

0286

BOX:

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FOLDER:

361

DESCRIPTION:

Simmors, Zachariah E.

DATE:

01/14/81



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Filed Nov. 1882 by
Henry Dreyer
234 N. 26

20-120

Day of Trial,
Counsel,
Filed 11th day of Decr 1881
Plends

THE PEOPLE

vs.

Violation of Lottery Laws.

Zachariah C. Simmons
(2 Cases)

Samuel S. Collins.
SUNGALANDERS,

District Attorney,

Prothonotary General, Clerk of the

Court - Sep 13, 1892

Assessors - May 11, 1883

A True Bill.

Foreman.

[Handwritten signature]

0288

1
Gent Sessions
The People

Zachariah E Simmons

Statement of facts

Upon the 4th day of December 1880 the Grand Jury filed in this Court two Indictments against the above named defendant under which bail was given

Motions were made to quash said indictments upon the ground that both of them originated with the Grand Jury without any complaint before a Magistrate & without any opportunity for an examination such as is contemplated by the law of the State & by the Constitution & upon the additional ground that Anthony Comstock who was the hired agent & detective of the Society for the prevention of Vice, uninvited, appeared before the Grand Jury & by argument & persuasion declamation & harangue influenced the Jury to make the presentments, that he issued & caused the service of the subpoenas for witnesses, that he subse =

quently entered the office of the District Attorney & caused to be prepared the indictments, instructing one of the clerks therein as to the form character & contents thereof & in general usurped the office of the Prosecuting Attorney to the great scandal & disgrace of the office, uniting in his own person the functions of detective, of witness of prosecutor & of District Attorney.

When the motions came on to be heard upon an affidavit embodying the foregoing facts, the Assistant Dist Atty Joseph Bell Eoff upon his own motion entered by leave of the Court a rule of Nolle prosequi in each case. This occurred upon the 13th day of January 1887.

Upon the same day the Grand Jury for the January term of this Court filed another indictment against the defendant & upon the following day two more indictments were presented & filed similar in many respects to the indictments filed in December & charging similar offenses.

The three indictments last presented the defendant has moved to quash upon extrinsic grounds among others

0290

3rd

- 1st That no preliminary complaints were made before a magistrate
- 2nd That no legal evidence of all the facts constituting the offences charged in said indictments nor of ^{the} essential facts constituting any one of the offences charged in any single count of the indictments was presented to the Grand Jury
- 3rd That the Grand Jury never authorized ^{an} indictment for nor voted upon the different offences set forth in the respective counts of the several indictments nor concurred in finding the same but said indictments & the several counts therein were the creations of the pleader
- 4th That the indictments were vexatious & oppressive

4th

And as auxiliary to & to base said motions upon & as apart thereof the defendant asked in his moving papers that the members of the Grand Jury & Anthony Comstock might be cited before the Court to substantiate the allegations of irregularity charged in the affidavit of the defendant upon which the motion was founded.

The notice of motion stated that it would be made upon the affidavit upon the various papers & proceedings of record referred to in said affidavit & upon all other proceedings whatever of record touching said indictments.

Upon the coming on of the motion Joseph Bill Esq for the People stated that one of the indictments filed on the 14th ~~day~~ of January 1887 was intended to supersede the indictment filed upon the 13th of the same month & he then & there applied for a rule to supersede or nullify said last named indictment which was granted.

After opening the motion to quash the two remaining indictments & reading the affidavit of the defendant with a copy of which the Dist Atty had been duly served it was an =

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5th

announced upon the part of the People that no affidavit would be read controverting the statements of the defendants affidavit but the People would rely upon their judgment that the affidavit did not present any legal or sufficient grounds to quash the indictments

The allegations of the defendant in the affidavit are all admitted and the motion is to be determined as upon the demurrer to a complaint

In that view a brief summary of the affidavit is material & proper to show the admitted facts which are

1st That defendant is entirely innocent of each & every charge contained in the indictments

2nd That there was no legal evidence before the Grand Jury, of the commission of the acts charged in the different counts of x x the indictments

3rd That said indictments were procured at the solicitation & request of Anthony Comstock through malice & the expre =

6th

tation of pecuniary reward by said Comstock.

4th That the Grand Jury influenced & impressed by the fact, which was brought to their notice, that the defendant had been indicted by a former Grand Jury for the same or similar offences, which indictments were to be withdrawn & to be superseded by the indictments presented to them, found said indictments without any evidence at all or at all events without any sufficient legal evidence of any of the different offences charged in the several counts of said indictments.

5th That defendant has been by the former indictments which were null & again is by the present indictment, subjected to large expense trouble & harassment in his legal preparations to meet the indictments besides the mortification, disgrace & anxiety resulting from repeated vexations & humiliating criminal charges & indictments that can have no justification or support in fact.

6th That defendant cannot imagine nor inform his counsel of any of the facts & circumstances relating to himself upon

7th

Which such charges are predicated & is advised by his Counsel & verily believes that he cannot prepare for or safely proceed to trial without them

7th "That the defendant is & has been for twenty years past a resident of the City & means to remain, that his whereabouts in the City are well known & he can be reached at all times in the regular way & course of legal proceedings" & that there could be no reason for springing indictments upon him in the first instance =

8th "That the only witness before the Grand Jury to prove the facts upon which the indictments were found was Anthony Comstock a chronic solicitor to the commission of crimes, for hire & in the indictment in which the purchase was made by him a "particeps Criminis" an aider & abettor in fact the producing cause, the father the Creator of the offence

0295

8th

Points

First. The indictments should be quashed because the prosecution originated with the Grand Jury without any preliminary Complaint before a Magistrate and they were not found ^{upon} the personal knowledge of the jurors nor by the instruction of the Court nor by the request of the District Attorney

Whartons Am. Crim. Law 458

Such is the rule in many Judicial Districts in New York

It

It

458

and in the Court of General Sessions for New York

People v Strong 1 Abb R R N.S.

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9th

The inevitable advantages to the accused in a preliminary examination are

- 1st There is a responsible accuser to whom the defendant may look if he has been falsely & maliciously accused
- 2nd There is an opportunity to learn who are the witnesses & to cross examine them
- 3 To be represented by Counsel
- 4 To learn all the facts which can be established by the witnesses & where, where & how the crime was committed
- 5 To disprove the charge by his own testimony & by his own witnesses on the other hand

An indictment is found by a grand jury who are legally irresponsible without the defendant's knowledge of the accuser or opportunity to confront him or his witnesses or to cross examine them, without opportunity to be represented by counsel or to learn the facts or when where or how the crime was committed or to disprove the complaint by his witnesses

An indictment practically neither describes the time place nor the circumstances says Judge King -

Time is sufficiently described if the day on which the crime is charged is any day before the finding of the bill whether

it be the true day or not. Place is sufficiently indicated if stated to be within the county where the indictment is found & circumstances are adequately detailed when the offence is described according to certain technical formula.

The Commissioners for the revision of the Criminal Code of New York at p. 116 strongly condemned the practice of allowing Grand Jurors to originate accusations

& the British Commissioners in their 8th Report see (London Law Magazine No 64) say "that while a man, who has been publicly accused before a magistrate, has the amplest means of showing the character & motives of the witnesses, & of confuting the charge against him, a party secretly attached before the Grand Jury, is placed on his trial under circumstances of cruel disadvantage, and must rely on chance, rather than the purity of his conduct to establish his innocence. But this is not all. A door is consequently opened to the most disgraceful practices. A bill found by perjury, becomes the instrument of extortion to the innocent

but timid man; a bill found by true testimony, is employed with still greater power to wring money from the guilty

The public sentiment & feeling of Great Britain, of New York of Pennsylvania & many other states condemn the originating of accusations save in excepted cases by the Grand Jury & favors & sustains preliminary examination before a magistrate - Such has been the practice in New York City & in this Court as appears by Citations from the books.

An important & valuable right is taken away from the defendant through indictments, without a primary examination, to wit = the right of challenge to the Grand Jury as the Statute provides is lost after the Jury is sworn - In case of primary examination the defendant knows that his case will be before the Grand Jury & can attend & challenge the Jurors

Second Conceding that the primary examination is not a right yet in cases of hardship or vexation or oppression or danger to the defendant where, through the peculiar circumstances of the case, as in the one at bar, the character & liberty of the defendant would be unduly imperilled through ignorance of the facts & circumstances upon which a conviction is sought. the Court has the discretion & the power on motion to quash the indictment & leave the hired prosecutor to proceed before the Magistrate

When the character of the accuser his business & calling, the admitted ignorance of the defendant of all the facts & circumstances, his innocence of the crimes charged, his known residence in the County, the expense vexation mortification & disgrace to which he has already been subjected by springing numberless indictments upon him, are considered would it not be judicial

Ornelty
to refuse the motion

Third The indictments should be quashed because there was no legal evidence before the Grand Jury sustaining or tending to sustain all the essential facts necessary to constitute any one of the offenses named in any of the several counts of the indictments

That fact is admitted by failure to deny the defendants' affidavit but the Counsel for the People argue that the defendant could not know the fact & therefore his allegation thereof which is made upon information & belief should be taken for naught

The defendant could know it for the reason that as the authorities abundantly show there is no legal prohibition upon the jurors not to disclose it - & after indictment found any reason that existed for secrecy has ceased

The statute forbids the disclosure of what each one said or how they voted but nothing more

People v Shattuck 6 Abb. N.C. 34
Commonwealth v Mead 12 Gray 170, 171
The defendant could also know & did know that he had committed none of the acts constituting the

offences charged & that therefore no true evidence could be supplied to the Jury of those facts. There could be but two presumptions arising from the indictments, either that they were irregularly found without competent evidence. Or that they were found upon perjured evidence.

To presume an irregularity was a logical & legal presumption, as presumptions of Crime do not arise without proof — Crimes must be proved not presumed — perjury is a crime & the necessary logical & legal inference or presumption from the case as presented is that the the indictments were irregularly found without evidence as is alleged in the affidavit & not that that they were found upon perjured testimony.

It is sufficient on a motion to quash an indictment for irregularity that the facts constituting the irregularity be stated upon information & belief.

People v Briggs 60 How Pr R 17

& when they relate to testimony before the Grand Jury it is sufficient to

Call upon the Dist Atty to answer
the moving affidavits as the testimony
is presumptively within his knowl-
edge

People v Bugge last cited p 19

So in the case at bar it was the duty of
the Dist Atty to have examined the
witnesses & upon their testimony
to have prepared the indictments & to
have taken care that adequate & legal
evidence was presented to the Jury -
Presumably he knows what the evidence
was, that it was entirely inadequate
& therefore does not deny the fact as char-
ged in the affidavit

How idle & ridiculous to waste time
& trouble upon a motion to quash
indictments which are confessedly
found without adequate evidence
to support them

That the want of such evidence is proper
& sufficient ground when established
to quash was conceded on the argument
& is abundantly established in

People v Rostenblatt 1 Abb Pr. 268
People v Strong 1 — N.S. 248

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Prople	r	Hylar	2	Part	570
Prople	r	Briggs	60	How P.R	31
-	r	Hulbut	4	Denio	136

Fourth The indictments should be quashed for the reason that the indictments & each & every count therein appear to be the creation of the pleader & not to have been voted upon by the Grand Jury. It is so alleged in the moving affidavit & undenied is admitted by the People.

Certainly & beyond all possibility the Dist Atty knew for what offense if any the Grand Jury ordered an indictment, that would indicate the crime upon which they voted & it would appear by a production of the minutes of the Grand Jury which are in the possession of the Dist Atty. What the offense if any was for which the defendant was to be indicted - The failure & refusal to produce those minutes is the strongest confirmatory evidence that can be furnished by the People if the truth of the moving affidavit - Those minutes would show the irregularity & invalidity of these indictments which is conceded by the failure of the prosecuting officer to produce them or to deny the affidavit.

Fifth - The indictments should be quashed because they are vexatiously & oppressively found & maintained

CA The manner of finding the Dyer indictments, the prostitution of the officer of the Dist. Atty. without the knowledge of that officer or its assistants to the purposes of the prosecutor the witness & the detective Anthony Comstock, the taking bail & forcing the prosecution, entailing upon the defendant expense anxiety & disgrace, the motions to quash upon the grounds stated, the omission to Nolle the indictments until the defendant brought on his motion to quash although the affidavit & notice had been served many days before, the finding of three new indictments & subsequently after motion to quash entering a Nolle in respect to one of them, the official calling & occupation of the witness Comstock upon whose unsupported testimony the Indictments were based when it was apparent

to the Grand Jury & to the Dist. atty. that he was a participant in the crimes sought to be proved against the defendant. that he aided & abetted in the commission of the offence and should have been indicted himself. the refusal to permit an inspection of the minutes of the Grand Jury all these things show that one man Anthony Comstock who is an informer & detective by profession & occupation, earning his livelihood by tempting & soliciting the commission of crime & by aiding abetting & participating in the crimes themselves rendering himself amenable to punishment as a criminal is allowed to organize crime, then to appear before the Grand Jury either with or without the approbation of the Dist. atty. to become the witness & the private prosecutor & the prosecuting attorney at times, to formulate & spring indictments without number one after another as the preceding one may be quashed

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or nolle & at other times to produce indictments in bunches or flocks, that he has undertaken to pursue & hunt down this defendant, & is harassing him with indictments of which the two now under consideration are apart

The question for the Court is are these proceedings vexatious or oppressive
Certainly that question cannot be troublesome

For a whole digest of the law & practice as to motions to quash, when they can be made, upon what grounds & in what manner, when grand Jurors can be examined upon such motions to what they can be compelled to testify when the witnesses before the Grand Jury & the Dist Atty can be examined & in reference to what subject, reference is made to *People v Briggs* 60 How Pr R 17

When primary examinations are denied the protection of the accused will demand that Grand Jurors & other witnesses be examined upon motion to quash, which will necessarily increase in number - possibly such motion will in time a good and available substitute for the preliminary examination

Motions to quash rest in the discretion of the Court which is a judicial not an arbitrary one. It is however a wide one to be exercised whenever for any reason which seems good to the Court an indictment cannot be proceeded with advantageously to public justice or without

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doing a wrong to the defendant

Bishop's Crim Pro 1 sec 758

People v Robertson ^{by} ~~at~~ N.Y. Justice

Barrett's opinion

"Considering that in some way the Court must make available to defendants all their rights of defence, they may find it necessary to elevate this motion to quash to more than its ancient importance & allow it when it would not before have been allowed & even give it greater effect"

Bishop Crim Pro 1 sec 768

N.Y. General Sessions

The People

vs.

Zachariah K. Simmons

Defendants' brief on motion
to quash indictment.

Ed. M. Whitehead

Deft's Atty.
35 Wall. St.

John Graham
of Counsel

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Count of General Lepions

The People vs

Zachariah E. Simmons

City Honnly of New York &
Loring Watson of said City being
sworn says

That he i has been
for fourteen years last an attorney
at Law acting as such in
said City & that during the
time hereinafter mentioned de
ponent was managing Clerk
for H M Whitehead Esq the
counsel to the defendant in the
above entitled matter

That on the 14th
day of January 1881 after
the presentation & filing of
the indictments against the
defendant deponent acting
in the course of his employ-
ment went to the District
attorney's office to examine
the indictments filed & obtain
copies thereof - Deponent there
& there saw the indictments
& examining the indictments

03 12

Deponent made a
written memorandum at the
time of these circumstances,
which he shortly afterwards
handed to Mr Whitehead
with a verbal statement
in respect to the matter
from before me the ~~Young~~ ^{Young} ~~Watson~~ ^{Watson}
3^d day of Octbr 1882

W. Stebbins ~~Truce~~

(17) Notary Public

W. M. Cowley

0313

Good Spirit's
The People

Jackman's Economy

Wells of Living
Nation as to
attractions in
India

(Given Oct 4, 1992)

0314

Oct. 2. 1882.

In re Formians 3 Indictments -

Argument to Quash an Intrinsic grounds -

~~Indictment~~ can contain but one offence
Reas to Inland Case - Allen's Opinion -
14 & 15 Victoria

1st Sale of Lottery Ticket & contains 10 or 20
offences

2^d Count. no difference except says only
part of Ticket - & contains 10 or 20 offences

3^d Count -

Sect. 59 of Statute says &c.
It is same to set up as to open

4th Count. Illegal Lottery -

Offence - Each Count is liable to be examined
of setting back the public charge -
distribution of money was not made
if proved - How could they find an Indictment -

03 15

**POOR QUALITY
ORIGINAL
DOCUMENT(S)**

0316

Indictment is in language of the
 statute - it does not give the nature &
 cause of the crime - is entitled to have
 the facts same as in a pleading in civil action

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mis joinder of offences &

2. Otto - Chief Justice White, opinion of
 Court from -
 Wharton 2-796

Reed v. Mitchell

01



Criticizes first part of Indictment - it
 may for aught that appears it may have
 been found by Grand Jury -

~~His case~~ comes down to present time -
 to Maff

Reed v. People - Can offer but can't do
 80 N.Y. 171

Refugeance - uncertainty & duplicity -

8 N.Y. 83 + 87 N.Y. 679 -

201 of
 1864

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NY Court of Sessions

The People
agst.
Zachariah Finimons

Two Cases.

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Brief on part of the People on motion to
quash Indictments -

The two Indictments herein are based upon the
Statute against Policy, seeing which will be
found at page 1968 of § 283² Vol. R. S. Banks 7th Edition

The Indictment follows the language of the
Statute and an examination of the Indictments
will show that the crime charged is with
reference to the sale of a single Ticket, and
we have a right upon the trial to prove a
vending, seeing, bartering, furnishing, supplying, etc.
and it would be but one crime whether it was a sale
or a vending or a bartering and the Indictment
is good in that respect

It is but one crime charged and the various
means by which it may have been committed
are set forth so that we may give proof under
it of any of the various methods charged

See Vol 1 Bishop on Criminal
Procedure page 268 § 434 + Cases
there cited -

This statute under which this Indictment is predicated has been in operation since 1824 (See Laws 1824 § 6 and § 12) and this form of an Indictment has been in use during many years as the records of this Court will show.

The Indictment gives defendant ample notice of the crime with which he is charged and it is absurd to claim that we should set out all the facts and circumstances - it would be as reasonable to ask that we should give them a copy of our evidence in advance of the trial - It follows the statute

72 N.Y. § 334 -

People v. Van Pelt & How?

There cannot be a misjoinder when ^{§ 36} it is apparent on the face of the Indictments that there is but one crime charged i.e. an illegal disposition of a trolley ticket.

The criticism upon the face heading of the Indictment is answered by the fact that the New Code requires the heading of the Indictments to be in the language used in the new form of Indictment.

See Criminal Code § 206

03 19

The objection as suggestion as to the change of the year 1879 in the Teshi Indictment is fully and completely answered by the affidavits of Greyer & Tobin submitted herewith

The motion to quash should be denied

John McKean
Dist. Atty.

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DISTRICT ATTORNEY'S OFFICE.

New York, 188

People
2.
Exh. Simmons }

Memoirs.

Reveries Tallmadge in
1849 quashed an Indictment

Same View by Justice
Edmonds, see Parkers
Report, & Edmonds select Cases.

See People v. Hayles
2 Parkes p. 566

French v. People
3 Parkes p. 114

People v. Paige
3 Parkes p. 600

People v. Horton
4 Parkes p. 222

Hoffmanns
Decision

People v. Heffernan
5 Parkes p. 293

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ind. DISTRICT ATTORNEY'S OFFICE.

New York;

188

v.
Prope. v. Liepcomb
Co. N.Y.

p. 359

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Pease

r.

E. Simmons

Memo. from
Mr. Graham
Guil.

This motion is based upon
an affidavit framed upon
two authorities -

1878

The People v. Shattuck

6 Abbott New Cases 50

1880

The People v. Briggs

pamphlet number of Howard

The Report for Decr 1880

The denial of this motion in-
volves the disregard of these
decisions -

The decisions of the Court
ought not to be unstable -

Judge Cowing's decision
of two years ago ought not to
be lightly changed as to the
minutes of the Grand Jury
being produced -

We say that the uniform
practice of this Court for many
years has been the recognition
of the principles contained in the
Shattuck v. Briggs Cases.

Those cases merely extend the
application of those principles -
and show out further -

The course of the prosecution sustains this motion.

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No papers are presented, but -

1. It is admitted Comstock was the only witness before the Grand Jury, - which one is not said
2. The withholding of the Grand Jury minutes, backed by the avowal of the District Atty. that the finding could have been or was generally for violating the Lottery laws, places the Court in one of two positions: -
 1. It must order the minutes to be produced - for the responsibility is with the Court.
 2. If not produced, it must draw the inference the defence contends for, from non-production.

No argument is submitted except "ab inconvenienti" -

Suppose the prosecution is right, that our affidavit cannot be taken for what transpires in the Grand Jury room. that we cannot know that, or have reliable information to found a belief -

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The answer to that is, the moving affidavit is made up of two sets of facts.

- 1- Those occurring before the Grand Jury
2. Those occurring outside - and the latter are sufficient to govern instruction in some of its aspects -

Matters occurring before Grand Jury.

- 1- That they had no legal evidence or not enough.
2. That the indictments contain offences for which they did not indict - who drew them? whoever ~~draw~~^{did} this ought to deny this.
3. That the indictments were found to supersede others, without any special examination -
- 4- That they were found in consequence of misunderstanding as to the extent & character of the evidence before them -

An Indictment must come -

- 1- From a Grand Jury legally composed -

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2. They must have legal evidence -
 3. They must decide or vote upon the offense.
- The indictment incorporates their bidding -

Matters occurring outside the Grand Jury.

1. That the District Attorney's indictments were found on the haranguing of Comstock, who went before them uninvited without the knowledge of the District Attorney -
2. That he issued the subpoenas -
3. Had indictments drawn -
4. Hollershaus Testie was not subpoenaed & did not appear before the Grand Jury -
5. That defendant is innocent of charges why does not Comstock reply to this -
6. That defendant is a resident & has been for 20 years, could be easily found -
7. That the indictments were found at the request of Comstock through malice & for reward -

8. That any testimony given to the Grand Jury was untrue or hearsay, rumors & the like -
9. That the defendant was harassed ^{and} put to great expense by the first Indictment -
10. That Camstock deceives people into crime, to get them into trouble -
11. That Camstock initiated the prosecutions in the interest & pay of a personal enemy of defendants -

Why are not all these facts denied? Will it be seriously said that Camstock cannot swear that his evidence was true, covered the whole case ^{and} that he was paid in what he did without interfering with the secrecy of the Grand Jury -

Camstock is a material figure here. This bears upon all parts of this motion addressed to discretion -

He is prosecutor, the Instrumentality.

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If prosecution say they used him as a witness - sent him before Grand Jury -

Let them file & affidavit to that effect -

He is agent of a society
nourished — by contributions, a
species of begging - It gets
one half of all the fines
interested in making them
Arrives at a yearly revenue
of — \$50,000⁰⁰

Read from report for year
1880 as marked:—

Salaries of society 1879-	\$4839.98
Travelling expenses	1762.68

"Form of bequest" printed -

Owed Treasurer \$537⁰⁰, will
be set up, if that is not paid

Grounds of motion as noticed -

- 1- That Grand Jurors disclose
Conestock's evidence, so as to
show what offenses he assumed
to swear to -

State Rule

- 1- To show that Indictments contain errors of the Pleader.
2. That Grand Jury had not sufficient evidence within the legal rule to warrant any Indictment -
3. No legal vote upon the Bill - without this the whole thing a mockery -
This is aid of a motion to quash for matters abounds

2. Under any circumstances a preliminary examination is asked, should motion to quash be overruled. This is due to defendant to protect him against Comstock, a speculative detective whom the law marks with distrust and suspicion -

- 3- The motion to quash has two aspects -
 - 1- For matters de hors
 2. Intrinsic irregularities and mispleading -

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We confine ourselves now to matters

- 4- Under any circumstances that the prosecutor elect on what Court he will try -
- 5- That in event of trial a bill of particulars be ordered under the general counts -
- 6- That a list of witnesses, in event of trial, be furnished, those meant to be called as well as those called -
- 7- That the prosecution be obliged to stipulate to produce Comstock for cross-examination on the trial -

As to vexatiousness of Indictments -

Indictments should be quashed for this - if returned, a preliminary examination ordered -
Sgt. a resident of this City
20 years - offences only
mis-demeanors -

Five indictments within some 30 days, how easily got -

That establishes oppression & vexation -

Subjects deft. to unnecessary
expense -

See 3^d ground in and notice
of motion; this has
been recognized as a ground
for quashing in this Court
See my points in the
People vs. Dietrich

The People v. Westbrook
12 Wend 464 does not
establish anything against the
motion - Recognizes
right of control -

Power of this Court -

The power of this Court to
make "rules & regulations for
its government & conduct" and
to enforce submission to them
is most ample -

3 O.C. (6th Ed) 242. 372.
Laws of 1853 Chap 397.

The power of this Court to
perceive the purity of the adminis-
trations within its portals, and

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under its cover, is innate -

The U.S. Reckers & Blatchford 436
See McCune J. p. 466
Points in Quiser case pp. 30, 31.

The constitutional provision
against being held to answer for
an infamous crime, unless on
indictment or presentment of a
Grand Jury, becomes negatory
valueless, if the check can be
swept away by mere formality -

Points in Quiser Case as to Indictments.

Nature of Grand Jury Secrecy p. 24
as to the control of the Court pp. 29, 30.

Rules ^{and} principles as to Indictments.

44 Shaker Case. 303

Id. 349-50

Rule of trial as to mis-demeanors.

44 Shaker Case. 351

Right to a real substantial Indictment.

The People vs Shattuck

6 App New Cases 33

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affirming same ~~vs~~ ~~Austen~~ ~~blet~~
1 Att. Gen. 268

~~The People vs Briggs~~
~~Howard vs Report~~
~~Samuel St. for Decr 1880~~
~~The Question of Justice~~
~~N.Y. Times. Jan'y 23. 1881~~

Can deft. be a witness for himself?
Is that the answer?

See answer of Allen p 221. 222.
in ~~Thuloff vs~~ ~~The People~~
45 N.Y. Rep. 219-

There never was any dispute
in this Court or the Oyer and
Terminer for this County, about
the right to entertain a motion
to quash an indictment, but
in one instance in this Court
~~The People vs Camp & Wilkes~~
Oct. 17th 1846

Admiral overruled the Recorder.
The doctrine has been con-
siderably maintained since that
time, that the action of the
Grand Jury could be looked

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into, and controlled by the Court -
Reported opinions of this Court in
The People vs Ristenblatt
1 Abb. P. Rep. 268

The People v. Huang
1 Abb. P. Rep. (U.S.) 244

The opinions in those cases
are well reasoned, the law
carefully examined and are
authoritative -

The only question has been
was the power invoked in
a proper case -

The answer requires an
examination of the facts ^{and}
circumstances of each case -

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Low re summons

Motion to Quash

Indictment

Copy Brief

Inv. Graham

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

The People &c. vs. Zachariah E. Simmons	} Indictments of January 1881, now pending
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Sir:

Please take notice that on the affidavit of Loring Watson, and order therein referred to, copies of which are herewith served, and all other proceedings and papers herein, - a motion will be made before Hon. Henry A. Gildersleeve, Judge of the above named Court, (before whom a part of certain motions in above cases have been heretofore heard), at his Chambers No. 32 Chambers Street in the City of New York on Monday September 25th 1882 at 12 o'clock, noon; - that the order in above intitled cases, purporting to have been entered therein on September 14th 1882, denying certain motions made therein in January and February 1881, - be set aside, or that the same be amended by providing for the further hearing of the motions heretofore made in said

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actions, on the questions expressly reserved for a future hearing, at the time of the argument of the motions aforesaid; or that defendant have such other relief as may be just.

Dated New York September 16. 1882.

H. U. Whitehead

Def'ts. Atty.

To John M. Keen Esq.

District Attorney

City and County of New York.

0338

Fol. 1. Court of General Sessions of the Peace.
City and County of New York.

The People v.c. vs. Zachariah C. Simmons	} Indictments of January 1881, now pending.
--	---

City and County of New York, B:
Living Watson
being duly sworn says:

I am a Counsellor at Law, and
have general charge of the business
of H. M. Whitehead Esq., Counsel for
above named defendant.

I am informed and believe that
an order entitled in above named
cases, denying motions made therein,
(which order purports to have been
entered on September 14, 1882) was
" 2. entered on the records of the above
named Court, without the order, au-
thority, sanction or knowledge of the
Judge who decided said motions;
or of the Court: that said motions
were only heard as to a part of the
grounds alleged in the moving papers,
the hearing on other grounds having
been expressly reserved until after

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actions, on the questions expressly re-
the decision on the questions argued,
as aforesaid; - which decision was
not rendered until September 13. 1882.

" 3 An order has this day been granted
by Hon. Henry A. Gildersleeve,
(the Judge before whom the former
argument was made), that the further
argument on all the grounds of
objection reserved on the motion aforesaid,
^{for a further hearing,} be heard before him on September 25th instant.

From to this 10th day of ~~John Watson~~
September 1882, before me

Charles T. Duffy
Comm'r. of Duds

ms.

0340

General sessions

The People vs
Zachariah C. Simmons

Pending indictments January 1881.

The motion to quash the indictments in the several cases entitled as above having been heard and determined adversely to the defendant upon such grounds mentioned in the moving papers as were extrinsic; and the argument upon all other grounds having been reserved until the decision thereon. I do now on motion of the defendant, direct that the argument of said motions be continued before me on the 25th day of September 1882 at twelve O'clock noon
Sept 16th 1882,

(signed) H. A. Gildersleeve
Judge Genl Sessions

0341

City and County of New York:

Loring Watson,

being duly sworn says, that on September 16, 1887, he served copies of the annexed affidavit and ^{notice of motion} ~~and~~ on John M. Keon Esq., District Attorney of the City and County of New York, by delivering to and leaving with said District Attorney in person, at his office in said City, said copies of said papers.

From to this 18th day of September 1887, before me

L. W. McElroskey
Notary Public
N.Y. Co.

~~The motions heretofore made no place~~

0342

General Sessions
City & Co. of New York.

The People &c,
vs.

Jacobus & Junius

Affiant and notice
of motion &c.

A. M. Whitehead
Depts. atty,
231 Broadway
New York City.

(Filed Oct 2, 1892)

0343

M. Court of Sessions

The People
agst.
Zachariah E Simmons

Two Cases.

Brief on part of the People on motion
to quash Indictments.

The two Indictments herein are based upon the Statute against Policy Selling which will be found on page 1968 § 29 of 3^d Vol. R.D. Banks 7th Edition. The Indictment follows the language of the Statute and an examination of the Indictments will show that the crime charged is with reference to the sale &c of a single Ticket, and we have a right upon the trial to prove a sending, selling, bartering, furnishing, supplying &c. and it would be but one crime whether it was a sale or a sending or a bartering and the Indictment is good in that respect.

It is but one crime charged and the various means by which it may have been committed are set forth so that we may give proof under it of any of the various methods charged. See Vol 1 Bishop on Criminal Procedure page 268 § 434 & cases there cited.

0344

The statute under which this Indictment is predicated has been in operation since 1827 (See laws 1827) § 6 and § 12 and this form of an Indictment has been in use during many years as the records of this Court will show

The Indictment gives defendant ample notice of the crime with which he is charged and it is absurd to claim that we should set out all the facts and circumstances - it would be as reasonable to ask that we should give them a copy of our evidence in advance of the trial - It follows the Statute

72 N.Y. p. 334 - People v Van Rost 4 Kern. page 36. There cannot be a misapprehension when it is apparent on the face of the Indictment that there is but one crime charged i.e. an illegal disposition of a lottery ticket

See opinion herewith as marked in blue
The criticism upon upon the heading of the Indictment is answered by the fact that the New Code requires the heading of the Indictment to be in the language used in the new form of Indictment -

See Criminal Code § 276

0345

The suggestion as to the change of the year 1879 in the Trohi Decretment is fully and completely answered by the affidavits of Dwyer and Tobin submitted herewith

The motion to quash should be denied

John McKeon
Dist. Atty.

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

The People of the State
of New York.
— against —

Zachariah E. Simmons

City and County of New York: ss.
James H. Tobin
of said City being duly sworn
says that for twelve (12) months
prior to January 1882 deponent
was a clerk in the Office
of the District Attorney of
this County, and as such was
in the habit of copying Indictments.
That the Indictment filed on
January 14, 1881, on the complaint of
Bollerslaus Tschis, is in the hand-
writing of deponent and the
alteration of the year 1879 on line
eight of the first page of said
Indictment is in the handwriting
of deponent and was made as
deponent verily believes, by deponent
at the request of Ferdinand Oreyer,

0347

immediately after deponent had
copied the same and before said
Indictment was ^{signed by the Grand Jury} ~~signed by the Grand Jury~~
Jury for signature and before said
the same was filed in this court.
Sworn to before me this } J. A. N. Tobin.
10th day of October 1882.
Edw. W. Doonynge
Notary Public
N.Y. Co.

0348

New York Court of Sessions.

The People
vs
Zachariah E. Simmons

City and County of New York ss:

Ferdinand Dreyer of said City
being duly sworn says that for two
years prior to January 1882 Deponent
was Assistant Chief Clerk in
the District Attorney's Office in
this County and has such had
under his charge the drawing of
indictments. Deponent further says
that he has read the affidavit
of James H. Tobin annexed hereto
and verified on October 10. 1882
and said affidavit is in all
respects true.

Ferd Dreyer

Sworn to before me
this 10th day of October 1882.

Chas. A. Becker

Notary Public

N.Y.C.

Greenwood.

The People

—

Zachariah G. Simmons.

affidavit on part of
the People.

John McKeon

Rep. Atty.

Submitted, Oct. 13, 1882.

W. W. W.

0350

~~Subscribed~~ I. — I am of the opinion that no
one count in the Indictment sets
forth more than one offense; the
allegations set up the same offense claimed
to have been committed in various ways.
The several counts cover but one
transaction and I see no reason why
upon sufficient evidence, a conviction
cannot properly be had under either count
by the Indictment.
Motion to quash denied.
Dated May 11/82.

0351

Court of General Sessions

The People

vs

Jacobus E. Simmons,

Defendant

Indicted by

Dated May 11, 1883.

Filed May 11, 1883

0352

DISTRICT ATTORNEY'S OFFICE,

New York,

188

A

Hon. Joseph Bell

Albuquerque - New Mexico.

Did you agree with Simmon's Counsel on
argument of motion to quash Indictment
to adjourn ~~motion~~ argument upon intrinsic
grounds until after decision on motion to
quash upon extrinsic grounds

John McKeon

0353

GLUED PAGES

0354

DI

How.

Sid y
argument
to adjou
grounds
quash.

THE WESTERN UNION TELEGRAPH COMPANY

This Company TRANSMITS and DELIVERS messages only on conditions limiting its liability, which have been presented 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 be liable for errors or delays in transmission or delivery of Unrepeated Messages, beyond the amount of tolls paid thereon, nor in any case, unless so directed by the sender, for more than five days after sending the message. This is an UNREPEATED MESSAGE, and is delivered by request of the sender, under the conditions named above.

THOS. T. ECKERT, General Manager.

MERVIN GREEN, President.

NUMBER	SENT BY	REC'D BY	CHECK
5469	C mh	6 Collect	

Received at the WESTERN UNION BUILDING, 195 Broadway, New York.

Sept 21 1882.

Dated Albany New York 21

To J. McKeef

I made no such agreement
Joseph Bell

JB

0355

Court of General Sessions

The People v.

— agt. —

Zachariah E. Simmons

City and County of New York ss: John M. Keon being
that he is District Attorney of the City & County of New York
duly sworn says that on the 21st day of September
1882 he caused to be sent to Hon. Joseph Beece a
telegram, of which the annexed paper marked A is
a copy and received in reply thereto the annexed
paper B.

Sworn to before me this

23rd day of September 1882

John M. Keon

J. H. Roberts
Notary Public (C)
City & Co. N.Y.

Court of General Sessions
of the Recce
The People

vs
Joelariah E. Simmons

City and County of New York vs.

W C Beecher being duly sworn
deposes and says that he was former-
ly an assistant District Attorney
for the City & County of New York.
That he was present in Court
during the greater part of the
argument to quash the indictment
in this case. That to the best of his
recollection no agreement was
made at any time while he was
in Court. to reserve any question
for further argument after the
decision of the motion then ar-
gued.

Deponent further says that he frequent-
ly conversed with Hon Joseph Bell, who
argued the motion in behalf of
the People, respecting this case. and
deponent believes that if any such
agreement had been made de-
ponent would have known of it.

0357

That deponent never knew or heard
of any such agreement having
been made, while he was in of-
fice -

Subscribed before me
the 22 day of Sept. 1882

W. A. Beecher

John E. Gorman
Notary Public (284)
New York County

0358

N. H. General Sessions

The People

— agst. —

Jacobus E. Simmons.

affidavits on part of
People

John McKee

Dist. atty

0359

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

<p>The People vs. vs. Isachariah C. Simmons</p>	}	<p>Indictments of January 1881 now pending.</p>
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Sir:

Please take notice that on the
affidavit of Loring Watson, and copy
order therein referred to, copies of
which are herewith served, and all
other proceedings and papers herein,
a motion will be made before Hon.
Henry A. Gildersleeve, Judge of the
above named Court, (before whom a
part of certain motions in above
cases have been heretofore heard) at
his Chambers 710. 32 Chambers Street
in the City of New York, on Monday
September 25th 1882, at 12 o'clock,
noon; - that the order in above en-
titled cases, if supporting to have been
entered therein on September 14th 1882,
denying certain motions made therein in Jan. & Feb. 1881
be set aside - or that the same be
amended by providing for the further
hearing of the motions hereto-
fore made in said actions on the

0360

questions expressly reserved for a future hearing at the time of the first argument of the motions aforesaid; or that defendant have such other relief as may be just.

Dated New York September 16. 1882.

H. M. Whitehead

Defts. Attorney.

J.

John M. Keon Esq.

District Attorney

City and County of New York.

Vol. 1. Court of General Sessions of the Peace
City and County of New York.

<p>The People &c vs Zachariah E. Simmons</p>	}	<p>Indictments of 1881 now pending</p>
--	---	--

City and County of New York &c:

Forney Watson

being duly sworn says;

" 2 I am a Counsellor at Law, and have general charge of the business of H. M. Whitehead Esq Counsel for above named defendant. I am informed and believe that an order entitled in above named cases, denying motions and or therein (which order purports to have been entered on the September 14, 1882), was entered on the records of the above named Court, without the order, authority, sanction or knowledge of the Judge who decided said motions, or of the Court; that said motions were only heard as to a part of the grounds alleged in the moving papers, the hearing on other grounds having been expressly reserved until after the decision on the questions argued as aforesaid, which decision not rendered until September 13/1882.

0362

"3. An order has this day been granted by
Hon Henry A. Guldenslev, (the Judge before
whom the former argument was made),
that the further argument on all the
^{grounds of objection on the}
motions aforesaid, for a further hearing
be heard before him on September 25th
instant

GIVEN to this 16th day of } Loring Watson
September 1882, before me }

Charles J. Luffey
Coun^r of Deeds

0363

General Sessions

The People vs
Gachariah O Simmons

Pending indict-
ments
January 1881

The motion to quash the indictments in the several cases entitled as above having been heard and determined adversely to the defendant upon such ~~grounds~~ mentioned in the moving papers as were extrinsic and the argument upon all other grounds having been reserved until the decision thereon, I do on motion of ^{the} defendant direct that the argument of said motion be continued before me on the 25th day of September 1882 at twelve O'clock noon

Sept 16th 1882 (signed) A. A. Gilversleeve
Judge Genl Sessions

0364

General Sessions
City & Co. of New York

The People &c.

vs.

Isaaciah E. Simmons,

Copy affiant and
notice of motion &c.

A. M. Whitehead

Atty. for defendant

231 Broadway

New York City

To John W. & Kean Esq.

Dist. Attorney

N.Y. City & Co.

0365

General Sessions

The People &c
vs
Zachariah C. Simmons

Pending
Indictments
January 1881

The motion to quash the indictments in the several cases entitled as above having been heard and determined adversely to the defendant upon such grounds mentioned in the moving papers as were extrinsic, and the argument upon all other grounds having been reserved until the decision thereon, I do ^{on} motion of the defendant direct that the argument of said motion be continued before me on the 25th day of September 1882 at twelve O'clock noon.

Sept 16th 1882

(signed) H. A. Guldensleeve
Judge Genl. Sessions

For. 1. Court of General Sessions of the Peace
City and County of New York

The People *vs*
Zachariah C. Simmons

Indictments of
January 1887
now pending

City and County of New York *vs*:

Zachariah C. Simmons
being duly sworn deposes and says:

That he is the above named defendant; that he was present at the time of the argument to quash the indictments against him before Hon Henry A. Gildersleeve on January 31st and February 1st & 2nd 1887 in the above cases.

" 2 That it was distinctly stated upon the argument that defendant would reserve the argument to quash the indictments upon intrinsic grounds until after the decision of the motion to quash on extrinsic grounds stated in the moving papers.

That the argument had occupied part of several days, and the grounds stated were of so much gravity as to engender the belief that the motion would be granted on the grounds stated. The further argument was reserved upon the oral agreement of the District Attorney, made before and acquiesced in

by the Court which heard ~~the~~ motion.
 " 3 That defendant is advised by John Graham Esq, and by H. M. W. Litchfield Esq his Counsel that the indictments are defective in form and upon their face, and that good and sufficient legal reasons exist, and will be presented to the Court for quashing said indictments; and that the motion therefor is made in good faith, under their advice, as officers of the Court; and defendant is advised that he can not properly plead to said indictments in their present form; and that his rights and privileges will be prejudiced if he is compelled to plead before the hearing and decision of said motion.

" 4 That such part of said motion has never been heard, argued, or determined, but was expressly reserved as above stated.

That on about the 19th day of September 1882 an opinion was filed by the ~~City~~^{Said} Judge, considering the extrinsic grounds which were argued on the motion, and holding that the indictments should not be quashed on those grounds. That as he is informed by his Counsel, and believes to be true, on the 15th of September, now present, she causes appear on the day Calendar of the Court of General Sessions, to be heard before Recorder Smyth

sitting as a Judge of said Court, and defendant was called upon to plead to the indictments, and upon the said defendant answering, through
 .. 5 his Counsel H. M. Whitehead Esq., that a motion was still pending, unheard, and undetermined, to quash said indictments the records of the Court was produced, and an order found to have been entered therein, denying said motion to quash said indictments; That such order was made and entered without the knowledge of defendant's counsel, or any notice to him or them, and was a matter of surprise, as the Counsel thereupon stated to the Court; but that the Court holding that the motion ~~was~~ quashed were determined, as appeared by the records of the Court, directed said Causes to be set down for next morrow September 18th,
 .. 6 for defendant to plead thereto

From to this 15th day of
 September 1882 before me } J. E. Simmory
 Cornelius J. Kane
 Coroner of Precinct
 N.Y. City & County of New York

0369

General Sessions
City & Co. of New York.

The People &c.

vs.

Jacobus E. Simmons.

Copy affidavit and
order that argument
proceed &c.

A. M. Whitehead

Atty. for defendant

231 Broadway

New York City.

To

John W. Kean Esq.

Dist. Attorney,

N.Y. City & County.

0370

Law Offices of
H. M. Whitehead,

No. 231 Broadway,

New York, July 10 1883

Mr John Shanks
Clk. of the Court Supior

Dear Sir

In the case
of The People v. Zachariah E
Summons in which a writ of
Certiorari was issued by the
Supreme Court I would ask
an opportunity to see & examine
the Return to the writ
before it is made in order
that the Return may be

0371

so complete on the first motion
that no occasion will arise for
amended & further Returns re:
solving troublesome motions &
delay -

Some of the facts which
the Return should contain
perhaps do not appear
in writing upon the paper
but rest on the oral testi-
mony of the Dist Atty and
on open court upon the
argument -

Will you favor me with
ample notice so that I may
suggest these matters before the Return
Respectfully Anticipates

0372

Suppl
Zachariah E. Simmons
Letter 1st.

Printed by the
Government of the United States

0373

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

The People

against

Zachariah C. Simmons

Three indictments.

Take Notice that upon an Affidavit of which the annexed is a copy the various papers and proceedings of record referred to therein the minutes of the respective Grand Jurors preserving the indictments, referred to therein and all other proceedings whatever of record touching the indictments found against the defendant.

A motion will be made to quash the indictments against the above named defendant found during the present month of January upon the following grounds among others —

1st That no preliminary Complaint or Complaints were made before a Magistrate in respect to the offenses charged in said indictments.

2nd That no legal evidence of all the facts constituting the offenses charged in said indictments nor of the essential facts constituting any one of the offenses charged in any single count of the indictments was presented to the Grand Jury.

3rd That the indictments were found

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oppressively, vexatiously and in violation of the legal rights of the defendant as recognized and enforced by the usual rules and practice of the Court.

14th That the indictments were not based upon any vote of the Grand Jury authorizing the insertion therein of the different offences charged, or at least of all of them and that some if not all of the Counts inserted therein were, and are mere creations of whoever drew the indictments.

And for such further or other order or relief as to the Court may seem meet and proper.

Dated New York January 24th 1881

Yours &c

Atty for defendant
Zachariah C. Simmons

To
Daniel G. Collins Esq.
District Attorney
City and County of New York

Vol. 1.

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

The People

against

Zachariah E. Simmons

Three indictments.

City and County of New York ss.

Zachariah E. Simmons

being duly sworn on his oath says —

That he is informed and believes that on or about January 13th 1881 the Grand Jury of the City and County of New York ordered two or more indictments against affiant for violation of the Lottery laws of the State of New York one (or more of which indictments was thereafter presented to the Court —

2 That prior to said last named day and on or about December 3rd 1880 two indictments for alleged similar offences were ordered against affiant by the Grand Jury of the City and County of New York, unpannelled for the November Term of said year 1880 which last named indictments were filed on or about December 14th 1880 —

That a motion on behalf of affiant was made that the names of the Witnesses for the prosecution be furnished to him and endorsed on the indictments found, that the

- members of the Grand Jury or some of them be cited before the Court to testify in reference to certain matters stated in the affidavit used on such motion - which such Grand Jurors might not be prevented by statute from disclosing; that other persons who appeared before the Grand Jury or who had knowledge of certain facts stated in said affidavit might be cited to appear before the Court and notice of such motion specified that thereupon and thereafter a motion to quash such indictments of December 1880 would be made.

That in the affidavit made by this is affiant for the purposes of the motion aforesaid it was expressly stated on information and belief of affiant that one Anthony Comstock being incited thereto by pecuniary reward and acting as the hired servant of a certain society or corporation, did, uninvited by the Grand Jury and without the knowledge of the District Attorney, enter the Grand Jury Room and there and there addressed and harangued the Grand Jury and by means of his influence as such hired servant and by personal solicitation and confident assurances of the sufficiency of evidence he did procure such indictments to be found, which indictments but for

the illegal and unarrantable proceedings of said Comstock would not have been ordered; that said Comstock issued the subpoenas in the place of the District Attorney, and afterwards framed and directed the drawing of the indictments —

That the hearing of said motion was adjourned to January 13th 1881 and on said last named day after the affiant had stated the grounds of his motion which were set forth in the indictments themselves the indictments found on or about December 3rd 1880 were nolle in the opinion of the Assistant District Attorney who thereupon stated that a new indictment to supersede the former indictments against this affiant had been found —

That on January 14th 1881 affiant appeared in Court and pleaded not guilty to the last named indictment leave being then and there accorded by the Court to withdraw such plea and make such motion as affiant might be duly advised —

And affiant is informed and believes that the indictments found against him during January 1881 are intended as substitutes for those found in December last and are in many respects similar in form and for similar offences but whether the offences

charged are identical your affiant is unable to learn _____

7. Affiant on information and belief says that on application at the office of the District Attorney by defendants Counsel information was given by the District Attorney that the only witness who appeared before the Grand Jury for the purpose of giving evidence which led to the two or more indictments found against affiant in January instant was the aforesaid Anthony Cornstock (and deponent alleges upon the information thus furnished that one "Bollerslaus Teski" named in an indictment, which affiant is informed and believes was found against him on or about January 11th instant was not summoned and did not appear nor testify before the Grand Jury _____

9. And affiant further says that in the two or more indictments against him in January instant he is indicted as Zachariah E. Simmons alias "Williamson & Co" for selling tickets in the Kentucky State Lottery, at 72nd 599 Broadway in the City of New York to Anthony Cornstock and to Bollerslaus Teski in November 1879 or November 1880 and in other Counts of said indictments this affiant is charged with maintaining an office at said -

N^o 599 Broadway for registering tickets in the Kentucky State Lottery with carrying on the Kentucky State Lottery and with printing publishing and circulating an account of the Kentucky State Lottery —

11. Affiant says that he is entirely innocent of each and every charge contained in said indictments and is absolutely ignorant of the facts and circumstances upon which they were based or procured ~~except~~ ~~which they were based or procured~~ or upon which the District Attorney may seek a conviction thereunder —

12. That affiant has been a resident of the City and State of New York for twenty years and is now a resident thereof and so means to remain that he is never absent from the City of New York except on business or pleasure at intervals that his whereabouts in the City are well known and that he could and can be reached at all times in the regular way and course of legal proceedings That there could be no reason for springing indictments upon him in the first instance and that he is advised by J. C. M. Whitehead Esq. in behalf of himself and his Associate Counsel that his innocence of the offences laid in

the pending Indictments required more and most emphatically that he should be apprised in advance of a trial upon what facts the prosecution rely for the reason (among others) that as they could not and cannot be truthful they would and will be the more perilous and difficult to meet and disprove if not developed before the trial.

13 And affiant on information and belief says, that there was no legal evidence before the Grand Jury of the Commission of the acts charged in the different Counts of the last named indictments but said indictments were procured at the solicitation and request of Anthony Comstock, through malice and the expectation of pecuniary reward by said Comstock.

That all the official proceedings prior to the finding of the various indictments heretofore mentioned originated in the Grand Jury Room affiant having had no notice of any complaint before a Police Magistrate nor was any examination had before such official prior to the finding of said indictments.

14 And affiant charges that if testimony was produced before the Grand Jury sufficient upon the face thereof to authorize

such body to find the indictments afore-
said such testimony was untrue or
merely hearsay rumors or other secondary
and illegal evidence utterly incompetent
as against affiant.

15. That affiant understands and charges
that the Grand Jury influenced and
impressed by the fact which was brought
to their notice that affiant had been
indicted by a former Grand Jury for the
same or similar offenses which indict-
ments were to be withdrawn and to be
superseded by the indictments presented
to them found said indictments with-
out any evidence at all or at all events
without any sufficient legal evidence
of any of the different offenses charged
in the several counts of said indict-
ments.

16. That affiant was put to large expense,
trouble and harassment in his legal
preparations to meet the indictments found
in December 1880 and is again subjected
to similar expense annoyance and trouble
in preparing to meet the charges set forth
in the present indictment or indictments
besides the mortification disgrace and anxiety
resulting from repeated recitations and
humiliating criminal charges and indictments.

that can have no justification or support in fact —

Affiant cannot imagine nor inform his Counsel of any of the facts and circumstances relating to himself upon which such charges are predicated and without a knowledge thereof affiant is advised by his Counsel and verily believes that he cannot prepare for or safely proceed to trial —

17 Affiant charges that the said Anthony Cornstock the sole witness before the Grand Jury is the Agent of the Society for the Prevention of Vice and is supported and paid by them that he tempts and solicits persons to the commission of crime, in order that by the prosecution and occasional conviction thereof, his services may appear to be useful and meritorious to said Society and his salary may seem to be earned and may in fact be obtained —

18 Affiant charges on information and belief that at the present time the prosecutions initiated by all of the above indictments are instigated supported and paid for by some person or persons of affiant for whom the said Cornstock is acting —

Affiant knowing that he has committed none of the offences set forth in the indictments aforesaid feels justified

in charging with great positiveness that no legal evidence of any of the offences named in the different counts in said indictments was produced before the Grand Jury, and that the finding of said indictments was the result of some misunderstanding as to the extent and character of the evidence before them.

19.

That affair is advised by H. M. Whitehead Esq. his Counsel after full statement of the facts and circumstances that said indictments were erroneously found and that he should not be compelled to plead thereto and that a motion should be made to send the case before a Police Magistrate for examination & to quash said indictments which is motion affiant intends to make, and to that end desires to examine the minutes of the Grand Jury and the Grand Jurors, or so many of them as may be necessary and the said Anthony Connors as to the circumstances attending the appearance of said Connors before them and as to all that transpired before them in relation to defendant as well as to the testimony and evidence of the offences set forth in the different counts of the indictments mentioned which was heard or presented.

20

to them and upon which said indictments were based

21. That the motions in behalf of this Affiant are not made in the spirit or for the purpose of delay but under the joint advice and direction of his Counsel to whom he has fully and fairly stated the facts of the case so far as he could possibly know them that the motions are demanded and necessary for his security and protection and that without the benefit and advantage of the relief sought he could not and cannot safely join issue upon the said Indictments and proceed to the trial thereof

Given to this 26th day of 3
January 1881, before me }
Living Watson
Notary Public
N.Y. Co.

J. E. Simmons

0385

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

The People

against

Zachariah C. Simmons,

H. M. Whitehead

Depts. City.

(No. 35 - race St.,

New York City)

~~March 1764 - 1849.~~

For the Defendant

11 W. 10th St. 133

2 City Court House 266 E. 1st St. -
New York 267

3rd Ave. South 1019 331

Ex
A

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

The People

against

Zachariah E. Simmons.

Three Indictments

Take notice that upon an Affidavit of which the annexed is a copy, the various papers and proceedings of record referred to therein, the minutes of the respective Grand Jurors preferring the indictments referred to therein and all other proceedings whatever of record touching the indictments found against the defendant. —

A motion will be made to quash the indictments against the above named defendant found during the present month of January upon the following grounds among others —

1st That no preliminary Complaint or Complaints were made before a Magistrate in respect to the offenses charged in said indictments. —

2nd That no legal evidence of all the facts constituting the offenses charged in said indictments, nor of the essential facts constituting any one of the offenses charged in any single Count of the indictments was presented to the

0387

Grand Jury.

3rd. That the indictments were found oppressively, vexatiously, and in violation of the legal rights of the defendant, as recognized and enforced by the usual rules and practice of the Court.

4th. That the indictments were not based upon any vote of the Grand Jury, authorizing the insertion therein of the different offenses charged, or at least of all of them, and that some, if not all of the Counts inserted therein, were, and are, mere creations of whoever drew the indictments:

And for such further or other order or relief as to the Court may seem meet and proper.

Dated New York, January 24. 1881.

Yours &c.

H. M. Whitehead

Atty. for defendant -

Zachariah E. Simmons

To

Paniel G. Rollins Esq.,

District Attorney.

City and County of New York.

Fol. 1.

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

The People

— against —

Zachariah E. Simmons.

Three indictments

City and County of New York vs:

Zachariah E. Simmons

being duly sworn on his oath says. —

That he is informed and believes that on or about January 13. 1881, the Grand Jury of the City and County of New York, ordered two or more indictments against affiant for violation of the lottery laws of the State of New York, one (or more) of which indictments was thereafter presented to the Court.

That prior to said last named day, and on or about December 3^d 1880, Two indictments for alleged similar offenses were ordered against affiant by the Grand Jury of the City and County of New York, impanelled for the November Term of said year 1880, which last named indictments were filed on or about December 4, 1880.

That a motion on behalf of affiant was made that the names of the witnesses for the prosecution be furnished to him, and endorsed on the indictments found; that the

3.

members of the Grand Jury or some of them be cited before the Court to testify in reference to certain matters stated in the affidavit used on such motion, which such Grand Jurors might not be prevented by statute from disclosing; that other persons, who appeared before the Grand Jury, or who had knowledge of certain facts stated in said affidavit might be cited to appear before the Court; and notice of such motion specified that thereupon and thereafter, a motion to quash such indictments of December 1880, would be made. _____

4

That in the affidavit made by this affiant for the purposes of the motion aforesaid, it was expressly stated on information and belief of affiant, that, one Anthony Comstock, being incited thereto by pecuniary reward, and acting as the fixed servant of a certain Society or Corporation, did, uninvited by the Grand Jury, and without the knowledge of the District Attorney, enter the Grand Jury Room, and then and there addressed and harangued the Grand Jury, and by means of his influence as such fixed servant, and by personal solicitation, and confident assurances of the sufficiency of Evidence &c, did procure such indictments to be found; which indictments but for the

5 illegal and unwarrantable proceedings of said Comstock would not have been ordered; that said Comstock issued the subpoenas in the place of the District Attorney; and afterwards framed and directed the drawing of the indictments. —————

That the hearing of said motion was adjourned to January 13. 1881; and on said last named day, after the affiant had stated the grounds of his motion, which were extensive to the indictments themselves, the indictments found on or about December 3. 1880, were rolled, on the motion of the Assistant District Attorney, who thereupon stated that a new indictment to supersede the former indictments against this affiant, had been found. —————

6. That on January 14. 1881, affiant appeared in Court, and pleaded not guilty to the last named indictment, leave being then and there accorded by the Court to withdraw such plea, and make such motion as affiant might be duly advised. —————

And affiant is informed and believes that the indictments found against him during January 1881, are intended as substitutes for those found in December last, and are in many respects similar in form, and for similar offenses, but whether the offenses charged are identical your affiant is unable

to learn.

7. Affiant on information and belief says; that an application at the office of the District Attorney, by defendant's Counsel, information was given by the District Attorney that the only witness who appeared before the Grand Jury for the purpose of giving evidence which led to the two or more indictments found against affiant in January instant was the aforesaid Anthony Comstock (and deponent alleges upon the information thus furnished that one "Pollerslaus Testie," named in an indictment, which affiant is informed and believes was found against him on or about January 14th instant, was not summoned, and did not appear nor testify before the Grand Jury.

9. And affiant further says, that in the two or more indictments against him in January instant, he is indicted as Zachariah E. Simmons alias "Williamson & Co.," for selling tickets in the Kentucky State Lottery, at N^o. 599 Broadway in the City of New York, to Anthony Comstock and to Pollerslaus Testie, in November 1879 or November 1880; and in other counts of said indictments this affiant is charged with maintaining an office at said N^o. 599 Broadway for registering tickets in the Kentucky State Lottery, and with carrying on the Kentucky State Lottery, and with printing, pub-

-listing and circulating an account of the Kentucky State Lottery. —

11. Affiant says that he is entirely innocent of each and every charge contained in said indictments, and is absolutely ignorant of the facts and circumstances upon which they were based or procured, or upon which the District Attorney may seek a conviction thereunder. —

12. That affiant has been a resident of the City and State of New York for twenty years, and is now a resident thereof, and so means to remain — That he is never absent from the City of New York, except on business or pleasure, at intervals — That his whereabouts in the City are well known, and that he could and can be reached at all times in the regular way and course of legal proceedings — That there could be no reason for springing indictments upon him in the first instance, and that he is advised by N. M. Whitbread Esq. in behalf of himself and his Associate Counsel, that his innocence of the offences laid in the pending indictments requires ~~most~~ most emphatically that he should be apprised, in advance of a trial, upon what facts the prosecution rely, for the reason (among others), that as they could not and cannot be truthful, they would and will be more perilous and difficult to

meet and disprove, if not developed before the trial. _____

13 And affiant on information and belief says: That there was no legal evidence before the Grand Jury, of the commission of the acts charged in the different counts of the last named indictments, but said indictments were procured at the solicitation and request of Anthony Comstock, through malice, and the expectation of pecuniary reward by said Comstock.

That all the official proceedings, prior to the finding of the various indictments hereinbefore mentioned originated in the Grand Jury Room; Affiant having had no notice of any Complaint before a Police Magistrate, nor was any Examination had before such of official prior to the finding of said indictments.

14 And affiant charges that if Testimony was produced before the Grand Jury, sufficient upon the face thereof to authorize such body to find the indictments aforesaid, such Testimony was untrue, or merely hearsay, rumors, or other secondary and illegal evidence, utterly incompetent as against affiant. _____

That affiant understands and charges, that the Grand Jury, influenced and impressed by the fact, which was brought to their notice, that affiant had been indicted by a former

15.

Grand Jury for the same or similar offenses, which indictments were to be withdrawn, and to be superseded by the indictments presented to them found said indictments, without any Evidence at all, or at all events without any sufficient legal Evidence of any of the different offenses charged in the several Counts of said indictments. —

16

That affiant was put to large Expense, trouble and harassment in his legal preparations to meet the indictments found in December 1880; and is again subjected to similar Expense, annoyance and trouble in preparing to meet the charges set forth in the present indictment or indictments; besides the mortification, disgrace, and anxiety, resulting from repeated, vexatious and humiliating criminal charges and indictments that can have no justification or support in fact. —

Affiant cannot imagine nor inform his Counsel of any of the facts and circumstances relating to himself, upon which such charges are predicated, and without a knowledge thereof affiant is advised by his Counsel, and verily believes that he cannot prepare for, or safely proceed to trial. —

17

Affiant charges that the said Anthony Comstock, the sole witness before the Grand Jury, is the Agent of the Society for the Prevention

of Vice, and is supported and paid by them; that he tempts and solicits persons to the commission of crime, in order that by the prosecution and occasional conviction therefor, his services may appear to be useful and meritorious to said Society, and his salary may seem to be earned, and may in fact be obtained.

18

And affiant charges on information and belief, that at the present time the prosecutions initiated by all of the above indictments, are instigated, supported and paid for by some personal enemy of affiant, for whom the said Courtstock is acting.

Affiant, knowing that he has committed none of the offenses set forth in the indictments aforesaid feels justified in charging with great positiveness that no legal evidence of any of the offenses named in the different counts in said indictments, was produced before the Grand Jury, and that the finding of said indictments was the result of some misunderstanding as to the extent and character of the evidence before them.

19

That affiant is advised by H. M. Whitehead Esq. his Counsel, after full statement of the facts and circumstances, that said indictments were erroneously found, and that he should not be compelled to plead thereto; and that a motion

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20 should be made to send the case before a Police Magistrate for examination to quash said indictments, which motion affiant intends to make; and to that end desires to examine the minutes of the Grand Jury, and the Grand Jurors, or so many of them as may be necessary, and the said Anthony Comstock, as to the circumstances attending the appearance of said Comstock, before them, and as to all that transpired before them in relation to defendant, as well as to the testimony and evidence of the offenses set forth in the different counts of the indictments mentioned, which was heard or presented to them and upon which said indictments were based: —

21. That the motions in behalf of this affiant are not made in the spirit or for the purpose of delay, but under the joint advice and direction of his Counsel, to whom he has fully and fairly stated the facts of the case, so far as he could possibly know them, that the motions are demanded and necessary for his security and protection, and that without the benefit and advantage of the relief sought, he could not and cannot safely join issue upon the said indictments and proceed to the trial thereof. —

From the this 26th day of 3
January 1881, before me 3

Living Nations
Notary Public
N.Y. Co.

W. E. M. M. M.

0397

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

The People

— against —

Zachariah C. Simmons

Alfred A. Smith Prosecutor

H. M. Whitehead

Def't: Attorney
at 35 Nass St.
New York City.

0398

CITY AND COUNTY }
OF NEW YORK, } ss.

THE JURORS OF THE PEOPLE OF THE STATE OF NEW YORK,
in and for the body of the City and County of New York,
upon their Oath, present:

That *Zachariah E. Simmons* otherwise
called and known as "*Williamson & Co*"

late of the *eight* Ward, in the City and County aforesaid, on the *sixth*
day of *November*, in the year of our Lord, one thousand eight hundred and
seventy-nine, at the Ward, City and County aforesaid, with force and arms, did
unlawfully and knowingly vend, sell, barter, furnish, and supply to one

Anthony Comstock

and did procure and cause to be procured for the said

Anthony Comstock

a certain paper and instrument, being and purporting to be a ticket of a certain lottery,
to wit:

Kentucky State Lottery

the same being a lottery for the purpose of exposing, setting to sale, and disposing of
certain moneys, in a manner to the jurors aforesaid unknown, and in an amount to the
jurors aforesaid unknown, which said paper and instrument

is as follows, that is to say:

Kentucky State Lottery.
Authorized by act of the Legislature approved
December 9th. 1850 - To be drawn at Lexington, Ky.
on Saturday, Nov. 15. 1879.

By State authority.

This ticket entitles the holder to the prize
drawn to its number if applied for within (18833)
twelve months from date. Payable without
deduction, forty days after the drawing

Simmons & Dickinson
Managers

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.

Whole \$
Class F 1718

0399

And the Jurors aforesaid, upon their oath aforesaid, do further present

That the said

Zachariah E. Simmons otherwise
called and known as "Williamson & Co."

late of the Ward City, and County aforesaid, afterwards, to wit: on the day and in
the year aforesaid, with force and arms, at the Ward, City and County aforesaid,
did unlawfully and knowingly vend, sell, barter, furnish and supply to one

Anthony Comstock

and did procure and cause to be procured for the said

Anthony Comstock

a certain paper and instrument being and purporting to be a part and share of a ticket
of a certain lottery, to wit:

Kentucky State Lottery

the same being a lottery for the purpose of exposing, setting to sale, ^{distributing} and disposing of
certain moneys, in a manner to the jurors aforesaid unknown, and in an amount to the
jurors aforesaid unknown, which said paper and instrument

is as follows, that is to say:

Kentucky State Lottery
Authorized by act of the Legislature approved
December 9th. 1850. To be drawn at Covington,
Ky. on Saturday, Nov. 15, 1879.

By State Authority

This ticket entitles the holder to the prize
drawn to its number, if applied for within
twelve months from date. Payable without (18833)
deduction, forty days after the drawing.

Simmons & Dickinson
Managers

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.

~~SEAL K. PHILLIPS, State Attorney~~

Whole #
Class I 1718

And the jurors aforesaid upon their oaths aforesaid do further present

That the said Zachariah E. Simmons otherwise called and known as "Williams & Co" 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 being then the owner and occupant of a certain room in a certain building, known as Number five hundred and ninety nine Broadway in the said ^{ward} City and County did then and there open, set up, keep and maintain an office and place for registering the numbers of lottery tickets and tickets of and in a certain Lottery to wit, Kentucky State Lottery, the same being a lottery for the purpose of exposing, setting to sale, distributing and disposing of certain moneys in a manner and in an amount to the jurors aforesaid unknown, and the said lottery being then and ~~there~~ ^{not} authorized by law 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.

And the Jurors aforesaid upon their oath aforesaid, do further present:

That the said Zachariah E. Simmons otherwise called and known as William H. Co. afterwards to wit: on the day and year aforesaid and theretofore at the Ward, City and County aforesaid unlawfully and intentionally did promote and carry on a certain illegal lottery to wit: Kentucky State Lottery the same being a lottery for the purpose of exposing, setting to sale, distributing and disposing of certain moneys in a manner and in an amount to the Jurors aforesaid unknown by them and there vending selling, furnishing and supplying Lottery tickets and parts of tickets of and in said Kentucky State Lottery, and keeping, setting up, maintaining and carrying on a certain office and place and room at and in a certain building and premises in the Ward, City and County aforesaid commonly known as Chamber five hundred and ninety-nine Broadway whereat and wherein such lottery tickets and parts of tickets as aforesaid were on the day and

0402

year aforesaid and theretofore sold,
vended, supplied and furnished
and procured and caused to be sold,
vended, supplied and furnished and
the numbers thereof registered 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.

Daniel G. Collins.
District Attorney.

0403

120

Day of Trial,

Counsel,

Filed *14* day of *May* 188*1*

clerks

THE PEOPLE

vs.

Violation of Lottery Laws.

Jacobus C. Simmons

David G. Pollard

REPLACES

District Attorney.

*Motion to quash
dismissed by Court*

Sept 13, 1882

A True Bill, said - *May 11, 1883*

Frederic Stern
Foreman.

Recd from H. A. Felt 19/87

0404

CITY AND COUNTY }
OF NEW YORK, }

THE JURORS OF THE PEOPLE OF THE STATE OF NEW YORK,
in and for the body of the City and County of New York,
upon their Oath, present:

That *Zechariah E. Simmons* otherwise
called and known as "*Williamson & Co*"

late of the *eight* Ward, in the City and County aforesaid, on the *sixth*
day of *November*, in the year of our Lord, one thousand eight hundred and
eighty, at the Ward, City and County aforesaid, with force and arms, did
unlawfully and knowingly vend, sell, barter, furnish, and supply to one

Anthony Comstock

and did procure and cause to be procured for the said

Anthony Comstock

a certain paper and instrument, being and purporting to be a ticket of a certain lottery,
to wit:

Kentucky State Lottery

the same being a lottery for the purpose of exposing, setting to sale, and disposing
certain moneys, in a manner to the jurors aforesaid unknown, and in an amount to the
jurors aforesaid unknown, which said paper and instrument

commonly
called a lottery ticket

is as follows, that is to say:

Kentucky State Lottery.

Authorized by act of the Legislature approved
December 9th 1850 - To be drawn at Covington, Ky.
on Saturday, Nov. 15. 1889.

By State Authority.

This ticket entitles the holder to the prize
drawn to its number, if applied for within
twelve months from date. Payable without
deduction, forty days after the drawing

Simmons & Dickinson
Managers

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.

Whole

Class I 178

(18833)

0405

And the Jurors aforesaid, upon their oath aforesaid, do further present

That the said

*Zachariah E. Simmons otherwise
called and known as "Williamson & Co"*

late of the Ward City, and County aforesaid, afterwards, to wit: on the day and in
the year aforesaid, with force and arms, at the Ward, City and County aforesaid,
did unlawfully and knowingly vend, sell, barter, furnish and supply to one

Anthony Comstock

and did procure and cause to be procured for the said •

Anthony Comstock

a certain paper and instrument being and purporting to be a part and share of a ticket
of a certain lottery, to wit:

Kentucky State Lottery

the same being a lottery for the purpose of exposing, setting to sale, and disposing of
certain moneys, in a manner to the jurors aforesaid unknown, and in an amount to the
jurors aforesaid unknown, which said paper and instrument ^{distributing} ~~commonly~~

called a lottery ticket

is as follows, that is to say:

Kentucky State Lottery

*Authorized by act of the Legislature approved
December 9th. 1850. To be drawn at Covington, Ky.
on Saturday, Nov. 15, 1879.*

By State Authority

*This ticket entitles the holder to the prize
drawn to its number, if applied for within
twelve months from date. Payable without (18833)
deduction, forty days after the drawing.*

*Simmons & Dickinson
Managers*

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.

*Whole
Class I 1718*

And the jurors aforesaid upon their
oaths aforesaid do further present

That, ^{the said} Jacob ^{and} E. Simmons other-
wise called and known as "Williamson
& Co" 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, being then the
owner and occupant of a certain room
in a certain building known as Number
five hundred and ninety nine Broadway
in the said Ward City and County, did
^{then and there open set up} keep and maintain an office and place
for registering the numbers of lottery tickets
and tickets of and in a certain lottery
to wit: Kentucky State Lottery, the same
being a lottery for the purpose of exposing,
setting to sale, distributing and dis-
posing of certain moneys, in a manner
and in an amount to the jurors afore-
said unknown, and the said lottery
being then and there not authorized
by law against the form of the
Statute in such case made and pro-
vided ^{for} ~~known as~~ Number five hundred and
ninety nine ^{Broadway} ~~wherein~~ and wherein such
lottery tickets and ^{parts of} tickets as aforesaid
were on the day and year aforesaid

0407

And the Jurors aforesaid, upon their oath aforesaid, do further present

*and theretofore sold, vended, supplied
and furnished and procured and
caused to be sold, vended, supplied
and furnished and the numbers
thereof registered 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.*

*Daniel G. Rollins
District Attorney.*

0408

120

James Campbell
Sr. Centre St.

Day of Trial,
Counsel,
Filed 18 day of Aug 1881
Plends *Ind. Gully 114*
will have to withdraw
THE PEOPLE

Violation of Lottery Laws.

B

Zachariah E. Simmons
(2 Case)

David B. Rollins
~~BENJ. W. FIELDS~~

District Attorney.

Mar 14 for pleading
A True Bill.
James B. Moore
et Foreman
Aug 31 1881

Will be entered on
the indictment

0409

CITY AND COUNTY }
OF NEW YORK, }

THE JURORS OF THE PEOPLE OF THE STATE OF NEW YORK,
in and for the body of the City and County of New York,
upon their Oath, present:

That

Zachariah E. Simmons
otherwise called and known as *Williamson & Co.*

late of the _____ Ward, in the City and County aforesaid, on the ~~teach~~
day of *November*, in the year of our Lord, one thousand eight hundred and
seventy-nine, at the Ward, City and County aforesaid, with force and arms, did
unlawfully and knowingly vend, sell, barter, furnish, and supply to one _____

Bollerslaus Teschi

and did procure and cause to be procured for the said *Bollerslaus*
Teschi

a certain paper and instrument, being and purporting to be a ticket of a certain lottery,
to wit:

Kentucky State Lottery

the same being a lottery for the purpose of exposing, setting to sale, ^{distributing and} disposing of
certain moneys, in a manner to the jurors aforesaid unknown, and in an amount to the
jurors aforesaid unknown, which said paper and instrument ~~announced~~

~~called a lottery ticket~~

is as follows, that is to say:

Kentucky State Lottery.

Authorized by act of the legislature approved
December 9th. 1850.

To be drawn at Bowling Green, Ky. on Saturday, Nov. 15. 1879.

By State Authority.

*This ticket entitles the holder to the prize (53822)
drawn to its number, if applied for within
twelve months from date, payable without
deduction, forty days after the drawing.* *Simmons & Dickinson*
Managers

SEAL AND SIGNATURE

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.

Blanc 1914 \$1

04 10

And the Jurors aforesaid, upon their oath aforesaid, do further present

That the said

Zachariah E. Simmons otherwise
called and known as Williamson & Co

late of the Ward City, and County aforesaid, afterwards, to wit: on the day and in
the year aforesaid, with force and arms, at the Ward, City and County aforesaid,
did unlawfully and knowingly vend, sell, barter, furnish and supply to one

Bollerslaus Teski

and did procure and cause to be procured for the said

Bollerslaus
Teski

a certain paper and instrument being and purporting to be a part and share of a ticket
of a certain lottery, to wit:

Kentucky State Lottery

the same being a lottery for the purpose of exposing, setting to sale, and disposing of
certain moneys, in a manner to the jurors aforesaid unknown, and in an amount to the
jurors aforesaid unknown, which said paper and instrument ~~was~~ ^{distributing}

~~called a lottery ticket.~~

is as follows, that is to say:

Kentucky State Lottery.

Authorized by act of the Legislature

approved December 9th 1850.
to be drawn at Covington, Ky. on Saturday, Nov. 15, 1879.

By State Authority.

This ticket entitles the holder to the prize (53822)
drawn to its number, if applied for within
twelve months from date, payable without
deduction, forty days after the drawing. Simmons & Dickinson,
at Covington.

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.

And the jurors aforesaid upon their oath aforesaid, do further present: That the said Zachariah E. Simmons otherwise called and known as Williamson & Co 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 being then the owner and occupant of a certain room in a certain building known as Number Five hundred and ninety-nine Broadway in the said Ward, City and County did then and there open, setup, keep and maintain an office and place for registering the numbers of lottery tickets and tickets of and in a certain lottery to wit: Kentucky State Lottery, the same being a lottery for the purpose of exposing, setting to sale, distributing and disposing of certain moneys in a manner and in an amount to the jurors aforesaid unknown and the said lottery being then and there not authorized by law against the form of the Statute in such case made and provided and against the peace of the People of the State of New

Look and their dignity.

And the jurors aforesaid upon their oath aforesaid do further present:

That the said Zachariah E. Simmons otherwise called and known as Williamson & Co afterwards to wit on the day and year aforesaid and theretofore at the Ward, City and County aforesaid unlawfully and intentionally did promote and carry on a certain illegal lottery to wit: Kentucky State Lottery the same being a lottery for the purpose of exposing setting to sale, distributing and disposing of certain moneys, in a manner and in an amount to the jurors aforesaid unknown, by vending, selling, furnishing and supplying ^{exposing for sale} lottery tickets and parts of tickets of and in said Kentucky State Lottery and keeping, setting up, maintaining and carrying on a certain office and place and room at and in a certain building and premises in the said City and County aforesaid commonly known as Number five hundred and ninety-nine Broadway whereat and wherein such lottery tickets and tickets as aforesaid were on the day

0413

and year aforesaid and theretofore
sold, vendid, supplied and furnished,
and procured and caused to be sold,
vendid, supplied and furnished and the
numbers thereof registered and by his
the said Zachariah E. Simmons otherwise
called and known as Williamson & Co
then and there on the said tenth day
of November in the year aforesaid,
printing, publishing and circulating
an account of the aforesaid Kentucky
State Lottery stating in substance
and to the effect that a drawing
of the said Kentucky State Lottery
was to take place and be had on the
fifteenth day of November in the year
aforesaid at which drawing of said
lottery a prize and capital prize of
fifteen thousand dollars in money and
divers other prizes in money were to
be ^{then} drawn and drawn for, disposed of
and distributed (a more particular
description of which account is to
the jurors aforesaid unknown and
cannot now be given against the
form of the Statute in such case
made and provided and against the

04 14

peace of the People of the State of New
York and their dignity.

Daniel G. Rollins.

District Attorney.