August A.D. 1888.
John Matthews
Deputy Clerk said County.

0561

CIRCUIT COURT ATTACHMENT.

Pontiac Bill Poster Printing House.

State of Michigan, } ss.
County of Oakland,

The Circuit Court for the County of Oakland.

In the Name of the People of the State of Michigan.

To the Sheriff of the County, Greeting:

You are commanded to attach so much of the lands, tenements,
goods, chattels, moneys and effects of the defendant

James Barnes

not exempt from execution, wheresoever the same may be found
within the County of Oakland, as will be sufficient to satisfy the

demand of

Fred W Burch

plaintiff, and costs of writ, and safely keep the same, to satisfy the judgment that may be recovered by
the plaintiff in this attachment.

And in case you shall seize any property of said defendant in said County, but not sufficient to
satisfy said demand and costs, then you are hereby further commanded to seize other property of said
defendant, subject to attachment, sufficient, with that seized in said County of Oakland, to satisfy said
demands and costs, wherever the same may be found in the State of Michigan.

You are also commanded to summon the defendant if to be found within said County of Oakland
or in any other County of the State of Michigan where you may have seized property under and by virtue
of this writ, to appear before the Circuit court for the County of Oakland at the Court House in the City
of Pontiac, on *Tuesday* the *fourth* day of *September*
1888, at *10* o'clock in the forenoon of said day, to answer the plaintiff. And of this writ make
due return.

Witness, The Honorable *Joseph B Moore* Circuit Judge, at the
City of Pontiac this *24th* day of *August* in the year of our Lord
one thousand eight hundred and *Eighty-Eight*

Fred Wiland Clerk.

By *John Mathews* Deputy Clerk.

Rollins M. Batten Att'y for Plaintiff.

(Copy)

No. 8288

THE CIRCUIT COURT

For the County of Oakland.

Fred W. Burch

VS.

James Barnes

WRIT OF ATTACHMENT.

FILED, 18

Clerk.

Robert A. Bickman

Plaintiff's Att'y.

0562

0563

* DECLARATION.—11-7-31.

(32)

Richmond, Backus & Co., Stationers, Detroit. R

State of Michigan,
IN THE CIRCUIT COURT,
For the County of Oakland
County of Oakland, ss.

On the day of
..... A. D. 188.....

Fred W. Burch
Plaintiff herein, by Robbins & Bateman his Attorney James Barnes, complain of
herein, of a plea of trespass on the case upon promises, ~~filing this declaration as commencement of suit.~~
(The said Defendant having been duly
summoned to appear and
answer the said plaintiff)

For that Whereas, The defendant ~~heretofore to wit~~ on the 15th day of
August A. D. 1888, at City of Pontiac said County of Oakland was
indebted to the Plaintiff in the sum of Two thousand

Dollars, for the price and value of goods then and there sold and
delivered by the Plaintiff to the Defendant, at his request.

AND in a like sum for the price and value of work then and there done, and materials for the same,
provided by the Plaintiff for the Defendant, at his request.

AND in a like sum for money then and there lent by the Plaintiff to the Defendant, at his
request.

AND in a like sum for money then and there paid by the Plaintiff for the use of the Defendant
at his request.

AND in a like sum for money then and there received by the Defendant for the use of the Plaintiff.

AND in a like sum for money then and there found to be due from the Defendant to the Plaintiff
on an account stated between them.

And Thereupon, The said Defendant afterwards, and on the day and year aforesaid, in
consideration of the premises respectively, then and there promised the Plaintiff to pay him
the said several sums of money respectively, on request: Yet the said Defendant has disregarded
his said promises and has not (although often requested so to do) paid any of the sums of
money, or any part thereof; to the Plaintiff damage of Two thousand Dollars, and
therefore he bring suit, etc.

Robbins & Bateman
Plaintiff Attorney

To the above named Defendant:

TAKE NOTICE, That on the trial of the above cause, the Plaintiff under the money counts will give
in evidence certain Cop of which
given below,

(OVER.)

Plaintiff Attorney

0564

COPY.

State of Michigan, } ss.
County of _____

I Hereby Certify and return, that on the _____ day
of _____ 188____, I served the Declaration, of which the within is a copy, on
_____ the defendant____,
named in said Declaration, by delivering to said Defendant____ in said County of _____
a true copy thereof, and of the foregoing _____ and the notice relating thereto, together
with a true copy of the notice to appear and plead, endorsed thereon as hereon endorsed.

FEES _____

SHERIFF.

DEPUTY SHERIFF.

(32)
No. 8288
THE CIRCUIT COURT

FOR THE
County of *Oakland*
Fred W. Burch

vs.

James Barnes

NARR.

To the within named Defendant:
TAKE NOTICE, that on filing a Declaration in this
cause (of which the within is a true copy), as com-
mencement of suit, a rule was entered in the Book of
Common Rules, kept by the Clerk of said Court, in
his office, in _____

requiring you to appear and plead to said Declaration
within TWENTY days after service on you of a copy
thereof and notice of said rule or judgment, etc.

Yours, etc.,

Plaintiff Attorney

Filed *Sept 22nd* A. D. 188____
John Matthews Deputy Clerk.

0565

State of Michigan
The Circuit Court for the
the County of Oakland

Fred W Burch

vs.

James Barnes

(Attachment)

The defendant by his attorney
E. R. Wilcox comes and demands a
trial of the matters set forth in
the plaintiffs declaration
Dated Nov 16-1888-

E. R. Wilcox

Attorney for
Defendant

The above is a copy of the
plaintiffs plea filed in said
cause

E. R. Wilcox

Attorney for Defendant

S. Robbins and Bateman

Attorney for Plaintiff

Dated Nov. 16th 1888

8288
The Circuit Court
for the County
of Oakland

Fred W. Burch

vs.

James Barnes

Plea
of Defendant

Filed Nov 16th 1899

Fred Wickland
Clerk

C. P. Wilcox
Attorney for
Defendant

0566

0567

No. 8288

Calendar Entries

1888

C.R. B. 498

11

C.R. B. 498

Aug. 24 Affidavit for writ of attachment filed
 " " Cause entered on calendar
 " " writ issued returnable Sept. 4th 1888
 " 30 writ returned served and filed
 Sept. 22 Declaration filed
 Oct. 8 Appearance of defendant entered
 " 13 Proof of demand of bill of particulars filed
 Nov. 16 Plea filed
 " " Note of issue filed by defendant
 " 17 Note of issue filed by Plaintiff
 Jan. 10 Cause discontinued
 " 15 Defendant's costs taxed at \$15.50
 " " Taxed bill of costs filed

CLERK'S CERTIFICATE.

Pontiac Bill Poster Printing House.

STATE OF MICHIGAN, } ss.
 COUNTY OF OAKLAND,

I, Fred. Wiland Clerk of the Circuit Court
 for the County of Oakland, do hereby certify that the above and foregoing ^{are} ~~is~~ a true and correct ^{copies} ~~copy~~ of the writ
of attachment, affidavit for writ, sheriff's return, declaration,
plea, and copy of calendar entries
 entered and filed in the above entitled cause in said Court
 as appears of record in my office. That I have compared the same with the original, and it is a true transcript there-
 from, and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of said Court, at the City of
 Pontiac, this eleventh day of April A. D. 1889.

Fred. Wiland CLERK.

0568

The Circuit Court
for the County of
Fairfield

Fred W. Burch

vs
James Barnes
Ex Administrator

Tested copy
of Affidavit &
Gills &c

0569

STATE OF MICHIGAN, }
County of Oakland. } ss.

I, Fred Wieland Clerk of the Circuit Court of said
county of Oakland, the same being a Court of Record, do hereby certify that Fred S. Lamb Esquire,
before whom the annexed instrument, in writing, was proved or acknowledged, was at the time of taking the same, a Notary
Public within and for said county, duly appointed and sworn
and authorized by law to take the same, and that I am well acquainted with his handwriting,
and verily believe his signature subscribed to the certificate of proof or acknowledgement to
be genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of the
Circuit Court for said county, at Pontiac, this 11 day of April
A. D. 1889

Fred Wieland Clerk.

.....Deputy Clerk.

0570

State of Michigan,

County of Oakland. SS. Frank Reckwell of the city of Pontiac being duly sworn says he lives in the town of Waterford and knows Fred. W. Burch of the city of Pontiac and that he was subpoenaed by him in a law suit on or about the 9th day of Jan. 1889 and at that time at the Hedges house in the city of Pontiac the said Burch told this deponent, in speaking about his horses shipped to the city of New York, that he had sold all his horses and interests in said city of New York to James Barnes and taken said Barnes note in payment for the same. He also told this deponent much else of the same purport.

Subscribed & sworn
to before me this 9th
day of April 1889

Fred S. Loomb Frank Reckwell
Notary Public
Oakland County.

0571

State of Michigan,

County of Oakland SS.

Martin Halfpenny of the city of

Pontiac Michigan being duly sworn says he has lived at said city

21 years last past and knows James Barnes of said city and

also knows Fred W. Burch of said city. That he had a conversa-
tion with said Burch in the month of August, 1888 in said city

in front of Lewis & Crofoot's drug store, ~~in said city~~. Said
~~Conversation~~ was about some horses the said Burch ~~had~~ shipped to the city
of New York and as to the disposition of the same. The said
Burch then and there told this deponent he had sold all his
said horses to James Barnes and in payment for them had
taken said Barnes note and as near as this deponent can re-
member he stated the amount of said note to be about 1200
dollars.

Subscribed and sworn to this

10 th day of April 1889.

Frederick S. Lamb
Notary Public Martin Halfpenny
Oakland County.

0572

State of Michigan,

County of Oakland SS. Amos Barnes and James Barnes of the city of Pontiac in said county being each for himself duly sworn say they know Jerome W. Robbins of said city, a practising attorney-at-law there, and that he is attorney of record and general acting attorney for Fred. W. Burch of said city in relation to a business deal between said Burch and said James Barnes, involving the disposition of a certain lot of horses in the city of New York by the said James Barnes. That the said Robbins has frequently talked with these deponents in relation to said deal and the settlement thereof, and that on or about the 25th day of March 1889 he told these deponents, at said Robbins office in said city of Pontiac, that he never had a client who was such a d-d liar as his client Fred Burch is, that he had lied and misrepresented to him about the facts in all the cases about said deal and had misled him and had hurt his reputation as an attorney, and that if he could get some kind of settlement and get out of it, he would turn around and do all he could to help punish Burch and that he ought to be punished. And that the said Robbins stated various other matters of the same purport.

Subscribed and sworn to before me

this 9th day of April 1889.

Fred S. Lumb } Amos Barnes
Notary Public } James Barnes
Oakland County }

0573

Reindeer

James Barnes

Affidavits of
Frank Perkins
Mr. Haggerty
Miss & J. Barnes

0574

Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK,
against

James Barnes

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

James Barnes
of the CRIME OF *Grand* LARCENY, in *the first degree*, committed
as follows:

The said *James Barnes*,

late of the City of New York, in the County of New York aforesaid, on the
nineteenth day of *July* in the year of our Lord
one thousand eight hundred and eighty*eight*, at the City and County aforesaid, being
then and there the clerk and servant of *agent of one Fred W.*

Bundy,

agent
and as such clerk and servant then and there having in his possession, custody and control
certain moneys, goods, chattels and personal property of the said

Fred W. Bundy.

the true owner thereof, to wit:

the sum of fourteen
hundred and forty dollars in
money, lawful money of the United
States of America, and of the value
of fourteen hundred and
forty dollars,

the said *James Barnes*, afterwards, to wit:
on the day and in the year aforesaid, at the City and County aforesaid, with force and arms,
did feloniously appropriate the said *sum of money.*

to his own use, with intent to deprive and defraud the said *Fred W. Bundy,*
of the same, and of the use and benefit thereof; and the same moneys, goods, chattels and
personal property of the said *Fred W. Bundy.*

did then and there and thereby feloniously steal, 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.