

0009

BOX:

394

FOLDER:

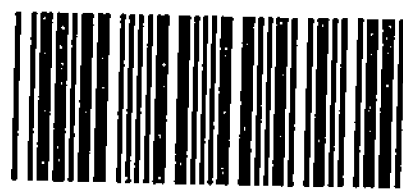
3668

DESCRIPTION:

Burroughs, Horace F Jr.

DATE:

05/29/90



3668

POOR QUALITY
ORIGINAL

0010

District Attorney's Office.

PEOPLE

vs
Henry &
Barney

Harvey A. Burroughs

Having to be heard to
the order to show cause why the
judges herein charged with the
determining of these two al-
legations but to state that there
is not a case presented on
record and no promise of
the People which would
warrant bringing in to trial.

The reasons for this are
clear and fully set forth
in the opinion of the Judge
filed herewith and whose
recommendation I hereby approve

I do not know fully with
the allegations in the Henry
case in the order to show
cause, but this is not im-
portant as I should have to
abandon the case if found
to trial. Some features of
the case have already been
indicated at the hearing and
the jury made a trial of the
case on the facts. I believe
Dirt City

Counsel

Filed

Pleas

THE PEOPLE

vs.

Harvey A. Burroughs

JOHN R. FELLOWS

District Attorney

A TRUE BILL

Charles B. Burroughs

Proven

Indictment dismissed

on the facts of the case

Mar 3rd 1896

Witnesses:

Deputy S. L. Lee

Wm. R. H. H. H.

David S. Cavallero

Indicated by District Attorney, Fellow
to discuss this indictment; that he is without evidence
upon which he can ask for a conviction. That in his
opinion the indictment should be dismissed &
discontinue that such course be adopted
March 3rd 1896.

John H. M. H. M.
Dirt City

POOR QUALITY
ORIGINAL



484

Jan, 28th

Expenses on Long Island

Jan, 12th Received -

50.00

14th Hempstead Hotel & Sundries -

2.75

15th Sag Harbor Hotel & Sundries -

3.75

Carriage East Hampton -

2.00

16th Southampton Hotel & Sundries -

2.50

Carriage West Hampton to Moncks -

1.50

17th Carriage Babylon to Islip -

2.00

Hotel & Sundries Islip -

3.25

18th Freight Carriage Hempstead to Farm -

1.00

Sand Ogden to & back (carriage)

2.00

19th Hotel & Sundries Hempstead -

3.75

20th Hotel & Sundries -

2.00

21st St John's Hotel & Sundries -

3.75

22nd St Jefferson to Sitons -

2.00

23rd Stony Brook Hotel & Sundries -

4.00

24th Carriage Southold to Peconic -

1.50

Peconic to New Suffolk Carriage -

2.00

25th Peconic Hotel & Sundries -

3.50

26th Freight Hotel & Sundries -

3.75

27th Sag Harbor Hotel & Sundries -

2.50

30.00

Carried forward 30.00

26th Raritan Hotel 8.00

28th Jamaica 3.90

29th 3.90

30th 3.90

total - 100.00

Jan 31 - 100.00

POOR QUALITY
ORIGINAL

00 12

PART III.

THE COURT ROOM IS IN THE FIRST STORY.

If this Subpoena is disobeyed, an attachment will immediately issue.

Bring this Subpoena with you, and give it to the officer at the Court Room door, that your attendance may be known.

[SEE OTHER SIDE FOR OTHER DIRECTIONS.]

225- Dec 22nd 93
SUBPOENA FOR A WITNESS TO ATTEND THE GENERAL SESSIONS OF THE PEACE.

1703

In the Name of the People of the State of New York.

To Walter R. Hemmner
of No. 217 Halsey Street Bklyn

YOU ARE COMMANDED to appear before the Court of General Sessions of the Peace in and for the City and County of New York, at the Sessions Building, adjoining the New Court House in the City Hall Park, in the City of New York, on the 8th day of January 1897 at half past ten o'clock in the forenoon of the same day, as a witness in a criminal action prosecuted by the People of the State of New York against

Horace F. Burroughs
Dated at the City of New York, the first Monday of January December
in the year of our Lord 1897

DE LANCEY NICOLL, District Attorney.

POOR QUALITY
ORIGINAL

0013

Wm. B. Stillwell.

L. F. Millen.

L. Johnson.

*Stillwell, Millen & Co.,
Pitch Pine Lumber & Timber
By the Cargo.*

Dictated by L.R.M.

Savannah, Ga.,

Oct. 31st. 1888

Mr. W.B. Burroughs,

Brunswick, Ga.

Dear Sir:-

Replying to your favor of the 16th. inst. Regret that we are unable to quote you for sched le contained in same. Thanking you for submitting inquiry, we are,

Yours Respectfully,

Signed Stillwell, Millen & Co.

C O P Y----

M.F.M.

POOR QUALITY
ORIGINAL

0014

11/16
HORACE F. BURROUGHS

WHOLESALE LUMBER

OFFICE,

21 BEAVER STREET.

Telephone Pearl 150.

Cable Address,

FENALABAMA.

New York 14th Jan'y 1889

Messrs Stillwell Milburn & Co
Savannah Ga

Dear Sirs:

Your 12th inst recd. Left for cargo for America
presented & paid -

I regret your firm should write so
many letters to my customers on this cargo -
they do you no possible good & probably may
do me an injury

Yours &c

Honore F. Burroughs

POOR QUALITY
ORIGINAL

0015

Stillwell, Millen & Co.
Georgia and Florida Pine

W. B. Stillwell
L. R. Millen
L. Johnson

Dictated by Mr. B. S. *Savannah, Ga.*

Jan. 16th. 1889

Horace F. Burroughs Esq.

New York

Dear Sir :-

Yours of the 14th. inst to hand. We note with some surprise your remarks with reference to our corresponding with your customers on the cargo of the "Lewis" In the first place, we do not know the names of your customers, and there has certainly no correspondence gone out of this office in connection with that cargo except to yourselves. If there had been any correspondence whatever with your customers, it must have been through our Brunswick house, and our Manager probably got the name from the Bills Lading or Charter Party which we forwarded him as soon as same were received from you; and such correspondence, if any referred wholly to the manner of loading the vessel, but we ever doubt this, and must think that you are mistaken, as our instructions to our Brunswick Manager were to correspond either directly with you, (giving him your address in full), or without in this connection. If any letters have passed in our name to your customers in this connection we would like to know to whom they were written, and the nature of them, for we always very particular in these matters.

Yours truly,
Signed. Stillwell, Millen & Co.
M. M. H.

C O P Y-----

POOR QUALITY
ORIGINAL

00 16

Form No. 1.

THE WESTERN UNION TELEGRAPH COMPANY.

This Company TRANSMITS and DELIVERS messages only on conditions limiting its liability, which have been assumed to by the sender of the following message. Errors can be guarded against only by repeating a message back to the sending station for comparison, and the company will not hold itself liable for errors or delays in transmission or delivery of Unrepeated Messages, beyond the amount of tolls paid thereon, nor in any case where the claim is not presented in writing within sixty days after sending the message.

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

THOS. T. ECKERT, General Manager.

NORVIN GREEN, President.

NUMBER	SENT BY	REC'D BY	CHECK
138 My No	mh	keps	

Received at

150p

1/8 1889

Dated

My 8

To

Stillwell Miller No

Vessel must be dispatched

at once

Horace G. Burroughs

POOR QUALITY
ORIGINAL

0017

Stillwell, Millen & Co.
Georgia and Florida Pine

*W. R. Stillwell
L. R. Millen
L. Johnson*

Dictated by Mr. W. B. S.

Savannah, Ga.

Jan. 8th. 1889

Horace F. Burroughs Esq.

New York

Dear Sir:-

Your telegram of even date to hand, and we will at once instruct our Brunswick Manager to fill your order as nearly as practicable, borrowing order sizes from other orders we have in Brunswick. This failure on our part to complete our order exact by this time as we had hoped, was occasioned by the failure of two mills to complete their portion of the order in the time they had promised same, thus making the order fall short to that extent.

One of these Mills was detained by being unable to get their machinery after the holidays in the time calculated on; and the other by reason of an injunction of the R.R. Co. against their sawing and handling lumber on their right of way without certain re-arrangement of their sidings and tracks, which Injunction the Courts sustained and shut their mill down. You will readily see that these were matters over which we had no control. At the same time, you will bear in mind that, despite these unforeseen and unfortunate delays we have done far better for you than the terms of our contract required, and are only sorry that we could not do better.

Yours truly,

Signed. Stillwell, Millen & Co.
M.M.H.

POOR QUALITY
ORIGINAL

0018

Expect ^{total} balance 864 ^{few} Relief tomorrow
same size may vary over
10.00 - take about week
supply such deficiencies =
shall my keep vessel

POOR QUALITY
ORIGINAL

0019

Form No. 1.

THE WESTERN UNION TELEGRAPH COMPANY

This Company TRANSMITS and DELIVERS messages only on conditions limiting its liability, which have been accepted by the sender of the following message. Errors can be guarded against only by repeating a message back to the sending station for comparison, and the company will hold itself liable for errors or delays in transmission or delivery of Unrepeated Messages, beyond the amount of tolls paid thereon, nor in any case where the claim is not presented in writing within sixty days after sending the message. This is an UNREPEATED MESSAGE, and is delivered by request of the sender, under the conditions named above.

THOS. T. ECKERT, General Manager.

HORVIN GREEN, President.

NUMBER	SENT BY	REC'D BY	REMARKS
76 ny	Pa	ek	HH Paid
Received at		SAVANNAH, GA. 1130a	
Dated		New York 8	
To		Stillwell Miller & Co	

Expect order ten per cent
Moore or less filled at once
Answer when will finish
Horace F. Burroughs

**POOR QUALITY
ORIGINAL**

0020

Wm. B. Stillwell.

L. F. Millen.

L.

Johnson.

*Stillwell, Millen & Co.,
Pitch Pine Lumber & Timber
By the Cargo.*

Dictated by

Savannah, Ga.,

Jan. 8th. 189

Hobace F. Burroughs,

21 Beaver St. New York

Expect balance one hundred and eighty six thousand delivered tomorrow. Some few sizes may vary over ten per cent. Take about week supply such deficiencies. Shall we keep vessel.

Signed. Stillwell, Millen & Co.

Day Paid.

C O P Y of Telegram.

POOR QUALITY
ORIGINAL

0021

V
HORACE F. BURROUGHS

WHOLESALE LUMBER

OFFICE,

21 BEAVER STREET,

Telephone, Peart, 150.

Cable Address,

FENALABAMA.

New York Jan. 7th 1889

Mess. Stillwell, Millen & Co.

Savannah, Ga

Gentlemen-

Your favor of the 4th is to hand and noted. I will have 50 M shingles delivered to the "Lewie" today which will complete shipment of shingles. Advice from the Captain of the "Lewie" under date of the 2nd states that he then requires a balance of 40 M ft of lumber to complete load under deck and that he did not expect to receive his full cargo before the 12th or 14th. I am much surprised at this information as it does not agree with your recent advice and I have today wired you partially as above and requested that you telegraph me when she will be loaded. I am awaiting your reply.

Yours truly

Horace F. Burroughs.
Davidson

POOR QUALITY
ORIGINAL

0022

Form No. 1.

THE WESTERN UNION TELEGRAPH COMPANY.

This Company TRANSMITS and DELIVERS messages only on conditions limiting its liability, which have been assented to by the sender of the following message. Errors can be guarded against only by repeating a message back to the sending station for comparison, and the company will not hold itself liable for errors or delays in transmission or delivery of Unrepeated Messages, beyond the amount of tolls paid thereon, nor in any case where the claim is not presented in writing within sixty days after sending the message. This is an UNREPEATED MESSAGE, and is delivered by request of the sender, under the conditions named above.

THOS. T. ECKERT, General Manager.

NORVIN GREEN, President.

NUMBER	SENT BY	REC'D BY	CHECK
158 My	NEV	25pd	
Received at SAVANNAH GA.		Jan 1889	
Dated New York			
To Stillwell Millen & Co			
Delivered Lewis today fifty thousand shingles which completes shingles Captain advises forty thousand feet lumber yet go under deck wire When vessel will be loaded Horace F Burroughs			

**POCR QUALITY
ORIGINAL**

0023

H. B. P.

Ex French dictionary
 486 in number
 Dictionary, however, was
 very much damaged
 for portions of it
 to your wish we had determined
 to send the only copy
~~shortages~~ ~~vacations~~
 Mrs.

2/2/20

**POOR QUALITY
ORIGINAL**

0024

Wm. B. Stillwell

L. B. Millen

L. Johnson

*Stillwell, Millen & Co.,
Pitch Pine Lumber & Timber
—By the Cargo—*

Dictated by

Savannah, Ga.,

Jan. 7th. 1889

Horace F. Burroughs,

21 Beaver St. New York

Expect finish delivery one eighty six thousand lumber tomorrow.
May vary somewhat from proportions of order. Do you wish vessel
detained to supply any variations? Answer.

Signed. Stillwell, Mille & Co.

N.M. Paid.

C O P Y of telegram

POOR QUALITY
ORIGINAL

0025

Form No. 44.

NIGHT MESSAGE. THE WESTERN UNION TELEGRAPH COMPANY.

This Company TRANSMITS and DELIVERS messages only on conditions limiting its liability, which have been assented to by the sender of the following message. Errors can be guarded against only by repeating a message back the sending station for comparison, and the company will not hold itself liable for errors or delays in transmission or delivery of Unrepeated Night Messages, sent at reduced rates, beyond a sum equal to ten times the amount paid for transmission; nor in any case where the claim is not presented in writing within thirty days after sending the message.

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

NORVIN GREEN, President.

NUMBER	SENT BY	REC'D BY	CHECK
1227	R	R	15 p.m. nite

Received at 80 Jan 5 1889

Dated New York

To AC Banks

Mgr Stillwell mill
Can you purchase seventy five
thousand shingles for Lewis
size hem or sawn answer
H J Burroughs

POOR QUALITY
ORIGINAL

0026

HORACE F. BURROUGHS

WHOLESALE LUMBER

OFFICE,

21 BEAVER STREET.

Telephone Pearl 156.

Cable Address.

FENALABAMA.

New York Jan 5th 1889

Messrs Stillwell Millen & Co

Savannah, Georgia

Gentlemen

I will ship fifty thousand (50000)
shingles to Sch. "Lester Lewis" on Monday the 7th inst.

Please dispatch vessel at once as this is all the
cargo we shall give her.

Yours Very Truly

Horace F. Burroughs
H. F. Burroughs

POOR QUALITY
ORIGINAL

0027

HORACE F. BURROUGHS

WHOLESALE LUMBER

OFFICE,

21 BEAVER STREET,

Telephone Pearl 150.

Cable Address.

FENALABAMA.

New York Jan. 3rd 1889

Miss. Stittwell, Millen & Co

Savannah, Ga

Gentlemen-

I have today arranged for loading the shingles on the "Lewis". I had some on the Mallory's Line wharf at Brunswick which were intended for shipment to N.Y. but as Everett & Boyle have failed to keep their contract I was obliged divert the N.Y. shipment and have it loaded on the "Lewis".

Yours truly

Horace F. Burroughs
Savannah

POOR QUALITY
ORIGINAL

0028

HORACE F. BURROUGHS

WHOLESALE LUMBER

OFFICE,

21 BEAVER STREET,

Telephone Pearl 150.

Cable Address.

PENALABAMA.

New York 4th Jan'y 1889

Messrs. Tibbrell Miller & Co.,

Savannah Ga

Sirs:

I missed Mallory's Agent at Savannah
to deliver "Lewis" 75 M Shingles per order
this wharf destined for NY. But this
am. recd his wire saying Shingles were
already loaded on steamer and could not
get at them I am now trying to buy
some Shingles on the spot if I fail
I will despatch vessel with her present
Crew provided it is the order complete
Yours truly

Horace F. Burroughs

POOR QUALITY
ORIGINAL

0029

Stillwell, Millen & Co.
Georgia and Florida Pine

*W. B. Stillwell,
L. P. Millen,
L. Johnson.*

Dictated by Mr. W. B. S.

Savannah, Ga.

Jan. 7th. 1889

Horace F. Burroughs Esq.

New York

Dear Sir:-

Yours of the 5h. inst to hand and noted. We will follow instructions contained in same. In doing this we shall probably be obliged to vary somewhat from the exact proportions of our order of 186 M, as some of our mills cutting this order were delayed in starting up after the holidays, and have not been able to complete the order. We are however, borrowing sizes from other orders that we have in Brunswick that while, they will suit the size of your order, they will not fill the proportions of each size exactly.

We will wire you to effect that we will proceed to clear the vessel after putting in the shingles, and 186 M ft. of lumber as above, unless you wire us to the contrary.

Yours truly,

Signed. Stillwell, Millen & Co.

M. M. H.

POOR QUALITY
ORIGINAL

0030

114
HORACE F. BURROUGHS

WHOLESALE LUMBER

OFFICE,

21 BEAVER STREET,

Telephone Pearl 156.

Cable Address,

FENALABAMA.

New York Jan. 2 1888

Miss Stillwell, Millerton

Savannah, Ga.

Gentlemen—

Your favor of the 31st. ult. is to hand and I appreciate the efforts you have made expedite loading of the schr. "Lewis". Circumstances will not however permit of a longer detention and I have today wired Mr. C. A. Danko at Brunswick to despatch the vessel at once and not wait for the shingles.

Yours truly

Horace F. Burroughs
Davidson

POOR QUALITY
ORIGINAL

0031

Stillwell, Millen & Co.
Georgia and Florida Pine

*W. B. Stillwell
L. R. Millen
L. Johnson*

Dictated by Mr. W. B. S. *Savannah, Ga.* Jan. 4th. 1889

Horace F. Burroughs Esq/
New York,

Dear Sir:-

Yours of the 2nd. inst. to hand. We do not fully understand what you wish us to do in the matter of the "Lester A. Lewis" As wired you, we cannot increase the order for this vessel over the amount originally placed with us. In fact, we will now have some demurrage to pay on other vessels in consequence of our giving your order preference to try and save you demurrage on the "Lewis"

You can hardly, under these circumstances expect us to stand in the breach, and fill up the shortage of the shingle people. We have wired you to this effect, and wait your further advises, as we do not suppose that you intend for the vessel to go with a part cargo.

Yours truly,

Signed Stillwell, Millen & Co.

M. M. H.

C O P Y---

POOR QUALITY
ORIGINAL

0032

1

DONALD LEE, being duly sworn, deposes and says that he is a member of the firm of Middleton & Co., doing business at 62 Beaver St., ~~N. Y. City~~, in the City of New York, and that on or about the / ~~11~~ day of Oct., 1888, on behalf of his firm and under their name he entered into a contract with Mr. Burroughs, represented by one Walter F. Peineman, whom he knew only as an employee of the said Burroughs, wherein and whereby the said Burroughs agreed to sell and deliver to them at Brunswick, Ga., a cargo of yellow pine lumber. The said contract contained among other conditions the stipulations:

That the lumber was to be free from sap.

That an inspector's certificate to that effect was to be furnished.

That he would hold them harmless from any loss that might arise ~~by reason~~ of the lumber being unsatisfactory to the consignees at Guadeloupe.

Reference is here made to the buyer's copy of the contract marked Exhibit A.

These unusual conditions were inserted in the contract by this deponent, because of his fear that the lumber might not be of the right quality, he having been informed that it was difficult if not impossible to get lumber entirely free from sap at Brunswick. The cargo was to be ready for delivery by Nov 20 and Middleton & Co. had chartered a vessel to begin loading about that time, when on or about the 5th day of Oct. Burroughs informed them that the lumber would be in better shipping condition if it were allowed more time to remain on sticks and dry, so that they arranged with

POOR QUALITY
ORIGINAL

0033

Messrs. E. H. Smith & Co., with whom they had agreed to charter the vessel above mentioned, to substitute in her place the "Lester A. Lewis," due at Brunswick at ^a later date. And on or about the 13th day of Dec., 1888, the said vessel arrived there, Mr. Burroughs having previously informed this deponent some time in the latter part of Nov. that the lumber was at that time ready.

While the vessel was loading this deponent caused inquiry to be made at Brunswick, and learned that the lumber going aboard the "Lester A. Lewis" while of fair merchantable quality was not free from sap, so that when Mr. Burroughs presented his bill accompanied by the shipping documents, which included a specification of the cargo, with the following words appended thereto "quality
" free of sap

Wm. P. Mitchell, Inspector,"

which specification is hereto attached marked Exhibit B, ^{to} which ² was the only specification added by Mr. Burroughs, payment in full was refused and the matter was referred

to Mr. E. F. Metcalf, who decided that in view of Mr. Burroughs having given Middleton & Co. an inspector's certificate, certifying the lumber to be free from sap, and of their having his agreement in writing to hold them harmless in case of loss, they should pay the bill, which was done.

(Reference is here made to the affidavit of Mr. E. F. Metcalf, dated N. Y., May 17th, 1889, marked Exhibit C.)

but for the delivery of such a certificate deponent would not have arbitrated the matter, but would have refused to pay the bill in full, and so have held the money to protect his firm.

**POOR QUALITY
ORIGINAL**

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3

That after the arrival of the cargo at Guadeloupe the consignees complained of the lumber as having sap, etc. etc., and under the customs existing there the claim of their buyer was referred to arbitration, which resulted in an allowance to him of \$ 1,097.11 , which amt. was charged to Middleton & Co. by their correspondents, and which amount they paid.

(Reference is here made to the papers received from Guadeloupe marked Exhibit D.)

The deponent further states that Mr. Burroughs offered to allow the full amount of the claim, provided deponent's firm would agree in future to buy their lumber of him, allowing 50cts per thousand feet on each lot of lumber purchased until the claim should be that means have been settled.

POOR QUALITY
ORIGINAL

0035

LORING R. MILLEN, being duly sworn, deposes and says that he is a member of the firm of Messrs. Stillwell, Millen & Co., doing business at Savannah and Brunswick, Ga., and of the firm of Messrs. L. R. Millen & Co., having its place of business at No. 16 Beaver Street, N. Y. City. That he has been in the yellow pine business at Savannah and Brunswick for several years, and that he is familiar with the grades of lumber shipped from the latter port and with the names of the inspectors who measure and inspect it there. That he is familiar with the facts connected with the cargo of yellow pine lumber shipped by Mr. Horace F. Burroughs on an order of Messrs. Middleton & Co. from Brunswick by the schooner "Lester A. Lewis" in Dec/Jan. last, and that the cargo was sold by ~~the~~ the said deponent on behalf of his firm to Mr. Horace F. Burroughs under the following circumstances:

On or about the 15th day of Nov., 1886, a person claiming to be Walter F. Reinman, and claiming to be the representative of Mr. Horace F. Burroughs of New York, called at the office of deponent's firm in Savannah and presenting a card bearing the name of Mr. Burroughs as principal, and also bearing his own name, proceeded to negotiate for and finally bought on the 15th day of Nov. the cargo of yellow pine lumber that was ~~delivered~~ delivered to the schooner "Lester A. Lewis," the shipping documents of which vessel were made out by Stillwell, Millen & Co. in accordance with Mr. Burroughs' instructions in the name of Middleton & Co., the lumber going to Guadeloupe. The grade of lumber sold by deponent was Savannah merchantable by the rule of 1886, which allows

POOR QUALITY
ORIGINAL

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2

sap as follows:

Boards and plank 9 inches and under wide, not exceeding 1-3 sap on one side, over 9 inches wide, not exceeding 1-3 sap on both sides.

Scantling allowing sap on one corner, but without specification as to the amount.

Dimension sizes: Square lumber not exceeding 1-3 ^{on 2 sides} sap, not exceeding half sap on the other two sides.

Other sizes not exceeding 1-3 sap on faces, and not to show sap more than 1-3 of the length on edges, excepting where the ^{width} length exceeds the thickness by 3 inches or over, when it may show sap on the edges for half the length. And this cargo contained sap, but not exceeding the limits above mentioned. (The next highest grade is Savannah merchantable by rule of 1878, which allows a less amount of sap than the rule of 1883, and the next grade above that is prime, which limits the amount of sap to a small quantity, while the highest grade is all heart or free from sap, the last named being very difficult to get and seldom furnished)

Delivery of this cargo was to begin by Jan. 5th, 1889, and continue at the rate of 15,000 ft per day, Sundays excepted, as deponent explained to Mr. Heineman that at this season of the year the mills were always crowded and could not undertake delivery till after the Holidays; that, in fact, it was doubtful if the mills could begin sawing the lumber till after the 1st of Jan.

That on the said 18th day of Nov., 1888, deponent on behalf of his firm and in their name addressed to Mr. Horace F. Burroughs at New York a letter confirming the

POOR QUALITY
ORIGINAL

0037

contract made with Mr. Heineman on his behalf, stating the quality and the time of delivery as above set forth ~~the~~ Copy of letter attached hereto marked Exhibit A.) The receipt of which letter was acknowledged by Mr. Burroughs in his letter dated Nov. 22nd. (Original attached hereto marked Exhibit B.) The said letter of Mr. Burroughs confirming the purchase upon the terms of Messrs. Stillwell, Millen & Co's. letter of Nov. 18th.

That on or about the 13th day of Dec. the schooner "Lester A. Lewis" reported at Brunswick, and deponent's firm being in receipt of urgent telegrams from Mr. Burroughs to load her as rapidly as possible, proceeded to do so, employing Mr. T. H. Willink to inspect the cargo according to the contract.

That on or about the 5th of Jan., 1889, the vessel completed loading and deponent's firm forwarded to Mr. Burroughs' with the other shipping documents Mr. Willink's specification, ~~saying~~ the number of pieces and the ^{quantity} quality of lumber shipped by the said vessel, and setting forth that the quality was merchantable by the rules of 1883 (copy of specification and certificate attached hereto marked Exhibit C.)

That the deponent is familiar with the names of the inspectors usually inspecting lumber at Brunswick, and that he never heard of any one of ~~them~~ named Wm. F. Mitchell; that so far as he knows no other person than T. H. Willink inspected the cargo or had anything to do with it, save that his agent at Brunswick, Mr. A. C. Banks, supervised the shipment as it was his duty to do, and this deponent is informed by said Banks that one W. Aiken, of Brunswick, came to look at the cargo

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ORIGINAL**

0038

once or twice while loading; that no notification was
ever given to his firm ^{by} ~~or~~ Mr. Burroughs of his inten-
tion to employ an inspector of his own, which notifica-
tion would have been usual and customary under the cir-
cumstances.

**POOR QUALITY
ORIGINAL**

0039

1

LORING E. MILLEN, being duly sworn, deposes and says that he has examined the specification of the cargo of yellow pine, per schooner "Lester A. Lewis," dated Brunswick, Georgia, January 10th, 1889, and purporting to be signed by "William P. Mitchell," inspector, and that the said alleged inspector's certificate was not delivered by him or his firm to Mr. Horace W. Burroughs, and did not constitute any part of the shipping documents of the cargo per schooner "Lester A. Lewis" as furnished by his firm; and in fact, that he never saw the certificate until he was shown it by Mr. Lee of Messrs. Middleton & Co. That he is familiar with the market prices prevailing during the year 1888 for lumber at Brunswick, Georgia,

POOR QUALITY
ORIGINAL

0040

Savannah, Ga.

THOMAS M. WILLINK, being duly sworn, deposes and says that he is a resident of Savannah, Georgia, that he is an employee of Messrs. Stillwell, Millen & Co. of this place, and that he is an inspector of yellow pine lumber. That he is familiar with the different grades of lumber shipped from Savannah and Brunswick, Georgia, That in December last, on or about the 17th day of that month, he, being then in the employ of Messrs. Stillwell, Millen & Co. - as he is now - under their instructions proceeded to Brunswick, Georgia, to inspect a certain cargo of yellow pine lumber that had been sold by them to Mr. Horace F. Burroughs, and which he was instructed to inspect according to the Savannah classification of 1883. That he was ordered to make out the specification and certificate of the said lumber in the name of Messrs. Middleton & Co.. That pursuant to these instructions he inspected the said cargo, rejecting any lumber that was not up to merchantable by the said rule of 1883. That the lumber shipped by him on board the schooner "Lester A. Lewis" was merchantable according to that grade, that is, the poorest piece shipped did not have more than the amount of sap allowed by the rule; but that, as is always the case, a large proportion of the lumber had a smaller quantity of sap on it than the rule allowed. That he inspected the said lumber piece by piece as it went aboard the vessel, and that no other person inspected the said lumber or any part of it. That the only time when the lumber could have been inspected by any one was when it went aboard the vessel, as when it lay on the cars or on the dock it was impossible for any one to

**POOR QUALITY
ORIGINAL**

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see both sides of it so as to be able to inspect it, although any one looking at the lumber could see that it had some sap on it, as the edges and the ends at least of the lumber would show in whatever manner it was piled. That during the shipment of this cargo the lumber was visited and examined from time to time by Mr. A. C. Banks, the agent of Messrs. Stillwell, Millen & Co. at that place, and once or twice by Mr. Frank D. Aiken, and by no other person. That it would have been impossible for any person to inspect the lumber or make any careful examination of it without the knowledge of this deponent, as he was there during the entire time that the lumber was being handled, and it was only during that time that any person could have made even a careful examination of it. That he is well acquainted in Savannah and Brunswick among the inspectors of lumber, and that he does not know and never heard of any such person as "William P. Mitchell." That his acquaintance with the business and the inspectors is such that he is certain that he would have heard of the man had he been engaged in the inspection of any considerable quantity of lumber from either Brunswick or Savannah.

**POOR QUALITY
ORIGINAL**

0042

Brunswick, Ga.

ALBERT C. HANKS, being duly sworn, deposes and says that he is the agent at Brunswick of Messrs. Stillwell, Millen & Co., of Savannah. That he is familiar with the different grades of yellow pine lumber shipped from this port, and with the names of the inspectors who inspect the same, and that he is familiar with the grade of lumber shipped by the schooner "Lester A. Lewis" from this port for Guadeloupe in Dec-Jan. last, the said cargo having been shipped under his supervision. That the quality of the said cargo was Savannah merchantable by the rule of 1883; that the lumber had sap on it, but not beyond the limit allowed by that rule. That the cargo was inspected by Mr. Thomas M. Willink, an employee of Messrs. Stillwell, Millen & Co., and that he is a competent and careful inspector. That no other person than the said Thomas M. Willink inspected the said cargo, although Mr. Frank D. Aiken came to look at it while it was loading at the request, as deponent understood it, of Messrs. Middleton & Co., the parties who had purchased the same. That deponent has been a resident of Brunswick for years, and that he knows the inspectors engaged in inspecting lumber shipped from this port, and that no such person as "William P. Mitchell" is known, or ever was known to him. That no such person and no other person, except the Thomas M. Willink aforesaid, inspected the cargo shipped per schooner "Lester A. Lewis," or any part of it.

**POOR QUALITY
ORIGINAL**

0043

Brunswick, Ga.

GEORGE A. RALSTON, being duly sworn, deposes and says that he is a resident of Brunswick, and that his business is that of a lumber inspector, in which he has been engaged for *20* years. That he knows all the persons engaged in the inspection of lumber at Brunswick, and that there is not among them any such person as "William P. Mitchell." That no such person was ever engaged in the business of an inspector of lumber at Brunswick during the whole time that he has been there to the best of his recollection. And that if any such person had inspected any considerable quantity of lumber, this deponent is sure from his acquaintance with what is going on in Brunswick that he would have known or heard of him.

POOR QUALITY
ORIGINAL

0044

Brunswick, Ga.

Harry Salmond

, being duly sworn, deposes and

says that he is a resident of Brunswick, that his business is that of a stevedore, and that he was employed as such in loading the cargo of yellow pine lumber that was shipped by Messrs. Stillwell, Millen & Co. at Brunswick bound for Guadeloupe by the schooner "Lester A. Lewis" in December-January last. That he was constantly present at the vessel during the operation of loading, and saw the greater part of the lumber, which in his opinion was all merchantable by the rule of 1883, although the lumber had some sap on it. That the entire cargo was inspected by Mr. Thomas M. Willink, an employee of Messrs. Stillwell, Millen & Co., and that no other person inspected the said lumber or any part of it. That he has been a resident of Brunswick for — years, and is familiar with all of the inspectors who handle lumber at this port there is and that no such person as "William P. Mitchell" among them, and that no such man as "William P. Mitchell," or any other person than the said Thomas M. Willink, inspected the lumber shipped by the schooner "Lester A. Lewis" aforesaid or any part of it. That while the cargo was loading the only persons excepting the said Willink, who examined the lumber were Mr. A. G. Banks, agent of Messrs. Stillwell, Millen & Co., and Mr. Frank D. Aiken.

POOR QUALITY
ORIGINAL

0045

THE PEOPLE OF THE STATE OF NEW YORK

vs.

H O R R A C E F . B U R R O U G H S .

In the above case the defendant was indicted May 29th, 1890. The indictment contains three counts, for forgery in the second degree, and grand larceny in the first degree.

The first count charges substantially that the defendant entered into an agreement with the firm of the complainant, Donald S. L. Lee, (firm name being Middleton & Co.) wherein the defendant promised to furnish the shipment from Brunswick, Ga., of a cargo of lumber of certain specified lengths and of a "quality free of sap." And that the defendant should furnish a certificate of a lumber inspector in relation to such lengths and quality. Afterwards and in accordance with the contract aforesaid, the schooner Lester A. Lewis was loaded at Brunswick for Guadeloupe. The defendant afterwards presented such certificate signed "quality free of sap", William P. Mitchell, Inspector.

The first count of the indictment alleges that the certificate was forged, and that the intent of the defendant was to procure payment under the contract of such forged certificate for the cargo so shipped.

That the uttering and publishing of such forged certificate constitutes the second count of said indictment.

That by the third count of said indictment, the defendant is charged with the crime of grand larceny in obtaining money by means of the following false token, to wit:

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the alleged forged certificate.

I have examined this case carefully and the evidence necessary to support the allegations contained in the indictment, and submit reasons and facts upon which I formulate my opinion that, in my judgment, the indictment referred to should be dismissed.

The crime charged in the indictment is said to have been committed on the 13th day of October 1888. From the nature of the crime, it is evident, that all information respecting it, was in the possession of the complainant within a few weeks after its alleged commission, but no indictment was found until the 29th day of May 1890, about nineteen months thereafter.

To fully understand this case in all its bearings it should be said here that the contract between defendant and complainant's firm contained a very binding clause, indemnifying the complainant by the defendant against all loss thereunder.

The cargo of lumber was so shipped, and, it appears, rejected by the consignees.

Previous to the institution of any criminal proceedings, it appears that an arbitration was had at the instance of the complainant's firm, as to the justice of their claim before the arbitrator, elected and appointed from the Produce Exchange, the defendant having claimed the money due on the contract, and which he claimed to have fulfilled.

The decision of such arbitrator was in favor of the

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defendant for the reason (as maintained by such arbitrator) that the complainant should, in accordance with the laws of the Exchange pay the amount due under the contract, and hold the defendant for any loss that might have ensued under the indemnity clause of such contract.

This arbitration was had within a very short period of the rejection of such cargo by the consignees.

The principal witness for the prosecution as to the alleged forgery of such certificate is one Walter R. Heineman who, it appears, some time subsequent to the decision of such arbitrator, and the payment by the complainant's firm to the defendant of the moneys due under such contract, informed the complainant herein, Donald S. L. Lee of the firm of Middleton & Company, that the certificate of the lumber inspector, William P. Mitchell, also given to them by said defendant, was a forgery; That said Mitchell was a myth, and that he (said Heineman) had seen this defendant sign the same and the name of said Mitchell thereto. That thereupon, though some little time afterward, proceedings were instituted before the late Judge Daniel O'Reilly upon such charge, who, after examination, held the defendant and the indictment thereupon, (and now under examination,) was found.

That such indictment never was brought to trial, but that pending the trial of the same, the complainant's firm, said Middleton & Company, brought a civil suit to recover back the money paid to the defendant under such contract and upon the decision of the arbitrator, "upon the sole alle-

**POOR QUALITY
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(4)

gation of fraud" in the procurement of its payment, the fraud alleged in such action being that which is charged as a crime in this indictment.

This suit was pressed to trial before Chief Justice Clemment, of the City Court of Brooklyn, and occupied several days in the trial thereof, commencing on May 11th, 1892.

Upon such trial the complainant herein, said Donald S. L. Lee, was called as a witness for the plaintiff therein, and in his testimony upon such trial, substantially testified as follows: That his firm had received an order from Fleurot & Company, of Guadeloupe, for a cargo of lumber similar to the cargo of lumber which had been previously shipped to Meduille, a consignee of a certain cargo theretofore shipped to Guadeloupe, and which it seems had been most satisfactory, and the character of which had been taken as a standard for the cargo embraced in this order. And that in accordance with such instructions from such firm of Fleurot & Company finding that the person who had shipped the Meduille cargo was the defendant, he entered into an agreement with him for a similar cargo to be shipped to the said firm of Fleurot & Company, as consignees. It having appeared during the trial that, in the custom of the lumber trade, the words "quality free of sap" were not to be literally taken, but qualifiedly; it being impossible to procure lumber of the lengths desired and designated in either the Meduille or Fleurot cargos, and absolutely free of sap; and it having further appeared upon such trial that about when sixty per cent. of such cargo (that is, the Fleurot cargo; so shipped or to be shipped

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under such contract) was loaded upon the schooner Lester A. Lewis at Brunswick, Georgia, complainant's firm themselves sent an inspector of lumber to Brunswick to examine and report upon such cargo, and the quality of the lumber then on board.

Complainant then testified that he or his firm then telegraphed his consignees, Fleurot & Company, as follows:

"Impossible free of say. Answer." And received this reply thereto from Fleurot & Company: "Do your best," and that complainant's firm thereupon wrote to such firm a letter as follows: "On Monday 15th we received your prompt reply, 'Do best', which enabled us to close for the cargo at 1450 per m. Furnishers, however, would not agree to begin the loading before the 20th of November. We have chartered schooner Lester A. Lewis, 200 - 10m feet capacity, \$9, and hope everything will turn out to your satisfaction."

It further appears from the evidence upon such trial that in accordance with this correspondence such cargo was shipped, but that, by reason of delays, the said schooner Lester A. Lewis did not clear from Brunswick until about the 15th of January, 1889, instead of in November preceding, as was contemplated; and that there was considerable delay of several days at Quarantine, and that the term of the expiration of the contract had elapsed, and that the cargo so shipped was rejected therefor by said consignee.

Upon the trial of the civil case the said Lee further testified that he did not place the slightest reliance upon the certificate, (the Mitchell certificate so-called);

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that his said firm, having had the lumber examined by their own inspector, knew that the lumber contained a certain small percentage of sap, and that the contract had been changed, in order to procure the lengths desired, and the time extended from November to January, between his firm and the defendant.

Complainant further sworn that his firm did not in any manner rely upon the Mitchell certificate in the payment of the money to the defendant, and furthermore that no claim whatsoever would have been made against the defendant, in fact, if the consignees had have accepted the cargo.

It will thus appear that according to the sworn testimony of the complainant in this case, given in the civil suit above referred to, that the certificate upon which or the alleged forging of which charged in the indictment as the basis for such crime of forgery, was not a matter of the slightest importance.

That the complainants placed not a particle of reliance upon it for the payment of the moneys due under such contract; that it was in no wise as inducement for the payment of such money, nor did it enter into their consideration whatsoever; but that on the contrary they regarded it and understood it as bearing a merely technical relation thereto, because they themselves had previously procured an examination of such cargo to be made by their own inspector.

This in itself would seem to dispose of the indictment so far as any offence thereunder was committed.

In addition to this, it is submitted, that the indictment itself could not be maintained upon a trial for the

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reason that the only two witnesses thereto for the prosecution are Donald S. L. Lee, the complainant, whose testimony as above set forth must necessarily inure to the benefit of the defendant and against the prosecution upon such indictment, and one Walter R. Heineman, the agent of this defendant, through and with whom all dealings with regard to the contract were had, and who was the informant of this complainant of the alleged fact that the defendant himself signed the Mitchell certificate, the doing of which constitutes the forgery charge in the indictment.

As to the testimony of Heineman, I submit, it is absolutely unworthy of belief, and no reliance can be placed thereupon whatsoever.

In fact, upon the trial of such civil suit where said Heineman was a witness for the plaintiff therein, upon the very fact as to which he would have to testify here, and especially to the fact that he (Heineman) had seen the defendant write the name of Mitchell, the alleged inspector, to the certificate in question, Judge Clemment himself then and there declared that he would utterly disregard the testimony of said Heineman as unworthy of belief, and, in fact, stopped the cross-examination, and discrediting of said Heineman by evidence, upon such trial, for such reason.

There is ~~xxx~~ one further fact or circumstance in addition to the above which, in my judgment, would militate against the prosecution and to the benefit of the defendant upon any trial of this indictment; and that is to the identity of William P. Mitchell, the inspector whose name is

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signed to such certificate, and who in such indictment is alleged to be a mythical personage.

Upon the trial of such civil action, Mr. John Kearney, one of the ~~lumber~~ stevedores of New York, testified that he knew Wm. P. Mitchell personally; that he knew him as a lumber inspector and employed him as such, and that upon the day on which the certificate of Mitchell was prepared, he met Mr. Mitchell in Mr. Burrough's office, and that the subject of a conversation overheard by him between said Mitchell and Burroughs were certain matters of schedules of a cargo of lumber shipped via Georgia; that the said Burroughs instructed one Thomas M. Sullivan, one of his clerks, to put the matter in shape for Mr. Mitchell to sign as a lumber inspector that it being about six o'clock in the evening, Mr. Mitchell said that he would call the next morning and sign it, because of its being late then, and he did not desire to wait, and the preparation thereof would take some time; and that he, Mitchell and the defendant then went out together and before he and the defendant left Mitchell the said defendant again instructed or requested Mr. Mitchell to be sure and call at the office of defendant in the morning and sign. That the clerk testified that he did so prepare it, and, finding it the next morning signed, took it to complainant's firm and delivered it to them, and that the said defendant at such time had not yet arrived at his office and did not get there until about twelve or one o'clock, it being the custom of the defendant, it seems, to visit his lumber-yard in Long Island City every morning before coming to the office.

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Mr. William H. Burke, one of the officers of the Supreme Court (the Special private officer of Judge Patterson) testified also as to his knowledge and acquaintance with the said Wm. P. Mitchell, and to the fact of his having been introduced sometime theretofore to him by the defendant whom he also knew, and that he had taken his acknowledgement to various papers and to affidavits, as such lumber inspector, personally, and that he knew him as such from such description and from such papers.

Practically every question that could arise upon a trial under this indictment, has been brought out in the action of the City Court of Brooklyn. The testimony of Donald S. L. Lee shows beyond a question that the paper which the indictment here charges the defendant with having forged, did not defraud the firm of Middleton & Company, and had no influence whatsoever upon their action. It had no connection with, or bearing upon the action of Middleton & Company in settling with the defendant for the lumber which they had purchased from him, as far as the record of the trial discloses.

In the opinion written by Chief Justice Clemmatt, in which he determines the issues of said trial in effect in favor of the defendant, he substantially states that Mr. Lee did not rely upon the certificate that he paid for the lumber and the same was not presented to him until four days after the acceptance.

And it appearing also from the testimony that the only proof tending to connect the defendant with the certifi-

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cate alleged to have been forged, is the proof of Heineman, and it appears from his testimony, that at the time he first made this accusation against the defendant, the defendant had discovered that Heineman had fraudulently obtained \$1,000 or thereabouts from the defendant and being brought up with a short turn, he had given a check for the amount and had borrowed money to meet that check, and immediately after depositing that borrowed money to meet this check for the defendant, he went to the District Attorney's Office and for the first time then and there and under such circumstances made the accusation against defendant.

(See Page 246 Stenographer's Minutes.)

The only other proof in this case tending to establish the commission of the crime of forgery, is that of one Carvalho, an expert in hand-writing, and with Heineman's testimony out or discredited, it would be highly unreasonable to expect a jury to convict on the testimony of an expert only.

All the issues that would necessarily be raised upon the trial of this indictment, were presented on the trial in the City Court of Brooklyn, before Chief Justice Clemment, and in effect adversely determined to the complainants.

Taking therefore into consideration the complete breakdown of Heineman in that case, and the testimony given by Donald S. L. Lee, one of the complainants mentioned in the indictment, it would ~~be~~ in my judgment be utterly useless to call this defendant to the bar for trial. It would involve a useless outlay of a vast sum of money, and in the end, no result accomplished. I do not believe that any jury would

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convict this defendant. I therefore suggest that the
District Attorney recommend to the Court that the indictment
^{under}
~~in~~ consideration be dismissed.

New York March 20, 1894

John F. M. Fitzgibbon
Dist. District Attorney

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Purple etc.

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Horace J. Burroughs

Report of Mr. M. S. H. H.

POOR QUALITY
ORIGINAL

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Sec. 192.

First District Police Court.

Undertaking to appear during the Examination.

CITY AND COUNTY }
OF NEW YORK, } ss.

An information having been laid before John J. Gorman a Police Justice
of the City of New York, charging Horace F. Burroughs Jr Defendant with
the offence of forgery

and he having been brought before said Justice for an examination of said charge, and it having been made to
appear to the satisfaction of said Justice that said examination should be adjourned to some other day, and the hear-
ing thereof having been adjourned,

We, Horace F. Burroughs Jr Defendant of No. 197 Carlton
Avenue City of Brooklyn Street; by occupation a merchant
and Horace F. Burroughs Jr of No. 197 Carlton Avenue
Brooklyn Street, by occupation a merchant Surety, hereby jointly and severally undertake that
the above named Horace F. Burroughs Jr Defendant
shall personally appear before the said Justice, at the First District Police Court in the City of New York,
during the said examination, or that we will pay to the People of the State of New York the sum of fifty
Hundred Dollars.

Taken and acknowledged before me, this 3rd

day of November 188 9

J. J. Gorman POLICE JUSTICE.

Horace F. Burroughs Jr
Horace F. Burroughs Jr

POOR QUALITY
ORIGINAL

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CITY AND COUNTY } ss.
OF NEW YORK,

day of November 1889

Police Justice

Sworn to before me, this

the within named Bail and Surety being duly sworn, says, that he is a resident and free
holder within the said ~~County and~~ State, and is worth ~~thirty thousand~~ ^{thirty thousand} ~~and~~ 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 ~~one~~ ^{one} three story house & two

lots of ground known as numbers 885 + 887 Bedford
Avenue in the City of Brooklyn worth fifteen thousand
Dollars. said houses are free and clear of all in
ambances

Horace F. Burroughs

District Police Court.

THE PEOPLE, &c.,

ON THE COMPLAINT OF

Pratt R. Newman

vs.

Horace F. Burroughs

Taken the

day of

November 1889

Justice.

Undertaking to appear
during the Examination.

First District Police Court
City and County of New York } S.S.

Donald S. L. Lee, being duly sworn, says:
~~I reside at~~ My place of business is 60 New
Street, N. Y. - I am 37 years of age - I am
engaged in the ~~business~~ ^{shipping} business - I am a
member of the firm of Middleton and
Company, which said firm at all the times
hereinafter mentioned carried on business
in this city under the firm name or style of
Middleton and Company. On or about the
fifteenth day of October, 1888, the said firm
of Middleton and Company, at the city of
New York, entered into a contract with Horace
F. Burroughs through his agent Walter R.
Heinemann a copy of which contract is hereto
annexed, is marked Exhibit A, and is in-
tended to be taken as a part of this deposition.
Hereafter, and on or about the tenth day of
January, 1889, at the city of New York, the said
Horace F. Burroughs caused to be presented
to the said firm of Middleton and Company
a certain instrument in writing a copy of
which is hereto annexed, is marked Exhibit B,
and is intended to be taken as a part of this
deposition. That also on or about January 10th,
1889, at the city of New York, and at the time
of the presentation of the instrument aforesaid

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a copy of which is hereto annexed and marked Exhibit B., the said Horace F. Burroughs caused to be presented to the said firm of Middleton and Company a certain instrument in writing nowhere produced, and a copy of which is hereto annexed, is marked Exhibit C., and is intended to be taken as a part of this complaint. That said instrument, a copy of which is annexed hereto and marked Exhibit C., purports to be a specification of pitch pine lumber shipped on board schooner "Lester A. Lewis" by Messrs Middleton and Company for the account of Messrs J. Fleuret and Company, and the words upon said instrument "Quality free of sap. Wm P. Mitchell, Inspector" purport, according to the usages and customs of the lumber trade, to be the certificate of the quality of the lumber in said instrument mentioned by the person who examined the same prior to its shipment. That at all the times herein mentioned the only contract that said firm of Middleton and Company had with said Horace F. Burroughs was the one heretofore herein mentioned. That said instrument, a copy of which is hereto

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annexed and marked Exhibit C, was presented to said firm of Middleton and Company as aforesaid as evidence that the said contract, a copy of which is hereto annexed and marked Exhibit B.A., ~~and~~ had been performed and carried out on his side by the said Horace F. Burroughs, and the instrument, a copy of which is hereto annexed and marked Exhibit B., was presented as a claim that there was due and owing to said Horace F. Burroughs the sums therein mentioned by reason of, and because of the performance upon his, the said Burroughs, part of the said contract. That by the terms of said contract the seller, the said Horace F. Burroughs, was to furnish a certificate of inspection of the lumber therein mentioned, and upon reference being had to said contract it will appear that before the said Horace F. Burroughs could, upon the performance of his part of the contract, demand payment from said Middleton and Company it was requisite and necessary that the said Horace F. Burroughs, should produce to the said Middleton and Company such certificate as aforesaid. That the words "Quality free of sap. Wm P. Mitchell, Inspector"

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upon the instrument, a copy of which is hereto annexed and marked Exhibit C purport to be such certificate as is in said contract, a copy of which is hereto annexed and marked Exhibit A, mentioned and referred to, and was presented as aforesaid to said firm of Middleton and Company as such certificate. That after the presentation as hereinbefore set forth of said instruments, copies of which are hereto annexed and marked respectively Exhibit B, and Exhibit C, to said firm of Middleton and Company, the said firm of Middleton and Company believing that the words "Quality free of sap. W^m P. Mitchell Inspector" upon the instrument a copy of which is hereto annexed and marked Exhibit C, was a true and original certificate of the character and quality of the lumber therein specified and one duly made by some person by the name of W^m P. Mitchell, who had inspected the said lumber at its port of shipment viz. Brunswick, Georgia, and was a full and complete evidence of the quality of the said lumber and the certificate required by the

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terms of the said contract, a copy of which is hereto annexed and marked Exhibit A., on or about the 8th day of February, 1889, paid to the said Horace F. Burroughs, in performance on their part of the said contract, the sum of two thousand five hundred and seventy and twenty three one hundredths dollars. That at all the times herein mentioned the said firm of Middleton and Company was composed of J. N. B. Middleton, C. L. Middleton and deponent.

Sworn to before me }
this 2nd day of November 1889 } Donnan Speer

John J. Speer
Police Justice

Ex 1

27/1794

POOR QUALITY
ORIGINAL

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First District Police Court.
City and County of New York } ss.

Walter R. Heineman, being duly
sworn says:

I am 23 years of age. I reside at
143 Lewis Avenue, Brooklyn N. Y.
I am carrying on the business of a builder.
I know the Horace F. Burroughs mentioned
in the annexed affidavit of Donald S. Lee.
I have seen the instrument in writing now
here produced, a copy of which is hereto
annexed is marked Exhibit C and is
intended to be taken as a part of this deposi-
tion. The said instrument is in the hand-
writing of one Thomas F. Sullivan save
and except the words "Quality free of sap.
Wm P. Mitchell, Inspector". Said Thomas
F. Sullivan was, at the time said in-
strument ~~to~~ was written, a clerk in the
employ of said Horace F. Burroughs. In
the city of New York on or about the 10th day
of January, 1889, I saw the said Horace F.
Burroughs write the words "Quality free of
sap. Wm P. Mitchell, Inspector" upon said
instrument now here produced, a copy of
which is hereto annexed and marked
Exhibit C. As agent for said Horace F.
Burroughs and on his behalf I entered

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into the contract a copy of which is hereto
annexed is marked Exhibit A and is intended
to be taken as a part of this deposition.
Subsequent to the formation of said contract
I was sent by said Horace F. Burroughs
to Brunswick, Georgia, to purchase lumber
for the purpose of performing the said
contract on the part of the said Horace F.
Burroughs. The lumber which I purchased
under the direction of the said Horace F.
Burroughs for the purpose aforesaid
was not of the quality "free of sap"
but was lumber of an inferior grade.

Sworn to before me this
2^d day of November 1889

Walter R. Brimmer

John H. Norman
Police Justice

POOR QUALITY
ORIGINAL

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Horace J. Burroughs
23 Beavel St.

Exhibit A.

New York October 15th 1888

Contract

Sold to Messrs Middleton & Co.

Bought of Horace J. Burroughs.
186,500 feet Pitch Pine
75,000 Shingles.
Scheelite
For Point Pitre, Guadeloupe

Feet	Dimensions	Feet	Dimensions
2102 3.000	2 x 2	160.500	
5636 6.000	2 x 3	1.000	2 x 10
15756 10.000	3 x 3	5.000	2 x 12
21013 20.000	3 x 4	3.000	2 x 14
26122 35.000	4 x 4	9.000	
2088 2.000	3 x 5	2.000	3/4 x 14
21494 1.000	3 x 6	5.000	1 1/4 x 6
10210 5.000	4 x 5	5.000	1 1/4 x 12
2256 2.000	4 x 6	3.000	1 1/2 x 12
14270 0.000	5 x 5	2.000	1 1/2 x 14
6202 8.000	5 x 6	17.000	
8184 8.000	6 x 6		
3445 4.000	6 x 10		25.000 - 4" } Tied
1416 1.000	6 x 8		25.000 - 5" } 50 in a bundle
7231 4.000	8 x 8		25.000 - 6" }
139.000			75.000 Aggregate Split Cypress Shingles
4.000	8 x 8		
3936 4.000	8 x 12		
2565 2.000	8 x 10		
10.000			
1638 2.000	4 x 8		
3843 2.500	3 x 12		
2138 2.000	3 x 14		
1421 1.500	4 x 10		
2668 2.500	4 x 12		
1576 1.000	4 x 14		
11.500			
160.500	Carried forward	186500	Aggregate Pitch Pine

This contract may be increased or decreased of 10% In the latter case do not decrease sticks from 2 x 3 to 3 x 5 and in the former case those dimensions may be increased - That is 2 x 3 & 3 x 5

Delivery At Brunswick Georgia - Delivery at the rate of twenty thousand feet per day Sundays & Holidays excepted - Lay days to commence November 1st provided vessel reports ready for cargo at that time.

P. Pine Quality. To be free of sap. - Seller to furnish certificate of inspection

Shingles to be free of sap

Seller agrees to hold Middleton & Co. harmless against loss in case of claim arising by reason of unsatisfactory quality of lumber or shingles from Guadeloupe. Messrs Middleton & Co.

Price. ^{#7.50} Seller agrees to pay no claims without first submitting same to the seller.
14⁵⁰ Fourteen dollars & fifty cents net for Pitch Pine and (84⁵⁰) Four dollars and fifty cents net for four inch shingles and (86⁵⁰) six dollars and fifty cents net for six inch shingles. Both Lumber & Shingles F.O.B. Brunswick
Horace J. Burroughs

POOR QUALITY
ORIGINAL

0067

TERMS CASH

Telephone Pearl 156

Cable Address Penababam

New York Jan. 10th 1889

Mess. Middleton and Co.

City

Exhibit B

Do Horace J. Burroughs

Per Schr. Lester A. Lewis

Office

Wholesale Lumber. Dr.

By

21 Beaver Street

Marks

From Brunswick to Point a Pitre

On deck

1.933 Pes. 53244 feet Pitch Pine @ 14⁵⁰

77204

Under deck

3290 Pes. 124013 feet Pitch Pine @ 14⁵⁰

179819

23

25.000 6" Cypress Shingles @ 6⁵⁰

162500

25.000 5" " " @ 5⁵⁰

137500

25.000 4" " " @ 4⁵⁰

112500

5223 Pes. 177.257 feet Total

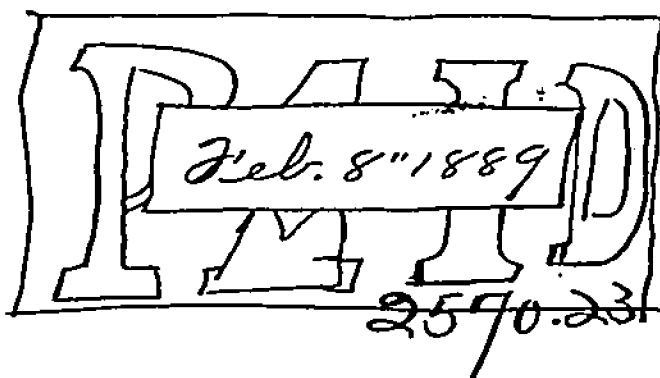
75.000 Shingles

298273

Board Measure 177.257 feet

Gross Weight 797.656 lbs.

Shingles " " 75000 "



No document for Shingles recd.

**POOR QUALITY
ORIGINAL**

0058

Specification of Pitch Pine Lumber shipped on board
of Sch. Lester A. Lewis by Mess. Middleton & Co.
for account of Mess. J. Stewet & Co.

Number of Pieces	Dimensions in Inches	Length in Feet	Contents in Board Measure	Remarks
266	✓ 2 x 2	6.406	2.102	Exhibit C.
478	✓ 2 x 3	11.273	5.636	
882	✓ 3 x 3	21.008	15.756	
946	✓ 3 x 4	24.013	24.013	
762	✓ 4 x 4	19.592	26.122	
60	✓ 3 x 5	1.671	2.088	
138	✓ 3 x 6	2.996	4.494	
218	✓ 4 x 5	6.126	10.210	
43	✓ 4 x 6	1.128	2.256	
250	✓ 5 x 5	6.850	14.270	
93	✓ 5 x 6	2.481	6.202	
94	✓ 6 x 6	2.728	8.184	
25	6 x 10	6.89	3.445	
12	6 x 8	3.54	1.416	
44	8 x 8	1.356	7.231	
16	8 x 12	4.92	3.936	
13	8 x 10	3.85	2.565	
49	3 x 12	12.81	3.843	
23	3 x 14	6.11	2.138	
14	4 x 10	4.27	1.421	
24	4 x 12	6.67	2.668	
13	4 x 14	3.38	1.576	
22	4 x 8	6.11	1.628	
24	2 x 10	6.38	1.063	
137	2 x 12	3.241	6.482	
45	2 x 14	1.074	2.506	
51	3/4 x 14	1.248	1.456	
241	1 1/4 x 6	5.754	3.596	
111	1 1/4 x 12	2.974	3.717	
92	1 1/2 x 12	2.438	3.657	
37	1 1/2 x 14	9.03	1.580	
5223			177.257	

C. & O. E.

Brunswick Ga. Jan'y 10/89

Exhibit B

Quality free of sap

W. P. Mitchell

Original of this certificate on file
with the Clerk of the Court of General
Sessions

Inspector

H. R. D. June 26/94

POOR QUALITY
ORIGINAL

0069

Sec. 198—200.

CITY AND COUNTY } ss.
OF NEW YORK,

District Police Court.

Horace J. Burroughs, Jr. 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. *Horace J. Burroughs, Jr.*

Question. How old are you?

Answer. *32 years of age*

Question. Where were you born?

Answer. *Brooklyn, N.Y.*

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

Answer. *197 Carlton Ave. Brooklyn*

Question. What is your business or profession?

Answer. *Lumber dealer*

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.
I demand an examination*

Horace J. Burroughs, Jr.

Taken before me this

day of *November* 188*5*

John J. Caffrey
Police Justice.

POOR QUALITY
ORIGINAL

0070

Sec. 151.

Police Court First District.

CITY AND COUNTY }
OF NEW YORK, } ss.

In the name of the People of the State of New York; To the Sheriff of the County
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 Walter R. Heineman and Donald S. Lee
of No. 143 Lewis St. Brooklyn and 601 W. 119th St. N.Y. that on the 10th day of January
1889 at the City of New York, in the County of New York,

Horace F. Burroughs did feloniously and with intent to defraud
forge a certain certificate in writing in words as
follows: "Quality free of soap Wm P. Mitchell Inspector"
whereby a certain class pecuniary claim and demand and
obligation was and purported to be created and
affected viz. a demand upon the firm of Middleton and
company for the sum of \$2570.²³/₁₀₀

Wherefore, the said Complainants have 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 2nd day of November 1889

John J. Moran POLICE JUSTICE.

POOR QUALITY
ORIGINAL

0071

POLICE COURT / DISTRICT.

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Walter R. Hinneen
vs.

Horace F. Burroughs

Warrant-General.

Dated Nov. 2nd 1889

L. L. Linnan Magistrate.

O'Connor Officer.

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

Edward J. O'Connor Officer.

Dated Nov. 3rd 1889

This Warrant may be executed on Sunday or at
night.

Police Justice.

WARDEN and KEEPER of the City Prison of the City of New York.

Dated

32 yrs

N.

U.S.

Lumber Merchant

in

197. Carlton Ave

188

188

Warrant, is committed for examination to the

The within named

Police Justice.

0072

RECEIVED
DISTRICT ATTORNEY'S
OFFICE
MAY 10 1890
JAN 10 1890

Burroughs

Fifty

Dated May 9 1890 La Jolla Police Justice.

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

POOR QUALITY
ORIGINAL

0073

-----x
T H E P E O P L E

vs.

B U R R O U G H S
-----x

I give below, extracts from the minutes with reference to the pages in the testimony taken in the Civil suit between Middleton & Company and Burroughs, before Judge Clement, which passages I have marked on the minutes.

Testimony of WALTER R. HEINEMAN

Q. Did you make the copy of the contract for Mr. Burroughs, at this time, at the time of the contract? A. He had been away for some little time, but Mr. Burroughs at the time never saw this contract. (This refers to the original contract for the sale of the cargo of lumber in question)

Page 182.

Q. Didn't you testify that you didn't say anything at all to Mr. Burroughs upon the subject and he didn't know anything about it until after the whole thing was completed.

A. Yes sir.

Page 183.

Q. Isn't it a fact that you were discharged by Mr. Burroughs under a charge of embezzlement?

A. No sir, never discharged.

Q. Didn't you testify you were before Judge O'Reilly?

A. He called it embezzlement.

Q. ~~He called it embezzlement.~~

Page 197.

**POOR QUALITY
ORIGINAL**

0074

2.

Q. What do you call it?

A. I call it overdrawing my account.

Q. Had you overdrawn your account?

A. I had.

THE COURT: About how much?

A. I think, in the neighborhood of \$200.

(Page 198.)

The witness had sworn that he had been at the District Attorney's office where he was interrogated by Mr. Jerome about the certificate in question and was then asked if thereafter he had not met Horace F. Burroughs, Sr., defendant's father and if he did not say to witness as follows:

"Walter, what does all this mean, what is there in this; and didn't you reply that everything was perfectly straight nothing in it, that it was only a put up job to down Frank, (referring to the defendant) and did not Mr. Burroughs father say to you or ask you if you knew Mitchell, and didn't you say you knew him and that you had employed Mitchell to inspect the cargo; and that he knew all about the matter and he could depend upon it that the transaction was straight and everything all right and that there could not be any trouble about it.

A. Not to that question.

(Page 202.)

Q. Did not Horace F. Burroughs Sr. say to you, well, what does all this mean, what is there in this. Did he say that

A. I think he did.

Q. Did you reply that everything was perfectly straight and there was nothing in it?

**POOR QUALITY
ORIGINAL**

0075

3.

A. I did.

Q. Did you also say that it was only a put up job to down Frank, to down Mr. Burroughs, referring to the defendant?

A. I think I did.

Q. Did Mr. Burroughs ask you if you knew Mitchell?

A. I think he did.

(Page 203.)

Q. Did you say that he knew all about the matter?

A. I think I did.

Q. Did you also say that he had been through with this transaction and it was all straight?

A. I think I did.

Q. And that everything was all right?

Yes sir, I think I did.

Q. And there would not be any trouble about it?

A. I believe I did.

(Page 204.)

Q. Some time prior to that you had received lumber from Mr Burroughs under a trust agreement, hadn't you?

A. Yes, sir.

(Page 207.)

Q. And you knew that the lumber which you had just received in trust, did not belong to you?

A. I did not know what the word "trust" meant at that time

Q. I am asking you if you knew at any time?

A. I did after.

Q. And you also believed that you were liable to criminal

**POOR QUALITY
ORIGINAL**

0076

4.

prosecution for spending that money, didn't you?

A. Yes sir.

Q. Was there not \$975 of it?

A. I think that was it.

Q. And you received Horace F. Burroughs' money for goods sold which he had delivered to you in trust, \$975.?

A. Yes, sir.

Q. You had spent it all, hadn't you?

A. Considerable of it.

(Page 208.)

Q. Did you have more than \$5. in the Bank left?

A. I don't remember.

"It then appeared that on the 31st of October, the witness gave defendant a check on the Queens County Bank for \$975 and some cents, which check was not good at the time of giving it, but was dated ahead."

(Page 209.)

"And it also appeared that the check was made good and paid at the bank on the 2nd day of November."

Q. Didn't you on that same 2nd of November, as soon as you got the money safe in the bank, go over to the District Attorney's office and sign an affidavit for the arrest of Horace F. Burroughs?

A. If that was the day, I did.

Q. Look at that affidavit and say if you did not on the 2nd of November deposit that money to make the check good and then go to Mr. Jerome's office and swear to that affidavit?

**POOR QUALITY
ORIGINAL**

0077

5.

A. I did.

(Page 210.)

" The witness had already testified that he had borrowed the money to make the check good.

"It also appears in the testimony that the witness, on the 10th of January, having procured a thousand mile ticket on the Long Island Railroad Company, prepared to start on a travelling trip through Long Island to sell lumber for account of Mr. Burroughs, and that upon that day he wrote himself and caused Thomas Sullivan, a fellow clerk in the employ of the defendant, also to write a number of letters to customers in various parts of Long Island announcing that he would call upon them upon his trip.

(Pages 229-231-232.)

" The witness also testified that in the course of his trip he was in Hempstead on the 14th of January 1889, and that the 14th of January was Monday.

(Page 233.)

Q. Did you testify before Judge O'Reilly that when you left for that trip, you made one continuous trip of it, without returning to the office?

A. Yes, sir.

Q. Was it true?

A. Yes sir.

Q. Look at this specification of the Lester A. Lewis cargo. No man could know, could he, what that cargo consisted of, so as to prepare a specification, until the vessel had loaded, could he?

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ORIGINAL**

0078

6.

A. Very true.

(Page 234.)

The further proof that the witness was absent from the City on his Long Island trip is to be conclusively found on the marked passages of the pages 235-236.

"The witness further testified that he was in the commission business, on horse races, at a place commonly known as a pool-room.

(Page 256.)

At page 293 of the minutes when counsel was interrogating the witness as to the certificate signed William P. Mitchell, the Court ~~mand~~ed further examination in this direction and used the following language:

THE COURT: You need not go to this point any more. I will be willing to find that Mr. Heineman did not see Mr. Burroughs sign the certificate. There is other testimony tending to show that the certificate is fraudulent, that there is no such inspector as Mitchell. I would not find that Mr. Burroughs was guilty of fraud on the testimony of Heineman.

(Page 293.)

THOMAS M. SULLIVAN testified that he was in the employment of Burroughs in the latter part of September 1888 and through the month of January 1889 and was interrogated as follows:

Q. I hand you this paper marked Exhibit 3, May 11th, in whose hand-writing is the body of the certificate if you

**POOR QUALITY
ORIGINAL**

0079

7.

know? I mean the figures and specifications?

A. Mine.

Q. All except the words "quality free of sap, W. P. Mitchell inspector" and the exhibit marked on that paper is in your handwriting?

A. Yes, sir, exactly.

Q. I ask you now if you know what day it was when you copied this paper?

A. 14th of January, 1889.

(Page 300.)

Q. What time of day did you make this copy?

A. After six o'clock in the evening.

Q. Did you see Mr. Burroughs at the office that day, that afternoon?

A. Yes, sir.

Q. Who else was at the office during, I mean late, at the time of closing of the office, about that time?

A. Mr. Kearney and another gentleman.

Q. Do you know who that man was?

A. No sir, I am not positive, but I heard him called Mr. Mitchell.

Q. Who called him Mitchell?

A. Mr. Burroughs called him in the office, he was seated outside.

Q. How long had he been outside?

A. Been out there a couple of hours or more.

Q. Been waiting outside while Mr. Burroughs was away?

(Page 301.)

A. Yes, sir.

**POOR QUALITY
ORIGINAL**

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8.

(Page 302.)

Q. What became of this gentleman who was in the office with Kearney and Burroughs whom you heard them call Mitchell?

A. I left him in the office and went to supper between half past five and six and when I returned they had gone.

(Page 304.)

The witness then testified that Heineman was not at the office on the 12th or 14th of January.

(Pages 306-307.)

THE COURT: Do you know Mr. Burrough's Handwriting?

A. Yes, sir.

Q. Does that look like the handwriting at all (referring to the Mitchell signature in certificate)?

A. Somewhat.

Q. You say it does look like his handwriting?

A. Yes, a little.

Q. The words "free of sap" is exactly like his?

A. Somewhat, a little like it.

Q. You say that is in Mr. Burroughs hand-writing from your knowledge of his hand-writing?

A. No, sir, I will say no, from what I know of his handwriting.

(Page 315)

**POOR QUALITY
ORIGINAL**

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9.

WILLIAM H. BURKE a witness called for the defendant testified as follows:

Q. Do you know Horace F. Burroughs, the defendant?

A. Yes, sir.

Q. Do you know a man named William P. Mitchell?

A. Yes sir.

Q. How early did you know him?

A. In the year 1887.

Q. How did you become acquainted with him?

A. I was introduced to him by Burroughs.

Q. Had you any business with him?

A. Yes, sir.

Q. You are a Notary Public?

A. Yes, sir.

Q. Did you take his acknowledgement?

A. Yes, sir.

Q. What kind of papers were they?

A. Affidavits, and a power of attorney. I think two papers and a power of attorney, that is all.

Q. Did you see him write his name to the power of attorney?

A. Yes, sir.

Q. And then you took his acknowledgement?

A. Yes, sir.

Q. How many times have you seen that man?

A. I have seen him about 7 or 8 times in my acquaintance.

Q. Whereabouts?

A. I have met him at the office of Burroughs on three different occasions. I had met him in Beaver street. I met

**POOR QUALITY
ORIGINAL**

0082

10.

him here last January, he stopped me on Broadway, I was in a hurry, He asked me if I knew where Burroughs was.

(Page 317.)

JAMES C. KEARNEY a witness called was interrogated as to his seeing and talking with Heineman when counsel was interrogated by the Court.

THE COURT: You need not go any further into that. I will find that Mr. Heineman did not see Mr. Burroughs sign that certificate.

Q. Aye you acquainted with a man named Mitchell?

(Page 318)

A. Yes, sir.

Q. Where did you first become acquainted with him?

A. He came to make an application for work on a vessel I was loading with lumber.

Q. In New York City?

A. Yes, sir.

Q. Do you recollect of seeing this same man at the office of Mr. Burroughs in January 1889?

A. I did.

Q. How long before that had you seen him and known him?

A. I should judge probably a year.

Q. Now, did you see him more than once before that interview, at the office of Mr. Burroughs in January, 1889?

A. I did.

Q. Where?

A. I met him on South street.

Q. And then you met him at Mr. Burroughs office in January

**POOR QUALITY
ORIGINAL**

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11.

1889.

A. Yes, sir.

Q. State what occurred and we will identify the occasion?

A. I went to the office, I had a great deal of business with Burroughs.

Q. Was Mr. Burroughs in the office?

A. No, sir.

(Page 319.)

Q. He introduced you to him as William P. Mitchell?

A. He introduced me to him as William P. Mitchell, lumber inspector he was.

(Page 320.)

Q. What was done after this talk with Mitchell and Burroughs at the office, did you see Mr. Burroughd there deliver any paper to Sullivan?

A. Yes sir.

Q. What was said in that connection?

A. He told him to make a copy.

Q. Mr. Burroughs gave him some papers after he was speaking with Mitchell and told him to keep them and to leave them there for Mitchell to sign in the morning.

Q. What occurred after that?

(Page 321.)

A. We went across the street and had a drink.

Q. Who?

A. The three of us, Burroughs, Mitchell and myself.

POOR QUALITY
ORIGINAL

0084

12.

Q. After that what occurred?

A. After the drink we walked up as far as the corner of Beaver street and Broadway and Mitchell promised faithfully to be there in the morning and sign. Burroughs and I went to the Astor house and had dinner.

(Page 322.)

HORACE F. BURROUGHS called on his own behalf.

Q. I show you this paper, Exhibit 8, and call your attention to the words "free of sap, William P. Mitchell inspector" did you insert those words?

A. No sir.

Q. I show you William Middleton's & Co's letter dated Jan. 12, 1889, together with the invoices and the Willink certificate and papers annexed to it and ask you when the papers were received by you?

A. January 14th, 1889.

Q. These were the certificate and the papers mailed from Georgia on the 12th which contained the statement of the cargo shipped by the Lester A. Lewis.

Q. Did you employ this William P. Mitchell or any other Mitchell to inspect this cargo of lumber?

A. Personally, no, sir.

Q. Who did?

A. Heineman.

(Page 328.)

Q. What was your information with respect to Mitchell's inspection of this cargo of lumber?

A. He said he would engage him and have him sent South to

**POOR QUALITY
ORIGINAL**

0085

13.

be in time to go there when the vessel commenced loading.

Q. Proceed, you were stating what you did with the paper?

A. Sullivan was busy and had been busy on that evening at the office.

Q. Were you on that evening at the office?

A. He was going to start down; I was in the office, outside I had a conversation with Mitchell and Mr. Mitchell agreed to come back, and then, next morning the specifications were delivered to Middleton & Co.

(Page 329.)

THE COURT: Give me the certificate (to the witness)

" Will you write the words "quality free of sap, William P. Mitchell inspector, write it in as small a hand as you can (the witness does so and the paper so written by him was offered in evidence as Exhibit 2, May 26.

THE COURT: Mark it in Evidence as having been written in Court by Mr. Burroughs.

(Page 332.)

POOR QUALITY
ORIGINAL

0006

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

-----X
People of the State of New York:

-against-

Horace F. Burroughs.
-----X

---B R I E F O F F A C T S---

Submitted on behalf of the defendant as reasons for
dismissing the indictment.

The above named defendant is under indictment on two
charges, both growing out of the same transaction. He is in-
dicted for forgery in the second degree and for Grand Larceny.
The facts in the cases as appears from the testimony taken be-
fore the Police Magistrate, and from documents in possession
of the District Attorney are as follows.

The defendant, H. F. Burroughs, is an extensive
wholesale dealer in lumber and has an office in the city of
New York and large lumber yards at Long Island City. On or
about the 15th day of October, 1888, the defendant through one,
Walter R. Heineman entered into a contract with the firm of
Middleton & Co., also lumber dealers of the city of New York
for the sale of a certain quality of lumber, to be shipped on
board the vessel chartered for that purpose by Middleton & Co.
from Brunswick, Georgia, to Guadaloupe. Such lumber to be of
a quality in accordance with the contract entered into by the
said parties, and upon the part of the said defendant by Wal-
ter R. Heineman. It will be observed that the defendant H.F.

**POOR QUALITY
ORIGINAL**

0007

Burroughs, had nothing whatever to do with the making of the contract for the sale or shipping of this lumber and was not present at any time when any of the matters connected with the said contract or its fulfillment were subjects of discussion or arrangement, but so far as his part to said contract was concerned everything pertaining thereto was done solely by the said Walter R. Heineman. It may also be observed here that the said Walter R. Heineman was not at the time of the making of this contract a person in the general employment of this defendant. It on the contrary appears that some time prior to the making of such contract, he had been in the employment of this defendant and had been detected in a series of embezzlements aggregating a sum somewhat exceeding \$1000 and that by reason of his dishonesty he had been discharged by the defendant from such employment and threatened that unless he made good the amount he had stolen or embezzled, he would be prosecuted by this defendant. A short time prior to the execution of this contract, Heineman having complained to the defendant that as it was generally known there at the trade that he had been discharged from the defendant's employment for dishonesty, it was impossible for him to procure employment which would enable him to repay the defendant the amount he had taken from him; and that therefore, if the defendant would authorize him so to do, he could procure the contract for the sale of a cargo of lumber to Middleton & Co., and out of the commissions of which, coming to him, he could refund at least a part of the amount he had so taken.

The defendant thereupon authorized the said Heineman to make such contract and said Heineman as aforesaid did enter upon the making of the said contract, and did conclude the

**POOR QUALITY
ORIGINAL**

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same as a representative or agent of this defendant.

The said lumber in accordance with the terms of such contract was to be Pitch Pine lumber, and of the "quality free of sap". This term is a technical or trade term and does not necessarily mean that such lumber shall be absolutely and entirely free from sap, which is very nearly an impossibility, but that the proportion thereof should not exceed ten per cent

By the terms of said contract, the seller was to furnish to Middleton & Co. a certificate of inspection of the lumber indicating it to be of a character and quality as required by the said contract. Such a certificate was presented and signed, William P. Mitchell, Inspector, and in connection with the presentation of this certificate to Middleton & Co. for the first time it appears that this defendant had any connection personally with the matters relative to said contract.

The indictment for forgery as against the said defendant is based upon the alleged character of this certificate of inspection and the indictment for Grand Larceny is founded upon the payment of the money due under said contract and payable upon the presentation of the certificate referred to.

The lumber aforesaid, comprehended in said contract was shipped in a vessel from Brunswick, Georgia, to Guadeloupe. Upon its arrival at Guadeloupe the cargo was rejected, the complainant asserting that the reason of that rejection was because of the fact that the lumber was not of the quality required by the contract and the defendant asserting that such rejection was due to the delay in the arrival of the vessel at the Port of Guadeloupe,

**POOR QUALITY
ORIGINAL**

0089

which was not until the expiration of the time limited by the contract with the consignees in Guadaloupe for its delivery there. Whatever was the real cause of the rejection the cargo as a consequence thereof was sold at a loss. The complainant made a certain complaint before the board or committee of Arbitration of the New York Produce Exchange in May, 1889, and the defendant consenting at that time to an arbitration. Mr. Averill Blackmour was selected as a referee. The arbitration having progressed for about three weeks, Mr. Burroughs withdrew therefrom, it appearing that the referee or arbitrator was inimical to him and was in fact in the interest absolutely of the complainant. Thereafter suit was brought against the said complainant arising out of the said transaction in which suit the said Averill Blackmour, such arbitrator or referee in the New York Produce Exchange proceeding appeared as counsel for the said complainant in such suit, thereafter an attempt was made by the complainant, Lee, to procure an indictment against this defendant, but Mr. Jerome, at that time an Assistant District Attorney, declined to permit the complainant to go before the Grand Jury until he had first initiated proceedings before a Police Magistrate, and thereupon on or about the second day of November, 1889, upon the affidavits of Donald S. L. Lee of the firm of Middleton & Co. and Walter R. Heine- man, Mr. Police Justice Gorman issued his warrant for the arrest of this defendant and thereafter an examination was held before Mr. Police Justice O'Reilly and continued from time to time until on or about the day of That the said Justice O'Reilly after the completion of the said testimony held or made no advisement for several months

**POOR QUALITY
ORIGINAL**

0040

and at the expiration of that protracted period held this defendant for trial, and that therefore these indictments were found by the Grand Jury.

The charge of forgery is sustained only by the testimony of Heineman, who swears that he saw this defendant sign Mitchell's name to the certificate on the 10th day of January, 1889. It is conclusively shown on the cross examination of the witness, Heineman, that he could not possibly have seen this act done on the date specified. 1st. Because the information as to the description of the lumber, with marks quality &c. was not mailed to the defendant from his correspondent in Brunswick, Georgia, until the 12th day of January and could not possibly have reached him until the 14th day of January. 2nd. Because from a date prior to the 10th day of January and until after the 15th day of January the witness, Heineman, was on a business tour through the country towns of Long Island and did not return to Burroughs' office until after the 15th day of January, and the certificate which he says he saw Burroughs sign was delivered to the complainant before the 15th day of January and during the absence of the witness, Heineman, from Long Island City, and 3rd. Because cross examination of the witness, Heineman, disclosed that he is utterly unworthy of belief, having been repeatedly detected in pilfering from the defendant, Burroughs, when in his employ.

Inspection of the lumber was made on the dock at Brunswick, Georgia, as it was delivered on board the schooner by Mitchell. The inspector, as is the custom in the trade, made rough notes in his note book of the number of feet of

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ORIGINAL**

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lumber and the various markings on the same and tore these out and transmitted them to Burroughs through his correspondent at Brunswick, Messrs. Stillwell, Millen & Co. and from these notes thus transmitted to Burroughs, the certificate was made up. There is no pretense that there was any attempt to imitate the handwriting of the inspector or that the certificate was anything more than an assurance that the lumber specified in the certificate had been inspected by an inspector named Mitchell. It is of course understood that Mitchell was not a Government official, but merely a man employed by the lumber trade to inspect cargoes as an expert. While we do not concede because we do not as a matter of fact know whether Mr. Burroughs signed said certificate or whether the same was signed by some clerk in his office and with his authority, it is a fact that Mr. Burroughs held a power of Attorney, duly executed and witnessed before a Notary Public of this City, Mr. Burke, now an officer in the Supreme Court under Judge Patterson from said Mitchell to him, authorizing him to sign Mitchell's name to certificates thus made up from Mitchell's rough notes. This power of Attorney has been already exhibited to the District Attorney and is now in his possession. It is important also to note according to the testimony of the complainant, Lee, he said Lee did not rely upon the correctness of the certificate of Mitchell as to whether or not the lumber was "free of sap" because he had taken the precaution to have his correspondent at Brunswick, Georgia, employ an inspector named Atkins to inspect such lumber and was informed by his correspondent at Brunswick, Ga. that said lumber was not "free from sap" and had the knowledge before he paid Mr. Burroughs for said cargo.

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IT IS RESPECTFULLY SUBMITTED THEREFORE:

I.

That there was no forgery.

II.

That there was no larceny through false pretenses, because Lee paid Burroughs, not because he believed the statements contained in the certificate as to the character to be true, but because he relied upon the report of the inspector his firm had employed, and who had reported to them the result of his inspection of such lumber. It will also be observed in this connection as the fact discloses that under the terms of the contract with the Consignees in Guadaloupe, there was no requirement whatever that the lumber should be "free from sap".

With respect to the allegation that said certificate was forged which is alone and unsupportedly made by Heineman, it will be observed that there is no dispute as to the truth of everything contained in the certificate respecting the lengths and quantities of the lumber and the necessary descriptions of the same, as it was put aboard the vessel and received at Guadaloupe, but that such allegation of Heineman is exclusively confined to the signature and to the words "free from sap".

Two circumstances are worthy of consideration with respect to the alleged ^{loss} ~~laws~~ of Middleton & Co. on the cargo sold by this defendant and consigned ^{to} ~~to~~ Guadaloupe.

First; the first notice that this defendant had that there was a loss claimed on the cargo was contained in a letter from Middleton & Co. to him to the effect that "owing to the delay in the delivery of the lumber per schr. 'Lester A. Lewis' the government at Gaudaloupe had rejected the cargo

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and it is also significant that the day before
Stienman made is affidavit in which Burroughs
was arrested, he walked into Burroughs office and
paid him \$1000 the amount of his endorsement
who furnished him with this \$1000-

prior to its arrival at Guadaloupe, and for that reason the cargo would be very critically examined as to quality and that they feared a heavy reclamation would be claimed."

Whereupon defendant replied in writing that if the consignees proposed to sell the cargo, in the open market or otherwise, that he must insist upon notice of any such proceedings as he was assured that the cargo could be disposed of at Guadaloupe without loss. He never received any such notice, and the cargo was sold without his knowledge and without affording him an opportunity to make a bid on the same. As a matter of fact the consignees, Fleurot & Co., bought the cargo in for their own account and then re-sold it at a considerable profit and the cargo did not actually show a loss, but a profit.

Second; prior to the institution of criminal proceedings by Middleton & Co., they sold their entire claim to Thomas S. Quinn of the Export Lumber Company, and William D. Wheelwright, both of whom are competitors of defendant in trade.

In this connection the testimony of Donald S. L. Lee under cross-examination, that he was not the complainant in this case is significant, and it is equally significant that Mr. Carvalho testifies on his cross-examination that he was employed and paid by Mr. W. D. Wheelwright.

* Now what was it that Messrs. Quinn & Wheelwright purchased from Middleton & Co.? Not the assignment of a civil claim against Horace F. Burroughs but the right to institute criminal proceedings against a formidable rival in trade who was at that time, engaged in organizing an English syndicate in the lumber business that would be a most serious

**POOR QUALITY
ORIGINAL**

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rival of the Export Lumber Co., and indeed, at the time that the indictments for forgery and Grand Larceny were obtained against this defendant he was actually in England engaged in forming this syndicate. The fact that the indictments were procured was published broad-cast in the press of this country and it was telegraphed over to England together with the assertion that he, Burroughs, was a fugitive from justice.

This had the effect, as it was intended that it should, of arresting negotiations for the formation of the syndicate, and it resulted in Mr. Burroughs hastening back to this country to surrender himself and give bail for these two indictments. This certainly, does not look like the action of a man guilty of such serious offences and anxious to flee the jurisdiction of the Court.

If on the perusal of these facts, you come to the conclusion,

I.

That there is no evidence to sustain the charge of forgery,

II.

That no money was obtained on false pretences and,

III.

That these indictments were procured for the sole and only purpose of injuring the credit of a rival in trade,

Then you are asked in the conscientious discharge of your duties as a public officer to set the seal of your disapproval on this gross perversion of the criminal process of this county and to recommend the dismissal of the indictments.

**POOR QUALITY
ORIGINAL**

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And this is a duty, it is respectfully submitted,
that you owe no less to the defendant, than to the people of
the state, whose process has been abused and whose represen-
tative you are.

Very respectfully yours,

THOMAS C. E. ECCLESINE,

of Counsel for the Defen-
dant.

Dated New York,

July 21, 1891.

POOR QUALITY
ORIGINAL

0096

COURT OF GENERAL SESSIONS.

The People &c.,

-against-

Horace F. Burroughs.

BRIEF OF FACTS

ON

APPLICATION TO DISMISS.

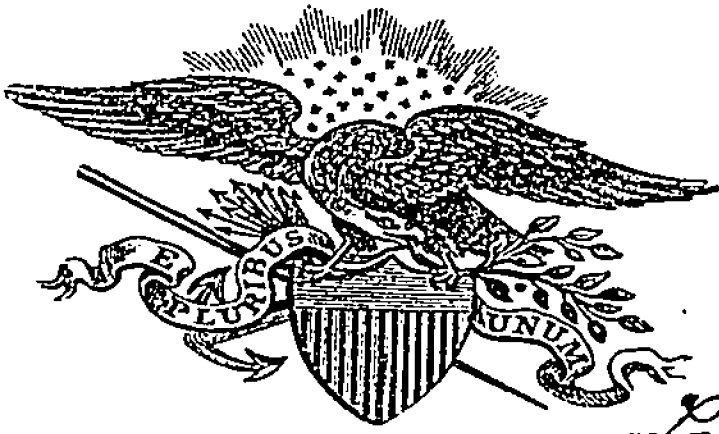
T. C. E. Ecclesine

of Counsel for

Defendant.

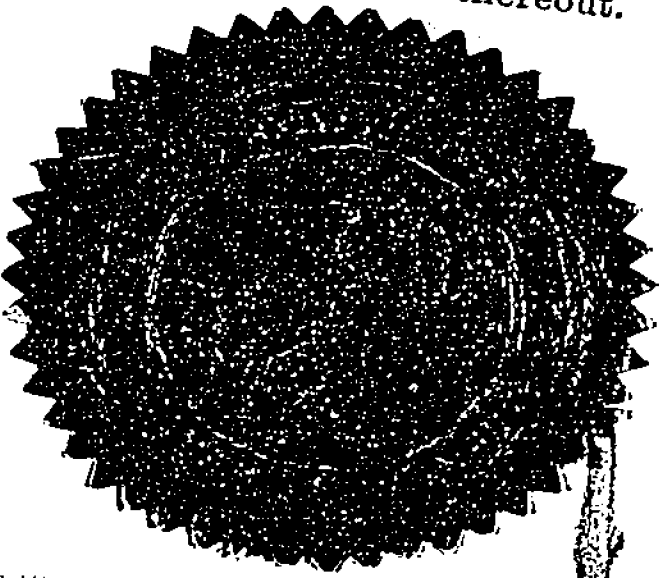
POOR QUALITY
ORIGINAL

0097



Consulate-General of the United States of America,
for Great Britain and Ireland, at London.

I, Francis W. Trigout, Vice Deputy Consul-General
of the United States of America for Great Britain and Ireland at London,
do hereby make known and certify to all whom it may concern, that the signature
" Edwin J. Watkinis " subscribed to the annexed Certificate, is of the
true and proper handwriting of Edwin J. Watkinis, a Doctor of
Medicine and a member of the Royal College of Surgeons
that the seal affixed to the said Certificate is the seal of the
and that to all acts signed as the annexed full faith and credit are and ought to be given in
Judicature and thereout.



In testimony whereof I have hereunto set my hand and affixed
the Seal of the Consulate-General of the United States at London,
aforesaid, this 23rd day of February 1892.
Francis W. Trigout
Vice Deputy Consul-General.

POOR QUALITY
ORIGINAL

0098

HORACE F. BURROUGHS
NEW YORK.

This is to certify that
Mr. Horace F. Burroughs
is suffering from
 Gastric Catarrh, &
Rheumatism, & is at
present unable to make
a voyage to New York.

Edwin J. Waddington
M.D.
6, Guildford St.
London W.C. Dec 22. 1892.

POOR QUALITY
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0044

HORACE F. BURROUGHS.
NEW YORK.

Horace F. Burroughs
of the City & County of
New York U.S.A. being
duly sworn deposes
as follows. I am sick
with Gastric Catarrh
& Rheumatism, and
have been constantly
under medical treatment
for these complaints
since November 1891
by specialists in

POOR QUALITY
ORIGINAL

0100

Europe, having been
ordered away from
New York by my physician
there Dr. M. S. Hutchins
of New York City - And I
am still under medical
treatment. I am physically
unable to return to
New York to attend to
any business of any
kind whatsoever
as such a journey

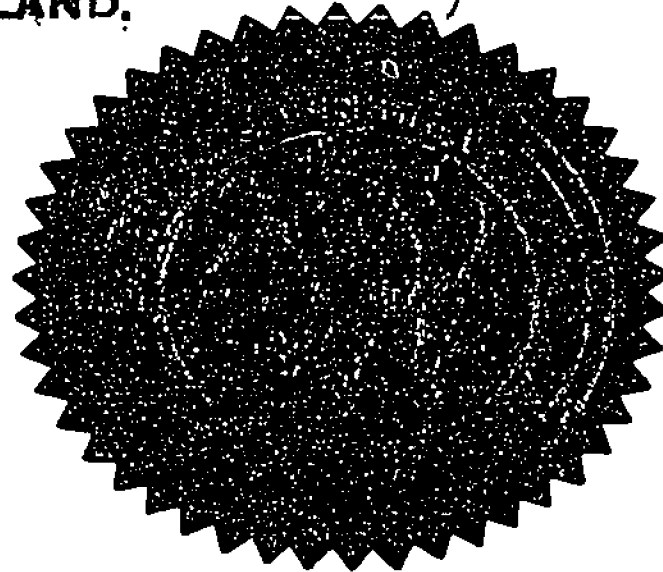
would be dangerous
to my life

James H. Tugout

London Feb 22nd 1892

Shewn AT THE CONSULATE-
GENERAL OF THE UNITED STATES
OF AMERICA AT LONDON, ENGLAND,
THIS 23rd DAY OF February
1892 BEFORE ME

James H. Tugout
and his wife
CONSUL-GENERAL OF
THE UNITED STATES OF AMERICA
AT LONDON, ENGLAND.



POOR QUALITY
ORIGINAL

0101

Summons.

TUCKER & CO., Printers and Mfg Stationers, 51 Nassau St., N. Y.

City Court of Brooklyn.

Clifford L. Middleton and

Donald S. L. Lee as surviving

members of the co-partnership

firm of Middleton & Co.

Plaintiffs,

against

Horace F. Burroughs,

Defendant.

Summons.

To the above named Defendant

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

Dated August 5, 1890.

Baldwin & Blackmar,

Office and Post Office Address,

Plaintiff's Attorneys,

No. 55 Liberty Street

New York City.

POOR QUALITY
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Fol. 1. City Court of Brooklyn.

-----x
Clifford L. Middleton and)
Donald S. L. Lee as surviving)
members of the co-partnership)
firm of Middleton & Co.)
Plaintiffs, : Complaint.
against)
Horace F. Burroughs,)
Defendant.)
-----x

Said plaintiff complaining against said defendant
alleges.

I

For a first cause of action.

- 1st. That at the time of the transactions herein-
below mentioned the said plaintiffs together
with one John N. B. Middleton were co-partners in trade
2. doing business under the firm name of Middleton & Co. in
the City of New York. That thereafter to wit: on the
4th day of May 1890, the said John N. B. Middleton died
leaving the said plaintiffs the surviving members of the
said firm of Middleton & Co.
- 2nd. That on or about the 15th day of August 1888
the said firm of Middleton & Co. made a con-
tract in writing with the said defendant, wherein and
whereby the said defendant agreed to sell and deliver to
3. the said firm of Middleton & Co. at Brunswick, Georgia

POOR QUALITY
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2.

for shipment to Point Pitre Guadeloupe about 186500 feet of pitch pine lumber and 75000 shingles for and at the agreed price of fourteen and 50-100 dollars net per thousand feet for the pitch pine lumber and four and 50-100 dollars per thousand for four inch shingles and five and 50-100 dollars per thousand for the five inch shingles and six and 50-100 dollars per thousand for the six inch shingles both lumber and shingles to be delivered free on board at Brunswick Georgia; and it was further agreed, as part of said contract, that the quality of the

4. pitch pine lumber and shingles was to be " free of sap " *furnish to the purchaser an inspectors certificate certifying the quality of said lumber and that the said defendant will be held* and that the said defendant should hold the purchasers harmless in case of claim arising by reason *of the* unsatisfactory quality of the lumber or shingles from Guadeloupe.

3rd. On information and belief that thereafter in pursuance of said contract the said defendant

5. did deliver at Brunswick Georgia on board the schooner " Lester A. Lewis " chartered by Middleton & Co. 177257 feet of pitch pine lumber and 75000 shingles; but that the said pitch pine lumber was not free of sap but contained sap and *was a* of much inferior quality; that the said defendant in order to obtain from said Middleton & Co. the purchase price of said lumber did fabricate a false and fictitious inspectors certificate certifying that said lumber was free of sap and purporting to be signed by one " William P. Mitchell inspector" whereas said certificate was not signed by William P. Mitchell but by
6. the defendant, and said lumber was never inspected by any inspector named William P. Mitchell.

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3.

That said Middleton & Co. hearing that said lumber was ^{not} free of sap declined to pay the purchase price thereof and agreed with said defendant to submit the question of their duty so to do to one B. F. Metcalf, that said defendant presented to said Metcalf said false certificate of inspection and claimed that Middleton ^{has} should pay said purchase price in full and reserve any claim against defendant until it was learned whether any claim was made from Guadeloupe, and the said Metcalf so decided and the said Middleton & Co. was thereby compelled to and did pay to said defendant Burroughs the sum of two thousand *five hundred* seventy and 23-100 dollars (\$2570 23-100)

4th. That said firm of Middleton & Co. shipped said lumber to J. Fleuret & Co. of Guadeloupe and said firm of J. Fleuret & Co. made a claim against said Middleton & Co. of one thousand ninety and 15-100 dollars on account of the unsatisfactory condition of said lumber and deducted the same from the remittance to said Middleton & Co. and the said Middleton & Co. were compelled to and did allow the said claim and suffer ^{ed} loss to the amount thereof.

On information and belief that the difference in the market price of an equal amount of pitch pine lumber ^{free} "Sap" and the market price of the lumber so delivered by said defendant, was upward of ten hundred and ninety and 15-100 dollars (\$1090 15-100) and that the said firm of Middleton & Co. were damaged by said wrongful act of defendant in the sum of one thousand ninety

POOR QUALITY
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4.

and 15-100 dollars with interest from 8th February 1889.

9. 5th. On information and belief that no bill of lading of the said 75000 shingles was delivered to said Middleton & Co. but that the same together with the said shingles was held and owned by a bank and the said shingles on their arrival at Guadeloupe were seized and sold by said bank and the said firm of Middleton & Co. through J. Fleuret & Co. were compelled to buy in the same to fulfill their contract and the amount paid for the same over and above the contract price was thirty one and 37-100 dollars (\$31 37-100) which amount was lost to said Middleton & Co. because the said defendant did not deliver said shingles to Middleton & Co. as agreed.

II

10. For a second and separate cause of action said plaintiffs repeat the allegations ⁱⁿherebefore contained and further allege that the said firm of Middleton & Co. ^{acting}through and in the name of said plaintiff. Donald S. L. Lee agreed to submit the said matters in dispute to arbitration and on or about 15th May 1889 by agreement signed by said defendant and said plaintiff Donald S. L. Lee acting for said Middleton & Co. said differences were submitted to arbitration and that on or about June 7, 1889 before said case was finally submitted to the arbitrator said defendant revoked the submission and that said firm of Middleton & Co. incurred costs and expenses and suffered damages in preparing for the arbitration; and conducting the proceedings up to the time of revocation to the amount of One hundred twenty nine and 72-100 dollars.
- 11.

**POOR QUALITY
ORIGINAL**

0106

5.

Wherefore said plaintiffs demands judgment against defendant for the sum of One thousand two hundred fifty one and 24-100 dollars with interest from February 8, 1890.

Baldwin & Blackmar,

Plaintiffs' Attorneys,

55 Liberty St.,

N. Y.

State of New York,

:

) SS.:

City and County of New York,:

Donald S. L. Lee being duly sworn, says:

I am one of the plaintiffs herein and have read the foregoing complaint; the same is true to my knowledge except as to the matters therein stated to be alleged on information and belief and as to such matters I believe it to be true.

Sworn to, before me, this:

)

Donald S. L. Lee.

6th august 1890.

:

Jesse Larrabee,

Comr. of Deeds,

City of New York.

POOR QUALITY
ORIGINAL

0 107

Sir :

Please take notice that a

copy, was this day duly entered in the office
of the clerk

Dated, N. Y. City, 18

Yours &c.,

BALDWIN & BLACKMAR,

Attorneys for

To,

Esq.

Attorney for

City Court of Brooklyn.

Clifford S. Middleton

& ano &c

Plaintiffs,

against

Horace F. Burroughs,

Defendant.

Summons & Complaint.

BALDWIN & BLACKMAR,

Attorneys for Plaintiffs,

Office and Post Office Address,

55 LIBERTY STREET,

New York City.

Due service of a copy of within

admitted this day of 18

To Horace F. Burroughs,

Attorney for Defendant

21 Beacon St

POOR QUALITY
ORIGINAL

0100

-----X
The People of the State of New York
against
Horace F. Burroughs, Jr.
-----X

State of New York
County of Kings. SS.

H. F. Burroughs being duly sworn,
says:- Without intending the slightest criticism or reflection on the District Attorney's act in moving this cause ~~now~~ now, I respectfully suggest that no public reason exists ~~for~~ for the trial of this cause at this particular time, or why I, as my son's surety, should be subjected to the expense and trouble and my family to the anxiety of any extraordinary effort to produce him here for trial now or why my son should be subjected to the risk of such a journey at this season, which is the most unfavorable and dangerous during the year. I am acquainted with the gentleman on whose complaint this prosecution was commenced; but am not aware that he has recently taken any step in this prosecution.

The only person who has been active in the matter so far as I am informed is one F. E. Eberstadt, and he has recently made threats to stir up this cause and have it brought on for trial. This, I verily believe is the result of personally hostility to me and to my son, growing out of business matters. When this prosecution was commenced, this gentleman Eberstadt made strong professions of friendship for my son in this matter, assuring me personally that

POOR QUALITY
ORIGINAL

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he believed this prosecution was wholly unfounded and that there was no element of larceny, forgery or fraud in the case. Thereafter my son and Eberstadt's firm (A. D. Straus & Co.) had dealings together, resulting, as my son claimed, in a large balance due from said firm to my son, some \$6300. My son drew a time draft to his own ^{for \$1,000,} order, and Eberstadt had it cashed. It was accepted by another party but was not paid. Eberstadt insisted that my son should take it up, and Eberstadt sent me word that if the draft was not taken up by ten o'clock the next day he would have my son arrested. My son was then absent from the City. I asked Eberstadt to wait a day or two until my son could return. He replied he would not wait. Wishing to avoid further trouble I took up the draft, took an assignment of my son's claim and some weeks thereafter employed counsel to enforce the claim against Eberstadt's firm. A conference between Eberstadt and my counsel, and a later with his clerk, resulted in declarations stated in their affidavits herewith submitted, dated March 2 and 3, 1892.

Sworn to before me this

5th day of March, 1892.

Horace F. Burroughs
Rouger Thorne

NOTARY PUBLIC QUEENS CO.,
Certificate filed in Kings Co.

**POOR QUALITY
ORIGINAL**

0 1 1 0

City of Brooklyn,

County of Kings, ss:-

George H. Fisher of said City
being duly sworn, deposes and says:

I am an attorney and counsellor at law, and as such was employed by Mr. Horace F. Burroughs, Senior, of said City of Brooklyn to present to the firm of A. D. Strauss & Company a claim against said firm which had been assigned to said Horace F. Burroughs by his son Horace F. Burroughs of the City of New York. I received instructions to present such claim in November or December, 1891. I wrote to said firm about the early part of December, 1891, stating the claim and received from them a reply asking me to call on them, and stating that they would submit to me receipts covering almost every item of said claim and that said assignor was still indebted to said firm. I did call accordingly before commencing the suit and met at the place of business of said A. D. Strauss & Co. No. 15 Broadway, New York City, a gentleman purporting to answer for and represent said firm and whom I understood to be Mr. E. F. Eberstadt, a member of said firm and conversed with him at considerable length about said claim, and in the course of such conversation he said to me in substance and effect that if Mr. Burroughs, my client, brought suit on this claim, he or his firm would take measures to see that Mr. Burroughs son, the assignor of said claim was sent to State Prison. He admitted to me that he had written or caused to be written this letter inviting me to call and I asked him to show me the papers referred to, to which he replied that it would take time to get at them or to prepare them, and that if I would

**POOR QUALITY
ORIGINAL**

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call again I might see them. I never called there afterwards.
but promptly commenced the suit.
Sworn to before me this

2d day of March, 1892.

Wm B. Smith
Comptroller

John H. Fisher

**POOR QUALITY
ORIGINAL**

0112

State of New York,

City of Brooklyn,

County of Kings, ss:-Charles Christman being duly sworn, deposes and says:

That he is a clerk in the employ of Fisher & Voltz, Attorneys, &c. of No. 99 Broadway in the City of Brooklyn. That in the month of January, 1892, the summons and complaint in an action then pending in the Supreme Court of Kings County in which Horace F. Burroughs, Senior was plaintiff and Edward F. Eberstand and others were defendants, was delivered to this deponent for service on the various defendants. That on or about the 2d day of February, 1892 deponent called at the office of the defendant Edward F. Eberstadt No. 15 Broadway, in the City of New York to serve him with process. That he did serve said defendant with the summons and complaint and then inquired of him if it would be necessary for this deponent to serve the additional defendant in the suit, to which Mr. Eberstadt replied that deponent had better see Mr. Delancey Nicholls, who could tell deponent all about it. That he would see that Mr. Horace F. Burroughs, Junior (the plaintiff's assignor) would land in State Prison in a short time.

Sworn to before me this

3d day of March, 1892.

Charles Christman

Chas. O. Grim

Notary Public,

Knip Co. N.Y.

POOR QUALITY
ORIGINAL

0113

City Court of Brooklyn.

----- X
Clifford L. Middleton and Donald S. :
L. Lee as surviving members of the :
copartnership firm of Middleton & Co. :
-- vs -- :
Horace F. Burroughs. :
----- X

Said complaint. complaining against said defendant
alleges:

1

For a first cause of action.

1st. That at the time of the transactions herein-
below mentioned, the said plaintiffs, together with one
John N. B. Middleton, were co-partners in trade doing
business under the firm name of Middleton & Co. in the City
of New York. That thereafter, to wit: on the 4th day of
May 1890, the said John N. B. Middleton died leaving the
said plaintiffs the surviving members of the said firm of
Middleton & Co.

2nd. That on or about the 15th day of August, 1888
the said firm of Middleton & Co. made a contract in writing
with the said defendant, wherein and whereby the said de-
fendant agreed to sell and deliver to the said firm of
Middleton & Co. at Brunswick, Georgia, for shipment to
Point Pitre Guadeloupe, about 186,500 feet of pitch pine
lumber and 75000 shingles for and at the agreed price of
fourteen and 50-100 Dollars net per thousand feet for the

**POOR QUALITY
ORIGINAL**

0114

pitch pine lumber and four and 50-100 Dollars per thousand for the five inch shingles and six and 50-100 Dollars per thousand for the six inch shingles, both lumber and shingles to be delivered free on board at Brunswick, Georgia; and it was further agreed as part of said contract, that the quality of the pitch pine lumber and shingles was to be "free of sap" and that the said defendant should furnish to the purchaser an inspectors certificate, certifying the quality of said lumber and that the said defendant should hold the purchasers harmless in case of claim arising by reason of the unsatisfactory quality of the lumber or shingles from GUadeloupe.

3rd. On information and belief, that thereafter in pursuance of said contract, the said defendant did deliver at Brunswick, Georgia, on board the schooner "Lester A. Lewis" chartered by Middleton & Co. 177,257 feet of pitch pine lumber and 75000 shingles; but that the said pitch pine lumber was not free of sap, but contained sap and was of ~~xxx~~ a much inferior quality; that the said defendant in order to obtain from Middleton & Co. the purchase price of said lumber, did fabricate a false and fictitious inspectors certificate, certifying that said lumber was free of sap and purporting to be signed by one "William P. Mitchell, Inspector", whereas said certificate was not signed by William P. Mitchell but by the defendant, and said lumber was never inspected by any inspector named William P. Mitchell. That said Middleton & Co. hearing that said lumber was not free of sap declined to pay the purchase price thereof and agreed with said defendant to submit the question of their duty so to do to one B. F. Metcalfe; that

**POOR QUALITY
ORIGINAL**

0115

said defendant presented to said Metcalfe said false certificate of inspection and claimed that Middleton & Co. should pay said purchase price in full and reserve any claim against defendant until it was learned whether any claim was made from Guadeloupe, and the said Metcalfe so decided and the said Middleton & Co. was thereby compelled to and did pay to said defendant Burroughs the sum of Two thousand five hundred seventy and 23-100 (\$2,570.23) dollars being the agreed purchase price of said lumber.

4th. That said firm of Middleton & Co. shipped said lumber to J. Fleuret & Co. of Guadeloupe, and said firm of J. Fleuret & Co. made a claim against said Middleton & Co. of one thousand ninety and 15-100 Dollars on account of the unsatisfactory condition of said lumber and deducted the same from the remittance to said Middleton & Co. and the said Middleton & Co. were compelled to, and did allow the said claim and suffered loss to the amount thereof. On information and belief that the difference in the market price of an equal amount of pitch pine lumber "free of sap" and the market price of the lumber so delivered by said defendant was upwards of ten thousand and ninety and 15-100 Dollars (1090.15) and that the said firm of Middleton & Co. were damaged by said wrongful act of defendant in the sum of One thousand ninety and 15-100 Dollars with interest from 8th February, 1889.

5th. On information and belief, that no bill of lading of the said 75000 shingles was delivered to said Middleton & Co. but that the same together with the said shingles was held and owned by a bank and the said shingles on their arrival at Guadeloupe were seized and sold by said

**POOR QUALITY
ORIGINAL**

0116

bank, and the said firm of Middleton & Co. through J. Fleuret & Co. were compelled to buy in the same to fulfill their contract and the amount paid for the same over and above the contract price was Thirty one and 37-100' (\$31.37) Dollars, which amount was lost to said Middleton & Co. because the said defendant did not deliver said shingles to Middleton & Co. as agreed.

11

and separate

For a second cause of action, said plaintiffs repeat the allegations hereinbefore contained. and further allege that the said firm of Middleton & Co. acting through and in the name of said plaintiffs Donald S.L. Lee agreed to submit the said matters in dispute to arbitration, and on or about 15th May 1889, by agreement signed by said defendant and said plaintiff Donald S.L. Lee acting for said Middleton & Co. said differences were submitted to arbitration, and that on or about June 7, 1889, before said case was finally submitted to the arbitrator, said defendant revoked the submission and that said firm of Middleton & Co. incurred costs and expenses and suffered damages in preparing for the arbitration and conducting the proceedings up to the time of revocation to the amount of One hundred twenty-nine and 72-100 Dollars.

WHEREFORE said plaintiffs demand judgment against defendant for the sum of One thousand two hundred fifty one and 24-100 Dollars with interest from February 8, 1890.

Baldwin & Blackmar,

Plaintiff's Attorneys,

55 Liberty St. N. Y.

POOR QUALITY
ORIGINAL

0117

City Court of Brooklyn.

-----X
Clifford L. Middleton and Donald S. L. :
Lee as surviving members of the copart- :
nership firm of Middleton & Co. :
-- vs -- :
Horace F. Burroughs :
-----X

The answer of the defendant to the complaint of the
plaintiffs herein respectfully shows to this Court:

1st. That he admits the allegations set forth in
paragraph one of said complaint to be true.

2nd. That he has not sufficient information or
knowledge to form a belief as to the truth of the allegat-
ions set forth in paragraph two of said complaint as to the
terms of the said contract and he therefore denies that the
same was as is therein set forth and demands that reference
be had to the said contract itself for confirmation or
refutation thereof.

3rd. That upon information and belief he admits the
shipment of the lumber &c as set forth in said paragraph
three of said complaint, but denies that the same was of an
inferior quality as averred in said complaint but avers that
the same was of a character and quality in accordance and
compliance with the terms, stipulations and conditions of
the said contract.

But defendant denies that either in order to obtain from
said Middleton & Company, the purchase price therefor, or for
any other purpose whatsoever he, as in said paragraph three
of said complaint alleged "did fabricate a false and

**POOR QUALITY
ORIGINAL**

0118

fictitious Inspector's Certificate, certifying that said lumber was free from sap and purporting to be signed by one William P. Mitchell, Inspector." And defendant further denies that he signed the said certificate or any certificate whatsoever, or in any manner or name whatsoever, with respect to the quality of the said lumber, or to any inspection thereof, as in said paragraph three alleged.

That defendant further answering the said paragraph three of said complaint, admits that the said firm of Middleton & Company did, at one time, decline to pay the purchase price of said lumber, and that thereupon, and upon agreement therefor, between the plaintiffs and ^{the said} ~~this~~ defendant, the question of the said plaintiffs "duty so to do" was submitted to one, B. F. Metcalfe, but defendant denies that he presented to the said Metcalfe or to any one whatsoever any false certificate of inspection, either respecting said lumber, or anything else, but admits, that he did claim before said Metcalfe, "that the said plaintiffs should pay the purchase price of said lumber in full, and reserve any claim against defendant that they might have thereon, until it was learned whether any claim was made from Guadeloupe"- and that the said Metcalfe so decided, and the said Middleton & Company, did therefore pay the sum set out in said paragraph three of said complaint.

4th. That defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph four of said complaint and therefore denies the same.

5th. That defendant admits that no bill of lading for the shingles referred to in paragraph five of said

**POOR QUALITY
ORIGINAL**

0119

complaint was delivered, but denies each and every other allegation in said paragraph five contained, for want of any knowledge or information thereof sufficient to form a belief as to the truth thereof.

6th. That the said defendant in answer to the second cause of action set forth in said complaint says.

That he admits the agreement to submit the matters in dispute to arbitration was so made but avers, that thereafter and before the matters in dispute were heard and decided by the Arbitrator originally selected, this defendant for good and sufficient reasons therefor, revoked his consent for the submission of such matters to arbitration, but denies that either the sum alleged to have been the amount "incurred in costs and expenses on such arbitration", or that any other sum or sums whatsoever was justly or properly incurred, or that the said plaintiffs suffered any damage for which they are entitled to recover in this action.

WHEREFORE he demands judgment against the said plaintiffs that the complaint herein may be dismissed with the costs and disbursements of this action.

Brooke & Brooke

Attorneys for defendant

111 Broadway

New York.

POOR QUALITY
ORIGINAL

0 120

The City Council of Brooklyn

Clifford L. Muddiman

spol

apk

Amos J. Cummings

Copy Readings

POOR QUALITY
ORIGINAL

0 12 1

CITY COURT OF BROOKLYN

-----X
Clifford L. Middleton et al
 against
Horace F. Burroughs Jr.
-----X

This cause having been tried before, and submitted to the Court, without a jury, a jury trial having been waived by the parties, the Court doth now hereby make and file this decision, as follows:

F I N D I N G S O F F A C T .

I. Prior to October 14th, 1888, the defendant sold and delivered to one Meduel, on board the brig "Alice", at the port of Brunswick, Georgia, a cargo of pitch pine lumber known as Merchantable under the rules of the Savannah Lumber and Timber Association adopted in 1883. This lumber was furnished to defendant by John Calville of Brunswick, Ga., and shipped to Guadaloupe.

II. On October 14th, 1888, the plaintiffs who were commission merchants at N. Y., and agents of J. Fleurot & Co of Guadaloupe, in order to fill an order from that firm, entered into a written contract in their own names with defendant, whereby the defendant agreed to sell and deliver to plaintiffs at a future day, free on board vessel to be furnished by them, at said port about 186,500 feet of pitch pine lumber of various sizes at \$14.50 per thousand feet and 75,000 cypress shingles at various prices according to speci

**POOR QUALITY
ORIGINAL**

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fied sizes, all free of sap; and defendant agreed to cause the lumber to be inspected by a competent inspector at ~~MM~~ said place and to furnish a certificate of such inspection to plaintiffs, and to hold plaintiffs harmless against loss arising from unsatisfactory quality of the lumber and shingles from Guadaloupe.

III. Although plaintiffs had never seen the lumber previously shipped by defendant for said Meduel, they, nevertheless, referred defendant to that cargo as a guide for the quality of lumber required under said contract. Said Fleurot & Co., had led plaintiffs to believe that said Meduel cargo was satisfactory, and plaintiffs desired, and entered into, an oral understanding with defendant that the lumber to be shipped under said contract should be just such as that so shipped for said Meduel. They also cabled Fleurot & Co. that they could not procure all sizes free of sap & that firm cabled in answer to do the best they could. Plaintiffs reasonably believed that they were strictly following the instructions of their principals in this respect & in all their arrangements and acts with defendant.

IV. The plaintiffs chartered the schooner Lester A. Lewis for account of said Fleurot & Co., and sent her to said port to receive said lumber under said contract and defendant procured about 187,000 feet of said Merchantable lumber containing about 10 per cent of sap and completed the delivery thereof free on board said schooner at that port, January 10th, 1889. In the meantime plaintiffs delivered to defendant shipping instructions which contained, among other things drafts bill of lading so far filled out as to be

**POOR QUALITY
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appropriate for said Schooner in which plaintiffs were named as consignors and said Fleuret & Co., were named as consignees, the intention being that said bills of lading should be completed and signed by the master of ~~XMM~~ said vessel when she had received her cargo, and thus pass into the absolute control of plaintiffs, or said Fleuret & Co., as their consignees.

V. In the meantime plaintiffs employed a lumber inspector at said port to inspect said lumber for them, and he did inspect the same during shipment and when about 60 per cent was on board and made his report, from which plaintiffs learned that, while said lumber was fairly up to said Merchantable class, it nevertheless contained 10 per cent of sap and they never thereafter insisted or relied on any inspection by an inspector to be employed by defendant.

VI. The plaintiffs knew that said vessel was ready to said January 11th, 1889, and believed that the lumber on board was of said Merchantable class and contained 10 per cent of sap. In this belief they notified defendant of said per centage of sap but did not object to or refuse to accept the lumber. On the contrary they complained of delay in starting the vessel and urged that she should be immediately sent on her contemplated voyage.

VII. Thereupon said bills of lading were signed by said master and the vessel sailed for Guadaloupe January 11, 1889, with said cargo on board. The shingles were also a part of her cargo.

VIII. On Janu^ary 18th, 1889, defendant presented the

**POOR QUALITY
ORIGINAL**

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bills of lading to plaintiffs at N. Y. together with a paper which contained a specification of the lumber on board, at the foot of which was written: "Quality free of sap Wm. P. Mitchell, Inspector." Plaintiffs never requested the presentation of this certificate. It was wholly voluntary on defendant's part. The lumber had never been inspected by said Mitchell and was not free of sap; but plaintiffs knew that said certificate was false so far as it purported to state quality as absolutely free of sap and they never changed that belief. Along with these papers was defendant's bill for the lumber and shingles but no bill of lading for the shingles. Plaintiffs then sent all these papers to Fleuret & Co., at Guadaloupe on or before January 18th, 1889, together with their bill for their advances for the lumber, their commissions and expenses.

IX. Plaintiffs then, because of the sappy quality of said lumber, asked defendant to accept a payment on account to which request he refused to accede and insisted on payment for the lumber, but not for the shingles. Thereupon they agreed to submit the question of plaintiffs' duty to pay for the lumber to the decision of B. F. Metcalf who decided that plaintiffs must pay for the lumber; and they then on February 8th, 1889, paid \$2570.23 to defendant for the lumber intending the payment for that special object; but in making said payment they did not rely at all on said certificate so far as it purported to state quality. On the contrary they believed that said lumber was of said Merchantable grade and contained at least 10 per cent of sap, and paid therefor under that belief.

**POOR QUALITY
ORIGINAL**

0125

X. The vessel arrived at Guadaloupe about February 8, 1889, Fleurot & Co. complained to plaintiffs of the quality ~~XX XMM~~ but nevertheless tendered the same to their customer for whom they had ordered it. These parties, without notice to plaintiffs or defendant submitted their differences to arbitrators, who, notwithstanding the fact that the lumber was worth \$14.50 per thousand feet, decided to reduce the value to \$8.50 per thousand feet. Fleurot & Co. then remitted plaintiff the amount of their bill less \$1,090.11 for said deduction and a part of expenses of said arbitration; and plaintiffs then claimed this sum from defendant with interest. They made no claim respecting the shingles.

XI. Neither plaintiffs or said Fleurot & Co. ever returned or offered to return said lumber or otherwise place it at defendant's disposal. On the contrary said Fleurot & Co. kept it as their own property and sold it to their customers in Guadaloupe.

XII. Plaintiffs never made any effort to enforce their claim against J. Fleurot & Co., except by sending them their bill in January 1889 and requesting its payment.

XIII. On receipt of said remittance and claim plaintiffs entered into an agreement with defendant to submit said claim to arbitration. Before final submission to the Arbitrator defendant without just cause revoked the arbitration agreement and refused to proceed. Plaintiffs reasonably paid \$62, for stenographers' fees and \$12 for arbitrator's fees on that arbitration. They also paid \$25 to an expert in handwriting as a witness and \$25 which another party had

**POOR QUALITY
ORIGINAL**

0 126

paid said expert, but not at plaintiffs' request.

XIV. The plaintiffs, by removing said lumber from said port under said bills of lading after their own inspection thereof and with knowledge of its true grade and quality, accepted the same and thereby waived any inspection by an inspector employed or to be employed by defendant or the presentation of any inspector's certificate, and elected to stand on the indemnity clause of their contract for any reclamation to which they might be entitled.

C O N C L U S I O N S O F L A W .

1. The plaintiffs, by removing the lumber in question from the port of Brunswick, after actual inspection of the bulk and with knowledge of the real quality of the whole cargo accepted the same under their contract and thereby waived any objection thereto on the ground that it did not comply with the contract. They also thereby waived the provisions of said contract requiring inspection, and the production of a certificate of inspection, by an inspector to be employed or selected by defendant.
2. The defendant's act in producing an inspector's certificate was wholly immaterial to the rights or obligations of either party.
3. The plaintiffs have failed to establish any cause of action under said contract dated October 14th, 1888, or for fraud in obtaining the payment for said lumber.
4. The defendant was not justified in refusing to proceed with the arbitration and is ~~whereby~~ liable to pay

**POOR QUALITY
ORIGINAL**

0127

plaintiffs' Twelve dollars for arbitrator's fees and Sixty-two dollars for stenographers' fees paid by them, with interest thereon from July 1st, 1889, but not for either sum paid the expert witness.

5. Judgment is therefore directed in favor of plaintiffs and against defendant for the sum of Seventy-four dollars with interest from July 1, 1889, besides costs.

Dated July 28th, 1892.

N. H. Clement

J. C. C.

POOR QUALITY
ORIGINAL

0120

Mr City Council of Brooklyn

Clifford L. Middleton
Esq

NY

Horace F. Burroughs

Copy Findings

Recd July 28. 1892

POOR QUALITY
ORIGINAL

0129

10/31 OFFICE F
W. B. BURROUGHS,
Insurance ♦ and ♦ Collecting ♦ Agent,
DEALER IN
LAND AND REAL ESTATE.

REFERENCES AND CORRESPONDENTS:
SAVANNAH BANK AND TRUST COMPANY.
MERCHANTS' BANK, ATLANTA, GA.
FIRST NATIONAL BANK, MACON, GA.
FIRST NATIONAL BANK, BRUNSWICK, GA.

Brunswick, Ga., 27 Oct 1888

Dear Sir

~~Enclosed to please find "order"~~
"Calotype" if you care cut it
please telegraph Mr Burroughs
price, delivery to commence 25 Nov.
Have made arrangements for
shingles -

Respectfully

W. B. Burroughs

**POOR QUALITY
ORIGINAL**

0130

County of Glynn :
State of Georgia : SS

John Colville being duly sworn states as follows: I have been engaged in the Pitch Pine Lumber business for twenty five years. I am thoroughly familiar with the grades of Pitch Pine for foreign trade. I have filled orders for qualities to be absolutely free of sap- free of sap- Prime &c &c. I have shipped lumber to the West India Ports, and especially to Martinique and Guadelaupe. I shipped the cargo per Brig "Alice" January 4, 1888 to Guadelaupe quality free of sap. I brought to Brunswick for shipment on account of this cargo merchantable quality of Lumber S. T. & L. classification of 1883 and shipped all but the very sappy pieces. The quality known as merchantable S. T. & L. classification of 1883 contains clear lumber in considerable quantities. I am acquainted with M. P. Mitchell, Lumber Inspector. He inspected the cargo per Brig "Alice" He has been in the inspection business for fifteen years, and is a thoroughly reliable trustworthy man, and a competent judge of Pitch Pine Lumber.

The term "free of sap" is a term and does not signify that lumber is to be absolutely free of sap.

I was personally present at the interview between Mr. Horace F. Burroughs of New York and Mr. A. C. Banks Agent for L. Millen & Co. of Brunswick on the 29th day of April 1889, and examined the lumber that Mr. A. C. Banks then and there produced as a similar quality of lumber as delivered to Schr. "Lester A. Lewis" in December 1888. I heard Mr. Burroughs state to Mr. Banks that a claim had been made on the cargo on account of sap. I heard Mr. Banks state that the "Lester A" Lewis" cargo was one of the finest ever shipped from Brunswick, and in order to substantiate his statement showed Mr. Burroughs and myself lumber which he stated was identical with cargo per "Lewis" and which was "free of sap". Mr. Banks further stated that he threw out a large quantity of sappy lumber, and made it the same as a cargo now being shipped for the West Indies which was to be free of sap. Mr. Burroughs further questioned him about quality and turned over a large number of pieces of lumber, asking Mr. Banks just how he made the quality of cargo per "Lewis" just what pieces he rejected and just what pieces he shipped and Mr. Banks stated he threw out about 20 per cent of the cargo, and

**POOR QUALITY
ORIGINAL**

0131

State of Georgia :
County of Glynn : 22

2.

in going over piece for piece with Mr. Burroughs indicating each rejection and each piece he would ship he, Banks, convinced both Mr. Burroughs and myself that the proper quality was shipped. Mr. Banks further stated that any claim of account of quality of cargo per "Lewis" whether for sap or otherwise is a fraud and simply preposterous. Mr. Banks further stated that the lumber we now examined was from the same mill of same manufacture and of same quality as cargo per "Lewis" and that we could there and then judge precisely what was shipped, taking into consideration what was rejected. I never heard or knew of T. M. Willink, Inspector.

I know Wm. D. Wheelwright & Co. have hired an office in Brunswick some six months ago. They were never here before for ten years past.

The difference in price between merchantable S. & T. L. classification and free of sap is 50 cents per M. ft.

Sworn to this :
31st of May 1889 :

John Colville

W. J. Way, Notary Public
Glynn County, Georgia.

POOR QUALITY
ORIGINAL

0132

COURT OF GENERAL SESSIONS.

-----X
The People

against

Horace F. Burroughs.
-----X

Motion to dismiss indictment.

Fitzgerald, J.:

This indictment was filed in 1890. Previous to the submission of the matter to the Grand Jury, an examination, extending through several sessions, and covering a period of many months, was held before a Police Justice.

The indictment charges the defendant with the commission of the offense of forgery in the second degree, alleging that he forged an instrument, purporting to be the certificate of one William P. Mitchell, a lumber inspector, certifying to the quality of a cargo of lumber, shipped from Brunswick, Georgia, to a port in the West Indies.

This original document, the foundation of the indictment, was not among the papers, at the time of the submission of this motion; and, upon examination, the Court

**POOR QUALITY
ORIGINAL**

0133

2

discovered that it was in the possession of private parties, for over four years, without even a memorandum of its whereabouts being attached to the public records. The proceedings instituted for the recovery of the certificates are herewith submitted to the District Attorney, for such action as he may deem proper. It is obvious that a multitude of abuses are liable to arise, if original evidence, by which the commission of crime is sought to be established, is thus permitted to be removed and withheld from official custody.

It appears that, subsequently to the finding of this indictment, a civil action was brought, in the City Court of Brooklyn by the complainant herein (Lee) against the defendant herein (Burroughs), which resulted favorably to said Burroughs.

The consent of the District Attorney to the dismissal of this indictment is, as appears by his endorsement and the accompanying report of his assistant, based upon the erroneous impression that the question of fraud was the issue disposed of upon that trial.

The Court finds, from the record, that the decision in the action of Lee vs. Burroughs was that the defendant (Burroughs) was not responsible to plaintiff (Lee)

**POOR QUALITY
ORIGINAL**

0134

3

upon the indemnity clause of the original contract. The question of fraud was absolutely withdrawn from the consideration of the Civil Court.

Furthermore, it is admitted that, notwithstanding the decision in Burroughs's favor, a settlement was made in full by some person or persons on his behalf with Lee for the full amount of his (Lee's) claim.

Incidentally, it was shown that, at the time of such settlement, the alleged forged certificate was presumably within the control of Lee.

As the District Attorney's consent was given upon a misapprehension of the facts the Court must deny the motion, and would suggest that, in view of all the circumstances testified to upon this inquiry, a due regard for the furtherance of justice requires the submission of the question of defendant's guilt or innocence to the consideration of a jury.

POOR QUALITY
ORIGINAL

0135

The People
v

Horace F. Burroughs Jr

STENOGRAPHER'S TRANSCRIPT.

189

Memo denying
motion to dismiss
indictment

N.Y. June 26th 94

**POOR QUALITY
ORIGINAL**

0136

Wm. B. Stillwell.

L. B. Millen.

L. Johnson.

*Stillwell, Millen & Co.,
Pitch Pine Lumber & Timber
By the Cargo.*

Dictated by

Savannah, Ga.,

Jan. 4th. 1889

Horace F. Burroughs
21 Beaver St. New York.

Your letter second. Shall we dispatch "Lewis" with part cargo?
Our other vessels on demurrage. We cannot increase order to fill
shingle room.

D.M.Coll.

Signed. Stillwell, Millen & Co.

C O P Y of telegram.

POOR QUALITY
ORIGINAL

0137

12/31

HORACE F. BURROUGHS

WHOLESALE LUMBER

OFFICE

21 BEAVER STREET.

Telephone Pearl 150.

Cable Address.

FENALABAMA.

New York Dec. 28 1888

Miss. Stillwell, Millen & Co

Savannah, Ga.

Dear Sirs-

Replying to your favor of the
26th I beg to say that I sincerely trust
there will be no demurrage on the "Lewis"
as such charges are now obsolete in the lumber
business. If the same are unavoidable however
you may value on me for the amount

Yours truly

H. F. Burroughs
Dated

POOR QUALITY
ORIGINAL

0138

HORACE F. BURROUGHS

WHOLESALE LUMBER

OFFICE,

21 BEAVER STREET.

Telephone Pearl 150.

Cable Address,

ENALABAMA.

New York 26th Dec 1888

Mess Stillwell Melbourn & Co.

Savannah Ga

Dear Sirs:

Your wire recd. saying you hoped to finish "Lewis" Jan'y 3rd - this is eminently satisfactory - for in that case demurrage will be avoided - as Sundays & holidays are excluded in $\frac{1}{2}$.
I sincerely trust you will succeed in your efforts and in such an event the same will be greatly appreciated.

Yours truly Horace F. Burroughs

POOR QUALITY
ORIGINAL

0139

Stillwell, Millen & Co.
Georgia and Florida Pine

*W. B. Stillwell
L. B. Millen
L. Johnson*

Dictated by Mr. W. B. S. Savannah, Ga.

Dec. 31st. 1888

Horace W. Burroughs Esq.

New York

Dear Sir:-

Yours of the 28th. inst to hand, and in case we incur demurrage on the Schr. "Lewis" we will make draft for same along with draft for amount of invoice. We have done some very hard work to avoid demurrage for you on this vessel, running such mills as we own a controlling interest in till late at night at a big fire risk, and we now see our way clear, with the exception of R.R. transportation. We have considerable of this lumber at the mills according to reports of the 29th, but are continually pushing up the R.R. people to move it to Brunswick.

According to our reports from Brunswick of the 29th. inst the shingles had not yet arrived there, and there may be some delay on account of the shingles. In case there is, we have requested our Brunswick Manager, Mr. A.C. Hanks to wire you direct, so that you can advise him what steps to take in this connection. We should think, if you were caused any demurrage by the delay of the shingles you could collect to that extent out of the parties furnishing the shingles.

Yours truly,

Signed. Stillwell, Millen & Co.

M. M. H.

Copy

POOR QUALITY
ORIGINAL

0140

Form No. 1.

THE WESTERN UNION TELEGRAPH COMPANY.

This Company TRANSMITS and DELIVERS messages only on conditions limiting its liability, which have been assented to by the sender of the following message. Errors can be guarded against only by repeating a message back to the sending station for comparison, and the company will not hold itself liable for errors or delays in transmission or delivery of Unrepeated Messages, beyond the amount of tolls paid therefor, nor in any case where the claim is not presented in writing within sixty days after sending the message.

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

THOS. T. ECKERT, General Manager.

NORVIN GREEN, President.

NUMBER	SENT BY	REC'D BY	CHECK
11804	nc	nh	gpd

Received at ATLANTA, GA. 2300 Dec 26 1888

Date My 26

To Stillwell mullen & Co

when will Lester a Lewis
finish ~~loading~~ answer
quick

H. J. Burroughs

POOR QUALITY
ORIGINAL

0141

21 Beaver is

Mill & Railroad Rebuilding
we hope finish Lewis Jan 32
may be later

**POOR QUALITY
ORIGINAL**

0142

Wm. B. Stillwell.

L. B. Millen.

L. Johnson.

*Stillwell, Millen & Co.,
Pitch Pine Lumber & Timber
— By the Cargo. —*

Dictated by

Savannah, Ga., 12/26 1888

Horace F. Burroughs.

21 Beaver St. New York N.Y.

Mills and Railroads permitting we hope finish "Lewis" January
third. May be later.

D.M.Paid.

Sig ed. Stillwell, Millen & Co.

C O P Y of telegram.

POOR QUALITY
ORIGINAL

0143

12/9/88
HORACE F. BURROUGHS

WHOLESALE LUMBER

OFFICE

21 BEAVER STREET.

Telephone Pearl 156.

Cable Address.

FENALABAMA.

New York Dec 24th 1888

Messrs Stillwell Millwood & Co
Savannah, Ga.

Gentlemen
(Messrs Everett & Boyle will ship
Security five thousand (5000) Shingles
on board Sch. Lester & Lewiswood at
Brunswick. Please instruct your Agent
at Brunswick to embody that quantity
in Bill lading for that cargo.)

POOR QUALITY
ORIGINAL

0 144

Wm. B. Stillwell.

L. B. Millen.

J. L. Johnson.

Stillwell, Millen & Co.,
Pitch Pine Lumber & Timber

By the Cargo.

Dictated by W.B.S.

Savannah, Ga., Dec. 26th. 1888

Mr. Horace F. Burroughs,
21 Beaver St New York, N.Y.

Dear Sir:-

Your favor of the 24th. to hand and same will have
our attention. Please advise us fully by return mail as to your
wishes should any demurrage accrue on Schooner "Lester A. Lewis"
We are doing our utmost to avoid such a contingency, but everybody
& everything is more or less demoralized with us at this time.

Wishing you the compliments of the season, we are,

Yours truly,

Signed. Stillwell, Millen & Co.
H.L.R.

C O P Y-----

POOR QUALITY
ORIGINAL

0145

Form No. 1.

THE WESTERN UNION TELEGRAPH COMPANY

This Company TRANSMITS and DELIVERS messages only on conditions limiting its liability, which have been agreed to by the sender of the following message. Errors can be guarded against only by repeating a message back to the sending station for comparison, and the company will not hold itself liable for errors or delays in transmission or delivery of Unrepeated Messages, beyond the amount of tolls paid thereon, nor in any case where the claim is not presented in writing within sixty days after sending the message.

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

TEOS. T. ECKERT, General Manager.

NORVIN GREEN, President.

NUMBER	SENT BY	REC'D BY	CHECK
131 my	NL	OK	10 Paid
SAVANNAH, GA. 505 P			

Received at

Dated New York 12/18 1888
To Stillwell Miller & Co

Has Lester A Lewis been
guaranteed for fifteen days answer
Herace J. Pennington

POOR QUALITY
ORIGINAL

0146

Horace P. Burroughs.

Lewis report for cargo
tomorrow morning, ^{best letter} ~~best letter~~ ^{Lumber}
ready will push Mills, all possible
writing particular

**POOR QUALITY
ORIGINAL**

0147

Wm. B. Stillwell.

L. B. Millen.

L. Johnson.

*Stillwell, Millen & Co.,
Pitch Pine Lumber & Timber
By the Cargo.*

Dictated by

Savannah, Ga.,

Dec. 18th. 1888

Horace F. Burroughs, Esq.

21 Beaver St. New York

"Bawis" reports for cargo tomorrow morning. But little lumber ready
Will push Mills all possible. Writing particulars.

Signed. Stillwell, Millen & Co.

N.M. Paid. C O P Y-----

POOR QUALITY
ORIGINAL

0148

Form No. 1.

THE WESTERN UNION TELEGRAPH COMPANY.

This Company TRANSMITS and DELIVERS messages only on conditions limiting its liability, which have been assented to by the sender of the following message. Errors can be guarded against only by repeating a message back to the sending station for comparison, and the company will not hold itself liable for errors or omissions in the transmission or delivery of Unrepeated Messages, beyond the amount of tolls paid thereon, nor in any case where the claim is not presented in writing within sixty days after sending the message.

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

NORVIN GREEN, President.

NUMBER	SENT BY	REC'D BY	CHECK
168 ny	Gn	Mb	1/17
SAVANNAH, GA.			

Received at _____ 1888

Dated _____

To _____

Lester A Lewis arrived on

thirteenth rush Cargo quickly as possible

Trace Y Burroughs

POOR QUALITY
ORIGINAL

0149

Wm. B. Stillwell & Co.

L. B. Millen.

L. Johnson.

Stillwell, Millen & Co.,
Pitch Pine Lumber & Timber
By the Cargo.

Dictated by Mr. W.B.S.

Savannah, Ga., Dec 17th. 1888

Horace F. Burroughs,

New York

Dear Sir:-

Your telegram of even date to hand, and we will do all possible for you on the Schr. "Lewis" We hope she will be detained for some days at quarantine getting out her balast, as our mills are still in a bad condition though we are pushing them up daily.

Yours truly,

Sig ed. Stillwell, Millen & Co.

M.F.M.

C O P Y---

POOR QUALITY
ORIGINAL

0150

HORACE F. BURROUGHS

WHOLESALE LUMBER

OFFICE,

21 BEAVER STREET,

Telephone Pearl 150.
Cable Address
FENALABAMA.

New York Nov 24 1888

Messrs Stillwell, Miller & Co
Savannah Ga.

Dear Sirs:-

Enclosed please find shipping documents for Schr. "Lester A. Lewis" which is to load at Brunswick order closed with you by our Mr. Heineman. documents consists of:-

3 Bills of Lading

4 Specifications

1 Charter Party

Also envelope addressed to Messrs J. Fleurat & Co. Point a Pitre - in which please enclose and send by vessel

1 Bill of Lading (Consignee's Copy)

1 Specification

1 Charter Party

POOR QUALITY
ORIGINAL

0151

HORACE F. BURROUGHS

WHOLESALE LUMBER

OFFICE,

21 BEAVER STREET,

Telephone: Pearl 150.

Cable Address,

PENNSYLVANIA.

S. M. Co
21

New York Nov 24/1888

Send remaining papers to me in N. Y.
viz: -

3 Bill of Lading

3 Specification

Yours very truly
Horace F. Burroughs
per E. M. W.

POOR QUALITY
ORIGINAL

0152

Stillwell, Millen & Co.
Georgia and Florida Pine

*W. B. Stillwell,
L. R. Millen,
L. Johnson.*

Dictated by L.R.M.

Savannah, Ga.

Nov. 24th. 1888

Horace F. Burroughs, Esq.

New York

Dear Sir:-

We have your favor of the 22nd. inst. We sincerely trust that your vessel will not arrive at Brunswick, before the time we have named in contract for delivery of cargo, as, with the very heavy storms we have recently had in this section, and other mishaps, we are so much behind on our orders, it may be difficult for us to do any better than time named, in point of delivery.

Should the vessel arrive in advance of the time named however, we will do our utmost for your account.

Yours truly,

Signe . Stillwell, Millen & Co.

M.F.M.

C O P Y-----

**POOR QUALITY
ORIGINAL**

0153

HORACE F. BURROUGHS

WHOLESALE LUMBER

OFFICE,

21 BEAVER STREET,

Telephone Pearl 156.

Cable Address,

ALABAMA.

New York Oct 16th 1888

Order Carotyper

3000	2x2
6000	2x3
10000	3x3
20000	3x4
35000	4x4
2000	3x5
1000	3x6
15000	4x5
2000	4x6
20000	5x5
8000	5x6
8000	6x6
4000	6x10
1000	6x8
4000	8x8
<u>139000</u>	

20 to 40 feet long

4000	8x8
4000	8x12
2000	8x10
<u>10000</u>	

20 to 40 feet long

2000	4x8
2500	3x12
2000	3x14
1500	4x10
2500	4x12
1000	4x14
<u>11500</u>	

20 to 40 feet long

1000	2x10
5000	2x12
3000	2x14
<u>9000</u>	

20 to 40 feet long

2000	3/4 x 14
5000	1 1/4 x 6
5000	1 1/4 x 12
3000	1 1/2 x 12
2000	1 1/2 x 14
<u>17000</u>	

20 to 40 feet long

186500 Total

25000 - 4" } Dried
25000 - 5" } 50 in a bundle
25000 - 6" }

75000 Split Cypress Shingles.

Order may be increased or decreased of 10%. In the latter case do not decrease sticks from 2x3 to 3x5 and in the former case those dimensions may be increased - That is the 2x3 & 3x5

Quality Free of Sap

**POOR QUALITY
ORIGINAL**

0154

-----X
The People of the State of New York
against
Horace F. Burroughs Jr.
-----X

State of New York
County of Kings. SS.

H. F. Burroughs being duly sworn,
says:- I reside at 197 Clinton Avenue Brooklyn, N. Y. and
am upwards of sixty years of age. The defendant is my son.
He left New York on or about November 7, 1891, under the
advice of his physician to go to South of France, and was to
go thence to such point as should be determined by his medi-
cal adviser there to try medicinal baths. His purpose was
to go to Aix-Les-Bains in the South of France unless other-
wise advised. He did go to Aix- les-Bains and he went in
good faith relying on said medical advice of his New York
physician and not for any other purpose.

The name of said New York physician is Dr. W. B. Pritch-
ard, No. 353 West 58th Street, N. Y. City. I have seen him
personally to consult with him about my son's health. At
the time of my son's departure I had no idea that this cause
would be brought on for trial until he could make said trip
and return, which I believe he fully and in good faith in-
tended to do. I am surety in the recognizance for my son's
appearance in this action and hereby respectfully ask that
the trial of this action may be postponed until say the end
of May 1892, by which time my son can have tried the treat-

POOR QUALITY
ORIGINAL

0155

ment which he has gone abroad to try for his health. I respectfully refer to the affidavit of my son dated at London, England February 22, 1892 and the certificate of his physician there under same date and the affidavit of Dr. Pritchard hereto annexed for a statement of the nature of my son's disease. He has been suffering from this difficulty more or less for two years. In the summer of 1890 he was utterly prostrated by this difficulty, confined to his bed for over two months (I think that was the time) under constant medical treatment. He suffered intensely and constantly. A year ago this present winter he was again brought to bed from this same difficulty- taken in November and after confinement to his bed where he was confined under Dr. Janeway being in consultation with Dr. Pritchard at request of the latter.

By the advice of these two physicians he was removed as well as he could be, in bed so far as he could be thus accommodated, in charge of nurse and two assistants, and taken to Hot Springs, in North Carolina. He had to be carried from the train to his hotel and to keep his bed on his journey. I visited him while there in Hot Springs. He was confined to his bed there for several weeks except for some time prior to his return to New York. He returned to said City of New York considerably improved.

On the approach of cold weather this last Autumn, the symptoms of his disease reappearing, Dr. Pritchard sent him to the baths in France above named.

His presence in London February 22, 1892, as I verily believe is the result of messages sent to him respecting the setting down of this cause for March 10th now next.

I have ~~had~~ had to-day a consultation with Dr. Pritchard

POOR QUALITY
ORIGINAL

0 156

and he stated to me that there would be great danger in my
son's return to New York before the latter part of May and
I verily believe said statement to be true.

Sworn to before me this }

5th day of March 1892.

Horace F. Burroughs

Rougie Horne.

NOTARY PUBLIC, NEW YORK CO.

POOR QUALITY
ORIGINAL

0157

In re
People of the State.
of New York vs
Horace J. Bumgarth Jr

City and County of New York;

William Broadbent
Pritchard being duly sworn says
I am a practicing Physician in
the City of New York and have an office
at No 353 West 58th Street New York
City; I am engaged in general practice
and am a Lecturer on Mental &
Nervous diseases in the New York
Polyclinic Hospital.

I personally know Horace J.
Bumgarth Jr. - for the past three years
I have been his Physician and he has
needed almost constant professional
care during said time - and
has during said period, suffered
from repeated attacks of acute
inflammatory Rheumatism oc-
curring in the Fall, Winter & Spring.

In time of these attacks his
condition has been one of bed
ridden helplessness with enormous
ly swollen & inflamed joints - He

has in each instance required the constant attendance of trained Nurses day & night. The average duration of these Rheumatic attacks has been two months.

At one time (Jan'y 1891) his Condition was so serious that I advised his removal to Hot Springs N.C. which advice met the approval of Dr E.G. Janeway of this City who was called in consultation.

The Rheumatic attacks have been complicated by a blood disease which has greatly increased the gravity of his case. Under his condition one which imperatively demands radical measures to prevent a recurrence of his Rheumatic seizures - with the object of preventing a recurrence of these attacks & to rebuild his general health already seriously impaired by long continued illness. I have insisted that Mr Burroughs should spend the Fall Winter & Spring away from New York & preferably in the south of France.

I attended Mr Burroughs in

the summer of 1891 and at ~~that~~ again in November 1891.

At the time of my last professional visit he had already begun to show evidences of the tendency of his blood disease aggravated as it has been by the associated attacks of Rheumatism to develop a condition of ^{serious} ~~serious~~ mental impairment known as General Paresis - and at that ^{time} ~~time~~ I advised Mr Brumby that he must leave all business and leave this country advising him to go to the South of France where the climate would be more continuously mild & equable -

His return to New York at this time or before the warmer weather of late spring would be not only unwise but would in my judgment involve a very great risk

I would not advise his return before the latter part of May

Sworn to before me
this 5th day of March 1892

Dr. C. Copeland Notary Public

Range & Co filed in N. Y. Co

J. B. Mitchell

**POOR QUALITY
ORIGINAL**

0 160

POOR QUALITY
ORIGINAL

0161

Walter R. Henderson

143 Lewis Ave

~~677 Lafayette Ave~~

Brooklyn

POOR QUALITY
ORIGINAL

0162

Lockwood & Hill,
(BOREEL BUILDING.)

115 Broadway,

Luke A. Lockwood,

John L. Hill,

Joseph C. Russell, Jr.

New York, October 7th 1892.

Hon. Delancey Nicoll

District Attorney.

Orlome

Dear Sir:-

Agreeably to my oral engagement with you on the 4th inst, in The People vs. Burroughs, I now indicate the facts which I desire to establish in behalf of the defendant.

1. The date of the arrival of the Schooner Lester A. Lewis at Brunswick Ga., on her voyage in Dec. 1888 or Jan'y 1889, to receive the cargo of lumber mentioned in the indictment. This date I understand was December 18th 1888; but on that I am ready to be corrected.
2. That the lumber mentioned in the indictment was purchased by defendant from Stillwell Millen & Co., of Savannah Ga., and was a fair quality of what is known as Merchantable Pitch Pine under the rules of the Savannah Lumber & Timber association adopted in 1883.
3. That this lumber was not absolutely free of sap, - that is to say all heart, - but contained about ten per cent of sap.
4. That this lumber was brought to Brunswick Ga., by flat railway cars, from day to day, from Mills in the interior of Georgia to a point about three hundred yards from the dock where the Schooner Lester A. Lewis was moored, at which point it was unloaded from the railway cars on tram cars which carried it to the vessel.
5. That ~~the lumber was inspected by one Willink, a lumber inspector, employed by Stillwell Millen & Co.~~ the lumber was inspected by one Willink, a lumber inspector, employed by Stillwell Millen & Co.
6. That the lumber delivered was all on board the vessel on or before January 10th 1889; and, on that day, said inspector made his report of inspection in triplicate and made no other written statement thereof, which report was an accurate statement of the quantity and sizes of the pieces delivered to Burroughs by Stillwell Millen & Co.
7. That this report - in triplicate - was sent by mail from Brunswick Ga., on January 10th or 11th 1889 to the office of Stillwell Millen & Co., at Savannah Ga.
8. That this report, consisting of three papers exactly alike, - were mailed at Savannah Ga., January 12th 1889, in a letter written by that firm dated that day, addressed to the defendant at New York City, which letter also contained a bill for the lumber.
9. That the said three papers and said letter are now herewith marked for identification as follows:

(Mark the papers)

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ORIGINAL

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Lockwood & Hill
(BOREEL BUILDING.)

115 Broadway,

New York,

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Luke H. Lockwood,

John L. Hill,

Joseph C. Russell, Jr.

2.

10. That the Captain or Master of said vessel, on January 10th 1889, received a bill of Lading covering said lumber under which she sailed from said port of Brunswick.

11. That said vessel had cleared and actually sailed from said port on her voyage to carry said lumber on January 11th 1889.

12. That a duplicate of said Bill of Lading was sent by one Banks, the managing clerk of Stillwell Millen & Co., at Brunswick Ga., from that place, by mail, to said office in Savannah.

13. That said firm of Stillwell Millen & Co., on the 12th of January, 1889, mailed said Bill of Lading accompanied by its sight draft on defendant for the price of said lumber, in the evening mail from Savannah, the draft being dated January 12th, 1889, the letter containing them being addressed to the City Bank of New York City, to the end that the draft might be presented to and paid by defendant.

14. That Frank D. Aiken, who resided and did business at Brunswick, Ga., in December 1888 and January 1889, was fully competent to inspect and determine the quality of such lumber as this was; and, while said lumber was being loaded on said vessel, and after fully sixty per cent of it had been loaded and from time to time thereafter until all was loaded, did examine and inspect the same in behalf and at the request of Mess. Middleton & Co., of N. Y. City, and after he became fully aware of ~~the~~ ^{the} quality, made a report of the character and quality thereof to Messrs Wheelwright & Co., of New York City.

15. That one Colville early in 1888, had furnished a cargo of pitch pine lumber of said Merchantable grade and quality for the defendant in fulfillment of a contract between one Meduel of N. Y. City and defendant, which lumber said Meduel shipped on board the brig "Alice" from said port of Brunswick Ga., to some person at Pointe a Petrie, Guadeloupe and that but one such cargo was ever furnished by said Colville to said Brig "Alice".

16. That defendant during in ordinary course, introduced a man to said Colville at N. Y. City by the name of Wm. P. Mitchell as a lumber inspector, which man said Colville subsequently and about met at Brunswick Ga., where he talked with him about the pitch pine lumber business and inspecting lumber.

That said Colville saw the same man on another occasion at New York City and never knew him by other name than Wm P. Mitchell and always supposed and believed that that was his real name.

17. That said Colville has been a dealer in pitch pine lumber for many years doing business at Brunswick Ga., and other places in

POOR QUALITY
ORIGINAL

0164

Luke H. Lockwood
John L. Hill
Joseph C. Russell, Jr.

3.

Lockwood & Hill
(BOREEL BUILDING.)

115 Broadway,

New York,

1889

the South, and was familiar with the various grades and qualities of pitch pine lumber and that according to his understanding a cargo of pitch pine lumber known as Merchantable under the said rule of 1883 containing not over ten per cent of sap, is regarded and treated by lumber dealers as "free of sap".

I think the foregoing statement sufficiently indicates the names of witnesses to be examined with perhaps the exception of the clerks of Stillwell, Millen & Co., who type wrote the letter of January 12th 1889 and drew and sent the draft and Bill of Lading. I do not yet know those names.

It may be that you will be willing to stipulate to admit, when I come to defendant's case on this trial, that the facts above stated are as I state them. If so it may save the trouble and expense of issuing commissions.

I think Mr. Willink is at Dallas, Texas. He was there the last I heard of him.

In case commissions are issued I would like the privilege of an oral examination and I ask that they shall be open commissions.

If agreeable I will call at your convenience to arrange details.

Very Truly &c.

W. H. Hill

0165

POOR QUALITY
ORIGINAL

0166

THE Maritime Association OF THE Port OF New York

Produce Exchange Building, Beaver Street,

P.O. Station 2

New York Sept 27 1892

Honable J. Burroughes
Dear Sir,

Replying to your inquiry of
this date, asking if any Committee of this
Association has been authorized to represent
the Association, to protest against legal
action against you. I beg to say that no
such Committee has been appointed, nor
has any action been taken by the Association
thereon.

Very Respectfully, Yours,

Edward S. Atwood
President

POOR QUALITY
ORIGINAL

0167

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

June 13 1894

Papers ~~in~~ taken from en-
velope by Mr. Brooke
and sent to Judge Fitzgerald

Per.
Burroughs

**POOR QUALITY
ORIGINAL**

0158

Wm. B. Stillwell.

L. E. Millen.

L. Johnson.

*Stillwell, Millen & Co.,
Pitch Pine Lumber & Timber
—By the Cargo—*

Dictated by L.R.M.

Savannah, Ga., Nov. 16th. 1888

Horace
Thos. F. Burroughs, Esq.

New York

Dear Sir:-

We hereby accept your order for about 186 M ft of Georgia Pine as per schedule below, closed today with your Mr. Heineman per telegraphic authority, as follows-

QUALITY - Merchantable according to Rules of So. L. & T. Association of 1883

Delivery- to begin to vessel at Brunswick by January 5th 1889, at the rate of 15 M ft. per day, Sundays expected

PRICE- \$13.50 Thirteen Dollars and fifty cents, net f.o.b.

TERMS- Sight draft accompanying shipping documents.

Kindly confirm by return mail.

Yours truly,

Stillwell, Millen & Co.

M.F.M.

**POOR QUALITY
ORIGINAL**

0169

THE MARITIME ASSOCIATION
OF THE PORT OF
NEW YORK.
MARITIME EXCHANGE,
BEAVER AND NEW STREETS,
P. O. STATION P.

Horace B. Burnaby
Admssed

POOR QUALITY
ORIGINAL

0170

Lucas H. Lockwood,
John L. Hill,
Joseph C. Russell,

Lockwood & Hill,
(BOREEL BUILDING.)
115 Broadway,

New York, August 9th 1892.

Hon. Delancy Nicoll

District Attorney.

Dear Sir:

We herewith hand you papers herein specified; and thereupon, as Counsel for Horace F. Burroughs Jr., respectfully submit that no public interest can be advanced by the further prosecution of the Indictment now pending against him charging Larceny and Forgery: And we respectfully suggest that you will move that a nolle prosequi be entered thereon. If you shall not concur in this suggestion we ask of you to join with us in a consent that a commission or commissions may issue to take the depositions of witnesses at Savannah and Brunswick Ga., and we think one other at Dallas, Texas, - to the end that the Indictment may be speedily disposed of by trial.

The papers referred to are as follows:

1. The pleadings in the civil action in the City Court of Brooklyn entitled Middleton Et al vs. Burroughs.
2. A copy of the Stenographers notes of the trial of that action before his Honor Ch. J. Clement.
3. A copy of his Honor's Memo opinion in that case.
4. A copy of the formal decision in same showing his Honor's conclusions of fact and law.

We also take the liberty of calling your attention to a few points in support of our suggestion:

I.

We suppose it to be obvious that the pivotal points made by the prosecution against Mr. Burroughs are (1) that he signed or procured the signing of the so called "Mitchell certificate of Inspection" and subsequently delivered or caused the delivery thereof to Mr. Lee with intent to defraud and subsequently with like intent induced Mr. Lee to pay him for the lumber therein referred to.

It cannot now be asserted that Mr. Lee was actually deceived in any material point.

I. We suppose that the charges of forgery and uttering forged paper depend necessarily on two elements (1) that the writing in some manner affected a pecuniary demand or contemplated demand and (2) that it was made "with intent to defraud or injure".

II.

We suppose that the charge of Larceny depends

POOR QUALITY
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Lockwood & Hill
(BOREEL BUILDING.)

115 Broadway,

2.

New York

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Luke & Lockwood

John L. Hill

Joseph E. Russell, Jr.

necessarily on the theory that Mr. Burroughs, by means of this certificate, obtained some thing of value from Mr. Lee under such circumstances that he would have been guilty of False Pretenses under the former statute- that is to say: (1) That Mr. Lee relied on material representations contained in this certificate and was thereby induced to pay Mr. Burroughs for the lumber: (2) That Mr. Burroughs made such representations "with intent to cheat, defraud or injure" Mr. Lee or his firm.

III. We submit that in view of facts which must now be conceded, a jury would not be warranted in finding any of these essential elements. We shall therefore assume but only for the purpose of our said suggestion (1) that Mr. Burroughs did sign or procure the signing of this certificate, (2) that it was false in its material representations, (3) that he intended to present it to Mr. Lee and thereby induce him to pay for the lumber (4) that he did present it or cause the presentation thereof with like intent and (5) that Mr. Lee did pay for the lumber.

The other material ~~injuries~~, i.e. (1) the intent to defraud or injure, (2) the legal character and legal effect of the paper and (3) the obtaining of the money in reliance thereon are matters respecting which we beg to refer you to facts, about which we cannot differ.

IV. A summary of our position is this:

(a) Mr. Lee's firm became absolutely indebted to Mr. Burroughs for the lumber January 11th 1889, and at the time of payment, had no defense either partial or total against that claim, nor had it, at that time, any counter claim against that indebtedness. This will involve the idea that the production of the certificate had been waived before its presentation and hence that its representations and subsequent production were utterly immaterial.

(b) That however false these representations, they were, at their worst, simply made to induce Mr. Lee to pay the debt of his firm. And that, under these circumstances, there could have been: 1. No intent to injure or defraud, within the legal meaning of those terms.

The People vs Thomas 3 Hill 169.

The People vs. Griffin 2 Barb. 248.

2. Since the production of the certificate had been waived, it is impossible to say that it could, in any manner, have affected a pecuniary demand or contemplated demand.

POOR QUALITY
ORIGINAL

0172

Lockwood & Hill,
John L. Hill,
Joseph E. Russell, Jr.

Lockwood & Hill,
(BOREEL BUILDING.)

115 Broadway,

New York,

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(c) And on the charge of Larceny, we insist that Mr Lee's sworn declarations, repeated on three separate occasions, before different tribunals, conclusively show that he did not rely on the representations and that they did not affect and could not have affected his conduct in paying for the lumber.

II.

Now, then, do we propose to establish these propositions:
We submit.

I. That Mr. Lee has, over and over again, declared, that he informed Mr. Burroughs, (thru Heinemann his agent at that time) that he wanted just such lumber as Mr. Burroughs had shipped for one Meduel, by prior cargo, to Guadeloupe, - that that prior cargo was to be the guide for quality, - and that Mr. Burroughs did ship precisely that grade and quality of lumber and that Mr. Lee accepted it under the contract knowing just what its quality was. We do not expect to vary the terms of a written contract in this way, but merely to insist that Mr. Lee is estopped from insisting upon a strict construction of the phrase "free of sap" or on the production of an Inspector's certificate.

(a) Mr. Lee's declarations as to these statements to Heinemann are shown by his testimony before Judge Clement.

He had heard that Calville had shipped the Meduel cargo from Brunswick and the fact was that that lumber was satisfactory. Stenographers Notes p. 27-8.

He therefore looked for Calville's agent, - Mr. Burroughs (p. 29) and found Heinemann who was Burroughs' agent (p. 35-6) and Heinemann told him that Burroughs had shipped the Meduel cargo - p. 36 Q. And that is the reason you wanted to send them just such lumber? A. Yes, sir. (p. 36)

That was to be the guide for quality (p. 37-8)

And Heinemann testifies to the same facts, in substance, before Mr. Blackmar as Arbitrator, before Judge O'Reilly and before Judge Clement. But no matter about Heinemann.

(b) The fact was that Calville did ship the prior Meduel cargo from Brunswick Ga., for Mr. Burroughs. It went by the Brig Alice, and he never shipped but this such cargo.

(c) And that prior Meduel cargo was of the grade and quality known as merchantable under the rule of 1888 and contained 10 per cent of sap.

Steno notes before Clement J p. 136-7.

POOR QUALITY
ORIGINAL

0173

Lester A. Lockwood
John L. Hill
Joseph C. Russell, Jr.

Lockwood & Hill
(BOREEL BUILDING.)
115 Broadway,
New York

189

(d) And all the witnesses agree that Mr. Lee's cargo shipped by the Sch'r *Lester A. Lewis* was of exactly that grade and quality.

(e) And Mr. Lee knew that that was the grade and quality of the lumber put on board his schooner before he sent her to sea.

1. His agent Aiken, employed thro', Wheelright & Co., examined the cargo when 60 per cent thereof had been delivered and reported the facts to him.

2. He learned during shipment that the delivery was simply a fair grade of Merchantable and was not free of sap.
(p. 49, 271. Also p. 53, 65, 66.)

(f) And yet with this knowledge he accepted the cargo (see next point) and thereby waived any inspection by an Inspector employed or to be employed by Mr. Burroughs, or *incidentally* developed. See next point where this point is *incidentally* developed.

II. The inspection by an Inspector employed or to be employed by Mr. Burroughs and the production of any inspectors certificate was waived by Mr. Lee January 11th, 1889, and the certificate could not have been signed before January 14th 1889; and Mr. Lee's firm on January 11th 1889 became Mr. Burroughs debtor on that date and so remained when the certificate was presented and when Mr. Lee paid for the lumber.

(a) The contract between Mr. Lee's firm and Mr. Burroughs was executory and contained no warranty.

1. It is in writing, contains no express warranty and cannot be varied by parol.

Benjamin on Sales Sec. 621, 215 Note b p 194.
49 N. Y. 390. 25 N. Y. 523, 44 N. Y. 500.

2. No warranty can be implied.

60 N. Y. 643. Benjamin on Sales Sec. 690, 610,
58 N. Y. 368; 49 N. Y. 321; 29 N. Y. 362. 115 N. Y
225 cited by Judge C. Id. 539.

3. The presence of the indemnity clause shows that no warranty was contemplated.

(b) Acceptance under an executory contract where there is no warranty and no fraud waives all conditions precedent and leaves buyer without defense or remedy.

Reed vs Randall 29 N. Y.
Benjamin on Sales Sec. 690.

POOR QUALITY
ORIGINAL

0174

Luke W. Lockwood
John L. Hill
Joseph E. Russell, Jr.

Lockwood & Hill
(BOREEL BUILDING.)
115 Broadway,

5.

New York,

1889

(c) Removal from the place of delivery constitutes acceptance.
Pease vs. Copp 67 Barb. 138
Stafford vs. Pooler 1d. 143.

(d) This vessel sailed from port of Brunswick January 11 1889 with this lumber on board.

1. It was Mr. Lee's vessel chartered by him, sailing under bills of lading in which he was consignor and his customers in Guadeloupe were consignees, - the form of which bills of lading were dictated by Mr. Lee to Mr. Burroughs by letter Nov. 23, 1888.

2. Mr. Lee repeatedly urged Mr. Burroughs to send the ^{vessel} to sea after he learned that the lumber was simply merchantable and contained 10 per cent of sap.

Hence no possible ground for charge of fraud in procuring acceptance. He had said not a word about quality up to that time.

(e) All obligation to inspect by an inspector employed by Mr. Burroughs or to produce any inspectors certificate was thus waived.

1. Mr. Lee had accepted and was bound then to pay for what he had accepted.

Benjamin on Sales Sec. 610.

2. At best the obligation to produce an inspectors certificate was a condition precedent to the duty of payment. But all conditions precedent are waived by acceptance.

Reed vs. Randall 29 N. Y.

3. It is idle to talk of the existence of a condition precedent to the duty of payment when the debt has been incurred and it had been in this case.

Benjamin on Sales Sec. 690.

(f) There was no return or offer to return the lumber.

III. There was no remedy surviving acceptance because no warranty.

Reed vs. Randall.

IV. The indemnity clause in the contract furnished no basis of counter claim because there would have been no breach when this paper was signed, January 14th 1889.

(a) The indemnity was against loss arising from claims from Guadeloupe, - and the vessel had not yet reached that port.

(b) There was no loss for reasons stated by Judge Clement in his Memo Opinion and decision.

V. Hence Mr. Lee's firm was indefensibly indebted to Mr. Burroughs January 11th 1889.

POOR QUALITY
ORIGINAL

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Luke H. Lockwood
John L. Hill
Joseph E. Russell

6.

Lockwood & Hill
(BOREEL BUILDING.)
115 Broadway,

New York,

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VI. The proofs show that the certificate could not have been signed before January 14th 1889. The details of the papers could not have been known in N. Y. before that day. They were mailed from Brunswick to the Savannah office of Stillwell Millen & Co., January 11th and from that office to N. Y., January 12th (Saturday) and could not have arrived in N. Y., until Monday 14th.

See Innans testimony and Millens.

Heinneman's pretenses to contrary are absurd. Judge Clement didn't believe a word he said. (p. 293.)

III.

As for the charge of larceny Mr. Lee distinctly testified that he did not believe the certificate when he received it or paid for the lumber; that he then believed it false and never relied on it for quality.

See notes before Clement J. p. 69-70.

Regretting that we should have occupied so much of your time.

We remain

Yours &c.

Lockwood & Hill

W.

POOR QUALITY
ORIGINAL

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Folio 1

N. Y. Court of General Sessions
x
of the Peace.

-----x
The People

vs

Horace E. Satterthwaite.
-----v

Sir:

You will please take notice that upon the annexed
affidavit, and upon all the papers and proceedings herein,
I shall move this Court at a stated Term thereof, to be
held at the Court Room thereof, at part **I**, upon the 30th
day of April, ¹⁸⁹⁴ at 10.30 o'clock in the forenoon of such day,
for a dismissal of the indictment heretofore found therein,
on the 29th day of Mar., 1894, against the above named de-

endant. *Under Sections 668 & 671 of Code of Criminal
Procedure*

Dated, N. Y., April 27th, 1894.

Yours, etc.,

Charles W. Brooks,
x

Attorney for Defendant,

111 Broadway, N.Y.

To:

Hon. John B. Folger,
District Attorney.

POOR QUALITY
ORIGINAL

0177

N. Y. Court of General Sessions
of the Peace.

-----X
The People of the State
of New York
vs

Horace F. Burroughs.

-----X
City and County of New York, SS:

Charles W. Brooke, being duly sworn,
doth depose and say: That he is the attorney for the
above named defendant; that the indictment herein was found
on the 29th day of May, 1890, and is for the crime of for-
gery, containing three counts.

3 The first count charges substantially that in pur-
suance of a contract entered into by the defendant with the
complainant's firm (Donald S. L. Lee being complainant),
Middleton & Company, defendant agreed to furnish for ship-
ment to Guadeloupe, from Brunswick, Georgia, a cargo of
lumber which should be of certain specified lengths and
"quality free of sap," and that the defendant with respect to
such length and quality should furnish the certificate of a
4 lumber inspector, in relation thereto; and that in accordance
with such contract, the Schooner Eosier A. Lewis was loaded
and cleared from Brunswick for Guadeloupe. The defendant
thereafter presented such certificate, signed "quality free
"of sap," William P. Mitchell, Inspector.

The allegation of the first count is that the cer-
tificate was forged and that the intent was, through means
of the forged certificate, to procure payment under the
5 contract for the cargo of lumber. This constitutes the

POOR QUALITY
ORIGINAL

0178

2.

charges of forgery under the first count.

The second count charges defendant with "uttering
"and publishing" such alleged forged certificate. The
third count charges grand larceny in obtaining money by
means of a false token (to wit: the alleged forged certifi-
cate).

6 The dates set forth in the indictment are material.
The offence is charged to have been committed on October
15th, 1888. The nature of the charge indicates that what-
ever information respecting its subject-matter there was to
obtain must inevitably have been found within a few weeks
after the date of the contract. The indictment was not
found until the 25th day of May, 1890, some nineteen months
thereafter.

7 Prior to the commencement of any criminal proceed-
ings (and these matters are stated for the information of the
Court and for its guidance upon this motion, and none of
which can be contested or denied) upon the application of
the complainant's firm, an arbitration of their claim was
had before an arbitrator selected from the Produce Exchange.
This was within a very short time after the date of the con-
tract and after the arrival of a cargo and its examination
in Guadeloupe. The contract contained a very sweeping and
8 technical clause of indemnity, by the terms of which, the
defendant agreed to indemnify the complainant's firm against
all loss. Such arbitration arose from the defendant hav-
ing demanded his money under such contract, which he claimed
to be due, and the contract fulfilled, and such demand and
claim was the subject of such arbitration.

POOR QUALITY
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3.

The arbitrator decided in favor of the defendant, declaring that in accordance with the law of the Exchange, the complainant should pay the amount due under the contract and look for any counterclaim he might have to the indemnity clause thereof, and which monies were so thereafter paid to this defendant, and the long period before referred to elapsed before action was taken criminally, as aforesaid.

The principal witness for the people is one Walter R. Heineman, a man whose testimony relative to this matter has already been characterized by the courts as utterly unworthy of belief.

Heineman at the time of making the contract with complainant's firm, was in the employ of the defendant and acted as his agent in the negotiations respecting such contract, the defendant and complainant having little, if any, personal relations whatsoever respecting the same.

Heineman was detected by the defendant in dishonest appropriations of large sums of money which he had collected for the defendant and failed to turn over, one item alone being \$975.00 in amount. Defendant after having repeatedly demanded the repayment of the same by Heineman threatened criminal prosecution, and under this threat Heineman from some source procured the money and paid it.

The defendant was an active and energetic business man who had previously been in the employment of the Export Lumber Company at an enormous commission (to wit: 75 per cent. of the profits of his sales) and had at a then comparatively recent date, embarked in business on his own account. Heineman procured the money from the Export Lumber Company, undoubtedly, or some of its interests, and thereupon assert-

POOR QUALITY
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ed to Mr. Lee, the Complainant, that the Mitchell certificate was forged, and that he (Heineman) had seen Burroughs sign the name of Mitchell thereto.

13 It should properly be stated here that the general assumption of the prosecution, with regard to Mitchell, has always been that he was a myth.
x

It was sometime after this communication of Heineman's before any criminal proceedings were instituted. An examination was then had before Mr. Justice O'Reilly and such examination was complete and thorough, occupying several weeks. Justice O'Reilly withheld his decision for some months, but finally held the defendant, and on May 29th the indictment was found.
14 x

There never has been the slightest effort made to bring the indictment to trial, but on the contrary, some time after it was found, complainant's firm brought a civil suit to recover back the amount of money paid under the contract of the defendant, upon the sole allegation of fraud in the procurement of its payment. No other question was involved in the civil suit when tried.

16 The complaint did allege the defendant's responsibility under the indemnity clause, but the Court very properly decided that the two causes of action were incompatible, the one sounding in tort, and the other on contract.
x

Therefore the only question tried and adjudicated was that of the fraud charged as the crime in this indictment. Such suit was vigorously pressed ~~xxx~~ to trial before Chief Justice Clement, of the City Court of Brooklyn, commencing on May 11th, 1892, and occupying six or seven days.
17 x

The complainant there swore that his firm had re-

POOR QUALITY
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ceived an order from Fleuret & Company, of Guadeloupe, for a cargo of lumber similar to the cargo which had been previously shipped to a consignee there named Medville, and in accordance with his instructions he sought out the person who had shipped the Medville cargo, and, learning it to be the defendant, entered into a contract with him for a similar cargo to be shipped to Fleuret & Company.

It appeared during the trial that, in the custom of the lumber trade, the words, "quality free of sap" were not to be literally taken, but qualifiedly; that it was impossible to procure lumber absolutely free of sap of the lengths desired and designated in either the Medville or Fleuret cargo.

It further appeared that when sixty per cent' of the Fleuret cargo was loaded upon a schooner called the Lester A. Lewis, at Brunswick, Georgia, the complainant's firm sent an inspector of lumber to Brunswick, to examine and report upon the quality of lumber then on board.

Complainant then telegraphed his consignees, Fleuret & Company, as follows: "Impossible free of sap. Answer." The reply to which telegram was: "Do your best." And the complainant's firm then wrote in accordance with such despatch, as follows: "On Monday 15th we received your prompt reply 'Do best' which enabled us to close for the cargo at \$1450 per m. Furnishers, however, would not agree to begin the loading before the 20th of November. We have chartered schooner Lester A. Lewis, 200-10m feet capacity, \$9, and hope everything will turn out to your satisfaction."

In accordance with this correspondence the evidence discloses the cargo was shipped, but it also appeared that

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21 because of delays, the vessel instead of clearing in November did not clear till about January 15th, 1899, and there being also some detention of the vessel for a number of days at quarantine, when she did finally arrive in Guadeloupe, the term of expiration of the contract had some time elapsed.

The complainant himself upon the trial of the civil case, testified that he did not place the slightest reliance upon the Mitchell certificate; that his firm had the lumber examined by their own inspector, and knew that the lumber 22 contained a certain small percentage of sap and that the contract itself had been changed in order to procure the lengths desired, and the time extended from November to January, as between his firm and defendant's. And that in the payment of the money to the defendant his firm did not in any manner rely upon the certificate, and that in fact, no claim whatever would have been made against the defendant if the consignees had have accepted the cargo.

23 This testimony certainly seems to dispose of the charges made in the three counts of the indictment.

An examination of the indictment will disclose the fact that the only two witnesses to sustain the prosecution were Donald S. L. Lee, the complainant, and the witness Walter R. Heineman, the agent. The name of David S. Carvalho, whose name appears, having been examined simply as an expert in hand-writing respecting the certificate.

24 Mr. Lee has positively sworn in the civil suit referred to that the certificate, charged as the forgery, was not a matter of the slightest importance, inasmuch as they did not place a particle of reliance upon it for the payment of the money under the contract. That it did not in any

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7.

manner induce the payment of such money, but that on the contrary they understood substantially its merely technical relation, because they had previously had an examination, by their own inspector of lumber, of the cargo.

25- With regard to Heineken's examination, the judge, from the very beginning, checked the volume of examination and asserted that he would not rely upon Heineken's testimony regarding his assertion especially that he had seen the defendant write the name of Mitchell, the alleged inspector, to the certificate in question, but would entirely disregard his evidence.

26 It will be observed that so far nothing but the plaintiff's case in the civil action has been presented, and upon which case they were unable to sustain the allegation of fraud or their action, and that such action was a civil action where the proof required would be decidedly less positive to support a verdict than would the proof necessary to support a conviction in a criminal action.

27 The witness Lee had testified that the certificate formed no part of the reliance in the contract as between his firm and the defendant. The witness, Heineken, had so involved himself that the judge who tried the case repeatedly declared him to be unworthy of belief, and it is upon the testimony of these two witnesses that the prosecution must rely.

The defence, for the vindication of Mr. Burroughs, insisted upon presenting their case and settled every possible question at issue.

Mr. John Kearney, one of the principal, most influential and important stevedores of New York, testified

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28 testified that he knew William P. Mitchell very well; that
he knew him as a lumber inspector and had employed him as
such; that upon the day on which the certificate of Mitchell
was evidently prepared, he met Mitchell in defendant's office,
that certain schedules of a cargo of lumber shipped from
Georgia were presented by Mitchell and were the subjects of
conversation between Mitchell and Burroughs; that a memoran-
29 dum was handed to his clerk, one Thomas M. Sullivan, and in-
structed by defendant to put them in proper shape and to
append to them the certificate for Mr. Mitchell to sign.

That they were very lengthy, and it being late in the day,
they did not desire to wait, but the three of them left the
office together and the said Mitchell parted from them in
front of the Hoffman House Cafe after positive instructions
from defendant for him (Mitchell) to be sure to get to the
office as early as possible the next morning to sign the
30 certificate. Sullivan, the clerk, testified that he prepar-
ed such certificate and left it for Mr. Mitchell to sign;
and the next morning, it bearing that signature, took it
and delivered it to complainant's firm, and that Mr. Bur-
roughs was not even at the office at the time he took it and
did not get to his office until about his usual time, twelve
or one o'clock, that day, Mr. Burroughs' mornings being oc-
cupied at his lumber yards in Long Island City.

31 Mr. William H. Burke, one of the officers of the
Supreme Court (Justice Edward Paterson's special, private
officer) testified also that he knew William P. Mitchell
very well; that he had been introduced to him by the defendan
some time before this transaction, by the defendant, whom he
also knew; that he had taken his acknowledgements to various
papers, as a notary public, to which he (said Mitchell) had

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32- made affidavit in his presence, and that he knew the said Wil-
-liam P. Mitchell from his own description and from the de-
scription of the papers, to which he refers, as an inspector
of lumber.

This testimony again induced the Court to remark
that it would certainly not regard the statement of Heineman
in relation to the alleged signing of the certificate by the
defendant.

33- That every circumstance connected with this case
has been the subject of investigation and inquiry by several
assistants of the District Attorney's office, during the
first term of the present District Attorney, when such in-
dictment was found, ~~by~~ his successor, Hon. De Lancey Nicoll,
and under the present District Attorney, by the direction
of their respective chiefs; and in each case report was
made, as deponent is informed and believes, that a dismissal
thereof should be had, and that the people had no evidence
34- to sustain a conviction or to justify a trial. That the
assistants referred to are Andrew D. Parker, Esq., under the
present District Attorney during his first term, and John
F. McIntyre, Esq., during both District Attorney Nicoll's
administration and that of the present incumbent.

35- The defendant has been under indictment now for
four years. The complainant in this case has himself under
oath in an action involving substantially the same issue in-
volved in the trial of this indictment, under oath testi-
fied to such matters as must inevitably destroy every sug-
gestion or implication of criminality, or even of fraud, re-
lative to the counts for forgery, or the count for larceny,
by false pretenses, etc. The only other witness the peo-

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36 ple have, Heineman, has, with reference to the very subject-
matter of this indictment, been judicially subjected to scrutiny
of belief; three District Attorneys have had reports from
their assistants to show the matter was given for their in-
vestigation and inquiry, that the indictment should be dis-
missed and that the prosecution had no case, and judgment
therefore allowed and given, in view of these facts and all
the circumstances in this case, that an order should be en-
tered herein by this Court, dismissing the said indictment
and discharging the defendants from all responsibility there-
under.

Given to Harry, the
this

37

27th day of April, 1894.

William Erdmann
Notary Public
W.H. Co.

Charles W. Brooks

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ORIGINAL

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W. J. General Sessions

The People vs

vs

Horace F. Burroughs

Affidavit Notice
of motion

Charles M. Browne
Atty Gen Sess
111 Broadway
N.Y.

POOR QUALITY
ORIGINAL

0 188

via St. Kitts.

Pointe-a-Pitre (Guadeloupe) October 17th 1888.

J. FLEUROT & Co.

POINTE-A-PITRE

(GUADELOUPE)

John Cobill Esq.

Manufacturer of Yellow Pine.
Brunswick.

Georgia.

Dear Sir,

Your address has been given to us by Captain Stuart of the brig "Alice" - We had previously had occasion to see some of the Lumber you are shipping through Mr. Medville of New York to one of our yard dealers, and had found some of quite suitable quality.

We have for number of years been dealing with Jacksonville but the Lumber shipped from that place is short and if you could guarantee us good lengths we would be pleased to send you all our business. The cargoes vary from 175 to 200 m. but and 3 months are generally allowed for the shipment of same.

Please let us know if you are ready to receive our orders and quote price at which you could furnish us a cargo; we would also be obliged for probable rate of freight and price of Cypress Shingles, 4, 5 and 6 inch - Split not scrub.

As customary with our friends we would remit amount of Invoice upon receipt of the Lumber. Our principal references are: the Havemeyer Sugar Refining Company 112 Wall St. New York, L. W. & J. Armstrong, 114 Wall Street, New York, the Royal Insurance Company of Liverpool (England), the New York Life Insurance Company etc.

Anticipating the pleasure of soon hearing from you,

We remain, Dear Sir,

Yours Truly

J. Fleurot & Co.

POOR QUALITY
ORIGINAL

0189

DR. W. B. PRITCHARD,
355 WEST 58th STREET.

Mr. Horace A. Burroughs, of 209
E. 21st, has been under my professional
treatment during the past ten days -
for a very severe attack of epidemic
influenza, from which he has not
yet entirely recovered. He has been out,
I learn, within the past three days, in
spite of my express injunction to the contrary,
& the exposure incurred has developed
symptoms indicating a relapse, a condition
which would involve in my opinion
absolute danger to life should he attempt
to attend Court to-morrow.

Jan'y 22^d/90

W. B. Pritchard, M.D.

POOR QUALITY
ORIGINAL

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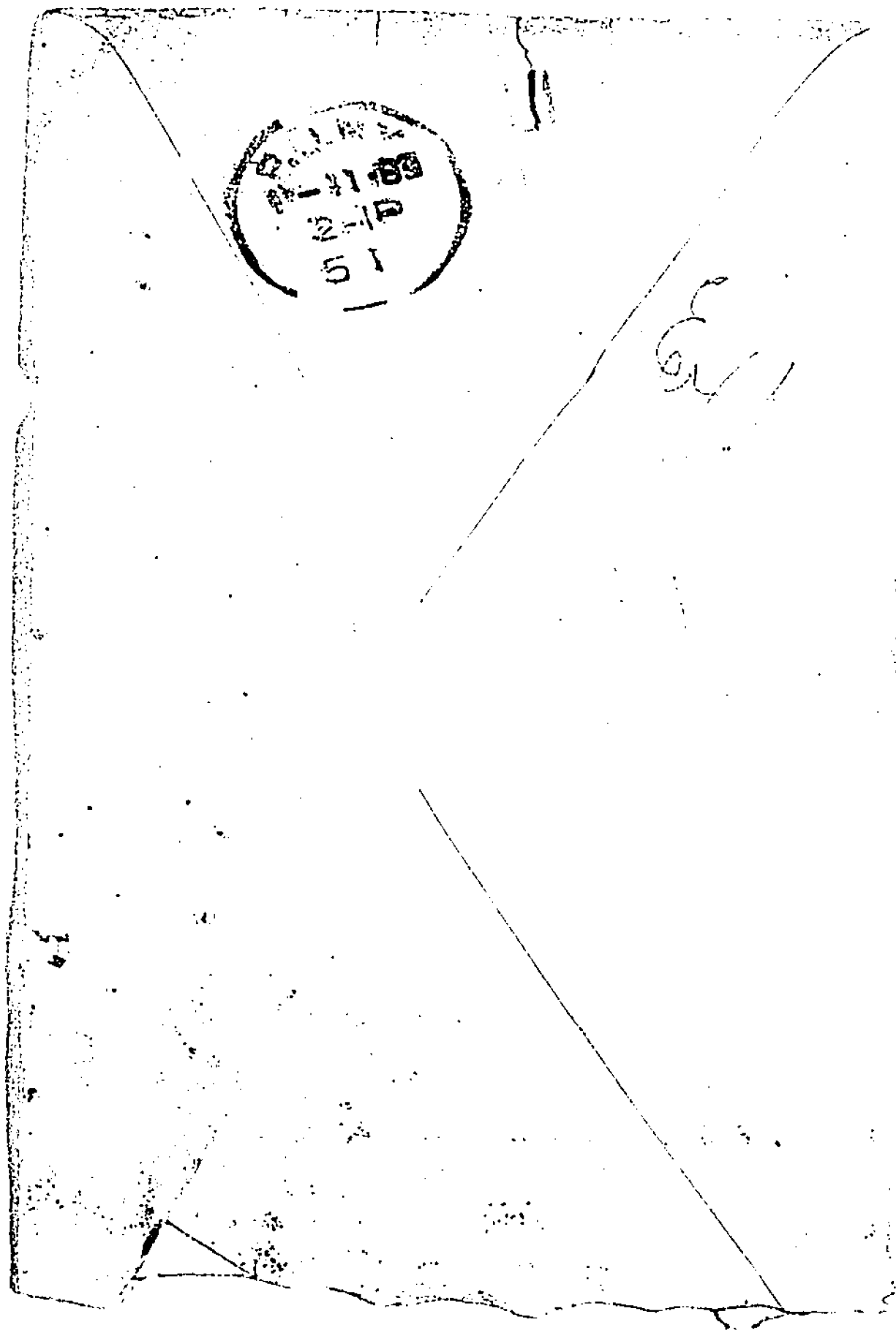
PIEDMONT LUMBER COMPANY,
ATLANTA, GA.



Mr. Justice O'Reilly,
Tomb's Police Court,
New York

**POOR QUALITY
ORIGINAL**

0191



POOR QUALITY
ORIGINAL

0192

THE CITY COURT OF BROOKLYN.

-----X
CLARENCE L. MIDDLETON & ANO.

vs.

H O R A C E F. B U R R O U G H S
-----X

Clement Ch. J.- Plaintiffs states to the defendant that they wanted a cargo of lumber like that which he had shipped before from Brunswick, Georgia (known as the Meduel cargo) that was of the merchantable grade and had not sap.

The proofs are that the lumber shipped by the defendant for the plaintiffs was fairly up to that standard. The defendant did agree to furnish lumber "free of sap", but the plaintiffs accepted the cargo after an inspection and with knowledge that it was only merchantable. The removal of the lumber from the place of delivery, after inspection and with full knowledge, was clearly a waiver as to quality. (Reed vs Randall, 29 N. Y. 358) Mr. Lee testified that he did not rely upon the certificate when he paid for the lumber, and the same was never presented to him until four days after the acceptance.

If plaintiffs were misled by the certificate, they were simply induced to pay their debt. (People vs. Thomas, 3 Hill, 169; People vs. Griffin 2nd Barbour, 427) There was no deceit as to the quality of the lumber, as the defects were known to the plaintiffs. (Studer vs. Bleistein 115 N. Y. 317)

I do not think that plaintiffs can recover on the indemnity because Fleurot & Company employed plaintiffs to buy the lumber for their account. They wrote that they

**POOR QUALITY
ORIGINAL**

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liked the Meduel cargo and telegraphed the plaintiffs to do the best they could. The lumber furnished is worth all that was paid for it, and by reason of the letters and telegrams sent to plaintiffs, Fleurot & Company had no valid claim against them.

Plaintiffs are entitled to judgment for the fees of the arbitrators and the stenographer.

Judgment for plaintiffs for the sum of seventy-four (\$74.00) dollars with interest and costs.

N. H. Clements.

J. C. C.

Filed July 28th, 1892.

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Profile

is

Baronopho.

POOR QUALITY
ORIGINAL

0195

6

Brunswick Ga October 17. 1884

Messrs. D. C. Bacon & Co

Savannah Ga

Gentlemen

Please inform me if you have any-
thing to offer in the line of work at either place
even if it is only temporary. I have ^{not} done any work since
I left Savannah, have had great deal of sickness in my
family, and must find something to do somewhere that
I may be able to catch up.

Respectfully

W. R. Mitchell

POOR QUALITY
ORIGINAL

0196

Brunswick Ga October 29. 1884
Mess: D. C. Bacon & Co.

Gents

Savannah Ga

Enclosed please find a bill for \$40⁰⁰ against
the Portg. Brig Valero, pilotage in January last.
Please collect and authorize Banks to pay. I un-
derstand the "Valero" is loading at your dock.

Respectfully

W. R. Mitchell

\$ 86.46

POOR QUALITY
ORIGINAL

0197

1
Brunswick Ga June 19. 1884
Messrs. D. C. Bacon & Co.

Savannah Ga

Gentlemen

On leaving Savannah your Mr. J. having kindly promised to reserve my place and to think the matter over about leaving me with Banks. Not long since your Major Bacon promised also to consult with you about giving me the checking on the new wharf. I am now prepared for work again and beg of you to inform me at what decision you arrived at.

Respectfully
V. R. Mitchell

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ORIGINAL

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WM. D. WHEELWRIGHT & CO.
PITCH PINE LUMBER.
82 WALL ST.

NEW YORK Nov 17, 1891.

J. F. McIntyre, Esq.,
District Attorney's Office,
N. Y. City.

Dear Sir:

The enclosed papers read in order give, I think, a complete statement of the facts in the Burroughs case, and indicate all the testimony needed, except that of Mr. D. M. Carvalho, the expert in handwriting, and of Walter R. Heineman. They are exact copies of original affidavits that were executed without material alteration. What has become of the originals and also of the letters of H. F. Burroughs, with which Mr. Carvalho compared the writing on the alleged certificate, or of Mr. Carvalho's statement, I am not now able to say. Mr. Wellman had all the papers at one time, and he may be able to tell you what became of them. Very likely they were returned to Mr. Lee, of Middleton & Co. The original contract and the alleged inspector's certificate are not in my possession, but they can be had whenever needed. I will make further inquiries to-morrow about the original affidavits and other papers, and will also try to ascertain where Mr. Millen, Mr. Banks, Mr. Willink and Mr. Heineman are and when they can be produced as witnesses. After reading the enclosed papers will you let me know what further you want me to do, if anything?

Yours truly,

Wm. D. Wheelwright

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ORIGINAL

0-199

Folio 1

N. Y. Court of General Sessions
*
of the Peace.

-----x
The People

vs

Horace F. Burroughs.
-----x

Sir:

You will please take notice that upon the annexed affidavit, and upon all the papers and proceedings herein, I shall move this Court at a stated Term thereof, to be held at the Court Room thereof, at part *I* upon the 30th day of April, ¹⁸⁹⁴ at 10.30 o'clock in the forenoon of such day, for a dismissal of the indictment heretofore found herein, on the 29th day of May, 1890, against the above named de-

fendant. *under sections 668 + 671 of Code of Criminal Procedure*
Dated, N. Y., April 27th, 1894. Yours, etc.,

Charles W. Brooke,

Attorney for Defendant,

111 Broadway, N.Y.

To:

Hon. John R. Fellows,

District Attorney.

POOR QUALITY
ORIGINAL

0200

N. Y. Court of General Sessions
of the Peace.

-----X
The People of the State
of New York
vs

Horace F. Burroughs.

-----X
City and County of New York, SS:

Charles W. Brooke, being duly sworn,
doth depose and say: That he is the attorney for the
above named defendant; that the indictment herein was found
on the 29th day of May, 1890, and is for the crime of for-
gery, containing three counts.

1 The first count charges substantially that in pur-
suance of a contract entered into by the defendant with the
complainant's firm (Donald S. L. Lee being complainant),
Middleton & Company, defendant agreed to furnish for ship-
ment to Guadeloupe, from Brunswick, Georgia, a cargo of
lumber which should be of certain specified lengths and
"quality free of sap," and that the defendant with respect to
such length and quality should furnish the certificate of a
4 lumber inspector, in relation thereto; and that in accordance
with such contract, the Schooner Ester A. Lewis was loaded
and cleared from Brunswick for Guadeloupe. The defendant
thereafter presented such certificate, signed "quality free
"of sap," William P. Mitchell, Inspector.

The allegation of the first count is that the cer-
tificate was forged and that the intent was, through means
of the forged certificate, to procure payment under the
5 contract for the cargo of lumber. This constitutes the
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POOR QUALITY
ORIGINAL

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2.

charges of forgery under the first count.

The second count charges defendant with "uttering
"and publishing" such alleged forged certificate. The
third count charges grand larceny in obtaining money by
means of a false token (to wit: the alleged forged certifi-
cate).

The dates set forth in the indictment are material.
The offence is charged to have been committed on October
6 15th, 1888. The nature of the charge indicates that what-
ever information respecting its subject-matter there was to
obtain must inevitably have been found within a few weeks
after the date of the contract. The indictment was not
found until the 29th day of May, 1890, some nineteen months
thereafter.

Prior to the commencement of any criminal proceed-
ings (and these matters are stated for the information of the
7 Court and for its guidance upon this motion, and none of
which can be contested or denied) upon the application of
the complainant's firm, an arbitration of their claim was
had before an arbitrator selected from the Produce Exchange.
This was within a very short time after the date of the con-
tract and after the arrival of a cargo and its examination
in Guadeloupe. The contract contained a very sweeping and
8 technical clause of indemnity, by the terms of which, the
defendant agreed to indemnify the complainant's firm against
all loss. Such arbitration arose from the defendant hav-
ing demanded his money under such contract, which he claimed
to be due, and the contract fulfilled, and such demand and
claim was the subject of such arbitration.

POOR QUALITY
ORIGINAL

0202

3.

9 The arbitrator decided in favor of the defendant, declaring that in accordance with the law of the Exchange, the complainant should pay the amount due under the contract and look for any counterclaim he might have to the indemnity clause thereof, and which monies were so thereafter paid to this defendant, and the long period before referred to elapsed before action was taken criminally, as aforesaid.

10 The principal witness for the people is one Walter R. Heineman, a man whose testimony relative to this matter has already been characterized by the Courts as utterly unworthy of belief.

Heineman at the time of making the contract with complainant's firm, was in the employ of the defendant and acted as his agent in the negotiations respecting such contract, the defendant and complainant having little, if any, personal relations whatsoever respecting the same.

11 Heineman was detected by the defendant in dishonest appropriations of large sums of money which he had collected for the defendant and failed to turn over, one item alone being \$975.00 in amount. Defendant after having repeatedly demanded the repayment of the same by Heineman threatened criminal prosecution, and under this threat Heineman from some source procured the money and paid it.

12 The defendant was an active and energetic business man who had previously been in the employment of the Export Lumber Company at an enormous commission (to wit: 75 per cent. of the profits of his sales) and had at a then comparatively recent date, embarked in business on his own account. Heineman procured the money from the Export Lumber Company, undoubtedly, or some of its interests, and thereupon assert-

POOR QUALITY
ORIGINAL

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4.

ed to Mr. Lee, the Complainant, that the Mirchell certificate was forged, and that he (Heineman) had seen Burroughs sign the name of Mitchell thereto.

13 It should properly be stated here that the general assumption of the prosecution, with regard to Mitchell, has always been that he was a myth.

It was sometime after this communication of Heineman's before any criminal proceedings were instituted. An examination was then had before Mr. Justice O'Reilly and such examination was complete and thorough, occupying several weeks. Justice O'Reilly withheld his decision for some months, but finally held the defendant, and on May 29th the indictment was found.

14 There never has been the slightest effort made to bring the indictment to trial, but on the contrary, some time after it was found, complainant's firm brought a civil suit to recover back the amount of money paid under the contract of the defendant, upon the sole allegation of fraud in the procurement of its payment. No other question was involved in the civil suit when tried.

16 The complaint did allege the defendant's responsibility under the indemnity clause, but the Court very properly decided that the two causes of action were incompatible, the one sounding in tort, and the other on contract.

Therefore the only question tried and adjudicated was that of the fraud charged as the crime in this indictment. Such suit was vigorously pressed ~~xxx~~ to trial before Chief Justice Clement, of the City Court of Brooklyn, commencing on May 11th, 1892, and occupying six or seven days.

17 The complainant there swore that his firm had re-

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5.

ceived an order from Fleurot & Company, of Guadeloupe, for a cargo of lumber similar to the cargo which had been previously shipped to a consignee there named Meduille, and in accordance with his instructions he sought out the person who had shipped the Meduille cargo, and, learning it to be the defendant, entered into a contract with him for a similar cargo to be shipped to Fleurot & Company.

It appeared during the trial that, in the custom of the lumber trade, the words, "quality free of sap" were not to be literally taken, but qualifiedly; that it was impossible to procure lumber absolutely free of sap of the lengths desired and designated in either the Meduille or Fleurot cargo.

It further appeared that when sixty per cent of the Fleurot cargo was loaded upon a schooner called the Lester A. Lewis, at Brunswick, Georgia, the complainant's firm sent an inspector of lumber to Brunswick, to examine and report upon the quality of lumber then on board.

Complainant then telegraphed his consignees, Fleurot & Company, as follows: "Impossible free of sap. Answer." The reply to which telegram was: "Do your best." And the complainant's firm then wrote in accordance with such despatch, as follows: "On Monday 15th we received your prompt reply 'Do best' which enabled us to close for the cargo at \$1450 per m. Furnishers, however, would not agree to begin the loading before the 20th of November. We have chartered schooner Lester A. Lewis, 200-10m feet capacity, \$9, and hope everything will turn out to your satisfaction."

In accordance with this correspondence the evidence discloses the cargo was shipped, but it also appeared that

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21 because of delays, the vessle instead of clearing in November did not clear till about January 15th, 1899, and there being also some detention of the vessel for a number of days at quarantine, when she did finally arrive in Guadeloupe, the term of expiration of the contract had some time elapsed.

11 The complainant himself upon the trial of the civil case, testified that he did not place the slightest reliance upon the Mitchell certificate; that his firm had the lumber examined by their own inspector, and knew that the lumber contained a certain small percentage of sap and that the contract itself had been changed in order to procure the lengths desired, and the time extended from November to January, as between his firm and defendant's. And that in the payment of the money to the defendant his firm did not in any manner rely upon the certificate, and that in fact, no claim whatever would have been made against the defendant if the consignees had have accepted the cargo.

13 This testimony certainly seems to dispose of the charges made in the three counts of the indictment.

An examination of the indictment will disclose the fact that the only two witnesses to sustain the prosecution were Donald S. L. Lee, the complainant, and the witness Walter R. Heineman, the agent. The name of David N. Carvalho, whose name appears, having been examined simply as an expert in hand-writing respecting the certificate.

24 Mr. Lee has positively sworn in the civil suit referred to that the certificate, charged as the forgery, was not a matter of the slightest importance, inasmuch as they did not place a particle of reliance upon it for the payment of the money under the contract. That it did not in any

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manner induce the payment of such money, but that on the contrary they understood substantially its merely technical relation, because they had previously had an examination, by their own inspector of lumber, of the cargo.

25- With regard to Heineman's examination, the judge, from the very beginning, checked the volume of examination and asserted that he would not rely upon Heineman's testimony regarding his assertion especially that he had seen the defendant write the name of Mitchell, the alleged inspector, to the certificate in question, but would entirely disregard his evidence.

26 It will be observed that so far nothing but the plaintiff's case in the civil action has been presented, and upon which case they were unable to sustain the allegation of fraud or their action, and that such action was a civil action where the proof required would be decidedly less positive to support a verdict than would the proof necessary to support a conviction in a criminal action.

27 The witness Lee had testified that the certificate formed no part of the reliance in the contract as between his firm and the defendant. The witness, Heineman, had so involved himself that the Judge who tried the case repeatedly declared him to be unworthy of belief, and it is upon the testimony of these two witnesses that the prosecution must rely.

The defence, for the vindication of Mr. Burroughs, insisted upon presenting their case and settled every possible question at issue.

Mr. John Kearney, one of the principal, most influential and important stevedores of New York, testified

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8.

28 testified that he knew William P. Mitchell very well; that
he knew him as a lumber inspector and had employed him as
such; that upon the day on which the certificate of Mitchell
was evidently prepared, he met Mitchell in defendant's office,
that certain schedules of a cargo of lumber shipped from
Georgia were presented by Mitchell and were the subjects of
conversation between Mitchell and Burroughs; that a memoran-
dum was handed to his clerk, one Thomas M. Sullivan, and in-
29 structed by defendant to put them in proper shape and to
append to them the certificate for Mr. Mitchell to sign.
That they were very lengthy, and it being late in the day,
they did not desire to wait, but the three of them left the
office together and the said Mitchell parted from them in
front of the Hoffman House Cafe after positive instructions
from defendant for him (Mitchell) to be sure to get to the
office as early as possible the next morning to sign the
30 certificate. Sullivan, the Clerk, testified that he prepar-
ed such certificate and left it for Mr. Mitchell to sign;
and the next morning, it bearing that signature, took it
and delivered it to complainant's firm, and that Mr. Bur-
roughs was not even at the office at the time he took it and
did not get to his office until about his usual time, twelve
or one o'clock, that day, Mr. Burroughs' mornings being oc-
cupied at his lumber yards in Long Island City.

31 Mr. William H. Burke, one of the officers of the
Supreme Court (Justice Edward Paterson's special, private
officer) testified also that he knew William P. Mitchell
very well; that he had been introduced to him by the defendan
some time before this, transaction, by the defendant, whom he
also knew; that he had taken his acknowledgements to various
papers, as a notary public, to which he (said Mitchell) had

POOR QUALITY
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9.

32 made affidavit in his presence, and that he knew the said William P. Mitchell from his own description and from the description of the papers, to which he refers, as an inspector of lumber.

This testimony again induced the Court to remark that it would certainly not regard the statement of Heineman in relation to the alleged signing of the certificate by the defendant.

33 That every circumstance connected with this case has been the subject of investigation and inquiry by several assistants of the District Attorney's office, during the first term of the present District Attorney, when such indictment was found, ~~by~~ ^{under} his successor, Hon. De Lancey Nicoll, and under the present District Attorney, by the direction of their respective chiefs; and in each case report was made, as deponent is informed and believes, that a dismissal thereof should be had, and that the people had no evidence
34 to sustain a conviction or to justify a trial. That the assistants referred to are Andrew D. Parker, Esq., under the present District Attorney during his first term, and John F. McIntyre, Esq., during both District Attorney Nicoll's administration and that of the present incumbent.

35 The defendant has been under indictment now for four years. The complainant in this case has himself under oath in an action involving substantially the same issue involved in the trial of this indictment, under oath testified to such matters as must inevitably destroy every suggestion or implication of criminality, or even of fraud, relative to the counts for forgery, or the count for larceny, by false pretenses, etc. The only other witness the peo-

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10

36 ple have, Heineman, has, with reference to the very subject-matter of this indictment, been judicially adjudged unworthy of belief; three District Attorneys have had reports from their assistants to whom the matter was given for their investigation and inquiry, that the indictment should be dismissed and that the prosecution had no case, and deponent therefore alleges and avers, in view of those facts and all the circumstances in this case, that an order should be entered herein by this Court, dismissing the said indictment and discharging the defendant from all responsibility thereunder.

Sworn to before me this

37 27th day of April, 1894.

William Erdman
Notary Public (14)
N.Y.C.

Charles M. Crooke

POOR QUALITY
ORIGINAL

0210

Motion herein
denied - see
Memo - Jy.

N.Y. June 26/94

N.Y. General Sessions

The People vs

vs

Harce F. Burrroughs

affidavit & notice
of motion

Charles W. Brooke

Atty for Def

111 Broadway

N.Y.

~~Shirley~~

I hereby consent to

the adjournment of motion

made to May 14/94

in fact one

april 30/94

John A. Fellows

District Atty

City of Albany New York } ss

Wallis R. Stennan being duly sworn says. I am 27 years old.

I was employed by Horace F. Burroughs Jr. about 1886 as his agent. On Oct 10th 1888 I sold to Mess Middleton & Co on account of Horace F. Burroughs Jr. the lumber in contract marked Exhibit A.

Some time later I went to Brunswick Ga to buy lumber for Mr. Burroughs Jr., I could not get what I wanted there, so went to Savannah Ga. There purchased the lumber ~~to~~ in schedule marked in Exhibit B. I was in Horace F. Burroughs Jr's office on or about Jan'y 10th 1889. when Horace F. Burroughs took the Inspector's certificate representing the lumber shipped ~~to~~ on which he wrote "Quality free & safe. Wm P. Mitchell Inspector." This Inspector's certificate was to be sent to Middleton and Co. The body of the writing on said certificate was in the handwriting of Thomas F. Sullivan one of the office boys.

The lumber I bought in Savannah Ga. was not of the quality free of sap. Before I left New York for Ga. Horace F. Burroughs Jr. told me to do the best I could. I think the quality I bought was "marchable". It was not of the quality free of sap.

On the afternoon of the day on which Burroughs Jr. wrote me the "Cesapeake" "Quality free of sap." Mr. P. Mitchell inspected I think I went to Long Island. On that trip I was in his employ.

About years ago when I was in the Real business in N.Y. a man ^{sent by} ~~named~~ Le Roy left word at my house, saying he would call that night as I was out. I was home when he returned. He said that he was going to Europe and he wanted someone to take his place as Agent.

He invited me to see Mr. Le Roy on full Monday night. I saw him, he asked me for references. I gave

Burroughs & Export Luncheon Co.

This went along for about 2 weeks when I took lunch at the Astor House with Mr. Leroy. He told me that he had wanted Burroughs. While we were eating Burroughs came in. Leroy proposed a private room. We took one.

Leroy leaned over the table from and asked what I had to say. I said nothing that I did not write Burroughs.

Then Leroy told Burroughs that he wanted to hire me for a responsible position and that he (meaning me) tells me he had some trouble with you.

Burroughs asked me if I was willing that he should tell my history. I said if you are going into the Burroughs case I will leave the room or insist on Mr. Leroy leaving the room. Leroy left the room. Burroughs said to me you know that I did not sign that paper. I said

POOR QUALITY
ORIGINAL

02 14

Frank, you know you
signed it and you know
I saw you sign it. He said
you are wrong. Then we
broke up. I did not see
Leroy after this till the civil
trial. I have had no conversation
since with Burroughs.

I live at No. 217 Halsey Street
Bklyn.

Given to before me this

22nd day of December 1893

Randolph B. Martine Jr.

Notary Public

New York Co.

Attest R. H. Hemenway

POOR QUALITY
ORIGINAL

0215

said Horace F. Burroughs in the month of January, 1889, the ground of my belief as to this last allegation is that I have heard the said Horace F. Burroughs state that he thought this said Exhibit D was in the handwriting of the said Sullivan. I have been informed by David N. Cavallo and believe that said original instrument, a copy of which is hereto annexed and marked Exhibit B, is in the handwriting of two persons, and that the words "Quality free of sap. Wm P. Mitchell, Inspector" in said original instrument are in the same handwriting and written by the same person who wrote the letters hereto annexed and marked Exhibit C; and further I have been informed by said Cavallo and believe that the figures and writing upon said original instrument other than the words "Quality free of sap. Wm P. Mitchell, Inspector" are in the same handwriting and written by the same person who wrote Exhibit D hereto annexed.

0216

Ronald S. L. Lee

York, in the County of New York, I was a member of the firm of Milledaleton and Company doing business in the City of New York. On or about the 15th day of October, 1889, at said city one Horace F. Burroughs entered into a contract with said firm of Milledaleton and Company a copy of which is hereto annexed, is marked Exhibit A and is intended to be taken as a part of this information. That on or about the day of January, 1889, the said Horace F. Burroughs caused to be presented to the said firm of Milledaleton and Company an instrument in writing now here produced and a copy of which is hereto annexed, is marked Exhibit B and is intended to be taken as a part of this information and representing them and there that the words "Quality free of sap. Wm. P. Mitchell, Inspector." were a genuine and original certificate of inspection of the lumber in said instrument, Exhibit B, ~~and that said~~ mentioned, demanded the performance on the part of Milledaleton and Company of the said contract, Exhibit A. That thereafter and on or about the 8th day of ~~January 188~~ February, 1889, the said Milledaleton and Company in performance of the said contract, paid said Burroughs the sum of \$2570⁷³/₁₀₀. The letters hereto annexed and marked Exhibit C are in the handwriting of said Horace F. Burroughs. That the instrument hereto annexed and marked Exhibit D is I believe to be in the handwriting of one Sullivan who was in the employ of

POOR QUALITY
ORIGINAL

0217

Wm. B. Fillerell Esq.
Dear Mr. Fillerell
Birmingham Ala Aug 31st - 89
J. R. Mitchell of this
city (Sunn's suspect) paid me a visit
this P.M. and wanted to know who suspected
the cargo of the Schooner a Lewis =
I told him that Wilhelm was the suspect. He
said that he thought that W. B. Mitchell
had suspected the cargo. I told him
that all of them of the matter was
what I had seen in the papers and
thought perhaps that Birmingham had gotten
him to look at the cargo and his
name was not exactly given. Mitchell
said he knew nothing of the cargo and
had not seen it at all. He then handed
me a telegram from Poinsett New York to
John P. White of this city, that it was
very important and imperative that Mitchell
should be in New York on Monday, if he

POOR QUALITY
ORIGINAL

02 18

(Mr. White) could not come but - it was
his intent for both to be in New York
City by Monday. The telegram was dated
Aug 30/19.

Mitchell asked Bourne whether
if he would give \$100⁰⁰ to Bourne that
V R M would come on.

This as I hear is all I can remember
the telegram, and if it is worth anything
you can use the information.

Yours very truly
A.C. Bailey

**POOR QUALITY
ORIGINAL**

0219

Wm. B. Stillwell.

L. E. Millen.

L. Johnson.

*Stillwell, Millen & Co.,
Pitch Pine Lumber & Timber
By the Cargo.*

Dictated by

Savannah, Ga.,

**SCHEDULE Y.P. LUMBER
for
Thos. F. Burroughs. Esq.**

3000 ft. 2x2	} 20 to 40 ft. long
6000 ft. 2x3	
10000 ft. 3x3	
20000 ft. 3x4	
35000 ft. 4x4	
2000 ft. 3x5	
1000 ft. 3x6	
15000 ft. 4x5	
2000 ft. 4x6	
20000 ft. 5x5	
8000 ft. 5x6	
8000 ft. 6x6	
4000 ft. 6x6	
4000 ft. 6x10	
1000 ft. 6x8	
4000 ft. 8x8	

739000 ft.

4000 ft. 8x8	} 20 to 40 ft long
4000 ft. 8x12	
2000 ft. 8x10	

10000 ft.

2000 ft. 4x8	} 20 to 40 ft. long
2500 ft. 3x12	
2000 ft. 3x14	
1500 ft. 4x10	
2500 ft. 4x12	
1000 ft. 4x14	

11500 ft.

1000 ft. 2x10	} 20 to 40 ft long
5000 ft. 2x12	
3000 ft. 2x14	
9000 ft.	

2000 ft. 3-4 x 14	} 20 to 40 ft. long
5000 ft. 1 1-4 x 6	
5000 ft. 1 1-4 x 12	
3000 ft. 1 1-2 x 12	
2000 ft. 1 1-2 x 14	

17000 ft.

TOTAL- 186,500 ft.

POOR QUALITY
ORIGINAL

0220

Feb'y 24. 90.

John D. Inman.

Discharged from H. F. Burroughs
employ. Cause unknown.
Was noted for having a
particularly bad memory.

He was a new comer in
office about 15th Jan'y 1889.
and knew nothing about
routine work of office.
Merely learning Ormsby's
method of keeping books.
Ask him if ~~he~~ R. G.

Ormsby was not down
to office during January.
He has no way of
determining to date of days
Ormsby was there.

Ask him if he has borrowed any money
from Burroughs.

ask him. If there were
not days when "Ormsby"
would come down and
stay ^{only} for an hour or
so and then go away.

Be particular about
his memory.

Sullivan.

Arrested by Burroughs
for appropriating certain
money belonging to Burroughs.
In jail about week.

O. M. Wiens.

Not present on
that day. Ask him
if he ever saw
Burroughs sign Certificates.
He has many times.

0221

County of New York)
) ss
 State of New York)

Wm. P. Mitchell being duly sworn states as follows:- I am the inspector who inspected cargo of Pitch Pine lumber shipped on ~~the bark~~ board Schr "Lester A. Lewis" at Brunswick, Ga. in January, 1889. I made my examination the same as I make any examination of lumber in the South -- the cargo as shipped on board said vessel I hereby certify was of proper quality and in conformity with contract, viz:- Quality free of Sap, which is a trade term and is not construed as indicating laterally that the cargo must be absolutely free of all sap -- on the contrary small sap is allowed in such shipments. I examined and inspected cargo per Brig "Alice" from Brunswick shipped by C Medeuil and sold by Horace F. Ga. Burroughs of New York and shipped from Brunswick in January or February, 1888 and I hereby certify that the quality of the cargo per "Lester A. Lewis" was fully equal in all respects to cargo per Brig "Alice". I know of my own knowledge that both the cargoes above indicated were destined for Guadeloupe and that they were to be similar in quality, they both being sold quality free of sap.

I further state that Horace E. Burroughs of New York has my full authority to sign my name to inspector's certificates, viz:- Wm. P. Mitchell, the same being a firm's name and is not to be signed by him as attorney and is so done as a matter of convenience, and is a custom in practice in the

**POOR QUALITY
ORIGINAL**

0222

Southern trade, with numerous houses.

Sworn to before me this

4th day of October 1889.

WM. P. MITCHELL

William H. Burke,

Notary Public,

New York County.

POOR QUALITY
ORIGINAL

0223

State of New York,

City and County of New York, ss:-

I, WILLIAM H. BURKE,

W.H.B.
~~Notary Public in and for said City and County of New York,~~

being duly sworn do depose and say that I ^{was} a Notary Public
on the 4th day of October 1889
in and for said City and County, duly commissioned and sworn,

and that as such I took the sworn statement of William P.

Mitchell on the 4th day of October, 1889 of which a copy is

hereunto annexed, and that such copy is a true copy of such

sworn statement of William P. Mitchell so taken before me as

aforesaid.

Sworn to before me this

5th day of January, 1891.

William H. Burke

John K. Downing

Notary Public in and for said City and County

Certificate duly filed in New York County

POOR QUALITY
ORIGINAL

0224

Profile

"
Hornet
Bucco rufus

Bucco rufus
Hornet

**POOR QUALITY
ORIGINAL**

0225

Letters,

**POOR QUALITY
ORIGINAL**

0226

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

**POOR QUALITY
ORIGINAL**

0227

WALTER R. HEINEMAN,

— REPRESENTING —

HORACE F. BURROUGHS,

No. 21 BEAVER STREET,

WHITE PINE * *
* * YELLOW PINE,
* SHINGLES. *

NEW YORK.

YARDS: HUNTER'S POINT, L. I.

**POOR QUALITY
ORIGINAL**

0228

For Identifi-
cation -
Plff X
(not in evidence)
SPD
C. J. [illegible]
[illegible]
[illegible]

POOR QUALITY
ORIGINAL

0229

Dear Mr Osborne.

We cant seem to learn
Walter R. Heeneham's
address. His father lives
at 858 Lafayette Ave. be-
tween Lewis & Sumner Aves
but at that house they deny
any knowledge of the boys
whereabouts. Cant you
start a subpoena after
him on that? Meanwhile
we are continuing our efforts
will advise you as soon
as I learn anything.

Sincerely
J. S. Quinn

Dec 10

POOR QUALITY
ORIGINAL

0230

~~W~~
Loring R. Miller
16 Beaver St
T. M.
Willink

A. C. Rausch
Bureau of
Agriculture

Contract with
Bumby's
Letter
Invoice

Inspector's
Certificate
Signed by
J. M. Miller

POOR QUALITY
ORIGINAL

0231

Copey

Dec 20th, 1888.

Hon. H. Burroughs

Recd. 1/1/89.

Since the removal of Mr
R. G. Ormsby who has been
conferred the honor. Burroughs
I have taken charge at his
request of the party, and have
appropriated the money some
two hundred & eleven (211) which
I was not willing to do and
which was without your knowledge
or authority & also without the
knowledge or authority of anybody.

Signed

Oscar M. Wiencke

POOR QUALITY
ORIGINAL

0232

36 hours - from Brumby
~~Habit of sending duplicate~~

~~Saturday afternoon (date)~~

Alice -

Grade of lumber
under instructions

Market ~~not~~ up -

Prices =

\$50 a thousand -

mills run so full -

Rush of the mills -

Admitted to me before

why the 'Franklin' may be
not squashed

POOR QUALITY
ORIGINAL

0233

Just money have
any thing to do with
contribution with
father.

Why - contribution with
father -

Didn't know
that money was
not given?
I plan

Used the money
before I knew of it

~~At~~ - ~~money~~ - ~~giving me~~

~~Expected to be at~~
~~from money in the~~
~~few days~~

~~Don't~~ got

Witchell

Ussow

Lockwood

Cook

Hennel

Barnes

Tracy & Foster
Birmingham

POOR QUALITY
ORIGINAL

0234

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

Letter
Memorandum to
Attorney Dec 19/88

Mitchell's affidavit for
Bonds Dec 8/89

Proposed bond affidavit
Donald Lee

also Hemmaman
suggestion

Have to Mr. [unclear]
for delivery to
Judge [unclear]

June 7/90

Done

POOR QUALITY
ORIGINAL

0235

HORACE F. BURROUGHS

WHOLESALE LUMBER

OFFICE,

21 BEAVER STREET,

Telephone: Pearl 150.

Cable Address,

FENALABAMA.

New York

188

Drawings since Jan 1 - 88

Jan 31	110-
Feb	100-
Mar	199-
April	130-
May	250-
June	23650
July	122

1147.50 total drawings or 163 ⁹²/₁₀₀ per mo
or 37 ⁶²/₁₀₀ per week

Jan Sales	3	26890.10
Feb	3	10786.41
Mar		13447.36
Apr		17327.42
May		15937.74
June		5760.81
July		
Sales up to Aug 1.		\$90,149.84

Sales H.F.B.	46935.87
W.M.H.	90149.84
Sales to Aug 1.	\$137,085.71

**POOR QUALITY
ORIGINAL**

0236

Mar 2, 1944
1944
7000.

POOR QUALITY
ORIGINAL

0237

Office of D. N. CARVALHO,
Expert Examiner of Questioned Hand-Writing, Inks, &c.
Room 28, No. 265 Broadway.

Refers by permission to leading Banks and Lawyers in this and other States.

P. O. Box 2293.

New York City, 1889

CITY AND COUNTY "

of " ss.

NEW YORK. "

David N. Carvalho being duly sworn deposes and says that he is by profession an examiner of questioned handwriting, inks, etc.- that in such capacity he has during the last 13 years been frequently called to testify in cases where the question of handwriting, inks, etc were in dispute,- that he has testified many times in the courts of this and other states, where his opinion and testimony has been received.

This deponent further says that he has seen certain papers to wit;- which have been marked on the back of same for identification D. N. C. I, 2, 3. D. N. C. I being specification certified by "Wm. P. Mitchell Inspector," D. N. C. 2 being a bill or invoice dated Jan. 10, 1889, Messrs Middleton & Co. to Horace F. Burroughs, D. N. C. 3 being 2 letters dated Jan. 14 and 20 respectively and signed Horace F. Burroughs.

That this deponent has made a careful examination of said papers with a view to determining as to the identity of said writings, and is of the opinion that the words "Quality free of sap Wm. P. Mitchell, Inspector" appearing on D. N. C. I, is in the disguised hand writing of the writer of D. N. C. 3- also that the writing appearing on D. N. C. I, down to said words "Quality free of sap" is in the same handwrit-

POOR QUALITY
ORIGINAL

0238

(2)

Office of D. N. CARVALHO,
Expert Examiner of Questioned Hand-Writing, Inks, &c.
Room 28, No. 265 Broadway.

Refers by permission to leading Banks and Lawyers in this and other States.

P. O. Box 2293.

New York City, 1889

ing as the writer of D. N. C. 2.

Subscribed and sworn to

before me this 10th day

of June 1889.

Daniel H. Carvalho

William H. Carter
County Clerk
City & County of New York

**POOR QUALITY
ORIGINAL**

0239

STILLWELL, MILLEN & CO.,
PITCH PINE LUMBER AND TIMBER
BY THE CARGO,
SAVANNAH, GA.

Walter Heinenman Esq.
Savannah.
Ga.
*Papers relating
to Middleton*

POOR QUALITY
ORIGINAL

0240

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

Dear Mr. Drake: -

Col Fellows
directed that ^{within} ~~this~~
be transmitted to
you. With regards
Truly
Yours

POOR QUALITY
ORIGINAL

0241

H. F. BURROUGHS, SR.

MARVIN CROSS.

H. F. BURROUGHS & CO.,
Merchants and Wholesale Lumber Dealers,
FOOT HEWES STREET, BROOKLYN, N. Y.
NEW YORK OFFICE, 136 WATER STREET.

LUMBER YARDS,
HUNTERS POINT, LONG ISLAND CITY.

CABLE ADDRESS,
"JARRON, NEW YORK."

PER.....

New York, 24th ¹²⁰ July 1894

Chas. H. Brooke Esq.
111 Broadway City

Sir:

Enclosed please find transcript of
judgment against Nicholas & B Smith
dated 24. 1890 - \$19,654.⁹⁹ assigned to take
a backwood & Gro. & Hill July 2/92 and
reassigned by them same day, but not recorded.
Also transcript of judgment against
Nicholas & B Smith June 14/90. \$20,456.⁴⁹

Smith took all the funds of the firm
of Gde Cordova & Co. including trust funds,
and moved to Glen Ridge New Jersey.
his case is exactly the same as the
recent indictment against the partner
of Abe Stein.

Yours truly

H. F. Burroughs

POOR QUALITY
ORIGINAL

0242

First District Police Court.
City and County of New York } ss.

Donald S. L. Lee, being duly
sworn, deposes and says,

I am years of age. I reside
at . I am a
merchant by occupation. On or
about the day of 1888
one Horace F. Burroughs entered into
a contract with Middleton and
Company, a firm of merchants doing
business in the city of New York,
a copy of which contract is hereto
annexed, is marked Exhibit A. and
is intended to be taken as a part of
this information. Said contract was
made at the city of New York. There
after and on or about the day of
1889, said Horace F. Burroughs,
at the city of New York, caused to be
presented to said firm of Middleton
and Company together with certain
other instruments in writing a
certain instrument in writing, now
here produced, a copy of which is
hereto annexed is marked Exhibit
B and is intended to be taken as a
part of this information. Said Horace
F. Burroughs then and there, at the

POOR QUALITY
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0243

time and place last above-mentioned caused to be delivered to said firm of Middleton and Company said certain instrument in writing, a copy of which is hereto annexed and marked Exhibit B, and then and there ~~re-~~presented demanded that said Middleton and Company should perform their part of said contract a copy of which is hereto annexed and marked Exhibit A. and said Horace F. Burroughs then and there, at the time and place last above mentioned, represented to said firm of Middleton and Company that the words "Quality free of sap. W^m P. Mitchell, Inspector" upon said certain instrument in writing a copy of which is hereto annexed and marked Exhibit B was a genuine and original certificate of inspection of the lumber in said certain instrument in writing mentioned and was made by one W^m P. Mitchell an inspector, Thereafter said firm of Middleton and Company in performance on their part of said contract, a copy of which

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is hereto annexed and marked Exhibit A paid to said Horace F. Burroughs the sum of \$. That said Horace F. Burroughs wrote the letters hereto annexed and marked Exhibit C. That deponent is informed and believes that the instrument in writing hereto annexed and marked Exhibit D is in the handwriting of one Sullivan who during the months of January and February, 1889, was in the employ of said Horace F. Burroughs. That the ground of deponent's belief and the source of his information in regard to the last above made allegation is a statement which he heard said Horace F. Burroughs make to wit, that he Burroughs believed said Exhibit D to be in the handwriting of said Sullivan.

POOR QUALITY
ORIGINAL

0245

Monday Oct 24 3 PM

I have just learned that Heineman is willing to go before the District Attorney and make that statement and affidavit. Will you, therefore, telegraph him this afternoon at 143 Lewis Avenue, Brooklyn, to be at your office at such hour to-morrow morning as suits your convenience? It is decidedly better to have the matter managed in this way and so avoid any possible chance of question as to negotiations leading up to his going to a lawyer's office and making affidavit, as was arranged this morning. I am also informed that Burroughs is threatening to arrest Heineman on a charge of breach of trust, the facts as alleged by Heineman being that he bought certain lumber of Burroughs, to be paid for when he had sold it and collected the money, that he had thus far been unable to collect the money and so could not pay Burroughs, and that Burroughs in order to intimidate him in this case is setting up the claim that the lumber was in his hands in trust, and that he committed fraud in disposing of it. You will recognize the importance of getting Heineman's affidavit and if possible his testimony before the Police Magistrate before he shall have been arrested by Burroughs.

I send herewith form of affidavit as suggested by you, but beg you will examine it carefully and see that it is correct and made as binding as possible before you use it.

POOR QUALITY
ORIGINAL

0246

County of New York }
State of New York } ss.

Wm. P. Mitchell being
duly sworn states as follows
I am the inspector who inspected
cargo of Pitch Pine lumber shipped
on board Sch. "Lester A. Lewis"
at Brunswick Ga in January 1889.
I made my examination the same
as I make my examination of
lumber in the South - The cargo
as shipped on board said vessel
I hereby certify was of proper
quality and in conformity with
contract viz Quality free of sap -
which is a trade term, and
is not construed as indicating
literally that the cargo must
be absolutely free of all sap -
on the contrary small sap is
allowed in such shipments -
I examined and inspected cargo
per Brig "Alice" from Brunswick
shipped by C. Medville and sold
by Horace R. Durrant of New York
and shipped from Brunswick
in January or February 1888. and
I hereby certify that the quality
of the cargo per "Lester A. Lewis"

POOR QUALITY
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was fully equal in all respects
to cargo per Brig "Alice".
I know of my own knowledge
that both the ~~above~~ cargoes above
indicated were destined for
Guadeloupe and that they were
to be similar in quality - they
both being sold quality free of
sap -

I further state that Horace F.
Burrangles of New York has my
full authority to sign my name
to inspectors certificates viz:
Wm. P. Mitchell, the same
being a firms name and is not
to be signed by him as Attorney.
and is so done as a matter of
convenience - and is a custom in
practice in the Southern Trade, with
numerous houses -

I sworn to before me

this 4th October 1889

Wm. P. Mitchell

William H. Burt

Notary Public

New York County

POOR QUALITY
ORIGINAL

0248

V
HORACE F. BURROUGHS

WHOLESALE LUMBER

OFFICE,

21 BEAVER STREET.

Telephone Pearl 150.

Cable Address,

FENALABAMA.

New York Dec 17th 1888

Wm Stillwell Mullen & Co.

Savannah Ga.

Dear Sirs,

I beg to confirm my wire
of this date advising you of the arrival
of Eck "Lester A. Lewis", and sincerely trust
you will do all possible to complete
loading as quickly as possible.

Yours very truly,
Horace F. Burroughs,
per Walter R. Kinnaman.

**POOR QUALITY
ORIGINAL**

0249

*For Identification
Plaintiff 9
Feb 18 '90
JED*

POOR QUALITY
ORIGINAL

0250

WALTER R. HEINEMAN, being duly sworn, deposes and says that ~~he~~ or about Oct. 15th, 1888, being then in the employ of Horace F. Burroughs, a lumber merchant at 23 Beaver St., N. Y. City, he made in behalf of said Burroughs a contract to supply Middleton & Co. with 186,500 ft pitch pine lumber and 75,000 shingles, that the contract was made in writing and that he submitted the same to Mr. Burroughs, who objected to the following clause: "Seller agrees to hold Middleton & Co. harmless in case of claim arising by reason of unsatisfactory quality of lumber or shingles from Guadalupe," but after consideration accepted the order, and later on instructed him, the said Heineman, to proceed to Savannah and purchase the lumber for his account of merchantable quality.

That the lumber above mentioned was furnished by Stillwell, Millen & Co., of Savannah and Brunswick Ga., and by them delivered to the schooner "Bester A. Lewis" at Brunswick in the latter part of Dec., 1888, and the early part of Jan., 1889; that when the shipping documents of the cargo reached Mr. Burroughs from Stillwell, Millen & Co. there was among them a certain specification of the cargo giving the number of pieces, sizes and the quantity, to which was appended a certificate signed by T. M. Wil-link, inspector, that the quality was merchantable and better by rules of the Southern Lumber & Timber Association of 1883.

That the said Burroughs instructed one, Thomas M. Sullivan, then a clerk in his employ, to copy the specifications, viz, number of pieces, sizes and the number of feet, and that Mr. Burroughs then took the said copy made by said Sullivan and wrote thereon with his own hand the words

**POOR QUALITY
ORIGINAL**

0251

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"quality free of sap. Wm. P. Mitchell, inspector."

That the said Heineman was present at the time and saw the said Burroughs write the above mentioned clause with his own hand.

POOR QUALITY
ORIGINAL

0252

H. F. BURROUGHS, SR.

MARVIN CROSS.

H. F. BURROUGHS & CO.,
Merchants and Wholesale Lumber Dealers,
FOOT HEWES STREET, BROOKLYN, N. Y.
NEW YORK OFFICE, 136 WATER STREET.

LUMBER YARDS,
HUNTERS POINT, LONG ISLAND CITY.

CABLE ADDRESS,
"JARRON, NEW YORK."

PER.....

New York, 24th Jan'y 1894

Chas. W. Brooke Esq
111 Broadway, City

Sir:

Enclosed please find copy of affidavit made by Frank W. McE. Laughlin - Supt of the Export Lumber Co. also copies of the affidavits of Bridat Mantras & Co. and B. Duran - the buyers of the cargo - This affidavit is libelous, and was uttered by Quinn of the Export Lumber Co in New York County - we have sufficient evidence in this matter to indict and convict Quinn of criminal libel and conspiracy - at the time Quinn uttered this libel, we can prove that he stated that, we could not indict him, as I was under indictment, and my testimony would not be received by the Dist. Atty.

Further I have been robbed of \$1,500. in cash by Frank A. Salamon, assisted by an accomplice. Salamon has done

POOR QUALITY
ORIGINAL

0253

H. F. BURROUGHS, SR.

H. F. BURROUGHS & CO.,
Merchants and Wholesale Lumber Dealers,
FOOT HEWES STREET, BROOKLYN, N. Y.
NEW YORK OFFICE, 136 WATER STREET.

MARVIN CROSS.

LUMBER YARDS,
HUNTERS POINT, LONG ISLAND CITY.

CABLE ADDRESS,
"JARRON, NEW YORK."

PER

C.W.B. #2.

New York, 24th Jan'y 1894

Time in an English prison for blackmail.
His criminal record is well known at Scotland
Yards. Landau - Salomon considers
himself safe from criminal prosecution
on the same grounds that Quinn does.

If I am to be without any protection
from criminals of all classes, I should
like to know it at once -

Yours very truly

H. F. Burroughs

POOR QUALITY
ORIGINAL

0254

Names of Parties against whom Judgments have been obtained.

Names of Parties in whose favor Judgments have been obtained.

Winchester B. Smith.

Horace F. Burroughs.

Attorneys' Name.	Time of Filing.	H.	M.	Damages and Costs.	When Satisfied.
Fisher & Volz.	June 14. 1890.	10.	57.	20.456 43	

Clerk's Office, Kings County,

ss.:

I, JOHN COTTIER, Clerk of the County of Kings, do hereby CERTIFY, that the foregoing is a correct transcript from the Docket of Judgment kept in my Office, of a Judgment rendered in the Supreme Court of the State of New York, for said County.

Clerk.

Names of Parties against whom Judgments have been obtained.

Names of Parties in whose favor Judgments have been obtained.

Winchester B. Smith
Gonzalvo de Cordova.

Horace F. Burroughs.

Attorneys' Name.	Time of Filing.	H.	M.	Damages and Costs.	When Satisfied.
Lockwood & Still	Decr 24. 1890.	9.	55.	19.657 99.	Assigned to Luke A. Lockwood and John L. Still by assent filed July 2. 1892

Clerk's Office, Kings County,

ss.:

I, JOHN COTTIER, Clerk of the County of Kings, do hereby CERTIFY, that the foregoing is a correct transcript from the Docket of Judgment kept in my Office, of a Judgment rendered in the Supreme Court of the State of New York, for said County. That said Judgment is assigned as above stated.

Clerk.

0255

Price

POOR QUALITY
ORIGINAL

0256

LAW OFFICES OF
BALDWIN & BLACKMAR,
55 LIBERTY STREET,
NEW YORK.

EDWIN BALDWIN, ABEL E. BLACKMAR,
CABLE ADDRESS "CARCAPULI NEW YORK"
TELEPHONE CALL "1922 CORTLANDT"

(Dictated.)

May 21, 1894.

Charles W. Brooke, Esq.,
111 Broadway, City;

Dear Sir:

Mr. Lee sent us your note to him re-
garding the case of People vs. Burroughs, with
a request that we answer the same.

Mr. Lee does not understand that he
has ever occupied the position of Complainant
in this case.

Yours very truly,

Baldwin & Blackmar

POOR QUALITY
ORIGINAL

0257

Charles W. Brooks.

W. J. O'Sullivan

Charles Lex Brooke.

- Law Offices -

BROOKE, O'SULLIVAN & BROOKE,

People
vs
Horace F. Burroughs.

111 Broadway, New York.

May 21st, 1894.

Donald S. L. Lee, Esq.

Dear Sir:-

A Motion now pending to dismiss the indictment against the above named defendant will be heard before Mr. Justice Fitzgerald, in Part One of the General Sessions, at two o'clock this P. M.

You being complainant in the case, I notify you of such motion in order that you may be present, if you so desire.

Very truly yours,

Charles W. Brooke
att'y for deft

POOR QUALITY
ORIGINAL

0258

Original Letter

Remoungs to

Secord M & Co

Dec 19/85

Proposed blank affdt of

Donald Lee

do Henemann +

suggestion as to form

A good affdt Wt Mithel

before bank &

Dec 1/89

District Attorneys Office,
County of New York,
New York.

**POOR QUALITY
ORIGINAL**

0259

1

LORING R. MILLEN, being duly sworn, deposes and says that he is a member of the firm of Messrs. Stillwell, Millen & Co., doing business at Savannah and Brunswick, Ga., and of the firm of Messrs. L. R. Millen & Co., having its place of business at No. 16 Beaver Street, N. Y. City. That he has been in the yellow pine business at Savannah and Brunswick for several years, and that he is familiar with the grades of lumber shipped from the latter port and with the names of the inspectors who measure and inspect it there. That he is familiar with the facts connected with the cargo of yellow pine lumber shipped by Mr. Horace F. Burroughs on an order of Messrs. Middleton & Co. from Brunswick by the schooner "Lester A. Lewis" in Dec)jan. last, and that the cargo was sold by ~~him~~ the said deponent on behalf of his firm to Mr. Horace F. Burroughs under the following circumstances:

On or about the 12th day of Nov., 1888, a person claiming to be Walter F. Heineman, and claiming to be the representative of Mr. Horace F. Burroughs of New York, called at the office of deponent's firm in Savannah and presenting a card bearing the name of Mr. Burroughs as principal, and also bearing his own name, proceeded to negotiate for and finally bought on the 16th day of Nov. the cargo of yellow pine lumber that was afterward delivered to the schooner "Lester A. Lewis," the shipping documents of which vessel were made out by Stillwell, Millen & Co. in accordance with Mr. Burroughs' instructions in the name of Middleton & Co., the lumber going to Guadalupe. The grade of lumber sold by deponent was Savannah merchantable by the rule of 1883, which allows

**POOR QUALITY
ORIGINAL**

0260

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sap as follows:

Boards and plank 9 inches and under wide, not exceeding 1-3 sap on one side, over 9 inches wide, not exceeding 1-3 sap on both sides.

Scantling allowing sap on one corner, but without specification as to the amount.

Dimension sizes: Square lumber not exceeding 1-3 sap, not exceeding half sap on the other two sides.

Other sizes not exceeding 1-3 sap on faces, and not to show sap more than 1-3 of the length on edges, excepting where the width exceeds the thickness by 3 inches or over, when it may show sap on the edges for half the length. And this cargo contained sap, but not exceeding the limits above mentioned. (The next highest grade is Savannah merchantable by rule of 1879, which allows a less amount of sap than the rule of 1883, and the next grade above that is prime, which limits the amount of sap to a small quantity, while the highest grade is all heart or free from sap, the last named being very difficult to get and seldom furnished)

Delivery of this cargo was to begin by Jan. 5th, 1889, and continue at the rate of 15,000 ft per day, Sundays excepted, as deponent explained to Mr. Heineman that at this season of the year the mills were always crowded and could not undertake delivery till after the Holidays; that, in fact, it was doubtful if the mills could begin sawing the lumber till after the 1st of Jan.

That on the said 16th day of Nov., 1888, deponent on behalf of his firm and in their name addressed to Mr. Horace F. Burroughs at New York a letter confirming the

**POOR QUALITY
ORIGINAL**

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contract made with Mr. Heineman on his behalf, stating the quality and the time of delivery as above set forth (Copy of letter attached hereto marked Exhibit D.) The receipt of which letter was acknowledged by Mr. Burroughs in his letter dated Nov. 22nd. (Original attached hereto marked Exhibit E.) The said letter of Mr. Burroughs confirming the purchase upon the terms of Messrs. Stillwell, Millen & Co's. letter of Nov. 16th.

That on or about the 13th day of Dec. the schooner "Lester A. Lewis" reported at Brunswick, and deponent's firm being in receipt of urgent telegrams from Mr. Burroughs to load her as rapidly as possible, proceeded to do so, employing Mr. T. M. Willink to inspect the cargo according to the contract.

That on or about the 16th of Jan., 1889, the vessel completed loading and deponent's firm forwarded to Mr. Burroughs' with the other shipping documents Mr. Willink's specification, stating the number of pieces and the quality of lumber shipped by the said vessel, and setting forth that the quality was merchantable by the rules of 1883 (copy of specification and certificate attached hereto marked Exhibit C.)

That the deponent is familiar with the names of the inspectors usually inspecting lumber at Brunswick, and that he never heard of any one of them named Wm. P. Mitchell; that so far as he knows no other person than T. M. Willink inspected the cargo or had anything to do with it, save that his agent at Brunswick, Mr. A. C. Banks, supervised the shipment as it was his duty to do, and this deponent is informed by said Banks that one Frank D. Aiken, of Brunswick, came to look at the cargo

POOR QUALITY
ORIGINAL

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once or twice while loading; that no notification was ever given to his firm by Mr. Burroughs of his intention to employ an inspector of his own, which notification would have been usual and customary under the circumstances.

*Given to before me, this
21st day of May 1889*

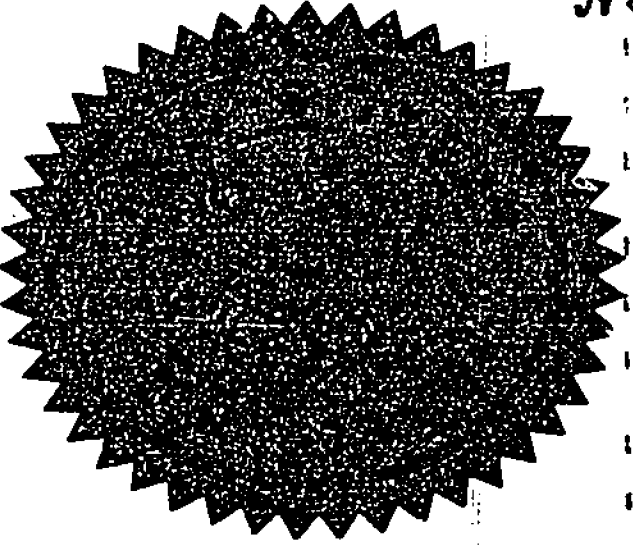
James R. Miller

NOTARY PUBLIC,
Kings County,
Cert. filed in N.Y. Co.

PLAINT

TO

J. C. Miller, Jr.



POOR QUALITY
ORIGINAL

0263

MIDDLETON VS
BURROUGHS

AFFIDAVIT OF

L. R. MILLEN, Esq.

circumstances.

tion would have been heard and customary under the cir-
-edition to employ an inspector of his own, which notifica-
-ever given to his firm by Mr. Burroughs of his inten-
-once or twice while loading: that no notification was

*Remondell
before*

POOR QUALITY
ORIGINAL

0264

Copy

Confirmation of telegram between A.C. Banks
and Horace F. Rumsford 21/Jan/18 N.Y.

Jan 11th

Lewis has

Antones

two hundred thousand feet

Abroad lumber & shingles, can

I settle

Africk

Four & half

days - reported Cases Dec 18

Answer quick

Banks -

Jan 11th - Answer

Please settle as per your telegram of today

Rumsford

**POOR QUALITY
ORIGINAL**

0265

Cargo for Schrr. Lister A. Lewis -
Inspected by J. M. Millard

POOR QUALITY
ORIGINAL

0266

AGENCIA CONSULAR DE ESPAÑA.

V. R. MITCHELL,
CONSULAR AGENT OF SPAIN.

Office on Bay Street.

Brunswick, Ga., June 22 1886
F. M. Fremont Esq

Atlanta Ga

Dear Sir

Your Favor of the 10 inst. addressed to V. R. Mitchell is to hand to day, the delay caused on account of the first initial being written wrong. In reply will say that the lowest figures for handling your lumber will be as follow:

unloading 10¢ trucking 30¢ stacking 15¢
wharfage 25¢ making total 80¢ per M,
the last figure includes all unforeseen expense
which may occur. At the last named figure
I will undertake the shipping of your lumber
and deliver clear Bills of Lading and Speci-
fications after Vessel is finished. Will work for
you either on salary or by contract and can
take charge regularly of a business.
Please let hear from you.

Yours Truly
V. R. Mitchell
P. O. box 42.

**POOR QUALITY
ORIGINAL**

0267

PIEDMONT LUMBER COMPANY,

MANUFACTURERS OF

GEORGIA LONG LEAF

YELLOW * PINE * LUMBER.

FRANK M. FREMONT, MANAGER.

P. O. BOX, 322.

40 MARIETTA ST.

ATLANTA, GA. Nov. 9th. 1920.

Mr. Justice O'Reilly,

Tenth Judicial Court,

City.

Dear Sir:-

Reference to the attached clipping from the N.Y. Herald Nov. 8th. I received as a preview. I have been the certificate to a certain
piece of lumber of which I am the proprietor. It has been shipped
from the mill, Ga. to the city of New York. It is now in
the hands of the city of New York. It is now in the hands of the city of New York.
It is now in the hands of the city of New York.

I am sure that the city of New York will be satisfied with the
quality of the lumber. It is now in the hands of the city of New York.
It is now in the hands of the city of New York.

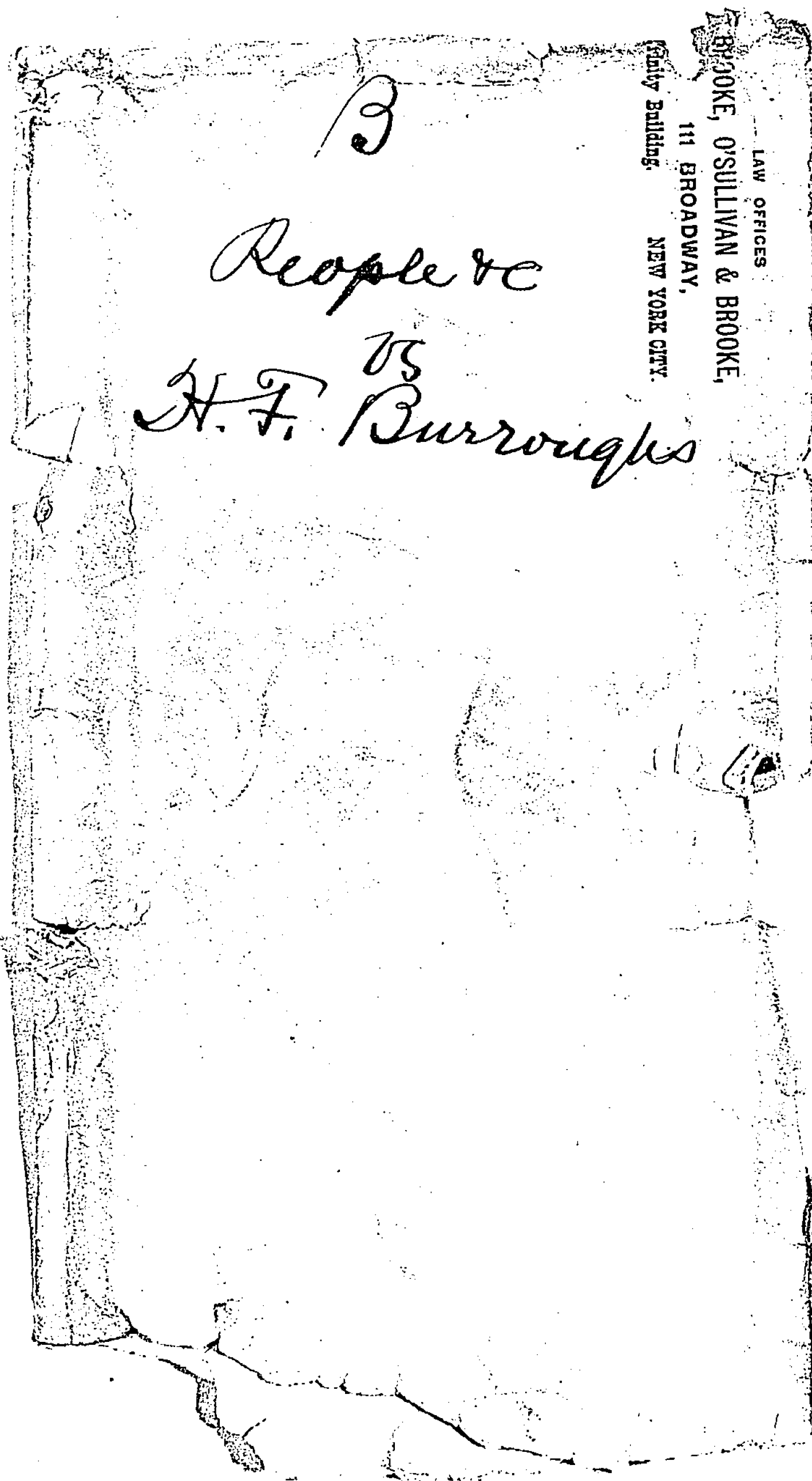
I am sure that the city of New York will be satisfied with the
quality of the lumber. It is now in the hands of the city of New York.
It is now in the hands of the city of New York.

I am sure that the city of New York will be satisfied with the
quality of the lumber. It is now in the hands of the city of New York.
It is now in the hands of the city of New York.

Frank M. Fremont.

**POOR QUALITY
ORIGINAL**

0268



**POOR QUALITY
ORIGINAL**

0269

People
is

Burroughs

**POOR QUALITY
ORIGINAL**

0270

DISTRICT ATTORNEY'S OFFICE.
CITY AND COUNTY OF
NEW YORK

HIS EXCELLENCY

DAVID B. HILL,

GOVERNOR STATE OF NEW YORK,

AT ANY, N.Y.

POOR QUALITY
ORIGINAL

0271

L.R. 9/1/4

You will no doubt
infer from above - that
L. R. is trying some
bribery game - with V.R.
Mitchell - an old Inspector of
Prisoners - A man whose
character - we have reason to
well know - and that any time
to repeat any statements he may
be bribed into making.

S

0272



RECEIVED

Oct 31st 1889

paid to

RECEIVED

from

Oct 31st 1890

Mrs. R. H. Heman

\$97.50

for

five & 60/100

Dollars

Wm. B. Burroughs

**POOR QUALITY
ORIGINAL**

0273

~~as a record~~
C. H. H. a
Feb. 12 / 18
N. H.

**POOR QUALITY
ORIGINAL**

0274

~~as on above~~
Child a
Feb. 12 / 78
N. H.

**POOR QUALITY
ORIGINAL**

0275

CLERK'S OFFICE,
COUNTY OF
NEW YORK.

*Indictment and
other papers in
Burton's forgery case.*

**POOR QUALITY
ORIGINAL**

02 76

CLERK'S OFFICE,
COUNTY OF
NEW YORK.

*Judgment and
other papers in
Burton's forgery case.*

POOR QUALITY
ORIGINAL

0277

Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK,

against

*Horace F. Burroughs the
younger. -*

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

Indictment accuse *Horace F. Burroughs the younger*

of the crime of *Forgery in the second degree,*

committed as follows:

Heretofore, to wit: *on the fifteenth day of October, in
the year of our Lord one thousand eight hundred and
eighty eight, at the City of New York in the County of
New York, aforesaid, the said Horace F. Burroughs the
younger, late of the City and County aforesaid, duly entered
into a certain contract in writing, through and by his
agent Walter R. Heinenman, with the firm of Middleton
and Company, lumber merchants of the said city, for
the sale by him the said Horace F. Burroughs the younger,
to the said Middleton and Company of certain lumber,
to wit: of one hundred and eighty six thousand and five
hundred feet of pitch pine lumber and seventy five
thousand shingles, to be delivered to the said Middleton
and Company by the said Horace F. Burroughs the younger
on board of vessels at Brunswick in the State of
Georgia, for shipment by the said Middleton and Company
to Point Pitre, Guadeloupe in the West Indies, and in*

POOR QUALITY
ORIGINAL

0278

and by which said contract it was agreed and understood between the said Horace F. Burroughs the younger and Middleton and Company, amongst other things, that the said lumber should be delivered at Brunswick aforesaid at the rate of twenty thousand feet each day day, Sundays and holidays excepted, commencing on the first day of November in the year aforesaid, that such lumber should be free of sap, and that the said Horace F. Burroughs the younger should furnish to the said Middleton and Company a proper certificate of inspection by a proper inspector of lumber, to the quality thereof, that the said Horace F. Burroughs the younger should hold the said Middleton and Company harmless against loss in case of claims from any adverse aforesaid arising by reason of the unsatisfactory quality of the lumber so to be sold and delivered by him, and that the said Horace F. Burroughs the younger should receive payment from the said Middleton and Company for such lumber at the rate of fourteen dollars and fifty cents ^{nett} for every thousand feet of pitch pine and at certain other rates for such shingles; and by reason ^{and according to the customs and usage of the lumber trade,} of the terms and conditions of the said contract, no claim became due, and no demand or obligation existed or could exist against the said Middleton and Company ~~for~~ payment for lumber sold or delivered by the said Horace F. Burroughs the younger to them pursuant thereto, except upon the furnishing to them by him of such proper certificate of inspection, whereby it should be made to appear that such lumber was of the

POOR QUALITY
ORIGINAL

0279

quality aforesaid, and had been duly examined and inspected by such inspector of lumber.

And afterwards, to wit: on the tenth day of January in the year of our Lord one thousand eight hundred and eighty nine, at the City and County aforesaid, the said Horace F. Burroughs the younger had in his custody and possession a certain paper writing purporting to be a specification of certain pitch pine lumber delivered by him, then lately before, on board of a certain vessel, to wit: the schooner "Sester A. Lewis" at Brunswick aforesaid, under and in accordance with the terms of the said contract, which said paper writing is as follows, that is to say:

"Specification of Pitch Pine Lumber shipped on board of Sch'r Sester A. Lewis by Mess. Middleton & Co. for account of Mess. J. Fleuret & Co.

Number of Pieces	Dimensions in Inches	Length in Feet	Contents in Board Measure	Remarks
266	2 x 2	6.406	2.102	
478	2 x 3	11.273	5.636	
882	2 x 3	21.008	15.756	
946	3 x 4	24.013	24.013	
762	4 x 4	19.592	26.122	
60	3 x 5	1.671	2.088	
138	3 x 6	2.996	4.494	
218	4 x 5	6.126	10.210	
43	4 x 6	1.128	2.256	
250	5 x 5	6.850	14.270	
93	5 x 6	2.451	6.202	
94	6 x 6	2.728	8.184	
25	6 x 10	6.89	3.445	
12	6 x 8	3.54	1.416	
44	8 x 8	1.356	7.231	
16	8 x 12	4.92	3.963	
13	8 x 10	3.85	2.565	
49	3 x 12	1.281	3.843	
23	3 x 14	6.11	2.138	
14	4 x 10	4.27	1.421	
24	4 x 12	6.67	2.668	
13	4 x 14	3.38	1.576	
22	4 x 8	6.11	1.628	
24	2 x 10	6.38	1.063	
137	2 x 12	3.241	6.482	
45	2 x 14	1.047	2.506	
51	3/4 x 14	1.243	1.456	
241	1/4 x 6	5.754	3.596	
111	1/4 x 12	2.974	3.787	
92	1/2 x 12	2.438	3.657	
37	1/2 x 14	9.03	1.580	
5223			177.257 "	

POOR QUALITY
ORIGINAL

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And so having the said paper writing in his custody and possession as aforesaid, the said Horace F. Burroughs the younger, well knowing the premises, aforesaid, to wit: on the said tenth day of January in the year of our Lord one thousand eight hundred and ninety, at the City and County of New York, aforesaid, with intent to defraud, did feloniously forge, on the same paper containing and on which was written the writing and specification hereinabove set forth, and immediately following the same, a certain instrument and writing purporting to be the act of another, to wit: of Wm. P. Mitchell, an Inspector of Lumber, by which a pecuniary demand and obligation against the said Middleton and Company and in favor of the said Horace F. Burroughs the younger, for the payment to him by the said Horace F. Burroughs the younger, by the said Middleton and Company in accordance with the terms of the said contract and at the rate therein mentioned for one hundred and seventy seven thousand, two hundred and fifty seven feet of pitch pine lumber, by him delivered to the said Middleton and Company in the performance of the said contract, and being the same lumber described in the said specification, purported to be and to have been created, and by which forging the said Middleton and Company might be bound, affected and injured in their property, to wit: a certain instrument and writing purporting to be signed by Wm. P. Mitchell, Inspector, and bearing date as follows: "Jan'y 10/89" whereby, according to the custom, usage and understanding in the lumber trade, it was made to

POOR QUALITY
ORIGINAL

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appear, and the same did then and there signify, indicate
and declare, in substance, that the lumber specified
in the said specification had been duly examined and
inspected by Wm. P. Mitchell, a proper inspector of lumber,
at Brunswick aforesaid, and that upon such inspection
and examination he the said Wm. P. Mitchell had found
the same to be of the quality specified in the said
contract, to wit: free of sap, which said forged instrument
and writing is as follows, that is to say:

" E. + O. E.

Brunswick Ga. Jan'y 10/89

Quality free of sap

Wm P Mitchell

Inspector."

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.

POOR QUALITY
ORIGINAL

0282

Second COUNT.

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

Horace F. Burroughs the younger
of the CRIME of Forgery in the second degree,

committed as follows:

The said

~~late of the City and County aforesaid, afterwards to-wit: On the day and in the year aforesaid,~~
~~at the City and County aforesaid,~~

Heretofore, to-wit: on the fifteenth day of October,
in the year of our Lord one thousand eight hundred and
eighty eight, at the City of New York, in the County of New
York, aforesaid, the said Horace F. Burroughs the younger,
late of the City and County aforesaid, duly entered into a certain
contract in writing, through and by his agent Walter P.
Heinemann, with the firm of Middleton and Company, lumber
merchants, of the said city, for the sale by him the said
Horace F. Burroughs the younger to the said Middleton
and Company of certain lumber, to-wit: of one hundred and
eighty six thousand and five hundred feet of pitch pine
lumber and seventy five thousand shingles, to be delivered
to the said Middleton and Company by the said Horace F.
Burroughs the younger on board of vessels at Brunswick in the
State of Georgia, for shipment by the said Middleton and Company

POOR QUALITY
ORIGINAL

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✓
to Point Pitre, Guadeloupe in the West Indies, and in and
by which said contract it was agreed and understood between
the said Horace F. Burroughs the younger and Middleton
and Company, amongst other things, that the said lumber
should be delivered at Brunswick aforesaid, at the rate of
twenty thousand feet each day, Sundays and holidays
excepted, commencing on the first day of November in the
year aforesaid, that such lumber should be free of rap, and
that the said Horace F. Burroughs the younger should
furnish to the said Middleton and Company a proper certificate
of inspection by a proper inspector of lumber, to the
quality thereof, that the said Horace F. Burroughs the
younger should hold the said Middleton and Company harmless
against loss in case of claims from Guadeloupe aforesaid
arising by reason of the unsatisfactory quality of the
lumber so to be sold and delivered by him, and that the
said Horace F. Burroughs the younger should receive
payment from the said Middleton and Company for such
lumber at the rate of fourteen dollars and fifty cents ^{nett} for
every thousand feet of pitch pine and at certain other
rates for such shingles; and by reason of the terms
and according to the customs and usages of the lumber trade,
and conditions of the said contract, no claim became due,
and no demand or obligation existed or could exist against
the said Middleton and Company, of payment for lumber
sold or delivered by the said Horace F. Burroughs the younger
to them pursuant thereto, except upon the furnishing to them
by him of such proper certificate of inspection, whereby it should
be made to appear that such lumber was of the quality
aforesaid and had been duly examined and inspected
by such inspector of lumber.

POOR QUALITY
ORIGINAL

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And afterwards, to wit: on the tenth day of January, in the year of our Lord one thousand eight hundred and eighty nine, at the City and County aforesaid, the said Horace F. Burroughs the younger had in his custody and possession a certain paper writing purporting to be a specification of certain pitch pine lumber delivered by him, then lately before, on board of a certain vessel, to wit: the schooner "Lester A. Lewis", at Brunswick aforesaid, under and in accordance with the terms of the said contract, which said paper writing is as follows, that is to say:

" Specification of Pitch Pine Lumber shipped on board of Schr. Lester A. Lewis by Mess. Middleton & Co. for account of Mess. J. Fleuret & Co.

Number of Pieces	Dimensions in Inches	Length in Feet	Contents in Board Measure	Remarks
266	2 x 2	6.406	2.102	
478	2 x 3	11.273	5.636	
882	3 x 3	21.008	15.756	
946	3 x 4	24.013	24.013	
762	4 x 4	19.592	26.122	
60	3 x 5	1.671	2.088	
138	3 x 6	2.996	4.494	
218	4 x 5	6.126	10.210	
43	4 x 6	1.128	2.256	
250	5 x 5	6.850	14.270	
93	5 x 6	2.481	6.202	
74	6 x 6	2.728	8.184	
25	6 x 10	689	3.445	
12	6 x 8	354	1.416	
44	8 x 8	1.356	7.231	
16	8 x 12	492	3.936	
13	8 x 10	385	2.565	
49	3 x 12	1.281	3.843	
23	3 x 14	611	2.138	
14	4 x 10	427	1.421	
24	4 x 12	667	2.668	
13	4 x 14	338	1.576	
22	4 x 8	611	1.628	
24	2 x 10	638	1.063	
137	2 x 12	3.241	6.482	
45	2 x 14	1.074	2.506	
51	3/4 x 14	1.248	1.456	
241	1/4 x 6	5.754	3.596	
111	1/4 x 12	2.974	3.717	
92	1/2 x 12	2.438	3.657	
37	1/2 x 14	903	1.580	
5223			177.257	"

on the paper containing and on which was written the writing and specification above set forth, and immediately following the same, there was then and there written a certain forged instrument and writing purporting to be the act of another to wit: of Wm. P. Mitchell, an Inspector of lumber, by

**POOR QUALITY
ORIGINAL**

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which a pecuniary demand and obligation against the said Middleton and Company and in favor of the said Horace F. Burroughs the younger for the payment to him the said Horace F. Burroughs the younger, by the said Middleton and Company in accordance with the terms of the said contract and at the rate therein mentioned for one hundred and seventy seven thousand, two hundred and fifty seven feet of pitch pine lumber, by him delivered to the said Middleton and Company in the performance of the said contract, and being the same lumber described in the said specification, purported to be and to have been created, and by which forging the said Middleton and Company might be bound, affected and injured in their property, to wit: a certain instrument and writing purporting to be signed by Wm. P. Mitchell, Inspector, and bearing date as follows: "Jan'y 10/89", whereby, according to the custom, usage and understanding in the lumber trade, it was made to appear, and the same did then and there signify, indicate and declare, in substance, that the lumber described in the said specification had been duly examined and inspected by Wm. P. Mitchell a proper inspector of lumber, at Brunswick aforesaid, and that upon such inspection and examination he the said Wm. P. Mitchell had found the same to be of the quality specified in the said contract, to wit: free of sap, which said forged instrument and writing is as follows, that is to say:

"E. & J. O.E.

Brunswick, Ga. Jan'y 10/89

Quality free of sap

POOR QUALITY
ORIGINAL

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Wm P. Mitchell

Inspector."

And the said Horace F. Broughs, well knowing the premises, and that the said instrument and writing was forged, afterwards, to wit: on the said tenth day of January, in the year last aforesaid, at the said City and County, with intent to defraud, did feloniously utter, publish, dispose of and put off as true the said forged instrument and writing, by then and there producing, furnishing and delivering the same to the said Middleton and Company as and for a true and genuine certificate of inspection required by the terms and conditions of the said contract; 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.

POOR QUALITY
ORIGINAL

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Third COUNT.

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

Horace F. Burroughs the younger

of the CRIME of Grand Larceny in the first degree,

committed as follows:

The said

late of the City and County aforesaid, afterwards to wit: On the day and in the year aforesaid,
at the City and County aforesaid,

Herebefore, to wit: on the fifteenth day of October,
in the year of our Lord one thousand eight hundred and eighty
eight, at the City of New York, in the County of New York,
aforesaid, the said Horace F. Burroughs the younger, late of
the City and County aforesaid, duly entered into a certain
contract in writing, through and by his agent Walter R.
Heinemann, with the firm of Middleton and Company, lumber
merchants, of the said city, for the sale by him the said
Horace F. Burroughs the younger to the said Middleton and
Company of certain lumber, to wit: of one hundred and eighty
six thousand and five hundred feet of pitch pine lumber
and seventy five thousand shingles, to be delivered to the
said Middleton and Company by the said Horace F. Burroughs
the younger on board of vessels at Brunswick in the State of
Georgia, for shipment by the said Middleton and Company

**POOR QUALITY
ORIGINAL**

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to Point Pitre, Guadeloupe in the West Indies, and in and
by which said contract it was agreed and understood
between the said Horace F. Burroughs the younger and
Middletown and Company, amongst other things, that the
said lumber should be delivered at Bismarck aforesaid
at the rate of twenty thousand feet each day, Sundays
and holidays excepted, commencing on the first day of
November, in the year aforesaid, that such lumber should
be free of sap, and that the said Horace F. Burroughs
the younger, should furnish to the said Middletown and
Company a proper certificate of inspection by a proper
inspector of lumber, to the quality thereof, that the said
Horace F. Burroughs the younger should hold the said
Middletown and Company harmless against loss in case of
claims from Guadeloupe aforesaid arising by reason of the
unsatisfactory quality of the lumber so to be sold and
delivered by him, and that the said Horace F. Burroughs
the younger should receive payment from the said Middletown and Company
for such lumber at the rate of fourteen dollars and fifty
cents ^{nett} for every thousand feet of pitch pine, four dollars
and fifty cents nett for every thousand four inch shingles,
five dollars and fifty cents nett for every thousand five
inch shingles, and six dollars and fifty cents nett for
every thousand six inch shingles; and by reason of the
terms and conditions ^{and according to the customs and usages of the lumber trade} of the said contract, no claim
became due, and no demand or obligation existed or could
exist against the said Middletown and Company of payment
for lumber sold or delivered by the said Horace F.
Burroughs the younger to them pursuant thereto, except
upon the furnishing to them by him of such proper

POOR QUALITY
ORIGINAL

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certificate of inspection, whereby it should be made to appear that such lumber was of the quality aforesaid

And afterwards, to wit: on the tenth day of January in the year of our Lord one thousand eight hundred and eighty nine, at the City and County aforesaid, the said Horace F. Burroughs the younger, with intent ^{and defraud} to deprive, J. N. B. Middleton, C. L. Middleton and Donald S. L. Lee, copartners in trade, then and at all the times herein mentioned constituting and composing the said firm of Middleton and Company of the proper moneys, goods, chattels and personal property herein below described, and of the use and benefit thereof and to appropriate the same to his own use, feloniously, knowingly and fraudulently did falsely pretend and represent to the said J. N. B. Middleton, C. L. Middleton and Donald S. L. Lee, so constituting and composing the said firm of Middleton and company,

~~That a certain paper writing in the words and figures following, to wit:~~

~~"Specification of Pitch Pine Lumber shipped on board~~

~~That the said firm of Middleton and Company was then justly indebted to him the said Horace F. Burroughs ^{the younger} in the sum of two thousand five hundred and seventy dollars and twenty three cents for lumber delivered by him in the performance of the said contract; that he the said Horace F. Burroughs the younger had then lately before delivered to the said Middleton and Company on board of a certain schooner called "Sister A. Davis" at certain lumber of the quality specified in the said contract, to wit: free of sap, consisting of Brunswick aforesaid, five thousand two hundred and~~

\$2570.23

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POOR QUALITY
ORIGINAL

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twenty three pieces of pitch pine lumber containing one hundred and seventy seven thousand two hundred and fifty seven feet in board measure, twenty five thousand four inch shingles, twenty five thousand five inch shingles and twenty five thousand six inch shingles, that the said ^{pitch pine} lumber had been duly examined and inspected by William P. Mitchell, a proper inspector of lumber, at Brunswick aforesaid, and that upon such inspection and examination he the said William P. Mitchell had found the same to be of the quality specified in the said contract, to wit: free of sap; that a certain paper writing, in the words and figures following, - that is to say:

Specification of Pitch Pine Lumber shipped on board of Schr. Lester A. Lewis by Mess. Middleton & Co. for account of Mess. Tenet & Co.

Number of Pieces	Dimensions in Inches	Length in Feet	Contents in Board Measure	Remarks
266	2 x 2	6.406	2.102	
478	2 x 3	11.273	5.636	
882	3 x 3	21.008	15.756	
946	3 x 4	24.013	24.013	
762	4 x 4	19.592	26.122	
60	3 x 5	1.671	2.088	
138	3 x 6	2.996	4.494	
218	4 x 5	6.126	10.210	
43	4 x 6	1.128	2.256	
250	5 x 5	6.850	14.270	
93	5 x 6	2.481	6.202	
94	6 x 6	2.728	8.184	
25	6 x 8	.689	3.445	
12	6 x 8	354	1.416	
44	8 x 8	1.356	7.231	
16	8 x 12	492	3.963	
13	8 x 10	385	2.565	
49	3 x 12	1.281	3.843	
23	3 x 14	611	2.138	
14	4 x 10	427	1.421	
24	4 x 12	667	2.668	
13	4 x 14	338	1.576	
22	4 x 8	611	1.628	
24	2 x 10	638	1.063	
137	2 x 12	3.241	6.482	
45	2 x 14	1.047	2.506	
51	3/4 x 14	1.248	1.456	
241	1/4 x 6	5.754	3.596	
111	1/4 x 12	2.974	3.717	
92	1/2 x 12	2.438	3.657	
37	1/2 x 14	903	1.580	
5223			177.257	"

which he the said Horace F. Broughs the younger then and there produced, delivered and furnished to the said J. W.

POOR QUALITY
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B. Middleton, C. L. Middleton and Donald S. L. See was then and there a schedule and description of ^{pitch pine} such lumber of the quality aforesaid; and that the words and figures following, to wit:

" E & O. E.

Brunswick Ga. Jan'y 10/89

Quality free of sap

Wm. P. Mitchell

Inspector."

which were ~~was~~ then and there ~~written~~ written on the same paper containing the paper writing above set forth, and immediately following the same, was a true and genuine certificate of inspection, and the proper certificate of inspection by a proper inspector of lumber, to the quality of the lumber specified and described in the said paper writing, and the certificate required by the reason of the terms and conditions of the said contract to be furnished by the said Horace F. Burroughs the younger to the said Middleton and Company in order that any claim might become due, or demand or obligation could exist against the said Middleton and Company if payment for lumber sold or delivered to them by the said Horace F. Burroughs the younger, pursuant to the said contract, and that the same had been duly made and signed by the said William P. Mitchell, and that the said William P. Mitchell was then a proper and duly qualified inspector of lumber.

And the said J. N. B. Middleton, C. L. Middleton and Donald S. L. See, then and there believing the said

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false and fraudulent pretenses and representations so made as aforesaid by the said Horace F. Burroughs the younger, and being deceived thereby, were induced by reason thereof to deliver, and did then and there give and deliver to the said Horace F. Burroughs the younger, the sum of two thousand five hundred and seventy dollars and twenty three cents in money, lawful money of the United States of America and of the value of two thousand five hundred and seventy dollars and twenty three cents, and one written instrument and evidence of debt, to wit: an order for the payment of money of the kind known as bank cheques for the payment of and of the value of two thousand five hundred and seventy dollars and twenty three cents, of the proper moneys, goods, chattels and personal property of the said J. N. B. Middleton, C. L. Middleton and Donald S. L. See.

And the said ~~J. N. B.~~ Horace F. Burroughs the younger did then and there feloniously receive and obtain the said proper moneys, goods, chattels and personal property from the possession of the said J. N. B. Middleton, C. L. Middleton and Donald S. L. See, by color and by aid of the false and fraudulent pretenses and representations aforesaid, with intent to deprive and defraud the said J. N. B. Middleton, C. L. Middleton and Donald S. L. See of the same, and of the use and benefit thereof, and to appropriate the same to his own use.

Whereas in truth and in fact the said

**POOR QUALITY
ORIGINAL**

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firm of Middleton and Company was not then justly indebted to the said Horace F. Burroughs the younger in the sum of two thousand five hundred and seventy dollars and twenty three cents for lumber delivered by him in the performance of the said contract; and the said Horace F. Burroughs the younger had not then lately before delivered to the said Middleton and Company on board of the said schooner called "Fester A. Lewis" at Brunswick aforesaid lumber of the quality specified in the said contract, to wit: free of sap, consisting of five thousand two hundred and twenty three pieces of pitch pine lumber containing one hundred and seventy seven thousand two hundred and fifty seven feet in board measure, twenty five thousand four inch shingles, twenty five thousand five inch shingles and twenty five thousand six inch shingles; and the said pitch pine lumber had not been duly examined and inspected by William P. Mitchell, a proper inspector of lumber, at Brunswick aforesaid, and the said William P. Mitchell had not upon such inspection and examination found the same to be of the quality specified in the said contract, to wit: free of sap; and whereas in truth and in fact the said paper writing which he the said Horace F. Burroughs the younger then and there produced, delivered and furnished to the said J. N. B. Middleton, C. L. Middleton and Donald S. L. Lee as aforesaid, was not then and there a schedule and description of such pitch pine lumber of the quality aforesaid, and the said words and figures which were so as aforesaid then and there

POOR QUALITY
ORIGINAL

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~~Court of General Sessions of the Peace~~

~~OF THE CITY AND COUNTY OF NEW YORK.~~

~~THE PEOPLE OF THE STATE OF NEW YORK,~~

~~against~~

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

~~Indictment accuse~~

~~of the crime of~~

~~committed as follows:~~

~~The said~~

~~late of the City of New York, in the County of New York, aforesaid, on the~~

~~day of~~

~~in the year of our Lord one thousand~~

~~eight hundred and eighty.~~

~~, at the City and County aforesaid,~~

*written on the same paper containing the paper writing
above set forth, and immediately following the same,
was not a true and genuine certificate of inspection,
and was not the proper certificate of inspection by a
proper inspector of lumber to the quality of the lumber
specified and described in the said paper writing, and
the certificate so required by reason of the terms and
conditions of the said contract; and the same had
not been duly made and signed by the said William
P. Mitchell, and the said William P. Mitchell was
not then a proper and duly qualified inspector
of lumber.*

POOR QUALITY
ORIGINAL

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And whereas in truth and in fact, the pretenses and representations so made as aforesaid by the said Horace F. Burroughs the younger to the said J. N. B. Middleton, C. L. Middleton and Donald S. L. See were then and there in all respects utterly false and untrue, as he the said Horace F. Burroughs the younger, at the time of making the same then and there well knew.

And so the Grand Jury aforesaid do say: that the said Horace F. Burroughs the younger, in the manner and form aforesaid, and by the means aforesaid, the said proper moneys, goods, chattels and personal property of the said J. N. B. Middleton, C. L. Middleton and Donald S. L. See, then and there feloniously did steal, against the form of the Statute in such case made and provided, and against the peace of the People of the State of New York, and their dignity.

John R. Fellows,
District Attorney

0296

BOX:

394

FOLDER:

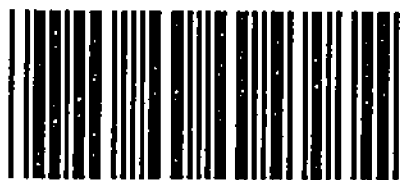
3668

DESCRIPTION:

Butch, Henry

DATE:

05/26/90



3668

0297

Радасно Венча
Олга. Ерма

Counsel,
Filed 26 day of May 1890

26 day of May 1891

Pleads, *Stycklin*

Tringali in the Third degree.
and [unclear]
[Section 498, 196, 192, 191, 190, 189, 188, 187, 186, 185, 184, 183, 182, 181, 180, 179, 178, 177, 176, 175, 174, 173, 172, 171, 170, 169, 168, 167, 166, 165, 164, 163, 162, 161, 160, 159, 158, 157, 156, 155, 154, 153, 152, 151, 150, 149, 148, 147, 146, 145, 144, 143, 142, 141, 140, 139, 138, 137, 136, 135, 134, 133, 132, 131, 130, 129, 128, 127, 126, 125, 124, 123, 122, 121, 120, 119, 118, 117, 116, 115, 114, 113, 112, 111, 110, 109, 108, 107, 106, 105, 104, 103, 102, 101, 100, 99, 98, 97, 96, 95, 94, 93, 92, 91, 90, 89, 88, 87, 86, 85, 84, 83, 82, 81, 80, 79, 78, 77, 76, 75, 74, 73, 72, 71, 70, 69, 68, 67, 66, 65, 64, 63, 62, 61, 60, 59, 58, 57, 56, 55, 54, 53, 52, 51, 50, 49, 48, 47, 46, 45, 44, 43, 42, 41, 40, 39, 38, 37, 36, 35, 34, 33, 32, 31, 30, 29, 28, 27, 26, 25, 24, 23, 22, 21, 20, 19, 18, 17, 16, 15, 14, 13, 12, 11, 10, 9, 8, 7, 6, 5, 4, 3, 2, 1]

Henry Burck

District Attorney.

A True Bill

Charles B. Foxcroft

June 1/90

For example:

© Fred. W. Convent of

11
 Quincy 3000
 L. P. H. Mrs. J. C. mg
 June 6, 1900
 B. M. 6

0298

POOR QUALITY
ORIGINAL

HARLEM POLICE COURT,
H.MURRAY, J., Presiding.

RAPHAEL ARANS, :
Agst. :
HENRY BUTCH, :
for Burglary. :

Daniel Van Cott, for the defendant.

By the Court (through Intrepreter)

Q.--Ask the complainant if his premises were burglarously entered?
A.--Yes.
Q.--When?
A.--On Sunday night about 11 o'clock.
Q.--Where ^{are} the premises ?
A.--Sixty-seventh street and Ninth Avenue.
Q.--What property was taken away ?
A.--Five pairs of shoes and a coat and a jacket.
Q.--When was that; on the 4th of May ?
A.--On Sunday ; don't know whether it was the 4th or the 5th.
Q.--In the night time ?
A.--Yes.
Q.--Ask defendant if he knows who committed the robbery ?
A.--I don't know.
Q.--Ask him if he saw the stolen property ?
A.--Yes, sir.
Q.--Where did he first see it ?
A.--In the Station House.
Q.--Did he identify the property?

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POOR QUALITY
ORIGINAL

(2)

A.--Yes, sir.

Policeman James Everitt, of the 26th Precinct street being duly sworn said: "I made the arrest personally. It was about 11 o'clock. I was trying my doors at 67th street at the time. As I walked down 67th street, I saw a man coming along with a bundle, and as I went toward him he dropped the bundle and started to run. I followed and caught him after he had climbed a fence, in the rear of a saloon.

By Mr. Van Cott:

Q.--Did you find any of the property in his possession?

A.--I got the property afterwards.

By the Court:

Q.--What did you mean by "trying my doors?"

A.--The doors of the premises on my post.

By Mr. Van Cott:

Q.--How far were you from him (the prisoner)?

A.--About ten feet.

Q.--Did you lose sight of him at any time?

A.--Only for an instant when he jumped the fence.

Q.--As he ran in an alleyway, you lost sight of him?

A.--Only for a second.

Q.--Then you did lose sight of him from the time you first saw him until he was arrested?

A.--It was only for a second.

Q.--He had not this bundle then?

A.--It was the two young men who had it.

Q.--You cannot tell what goods were in the bundle; and you don't know that he left these goods?

POOR QUALITY
ORIGINAL

0300

(3)

A.---I saw him drop them. He dropped them as he saw me coming toward him.

Q.---Did he not get between you and the stables?

A.---He dropped the goods and I then got him. I got the goods after I got him.

Q.---Did you know that the goods that this man --these men--
(the plaintiff)
picked up were the same goods that this man ~~(the defendant)~~
claims were stolen from his place?

A.---I saw this man drop them.

Q.---Now, officer, tell me what he, (the defendant,) said when he was arrested?

A.---He said he did not have anything to do with them.

Q.---Did he not say that some one had given them to him?

A.--- I asked him who the parties were and he could not tell. As the two men came out of the saloon, they said something to him, but what they said I do not know.

Q.---Who were these two men who had the goods?

A.---One's name was Abell--"Scotty" Abell. He lives in 67th street. The other one I don't know his name. He works for a man named Fink. He lives in the same street.

Q.---Do you know the character of Abell?

A.---Very good character.

Q.---Do you know the character of the other man?

A.---No.

Q.---How long have you known "Scotty"?

A.---He has never been arrested to my knowledge.

Q.---Did you see Butch in the liquor store when you came in?

A.---He came out of the Alleyway after he had jumped the fence.

POOR QUALITY
ORIGINAL

0301

(4)

Q.--Which yard did he go in, the stable yard or the saloon yard ?

A.--The saloon yard.

Q.--How far were you from him when you first saw him ?

A.--About 25 feet. I was about that distance behind him.

Q.--And you still insist that you saw this defendant drop that bundle ?

A.-- I did see him drop it .

Q.--It was very dark that night ?

A.--I could see him plain enough.

Q.--What did the defendant say when you arrested him ?

A.--He said he did not know anything about the things.

Mr. Van Cott (to the Court): "I claim that there is no evidence showing that this man was on the premises of this shoemaker. I ask for his discharge.

The Court: The motion is denied.

Mr. Van Cott: I will now put the defendant himself on the stand .

Henry Butch, the defendant was then sworn. He said: "I was going through the street when I was "taken short" and went into the saloon to the water closet there. This officer came and gave me a "welt" with his club. I fell on my back and said, 'Mr.Cop', don't hurt me. He said he was going to shoot me.

Mr. Van Cott (to the Court) : This defendant had only been in port four hours when the officer came and arrested him.

The Witness, resuming : I saw these two men. They gave me the stuff

**POOR QUALITY
ORIGINAL**

0302

(5)

to carry to Tenth Avenue. The officer sounded his club, and two more policemen came along. They took me in and this man from the shoe store came and identified the property. He did not say that I took it.

In reply to Mr. Van Cott: The officer came out of the saloon as I was coming in. I never had the goods in my possession, and I don't know how they came there.

The Court: That's all.

Mr. Van Cott: I still ask for his discharge.

Officer Everitt: He wrote a letter to the men asking them to come up and swear that he never did it.

The Court: Held in \$1,000 bail to answer.

POOR QUALITY
ORIGINAL

0303

Police Court 5 District.

City and County } ss.:
of New York }

of No.

64 N. 64

Street, aged 26 years,

occupation.

Shoe maker

being duly sworn

deposes and says, that the premises No.

64 N. 67

Street, First Ward

in the City and County aforesaid the said being a

building

one story frame

and which was occupied by deponent as a

shoe shop

and in which there was at the time no human being, by name

were BURGLARIOUSLY entered by means of forcibly

the window leading from the street
into said shop.

prying open

on the

4th day of May

1890

in the Night time, and the

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

Five pairs of Shoes. two
Coats. and one jacket. together
of the value of twenty five
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 taken, stolen and carried away by

Henry Butch. (now here)

for the reasons following, to wit:

that at the hour of 1
O'clock. P. M. said date, deponent

securely locked, and fastened the
doors and windows, of said premises,

and went out, leaving said premises
alone. and all of said property therein

and when deponent returned at the
hour of midnight same date, deponent
discovered that said premises had been

POOR QUALITY
ORIGINAL

0304

Entered, as aforesaid. And that
said property was missing therefrom.
Wepmunt is informed by Officer
James Everett, that at the hour
of 11.35 A.M. said date,
he arrested this defendant on West
6th Street West of 11th Avenue, and
just before his arrest, he the Officer
saw the said defendant drop two
Coats, and four pairs of Shoes, which
he the Officer recovered.
Wepmunt further says that he has
since seen the property which the
Officer recovered and fully identifies
it as his, and charges this defendant
with Burglarily entering said
premises and feloniously taking
stealing and carrying away said
property.
Sworn to before me
this 5th day of May 1890. Arena Raffaele

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
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 188
I have admitted the above named
to bail to answer by the undertaking hereto annexed.
Dated 188
There being no sufficient cause to believe the within named
guilty of the offence within mentioned, I order him to be discharged.
Dated 188
Police Justice

Police Court,	District,	Office—BURGLARY.
THE PEOPLE, &c.,		
on the complaint of		
1.		
2.		
3.		
4.		
Dated,	188	
Magistrate.		
Officer.		
Clerk.		
Witness,		
No.	Street,	
No.	Street,	
No.	Street,	
\$	to answer General Sessions.	

POOR QUALITY
ORIGINAL

0305

CITY AND COUNTY }
OF NEW YORK, } ss.

aged _____ years, occupation _____ of No. _____

says, that he has heard read the foregoing affidavit of _____

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

Sworn to before me, this _____

day of _____

1898

Police Justice.

POOR QUALITY
ORIGINAL

0306

Sec. 198-200.

District Police Court.

CITY AND COUNTY } ss.
OF NEW YORK, }

Henry Butch

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

Question. What is your name?

Answer.

Henry Butch

Question. How old are you?

Answer.

20 years old

Question. Where were you born?

Answer.

New York

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

Answer.

69th St near West End Ave 2 weeks

Question. What is your business or profession?

Answer.

Plasterer

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

Henry Butch

Taken before me this

day of

188

Police Justice.

**POOR QUALITY
ORIGINAL**

0307

0308

1907-1908
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Committee

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

POOR QUALITY
ORIGINAL

0309

40
The People vs. Henry Butch { Court of General Sessions. Part I
Monday, June 2, 1890. Before Judge Martine
Indictment for burglary
in the third degree &c.

testified

Raffaele Arane, sworn and examined
through the interpreter. I live No. 64 West
Sixty Seventh St. and am a shoe-
maker. I have my shop at that address;
on the 4th of May I lost some property;
there are two low windows and a door
in that shop leading to the street. I left
the shop in the afternoon at one o'clock
and both windows were shut from
the inside by myself. I returned 12 min-
utes past midnight and I found I lost
a coat, a jacket, and seven pairs of
shoes; the value of the property was between
\$14 and \$25. All these things were in my
shop when I left. I found the window was
opened when I returned. I saw the defend-
ant afterward in the station house, about
2 1/2 o'clock that same morning. I know
Officer Everett of the 26th precinct. I did
not see the defendant before I returned
to the shop that evening. After I found the
shop broken open I went to the station
house. The officer showed me the goods
there. I saw the defendant there and I
identified the goods as mine. I got them

Cross Examined. My store is near Ninth Avenue towards the river; my house is a two story; there is another house near mine. When I went out at one o'clock I left nobody in the house. I locked every door and window before I went out. I don't know what time the property was taken. I saw it just before I left the house. I did not see any one take the property. I think this was on a Sunday.

James Everett sworn. I am an officer of the 26th precinct. I arrested the defendant on the 4th of May at 11.35 night at Sixty Seventh st. between the Eleventh Avenue and the railroad track. It is in the 22nd ward and the 26th precinct. I was patrolling my post and trying the doors and I met the defendant going down the street coming through Sixty Seventh street with a bundle under his arm. I turned around and looked after him, and as soon as he seen me he turned and ran, he ran in the stable yard. There is a board fence separates the saloon from the stable yard; the number of the saloon is No. 309; the stable yard is No. 307 - you enter through the gate; it was open on that

night; the height of the fence is four feet; the defendant jumped over the fence, he ran into the stable yard. I was ten feet from him when I saw him with a bundle; as soon as he saw me he dropped it and ran into the stable yard. There did he drop the goods? Right in the yard going down the gangway for the horses, going down an incline, and he had gained about 25 feet on me at that time. I was right behind him and he jumped over the fence into the yard. I of course lost sight of him for about a second. Afterwards he ran out through the hall and I caught hold of him. I brought him over to where the stuff was. It was in my sight all the time. He said he did not drop it at all. I got two young fellows standing in front of the saloon door. I got them to carry up the two coats to Tenth Avenue and two other officers came. The stuff was two coats and five pair of shoes. I brought the defendant up to Tenth Avenue. I gave him in charge of one of the officers. I brought one officer down; we came down and carried up the five pairs of shoes and the

POOR QUALITY
ORIGINAL

0312

umbrella; the umbrella was dropped and was right beside the shoes. I took the goods to the station house and the prisoner too. In the morning going to Court after the defendant was committed and put under a Thousand dollars bail by Judge Murray he asked me how the case would go. I knew the defendant by sight before this; the Italian, the complainant came to the station house; the goods were shown to him, but not in my presence.

Cross Examined I made the arrest of the defendant about two and a half blocks from the complainant's store. I did not know at the time that a burglary had been committed. There are two shanties on that lot - the stable yard. I made the arrest at 11.35. The lot where the defendant ran into this night was not very dark; there was no light in it that night; the street is not rather dark in that neighborhood. There were one or two wagons on the street. I arrested the defendant as he was coming out of the hall door of the saloon. I saw the bundle before I made the arrest. I did not search the defendant.

until I got him to the station house. I was trying the door of a grocery store when I saw the defendant. I was about ten feet from him. I did not see the stuff until he had passed me. I did not lose sight of him on the street. I was after him all the time; when he jumped over the fence I lost sight of him. The yard is about a hundred feet deep; there is a house at the extreme end of the lot. Families live in the house in the rear. There does not to my knowledge a number of young men who hang around there all the time. I saw the defendant about two months before this on the corner, and he went away as soon as he seen me.

Redirect Examination.

When you first saw him you saw him on the sidewalk? Yes. Then you were ten feet away from him? Yes. It was not until he passed you that you observed the thing under his arm? Yes, that is what I say - he had them under his right arm. You ran towards him he immediately dropped them and ran? Yes sir; he gained about fifteen feet; he was within ten feet of me when I first saw him.

POOR QUALITY
ORIGINAL

0314

Henry Butch, sworn and examined in his own behalf testified. Were you in the saloon No. 309 West Sixty Seventh Street on the night in question? No sir, not then. Were you out of the city at any time previous to the day of your arrest? No sir, I was not out of the city, I was away from that precinct altogether, I was down in Thirty Sixth Street. From Thirty Sixth Street I went all the way straight up Eighth Avenue. I left two lady friends down at Thirty Sixth Street and Eighth Avenue. Did you return from England on that day? Yes sir, I returned that afternoon at half past twelve. I arrived in Boston. I came over on a steamship. I left Hull on the 17th of March. I arrived in Boston on Saturday afternoon May 3, and from there I came on the Old Colony road to Fall River. I took the Pilgrim down to New York; she was delayed on account of a fog and did not get in until half past twelve Sunday afternoon. On the way up town I was going up to my mother's. She moved from Sixty Seventh Street and I found her at No. 305 West Sixty Ninth Street and Seventh Avenue.

POOR QUALITY
ORIGINAL

03 15

What day were you arrested? I was arrested on the 4th, Sunday the same day. I reached New York Sunday and reached Boston Saturday afternoon twelve o'clock. I found my mother. I dressed myself and I went down to my cousins; me and my brother and three cousins went into this man's place to take a drink in this saloon. That was half past four or five o'clock, and from there I left and went down to my cousins in Sixtyeth street. I could not tell you the number exactly; from there I left and went down to a christening at No 765 West Fifty Second street on Ninth Avenue. That was half past seven or eight o'clock. From there I went to No. 502 Forty Seventh street. I stayed there until ten o'clock. I took home from there two lady friends and walked down to No. 236 West Thirty Sixth street; it was a few minutes after eleven o'clock when I left them. I walked all the way up Eighth Avenue to Fifty Ninth street and the Boulevard and I walked down Sixty Seventh street. I met the officer. I saw him trying the doors. I was about going into the saloon again. I did not go inside. I had

the intention of going in there, but I was taken shot and I went into the yard; the proprietor of the saloon was counting his money on the counter; he was just closing up the door. I say, "Hallo Mr. Crapps." He says, "Hallo." I walked out, and as I stepped off this door into the street. The officer grabbed hold of me and said, "Harry, where are you going?" I kind of jumped when I seen the officer. I ran across the street, and he says, "Where is that stuff you stole?" I says, "I dont know what you are talking about." He takes my umbrella off me and he hits me with it; he said, "you dont own that umbrella." I claimed it at the 100th street Station house. One of my lady friends; it was raining so hard that you could not see your hands before your eyes. He says, "Where did you get all that stuff?" I said, "I dont know anything about it." Going on up he said, "the best thing you can do is to take a plea, and then I will get you off light." I said, "I will stand my trial." He said, "you will only go away, and I will make it as hard as I can

POOR QUALITY
ORIGINAL

0317

for you." He told me he did not know me. If the other officers had caught me they would give me a good licking. He never knew me in that Ward; he is only there eight months. I am going away with cattle. I was only in the city six or seven hours when I was arrested.

Cross Examined. I ran across the street because every time an officer sees me standing on the corner they hit me; there is my head; three months ago they hit me on the head. I was lying in the hospital. I went to Europe on the first of April, and I came back to New York the very day this happened. I was convicted of burglary in 1886 and I came out of the 12th of May 1888. I have been working on steamships ever since and have been trying to reform. It is not true what the officer says that he saw me drop the package. I never had the goods in my hand at all. I was not sent to the Island for assaulting police officers.

James Everett recalled. I did not strike the defendant with the umbrella.

The jury rendered a verdict of guilty of burglary in the third degree.

POOR QUALITY
ORIGINAL

0318

Testimony in the
case of
Henry Butch

filed May
1890.

POOR QUALITY
ORIGINAL

0319

Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK

against

Henry Butch

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

Henry Butch

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

The said

Henry Butch

late of the *Twenty-second* Ward of the City of New York, in the County of New York, aforesaid, on the *fourth* day of *May* in the year of our Lord one thousand eight hundred and *ninety*, with force and arms, at the Ward, City and County aforesaid, a certain building there situate, to wit: the *shop* of one

Raffaele Arena

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

Raffaele Arena

in the said *shop* 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.

POOR QUALITY
ORIGINAL

0320

SECOND COUNT—

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

Henry Butch
of the CRIME OF *Peter* LARCENY committed as follows:

The said

Henry Butch

late of the Ward, City and County aforesaid, afterwards, to wit: on the day and in the year aforesaid,
at the Ward, City and County aforesaid, in the *night*-time of the said day, with force and arms,

*ten shoes of the value of one dollar
each, two coats of the value of
six dollars each, and one jacket of the
value of three dollars*

of the goods, chattels and personal property of one

Raffaele Arena

in the

shop

of the said

Raffaele Arena

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

POOR QUALITY
ORIGINAL

0321

THIRD COUNT—

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

Henry Butch
of the CRIME OF CRIMINALLY RECEIVING STOLEN PROPERTY, committed as follows:

The said

Henry Butch

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, with force and arms,

ten shoes of the value of one dollar each, two coats of the value of six dollars each and one jacket of the value of three dollars

of the goods, chattels and personal property of one

Raffaele Arena

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

Raffaele Arena

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

Henry Butch

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

JOHN R. FELLOWS,
District Attorney.