

0672

BOX:

68

FOLDER:

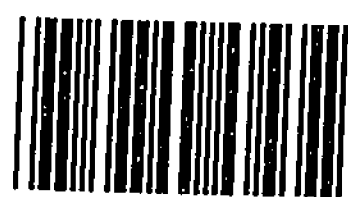
762

DESCRIPTION:

Stine, Allix

DATE:

05/12/82



762

0673

Counsel,

Filed 12 day of May 1882

Pleads

Wm. H. Phillips

THE PEOPLE

Wm. H. Phillips

Wm. H. Phillips

Wm. H. Phillips

District Attorney

22 May 17, 1882

pleads guilty 19.

A True Bill.

Wm. H. Phillips

Foreman.

Ed. R. J. 2d

97

Wm. H. Phillips

0674

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

THE PEOPLE OF THE STATE OF
NEW YORK,

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

person
committed as follows:

The said

late of the First Ward of the City of New York, in the County of New York, aforesaid,
on the *ninth* day of *May* in the year of our Lord one
thousand eight hundred and ~~seventy~~ *eighty-two* at the Ward, City, and County aforesaid,
with force and arms,

Divers Promissory Notes for the payment of money, the same being then and there
due and unsatisfied, and of the kind known as United States Treasury Notes, of a number
and denomination to the Jurors aforesaid unknown, and a more accurate description of
which cannot now be given, of the value of *twenty-two*

Divers Promissory Notes for the payment of money, the same being then and there
due and unsatisfied, and of the kind known as Bank Notes, of a number and denomina-
tion to the Jurors aforesaid unknown, and a more accurate description of which cannot
now be given, of the value of *twenty-two*

~~Divers Due Bills of the United States of America, the same being then and there
due and unsatisfied, and of the kind known as Fractional Currency, of a number and
denomination to the Jurors aforesaid unknown, and a more accurate description of
which cannot now be given, of the value of~~

Divers Coins, of a number, kind, and denomination to the Jurors aforesaid un-
known, and a more accurate description of which cannot now be given, of the value of

of the goods, chattels, and personal property of one
on the person of the said

from the person of the said then and there feloniously
did steal, take and carry away, against the form of the Statute in such case made and
provided, and against the peace of the People of the State of New York and their dignity.

John H. Phelps
BENT E. PHELPS, District Attorney.

0675

BAILED,
No. 1, by _____
Residence _____
No. 2, by _____
Residence _____
No. 3, by _____
Residence _____
No. 4, by _____
Residence _____

Sec. 208, 210 & 212.

Police Court 3 District.

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Minnie Stone
Allix Stone

Offence Larceny from
the person

Dated May 10 1882

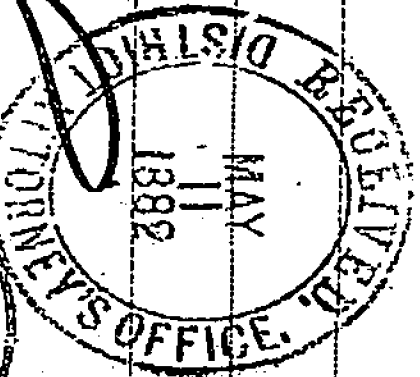
Smith Magistrate.

May 10 Officer.

Clerk.

Witnesses John McCarty

1075 Federal Place



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

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

Dated May 10 1882 Robert Smith Police Justice.

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

Dated _____ 188 _____ Police Justice.

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

Dated _____ 188 _____ Police Justice.

May 10

0676

Sec. 198-200.

CITY AND COUNTY
OF NEW YORK, } ss.

3
DISTRICT POLICE COURT.

Allix Stine being duly examined before the under-
signed, according to law, on the annexed charge: and being informed that it is ~~his~~ right to
make a statement in relation to the charge against ~~him~~; that the statement is designed to
enable ~~him~~ if he see fit to answer the charge and explain the facts alleged against ~~him~~
that he is at liberty to waive making a statement, and that ~~his~~ waiven cannot be used
against ~~him~~ on the trial,

Question. What is your name?

Answer.

Allix Stine

Question. How old are you?

Answer.

Nineteen years

Question. Where were you born?

Answer.

Germany.

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

Answer.

I have no home

Question. What is your business or profession?

Answer.

Dancer and Waiter.

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

Answer.

I am guilty

Allix Stine

Taken before me, this *10th*

day of *May* 188*8*

Solo R. Smith
Police Justice

0677

30

District Police Court.

Affidavit—Larceny.

CITY AND COUNTY
OF NEW YORK,

of No. 144 Chrystie Street, Minnie Henry
30 Years Old
 being duly sworn, deposes and says, that on the 9th day of May 1882
 at the Corner of the Bowery and Broome St. City of New York,
 in the County of New York, was feloniously taken, stolen and carried away from the possession
 of deponent, and from her person in the night time
 the following property, viz:

One hand bag containing gold and
lawful money consisting of bank
bills and silver coin of the value
of twenty-two dollars and ninety six
cents

the property of

Deponent

and that this deponent
 has a probable cause to suspect, and does suspect, that the said property was feloniously taken,
 stolen, and carried away by Allister Stue (man here)

for the reason that while deponent was
 passing along Broome Street said Stue
 snatched the above mentioned bag from
 deponent's hand, the said bag being at
 the time attached to deponent's arm by
 a strap.

Minnie Henry

Sworn before me this

10th day of

May

1882

Police Justice.

0678

John H Layton 36 years of age of the 10th Precinct
Police being duly sworn says that on the
night of May 10th 1882 he arrested Allison
Dumas Burkhed. That at the time of making
such arrest said Stone dropped the
within described bag, and which has
been identified by Minnie Henry
as her property and which had been
stolen from her possession and person
by said Allison Stone.

Sworn to before me John H Layton
this 10th day of May 1882
Solomon B Smith
Police Justice.

District Police Court.

THE PEOPLE, &c.,

ON THE COMPLAINT OF

vs.

AFFIDAVIT—Larceny.

Dated

188

Magistrate.

Officer.

WITNESSES:

DISPOSITION

0679

BOX:

68

FOLDER:

762

DESCRIPTION:

Storen, Daniel P.

DATE:

05/16/82



762

0680

BOX:

68

FOLDER:

762

DESCRIPTION:

McEntee, James P.

DATE:

05/16/82



762

0681

BOX:

68

FOLDER:

762

DESCRIPTION:

Kelly, James

DATE:

05/16/82



762

0682

BOX:

68

FOLDER:

762

DESCRIPTION:

Habighorst, Frederick

DATE:

05/16/82



762

Bill Ward

Filed

day of

1882

Pleads

THE PEOPLE

BURGLEY—Third Degree, and Grand Larceny.

Daniel O'Sullivan P.

Jamex B McEntee, P.

1/8 - 343 B. 124 Kelly P. 3

65-22. (Alien)

[illegible]

John McKoon

~~PAUL C. ROLLINS.~~

Chas. L. O'D.
District Attorney.

in Harder Days 3 days.

Indigment suspended

A True Bill

James Stevens

21. *Journal of Forensic Medicine*

Mr. C. Dickkopf by Grand

May 27/92

Verdict of Guilty should specify of which count.

2440 ①

Wm. Lead. June 3 day

Per: One year each.

0684

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

THE PEOPLE OF THE STATE OF NEW YORK

against
Daniel P. Storn James Kelly
James Mc Entee Frederick Habighorst

The Grand Jury of the City and County of New York, by this indictment, accuse
of the CRIME OF *Burglary in third degree*

committed as follows:

The said *Daniel P. Storn James Kelly James Mc Entee Frederick Habighorst*
late of the *fifteenth* Ward of the City of New York, in the County of
New York, aforesaid, on the *Eleventh* day of *May* in the
year of our Lord one thousand eight hundred and eighty *two* with force and arms,
about the hour of *nine* o'clock in the *day* time of the same day, at the
Ward, City and County aforesaid, the dwelling house of *Frederick Hartung*

there situate, feloniously and burglariously did break into and enter, by means of
forcibly *breaking open an outer door thereof*

the said Daniel P. Storn James Kelly
James Mc Entee Frederick Habighorst

then and there intending to commit some crime therein, to wit: the goods, chattels and
personal property of *Frederick Hartung*

in the said dwelling house then and there being, then and
there feloniously and burglariously to steal, take and carry away, against the form of
the Statute in such case made and provided, and against the peace of the People of
the State of New York, and their dignity.

And the Grand Jury aforesaid, by this indictment, further accuse the said

of the CRIME OF *Grand Larceny*

committed as follows:

The said *Daniel P. Storn James Kelly James Mc Entee Frederick Habighorst*
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,
one clock of the value of forty dollars
one penknife of the value of twenty five Cents
one ornamental China Swan of the value of twenty
Cents

of the goods, chattels, and personal property of the said *Frederick Hartung*

in the said dwelling house then and there being, then and there feloniously did steal,
take and carry away, against the form of the Statute in such case made and provided,
and against the peace of the People of the State of New York, and their dignity.

John McKeon
~~DANIEL G. ROLLINS~~, District Attorney.

0685

Subpoena

The People of

Staten Island

Staten Island

BAILED

No. 1 by

Residence

No. 2 by

Residence

No. 3 by

Residence

No. 4 by

Residence

Sec. 208, 209, 210, & 211
Police Court, Second District.

THE PEOPLE, &c.,

ON THE COMPLAINT OF

James M. Storey

James M. Storey

James M. Storey

James M. Storey

James M. Storey

James M. Storey

James M. Storey

James M. Storey

James M. Storey

James M. Storey

James M. Storey

James M. Storey

James M. Storey

James M. Storey

James M. Storey

James M. Storey

James M. Storey

Offence, Burglary and Larceny

Dated

May 11th 1882

James M. Storey

James M. Storey

James M. Storey

James M. Storey

James M. Storey

James M. Storey

James M. Storey

James M. Storey

James M. Storey

James M. Storey



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

James M. Storey, James M. Storey, and Frederick Neighbour

guilty thereof, I order that he be admitted to bail in the sum of Hundred Dollars and be committed to the Warden or Keeper of the City Prison until they give such bail.

Dated May 11th 1882

James M. Storey Police Justice.

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

Dated 1882 Police Justice.

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

Dated 1882 Police Justice.

0686

Sec. 198—200.

CITY AND COUNTY }
OF NEW YORK, } ss.

2 DISTRICT POLICE COURT.

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

Question. What is your name?

Answer.

Frederick Habighorst

Question. How old are you?

Answer.

14 Years -

Question. Where were you born?

Answer.

New York

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

Answer.

76 Allen Street 6 months

Question. What is your business or profession?

Answer.

None

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

Answer.

I went into the house looking for a Water Closet.

Taken before me, this

day of

May 188*8*

Frederick Habighorst

J. Henry [Signature] Police Justice.

0687

Sec. 198-200
CITY AND COUNTY } ss.
OF NEW YORK,

2 DISTRICT POLICE COURT.

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

Question. What is your name?

Answer. James Kelly

Question. How old are you?

Answer. 15 Years.

Question. Where were you born?

Answer. Ireland

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

Answer. Bayside L.I. 3 Years.

Question. What is your business or profession?

Answer. None.

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

Answer. I saw three boys going in the house and I followed them in and found the clock in the hallway

Taken before me, this 11th

day of May 1888

James Kelly
his mark

J. Murphy Police Justice.

0588

Sec. 198-200.

CITY AND COUNTY }
OF NEW YORK, } ss.

DISTRICT POLICE COURT.

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

Question. What is your name?

Answer. *Daniel P. Storen*

Question. How old are you?

Answer. *14 Years.*

Question. Where were you born?

Answer. *St Louis Mo.*

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

Answer. *417 East 19th Street 18 months*

Question. What is your business or profession?

Answer. *Soda Water*

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

Answer. *I am not guilty of stealing but I was in the house.*

Taken before me, this *11th*

day of *May*

188*2*

Daniel P. Storen

J. Murray Ford

Police Justice.

0689

Sec. 198-200.

CITY AND COUNTY
OF NEW YORK, } ss.

DISTRICT POLICE COURT.

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

Question. What is your name?

Answer *James M. Entee*

Question. How old are you?

Answer. *16 Years.*

Question. Where were you born?

Answer. *New York City*

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

Answer. *343 East 12 Street 1 Year.*

Question. What is your business or profession?

Answer. *Labrer*

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

Answer. *I was in the Building with the other three boys.*

Taken before me, this *11th*

day of *May* 188*8*

James M. Entee

J. Henry Ford Police Justice.

0690

Police Court—Second District.

City and County
of New York.

ss:

Charles Hartung Agent of Importation
of No. 578 Broadway Street, being duly sworn,deposes and says, that the premises No. 10 East Tenth
Street, 15 Ward, in the City and County aforesaid, the said being a dwelling
and which was occupied by ~~deponent~~ as a ~~dwelling~~ *Frederick Hartung dwelling*were **BURGLARIOUSLY**entered by means of forcibly breaking a panel
out of the Basement door leading from
the street to said premises and an
outside door.on the *Morning* of the *11th* day of *May* 1882 in the
day time

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

One block of the value of
Forty dollars One Pair of Iron and
one Penknife together of the value of Fifty Cents
all being of the value of Forty Dollars.

the property of *Frederick Hartung* and in *deponent's* care and
and deponent further says, that he has great cause to believe, and does believe, that
the aforesaid **BURGLARY** was committed and the aforesaid property taken, stolen
and carried away by *Daniel S. Stoen, James M. Enter*

for the reasons following, to wit: *James Kelly and Frederick*
Stabighorst (all now here) in the following
reason to wit: Deponent left said premises
securely fastened on or about the 29th day
of April 1882. Deponent is informed by
S. Henry A. Matthews that on the 11th day
of May 1882 at or about the hour of Nine O'clock
A.M. he saw the said defendants climbing
over the iron railing in front of premises

No 10 East 10th Street and went in search
 of a Police officer but not finding
 one returned in about ten minutes and
 discovered that the outside basement
 door had been forced open and found
 the check here shown in the possession
 of the said Kelly who threw it on the
 floor and ran away. Deponent is
 further informed by Officer Burke
 that arrested the said defendants
 and found a portion of the said
 property ^{in the possession} of the said Store. Deponent
 further says that the said defendants
 admitted and confessed in Deponent's
 presence that they were in said premises.

John Henry Ford
Charles H. H. H. H.
John Henry Ford
 Police Justice

Sworn to before me
 this 11th day of May 1882

City and County of New York Ss.

Henry A. Matthews aged 44 years
 of University Building Corner of Washington
 Square and University Place. and
 Lawrence Burke aged 37 of the 15th
 Precinct Police being duly sworn deposes
 and says each for themselves that they have
 heard read the foregoing affidavit and
 that the facts stated therein as far as relates
 to themselves are true of their own knowledge

Sworn to before me
 this 11th day of May 1882
Henry A. Matthews
Lawrence Burke
John Henry Ford
 Police Justice

0692

BOX:

68

FOLDER:

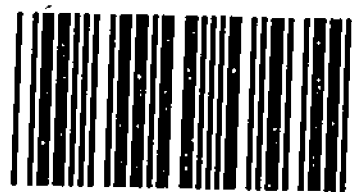
762

DESCRIPTION:

Strain, James

DATE:

05/29/82



762

0693

BOX:

68

FOLDER:

762

DESCRIPTION:

Higgins, Andrew

DATE:

05/29/82



762

WITNESSES.

Day of Trial

Counsel,

Filed

day of

1882

Pleads

Not guilty (June 5)

THE PEOPLE

vs.

James H. B.

Andrew Higgins

Wm. H. B.

Counts

LARCENY AND RECEIVING STOLEN GOODS.

JOHN McKEON,

District Attorney.

A True Bill.

Am. Lewis

Foreman.

Dec 26/82

Mr. L.

Not Discharged

1886

0694

0695

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

THE POPE OF THE STATE OF NEW YORK,

against

James Strain
and
Andrew Higgins

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

James Strain and Andrew Higgins

of the CRIME OF GRAND LARCENY, committed as follows:

The said

James Strain and Andrew Higgins

late of the First Ward of the City of New York, in the County of New York aforesaid,
on the *twelfth* day of *May* in the year of our Lord one
thousand eight hundred and eighty *two*, at the Ward, City and County
aforesaid, with force and arms

one sign of the value of fifteen dollars

of the goods, chattels and personal property of one

Joseph Linder

then and there being found,
feloniously did steal, take and carry away, against the form of the Statute in such case
made and provided, and against the peace of the People of the State of New York, and
their dignity

0696

And the Grand Jury aforesaid, by this indictment, further accuse the said

Andrew Higgins
of the CRIME OF RECEIVING STOLEN GOODS, committed as follows :

The said

Andrew Higgins

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

*one sign of the value of
fifteen dollars*

of the goods, chattels and personal property of the said

by James Strain

Joseph Linder

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

Joseph Linder

unlawfully, unjustly did feloniously receive and have, the said

Andrew Higgins

then and there well knowing the said goods, chattels and personal property to have been feloniously stolen, taken and carried away, against the form of the Statute in such case made and provided, and against the peace of the People of the State of New York and their dignity

JOHN McKEON, District Attorney.

0697

Sec. 209.

CITY AND COUNTY }
OF NEW YORK, } ss.

18 District Police Court.

It appearing to me by the within depositions and statement that the crime therein mentioned

has been committed, and that there is sufficient cause to believe the within named

James Straus

guilty thereof, I order that he be held to answer the same, and the said crime not being bailable by me, I further order that he be committed to the Warden and Keeper of the City Prison of the City of New York, until he shall be discharged by due course of law.

Dated at the City of New York, 20 May 188

George Gardner Police Justice.

0698

Sec. 209.

1st District Police Court.

CITY AND COUNTY }
OF NEW YORK, } ss.

It appearing to me by the within depositions and statement that the crime therein mentioned

has been committed, and that there is sufficient cause to believe the within named

Andrew Higgins

guilty thereof, I order that he be held to answer the same, and the said crime not being bailable by me, I further order that he be committed to the Warden and Keeper of the City Prison of the City of New York, until he shall be discharged by due course of law.

Dated at the City of New York, 10 May 1882

Stephen J. Foxworth Police Justice.

0699

Sec. 210.

1812
District Police Court.

CITY AND COUNTY }
OF NEW YORK, } ss.

It appearing to me by the within depositions and statement that the crime therein mentioned

has been committed, and that there is sufficient cause to believe the within named

James Strain

guilty thereof, I order that he be held to answer the same, and the said crime being bailable by me, I have admitted two to bail in the sum of two Hundred Dollars to answer by the undertaking hereto annexed.

Dated at the City of New York, 20 May 1882

Hugh Gunner Police Justice.

0700

Sec. 210.

188 District Police Court.

CITY AND COUNTY }
OF NEW YORK, } ss.

It appearing to me by the within depositions and statement that the crime therein mentioned

has been committed, and that there is sufficient cause to believe the within named

Andrew Higgins

guilty thereof, I order that he be held to answer the same, and the said crime being bailable by me, I have admitted him to bail in the sum of ten Hundred Dollars to answer by the undertaking hereto annexed.

Dated at the City of New York,

10 May 1887

Blough Gardner Police Justice.

0701

Dec 21 1882

1433

24

I consent to the discharge of
this defendant on his own recognizance.
It is doubtful if the people
ever get a trace of if they
do the defect can be put out
at any time

James Strain

BAILED

No. 1 by

John D. Jones

Residence

114 Baxter Street,

No. 2, by

John D. Jones

Residence

319 Lexington Ave

No. 3, by

Residence

Street,

No. 4, by

Residence

Street,

Police Court

District

THE PEOPLE &c.,
OF THE COMPLAINANT OR

James Strain

Receiving Stolen Goods

Dated

May 20

188

Magistrate

John D. Jones

Officer

John D. Jones

Clerk

John D. Jones

Witnesses

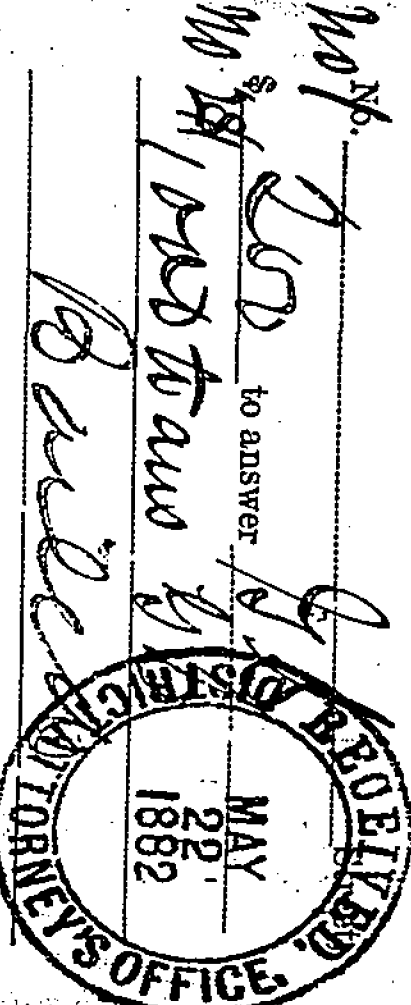
John D. Jones

No.

John D. Jones

No.

John D. Jones



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

James Strain
and Andrew Higgins

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

Dated May 20 188 2 Police Justice.

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

Dated May 20 188 2 Police Justice.

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

Dated _____ 188 _____ Police Justice.

0702

Sec. 138-200.

CITY AND COUNTY
OF NEW YORK, ss.

1st District Police Court.

Andrew Higgins

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

Question What is your name?

Answer.

Andrew Higgins

Question. How old are you?

Answer.

36 Years

Question. Where were you born?

Answer.

Ireland

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

Answer.

116 Mott Street & about 2 Years

Question. What is your business or profession?

Answer.

Helper in a Junk Store

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

Answer.

*I am not guilty of the
charge I did not know the
goods I received & paid
for was stolen*

Andrew Higgins

day of

Taken before me this

188

Wm. J. Brennan
Police Justice.

0703

Sec. 198-200.

CITY AND COUNTY }
OF NEW YORK, } ss.

1st District Police Court.

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

Question. What is your name?

Answer.

James Strain

Question. How old are you?

Answer.

14 Years

Question. Where were you born?

Answer.

This City

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

Answer.

121 Baxter Street & about 5 Years

Question. What is your business or profession?

Answer.

I work in a printing office

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

Answer.

I am guilty of the charge

James Strain

day of

Taken before me this

188

James Strain

Police Justice

0704

City and County of New York, ss.

Police Court—1st District.

THE PEOPLE

vs.

On Complaint of

For

James Strain

Joseph M. Under
Larceny

After being informed of my rights under the law, I hereby demand a trial by Jury, on this complaint, and ~~demand~~ a trial at the **COURT OF SPECIAL SESSIONS OF THE PEACE**, to be holden in and for the City and County of New York.

Dated May 2 1882

Blough Gorman

POLICE JUSTICE

James Strain

0705

First

District Police Court.

Affidavit—Larceny.

CITY AND COUNTY
OF NEW YORK

of No.

105 Elm

Street,

Joseph Linder 36 years old Manufacturer

being duly sworn, deposes and says, that on the

10

day of

May

1882

at the

City of New York,

in the County of New York, was feloniously taken, stolen and carried away from the possession of deponent, from in front of said premises in the origin
the following property, viz:

A brass business sign
26 x 24 inches of the value
of fifteen dollars

Sworn before me this

10th day of May

1882

the property of

deponent

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

James Phain now here

And another not arrested from

the fact that the defendant

now admits and acknowledges

in Court—that he did with said

other to take steal & carry away

said sign & deponent believes

the same to be true. That deponent

now charges Andrew Higgins here present

with buying & receiving said sign he well

knowing at the time of such purchase that

the property was stolen Joseph Linder

Joseph Linder & Police Justice

0706

BOX:

68

FOLDER:

762

DESCRIPTION:

Sullivan, Florence

DATE:

05/29/82



762

Received Apr 11/83

Counselor

Filed 9 day of May 188

Plends / My Grady, Grace!

THE PEOPLE

73 Apr 11/83

Flurence Sullivan

Violation of Excise Law.

33 Parker

JOHN MCKEON.

District Attorney.

A True Bill.

Amey Powers

Норман

Lucretia

29/5

0708

Court of General Sessions

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK

against

Florence Sullivan

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

Florence Sullivan

of the CRIME OF *Selling Spirituous Liquors without a License,*

committed as follows:

The said

Florence Sullivan

late of the *Sixth* Ward of the City of New York, in the County of New York aforesaid, on the *twenty first* day of *May* in the year of our Lord one thousand eight hundred and eighty *two*, at the Ward, City and County aforesaid, certain strong and spirituous liquors, and certain wines, to wit: one gill of wine, one gill of brandy, one gill of rum, one gill of gin, one gill of whisky, one gill of cordial, one gill of bitters, one gill of ale, one gill of porter, one gill of beer, one gill of lager beer, and one gill of a certain strong and spirituous liquor to the Grand Jury aforesaid unknown, unlawfully did sell, in quantity less than five gallons at one time, to a certain person whose name is to the Grand Jury aforesaid unknown,

; without having a license therefor, as required by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the People of the State of New York.

SECOND COUNT.—And the Grand Jury aforesaid, by this indictment, further accuse the said *Florence Sullivan* of the crime of exposing for sale and selling spirituous liquors on Sunday, committed as follows, that is to say: The said *Florence Sullivan* 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, the same being the first day of the week, commonly called and known as Sunday, with force and arms, certain strong and spirituous liquors and certain wines, to wit: One gill of wine, one gill of brandy, one gill of rum, one gill of gin, one gill of whisky, one gill of cordial, one gill of bitters, one gill of ale, one gill of porter, one gill of beer, one gill of lager beer, and one gill of a certain strong and spirituous liquor to the Grand Jury aforesaid unknown, unlawfully did expose for sale and sell as a beverage to a certain person whose name is to the Grand Jury unknown,

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

JOHN McKEON, District Attorney.

0709

Samuel Regan
103 Bayard St.

Not found

Removed to
Boston Sam
informed

X

0710

Court of General Sessions, Part *Two*

THE PEOPLE

INDICTMENT

For

Florence Sullivan

To

Mr Daniel Regan

No. *103* *Bayard*

Street.

The indictment against the above-named defendant, for whose appearance you are bound, has been placed upon the Calendar for *Trial* at the Court of GENERAL SESSIONS of the Peace, at the Sessions Building, adjoining the New Court House, in the Park of the said City, on *Tuesday* the *2^d* day of *Jan* instant, at eleven o'clock in the forenoon.

If the defendant is not produced at that time, your bond will be forfeited.

JOHN McKEON,

District Attorney.

0711

Police Court

First

District.

STATE OF NEW YORK,

CITY AND COUNTY OF NEW YORK, } ss

of No.

6th Precinct Police

Timothy Delaney

of the City of New York, being duly sworn, deposes and says, that on the

Sunday

21st

Street,

of

May

188

in the City of New York, in the County of New York, at

premises No.

107 Bayard

Street,

Florence Sullivan

[now here]

did then and there sell, and caused, suffered and permitted to be sold, under his direction and authority, strong and spirituous liquors, wines, ale and beer, being intoxicating liquors, in quantities less than five gallons at a time, to be drunk in the house or premises aforesaid, contrary to and in violation of law. *it being Sunday*

WHEREFORE, deponent prays that said

Florence

may be arrested and dealt with according to law.

Sworn to before me, this

22nd

day

of

May

188

Timothy Delaney

Samuel J. Sullivan

POLICE JUSTICE.

0712

N. Y. General Sessions of the Peace

THE PEOPLE
OF THE STATE OF NEW YORK,

against

Florence Sullivan
33 Baxter

Bench Warrant for Misdemeanor.

Issued

April 11th 1883

☒ The defendant is to be admitted to be bail
in the sum of _____ dollars.

April 27th

The within named
defendant can't
be found left
33 Baxter Street
some time ago
and ^{no} one knows his
whereabouts.

Von Derichten

0713

COUNTY OF NEW YORK, ss.

In the Name of the People of the State of New York, To any Sheriff, Constable,
Marshal or Policeman in this State, GREETING :

An indictment having been found on the 29 day of May
188 2, in the Court of General Sessions of the Peace, of the County of
New York, charging Florence Sullivan
with the crime of Violation of excise law

You are therefore Commanded forthwith to arrest the above named Florence
Sullivan and — bring him before that Court to answer the indictment; or
if the Court have adjourned for the term, that you deliver him into the custody of the Keeper of the
City Prison of the City of New York, or if he require it, that you take him before any Magistrate
in that County, or in the County in which you arrest him, that he may give bail to answer the
indictment.

City of New York, the 11th day of April 188 3

By order of the Court,


Clerk.

BAILED,
 No. 1 by Daniel Regan
 Residence 103 Bayard Street,
 No. 2, by _____
 Residence _____
 No. 3, by _____
 Residence _____
 No. 4, by _____
 Residence _____
 Street, _____

451
 Police Court 1 District.
 THE PEOPLE, &c.,
 ON THE COMPLAINT OF
Sammy Halan
Florence Sullivan
 Dated May 22 188 2
William Magistrate.
William Clerk.
 Witnesses, _____
 No. _____ Street, _____
 No. _____ Street, _____
 No. 100 to answer H.D.
William

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

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

Dated May 22 188 2 J.M. Sullivan Police Justice.

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

Dated 22 May 188 2 J.M. Sullivan Police Justice.

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

Dated _____ 188 _____ Police Justice.

0715

Sec. 198-200.

CITY AND COUNTY }
NEW YORK, } ss.

District Police Court.

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

Question. What is your name?

Answer. *Florence Sullivan*

Question. How old are you?

Answer. *Twenty-one years of age*

Question. Where were you born?

Answer. *New York*

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

Answer. *53 Bayter St. one year*

Question. What is your business or profession?

Answer. *Bar Tender*

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

Answer. *I am not guilty.*

Florence Sullivan

Taken before me this *26*
day of *May* 19*18*

John J. Sullivan
Police Justice.

0716

BOX:

68

FOLDER:

762

DESCRIPTION:

Sullivan, James

DATE:

05/09/82



762

0717

Witnesses:

Day of Trial,

Counsel,

Filed

9 day of

188

Pleads

Angela

May

not guilty

THE PEOPLE

vs.

P.

James Sullivan

Felony Assault and Battery.

no answer

John McKeon
~~JOHN C. ROLLINS~~

District Attorney.

A True Bill.

John Henry

Foreman.

May 17/82

Charles J.

Peri Lee

0718

Court of General Sessions

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK

against
James Sullivan

The Grand Jury of the City and County of New York, by this indictment, accuse
James Sullivan
of the CRIME OF "Assault and Battery upon another with a deadly weapon with intent to kill," committed as follows:

The said *James Sullivan*
late of the City of New York, in the County of New York, aforesaid, on the
thirteenth day of *April* in the year of our Lord
one thousand eight hundred and eighty *two* with force and arms, at the City and
County aforesaid, in and upon the body of *Joseph Davis*
in the peace of the said people then and there being, feloniously did make an assault
and *him* the said *Joseph Davis*
with a certain *knife*
which the said *James Sullivan*

in *his* right hand then and there had and held, the same being a deadly and
dangerous weapon, wilfully and feloniously did beat, strike, stab, cut and wound
with intent *him* the said *Joseph Davis*
then and there feloniously and wilfully to kill, against the form of the Statute in such
case made and provided, and against the peace of the People of the State of New York
and their dignity.

SECOND COUNT.

And the Grand Jury aforesaid, by this indictment, further accuse the said
James Sullivan
of the CRIME OF "Assault upon another, without justifiable or excusable cause, with a
sharp, dangerous weapon, with intent to do bodily harm," committed as follows:

The said *James Sullivan*
afterwards, to wit, on the day and in the year aforesaid, at the City and County
aforesaid, the said *James Sullivan*
with force and arms, in and upon the body of the said *Joseph Davis*
then and there being, wilfully and feloniously did make an
assault and *him* the said *Joseph Davis*
with a certain *knife* which the said *James Sullivan*

in *his* right hand then and there
had and held, the same being then and there a sharp, dangerous weapon, wilfully
and feloniously, and without justifiable and excusable cause, did then and there beat,
strike, stab, cut and wound, with intent to then and there wilfully and feloniously
do bodily harm unto *him* the said *Joseph Davis*
against the form of the Statute in such case made and provided, and against the
peace of the People of the State of New York and their dignity.

John McKeon
District Attorney

0719

Sec. 208, 209, 210 & 212.

Police Court

District

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Joseph Davis
James Sullivan

Palmer's Battery

387

Dated

May 4 1882

Magistrate.

Clerk.

John H. Charles

Witnesses

No.

Street,

No.

Street,

No.

Street.

Com without

S. S.



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

James Sullivan

guilty thereof, I order that he ~~be held to answer the same and be committed to the Warden or Keeper of the City Prison until he~~ *be legally discharged*

Dated *May 4* 1882

Clayton Police Justice.

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

Dated _____ 1882

Police Justice.

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

Dated _____ 1882

Police Justice.

0720

Sec. 198-200.

CITY AND COUNTY } ss.
OF NEW YORK, }

District Police Court.

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

Question. What is your name?

Answer.

James Sullivan

Question. How old are you?

Answer.

20 years

Question. Where were you born?

Answer.

City of New York

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

Answer.

44 Baxter St. Since last Monday

Question. What is your business or profession?

Answer.

Laborer

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

Answer.

I am guilty

James Sullivan
Mark

Taken before me this
day of May 1888

Heath Sherman Police Justice.

0722

BOX:

68

FOLDER:

762

DESCRIPTION:

Sullivan, John

DATE:

05/23/82



762

0723

COURT OF GENERAL SESSIONS.

JUDGES CHAMBERS.

32 CHAMBERS STREET.

New York, _____ 1888

People
vs.
Seelmann

The allegations of
fact set forth in the plea
of defendant must be
taken as true. Upon
the arguments the
court is of the opinion
that the People
are entitled to a new
trial had the jury
been properly
instructed. I think
I must therefore
set aside the verdict
and order a new
trial.

Bill Adair

290

Counsel

Filed 23 day of

188

May

Plends

THE PEOPLE

vs.

P.
John Sullivan

BURGILARY—First Degree, and
Grand Larceny.

JOHN MCKEON

District Attorney.

A True Bill.

James H. Lewis

Foreman.

Verdict of Guilty should specify of which count.

751

Sep 30 1888

0724

Judgment - must
be entered for deft -
on ~~demurrer~~ and
def't discharged.

0725

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

THE PEOPLE OF THE STATE OF NEW YORK

John Sullivan
against

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

John Sullivan
of the CRIME OF BURGLARY in the *first* Degree, committed as follows:

The said *John Sullivan*

late of the *first* Ward of the City of New York, in the County of
New York, aforesaid, on the *twenty fifth* day of *September* in the
year of our Lord one thousand eight hundred and eighty-*one* with force
and arms, about the hour of *one* o'clock in the *night* time of the same
day, at the Ward, City and County aforesaid, the dwelling house of *Nicholas Smith*

there situate, feloniously and burglariously did break into and enter, by means of *forcibly*
breaking open an outer window thereof
whilst there was then and there some human being, to wit, one *Nicholas Smith*
within the said dwelling-house, the said

John Sullivan
then and there intending to commit some crime therein, to wit: the goods, chattels and
personal property of *Nicholas Smith*

in the said dwelling house then and there being, then and there
feloniously and burglariously to steal, take and carry away, against the form of the
Statute in such case made and provided, and against the peace of the People of the State
of New York, and their dignity.

Second Count

And the Grand Jury aforesaid by this indictment further accuse the said John Sullivan of the crime of burglary in second degree committed as follows

The said John Sullivan late of the first Ward of the City of New York in the County of Kings County aforesaid on the twenty fifth day of September eighteen hundred & eighty at the Ward City and County aforesaid about the hour of one o'clock in the night time of said day entered into the dwelling house of Nicholas Smith there situate he the said John Sullivan then and there intending to commit a crime therein to wit: the goods and Chattels of the said Nicholas Smith in the said dwelling house there being then and there feloniously to steal take and carry away and did then and there in the night time of said day feloniously and burglariously did break on outer window of the said dwelling house to get out of the same against the form of the Statute in such case made ~~made~~ and provided and against the peace of the people of the State of New York and their dignity

John McKeon
District Attorney

0727

U. S. Marshal's Office

John Sullivan

Plaintiff
vs
Defendant

The People of the State
of New York

Order of Indictment

JOHN O. MOTT,
Attorney for John Sullivan

140 Nassau Street,
NEW YORK.

To
Esq.,

Attorney for

Due service of
is hereby admitted.

Dated New York, 18

John O. Mott

Attorney for

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

John Sullivan
vs
The People of the State of New York

And the said John Sullivan being brought to the bar of this Court, and having heard the said Indictment read and the matters therein contained, says, that he ought not to be put to answer the said indictment, he having been heretofore in due manner of Law acquitted of the premises in and by the said indictment above specified and charged upon him; And for plea to the said Indictment he says, that heretofore, to wit: At a Court of General Sessions of the Peace, in and for the City and County of New York, holden at the City Hall, in and for the City and County of New York, of the term of September Term, on the 30th day of September, 1880, it was by 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 Oaths presented, that John Sullivan, late of the First Ward of the City of New York, in

the County of New York aforesaid, on the
 twenty-fifth day of September, in the year
 of Our Lord One thousand eight hundred
 and Eighty, with force and arms, about the
 hour of two o'clock in the night time of the
 same day, at the ward, city and County
 aforesaid, the dwelling house of Nicholas
 Smith, there situate, feloniously and bur-
 glariously did break into and enter, by
 means of forcibly breaking open an outer
 window of said dwelling house, whilst there
 was then and there some human being, to wit,
 one Nicholas Smith, within the said dwelling
 house, he, the said John Sullivan, then and
 there intending to commit some crime
 therein, to wit, the goods, chattels, and per-
 sonal property of Nicholas Smith in the
 said dwelling house then and there being,
 then and there feloniously and burglariously
 to steal, take and carry away, against
 the form of the Statute in such case made
 and provided, and against the peace of the
 People of the State of New York and their
 dignity. Benjamin R. Phelps District Atto-
 rney. "Which said last mentioned indict-
 ment is indorsed, "a true bill", and Signed
 by Abraham Lent, as foreman, and by
 Benjamin R. Phelps as District Attorney:

And the said John Sullivan, in his own proper person, further saith, that the said felony and Burglary so charged upon him in said last mentioned indictment as aforesaid included divers degrees, and consisted of different degrees and of Attempts to commit such felony and Burglary so charged upon him in said last mentioned indictment as aforesaid and of Attempts to commit any of the divers degrees and different degrees of felony and Burglary so as aforesaid charged upon him, the said John Sullivan in the said last mentioned indictment and suppose and alleged to have been made and committed by the said John Sullivan, in the said indictment named. And the said John Sullivan, in his own proper person, further saith, that at a Court of General Sessions of the peace, in and for the City and County of New York of the term of September, to wit, on the 1st day of October 1880 before Hon. Henry A. Goldensleeve, Judge of the said Court, he the said John Sullivan, was charged in the above last recited indictment for Burglary, and his plea to the same ^{being} demanded, he,

the said John Sullivan, pleaded thereto "Not guilty," and said that he required a trial upon such indictment.

And afterwards, to wit, at a Court of General Sessions of the Peace held in and for the said City and County of New York, at the City Hall of the said City, of the term of October, to wit, on the 5th day of October 1880, before Hon. Frederick Smyth, Recorder of the City of New York, and Justice of said Court, on motion of Benjamin K. Phelps Esquire District Attorney for the City and County of New York, by Daniel G. Rollins Esquire one of the Assistant District Attorneys for the City and County of New York, the said Court ordered on the trial of the said John Sullivan on said indictment for Burglary.

Whereupon, Peter Bone Esquire, Sheriff of the City and County of New York, having returned a panel, the following persons appeared and were sworn, viz: Charles Frederick - Allen H. Adams - Jonas A. Roseman - Louis Frankenthaler - Robert W. Cooper - Alexander G. Lippin - William J. Gessner - Edward Bauman - George Nugent - John L. Heller - John H. Davitt - John H. Bode. ~~After hearing and a charge from the~~

well and truly to try and true delivrance
make between the people of the State of New
York and the said John Sullivan then
at the bar, whom they should have in
charge upon the said indictment, and a
true verdict give according to Evidence
who after hearing the testimony on
behalf of the prosecution and of the de-
fence and a Charge from the Court, the
jury retired to consider of their verdict
with a Sworn officer to attend them,
and after some time the said jury returned
into Court, and said they had agreed
on the verdict, and by Charles Frederick,
their foreman, said they found the said
John Sullivan "guilty of an attempt
to commit burglary in the first degree
in manner and form as he stood cha-
rged, and so, ^{said} they all, as by the record
thereof, more fully and at large appears;
And the said John Sullivan, in fact saith
that the said verdict so as aforesaid rendered
given and recorded was an acquittal of
him the said John Sullivan of every and
all the felonies and degrees, and of attempts
to commit such felony and burglary
so charged upon him in said last
mentioned indictment as aforesaid

except as is specifically mentioned and set forth
 in the said verdict to wit; "An attempt to
 Commit burglary in the first degree".
 And the said John Sullivan further says
 that the said verdict so as aforesaid rendered
 by said jury to wit; "Guilty of an attempt to
 Commit burglary in the first degree" was
 in fact a verdict of "Not guilty" and was
 in truth and in fact a verdict of said
 jury that they the said jury found the said
 John Sullivan "Not guilty"; in manner and
 form as he stood charged in the said last
 mentioned indictment as aforesaid, of any
 of the divers degrees, or different degrees or
 attempt to Commit any of the divers degrees
 or different degrees of felony and burglary
 so as aforesaid charged upon him the
 said John Sullivan in the said last men-
 tioned indictment and supposed and
 alleged to have been made and committed
 by the said John Sullivan, in the said indict-
 ment named, save and except ^{of an attempt} ^{guilty} to Commit burglary in the first degree; which
 said verdict and judgment so far as it
 was in fact a verdict of "Not guilty" and
 so far as it was in fact and in truth a
 verdict of said jury that they the said
 jury found the said John Sullivan

"Not guilty" in manner and form as he stood charged in the said last mentioned indictment as aforesaid, of any of the crimes degrees, or different degrees or attempts to commit any of the crimes degrees or different degrees of felony and burglary so as aforesaid charged upon him the said John Sullivan in the said last mentioned indictment and supposed and alleged to have been made and committed by the said John Sullivan, in the said indictment named, save and except "guilty of an attempt to commit burglary in the first degree", still remains in full force and effect, and not in the least reversed or made void. And the said John Sullivan, in fact saith that the said John Sullivan so indicted and acquitted as aforesaid, and he, the said John Sullivan, who is charged in the present indictment first above mentioned and set forth, are one and the same person, and not other and different persons and that the said offense of Burglary, in the former indictment mentioned last set forth and the said offense of Burglary in the present indictment first above mentioned, are one and the same offense of Burglary, and not crimes and different offenses of Burglary; And that the said

felony and Burglary and attempts to Commit any of the different degrees of said felony and Burglary so as aforesaid charged upon him the said John Sullivan in the said last mentioned indictment and suppose to have been made and committed by the said John Sullivan in the said Indictment named, are the same identical felony and Burglary as in the said indictment to which the said John Sullivan is now here pleading, and not other or different.

And the said John Sullivan further in fact saith, that the felony and burglary set forth in the first ~~and second~~ Count, and the felony and burglary set forth in the ~~first~~ Second Count in the said indictment to which the said John Sullivan is now here pleading, are one and the same felony and burglary, and not other and different felonies or burglaries.

And of this he the said John Sullivan is ready to verify. Wherefore he prays judgment, since he, the said John Sullivan, hath already been heretofore acquitted of the offense of Burglary aforesaid, save and except of an attempt to Commit burglary in the first degree, ~~and~~ and that by the Court, ~~that~~ he may be dismissed and

discharged from the said premises, in the
present indictment specified, except so
far as said indictment charges and in-
cludes an attempt to commit burglary
in the first degree - and as to that the defendant
Pleads "Not Guilty"

John V. Mott
of Counsel for Defendant
John Sullivan -

City & County of New York

John Sullivan,
the defendant in the foregoing plea named,
being sworn, deposes and says that all the
allegations of fact therein contained are
true.

Sworn before me
this 29th May 1882 }

~~John Macdonald~~
John Sullivan

Deputy Clerk
Court of General Sessions
New York City

Mr. Gen. Leeper
Sullivan

ads

The People

Brief for
Defendants

John M. A.
Sgt. Counsel

Court of General Sessions

The People
 vs
 John Sullivan

I. Where a prisoner is acquitted or convicted, upon an indictment for a crime consisting of different degrees, he cannot thereafter be indicted or tried for the same crime, in any other degree, nor for an attempt to commit the crime so charged, or any degree thereof.

3 Cr. 8. 6th Ed. pag 995-§ 49-

Gunnther vs The People 24th N.Y. 101.

See Opinion of Judge Selden agreeing to the above proposition more strongly than Judge James -

See Authorities cited in Opinions -

The People vs Dooling 84th N.Y. 478- 483. and Cases cited on this page.

People vs Samuels 4th Parker Cr. Rep. 196.

Kay's vs The People 40 N.Y. 348. 357

See Opinion at page 357

22

II - In pleading a bar to an indictment the prisoner is not, and cannot be confined to "a former conviction or acquittal". He has a right to set up the facts that will enable him to avail himself of the proceedings upon the first trial as a defense.

Guenter vs The People 24 N.Y. 100-102
and authorities cited on last page -

A Plea of former Conviction is supported by ~~Proof~~ of trial and verdict, though no judgment has ever been given -
Shepherd vs People 25 N.Y. 406 -

III - Every allegation of fact in the Plea is to be taken as true, and nothing is to be added thereto or taken therefrom -

Upon the state of facts therein set forth there must be judgment for the defendant upon the demand and the prisoner discharged -

John V. Mord
Counsel for the
Defendant.

My. Gen. de Paris
Sullivan

ads

The People

Brief for
Defendants

John M. A
Left Counsel

0741

People
Sullivan

Law Offices of JOHN O. MOTT,

Room 44, Fourth Floor,
MORSE BUILDING,
No. 140 NASSAU ST.,

Ascend by the Elevator.

New York City, June 14th 1882

Hon. A. A. Silderslow.

My Dear Sir - Pardon me one word in relation to the Sullivan Case. If you overrule the plea and give judgment for the People then the prisoner is to be brought to the bar again to plead and he must plead either guilty or Not guilty to the Second Indictment. Certainly his plea cannot be Not Guilty. It is decided in People vs. Benjamin & Parker Ann. Rep. that a former trial and conviction cannot be given in evidence, unless the plea of Not Guilty. The only way that a former acquittal or former Conviction can be brought up is by plea in bar and specially pleaded as in this case. So that if you should overrule the plea, the prisoner must be tried upon the Second Indictment for the offense of which he has admittedly been acquitted. Col. Tilden is saying he would not put prisoner to trial only for Attempt & Commit Burglary in 1st degree does not bind any one. The Case & Spoke of in 5th Parker, is that of People vs

Van Keuren at page 66. Your honor will see in that case that there was a demurrer interposed, which is an admission that all the facts interposed are true - upon which the question of law arises as follows - these facts being admitted can this prisoner be tried again?

Now it is of no importance whether the matters alleged are true or false if the people admit the plea to be true by demurring, then the Court has only to give judgment for the prisoner, if in the opinion of the Court the admitted matter if true would be a bar to another trial -

Such is the position in this case and therefore I claim the only legal determination that can be made in this case is - judgment for the prisoner upon the demurrer and grant his discharge -

Very Respectfully
John D. Wood

BENJ. H. TYRRELL, LAW PRINTER, 74 MAIDEN LANE.

Supreme Court.

<p>JOHN SULLIVAN, <i>Plaintiff in Error,</i> vs. THE PEOPLE OF THE STATE OF NEW YORK, <i>Defendants in Error.</i></p>	}	<p><i>Points for Plaintiff in Error.</i></p>
--	---	--

Statement of Facts.

The prisoner was indicted, charged with burglary in the first degree, for having broken into and entering in the night time the dwelling-house of Nicholas Smith, "*by means of forcibly breaking open an outer window*" of said dwelling house, &c.

See Error Book, page 3, fol. 9.

The only witness speaking on the subject was Nicholas Smith. He says: "there was no place broken down stairs."

Error Book, page 7, fol. 20.

He also testified that he did not know whether the window leading to the roof was open or shut that night. That the room was occupied by 12 or 13 men that night. That he heard a pane of glass break and he went up-stairs to the third story, and when he got to the doorway of the room on that floor he saw the prisoner going out of the window.

And soon after that an officer arrested the prisoner on top of the house outside of the window. That the prisoner was not a boarder, nor did he belong there at all. There was no claim or evidence in respect to any entry except the window leading to the roof of the house of Smith.

Points.

I.—The learned Recorder erred in not granting the request of the prisoner's counsel made at the close of the evidence at page 8, fol. 24, of *Error Book*.

3 R. S. 6th ed., 940, § 11.

There was no evidence that the prisoner "broke into and entered, in the night time, the dwelling-house" mentioned in the indictment *by breaking open an outer window of said dwelling house,* &c.

The evidence did not bring the case within the 1st degree as defined by statute, and as matter of law the crime had not been proven, and the request should have been granted.

The People vs. B nnett, 49 N. Y., 137.

The Court in that case said, "If the prosecution leaves some element necessary to constitute the crime entirely unproved, it is a clear case for the interposition of the Court."

It is quite clear that the prosecution must prove the entry of the prisoner by the "*forcible bursting or breaking of the outer window,*" as alleged, as that was an element necessary to constitute the crime. That element was not proved by the prosecution, as is respectfully submitted.

It is quite evident that the opening made by the breaking of the glass was not that through which the prisoner entered. The window was raised up.

The glass was not the fastening of the window. The indictment did not charge that the entry was made by "breaking of the fastening."

To constitute a good indictment for burglary in the first degree, it must be averred that the breaking into and entering, was effected in one of the modes mentioned in the statute.

People vs. Burt, 3 Alb. L. J., 96.

An indictment for burglary in the first degree, which does not charge the mode of entry into the premises, is fatally defective; and the defect is not cured by verdict.

People vs. Fillinger, 24 How. Pr. 341.

It is well settled that the proof must establish all the material allegations in the indictment going to constitute the offence. Whatever is necessary to be alleged, it is necessary to prove.

Opening a street door which is only latched, is a sufficient breaking to constitute burglary at the common law; *but simply lifting the latch of an outer door though still a sufficient breaking to constitute burglary, in an inferior degree, is not a breaking within the statute definition of burglary in the first degree.*

People vs. Bush, 3 Parker., 552.

In that case the Court in the opinions at page 557, say that the evidence disclosed the fact that one of the doors was seen to have been latched ten minutes, and the other fifteen minutes before the prisoner was found in the room, and that evidence (under objection), was given that both doors were generally kept closed.

And the Court further say that the proof that the doors had been so recently shut, fairly led to the inference that they were closed at the time, which was strengthened by the general custom. Had no other proof but that of the general habit

been introduced, I doubt whether that alone should have been received, and, if admissible, *it would have been too uncertain to have warranted the conclusion that the doors were closed when the defendant reached them.*

The complainant swears in this case (page 7, fol. 18, *Error Book*) "*I do not know whether that window was shut or open that night.*" Again, at fol. 22, page 8 of *Error Book*, the same witness says: "*I do not know if the window was open or shut; of course the window can be just as well open as shut. The window had been fastened some time,*" &c.

It had been shown to be an old-fashioned slate roof house.

The evidence showed the window to have been fastened "*some time,*" but so long before, that the memory of the complainant (a man) could not recall the time. This did not come up to the evidence in the Bush case, above cited, where the witness said that "both doors were generally kept closed," of which the Court said that that "*would have been too uncertain to have warranted the conclusion that the doors were closed when the defendant reached them.*"

There is no evidence in this case that the window alleged to have been broken open in this indictment, was broken that night, or that it was broken by the defendant, or that the defendant entered through that window, or that he could have entered through the opening in the window made by reason of the broken pane of glass. If he had broken the window, why raise it up to get in or out?

Now, the allegation being in this indictment that the defendant "*feloniously and burglariously did break into and enter, by means of forcibly breaking open an outer window,*" &c., the proof must be confined to that allegation, and unless the proof disclosed an attempt to commit burglary in the

first degree in THE MODE CHARGED IN THE INDICTMENT, the defect is not cured by verdict.

People vs. Fellingner, 24 How. Pr., 341.

The evidence shows that the defendant was in the dwelling house, and there being no pretence in the proof of any other entry than through that window, and if by bursting the window, then it was burglary in the first degree; and the verdict that was rendered was contrary to the express provisions of the statute.

By § 47 of 3 R. S., 6th Ed., page 994, it is provided that "No person shall be convicted of an assault with intent to commit a crime, or of any other attempt to commit any offense, when it shall appear that the crime intended or the offense attempted was perpetrated by such person at the time of such assault, or in pursuance of such attempt."

And by the following section (§ 48,) on page 995, it is provided, "Upon an indictment for any offense consisting of different degrees, as prescribed in this chapter, the jury may find the accused not guilty of the offense in the degree charged in the indictment, and may find such accused person guilty of any degree of such offense, inferior to that charge in the indictment, or of an attempt to commit such offense."

The statute relating to attempts to commit crime is as follows: 3d R. S., 6th Ed., page 988, § 3. "Every person who shall attempt to commit an offense prohibited by law, and in such attempt shall *do any act towards the commission of such offense,* BUT SHALL FAIL IN THE PERPETRATION THEREOF, or shall be prevented or intercepted in executing the same, upon conviction thereof shall, in cases where no provision is made by law for the punishment of such attempt, be punished as follows:?"

It is plain that *the attempt* could only consist in doing *some act towards the breaking of the window* mentioned in the indictment, and stopping short of

entering the dwelling house through the window thus broken with the intent, &c., for when the window was broke and the defendant had entered the full crime was complete—he had not failed in the perpetration thereof.” And the jury had no right to render the verdict, “that the said John Sullivan is guilty of an attempt to commit burglary in the first degree.”

The jury were prohibited by section 47, above referred to, from rendering the verdict they did. It was void. The Court should have instructed the jury to retire and render a proper verdict, for, as they had found by the verdict they rendered, that the defendant was not guilty of first degree, they must go down to a lower degree if they believed he entered through an open window for that could not constitute first degree or attempt first degree.

There being no evidence of any “bursting or breaking an outer window,” and there being evidence of the presence of the prisoner in the dwelling-house of the complainant in the night-time whilst said complainant was within the dwelling, the proof, if it established anything, brought the case under the 14th § of the statute defining burglary in the second degree.

3 R. S., 6th Ed., page 940, “§ 14. Every person who shall enter into the dwelling-house of another, by day or by night, in such manner as not to constitute any burglary hereinbefore specified, with an intent to commit a crime; or being in the dwelling-house of another, shall commit a crime, and shall in the night-time break an outer door, window or shutter of a window, or any other part of such house, to get out of the same, shall be adjudged guilty of burglary in the second degree.”

The request was to direct an acquittal on the ground: “that the jury could not convict the prisoner on the first count in this indictment.”

There being but one count in the indictment, and that being first, and that in first degree, it is evident that the prisoner's counsel on the trial, and the

Court equally, understood it to be a request to direct or instruct the jury as matter of law that the prisoner could not be convicted of burglary in the first degree.

People vs. Bennett, 49, N. Y., 137.

II.

The Court should reverse the conviction and judgment, and direct the discharge of the prisoner.

By § 49, 3 R. S., 6th Ed., page 995, it is provided as follows: “When a defendant shall be acquitted, or convicted upon an indictment for an offence consisting of different degrees, as prescribed in this chapter, he shall not thereafter be tried or convicted for a different degree of the same offence; nor shall he be tried or convicted for any attempt to commit the offence charged in the indictment, or to commit any degree of such offence.”

Where, on the trial of an indictment containing different counts, there is a specific verdict of guilty on one count, and the verdict is silent as to the other counts, it is equivalent to an acquittal on those counts, and a judgment on the verdict is, as to them, a bar to further prosecution.

Upon a reversal of the conviction, the trial and conviction are not a bar to a new trial upon the count on which the verdict of guilty was rendered, but the reversal does not disturb the verdict of acquittal upon the other counts.

People vs. Dowling, 84 New York, 478.

There being but one count in the indictment in this case, under § 48 of the Revised Statutes cited on first point, it in effect contains a count upon every degree of burglary, and the verdict rendered in this case “that the said John Sullivan is guilty of an attempt to commit burglary in the first de-

0747

8

gree," is equivalent to an acquittal on those degrees ; and, under the § 49 above cited, the defendant cannot be tried on any other charge connected with the transaction referred to in the indictment on the reversal of this judgment than "*an attempt to commit burglary in the first degree,*"

3 R. S. 6th ed. § 49, page 995.
84 N. Y., 478 ; 24 N. Y. 100.

It follows from what has been heretofore said, that the evidence shows that the verdict was one prohibited by statute, and an acquittal upon all other matters therewith connected. The plaintiff in error cannot be legally convicted of any offence, and should be discharged.

JOHN O. MOTT,
Counsel for Plaintiff in Error.

0748

SUPREME COURT.

FIRST DEPARTMENT.

JOHN SULLIVAN,

Plaintiff in Error,

vs.

THE PEOPLE OF THE STATE OF NEW
YORK,

Defendants in Error

ERROR BOOK.

JOHN O. MOTT,

Attorney for Plaintiff in Error.

DANIEL G. ROLLINS,

District Attorney, for Defendants in Error.

NEW YORK.

BENJ. H. TYRREL, LAW PRINTER, 74 MAIDEN LANE.
Law Telephone No. 352.

1881

0749

The People of the State of New York, by the
Grace of God free and independent, to the
Court of General Sessions of the Peace, in and
for the city and county of New York, *Greeting* : 1

Because in the record and proceedings,
and also in the giving of judgment upon a
certain indictment which was in our Court before
you, against John Sullivan for Burglary in the first
degree and Grand Larceny. Manifest error hath
intervened, as it is said, to the great damage of the
said John Sullivan, as he complains, and we being
willing that the error, if any, shall be corrected, and
full and speedy justice be done to him on that be-
half, do command you that if judgment be there-
upon given, then without delay you distinctly and
openly send, under your seal, the record, bill of 2
exceptions, and judgment aforesaid, with all things
touching, or in anywise concerning the same, to
our Justices of our Supreme Court, at a General
Term thereof (First Judicial Department), to be
held at the New County Court House, in the city
of New York, on the first Monday of January next,
together with this writ, that the record judgment
and bill of exceptions aforesaid being inspected,
we may cause to be done thereupon for correcting
that error, what of right ought to be done.

Witness Hon. Noah Davis, one of the Justices
of the Supreme Court of the State of New York, 3
and presiding Justice First Judicial Department,
at the New County Court House, in the city of
New York the 23d day of December, 1881.

By the Court,

WM. A. BUTLER,

Clerk.

JOHN O. MOTT,
Attorney.

I hereby allow the within writ of error this 23d day of December, 1881.

ABRAM R. LAWRENCE,
Justice Supreme Court.

4 Endorsed—Filed Dec. 23d, 1881.

The answer of the Judges of the Court of General Sessions of the Peace, held in and for the city and county of New York.

A transcript of the indictment and judgment of the Court, together with all things touching or in anywise concerning the same.

5 [L. S.] We certify, under the seal of our said Court, to the Justices of the Supreme Court within mentioned, in a certain schedule to this writ annexed, as within it is commanded.

By the Court,

JOHN SPARKS,
Clerk.

STATE OF NEW YORK,
City and County of New York. } ss. :

6 Be it remembered, That at a Court of General Sessions of the Peace, holden at the City Hall of the City of New York, in and for the City and County of New York, on the first Monday of September, in the year of our Lord one thousand eight hundred and eighty, before Henry A. Gildersleeve, Esq., Judge of the said Court, assigned to keep the peace of the said city and county of New York, and to inquire, by the oaths of good and lawful

men of the said county, of all crimes and misdemeanors committed or liable in the said county, to hear, determine, and punish according to law, all crimes and misdemeanors in the said city and county done and committed.

By the oath of ABRAHAM LENT, Foreman.
Monmouth H. Underhill, Peter A. Welch,
Henry K. Motley, Kilian Van Rensselaer,
Martin L. Bryant, Edwin Dobbs,
Charles H. Haswell, James S. Smith,
Walter C. Tuckerman, Henry Koppenburgh,
Samuel A. Goldschmidt, George C. Magoun,
James Macdonough, Henry Friedman,
Peter Masterson, Richard P. Dana,
Henry V. Mead, John F. Cunningham,
Christian S. Delevan, Dudley J. Bean,
William H. Morrell, Hiram M. Forrester.

It was then and there presented as follows, that is to say :

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 John Sullivan, late of the First Ward of the City of New York, in the County of New York aforesaid, on the twenty-fifth day of September, in the year of our Lord one thousand eight hundred and eighty, with force and arms, about the hour of two o'clock in the night time of the same day, at the ward, city, and county aforesaid, the dwelling-house of Nicholas Smith, there situate, feloniously and burglariously did break into and enter, by means of forcibly breaking open an outer window of said dwelling-house, whilst there was then and there some human being, to wit, one Nicholas Smith, within the said dwelling-house, he, the said John Sullivan, then and there intending to commit some crime therein, to wit, the goods, chattels, and personal property of Nicholas Smith.

in the said dwelling-house then and there being, then and there feloniously and burglariously to steal, take, and carry away, against the form of the statute in such case made and provided, and against the peace of the People of the State of New York and their dignity.

- 10 and the said John Sullivan afterwards, to wit, on the first day of October in the year of our Lord one thousand eight hundred and eighty, at the place last mentioned before the said Justice above named, came in his own proper person, and being brought to the bar here in his own proper person, and arraigned upon the said indictment, and having heard the said indictment read, and being asked whether he demanded a trial upon the said indictment, answers that he does require a trial thereon, and says that he is not guilty thereof: and thereupon, for good and ill, is put upon the country.

- 11 And Benjamin K. Phelps, Esquire, District Attorney for the City and County of New York, who prosecutes for the People of the said State of New York, in their behalf doth the like.

- And afterwards, to wit, at a Court of General Sessions of the Peace held in and for the said city and county of New York; at the City Hall of the said city, on the fifth day of October, in the year of our Lord one thousand eight hundred and eighty, before Frederick Smyth, Esquire, Recorder of the City of New York, and Justice of said Court, comes the said John Sullivan, and the said Benjamin K. Phelps, Esquire, District Attorney, likewise comes. Therefore, left a jury immediately come before the Justice last above mentioned, of free and lawful men of the said city and county, each of whom hath, &c., by whom the truth of the matter may be better known, and who are not of kin to the said John Sullivan to recognize upon their oath, whether the said John Sullivan be guilty of the felony in the indictment aforesaid, above specified, or not guilty.

And the jurors of the said jury, by Peter Bowe, Esquire, Sheriff of the City and County of New York, for this purpose impaneled, and returned, to wit:

Charles Frederick,	William J. Gessner,	
Allen H. Adams,	Edward Bauman,	
Jonas A. Rossman,	George Nugent,	13
Louis Frankenthaler,	John L. Heller,	
Robert W. Cooper,	John H. Davitt,	
Alexander G. Lappin,	John H. Bosche,	

who being called, come; and who being then and there elected, tried, and sworn well and truly to try and true deliverance make between the People of the said State of New York and the said John Sullivan then at the bar, whom they should have in charge upon the said indictment, and a true verdict give according to evidence, who, upon their oath aforesaid, say that the said John Sullivan is guilty of an attempt to commit burglary in the first degree, above charged in the form aforesaid, as by the indictment aforesaid, is above alleged against him.

And upon this it is demanded of the said John Sullivan whether he hath or knoweth anything to say wherefore said Justice here, ought not, upon the premises and verdict aforesaid to proceed to judgment against him, who nothing further saith, unless as before he has said. Whereupon, all and singular the premises, being seen, and by the same Justice here fully understood. It is considered, ordered and adjudged by the said Justice, that the said John Sullivan, for the felony aforesaid, be imprisoned in the State Prison at hard labor for the term of seven years and six months.

DANL. G. ROLLINS,

District Attorney.

Judgment signed, this 22d }
day of December, 1881. }

FRED'K SMYTH,
Recorder.

COURT OF GENERAL SESSIONS OF THE
PEACE,

FOR THE CITY AND COUNTY OF NEW YORK.

16 THE PEOPLE OF THE STATE OF
NEW YORK,

vs.

JOHN SULLIVAN.

Bill of Exceptions.

At a Court of General Sessions of the Peace of the City and County of New York, held at the City Hall, in the city of New York, before Hon. Frederick Smyth, Recorder of the said city, on the 5th day of October, 1880, the issue joined upon a certain indictment against John Sullivan for burglary in the first degree and grand larceny, came on to be tried, and a jury having been impaneled and sworn, the following testimony was then and there given, and the following proceedings were then and there had; Assistant District Attorney Rollins appearing for the people and Mr. Price for the prisoner:

NICHOLAS SMITH was called and sworn as a witness on the part of the people, and testified as follows:

18 I live at No. 6 Carlisle street, in the city of New York. The prisoner does not live there. It is an emigrant boarding house. I occupied the whole of the house; my room is on the first floor. I shut up the house the night of the 25th of September; there is a window leading from the house to the roof; the window is large enough for a person to get through, if it is open. If a person got through that window from the roof he would be in the sleeping room where all my boarders slept; that was the only window to that room, and that opened

out upon the roof. I do not know whether that window was shut or open that night. I saw the prisoner in my house that night between two and three o'clock in the morning. I heard a pane of a glass break, and I heard a good deal of noise, and I went up stairs. I had been in bed three or four hours. Before I went to bed the house was all locked up in front and in back. The first that attracted my attention to this prisoner being in the house was, I heard a noise inside on top of the house, and I went up there, and the prisoner jumped out of the window. My boarders were in the room sleeping in the bed; the prisoner was not a boarder, nor did he belong there at all. When I saw him he was getting out of the window two flights of stairs up. I went up stairs with a lamp; the door which leads from the hallway into the big room where the boarders slept was open, so that in going up stairs the light would shine in the room, and when I got to the doorway he was going out of the window. I went down stairs and told the officer to come up, and two policemen went up along with me, and outside of the window on top of the house the officer arrested the prisoner. There was no place broken down stairs; persons can walk from one roof to the other the whole length of the row of buildings adjoining; the window shoves up and down just with a pulley and can be opened from the outside or inside of the house. There is a nail fixing it to stop the window, but I do not know whether the window was locked or not.

To the Court.—This house is three stories high. 21 It has a slate roof—an old-fashioned slate roof, a kind of slanting roof, with windows in the roof. The first floor is for my boarders to sit in. The next floor I sleep in myself. There was families living on the third floor, one by the name of Reilly. Up on the attic I keep boarders' sleeping rooms—only one window in that room. That night, I guess, twelve or thirteen men were sleeping in that room. The next house to me is built exactly the

same way. I locked the house myself; no person could get in unless they went on the roof. The prisoner did not live in the house.

To the District Attorney.—The first noise I heard was glass breaking. The glass was broke in that window. If the widow had been shut, it could only have been fastened by putting a nail through the upper and lower sash. I do not know if the window was open or shut; of course the window can be just as well open as shut. The window had been fastened sometime. Whenever it was fastened it was fastened with a piece of nail through the window. There was two windows, one going up and the other one going down. You can slide one up and one down. When the nail was in in that way the window could not be opened from the outside. When I went up stairs the first thing I heard was the breaking of the glass. At that time I did not look at the window to see if the glass was broke or not; after that I saw that the glass was broken. The glass was broken on the window outside the roof; there was property in the house.

JAMES TYRELL, a witness on behalf of the People, being duly sworn testified as follows:

I arrested this prisoner; I arrested him on the roof of No. 6 Carlisle street, in a gutter standing alongside of the attic window; the window was up and the parties inside of the room told me there was a man outside, and I caught him standing outside; I did not examine the window, it was raised up; I asked him what he was doing there and he said he was led into this; I led him down stairs; he made no other explanation; he did not tell me the particulars about it at all.

The People then rested their case.

The prisoner's counsel then requested the Court to charge the jury that there was no evidence here

of burglary and also that the jury could not convict the prisoner on the first count in this indictment.

The Court.—There is very little evidence of the breaking, there is some evidence tending to show that the prisoner broke a pane of glass. I will have to leave it to the jury to determine the facts.

The Prisoner's Counsel.—Give me the benefit of the exception.

The jury thereupon rendered a verdict of guilty of an attempt at burglary in the first degree and the Court thereupon sentenced the prisoner to imprisonment in the State Prison for the term of seven years and six months.

And inasmuch as the said several matters so produced and given in evidence on the part of the People, and excepted and objected to on the part of the defendant, John Sullivan, and the same not appearing by the verdict of the jury or upon the record of said trial, the counsel for the defendant then and there proposed this bill of exceptions to the Hon. Frederick Smyth, Recorder, holding said Court of General Sessions of the Peace, to put his seal to the same, according to the form of the statute in such case made and provided, and thereupon said Recorder did sign and seal this bill of exceptions this 22d day of Dec'r, 1881.

[L. s.] FRED'K SMYTH,
Recorder.

U. S. Supreme Court,

GENERAL TERM.

John Sullivan

Def't in error

vs

The People

Def't in error

COPY OF

OPINIONS.

*Brady J. Davis Esq. &
Daniel J.*

0754

SUPREME COURT,

FIRST DEPARTMENT GENERAL TERM JAN. 1882.

NOAH DAVIS P.J. JNO. R. BRADY AND CHAS. DANIELS J.J.

JOHN SULLIVAN

Plff. in Error.

agst.

The People,

Defts in Error.

Writ of error to the Court of General Sessions.

JOHN O. FOTT for applt.

JOHN VINCENT for respt.

BRADY J.

The prisoner was indicted charged with burglary in the first degree, in having broken into and entered the dwelling house of Nicholas Smith by means of forcibly breaking open an outer window of such dwelling, whilst there was then and there some human being within it, to wit, the said Nicholas Smith. On the trial Smith was called as a witness and testified that on the night of the burglary, he shut up the house; that there was a window leading to the roof which was large enough for a person to get through if it was open and if a person did get through it he would immediately enter the sleeping room where some of his boarders slept. And that that was the only window in that room which opened out upon the roof, but he did not know whether it was open or shut on that night. He testified further that there was

no place broken down stairs, to use his own language, and further that no person could get into the house unless he got onto the roof. And further that when he went up stairs on being alarmed the first thing he heard was the breaking of glass, and although he did not at that time look at the window spoken of, to see if the glass was broken, he afterwards saw that it was broken. It further appears that the prisoner was seen going out through the window, and that he was found on the top of the house by the officer, who went in search of, and arrested him, and that upon being asked what he was doing there said "I was led into this". He made no further explanation. The indictment as already suggested was for burglary in the first degree, and upon the conclusion of the case on the part of the People, the prisoner's Counsel requested the Court to charge that there was no evidence of burglary and that the jury should not convict the prisoner on the first count in the indictment. To which the Court responded, "There is very little evidence of the breaking. There is some evidence tending to show that the prisoner broke a pane of glass. I will leave it to the jury to determine the facts." The prisoner's Counsel thereupon said, "Give me the benefit of the exception." The request to charge seems to be infelicitous in form. It is that the jury should be instructed that there was no evidence of burglary. This is clearly incorrect because the evidence shows that the prisoner entered the house without permission, without right unlawfully and undoubtedly through the window to which reference has been made. And the request was also based

on the supposition that there was more than one count in the indictment which was erroneous, as there was but one count in that pleading. Perhaps it may be said the design of the request ^{was} to assert that there was no evidence of burglary in the first degree and that the prisoner could not ~~be~~ ^{be} therefore convicted of that offence. The jury however found the prisoner guilty of an attempt only to commit burglary in the first degree and he was thereupon sentenced to the State Prison for the term of seven years and six months. It is quite apparent that the evidence was not sufficient to establish a forcible breaking and entrance. All that appears on that subject is the breaking of a pane of glass, and that does not appear to have resulted in making an opening through which the prisoner could ~~have~~ entered the premises, whilst it does appear that the window may have been open, and if so that the entry may have been effected without any breaking in ~~such~~ ^{which} case the offence was not burglary in the first degree.

People vs. Burt 3d Albany Law Jour. 90. People vs. Fillinger 3d How. P.R. 321.

People vs. Bush 3d Parker 552.

It was the duty of the Court therefore to have instructed the jury that the evidence was not sufficient to prove the crime of burglary charged. If the prosecution fail in some element of proof necessary to constitute the crime, it is a clear case for the interposition of the Court.

People vs. Bennett 49 N.Y. 137.

Here the proof of the breaking in was an element necessary but wanting. The learned recorder as already shown, enters

tained the view himself that there was very little evidence of the breaking, there being only some tending to show that the prisoner broke a pane of glass. But as already suggested it does not appear that the glass broken ^{covered} a space sufficient to admit the prisoner's body, and if any presumption is to be indulged in it is that a pane of glass in such a window as that described would be too small to allow any such performance. The breaking should be sufficient to allow an entrance to be made, otherwise it would amount to an attempt only. The case was submitted to the jury therefore upon the single fact in reference to the breaking in, if that were sufficiently proven, that the prisoner broke a pane of glass and which was to be inferred from the fact that the breaking was heard and not from his having been seen committing the act of breaking. The prisoner could have been convicted nevertheless of burglary in the second degree under the Statute, because the evidence conclusively established that he had burglariously entered the premises.

3. REV. STAT. 6th EDITION p 940 995
SECTION 14 and 48. But he could not be convicted of an attempt because the Statute declares that no person shall be convicted of an attempt to commit any offence unless it shall appear that the crime intended or the offence attempted was not perpetrated by him.

3d REVISED STATUTES supra p 994

SECTION 47

In this case the crime of burglary in the second degree on the evidence, was accomplished. The prisoner had unlawfully entered the premises with a felonious intent and was seen

therein, and under such circumstances as to leave no doubt of his intention feloniously to appropriate property. The prisoner can be convicted of an attempt only when he shall fail in the perpetration of the crime intended, or shall be prevented or interrupted in the execution of the same (3 R. C. supra, p. 923, sec. 3)

The offence charged being burglary in the first degree ~~the jury could not convict him of an attempt~~ and the evidence showing the commission of the offence of burglary in the second degree, the jury could not convict him of an attempt, and the conviction was therefore erroneous.

the learned counsel for the plaintiff in error insists that the effect of this conviction is that his client should be discharged from further imprisonment absolutely. This proposition rests upon the provision of the statute (See 3 R. C. supra, p. 906, § 49.) which provides that when a defendant, shall be acquitted or convicted upon an indictment for an offence consisting of different degrees, as prescribed in the chapter, he shall not thereafter be tried or convicted for a different degree of the same offence, nor shall he be tried or convicted ^{for} any attempt to commit the offence charged in the indictment, or to commit any degree of such offence; and he relies upon the adjudication in the case of *The People v. Dowling* (34 N. Y., 473) and in the case of *Gunther vs. The People* (24 N. Y., 100)

There is, as already suggested, but one count in the indictment which is for burglary in the first degree, and the verdict being for an attempt to commit that crime, is,

0760

V 2335-6

under the authorities named, an acquittal upon all the degrees of burglary charged or of which he ^{could} ~~can~~ be convicted.

Under the provisions of the statute and these authorities, therefore, the logical result is that he can not be tried upon any other charge connected with the transaction,

than an attempt to commit burglary in the first degree, of which he was convicted. He can be tried again for that same offence, but under this indictment and the proof, as already demonstrated, he could not be convicted of an attempt to commit burglary in the first degree. To recapitulate - he has been indicted for burglary in the first degree, he has been acquitted of burglary in all the degrees, and he has been found guilty of an attempt to commit burglary in the first degree, which the evidence does not sustain. Under the provisions of the statute he can not be tried again for any offence of a higher grade. He can only be tried again for the same offence, which would be for an attempt to commit burglary in the first degree; and the evidence in this case sustains the proposition that he could not be convicted of that offence, because he was guilty of burglary in the second degree. Hence his discharge seems to be inevitable.

The judgement should therefore be reversed, and an order entered discharging him. ^{ordered} ~~entered~~ accordingly.

0761

2535-7

DAVIS, P. J.

I agree to the ~~renewal~~ ^{reversal} of the judgement, but not to the discharge of the prisoner. I think a new trial should be ordered upon the ~~renewal~~ ^{reversal} and venire de novo on error brought by the prisoner, the case stands precisely as though no trial had ever been had. The prisoner has in legal contemplation been neither convicted nor acquitted of any degree of burglary. On his new trial he can be convicted of any offense lawfully embraced within the indictment and all that has taken place on the former trial goes for nothing either for or against him.

I agree to
I am not able to agree to the conclusion of Brady J. that the prisoner must be discharged absolutely.

DANIELS J.

I agree that the conviction must be reversed, but it is not so clear that the prisoner cannot again be tried as to justify a direction for his discharge. A new trial should accordingly be ordered.

Recd by
Lewis & Becher

The People

apt

John Sullivan

Demmer to plea

~~John~~ John McKeon

Diab. My

Filed 29. May 1882

0762

And John McKeon who prosecutes for
 the said people in this behalf, as to the said plea of
 the said John Sullivan, by him above pleaded,
 says that the same, and the matters therein
 contained, in manner and form as the same
 are above pleaded and set forth, are not
 sufficient in law to bar or preclude the
 said state from prosecuting the said indictment
 against him the said John Sullivan;
 And that the said state is not bound by the
 law of the land to answer the same; and this
 he the said John McKeon, who prosecutes
 as aforesaid, is ready to verify; wherefore
 for want of a sufficient plea in this
 behalf, he the said John McKeon for
 the said state prays judgment, and the
 said John Sullivan may be convicted
 of the premises in the said indictment
 specified

N.Y. General Session

The People

vs

John Sullivan

Copy Notice Motion
& dismiss indictment
and discharge the
Defendant.

John D. Mott
City Attorney General
140 Nassau Street
N.Y. City

0765

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

The People of the State of New York

against

John Sullivan

Indictment

for Burglary

1st Degree

To

Hon. John Mc Kern.

District Attorney.

Please take notice that

I shall apply to this Court, in part one
thereof, on the last day of the present May
term (1882) at the opening of the Court on
that day, or as soon thereafter as counsel
can be heard, for an order dismissing the
Indictment herein as to the above named
defendant and discharging the defendant
from custody, or for such other or further
order as the Court may think proper to
grant, unless the defendant shall have
been brought to trial during the present
May term of this Court.

Dated New York May 22^d 1882.

Yours &c

John T. Moff

Attorney & Counsel for defendant

0766

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

The Peo
v
Sullivan }

The Code § 962 says that "actions"
commenced before Sept 1. 1881 must
be conducted as if there was no Code.

By § 5 "an action" is defined to be
"a proceeding by which a party is
accused and brought to trial. &c"

The action is begun when the in-
formation, accusing one of crime,
is laid before a Magistrate.

This was done in this case in 1880.
Ergo - etc -

Heallen
of Counsel.

0767

Conan

Mary Brad

And Baker in hanging
Turrell

441/81 295

POWELL DISTRICT

THE PEOPLE & C.

ON THE COMPLAINT OF

Nicholas Smith
of Carlisle & Co.

John Sullivan

26 September 1881

Murray Magistrate

Hanning

Clerk

Witnesses: Michael Hanning

27th 1881 Precinct

Off April 27

RECEIVED. MAY 1881

COMMITTED BY

BAILED BY

NO.

Street

Committed

157

0768

POLICE COURT—First DISTRICT.City and County }
of New York, } ss:

Nicholas Smith
of No. 6 Carlisle Street, being duly sworn,
deposes and says, that the premises No. 6 Carlisle
Street, First Ward, in the City and County aforesaid, the said being a brick
building
and which was occupied by deponent as a dwelling house

entered by means forcibly raising the window which
leads from the roof of said premises and
entering therein ^{were} **BURGLARIOUSLY**

on the night of the 25 day of September 1880
and the following property feloniously ^{attempting to be} taken, stolen, and carried away, viz:
a quantity of bed covers and bedding
about the value of fifty dollars

the property of deponent
and deponent further says, that he has great cause to believe, and does believe, that
the aforesaid **BURGLARY** was committed and the aforesaid property ^{attempted to be} taken, stolen, and
carried away by John Sullivan now present

for the reasons following, to wit; that deponent saw
said Sullivan in said premises at
the hour of ^{about} 2 AM and when said Sullivan
saw deponent he ran out of said premises
to the roof

Wherefore deponent charges said
John Sullivan with burglariously entering
the aforesaid premises as aforesaid and attempting
to take steal and carry away the aforesaid property

Nicholas Smith

Deponent to before me this
26 day of September 1880
J. W. Smith
Police Justice

0769

Police Court—First District.

CITY AND COUNTY }
OF NEW YORK, } ss.

John Sullivan being duly examined before the undersigned,
according to law, on the annexed charge, and being informed that he was at liberty
to refuse to answer any question that may be put to him states as follows, viz:

Question. What is your name?

Answer. *John Sullivan*

Question. How old are you?

Answer. *22 years*

Question. Where were you born?

Answer. *Savannah Geo*

Question. Where do you live?

Answer. *12 New Church Street*

Question. What is your occupation?

Answer. *Longshore man*

Question. Have you anything to say, and if so, what—relative to the charge here
preferred against you?

Answer. *I am not guilty*
John Sullivan

Taken before me, this

22 day of *Sept*

1891

John Sullivan
POLICE JUSTICE.