

04 17

BOX:

444

FOLDER:

4091

DESCRIPTION:

Kee, Tom

DATE:

07/21/91



4091

Upon examination of the facts of this case I find that the people have no proof to show that the defendant did not own the property which he stated in the indictment to be his property. From all information that I can obtain I am of the opinion that the facts point to such ownership by him. The dismissal of the indictment of the people is respectfully recommended.

Sept 23/91
H. M. T. P.
District Attorney

No. 139

Counsel, Le Barbeg
Filed 21 day of July 1891
Pleads, Not Guilty (22)

THE PEOPLE
vs.
B

Tom Kee
D. 3. Sept 23/91
Dec on basis of Bill
Bar on basis of Bill
DE LANCEY NICOLL,
Attorney
Sept 23/91
Sept 23/91

A TRUE BILL.

Nicholas L. Corb
Foreman.
Sept 23/91
Sept 23/91

Witnesses:

0420

Police Court, *1st* District.

THE PEOPLE, &c.,

ON THE COMPLAINT OF

an you

vs.

1 *Tom Kee*

2

3

4

Requy
Offense.

Dated *July 15*

1891.

Magistrate.

Officer.

Clerk.

Witnesses,

No. Street.

No. Street.

No. Street.

\$ to answer. Sessions.

0421

Sec. 568.

186

District Police Court.

Undertaking to Answer.

CITY AND COUNTY,
OF NEW YORK, ss:

An order having been made on the 7th day of July 1891 by
Daniel O'Keilly Police Justice of the City of New York, that
ah Pang be held to answer upon a charge of
Giving theatrical performance on Sunday

upon which he has been duly admitted to bail in the sum of Three Hundred Dollars.

WE, ah Pang Defendant of No. 19 Bamery
Tom Kee Street, Occupation actor; and
ah Pang of No. 4 Sayer Street,

Occupation grocer Surety, hereby undertake jointly and severally
 that the above-named ah Pang shall appear and answer the charge
 above-mentioned, in whatever Court it may be prosecuted; and shall at all times render himself amenable
 to the orders and process of the Court: and if convicted, shall appear for judgment, and render himself in
 execution thereof; or if he fail to perform either of these conditions, that we will pay to the People of
 the State of New York the sum of Three Hundred Dollars.

Taken and acknowledged before me this 7
 day of July 1891

(Signed) ah Pang
Tom Kee

(Signed) Daniel O'Keilly Police Justice.

0422

City and County of New York, ss:

(Signed) Daniel Smith
day of July 1891
Sworn to before me this 7th day of July 1891
Police Justice

1
the within-named Bail and Surety, being duly sworn, says, that he is a resident and holder within the said County and State, and is worth Five Hundred Dollars, exclusive of property exempt from execution, and over and above the amount of all his debts and liabilities, and that his property consists of the stock and produce of the Green Store situated at 44 Bay Street and is worth Eight thousand dollars clear of all encumbrances

THE PEOPLE, &c.,
ON THE COMPLAINT OF

vs.

ah Parag

Taken the 7 day of July 1891
O'Reilly Justice.

Filed day of 1891

a true copy
John Harroll
clerk

Under-taking to Answer.

0423

Sec. 198—200.

CITY AND COUNTY }
OF NEW YORK } ss.

District Police Court.

Tom Kee 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. *Tom Kee*

Question. How old are you?

Answer. *37 years*

Question. Where were you born?

Answer. *China*

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

Answer. *4 Dryer Street. 6 months.*

Question. What is your business or profession?

Answer. *Owner*

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. Tom Kee*

Taken before me this

day of

1891

Police Justice.

0424

Sec. 151.

Police Court First District.

CITY AND COUNTY } ss. *In the name of the People of the State of New York: To the Sheriff of the County*
 OF NEW YORK, } *of New York, or to any Marshal or Policeman of the City of New York, GREETING:*

Whereas, Complaint in writing, and upon oath, has been made before the undersigned, one of the Police
 Justices for the City of New York, by Al. Yu

of No. 182 Ninth Avenue Street, that on the 7 day of July
 1888 at the City of New York, in the County of New York,

*one Tom Kee did commit the crime of perjury
 in that he did ~~not~~ knowingly falsely and willfully
 swear that he was the owner of the clock and fixtures
 of the Grocery store situated at 457 1/2 St. and in other
 eight hundred dollars charges circumstances.*

Wherefore, the said Complainant has prayed that the said Defendant may be apprehended and bound to
 answer the said complaint.

These are, Therefore, in the name of the PEOPLE of the State of New York, to command you the said
 Sheriff, Marshals and Policemen, and each and every of you, to apprehend the said Defendant, and bring him
 forthwith before me, at the First District Police Court, in the said City, or in case of my absence
 or inability to act, before the nearest or most accessible Police Justice in this City, to answer the said charge, and to
 be dealt with according to law.

Dated at the City of New York, this 7th day of July 1888

J. J. [Signature] POLICE JUSTICE.



0425

Police Court 2nd District.THE PEOPLE, &c.,
ON THE COMPLAINT OFah you
vsTom Kee.

Warrant-General.

Dated _____ 188

Magistrate.

Officer.

The Defendant Tom Kee
 taken, and brought before the Magistrate, to answer
 the within charge, pursuant to the command con-
 tained in this Warrant.

Officer.

Dated July 16 - 91 188

This Warrant may be executed on Sunday or at
 night.

P. J. Bell Police Justice.

REMARKS.

Time of Arrest, _____

Native of _____

Age, _____

Sex, _____

Complexion, _____

Color, _____

Profession, _____

Married, _____

Single, _____

Read, _____

Write, _____

0426

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.....

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

Dated July 16 1891 Da J. C. B. J. Police Justice.

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

Dated July 16 1891 Da J. C. B. J. Police Justice.

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

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

0427

Police Court---

1139 923 District.

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Al Ym
182-9000
Tom Kue

Office
Prisoner

1
2
3
4

Dated July 16 1891

O'Reilly Magistrate.

Dixm Officer.

Court Precinct.

Witnesses

No. Street.

No. Street.

No. Street.

\$ 15.00 to answer

Done

BAILED.

No. 1, by Chas Schaeffer
Residence 149 Suffolk Street.

No. 2, by

Residence Street.

No. 3, by

Residence Street.

No. 4, by

Residence Street.

0428

Sec. 568.

District Police Court.

Undertaking to Answer.

CITY AND COUNTY OF NEW YORK, ss:

An order having been made on the 14th day of July 1891 by Samuel O'Reilly Police Justice of the City of New York, that Ah Pang be held to answer upon a charge of

Giving Steamboat performance on Sunday upon which he has been duly admitted to bail in the sum of Three Hundred Dollars.

WE, Ah Pang Defendant of No. 19 Bowery Street, Occupation Actor; and

Thompson of No. 420 1/2 Street, Occupation Carpenter, Surety, hereby undertake jointly and severally that the above-named Ah Pang shall appear and answer the charge above-mentioned, in whatever Court it may be prosecuted; and shall at all times render himself amenable to the orders and process of the Court; and if convicted, shall appear for judgment, and render himself in execution thereof; or if he fail to perform either of these conditions, that we will pay to the People of the State of New York the sum of Three Hundred Dollars.

Taken and acknowledged before me this 14th day of July 1891

TSRB

Don Kee

Police Justice.

0429

City and County of New York, ss:

Subscribed and sworn to before me this
day of June
1881
John J. Kelly
Police Justice.

Tom Lee

the within-named Bail and Surety, being duly sworn, says, that he is a resident and Lease
holder within the said County and State, and is worth Six Hundred Dollars,

exclusive of property exempt from execution, and over and above the amount of all his debts and liabilities,
and that his property consists of The store and fixtures of

the grocery store situated at 47
Adams Street and is worth Eight
thousand dollars clear of all
encumbrances

Underwriting to Answer.

THE PEOPLE, &c.,
vs.
ON, THE COMPLAINT OF

vs.

Taken the day of 1880

Justice.

Filed day of 1880

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

THE PEOPLE OF THE STATE OF NEW YORK,

against

Sam Lee

The Grand Jury of the City and County of New York, by this
Indictment accuse *Sam Lee* —

of the crime of *Burglary.*

committed as follows:

Heretofore, to wit: *on the nineteenth day of*
July, 1891, at the City and County of New York,
an order having been then and there duly
made by David O'Reilly Esquire, then
and yet being one of the Justices
of the said City and County, that one
Sam Lee be held to answer upon a certain
charge of misdemeanor in having then
and there at the City and County
of New York unlawfully aided in a fraudulent
and dishonest manner on the first day of the
month of July, upon which said charge the said
Sam Lee had then and there duly
admitted to fact in the sum of three
hundred dollars, the said David O'Reilly Esquire, Police Justice and
the said Sam Lee,
at the City and County of New York,
did go before the said David O'Reilly

Enquire, under Police Justice as aforesaid,
 and as under Police Justice then and there
 then and there having, some time and
 proper authority to take said for the
 appearance of the said John Cane to
 answer the said charge, and did then
 and there offer himself to be and become
 said and answer for said appearance, the
 said John Cane, and did then and
 there produce and exhibit to the said
 Daniel O'Reilly, Enquire, Police Justice
 as aforesaid a certain written undertaking
 executed by himself, and also by the said
 John Cane, wherein and whereby they the
 said John Cane and Tom Lee did undertake
 jointly and severally that the said John
 Cane should appear and answer the
 said charge in whatever court it might be
 prosecuted; and should at all times render
 himself amenable to the orders and
 process of the Court; and if convicted
 should appear for judgment, and render
 himself in execution thereof; or if he
 failed to perform either of these conditions,
 that they would pay to the People of the
 State of New York the sum of three
 hundred dollars; together with a certain
 affidavit in writing of him the said
 Tom Lee, ~~to the effect that~~ demand and

~~And the said Tom Lee did swear~~
~~and did take his corporal oath, by and~~
 before the said Daniel O'Reilly Esquire,
 and Police Justice as aforesaid, touching
 and concerning the truth of the matters
 and statements so contained in his said
 affidavit in writing, as touching and
 concerning the said Daniel
 O'Reilly Esquire, as said Police Justice
 as aforesaid then and there lawfully
 and completely and power and
 authority to administer the said oath
 to the said Tom Lee in that behalf
 directed.

And the said Tom Lee, being so
 sworn as aforesaid, upon his oath
 aforesaid, before the said Daniel
 O'Reilly Esquire, and Police Justice
 as aforesaid, in and by his said
 affidavit in writing, do and concerning
 his circumstances and property and
 his qualifications as such trial and
 jury upon the said undertaking.

intended to purchase from Deane
 Street in the said City, and the same
 was not then worth eight thousand
 dollars, and was not then dear of
 all encumbrances, all of which the
 De said from the then and there
 well known.

And so the said Deane did
 do say, that the said from the in
 manner and form aforesaid, knowingly
 wilfully, unlawfully and corruptly
 did commit and corruptly
 perjure, against the form of the
 Statute in such case made and
 provided, and against the peace of
 the Peace of the State of New York,
 and their dignity.

Deane, Vice,

Deane Attorney

0435

BOX:

444

FOLDER:

4091

DESCRIPTION:

Kelly, James

DATE:

07/09/91



4091

0436

BOX:

444

FOLDER:

4091

DESCRIPTION:

McDonald, James

DATE:

07/09/91



4091

Witnesses;

Wm. H. Hines
As previously
written & AB

Counsel,

Filed

9

day of

July 1891

Plends,

THE PEOPLE

vs.

James Kelly

and

James McDonald

Burglary in the Third degree.
Count 1.

[Section 498,

DE LAKE WOOD,

JOHN R. FELLOWS

District Attorney.

A True Bill.

Nicholas J. Conn

Foreman.

July 9, 1891

Both found Guilty 3 dy

Both 2 yrs. 6 mo. 5 dy

0438

Police Court—V District.City and County } ss.:
of New York,of No. 545 9th Avenue Street, aged 46 years,
occupation Saloonkeeper being duly sworndeposes and says, that the premises No 545 9th Avenue Street,
in the City and County aforesaid, the said being a Four story brick
tenement house the ground floor
and which was occupied by deponent as a Liquor Beer Saloon
~~and in which there was at the time a human being, by name~~were BURGLARIOUSLY entered by means of forcibly breaking the
Fan light over the door of said Saloonon the 5th day of July 1891 in the night time, and the
following property feloniously taken, stolen, and carried away, viz:A quantity of Liquors and Cigars
to the value of about Five Hundred
Dollars\$500 &cthe 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 taken, stolen, and carried away byJames Kelly and James McDonald
for the reasons following, to wit: Deponent securely locked
and bolted the door and Fan light of
said premises at the hour of about
12 o'clock midnight on said date.
at about the hour of one p.m. on
said date he heard a noise in said
saloon. Deponent is informed by Officer
Ennis that he saw Defendants Kelly
take off his shoes then enter said saloon

0440

CITY AND COUNTY }
OF NEW YORK, } ss.

William J. Ennis
aged *24* years, occupation *Police Officer* of No. *20* *Princis* Street, being duly sworn deposes and
says, that he has heard read the foregoing affidavit of *William Morgan*
and that the facts stated therein on information of deponent are true of deponents' own
knowledge.

Sworn to before me, this *5* day of *July* 18*91* } *William J. Ennis*
[Signature]
Police Justice.

0441

Sec. 108-200.

CITY AND COUNTY } ss.
OF NEW YORK,

District Police Court.

James McDonald 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 McDonald

Question. How old are you?

Answer. 18 years

Question. Where were you born?

Answer. New York

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

Answer. 526 West 45th Street 5 years

Question. What is your business or profession?

Answer. Driver

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
James McDonald

Taken before me this

day of

July

1891

Police Justice.

0442

Sec. 198-200.

2 District Police Court.

CITY AND COUNTY } ss.
OF NEW YORK,

James Kelly 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 Kelly*

Question. How old are you?

Answer. *18 years*

Question. Where were you born?

Answer. *New York*

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

Answer. *No home*

Question. What is your business or profession?

Answer. *work in paper Factory*

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 -
~~Thomas~~ James Kelly*

Taken before me this

day of *June* 1881

Police Justice.

0443

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

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

Dated *July 25* 18*91* *[Signature]* Police Justice.

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

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

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

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

3.

Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK,

against

*James Kelly and
James Mc Donald.*

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

James Kelly and James McDonald

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

The said

*James Kelly and James
Mc Donald, both*

late of the *Twenty-second* Ward of the City of New York, in the County of New York
aforesaid, on the *fifth* day of *July* in the year of our Lord one
thousand eight hundred and *ninety-one*, with force and arms, in the
night— time of the same day, at the Ward, City and County aforesaid, the
~~dwelling house of one~~ *a certain building, to wit:*

the saloon of one William Morgenweck

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

*De Lancey Nicoll,
District Attorney.*

0446

BOX:

444

FOLDER:

4091

DESCRIPTION:

Kelly, John

DATE:

07/21/91



4091

0447

BOX:

444

FOLDER:

4091

DESCRIPTION:

Hurley, John

DATE:

07/29/91



4091

0449

Police Court

District.

Affidavit—Larceny.

City and County } ss:
of New York,

Andrew Bisley

of No. 548 Court Street, Brooklyn Street, aged 47 years,
occupation Longshoreman being duly sworn,deposes and says, that on the 22 day of July 1891 at the City of New York,
in the County of New York, was feloniously taken, stolen and carried away from the possession of deponent, in
the day time, the following property, viz:One double case silver
watch of the value of Eight dollars \$8.

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 ^{from his person} John Kelly and John Hurley (both now dead) who were acting in concert with each other for the reason that on the above date deponent was sitting asleep on a stoop on South Street near Dover Street, and that he had the aforesaid property in the left pocket of his trousers and when he awoke the said property was not there. He was informed by ~~John Kelly~~ Hurley that he saw the two defendants standing near deponent and that he saw the defendant Hurley insert his hand in deponent's pockets and then take therefrom the said watch. Hurley then in company with the defendant Kelly walked away. Officer Jeremiah J. Griffith then showed deponent a watch which the said Hurley threw away in the

Sworn to before me, this

189

Police Justice.

sheet and defendant identifies said watch as
his property. Wherefore defendant charges
the said Kelly and Hurley with the
larceny thereof and prays that they may
be held to answer -

x Andee Beasley

Sworn to before me at
25th day of July 1891

[Signature]

Officer Justice.

0451

CITY AND COUNTY }
OF NEW YORK, } ss.

aged 21 years, occupation John Stern
Latner of No. 3 James
Street, being duly sworn, deposes and
says, that he has heard read the foregoing affidavit of Andrew Bialer
and that the facts stated therein on information of deponent are true of deponent's own
knowledge.

Sworn to before me, this 25
day of July 1898, } * John Stern
[Signature]
Police Justice.

0452

Sec. 198—200.

District Police Court.

CITY AND COUNTY } ss.
OF NEW YORK, }

John 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. *John Kelly*

Question. How old are you?

Answer. *22 years.*

Question. Where were you born?

Answer. *New York*

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

Answer. *140 Cherry Street. 10 years*

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*

x John Kelly

Taken before me this

day of

1891

Police Justice.

0453

Sec. 198-200.

CITY AND COUNTY } ss.
OF NEW YORK,

District Police Court.

John Hurley 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. *John Hurley*

Question. How old are you?

Answer. *18 years*

Question. Where were you born?

Answer. *New York*

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

Answer. *42 Main Street Brooklyn 2 Years.*

Question. What is your business or profession?

Answer. *Book - Binder*

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.*

x John Hurley

Taken before me this

day of

Sept 11 1891

Police Justice

0454

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

Defendant
guilty thereof, I order that he be held to answer the same and he be admitted to bail in the sum of *Five* Hundred Dollars, *1000* and be committed to the Warden and Keeper of the City Prison, of the City of New York, until he give such bail.

Dated *July 25* 18*91* *[Signature]* Police Justice.

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

Dated 18 _____ Police Justice.

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

Dated 18 _____ Police Justice.

0455

BAILED,

No. 1, by

Residence Street.

No. 2, by

Residence Street.

No. 3, by

Residence Street.

No. 4, by

Residence Street.

202
Police Court---

964
District.

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Andrew Bickel
548 1/2 Court St. Boston

1 John Kelly

2 John Hurley

3

4

Officer Lacey
7th Precinct

Dated July 25 1891

Davin Magistrate.

Griffin & Logan Officer.

14th Precinct.

Witnesses John Stern

No. 3 James Street.

Joseph J. Sullivan

No. 14th Precinct Street.

John Stern Committed to
House of Detention for 100 Days

No. Street.

\$ 1000 to District S.

Committed 9th Precinct

0456

CITY AND COUNTY
OF NEW YORK, ss.

POLICE COURT, DIST.

of No. 4th Police Precinct Street, aged 37 years,
 occupation Police Officer being duly sworn deposes and says,
 that on the _____ day of _____ 188

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

John Stern (now here) is a material witness
 against John Kelly and John Hurley
 both charged with Larceny. The defendant has
 reason to believe that said Stern will not
 appear to testify when wanted, defendant prays
 that the said Stern be committed to the
 House of Detention in default of One
 Hundred Dollars Bail for his appearance.

Jeremiah J. Griffin

Sworn to before me, this _____ day

of _____

1891

day

Police Justice.

0457

Court of General Sessions.
CLERK'S OFFICE.

Filed 29 July 1891

PEOPLE

vs.

John Kelly
and

John Hurley

Rec. April 1889

and
Jan 29 1894

for other Inds

Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK

against

*John Kelly and
John Hurley*

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

John Kelly and John Hurley —
of the CRIME OF GRAND LARCENY in the *second* degree, committed as follows:

The said

John Kelly and John Hurley, both
late of the City of New York, in the County of New York aforesaid, on the *23rd*
day of *July* — in the year of our Lord one thousand eight hundred and
eighty-nine, in the *day* — time of the said day, at the City and County
aforesaid, with force and arms,

*one watch of the
value of eight dollars*

of the goods, chattels and personal property of one

on the person of the said

then and there being found, 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.

*De Lancey Nicoll,
District Attorney*

0459

BOX:

444

FOLDER:

4091

DESCRIPTION:

Kirwan, John P.

DATE:

07/14/91



4091

0460

POOR QUALITY
ORIGINAL

Bail fixed at
\$5000 = RBC

Witnesses:

Bailed Aug 11, 1891
by deposit of Money by
L. K. Ungrich
2600 7/10 135 1/2

Guilty on appeal
Oct 14/91

Geo M Laughlin
14 Oct 6/91

In this case the defense
and was tried June 7 jointly
subsequently an appeal was taken
to the General Term and the judg-
ment of conviction upon the facts
was reversed.
It is impossible for the People
to furnish any further evidence
bearing upon the alleged crime
than that which was adduced
upon the trial. In view of the
decision of the General Term
no conviction can be had. I say
that this indictment be dis-
missed.
John F. McLaughlin
Oct 20, 1891

137k July 28/91 BSA July 14/11
1000 1/2

Counsel, Keweenaw & 76
Filed 14 day of July 1891
Pleads, Not Guilty (20)

THE PEOPLE
vs.

John P. Keweenaw

DE LANCEY NICOLL,
P.3 Sept 23, 1891 District Attorney.
Tried and convicted
A. 2 2/9
A TRUE BILL.
On me of a Jury
of 12 in court
Sept 22 1891
Whelan
Foreman.

F July 28, 1891
2. 1/2. 2. Mrs. P. 1/2
F. 1/2

0461

Police Court 2 District.CITY AND COUNTY } ss,
OF NEW YORK,of No. 449 West 21st Mary Allan
Street, aged 35 years,
occupation Married woman being duly sworn, deposes and says, that
on the 20th day of May 1887 at the City of New York,

in the County of New York,

And in decessly
he was violently ASSAULTED and BEATEN by John B. Kirwinwho came into deponent's parlor and forciblyattempted to throw deponent down on the floorand while this person was exposed he forcibly placed his
hand on deponent's naked thigh
without any justification on the part of the said assailant.Wherefore this deponent prays that the said assailant may be apprehended and bound to
answer the above assault, &c., and be dealt with according to law.Sworn to before me, this 22ndday of June 1887Mary AllanA. T. McMahon Police Justice.

0462

POLICE COURT 2 DISTRICT.

City and County of New York, ss.:

THE PEOPLE,

vs.

John P. Kerwin

On Complaint of

Mary Allan

For

Indecent Assault

After being informed of my rights under the law, I hereby waive 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

June 28 1891

John P. Kerwin

W. M. M. M. M.

Police Justice.

0463

Sec. 198-200.

CITY AND COUNTY } ss.
OF NEW YORK,

District Police Court

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

Question. What is your name?

Answer. *John B. Kirwan*

Question. How old are you?

Answer. *30 years*

Question. Where were you born?

Answer. *New York*

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

Answer. *365 West 31st St. 1 year*

Question. What is your business or profession?

Answer. *Real Estate broker*

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**John B. Kirwan*Taken before me this *23*
day of *June*
1891

Justice

0464

Sec. 151.

Police Court, 2 District.

CITY AND COUNTY } ss. *In the name of the People of the State of New York; To the Sheriff of the County*
 OF NEW YORK. } *of New York, or any Marshal or Policeman of the City of New York, GREETING;*

Whereas, Complaint in writing, and upon oath, has been made before the undersigned, one of the Police
 Justices for the City of New York, by *Mary Allan*

of No. *449 West 21st* Street, that on the *20th* day of *January*
 188*9* at the City of New York, in the County of New York,

and Indecently
 he was violently Assaulted and Beaten by *Kirwin*

who forcibly placed his hand on Complainant's person

Wherefore, the said Complainant has prayed that the said Defendant may be apprehended and bound to
 answer the said complaint.

These are Therefore, in the name of the PEOPLE of the State of York, to command you the said
 Sheriff, Marshals and Policemen, and each and every of you, to apprehend the said Defendant and bring *him*
 forthwith before me, at the *2* DISTRICT POLICE COURT, in the said City, or in case of my absence
 or inability to act, before the nearest or most accessible Police Justice in this City, to answer the said charge, and to
 be dealt with according to law.

Dated at the City of New York, this *22* day of *June* 188*9*
W. J. Marshall POLICE JUSTICE.

0465

403 W. 51st St

Police Court 2 District.

THE PEOPLE, & c.,
ON THE COMPLAINT OF

Mary Illan
vs.
John P. Rivin

Warrant A & B.

Dated June 22 1891

McMahon Magistrate.

Farrell Officer.

The Defendant John P. Rivin
taken, and brought before the Magistrate, to answer
the within charge. pursuant to the command con-
tained in this Warrant.

John D. Farrell Officer.

Dated June 23 1891

This Warrant may be executed on Sunday or at
night.

Police Justice.

Dated 188

Police Justice.

The within-named

having been brought before me under this Warrant, is committed for examination to the WARDEN
and KEEPER of the City Prison of the City of New York.

1³⁰ AM 98 M New York State Prison N.Y. No 365 M 31 June

0466

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

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

Dated 18 Atkinson Police Justice.

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

Dated June 20 1897, W. W. Mahala Police Justice.

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

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

0467

BAILED.

No. 1, by James R. Cirkitt
Residence 1406 West 52nd Street.

No. 2, by _____
Residence _____ Street.

No. 3, by _____
Residence _____ Street.

No. 4, by _____
Residence _____ Street.

Police Court --- 27 District.

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Mary Allan

1 Kirk
2 John P. Kerwin
3 _____
4 _____

Indictment
Offence
C. W. Smith

Dated June 23 1891
McMahon Magistrate.

Officer _____
Precinct _____

Witnesses _____

No. _____ Street.

No. _____ Street.

No. _____ Street.

574 to answer S.S.
P.

14 June 26 2 P.M.
30 Bailed

0468

My dear friend I have something
to tell you so ~~be~~ ^{be} prepared
to have a little surprise it
is all over now and all's
well that ends well as
it has done so far it is
no sickness and has
annoyed me only but I
have come out all right.
Well as all tales commence
in the beginning a man
called in April 28th to see

0469

found me alone in the house. he came at 10 o'clock and I opened the door for him myself as there was no one else to do so. he asked me when the girl was & I told him that I ~~had~~ discharged her and that my boy Joe had gone to get one. as he had acted like a gentleman on his previous visits I did not think he had any bad intentions. he said he had some papers that I could read and sign if I saw fit so I asked him up in the parlor where I

0470

2

about the Blecker St place
 & wanted to know what
 we would take I told him
 it must be over 19⁰⁰⁰ \$ as
 I had been offered he said
 he would call again I told
 him that we was not anxious
 to sell, and he went away.
 in the first part of may he
 called again and said he
 had a man who would buy
 it and made an appointment
 for the 20 of May as I had no
 servant at the time having
 kept Joe home two days to
 hunt up one & he ^{Joe} being
 gone down to Milton St at
 the time he ^{the morning} called. he

0471

keep the pen + ink as soon
as I got it he shut the
door and caught hold of
my hands and we had
a tussle round the room
he unbuttoned his pants and
grabbed me by the leg as I
was falling he having tripped
me with his foot as he did so
it loosened my hands and
I sprang around one of our
big arm chairs and rushed
out of the room I ran upstairs

0472

5

in my own bedroom &
bolted it and watched
through the window for an
officer but he went out
himself before I could see
one. pretty soon Joe came
back and I kept him in
the house with me never
letting him out untill
the girl that he had
got came on the following
day 21 of May. the first
time he called after this

for the commission of the sale so I went down and he asked me to be seated I said no I will not he got hold of me by the shoulders and tried to force me into a chair and the girl who I told to watch thought that he was trying to kiss me but I think he wanted to whisper in my ear because he kept saying speak low and I screamed out No if you cannot speak loud I will not listen to you. so I went up stairs and left him sitting there.

girl came he asked to see me and she came upstairs and said a gentleman wanted to see me. I went down and when I saw who it was I stopped on the middle steps of the oak stairs and said is that you. I won't have any thing to say to you & went upstairs again. He sat down on the lounge and after a while he took a card and wrote on it I have a customer for this house. I thought if I did not see him perhaps he would see us

0474

he sat on the lounge
all of 15 minutes so the
girl says before he went.
The next time he called
the girl knew him and
told him I was out but
he did not believe her. I
was upstairs but had told
her never to admit him he
asked her when I generally
went out and when I came
in but she gave him no
satisfaction. I told Mary
Muir who happened to drop
in and she asked her
brother Tom and he advised

0475

9

her to tell me to go to a
Lawyer and take his advice
on their recommendation I
went to Lucius McAdam
and he said that he
would write to him and
tell him to keep away
or further proceedings
would be taken for my
protection that was last
Friday June 19. the lawyer
thought that would frighten
him but on Monday morning

wife he laughed at me and said I dare not as she was soon to be confined and I would have her death on my head. and then he said he would write to you and that I dare not give him your address but I did tell him where you was and your address. anything that I had done he forced me. but you understand he did not accomplish his design. well to take up where I left off. I went over to Jefferson Market Police court and got a warrant served on him

at 10 o'clock he came up the street I was standing at the gate talking to a lady and he stopped at the gate I asked her if she would come in and I turned round and said Mr Kirwan don't you dare go in that house we went in and shut the door. he stood at the gate a few minutes and then went away. I must say here something that I forgot to mention before when on the 20 of May while we were having the tussle I said if you don't let me go I will tell your

0477

I had to undergo a private examination by the judge and he was arrested the next morning and I had to go to court but the judge took us in his private office and he denied every thing I sent a telegraph message for Lawyer Fetteritch and he met me in court and advised me what to do I have done so and he has put me in

13

John Goff's hand and I
shall do as he advises me.
he thinks it will be all
settled by to night I hope
so. he the lawyer will send
you a copy of the judges
opinion & decision and
his own & Mr Fetterlock
so I hope you will be
satisfied that I did
everything the best I
knew but if you feel
doubtfull of me.

The children are all well and I send you the papers that has a mistaken account I in hoping you will not blame me for the frightful thing I remain

Yours

Sincerely

Mary Allan

I am very very sorry but I can not help it dont ~~not~~ make yourself sick for before you get this it will be settled in my favor as he is awfully anxious to hush it up and of course if he will never trouble me I will do whatever Mr Goff advises.

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

THE PEOPLE, et al.,

JOHN P. KIRWAN,

A motion having been made on behalf of the
defendant for a certificate of judgment in accordance
of the Code of Criminal Procedure, which shall operate
as a stay of proceedings upon the indictment and a re-
vision rendered in the Court of General Sessions
against the above named John P. Kirwan for the crime
of assault with a dangerous weapon, upon which conviction
he was sentenced to be imprisoned in the Penitentiary
for the term of one year, and said motion came on to
be heard, and after hearing William L. Howe, in favor
of said motion, and the District Attorney of the County
of New York in opposition thereto, it is ordered, (the
deliberation being had) that the said motion be and the
same hereby is granted, and I do hereby certify that,
in my opinion, there is reasonable doubt whether the
said conviction of the said John P. Kirwan should stand.

And I do hereby certify that, pending the appeal taken
by the said Kirwan from the said conviction, said
defendant be admitted to bail in the sum of ten thousand
dollars.

Dated October 15th, 1901.

Justice Supreme Court.

To

Esq.,
Attorney

A. J. General

Please take notice that the within is
a copy of an order duly made and entered
in the within action and filed in the office
of the Clerk of the

the day
of 189

Dated

189

Yours, &c.,

HOWE & HUMMEL,

Attorneys for

87 and 89 Centre Street,

New York City.

Defendant

ORDER.

HOWE & HUMMEL,

Attorneys for *Defendant*

87 and 89 Centre Street,

New York City.

Due and timely service of a copy of
within order admitted this day
of 189

To

Atty

Esq.,

Atty

The People of

Plaintiff

against

John P. Kieran.

0481

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

-e- : -e- : -o- : -e- : -e- : -e- : -e- x

The People of the State of New York :

-against-

J O H N P. K I R W A N, :

-o- : -o- : -e- : -o- : -e- : -o- : -e-x

MOTION FOR A NEW TRIAL.

The defendant moves that the verdict of the Jury be set aside and a new trial granted upon the following grounds:

First:- Because the said verdict was against the evidence and against the law, the testimony of the complainant as given on the trial not having been corroborated by any witness.

Second:- If the testimony for The People be accepted as true, does not this prove the defendant to have been guilty of the crime of Attempt at Rape?

It did not matter whether the indictment was merely for an assault, or Rape itself.

CORROBORATION was necessary in order to convict.

Had the indictment been for rape itself, it is

true, the Jury could have convicted of an attempt at rape, or even of assault; but it will be admitted that the Jury would not have been permitted to have considered any offense whatever against the defendant- even for a simple assault, without corroborative proof being given of the complainant's testimony.

The requirements of the law as to corroboration cannot be avoided by merely indicting a man for an inferior grade of crime; and it would be to hold that unsupported testimony of females should, in the face of the statute, be sufficient to convict of lesser offences, simply because their testimony does not go so far as to prove that the full offence was committed, but only to the extent of claiming that the prisoner charged did not succeed in the full perpetration of the crime.

Another view,- and, it is respectfully submitted, an important one- is that the offense of assault with intent to commit a rape is merged- and in effect the indictment charges an attempt at rape.

EVERY RAPE INCLUDES AN ASSAULT.

The offense of Rape also includes an INTENT TO COMMIT it.

The Court has held under that subdivision of the statute which declares murder in the first degree the killing of a human being whilst in the commission of a felony, that the felony must be some felony other than the assault; for the reason that the killing and the assault are one and

the same act.

So, in Rape, if the female consents, there is no Rape; every Rape includes an Assault; and the learned Recorder, in charging the Jury in this case defined an attempt, and, referring to the indictment, said:

"Substantially it charges this man with having made a felonious assault upon the person of the complainant with the intent to force her to submit to an act of sexual intercourse with him. Now that is substantially what the law calls an attempt to commit the crime of rape, and that is the felony charged in this indictment. Rape is defined to be 'An act of sexual intercourse with a female not the wife of the perpetrator committed against her will and without her consent'. An attempt to commit that crime is a felony. The statute says, 'An act done with intent to commit a crime, and tending but failing to effect its commission is an attempt to commit that crime'. Rape is a felony, and an attempt to commit a rape is also a felony. So that if you come to the conclusion in this case, beyond all reasonable doubt, that this man made a felonious assault upon the person of the complainant with the felonious intent to commit the crime of rape- that is, to have an act of sexual intercourse with her against her will and consent, and if he did any act towards the commission of the crime of rape, which tended but failed to effect the commission of that crime, he would be guilty

of an assault in the second degree, and it would be your duty to convict him of that degree of crime".

So that the Justice presiding, while he admitted in his charge that the offense charged was substantially an attempt at rape, still upon the trial held that the corroboration was not necessary, because the indictment charged an assault in the second degree, to wit, assault to commit a rape, although the facts proved, if believed, would have justified the finding of an indictment and a conviction for an attempt at rape.

So, in effect, the law is juggled with to the extent that, had the District Attorney prepared an indictment that the testimony for The People warranted, the testimony of the complainant would have required corroboration; but instead of this, an indictment for an inferior grade of crime is presented, upon the theory that if a conviction could not be had under the law because there was no corroboration, still an indictment could be presented for an inferior grade of crime; thus thwarting the object of the law makers in requiring corroboration of like charges.

A motion for a new trial is made upon the further ground of **ERRORS COMMITTED BY THE TRIAL COURT**, in permitting proofs of assaults other than the one alleged in the indictment.

Such assaults in no way form part of the act alleged to have been committed on the date- the May 20th, 1891 set out in the indictment; but on the contrary were

in themselves separate and distinct offences.

The admission of this testimony was clearly prejudicial, as will be seen by the inquiry of the foreman of the Jury, as follows:

"The Foreman: Will it make any difference in the degree of the assault if we take into consideration that the man made approaches to the lady improperly on his first visit and was allowed to re-enter the house a second time?

The Court: I told you you had a right to take any evidence of that character into consideration in determining what the intention of this man was, at the time he committed the assault, whether his intention was to have sexual intercourse with this woman or not#.

UPON THE FURTHER GROUND of the illegal admission of the testimony of James Allan as to his visit to the defendant on the 8th day of July, 1891.

Such evidence is clearly inadmissible, and was only introduced unfairly for the purpose of creating a prejudice against the defendant.

FURTHER, upon the ground of the illegal and incompetent questions put to the witnesses Adam Huston, Henry Menken, Henry L. Barnier and James A. O'Gorman, each of whom were asked by the District Attorney on cross-examination whether they had ever heard of the defendant having been charged with committing a rape upon one Jeanette S. Hawkes.

These questions were in violation of the Rules of Evidence.

A mere charge or indictment is of itself nothing affecting the reputation of any individual. Courts have frequently so held.

The learned Justice assumed that because evidence of good character was introduced, and the questions on direct included the reputation of the prisoner, it became competent to permit the District Attorney to ask upon such matters as he did ask. On the contrary, the law allows on cross examination, the District Attorney to prove acts and facts affecting the defendant's character or credibility; but never was the District Attorney allowed to parade before the Jury by means of questions, the contents of an accusation or indictment upon which no conviction was ever had. The law correctly discredits a person who has committed or has been convicted of a felony. If a conviction be proved, the law requires that it shall affect the credibility; and, for the same reason, if acts on the part of the defendant can be shown they also affect credibility; but in criminal trials accusations and charges have never been allowed to be introduced.

UPON THE FURTHER GROUND that the Court should have charged requested in the language requested.-

0488

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.:

..... being duly
sworn, says that he resides at No. Street, in the City of
New York; that he is years of age; that on the day of
1890, at Number in the City of
New York, he served the within on
the by leaving a copy thereof with

Sworn to before me this
day of

1890. }

J. H. General Sessions

The People's

Plaintiff,

against

John P. Kiwan.

Defendant.

*Brief on Motion
for New Trial*

HOWE & HUMMEL,

Attorneys for Defendant

87 & 89 CENTRE ST., New York City.

Due and timely service of copy of the within
hereby admitted

this day of 1890.

Attorney.

To

0489

449 West 21st St
July 10th 91

Giftlet
no. 2

To Mrs John P Kiwan

My dear Madam

I deem it my duty to write
you informing you that yesterday on
arriving home from Texas I learned that
your husband had made an assault
on my wife on whom he had called
on business he has been arrested and
is now out on bail. believe me Madam
I sympathize deeply with you and will
do my best to rid you for a time of so
unwarrantable a note

yours very respectfully
James Allan

Court of General Sessions, Part III.

The People of the State of New York
against
John P. Kirwan.

Indictment filed July 14th, 1891; indicted for attempt at rape and assault in the second degree.

New York, September 22d, 1891.

A P P E A R A N C E S:

For the People Assistant District Attorney John F. McIntyre;

For the Defendant William F. Howe.

M A R Y A L L I N, a witness for the People,
being called and sworn, testified:

I am the wife of James Allin. I live at 449 West 21st Street in this city. I have been married to Mr. Allin nineteen years last August. I have resided at that address for a year and five months. James Allin, my husband, is the owner of the house No. 449 West 21st Street, and he also owns a house at No. 223 Bleecker Street. In the month of April last my husband was to my knowledge in Texas. During his absence I was residing with my family composed of four children at No. 449 West 21st Street. One of my children is eighteen years of age, another sixteen, another fourteen and another ten. On the 29th day of April last I had a house servant by the name of Maggie Barrett. On that day I first saw the defendant. He called at my house at

about ten o'clock in the morning. He asked me if I owned the property at 223 Bleecker Street. I said yes. He says, "Is it for sale?" I said, "Not that I know of." He says, "Would you entertain a sale of it?" I says, "Yes if the price given is what we want for it." I told him the price which we had been offered for it, and he said that he had a party who was inquiring for the place. He then asked me if he could find a customer for the house in 21st Street and if we would sell it. I told him if we could sell all our property at the price we wanted we would be pleased to do so. He went away. He called again on the 6th day of May, I should think about half past two. The girl Maggie Barrett opened the door for him. I was in the parlor. This is an English basement house, four stories and basement, and myself and family occupied by myself and family. I came downstairs and saw the defendant in the hall. He came into the parlor and said he had seen the party, but the price we asked for the Bleecker Street house was too much. He then asked if Mr. Allin was at home, and I told him Mr. Allin could not be seen. He then asked if I would see a customer and I said I would. He told me he would return in a week with the customer and I said "Very well". I told him my husband had gone away South. He asked me how long my husband would be gone and I told him two years. I told him my husband was in Texas. Then he made a remark that it was a pity that I should be left alone without a husband for two years. I told him that was none of his business; that I didn't want to hear any such talk; that it was not proper to talk like that, and if he intended to talk like that he had better go. He says, "I beg your

pardon. I didn't mean anything by it." He said, "I do not see any harm in it." I told him I did, and that I didn't want any such talk as that. He said "That is all right." He was going to go, but he had no umbrella and it was raining. I could not just shut the door in his face, and I told him he had better wait until the shower was over. He sat down on the lounge and waited in the main hall downstairs. After the storm was over he went away. The next I saw of him was on the 20th of May at ten o'clock in the morning. He came in and said "Good morning." He said "You look very pleasant this morning." I said, "Not at all." This was the day he had promised to bring his customer with him, and I said, "Where is your customer?" and he said "I have not had the pleasure of getting him to come. I want to talk to you further about this matter. The price you ask is too much altogether. I have also some papers here that I would like you to read and sign if you see fit." I said, "Well, I don't keep a pen and ink down here, but I have them upstairs." I asked him to come up into the parlor and we came up. I went first and he followed me up the stairs and into the parlor. I went in first, then he came in and closed the door behind us. I said, "Don't close the door, it is too warm in here on account of the windows being shut. We very seldom open them." He says, "Well, I have got business, and I don't want everybody to hear my business." I says "There is nobody in the house to hear any business that you may have." Then he got up and he seized me by the hands. He took hold of my hands over near the door. I did not say anything; I was

too much excited to say anything. He pulled me against the wall and kept me there with my back to the wall. Then he put his knee against me and the weight of his body and took my hands and put them under his arms somehow, and then he unbuttoned his trousers. He was standing in front of me all this time. Then he leaned against me on one side. He put his shoulder right against mine, and liberated his one hand and caught my two hands right here and pushed me against the wall. I am positive I saw him unbutton his trousers. Then there was quite a struggle. I told him that if he didn't let me go I would tell his wife and I would have the law on him. He laughed at me and said that I ought to feel myself very highly flattered; that there were a great many handsome women in New York that had offered themselves to him, and that he had never paid a dollar for it. He said if I put the law on him he didn't fear arrest, that there was no Judge in New York that would convict him, that he was a Tammany boy and had a great pull, and said my social position was nothing, and as for my name he wouldn't have any regards for the truth. I was just getting my courage back and then I got very angry. He asked me to tell him where my husband was. I told him "If you let my hands go I will," and he said, "No, I won't." We were struggling all this time. I finally struggled until I got to the end of a long table that was there, and as I made a rush to get out of the door he tried to trip me, and as I was apparently falling he caught hold of my leg right there. He put his hand under my clothes. I was then liberated and called out. I ran through the door and

upstairs to the third floor in my own bed room and bolted the door. I remained there fifteen minutes. He left the house. The defendant called after that on the 27th day of May. I told him I would have no business transactions with him whatever. He called again and I saw him at the front gate, but I would not let him in the house. I consulted Lawyer McAdam, of No. 314 West 34th Street in reference to this case, and McAdam wrote him a letter telling him that if he visited the house again he would have him arrested.

Cross Examination.

The man put his hand on my leg about two inches above my knee. That was whilst I was standing against the wall. All this occurred on the 20th of May. On the 22d of June, more than a month afterwards, I went to the Jefferson Market Police Court and made a complaint against him. I charged there that on the 20th of May I was indecently assaulted by John P. Kirwan, who came into my parlor and forcibly attempted to throw me down on the floor, and while his person was exposed he forcibly placed his hand on my thigh. The reason I waited more than a month before making a complaint was that I wrote to my husband informing him of all the details of this occurrence and asking his advice as to what I should do. He wrote me a letter advising me to consult a lawyer about it, and to have the man arrested if I was so advised. I am positive that this occurred at ten or half past ten o'clock in the morning. The attack completely unnerved me. I am a married woman and have seven children. I did not tell this to anybody because I was not afraid of a loafer like him, and I knew

he couldn't do me much harm anyway. The first person I ever mentioned it to was Miss Muir, of 238 West 21st Street. She was a school friend of mine. It was the 19th of June that I saw Lawyer McAdam, and the following day he wrote a letter to the defendant Kirwan, cautioning him not to come near me again. The letter which he wrote reads as follows: "John P. Kirwan, Esq.

"Dear Sir:--

"Mrs. James Allin, of 449 West 21st Street, has consulted me as to some annoyances which she claims to have been subjected to by you. I have advised her that it would be unnecessary to take measures at present further than to write you this note, which I trust will have the effect upon you to discontinue your visits."

I did not call them annoyances, that was the lawyer's language. I simply narrated to him the facts and he wrote his own letter. My servant girl, Annie Burns, was present on one of his visits.

A N N I E B U R N S, a witness for the People, being sworn, testified as follows:

I live in 21st Street with Mrs. Allin, the last witness. I have been living with her for about four months. On the 27th of May I was present in the house when the defendant called. He asked me if Mrs. Allin was in. I said yes. He walked in and took a seat on the sofa which we had downstairs in the front hall. I went up to Mrs. Allin where she was, in her own room. I says to her, "There is a gentleman down there who wants to see

you." Mrs. Allin came downstairs, half way only, and said, "Is that you, Mr. Kirwan?" There was no answer and then Mrs. Allin said "I have no business transactions with you this morning. I don't want to see you. Haven't I got enough trouble of my own without having a loafer like you coming to bother me." When I heard this I went up to Mrs. Allin and asked her what was the matter and she told me. I am positive that Mrs. Allin did not go downstairs on this occasion.

M A R Y H O P P E R, a witness for the People, being sworn, testified:

I live in 19th Street and am acquainted with Mary Allin. On the 22d of June I saw the defendant in the court yard of Mrs. Allin's house in the morning between ten and eleven o'clock. I heard Mrs. Allin say to him not to dare to go into the house. He stayed there for a while and then he walked down the street and went away. Mrs. Allin and I went in the house and locked the door.

J A M E S A L L I N, a witness called for the People, being sworn, testified:

I am the husband of Mary Allin, the complainant in this case. In the month of April last I was in El Paso, Texas. I returned to the City of New York on the 8th of July last. The reason of my returning was because of the receipt by me of a letter from my wife informing me of this occurrence. On the 9th of July I went to No. 402 West 51st Street to Mr. Kirwan's real estate office. When I

went in I told him I wanted to look at him. I said "I believe you wanted to write to me," and I said, "Instead of writing you can tell me what you have got to say. My name is Allin. I am from Texas." Then he wilted, fell back into a chair, and never said a word. I accused him of having been down to the house. I said, "You have been trying to fill my place down there, and if you have got anything to say to me I am here to listen to it." He never opened his mouth. The first words I used when I went in and saw him was "Stand up." He stood up and said "What can I do for you?" I said, "You can do nothing for me. I only want to look at you." I said, "You have been trying to do something for me. You have been trying to fill my place down in 21st Street. My name is Allin. I am from Texas, and I want to see what sort of a sonof a bitch you are." Those were my words to him and he fell into the chair.

CROSS EXAMINATION.

I knew then that proceedings were pending in court on my wife's complaint. She had been to the police court on the 22d of June.

D E F E N S E.

A D A M H U S T O N, a witness for the defendant, being sworn, testified:

I am in the plumbing business at No. 406 West 52d Street. I have lived in this city about twenty-nine or thirty years. I know the defendant John P. Kirwan intimately. His reputation is good. He has always been

looked upon as a good man, hard-working, honest and respectable.

CROSS EXAMINATION.

I have done plumbing work in houses that he has charge of. I never heard anybody speak of his assaulting a girl named Jeannette S. Hawks or that he was indicted for that offense.

HENRY MEINKEN, of 314 West 34th Street; HENRY L. BERNIER, of 61 West 62d Street; JAMES A. O'GORMAN, of 206 Broadway; STEPHEN McPARTLAND, of 316 West 45th Street; EDWARD O'FLAHERTY, of Eighth Avenue, between 40th and 41st Streets; PATRICK S. TRACY, of 114th Street and Third Avenue testified to the good character of the defendant.

J O H N P. K I R W A N, the defendant, sworn in his own behalf, testified:

I am thirty-one years of age. I live at 365 West 31st Street. I am married and have one child. My business is that of a real estate broker, and I have been engaged in it since the first of March, 1890. I saw the complainant in court to-day. I heard her testimony. I did not assault her as she has testified to in any way whatever. About the middle of April my partner and I heard from a Mr. Lutz that a Mr. Allin of the firm of Allin & Clarkson, had a house No. 323 Bleecker Street for sale. I went to Clarkson & Allin's place of business and was informed that Allin lived in West 21st Street. I went there, 449 West 21st Street and saw Mrs. Allin. I handed her one of my business cards and told her that my name was Kirwan, that

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I was a real estate broker, and asked her if her husband owned the house 323 Bleecker Street. She said yes. I asked her what she would take for it. She said they had been offered nineteen thousand dollars for it and she was willing to entertain any figure over that amount. I told her I would try to sell it for her. We had a customer for it named Lewine, who lives at 813 Lexington Avenue. Afterwards Mr. Lewine said he would give us eighteen thousand dollars for it. I called on Mrs. Allin and made her the offer of eighteen thousand dollars. She said she would not accept it. I then came away. I saw Mr. Lewine again and told him that his offer of eighteen thousand dollars was refused, and then he said to find out what was the lowest price that the house could be bought for, to let him know and he would decide whether to buy it or not. I called again on Mrs. Allin and she said that she had received word from her husband stating not to sell the house, and that she would not sell it at all. Then she said she would sell the house she was living in. I asked her what price she would sell it for and she said any reasonable price, that she was tired of living the way she was. I asked her if I could see the house to ascertain how it was laid out and she said I could not see it then because she didn't have any servant girl and the things were upset. She asked me to call back in the course of a week and I could see the house. I called back again to see the house. Mrs. Allin then said that she had received a telegram from her husband saying that he was sick and had hemorrhages, and that she was afraid he would not live, and she couldn't

show me the house on that day. I apologized for calling and told her I would call again if she said so. She said then "If you call, Mr. Kirwan, in about a week I will show you through the house." That is the day it is alleged that this assault was committed. She swears that on the 20th of May I attempted to ravish her. That is not true. She was always friendly every time I called upon her. I am positive that nothing of the kind occurred on the 20th of May. I remember the 20th of May. I went into the parlor. That was the occasion of the third visit. I came to find out what was the lowest price that she would sell the house for, and I told her that my party would not agree to her price. We both sat down and had a chat. I sat near a long table in the parlor. Mrs. Allin occupied a chair on the other side of the table near the mantel. I asked her what was the lowest figure that she would sell her house for, and that my party wanted to know so that the matter would be on or off, that he would either buy the house or would not buy it. She said that she had received a letter from her husband stating that she had better not sell the property. She then told me she would sell the house she was living in at a reasonable figure. I asked her what she called a reasonable figure, and she told me to make an offer and then she would tell me whether it was enough or not. I left the house. Mrs. Allin came down stairs as far as the door with me. I said then that I would call again in the course of a week or so. She never complained to me about having annoyed her on that occasion or on any other occasion. The tone of her conversation

had been very friendly. She told me her husband was sick and was away on account of his health, and she didn't know when he would be back. She had received word that he was not getting well then. No complaint was made until the 22d of June, when I was arrested and held for trial. I swear positively that I never assaulted the woman. At the time this charge was made against me my wife was pregnant, and at the time my case was called for trial in July when I did not appear my wife was about to give birth to a child.

CROSS EXAMINATION.

Q. Did you communicate the fact of your wife's pregnancy to Mrs. Allin? A. Mrs. Allin asked me if I was a married man, and I told her of the fact of my wife's condition.

Q. How long have you been in the real estate business? A. Since the first of March, 1890.

Q. Prior to that time what business were you in? A. I was employed in the custom house.

Q. When did you resign from the custom house? A. When I went into the real estate business. I was appointed in the custom house under the civil service rules.

Q. You didn't tell Mrs. Allen that you were a man of large resources, did you? A. I said I was doing a good business.

Q. You didn't tell her you were a man in receipt of a large income? A. No sir.

Q. You heard your counsel to-day in opening the case characterize the complaint as one of blackmail? A. I don't know whether I heard him say so or not. It might

be blackmail. I don't know of any special reason why it should be. I don't think that was Mrs. Allin's reason.

Q. Did you hear Mrs. Hopper say that she saw you call at Mrs. Allin's house in June ? A. Yes sir. I could not state whether I saw the woman or not.

Q. Did you ever examine the house 449 West 21st Street ? A. No sir. I called several times to examine it, but each time she made some excuse, that the house was upset and she could not show me through it. I could not form any opinion as to the kind or character of a house it was from just seeing the outside of it and the parlor. I wanted to see it so that I would be able to talk about the house. She told me on the 20th of May that she had no servant and that the house was upset. I called afterwards on the 22d. I heard Annie Burns testify as to what took place on the occasion of one of my visits. What she says is true. I sat on the chair in the hall. I asked if Mrs. Allin was in and she said yes. I asked if I could see her and she asked my name. I gave it to her. Mrs. Allin came down stairs and said she could not see me to-day on business. She seemed to be excited. I asked her what the matter was. She said she had trouble, that she had received a telegram from her husband and he was quite sick. I remember having an interview with Mr. Allin. He came into my private office and said, "I am Allin from Texas. I have come here to take a look at you." He says, "So you have been down to 21st Street ?" I said yes. He says, "You have been trying to take my place." I said "No." Then he said, "I didn't come here to talk to you. I only came

here to look at you. I want you to take a good look at me." There was nothing to answer in all that, so I did not answer him. I do not remember him calling me a son of a bitch. I can't tell whether he did or not. I have told the story of his visit to me as I recollect it. I received a letter from Mr. McAdam the lawyer, but did not pay any particular attention to it.

Q. Upon your first visit to Mrs. Allin, did you tell her that you had a customer for the house in Bleecker Street? A. I told her I thought I had one.

Q. How did you find out that the house in Bleecker Street was for sale? A. My partner found it out through a man named Lutz. I went to the store of Clarkson & Allin, and they referred me to Mr. Allin's house. That is how I came to visit there.

Q. You were held in bail in what amount? A. Five hundred dollars.

Q. You were subsequently bailed? A. Yes sir.

Q. And then your bail was raised to the sum of two thousand dollars? A. Yes sir.

Q. You remember that in the month of July that your case was called at this bar for trial? A. Yes sir.

Q. And you fled the jurisdiction of this Court? A. Yes sir, and for the very good reason which I have stated. My wife was in a delicate condition, and I was afraid that any excitement would have a serious effect upon her.

J U L I A N . K I R W A N , a witness for the
defendant, sworn, testified:

I am the wife of the defendant. I was married to
him on the 24th of June, 1890. I have one child, born
last July.

James Allin recalled.

The letter which is now shown me was written by
me to the wife of the defendant. It reads as follows:

"To Mrs. John P. Kirwan.

"My dear Madam:--

"I deem it my duty to write you in-
forming you that yesterday on arriving home from Texas I
learned that your husband had made an assault on my wife,
on whom he had called on business. He has been arrested
and is now out on bail. Believe me, Madam, I sympathize
deeply with you and will do my best to rid you for a time
of so unworthy a mate.

"Yours very respectfully,

"James Allin."

Mary Allin, recalled, testified:

Q. Mrs. Allin, the defendant states that on several
occasions he called at your house in 21st Street and re-
quested you to show him through the house. Was there any
such request ever made of you, and if so when? A. He
never made that request until the fourth visit.

Q. That was after the assault? A. Yes sir.

Q. What did you say to him? A. I said to him, "Who is

your customer, a lady or a gentleman ? and he did not say. I told him he could send his customer to the house at any time between three and five o'clock in the afternoon and I would show them through. He never mentioned the name of Lewine or any other customer to me.

Q. Did you make any complaint to Lawyer McAdam about his conduct ? A. I made the statement that he had acted unbecoming a gentleman. Mr. McAdam then wrote the letter which has been produced in my presence. I did not dictate the letter, nor did I know until afterwards what was in it.

The following letter, written by Mrs. Allin to her husband, was then read in evidence by the District Attorney:

"My dear Jim:--

"I have something to tell you, so prepare to have a little surprise. It is all over now, and all is well that ends well, as it has done so far. It is no sickness and has annoyed me only, but I have come out all right. Well, first--all tales must have a beginning--a man called on April 28th to see about the Bleecker Street place and wanted to know what we would take. I told him it must be over nineteen thousand dollars, as I had been offered that. He said he would call again. I told him that we was not anxious to sell. He went away and in the first part of May he called again and said he had a man who would buy it, and made an appointment for the 20th of May. As I had no servant at the time, having kept Joe home two days to hunt up one, and he, Joe, being gone down to Morton Street at the time the man called, and he found

me alone. He came at ten o'clock. I opened the door for him myself as there was no one else to do so. He asked me where the girl was. I told him that I had discharged her, and that my boy Joe had went to get one. As he had acted like a gentleman on his previous visit I didn't think he had any bad intentions. He said he had some papers that I would read and sign if I saw fit. So I asked him up in the parlor where I keep the pen and ink, and as soon as I got in he shuts the door. He caught hold of my hands; we had a tussle around the room. He unbuttoned his pants and grabbed me by the leg as I was falling, he having tripped me with his foot. As he did so it loosened my hands and I sprang around one of our big arm chairs and ran out of the room. I ran upstairs in my own bed room and bolted ~~the~~ it and watched through the window for an officer, but he went out just before I could see one. Pretty soon Joe came back and I kept him in the house with me, never letting him out until the girl that he had got came on the following day, the 21st of May, the first time that this girl came. He came again and asked to see me and she came upstairs and said a gentleman wanted to see me. I went down and when I saw who it was I stopped on the middle of the steps on the bottom stairs and said, "Is that you? I won't have anything to say to you," and I went upstairs again. He sat down on the lounge and took a card and wrote on it, "I have a customer for this house." I thought if I didn't see him perhaps he would sue us. He sat on the lounge all of fifteen minutes, so the girl says, before he went. The next time he called the

girl knew him and told him I was out, but he didn't believe her. I was upstairs, but I told her never to admit him. He walked away. I spoke to Mary Muir about it, and she asked her brother Tom, and he advised her to tell me to go to a lawyer and take his advice. On their recommendation I went to Lucius McAdam, and he said that he would write to him and tell him to keep away or further proceedings would be taken for my protection. That was last Friday, June 19th, and the lawyer thought that that would frighten him, but on Monday morning at eleven o'clock he came up the street. I was standing at the gate talking to a lady. He stopped at the gate. I asked her if she would come in. I turned around and said, "Mr. Kirwan, don't you dare go in that house." We went in and shut the door. He stood at the gate a few minutes, and then went away. I must say here something that I forgot to mention. Before he went on the 20th of May, while we were having the tussle, I said, "If you don't let me go I will tell your wife." He laughed and said that if I would fight I would have further trouble on my head. He said he would write to you, and that I dare not give him your address, but I did and told him where you was and your address, and that anything I had done he could tell. You understand he did not accomplish his design.

But, to take up where I left off, I went over to the Jefferson Market Police Court and got a warrant served on him. I had a private examination about it. He was arrested the next morning and I had to go to court before the Judge in his private office, and he denied everything.

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I sent a telegraph messenger for Lawyer Fettrich, and he met me in court and advised me what to do. I have done so and he has put me in John Goff's hands and I shall do as he advises me. All this will be settled up by tonight; I hope so and the lawyer will send you a copy of the Judge's opinion and decision and his own and Mr. Fettrich's, so I hope you will be satisfied that I did everything for the best. The children are all well. I send you the papers. there is a mistaken account in it. I hope you will not blame me for frightening you.

I remain,

Sincerely yours,

Mary Allin.

The jury returned a verdict of assault in the second degree.

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Indictment filed Sept 14th, 1891

COURT OF GENERAL SESSIONS

Part III.

THE PEOPLE &c.

against

JOHN P. KIRWAN

Abstract of testimony of

trial New York Sept. 22nd

1891.

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

THE PEOPLE OF THE STATE OF NEW YORK,

against

John P. Kirwan

The Grand Jury of the City and County of New York, by this
Indictment accuse *John P. Kirwan* —

of the crime of *Assault in the second degree*,
committed as follows:

The said *John P. Kirwan*,

late of the City of New York, in the County of New York, aforesaid, on the
Twenty-third day of *May*, in the year of our Lord one thousand
eight hundred and ~~eighty~~ *ninety-one*, at the City and County aforesaid,
with force and arms, in and upon a
certain female not his wife, to wit:
one Mary Allan, then and there residing,
willfully and feloniously did make
an assault, with intent to commit a
felony, to wit: with intent an act of
sexual intercourse with her the said
Mary Allan, against her will and
without her consent then and there
willfully and feloniously to commit
and perpetrate; against the form
of the Statute in such case made

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and provided, and against the
peace of the People of the State
of New York, and their dignity
Sedamynia.

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