

0325

BOX:

36

FOLDER:

426

DESCRIPTION:

Foley, Mary

DATE:

04/02/81



426

0326

BOX:

36

FOLDER:

426

DESCRIPTION:

Foley, Frank

DATE:

04/02/81



426

0327

BOX:

36

FOLDER:

426

DESCRIPTION:

Parker, Frank

DATE:

04/02/81



426

0328

4/423

Counsel, H.C.  
Filed 2 day of April 1884  
Plends *John G. Dwyer (x)*

THE PEOPLE

vs.

<sup>1</sup> Mary Foley  
<sup>2</sup> Frank Foley  
<sup>3</sup> Frank Parker

*James B. Collins*  
~~DEAN K. PHILLIPS~~

District Attorney.

A True Bill.

*Maurice St. Philips*

*April 5/84 Foreman.*

*John D. J.*

*Only Prison 10 days*

*John D. J.*

*James B. Collins*

INDICMENT  
~~the People~~  
*Cur No. 1000000000*



0329

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

FORM 112.

Police Court—Third District.

Terence Foxof No. 23 Damourik Street, being duly sworn, deposes  
and says that on the 24 day of March 1881at the City of New York, in the County of New York, was feloniously taken, stolen, and carried  
away from the possession of deponent and from the person of  
deponentthe following property viz: one gold Watch with plated Chain  
attached of the value of Twenty five dollars +  
a pocket book containing Silver coin of the  
value of about three dollars and one pair  
of shoes of the value of four dollars  
said property being in allof the value of Thirty two Dollars  
the property of deponent

and that this deponent has a probable cause to suspect, and does suspect, that the said property  
was feloniously taken, stolen, and carried away by Mary Foley and  
Frank Foley (both now here) and another person  
who is not arrested, and whose name is  
unknown to deponent, for the following reason to wit:  
Deponent met said unknown person in the  
Barney and at his request and in his  
company deponent visited the Basement at premises  
38 Eldridge Street, he there introduced deponent  
to said Mary Foley as his sister in law and  
said Frank as his brother.  
Deponent was in the company of said defendants  
from 12 o'clock until about 6 o'clock P.M. &c.  
Deponent was lying on a sofa asleep

Sworn to before me this

day of

188

Dated Justice

0330

with the aforedescribed Watch & Chain  
in the right hand Vest pocket of the  
last worn upon deponents person, and  
deponent had the pocket book containing  
said Money in the right hand pocket  
of the pants worn upon the person of  
deponent, and deponent had the  
within described Shoes on his feet,  
That when deponent awoke, ~~he saw~~  
~~the afore said property~~ said unknown  
person walked out of the Basement  
with deponent, and then deponent found  
a pair of old Slippers upon his feet  
and his Shoes taken & stolen then  
deponent missed the other described  
property when said unknown person  
ran away. Deponent caused the  
arrest of said Mary, charging  
her with the commission of said  
Larceny, and when under arrest  
deponent is informed by officer, <sup>Charles</sup> ~~James~~ <sup>of the 10th Precinct</sup> ~~of the 10th Precinct~~  
said Frank Foley came to the Station  
House with deponents Watch saying  
did you arrest my Wife here is the  
Watch a young fellow gave it to me,

Sworn to before me this }  
24<sup>th</sup> day of March 1881 } Terrence Fox  
Det. U.S. Marshal

City & County of New York SS

Etienne Borer of the 10<sup>th</sup> Precinct  
being duly sworn deposes & says he has read the  
affidavit of Terrence Fox and knows the contents  
thereof, that the portion therein referring to deponent  
is true to deponents own knowledge  
Etienne Borer

Sworn to before me this  
24<sup>th</sup> day of March 1881

John C. Mott

Police Justice

0331

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

*Terrence Fox*

of No. *23 Danvers* Street,

being duly sworn, deposes and says that on the \_\_\_\_\_ day of \_\_\_\_\_

1871 at the City of New York, in the County of New York

*Frank Papker (now here)*  
is the person as <sup>described</sup> the unknown  
person in the hereto annexed affidavit  
and who is charged as one of the  
defendants with the commission  
of the Larceny from defendant's person

*Terrence Fox*

Sworn to and  
before me

*Wm. H. [Signature]*  
1871

Police Justice.

0332

Police Court—Third District.

CITY AND COUNTY } ss.  
OF NEW YORK, }

*Frank Parker* being duly examined before the under-  
signed, according to law, on the annexed charge; and being informed that he was  
at liberty to answer, or not, all or any questions put to him, states as follows, viz.:

Question.—What is your name?

Answer.—*Frank Parker*

Question.—How old are you?

Answer.—*18 years*

Question.—Where were you born?

Answer.—*Ireland*

Question.—Where do you live?

Answer.—*38 Washington St.*

Question.—What is your occupation?

Answer.—*Steam cutter*

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

Answer.—*I picked this man up on the  
Rumsey we went to a Saloon had a  
glass of Beer he went to sleep and  
I told one of the Waiters to take his  
Watch till he got sober we then  
walked down to Foley's House he  
went to sleep on the sofa his Watch  
was left there for safe keeping  
I went out with him for two blocks  
he would not go no further and  
I left and went back to Foley  
place, I heard Foley this Chief  
man arrested and it came up  
here.*

*Frank Parker*

Taken before me, this

27th March 1891

Police Justice.

0333

Police Court—Third District.

CITY AND COUNTY }  
OF NEW YORK, } ss.

Frank Foley being duly examined before the under-  
signed, according to law, on the annexed charge; and being informed that he was  
at liberty to answer, or not, all or any questions put to him, states as follows, viz.:

Question.—What is your name?

Answer.—Frank Foley

Question.—How old are you?

Answer.—23 years

Question.—Where were you born?

Answer.—New York

Question.—Where do you live?

Answer.—24 Edwidge

Question.—What is your occupation?

Answer.—Printer

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

Answer.—This Gentleman here came to my  
house with a friend of his, and is also  
a friend of mine, my friend introduced  
me to this man, the complainant told me  
he left his Watch in the Bowery, he got  
his Watch in the Bowery and he came back  
he lay on the Sofa asleep, I took  
the Watch from his pocket for safekeeping  
I went down to the foot of Rivington Street and  
a Boat for some money due to me,  
when I returned I was told my Wife  
was arrested and I brought the  
Watch to the Station House

Frank Foley

Taken before me, this

Day of March 1881

Police Justice.

0334

Police Court—Third District.

CITY AND COUNTY } ss.  
OF NEW YORK.

*Mary Foley* being duly examined before the under-  
signed, according to law, on the annexed charge; and being informed that he was at  
liberty to refuse to answer any question that may be put to ~~her~~ states as follows,  
viz:

Question. What is your name?

Answer. *Mary Foley*

Question. How old are you?

Answer. *23 years*

Question. Where were you born?

Answer. *Germany*

Question. Where do you live?

Answer. *34 E. 12th St*

Question. What is your occupation?

Answer. *I am a Prostitute*

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

Answer. *I dont see anything about  
I was asleep when he came to the  
house, I am not guilty*

*Mary Foley*  
*M. J. Walsh*

Taken before me this 27th day of March 1881  
*J. J. Walsh*  
POLICE JUSTICE.

0335

COUNSEL FOR COMPLAINANT.

Name, \_\_\_\_\_  
Address, \_\_\_\_\_

COUNSEL FOR DEFENDANT.

Name, \_\_\_\_\_  
Address, \_\_\_\_\_

POLICE COURT—THIRD DISTRICT.

THE PEOPLE, &c.,  
ON THE COMPLAINT OF  
*Bruce J. [Signature]*  
*23*  
*172* *Dominick [Signature]*

AFFIDAVIT—LARCENY.

*James J. [Signature]*  
*James J. [Signature]*  
*James J. [Signature]*

4 \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_

Dated *March 22* 18*98*

*Smith* Magistrate.  
*Bayne* Officer.

Clark.

Witnesses  
*Ed. Bayne*

at \_\_\_\_\_  
Received at Dist. Atty's Office  
MAR 28 1898  
RECEIVED  
ATTORNEY'S OFFICE

BAILED.

No. 1, by \_\_\_\_\_  
Residence \_\_\_\_\_  
No. 2, by \_\_\_\_\_  
Residence \_\_\_\_\_  
No. 3, by \_\_\_\_\_  
Residence \_\_\_\_\_  
No. 4, by \_\_\_\_\_  
Residence \_\_\_\_\_  
No. 5, by \_\_\_\_\_  
Residence \_\_\_\_\_  
No. 6, by \_\_\_\_\_  
Residence \_\_\_\_\_



0336

CITY AND COUNTY }  
OF NEW YORK, } ss.

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

That *Mary Foley, Frank Foley and*  
*Frank Parker each*  
late of the First Ward of the City of New York, in the County of New York, aforesaid,

on the *twenty seventh* day of *March* in the year of our Lord one  
thousand eight hundred and eighty *one* at the Ward, City, and County aforesaid,  
with force and arms

*One watch of the value of twenty dollars*

*One chain of the value of five dollars*

*Two shoes of the value of two dollars*  
*each*

*One pocket book of the value of fifty*  
*cents*

*Divers coins of a number kind and*  
*denomination to the jurors aforesaid*  
*unknown and a more accurate*  
*description of which cannot now be*  
*given of the value of three dollars*

of the goods, chattels, and personal property of one  
on the person of said *Terrence Fox*  
from the person of said *Terrence Fox*  
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.

*Terrence Fox*  
then and there being found,  
then and there feloniously

\_\_\_\_\_, District Attorney.



0337

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

THAT the said

Mary Foley, Frank Foley  
and Frank Parker each

late of the Ward, City, and County aforesaid, afterwards, to wit: on the day and in  
the year aforesaid, with force and arms, at the Ward, City, and County aforesaid,

One watch of the value of twenty dollars  
One chain of the value of five dollars  
Two shoes of the value of two dollars  
each

One pocket book of the value of fifty  
cents

Given coins of a number kind and  
denomination to the jurors aforesaid  
unknown and a more accurate de-  
scription of which cannot now be given  
of the value of three dollars

of the goods, chattels and personal property of the said Terrence Fox

by a certain person or persons to the Jurors aforesaid unknown, then lately before  
feloniously stolen of the said ~~the said~~ taken and carried away from  
the said Terrence Fox

unlawfully, unjustly, and for the sake of wicked gain, did feloniously receive and have  
(the said Mary Foley, Frank Foley and Frank Parker

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 pro-  
vided, and against the peace of the People of the State of New York, and their dignity.

DANIEL C. ROLLINS,

~~Attorney at Law~~, District Attorney.

0338

BOX:

36

FOLDER:

426

DESCRIPTION:

Fredricks, John

DATE:

04/11/81



426

0339

57

Counsel,

Filed

Pleads

day of

1877

THE PEOPLE

vs.

John Fredericks  
I

David S. Sellers  
BENJ. K. PHILLIPS,

District Attorney.

A True Bill

James Lawrence

Foreman.

Feb 16, 1877

Pleas guilty

C.P. 18 months

Indictment—Larceny.

0340

FORM 112.

Police Court—Third District.

STATE OF NEW YORK,  
CITY AND COUNTY OF NEW YORK, } ssAdolphene Ebenstein  
of No. 236 Boreny Street, being duly sworn, deposesand says that on the 30<sup>th</sup> day of March 1887  
at about nine pm attempted  
at the City of New York, in the County of New York, was feloniously taken, stolen, and carried  
to take steel & carry  
away from the possession of deponent. a husbandSolomon H. Ebenstein  
the following property viz.: four Silver watchesof the value of Forty Eight Dollars  
the property of Solomon H. Ebenstein

and that this deponent has a probable cause to suspect, and does suspect, that the said property was feloniously taken, stolen, and carried away by <sup>attempted to be</sup> John Fredericks from the fact that a person came in to her husband's store about 9 o'clock last evening & pushed open a screen door & entered at the counter breaking the fastenings thereof & reached out to take said property when deponent saw him & screamed aloud, which caused said John to run out of the store followed by deponent. He was seen to run from the store & through the street by Officer Kane who pursued & arrested him at 16 Adolphene Ebenstein

Sworn to, before me this

day of

March

31

1887

POLICE JUSTICE.

0341

city & county of New York  
Bernard Kane of the  
10th precinct being duly  
sworn says that on the  
Evening of the 30th March  
he saw John Fredericks  
run out of Solomon  
& Ebstein's store when  
he pursued him about  
one block & a half &  
then arrested him

Bernard Kane  
Sworn to before me  
this 31st March 1887

W. A. Pryor

Police Justice

0342

Police Court—Third District  
CITY AND COUNTY OF NEW YORK ss.

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

Question. What is your name?

Answer.

*John Fredericks*

Question. How old are you?

Answer.

*26.*

Question. Where were you born?

Answer.

*Pennsylvania*

Question. Where do you live?

Answer.

*New York*

Question. What is your occupation?

Answer.

*Wood Carver*

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

Answer.

*It is a mistake. There was a great deal of men running that evening I was running at the same time. A cry of stop thief was yelled & I was running & a man grabbed me & I happened to come into his arms. He thought I was the man.*

*John Fredericks*

*John Fredericks*  
Taken before me, the  
Judge of the Court  
March 1857.  
JOHN JUSTICE

0343

COUNSEL FOR COMPLAINANT.

Name, \_\_\_\_\_  
Address, \_\_\_\_\_

COUNSEL FOR DEFENDANT.

Name, \_\_\_\_\_  
Address, \_\_\_\_\_

POLICE COURT—THIRD DISTRICT.

THE PEOPLE, &c., vs.  
ON THE COMPLAINT OF  
*Adolphus C. Stein*  
*236 Bowery*  
*John Fredrickson*  
AFFIDAVIT—LARCENY.

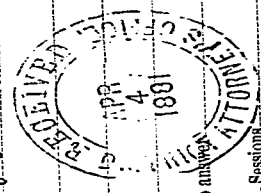
BAILED.

No. 1, by \_\_\_\_\_  
Residence \_\_\_\_\_  
No. 2, by \_\_\_\_\_  
Residence \_\_\_\_\_  
No. 3, by \_\_\_\_\_  
Residence \_\_\_\_\_  
No. 4, by \_\_\_\_\_  
Residence \_\_\_\_\_  
No. 5, by \_\_\_\_\_  
Residence \_\_\_\_\_  
No. 6, by \_\_\_\_\_  
Residence \_\_\_\_\_

Dated *31st March* 18 *81*.  
by *Pringle* Magistrate.  
by *John Fredrickson* Officer.  
*10th precinct*

Witnesses

*The officer*



\$ *2000.* to make  
at \_\_\_\_\_ Sessions  
Received at Dist. Att'y's Office,  
*see*

0344

CITY AND COUNTY } ss.  
OF NEW YORK, }

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

That

*John Fredericks*

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

*four watches of the value of twelve  
dollars each*

of the goods, chattels and personal property of one

*Solomon A. Eberstein*

there being found, feloniously <sup>attempt to</sup> 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.

then and

*David L. Rollins*

BENJ. K. PHELPS, District Attorney.



0345

BOX:

36

FOLDER:

426

DESCRIPTION:

French, Stephen

DATE:

04/30/81



426

0346

BOX:

36

FOLDER:

426

DESCRIPTION:

Nichols, Sidney

DATE:

04/30/81



426

0347

BOX:

36

FOLDER:

426

DESCRIPTION:

Mason, Joel

DATE:

04/30/81



426

0348

BOX:

36

FOLDER:

426

DESCRIPTION:

Smith, William

DATE:

04/30/81



426

Day of Trial

Counsel,

April 30 day of April 1881

Plaintiff  
vs.  
Defendant

THE PEOPLE

Stephen B. French  
Edw. C. French  
A. W. McArthur  
William L. Scudder

DANIEL G. ROLLINS,

District Atty. atty.

Mason & French  
as agents for Rep.  
French & French  
Mason & French  
French & French  
Oct. 7, 1881  
F.D.

A TRUE BILL

Mo. & French as  
agents for Rep. Mason  
French & French  
Mason & French  
Oct. 7, 1881  
F.D.

Aug 27/81

0350

1.

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

The People of the State of New  
York

William F. Smith, impleaded  
with Stephen G. French, Sidney  
J. Nichols and Joel W. Mason

Sir

2  
3  
Take notice that upon an Affidavit,  
of which the annexed is a copy, the Indictment  
hereto, all papers, minutes and proceedings of  
every description whatever, in reference to the  
subject matter thereof, or the defendant Smith,  
whether in the custody or possession of the Clerk  
of this Court, or filed or kept in his Office, - or  
being or remaining in the Office of the Dis-  
trict Attorney of this County, or within or un-  
der his control, and, particularly, the sum-  
mary of facts elicited by the Grand Jury, as  
published or referred to in the New York Herald  
of May 20<sup>th</sup> 1881, a motion will be made to this  
Court, in the part presided over by the Honor-  
able Frederick Smith Recorder of the City  
of New York, to be held in the large Iron  
Stone building in the City Hall Park near  
the Southwest corner of Chambers and Centre  
Streets in the City of New York, on the 26<sup>th</sup> day  
of May instant at the opening of the Court  
on that day or as soon thereafter as Coun-  
sel can be heard, that the Indictment here-  
in be quashed, vacated or set aside - or,  
if not, that the prosecutions be compelled to  
elect between the counts in the Indictment,

and name some one Street or Avenue in the Count selected under and in reference to which they mean to place the Board of Police - or the defendant Smith upon trial — and for such further or other Order as may then and there seem meet

The following are (some of) the grounds upon which the motions will be based

4 **1<sup>st</sup>** That the Indictment contains more than one offence in each Count. That a neglect in reference to any one of the Streets or Avenues mentioned in either count, is a separate and distinct offence in itself, though, in this instance, not on the part of, or of the defendants herein, or any of them, or the Board of Police

**2<sup>nd</sup>** That as the Indictment is drawn, it is broad enough to embrace all the Streets, Avenues, lanes, alleys, gutters, wharves, piers and heads of slips in the City of New York, which although referred to performatively or preliminarily are not sufficiently excluded or restricted by the averments in each count

**3<sup>rd</sup>** That neither of the Counts in the Indictment sets forth a legal offence. That they seem to have been based upon Chap 677 of the Session Laws of 1873, § 1, when that Section has been virtually abrogated and repealed by subsequent legislation

5 **4<sup>th</sup>** That the "Inspector of Street cleaning, the chief Officer of the" Bureau of Street cleaning" is, in no sense, the agent of the Police

0352

Board or the Police Commissioners. That it or they is or are not responsible for his delinquencies - that his duties are defined by the Charter of April 30<sup>th</sup> 1873 - that he is personally amenable for their performance - and that "supervision", if a duty of the Police Board, entailed upon it, or the Commissioners of Police, no such obligation as is averred in either count of the Indictment

5<sup>th</sup> That if it is claimed of the Board of Police, or the Police Commissioners, did not exercise a proper supervision over the Inspector of Street cleaning, or the work with which he was charged, that want of supervision, as it is purely a statutory offence, should have been the staple of each count of the Indictment. That, for aught that appears by the Indictment a proper supervision was exercised over that Officer and his work, for the Board and the Commissioners were entitled to be governed by his sworn, monthly statements, if the Comptroller, to whom they were rendered, was so entitled. That, in addition, the public inspection to which the Charter directed these statements to be open, was calculated to lead the Police Board, and the Commissioners of Police, to believe that, if the streets were not properly cleaned, or the other duties avowed in the Indictment were not properly performed, or the public monies were not properly expended, the Comptroller, to the extent to which he was to be a safeguard, and the public, in the exercise of their statutory privilege, could and would bring it directly to the knowledge of the Police Board and



0353

the Police Commissioners

6<sup>th</sup> That it is so where averred in the Indictment, the Inspector of Street cleaning, was not competent for his position, nor that he did not perform his duties, unless the averments, as to the condition of the Streets and Avenues, are to be taken as indirect averments of delinquency on the part of that Officer

7<sup>th</sup> That under the legislation, as to the Board of Health, the second count of the Indictment indicates an offence against that body, for which it is responsible

You will also take notice that, should it become necessary or proper on the said motion, reference will be made to any law or ordinance relative to the City Inspector, in operation on or since April 30, 1873 - and to any sanitary code of the Board of Health of the Health Department of the City of New York, and any ordinances, Rules, or regulations of any kind, in any way affecting or concerning that body, in operation on or since that day - and to the Rules and regulations of the Police Department of the City of New York, in operation on or since that day, and the Records and archives of that Department and to the monthly statements of the Inspector of Street cleaning, filed in the Office of the Comptroller of the City of New York previous to, on and since that day, with the oaths of the Inspector of Street cleaning thereto, and all other documents whatever

0354

connected therewith  
May 24<sup>th</sup> 1881

Yours &c.

*Wm. J. Smith*

Atty for Deft  
Wm. J. Smith

231 Broadway  
N.Y. City

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

0355

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

The People of the State of  
New York

William F. Smith impleaded  
with Stephen K. French, Sidney  
V. Nichols and Joel R. Mason

City & County of New York ss: -

William F. Smith the defendant  
above named, being duly sworn deposes  
and saith that he is now, and has been  
for fifteen years past, a resident of the City and  
State of New York.

That he is advised by his Counsel,  
and verily believes, a motion to quash the  
Indictment herein is proper and necessary,  
for the security and protection of his legal  
rights - that certain legal questions, arising  
upon the face of the Indictment, can be better  
discussed, and disposed of, upon such a motion,  
than during or in the course of a regular  
trial - that they are grave questions, and go  
to the right to maintain the Indictment, un-  
der any circumstances - that, if the motion  
should prevail, it would save this deponent  
great trouble and expense, as a trial under  
the Indictment would inevitably involve both  
these consequences to him.

That the motion (referred to in the  
annexed notice) is made in good faith,  
not for the purpose of delay, and in pursuance  
of the fragment and advice of this deponent's

0356

formel, after a careful and studious examination of the aspects of, and law controlling, the prosecution, as this deponent has been informed by his counsel, and verily believes

And this deponent further saith that he was not in the actual possession of his Office, as a Police Commissioner, between about April fourth 1879 - and July seventh 1880, his right to fill the Office - and discharge the duties thereof during that period being a matter of contest in the course of legal proceedings, - and that he was not reinstated there in until about the latter day - and that the Inspector of Street cleaning, who has ever since continued to be such, was appointed in or about the month of December 1879, this deponent having no voice whatever in his appointment

Sworn before me  
May 24<sup>th</sup> 1881

Wm. Smith

Living Watson  
Notary Public  
N. Y. C.

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

The People of the  
State of New York

- vs. -  
William Smith  
imprisoned &c.

Affidavit and  
Notice of Motion  
to Quash Indict-  
ment &c.

Wm. Smith  
Att. for Deft Smith  
231 Broadway  
N.Y. City

Filed June 20. 1881

0357

0358

The N. Y. Times. Saturday, October 8<sup>th</sup> 1881.

The indictment quashed.

Col. George Bliss appeared before Recorder Smyth, in General Sessions, yesterday and moved to quash the indictment for misdeemeanor found against Police Commissioners Stephen B. French, Sidney P. Nichols, Joel W. Mason, and James Matthews by the Office Grand Jury. This is the indictment charging the Commissioners with wilful neglect of duty in failing to clean the streets of the City, and is identical with that recently quashed by the Recorder, except that the name of Mr. Matthews is substituted for that of ex-policia Commissioner William F. Smith. District Attorney Attorney Rollins said that he had already covered the points in the case in his argument on the motion to quash the indictment against Gen. Smith. He had nothing to add, and would leave the matter in the hands of the court. His Honor's decision, he presumed, was as pertinent to the present application as it had been to that made on behalf of ex-Commissioner Smith. Recorder Smyth said that inasmuch as the matter was one of great public interest, he had examined it carefully in order to arrive at a correct conclusion. He saw no distinction between this case and the other, and would

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Therefore grant the motion to quash the indictment.

A record of the decision of his Honor was thereupon made. The Recorder, in quashing the Smith indictment some weeks ago, held that the law creating the new Street cleaning Department had repealed that which the Police Commissioners were charged with having violated, and that the indictment was therefore invalid.



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W. J. Simpson

People

- 1911 -

Wm. J. Smith

Revision of Records

Smith

W. J. Simpson  
Oct. 8/11



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CITY AND COUNTY OF NEW YORK: SS

THE JURORS OF THE PEOPLE OF THE STATE OF NEW YORK, IN AND FOR  
THE BODY OF THE CITY AND COUNTY OF NEW YORK, UPON THEIR OATH, PRE-  
SENT:

THAT ON THE TWELFTH DAY OF MARCH IN THE YEAR OF OUR LORD ONE  
THOUSAND EIGHT HUNDRED AND EIGHTY-ONE STEPHEN B. FRENCH, SIDNEY P.  
NICHOLS, JOEL W. MASON AND JAMES MATTHEWS WERE, AND EACH OF THEM WAS,  
AND, UNTIL THE FINDING OF THIS INQUISITION, HAS EVER SINCE BEEN ONE  
OF THE POLICE COMMISSIONERS OF THE CITY OF NEW YORK, IN THE COUNTY  
OF NEW YORK AFORESAID; AND THAT ON THE SAID TWELFTH DAY OF MARCH AND  
EVER SINCE, UNTIL THE FINDING OF THIS INQUISITION, THEY THE SAID  
STEPHEN B. FRENCH, SIDNEY P. NICHOLS, JOEL W. MASON AND JAMES  
MATTHEWS, EACH BEING SO AS AFORESAID ONE OF THE POLICE COMMISSIONERS  
SO AS AFORESAID, THEN AND THERE TOGETHER, AS SUCH POLICE COMMISSION-  
ERS, COMPOSED, CONSTITUTED AND ACTED AS THE BOARD OF POLICE OF THE  
CITY OF NEW YORK, IN THE COUNTY OF NEW YORK, AFORESAID, AND COM-  
POSED, CONSTITUTED AND ACTED AS THE BOARD OF POLICE OF AND IN THE  
POLICE DEPARTMENT OF AND IN THE CITY OF NEW YORK, IN THE COUNTY OF  
NEW YORK, AFORESAID.

AND THE JURORS AFORESAID, UPON THEIR OATH AFORESAID, DO FURTHER  
PRESENT: THAT THE SAID STEPHEN B. FRENCH, SIDNEY P. NICHOLS, JOEL  
W. MASON AND JAMES MATTHEWS, SO BEING EACH OF THEM ONE OF THE SAID  
POLICE COMMISSIONERS AS AFORESAID, AND SO TOGETHER, AS SUCH COM-  
MISSIONERS, COMPOSING, CONSTITUTING AND ACTING AS THE BOARD OF POLICE  
SO AS AFORESAID, WERE, ON THE SAID TWELFTH DAY OF MARCH IN THE YEAR

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AFORESAID, AND EVER SINCE, UNTIL THE FINDING OF THIS INQUISITION, HAVE BEEN, AS SUCH BOARD OF POLICE AS AFORESAID, FULLY AUTHORIZED, EMPOWERED, REQUIRED AND ENJOINED BY LAW TO THOROUGHLY CLEAN, AND TO CAUSE TO BE THOROUGHLY CLEANED, AND TO CAUSE TO BE AT ALL TIMES KEPT THOROUGHLY CLEANED, ALL AND SEVERAL THE STREETS, AVENUES, LANES, ALLEYS, GUTTERS, WHARVES, PIERS AND HEADS OF SLIPS, IN THE CITY OF NEW YORK AND COUNTY OF NEW YORK, AFORESAID; AND THAT THEY THE SAID STEPHEN B. FRENCH, SIDNEY P. NICHOLS, JOEL W. MASON AND JAMES MATTHEWS, POLICE COMMISSIONERS SO AS AFORESAID, AND SO TOGETHER, AS SUCH POLICE COMMISSIONERS, COMPOSING, CONSTITUTING AND ACTING AS SUCH BOARD OF POLICE, AS AFORESAID, ON THE TWELFTH DAY OF MARCH, AFORESAID, AND AT ALL TIMES SINCE, UNTIL THE FINDING OF THIS INQUISITION, HAD, AS SUCH POLICE COMMISSIONERS, AND AS SUCH BOARD OF POLICE, POSSESSION AND CONTROL OF, AND HAD AT THE LAWFUL DISPOSAL OF, <sup>at</sup> THE SAID BOARD OF POLICE, AND OF THEMSELVES THE SAID STEPHEN B. FRENCH, SIDNEY P. NICHOLS, JOEL W. MASON AND JAMES MATTHEWS, POLICE COMMISSIONERS AS AFORESAID, AND SO COMPOSING, CONSTITUTING AND ACTING AS SUCH BOARD OF POLICE, SUFFICIENT MONEYS, <sup>MEANS</sup> INSTRUMENTS AND APPLIANCES TO ENABLE IT THE SAID BOARD OF POLICE AND THEM THE SAID STEPHEN B. FRENCH, SIDNEY P. NICHOLS, JOEL W. MASON AND JAMES MATTHEWS, POLICE COMMISSIONERS AS AFORESAID, AND SO AS AFORESAID COMPOSING, CONSTITUTING AND ACTING AS THE SAID BOARD OF POLICE, TO THOROUGHLY CLEAN, AND CAUSE TO BE THOROUGHLY CLEANED AND CAUSE TO BE AT ALL TIMES KEPT THOROUGHLY CLEANED, EACH AND EVERY THE AFORESAID STREETS, AVENUES, LANES, ALLEYS, GUTTERS, WHARVES, PIERS AND HEADS OF SLIPS IN THE CITY OF NEW YORK, IN THE COUNTY OF NEW YORK, AFORESAID.

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AND THE JURORS AFORESAID, UPON THEIR OATH AFORESAID, DO FURTHER  
PRESENT: THAT ON THE TWELFTH DAY OF MARCH IN THE YEAR OF OUR LORD  
ONE THOUSAND EIGHT HUNDRED AND EIGHTY-ONE, AND ON EACH DAY SINCE,  
UNTIL THE FINDING OF THIS INQUISITION, CERTAIN OF THE STREETS AND  
AVENUES IN THE CITY OF NEW YORK, IN THE COUNTY OF NEW YORK, AFORESAID,  
*and to wit the streets and avenues*  
HEREINAFTER NAMED, TO WIT: -SUFFOLK STREET, HARRISON STREET, DUANE  
STREET, SIXTEENTH STREET, ROOSEVELT STREET, MORRIS STREET, LEONARD  
STREET, FRANKLIN STREET, BROOME STREET, BAYARD STREET, CITY HALL  
PLACE, PEARL STREET, BAXTER STREET, WORTH STREET, MULBERRY STREET,  
THOMPSON STREET, THIRTIETH STREET, VESTRY STREET, FIRST AVENUE,  
SECOND AVENUE, ORCHARD STREET, TENTH AVENUE, DELANCY STREET, JERSEY  
STREET, CHERRY STREET, BIRMINGHAM STREET, CANNON STREET, CORLEARS  
STREET, FERRY STREET, NORTH MOORE STREET, WERE NOT, THEN AND THERE,  
NOR WERE ANY OF THEM, THOROUGHLY CLEAN AND WERE NOT, THEN AND THERE,  
NOR WERE ANY OF THEM, ON SAID TWELFTH DAY OF MARCH, OR ON ANY DAY  
SINCE, UNTIL THE FINDING OF THIS INQUISITION, CAUSED BY THE SAID  
POLICE COMMISSIONERS OR BY THE SAID BOARD OF POLICE TO BE THOROUGHLY  
CLEANED OR TO BE CLEANED, AND WERE NOT, THEN AND THERE, ON SAID  
TWELFTH DAY OF MARCH, OR ON ANY DAY SINCE, UNTIL THE FINDING OF  
THIS INQUISITION, CAUSED BY THEM THE SAID POLICE COMMISSIONERS, OR  
BY THE SAID BOARD OF POLICE, TO BE KEPT THOROUGHLY CLEAN<sup>2</sup> OR TO BE  
KEPT CLEAN<sup>2</sup> BUT, ON THE CONTRARY, THAT THE AFORESAID STREETS AND  
AVENUES, ABOVE NAMED, WERE, AND EACH AND ALL OF THEM WERE, THEN AND  
THERE, ON THE SAID TWELFTH DAY OF MARCH, AND ON EACH DAY SINCE,  
UNTIL THE FINDING OF THIS INQUISITION, THOROUGHLY UNCLEAN, UNCLEANED  
DIRTY AND FILTHY, AND EACH OF THE SAME CONTAINED THEN AND THERE ,  
AND WAS THEN AND THERE CHOKED WITH AND OBSTRUCTED BY GREAT QUANTI-  
TIES

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OF MUD, DIRT, FILTH, MIRE, SLUSH, STAGNANT WATER, GARBAGE, ASHES, SWEEPINGS, REFUSE, DECAYING VEGETABLE AND ANIMAL SUBSTANCES, AND DIVERS OTHER UNCLEAN AND NOXIOUS MATTERS, WHEREBY THE AFORESAID STREETS AND AVENUES, AND EACH OF THEM, WERE RENDERED INCONVENIENT AND UNSAFE FOR THE PEOPLE OF THE SAID CITY AND THE STATE OF NEW YORK, THEN AND THERE AND THEREIN, PASSING, REPASSING AND BEING.

AND THE JURORS AFORESAID, UPON THEIR OATHS AFORESAID, DO FURTHER PRESENT: THAT THE SAID STEPHEN B. FRENCH, SIDNEY P. NICHOLS, JOEL W. MASON AND JAMES MATTHEWS, AS SUCH POLICE COMMISSIONERS AS AFORESAID, ON THE SAID TWELFTH DAY OF MARCH, AND ON DIVERS DAYS BETWEEN THE SAID TWELFTH DAY OF MARCH AND THE DAY OF THE FINDING OF THIS INQUISITION, MET TOGETHER AS AND ACTED AS SUCH BOARD OF POLICE, AS AFORESAID, AND AT ALL SUCH TIMES AND AT ALL TIMES BETWEEN THE SAID TWELFTH DAY OF MARCH AND THE DAY OF THE FINDING OF THIS INQUISITION THEY THE SAID STEPHEN B. FRENCH, SIDNEY P. NICHOLS, JOEL W. MASON AND JAMES MATTHEWS, AS SUCH POLICE COMMISSIONERS AS AFORESAID, AND EACH OF THEM, AND IT THE SAID BOARD OF POLICE, SO CONSTITUTED AS AFORESAID, THEN AND THERE WELL KNEW AND HAD NOTICE THAT THE STREETS AND AVENUES HEREINBEFORE NAMED WERE NOT, NOR WERE ANY OF THEM, THEN AND THERE, THOROUGHLY CLEAN, AND THEN AND THERE WELL KNEW AND HAD NOTICE THAT THE SAME WERE NOT, NOR WERE ANY OF THEM, KEPT THOROUGHLY <sup>Cleaned,</sup> ~~CLEAN,~~ NOR CAUSED TO BE THOROUGHLY CLEANED NOR TO BE KEPT THOROUGHLY CLEAN, BUT THAT THE SAID STREETS AND AVENUES, AND EACH OF THEM, WERE THEN AND THERE AT ALL SUCH TIMES UNCLEAN, FILTHY AND DIRTY, AND INCONVENIENT AND UNSAFE, AS AFORESAID.

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AND THE JURORS AFORESAID, UPON THEIR OATH AFORESAID, DO FURTHER  
PRESENT: THAT THEY THE SAID STEPHEN B. FRENCH, SIDNEY P. NICHOLS,  
JOEL W. MASON AND JAMES MATTHEWS, AND EACH OF THEM, AS SUCH POLICE  
COMMISSIONERS AS AFORESAID, AND AS SUCH BOARD OF POLICE AS AFORESAID  
WELL KNOWING THE PREMISES SO AS AFORESAID, AND WELL KNOWING THEIR  
AND HIS DUTY AS SUCH POLICE COMMISSIONERS AND <sup>as</sup> SUCH BOARD OF POLICE  
IN THAT BEHALF, BUT IN NO WISE REGARDING IT, DID, AT THE CITY OF NEW  
YORK, ON THE SAID TWELFTH DAY OF MARCH, AND CONTINUALLY AFTERWARD,  
UNTIL THE DAY OF THE FINDING OF THIS INQUISITION, WILFULLY, UNLAW-  
FULLY AND CONTEMPTUOUSLY NEGLECT, OMIT AND REFUSE<sup>b</sup> TO DO THAT WHICH  
OF RIGHT BELONGED TO THEM AS SUCH POLICE COMMISSIONERS AS AFORESAID  
AND AS SUCH BOARD OF POLICE AS AFORESAID, TO DO: TO WIT, DID THEN  
AND THERE NEGLECT, OMIT AND REFUSE TO CAUSE TO BE THOROUGHLY CLEANED  
AND TO BE KEPT THOROUGHLY CLEAN<sup>c</sup> THE AFORESAID STREETS AND AVENUES,  
AND EACH OF THEM, AND DID THEN AND THERE UNLAWFULLY, WILFULLY AND  
CONTEMPTUOUSLY ON SAID TWELFTH DAY OF MARCH, AND EVER SINCE, UNTIL  
THE FINDING OF THIS INQUISITION, PERMIT THE SAID STREETS AND AVENUES,  
AND EACH OF THEM, TO BE, AND CONTINUE TO BE, SO DIRTY, FILTHY AND  
UNCLEAN AND UNCLEANED, AS AFORESAID, AND TO BE SO FILLED, CHOKED  
AND OBSTRUCTED, AS AFORESAID; 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.

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And the jurors aforesaid, upon  
their oath aforesaid do further present  
That afterwards to wit: on the  
twelfth day of March in the year  
of our Lord one thousand eight  
hundred and eighty one, one Stephen  
B. French, Sidney I. Nichols, Joel  
W. Mason and James Matthews each  
of them were and ever since, and  
until the finding of this inquisition,  
have each of them been one of the  
Police Commissioners of the City of New  
York, in the County of New York, afore-  
said, and that on said twelfth day of  
March, and ever since, until the  
finding of this inquisition, they the  
said Stephen B. French, Sidney I.  
Nichols, Joel W. Mason and James  
Matthews, each being so as aforesaid  
one of the Police Commissioners so as  
aforesaid, together, as such Police  
Commissioners composed, constituted  
and acted as the Board of Police  
of the City of New York in the County  
of New York, aforesaid, and composed  
constituted and acted as the Board  
of Police of and in the Police  
Department in the City of New York

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in the County of New York aforesaid.

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

That the said Stephen B. French, Sidney J. Nichols, Joel W. Mason and James Matthews, so being each of them one of the said Police Commissioners as aforesaid, and so together, as such Commissioners, composing, constituting and acting as the Board of Police, so as aforesaid, were on the said twelfth day of March in the year aforesaid, and ever since, until the finding of this inquisition, have been, as such Board of Police as aforesaid, fully authorized, empowered, required and enjoined by law to remove from said City of New York, in the County of New York, aforesaid, daily, and as often as it should be necessary, all ashes, garbage, rubbish, dirt, <sup>and</sup> sweepings of every kind; and that the said Stephen B. French, Sidney J. Nichols, Joel W. Mason and James Matthews, as such Police Commissioners as aforesaid, and so together



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constituting, as such Police commissioners as aforesaid, such Board of Police, as aforesaid, on said twelfth day of March, and ever since, until the finding of this inquisition, had as such Police Commissioners and Board of Police as aforesaid, in the possession and at the disposal of the said Board of Police, and of themselves the said Stephen B. French, Sidney J. Nichols, Joel W. Mason and James Matthews, as so constituting, as aforesaid, the said Board of Police, sufficient moneys and means to enable it, the said Board of Police, and then the said Stephen B. French, Sidney J. Nichols, Joel W. Mason and James Matthews as so composing and constituting, as aforesaid, the said Board of Police, to so remove, as aforesaid, from the said City of New York, in the County of New York aforesaid, daily, and as often as it should ~~be~~ be necessary, all the aforesaid ashes, garbage, rubbish dirt and sweepings of every kind



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And the jurors aforesaid upon  
their oaths aforesaid do further  
present

That on the said twelfth day of  
March in the year aforesaid, there  
were in the said City of New York,  
in the County of New York aforesaid,  
and in, on and about the following  
Streets and Avenues of and in  
the said City of New York, in the  
County of New York aforesaid, and  
in and about the sidewalks thereof,  
to wit: Suffolk Street, Harrison  
Street, Duane Street, Sixteenth  
Street, Roosevelt Street, Morris  
Street, Leonard Street, Franklin  
Street, Broome Street, Bayard  
Street, City Hall Place, Pearl  
Street, Baxter Street, Worth Street,  
Mulberry Street, Thompson Street,  
Nassau Street, Fifth Avenue, Dist  
Avenue, Second Avenue, <sup>Third Avenue</sup> Orchard  
Street, Delancy Street, Jersey Street,  
Cherry Street, Birmingham Street,  
Cannon Street, Corlear Street,  
Perry Street, North Moore Street, and  
divers other Streets, to the jurors  
aforesaid unknown, great

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quantities and accumulations of ashes, garbage, rubbish, dirt and sweepings of various kind, which it was <sup>then found there</sup> necessary to remove from said City of New York, and which it was the duty of them the said Stephen B. French, Sidney P. Nichols, Joel W. Mason and James Matthews as such police commissioners and as such Board of Police, as aforesaid, to remove from the said City before the expiration of the next succeeding day, to wit the thirteenth day of March in the year aforesaid.

And the jurors aforesaid upon their oath aforesaid as further present,

That in divers instances and on divers other days between the said twelfth day of March and the day of the finding of this inquisition, there were in, on and about the Streets and Avenues, and each of them hereinbefore named, and in, on and about the sidewalks thereof, other great quantities, accumulations and collections of ashes, rubbish, garbage

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dirt, and sweepings of various  
kinds, which it became and was  
necessary to remove from said City,  
and which it was the duty of them  
the said Stephen B. French, Sidney  
J. Nichols, Joel W. Mason and  
James Matthews as such Police  
Commissioners, and as such Board  
of Police ~~Commissioners~~ as aforesaid  
in each of said instances respectively  
to remove and cause to be removed  
from the said City of New York,  
before the expiration of the next  
succeeding day after the said  
~~twelfth day of March and of~~  
~~the next succeeding day after~~  
each of the said days  
before mentioned.

And the jurors aforesaid  
upon their oath aforesaid do  
further present

That the said Stephen B.  
French, Sidney J. Nichols, Joel  
W. Mason and James Matthews  
as such Commissioners as afore-  
said on the twelfth day of March  
aforesaid, and on each of said  
days between the said

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twelfth day of March, in the year  
aforesaid, and the day of the  
holding of this inquisition, met  
together as and acted as such  
Board of Police as aforesaid,  
and on each and every of such  
days they the said Stephen B.  
French, Sidney J. Nichols, Joel W.  
Mason and James Matthews as  
such Police Commissioners as aforesaid,  
and so composing and  
constituting the Board of Police  
aforesaid, and it the said Board  
of Police, then and there, well  
knew and had notice that there  
were then and there in the said  
City of New York in and on and  
about the aforesaid streets and  
avenues and in ~~and~~ on and  
about the sidewalks thereof, the  
aforesaid divers great quantities  
and accumulations of ashes  
garbage, rubbish, dirt, and  
sweepings of various ~~sorts~~ sorts  
and kinds, which it became  
and was ~~then and there~~ necessary,  
as they the said Stephen B. French,  
Sidney J. Nichols, Joel W. Mason

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and James Matthews and each of them as such Police Commissioners, and it the said Board of Police then and there well knew, to remove from said City of New York and which it was the duty of them the said Stephen B. French, Sidney J. Nichols, Joe W. Mason and James Matthews as such Police Commissioners so composing, constituting and acting as such Board of Police as aforesaid to remove from the said City of New York, in the County of New York aforesaid, before the expiration in each instance respectively of the day next succeeding said twelfth day of March and the day next succeeding each of the aforesaid days aforesaid.

And the jurors aforesaid upon their oath aforesaid do further present that they the said Stephen B. French, Sidney J. Nichols, Joe W. Mason and James Matthews, as such Police Commissioners, and as such Board of Police as aforesaid, well knowing the premises so as aforesaid, and

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well knowing their duty in that behalf as such Police Commissioners and as such Board of Police, but in no wise regarding it, did, at the said City of New York, in the County of New York aforesaid, on the thirteenth day of March in the year aforesaid and on each of the days next succeeding each of the divers days aforesaid wilfully, unlawfully and contemptuously neglect, omit and refuse to ~~do~~ do that which of ~~right~~ right belonged to them as such Police Commissioners as aforesaid and as such Board of Police as aforesaid to do; to wit: did then and there neglect, omit and refuse to remove from the said City of New York, and from the aforesaid Streets and Avenues, and from the sidewalks thereof, each and every the said great quantities and accumulations of ashes, garbage, rubbish, dirt and sweepings so being as aforesaid on said twelfth day of March, and on



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the  
said days in said City, and  
in, ~~xxxx~~ on and about the afore-  
said streets and Avenues and  
the sidewalks thereof, <sup>and</sup> did un-  
lawfully, wilfully and contempt-  
uously on the said thirteenth  
day of March in the year  
aforesaid and on each of the  
days aforesaid next succeeding  
each of the days aforesaid  
suffer and permit each of the  
aforesaid great quantities and  
accumulations of ashes, garbage  
rubbish dirt and sweepings  
to be, and remain for many  
days together and for an unnecessary  
and unreasonable period of  
time in said City of New York,  
and in, on and about the  
Streets and Avenues aforesaid  
and the sidewalks thereof;  
against the form of the Statute  
in such case made and pro-  
vided and against the peace  
of the people of the State of  
New York and their dignity  
Daniel S. Collins  
District Attorney

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Day of Trial

Counsel,

Filed 30 day of April 1881

Call.  
Pleads not guilty, and begs to  
for a full trial.

THE PEOPLE

vs.

Stephen B. French  
Sidney D. Nicholas  
Alec W. Mason  
James Matthews

DANIEL G. ROLLINS,

Attorney at Law  
No. 100 N. 3rd St. St. Louis, Mo.

District Attorney.

A True Bill.

*James Lewis*

Foreman.

Arthur Dracut

Quashed as true.

The People

Oct. 7 - 1881

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**New York Recorder's Chambers**  
NO 311 BROADWAY.

New York

1881

N. Y. General Sessions.

The People, &c  
- vs -  
William F. Smith,  
Impleaded &c,  
"

Motion on the part of the defendant  
Smith to quash the indictment filed on  
the 30<sup>th</sup> day of April 1881.

John Graham and Daniel E. Sickles  
for Defendant.

Daniel G. Rollins - District Attorney -  
for People.

Smith, Recorder: -

The indictment alleges that on the  
fifteenth day of November 1880, and at all  
times between that day and the eleventh day  
of March 1881, the defendants were Police

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Commissioners of the City of New York, and that together they constituted and acted as the Board of Police in the Police Department of the City of New York; and charges that the defendants, as such Board, wilfully neglected on the fifteenth day of November 1880 and on each and every day thereafter to the eleventh of March 1881, to thoroughly clean and keep clean certain streets, avenues, &c., specifically named in the indictment.

The second count charges the defendants, as such Board, with wilfully neglecting to remove ashes, garbage, &c., from certain streets &c., also specifically named in the indictment.

The duty which it is thus alleged the

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**City of New York Remedy Chamber**  
 No 311 BROADWAY.

New York 187

defendants wilfully neglected to perform was enjoined upon them by Chapter 677 of the laws of 1872 and section 67 of Chapter 335 of the laws of 1873.

No special provision was made in either of those acts for punishment in case of delinquency or of non-performance of the duties thereby imposed.

The indictment was, therefore, found under the following provisions of the Revised Statutes: "that where any duty shall be enjoined by law upon any public officer or upon any person holding any public trust or employment, every wilful neglect to perform such duty, where no special provision shall have been made for the punishment of such delinquency,

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shall be a misdemeanor and punishable as such". (3 R.S. 6<sup>th</sup> Ed. Sec. 101 p. 983.)

On the twenty sixth of May 1881 the legislature of this State passed an act entitled, "An Act to create a Department of street cleaning in the City of New York and to provide for the cleaning of the public streets of said City, for the removal of snow and ice therefrom, and for the collection of ashes, garbage, and street sweepings, and the disposal of the same".

By this Act the legislature created a new Department additional to the Departments <sup>then</sup> in existence.

The Department thus created is designated a Department of street cleaning with the exclusive charge of cleaning the streets of this

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**City of New York Board of Aldermen**  
 No. 511 BROADWAY.

New York 185

City, and the removal of ashes and garbage therefrom. It provides for the appointment of a Commissioner and confers upon him full power and authority, and charges him with the duty of causing the streets, avenues, piers, &c., to be thoroughly cleaned and kept clean at all times, and to remove, or otherwise dispose of, all street sweepings, garbage, ashes, &c., as often as the public health may require, and the Board of Police are required to transfer to the Commissioner all books, papers, records, property, moneys, claims and things of every kind and description belonging to or in the custody of the Department of Police and used in the cleaning of the streets and the removal of ashes, &c.,

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There are other provisions of this act which might be referred to for the purpose of showing that it was the intent of the legislature to deprive the Department of Police of all the power and authority heretofore exercised by that Department over the cleaning of the streets of this City, but it is unnecessary to do so.

By section 12 of the same act it is provided, "That the several provisions of Chapter 677 of the laws of 1872 and section 67 of Chapter 335 of the laws of 1873, and all other acts and parts of acts inconsistent herewith are hereby repealed".

The act of 1881 was passed and became the law of this State after the original motion on the part of the defendant Smith

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**City of New York Remonders Chamber**  
 No 311 BROADWAY.

New York

1881

to quash the indictment as against him was noticed for hearing, and no reference was made by either the District Attorney or the Counsel for the defendant to the provisions of that act on the original motion.

The defendant Smith has renewed the motion to quash the indictment on the additional ground that "the indictment rests on no legal basis inasmuch as Chapter 677 of the laws of 1872 and § 67 of the Act of 1873, and all other legislation relative to street cleaning and the removal of ashes, garbage, &c, inconsistent with the provisions of the Act of May 26<sup>th</sup> 1881, have been repealed by the twelfth section of that Act.

If this ground is well taken and can

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be sustained it renders it unnecessary to give the conclusions arrived at by me upon the various questions which were argued with great ability by the able and learned Counsel for the defendant and by the learned District Attorney.

In the examination of the arguments so made and the briefs which have been submitted to me upon the question as to the effect of section 12 of the act of 1881 upon the indictment and the further prosecution thereof I have given as full and careful a consideration as my official engagements would permit and the magnitude of the questions presented demand, recognizing, as I do, that the case is one in which the inhabitants of this City and the defendants are deeply interested.



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*City of New York Remonders Chambers*  
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It is my duty to declare the law as the legislature has chosen to enact it, however I as an individual may regard the wisdom or expediency of enacting the statute which is the subject of the present examination without any provisions being therein made to avoid the question which is presented on this motion.

The question presented on this motion is, "Has the legislature by the passage of the Act of 1881, and especially of section 12 of that act, in effect declared that the further prosecution of this case must be stayed."

In other words, has the Act of 1872, upon which this indictment has been framed, been so effectually obliterated and repealed as if it had never passed and must be

considered as a law which had never existed.

The language of section 19 of said act is clear and unambiguous. It repeals the act of 1872 and § 67 of Chap. 335 Laws of 1873, referring to both acts by Chapter and date, and also repeals all acts and parts of acts inconsistent with it.

In an ordinary case it would not be necessary to cite authorities as to the effect of the repeal of an act upon a criminal prosecution founded upon the act so repealed, but this is no ordinary case, and, therefore, I deem it proper to refer to some of the many authorities upon which I rely as sustaining to the fullest extent the conclusions I have arrived at upon this motion.

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*City of New York Recorder's Chambers*

NO 317 BROADWAY.

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Mr. Sedgwick, in his able and learned work on the construction of statutory and ~~Constitutional~~ law, (Sedgwick on the Construction of statutory and constitutional law, page 108 et seq.) speaking of the effects of the repeal of a statute, says,

"We have next to consider the effects  
" of the repeal which when it is clear and  
" absolute are of a very sweeping character.  
" The effect of a repealing statute, says a  
" very eminent judge (Tindall, C.J.) I take  
" to obliterate the statute repealed as completely  
" from the records of Parliament as if it had  
" never passed, and that it must be considered  
" as a law that never existed except for the  
" purpose of those actions or suits which were

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" commenced, prosecuted and concluded while  
" it was an existing law. Upon this principle  
" the repeal of a statute puts an end to all  
" prosecutions under the statute repealed and  
" to all proceedings growing out of it pending  
" at the time of the repeal. There can be  
" no legal conviction unless the act is contrary  
" to law at the time it is committed, nor can  
" there be a judgment unless the law is in  
" force at the time of the indictment and the  
" judgment."

In *Keaton & others vs. The Schooner  
Genl. Funckney*, 5 Cranch, 281, which was  
an appeal to the Supreme Court of the United  
States from the sentence or judgment of the  
Circuit Court of Maryland condemning the Schooner  
and cargo for a breach of an Act of Congress

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*New York Board of Chamberlains*  
NO 611 BROADWAY.

*New York* 187

prohibiting intercourse with certain parts of the Island of St. Domingo, which Act was limited to one year and was continued until the end of the next Congress after the passage of the original Act, the vessel was libelled and condemned by the District Court, which condemnation was affirmed by the U.S. Circuit Court, from which sentence the claimants of the vessel appealed to the Supreme Court of the United States. After final judgement had been rendered in the Circuit Court and before the appeal had been heard by the Supreme Court the Act of Congress had expired. The only question argued before the Supreme Court was whether that Court could affirm the Decree appealed from after

the law which created the forfeiture had expired. Chief Justice Marshall, delivering the opinion of the Court, uses this language, "That the cause was to be considered as if no sentence had been pronounced, and that it had been long settled on general principles that after the expiration or repeal of a law no penalty can be enforced nor punishment inflicted for violation of the law committed while it was in force unless some special provision be made for that purpose"

The same doctrine was declared as in the preceding case in the following cases:  
*Schooner Rachel* vs *U.S.* 6 Cranch 392,  
*Norris* vs. *Crocker* 13 How. U.S. Rep. 429,  
*The Irresistible*, 7 Wheaton 551.

In a case reported 1 Wash. C.C. Rep.

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*The New York Recorder & Chambers*  
NO. 317 BROADWAY.

New York. 1872

24, Washington. Justice, says, "Every  
" offense for which a man is indicted must  
" be laid against some law, and it must be  
" shown to come within it, and the law  
" must be subsisting. If the legislature  
" has ceased to consider the act in the light  
" of an offense the purposes of punishment  
" are no longer to be considered."

The same doctrine has been held by  
the English Courts. Several cases are  
colated and referred to in Sedgwick on  
Construction of Statutes at page 111.

In this State the same rule has been  
steadily adhered to.

In *Butler vs. Palmer*, 1 Hill 325, it  
was held that the repeal of a statute

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conferring jurisdiction takes away all right of proceeding under the repealed statute even in regard to suits pending at the time of the repeal.

The same doctrine was held in *People vs. Supervisors of Westchester*, 4 Barb. at foot of page 77, and in *Hartung vs. The People* 22 N.Y. 96, in which last mentioned case the plaintiff in error was indicted, tried, convicted and sentenced to death, a writ of error was taken to the Court of Appeals.

After the return of the writ and previous to the argument of the case in the Court of Appeals an Act was passed by the legislature in relation to capital punishment, by which Act all former Acts relating to capital punishment ~~were~~ repealed, and making no



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**U.S. DEPT. OF JUSTICE**  
**NO. 671 BROADWAY.**

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provision for the punishment of persons who had or might be convicted of offenses which prior to the passage of that Act were punishable with death. The effect of this last mentioned Act upon the proceedings and judgment against the plaintiff in error was fully considered by the Court, Chief Justice Davis delivering the opinion in which all the judges concurred.

In this opinion he says, "Several interesting questions arise as to the application of this statute to the case before us, first, whether the prisoner can be executed under the provisions of the revised statutes which were in force when the crime was committed and when the trial and conviction took place,

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" but which have since been repealed x x x  
" Sir Matthew Hale lays it down in his  
" history of the Pleas of the Crown that when  
" an offense is made treason or felony by an  
" Act of Parliament, and then the Act is  
" repealed, the offenses committed before such  
" repeal and the proceedings thereupon are  
" discharged by such repeal and cannot be  
" proceeded on after such repeal, unless a  
" special clause in the Act of repeal be made  
" enabling such proceedings after the repeal  
" for offenses committed before the repeal.  
" This statement is made in the course of a  
" commentary on the statute of Edward IV  
" respecting treasons. It abolished all treasons  
" declared by Act of Parliament since the 25  
" of Edw<sup>d</sup> III, but it contained a clause

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**Geo. New York Remond & Chandler**  
 NO 317 BROADWAY.

New York

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" providing that no person already arrested  
 " or imprisoned, indicted or convicted of treason  
 " should have any advantage of that Act.  
 " This clause the learned writer considered  
 " necessary to prevent all such proceedings  
 " from falling to the ground, and then he lays  
 " down the rule as above stated. For the  
 " same reason when upon the enactment of  
 " the Revised Statutes of this State nearly all  
 " the then existing statutory law was repealed  
 " it was considered necessary to provide that  
 " no offense committed and no penalty or  
 " forfeiture incurred previous to the time when  
 " the general repeal should take effect should  
 " be affected by such repeal, and also that  
 " no prosecution for any offense then pending

" should be affected by it. (2 P.S. 479 § 6.7.)

" The law as stated by Hale has been steadily

" adhered to in England and in this Country.

" It was stated and applied in Miller's Case

" (1 Wm Bl. 451) and in Rex vs. McKenney.

" (Reno May 1439).

" In the last case the prisoners were

" indicted for stealing from a shop goods of

" the value of five shillings. A statute of

" Wm III had made this felony without

" benefit of clergy, but this Act was repealed

" by an Act of Geo. IV which took effect

" after the offence of the prisoners was

" committed. The repealing Act also provided

" for the punishment of such an offence

" thereafter committed by transportation for life.

" The Court held on the authority of the passage

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" should be affected by it. (2 R.S. 779 §. 6. 7.)  
" The law as stated by Hale has been steadily  
" adhered to ~~in~~ England and in this Country.  
" It was stated and applied in Millers Case  
" (1 Wm Bl. 451) and in Rex vs. McKenzie  
" (Rues & Ry 429).  
" In the last case the prisoners were  
" indicted for stealing from a shop goods of  
" the value of five shillings. A statute of  
" Wm III had made this felony without  
" benefit of Clergy, but this Act was repealed  
" by an Act of Geo. IV which took effect  
" after the offence of the prisoners was  
" committed. The repealing act also provided  
" for the punishment of such an offense  
" thereafter committed by transportation for life.  
" The Court held on the authority of the passage

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*The New York Recorder & Chamber*  
Nº 311 BROADWAY.

New York.

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" in Hale that a conviction could not be  
" had under the repealed statute and it clearly  
" could not under the provision in the last  
" act which was only prospective in its  
" operation "

The learned Chief Justice quotes with  
approval several cases both in England and  
in this Country sustaining the rule as laid  
down by Hale, and he proceeds to state,  
" But it scarcely requires an examination  
" of authorities to establish a principal &  
" plain upon reason as that life cannot be  
" taken under color of a law after the only  
" law by which it was authorized to be taken  
" has been abrogated by the law making  
" power x x x x It was apparent

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"that if the thought had occurred to the  
"law makers (a remarks which is peculiarly  
"applicable to this case,) a saving clause as  
"to existing offences, and especially as to  
"prosecutions and convictions which had taken  
"place, would have been added".

With this decision of the Court of  
final resort, which is the law of this State,  
and which it is my duty to follow to its  
fullest extent, I might well rest the  
conclusion at which I have arrived on  
this motion. There are, however, a  
number of cases which have been decided  
by the Courts since the decision in *Hartung*  
vs. *The People*.

In *Dowell vs. The People*, 5 Hun 169,  
the defendants, who were Commissioners of



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*The New York Recorder & Chambers*  
 NO. 311 BROADWAY.

New York 1872

Charities for Kings County, were required by statute to advertise for bids to furnish articles necessary to be used for the relief and support of the poor. They did not advertise as required by the statute, and they were indicted for a conspiracy to violate it. Before the trial and conviction of the defendants so much of the section of the statute as imposed the duty of advertising for bids was repealed, but notwithstanding this fact they were tried and convicted, and on point of error the judgment was reversed, the Supreme Court holding that they could not be legally tried and convicted for the violation of a statute which had been repealed.

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The U. S. vs. Emlay 1 Abb. U.S. Rep. 364. The defendant was indicted for rendering false returns of manufactures of woolen goods, and on a motion to quash the indictment it appeared that the Act of Congress under which the defendant was indicted was repealed.

Mr. Candless, J. says, "This Act is then  
" a repeal and abolition of the tax and  
" system of taxation upon woolen manufactures  
" which existed at the period when it is  
" alleged this offense was committed.  
" It is a repeal of the law under which  
" the defendant is indicted. The crime  
" and its penalty is abrogated, where then  
" is our jurisdiction? How can we  
" try the defendant, and, if found guilty,

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**Geo. Newman Remond & Co. Attorneys**  
 NO. 311 BROADWAY.

New York 187

"punish him under a law that has no  
 "existence? The offence is gone, and  
 "no one can be punished for what is not  
 "a crime at the time of punishment. Nothing  
 "is more certain than that if a statute  
 "creating an offence be repealed all  
 "proceedings under it fall. X X X X X  
 "The law unquestionably is that after the  
 "repealing Act is passed there shall be no  
 "such offence as that for which this defendant  
 "is indicted. It is no longer an offence.  
 "It cannot be indicted, it cannot be  
 "punished, it is taken from the penal code  
 "absolutely. X X X Such being the law  
 "the present prosecution must fall."

The same rule was applied by the

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1. <sup>2</sup> State W. Candler  
4. State W. Candler  
7. State W. Candler

General Term of this Department in People  
ex rel. Cook vs. Board of Police, 16 Abb. P.R. 473.  
See also. Ins. Co. v. Ritchie 54 Wall. S.C. Rep. 541. &c.

The necessity of providing by legislation  
against the effect of a repealing statute  
which as in this case does not contain  
any saving clause or provision whatever  
as to prosecutions pending or criminal  
liabilities incurred, was rendered apparent  
at the time of the passage of the Charter of  
1873 (N.Y. City Charter.)

Under an Act of the Legislature of this  
State passed in the year 1870.. a Board  
of Audit was created and certain duties  
were thereby imposed upon the members  
of such Board. They wilfully neglected  
to perform the duties so imposed upon them  
and they were indicted under the same

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**New York Chamber of Commerce and Industry**  
 NO. 37 BROADWAY.

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provisions of the Revised Statutes under which the indictment in this case was found.

By the Charter of 1873, "all the provisions of law creating any Board of Apportionment and Audit, or either, and providing for and requiring an audit and allowance of claims by said Board were thereby repealed."

Apprehensive, (doubtless,) of the effect of this provision of the statute upon prosecutions which were then pending against the members of the Board of Audit, and for the purpose of saving and reserving to the People whose laws had been violated by the members of the Board of Audit the right to maintain and continue the prosecutions under the repealed statute, an Act was passed on the 29<sup>th</sup>

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of April 1873 by the same legislature which passed the Charter, entitled "An Act to limit in certain respects the effect of certain repealing clauses contained in the Act entitled "An Act to reorganize the local government of the City of New York" so that such bill (the Charter of 1873) shall as a law conform to the intent of the legislature."

By this Act it is provided that  
"nothing contained in the Bill or Act (the  
"Charter of 1873) shall affect any right  
"heretofore accrued or liability heretofore  
"incurred, or prevent the indictment, or  
"prosecution under indictments found or to  
"be found, of any person or persons for any  
"offense or offenses heretofore committed, and  
"all such rights, liabilities and offenses shall

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*City of New York Reminders & Charters*  
NO 317 BROADWAY.

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"remain subject to redress, enforcement and  
"punishment in like manner as if the  
"Acts so repealed as aforesaid had remained  
"in full force"

This Act took effect immediately upon its passage, while the Charter was not passed until the 30<sup>th</sup> of April, the day following, and did not go into full operation until the first of May thereafter.

By this legislation we have, in addition to the opinions of the Courts the opinion and judgment of the law making power upon the effect of repealing statutes, conceding to the fullest extent the absolute necessity of such provisions as were enacted by the Act of April 29<sup>th</sup> 1873 for the purpose of



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saving and keeping alive prosecutions, suits and proceedings instituted under a repealed statute.

The learned District Attorney conceding as he was necessarily compelled to do, that Chapter 677 of the laws of 1872 and § 67 of Chapter 335 of the laws of 1873 were absolutely and unconditionally repealed by Chapter 367 of the laws of 1881, still claimed that the provisions of the Revised Statutes above referred to were unaffected by the repealing Act, and were therefore in full force, and that the indictment having been found under these provisions the motion to quash must necessarily fail.

The answer to this claim of the District Attorney is, that unless the Act of 1872, for

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*City of New York Remonders Chamber*  
 NO 317 BROADWAY.

*New York*

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wilfully neglecting to obey which the defendants were indicted, was in existence the indictment in this case could not be found or sustained under the provisions of the Revised Statutes, for the reason that no duty is by the Revised Statutes enjoined upon the defendants to clean the streets, &c., the failure to do which is the subject matter of this indictment. Without the Act of 1872 there was no duty to be performed by the defendants in respect to cleaning the streets &c, with it in existence there was, and a wilful failure to perform it the Revised Statutes declared a misdemeanor and punishable as such.

He also suggested that the provisions

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of the general repealing Act, (Laws of  
of 1828 § 6. Chap. 21,) providing that "no  
" offence committed or penalty incurred previous  
" to the time when any statutory provision  
" shall be repealed shall be affected by such  
" repeal," applied to this case.

This statute was passed when upon  
the enactment of the Revised Statutes of this State  
nearly all the then existing statutory law was  
repealed.

In *Mougeon vs. The People* 55 N.Y. 613  
the question suggested by the District Attorney  
was passed upon by the Court of Appeals.

In that case the plaintiff in error was  
indicted under the Act of 1869 relating to  
the crime of abortion. The General Term  
of the Supreme Court held that the section of the

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**City of New York Recorder's Chambers**  
 No. 311 BROADWAY.

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Act of 1869 under which the indictment was found was repealed by an Act passed by the legislature in 1872, but that the said provision of the Act of 1869 (under which the indictment was found) was continued in effect as though not repealed as to offenses committed prior to the taking effect of the repealing statute by the saving clause in the general repealing Act of 1872 - *Supra*.

Mr. Justice Allen, delivering the opinion of the Court, says, "The use of opinion that the learned Court below were in error in supposing that the statute of 1869 was saved or the punishment decreed by it continued by force of the Act of Dec. 10, 1872. That Act repealed certain Acts and parts of Acts by distinct

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"reference to them, the repeal to become operative  
"at the time the Revised Statutes upon the  
"same subjects were, by another law passed  
"on the same day, to take effect; and the  
"subsequent sections of the Act related solely  
"to the Acts so repealed and the effect of the  
"Revised Statutes then adopted upon the penalties,  
"punishments and proceedings under the  
"repealed statutes, and had no respect to  
"subsequent legislation. The Legislature could  
"not declare in advance the intent of  
"subsequent legislatures. or the effect of subsequent  
"legislation upon existing statutes."

For the reasons above stated my  
conclusion is that the motion should be  
granted and the indictment so far as it  
affects the defendant William F. Smith

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*City of New York Chamber of Commerce*

NO 311 BROADWAY.

*New York*

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*must be quashed.*

*F. S. May Jr*  
*received 10,*

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W. General Sessions  
The People, &c

vs.

William F. Smith

Implicated &c

Opinion of Justice, Rendered  
on motion to quash  
indictment

Order entered  
Sept 5/81

Filed August 27-1881



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City and County } ss.  
of New York }

The jurors of the  
People of the State of New York in  
and for the body of the City and  
County of New York upon their oath  
present:

That on the fifteenth day of  
November in the year of our Lord  
one thousand eight hundred and  
eighty and at all times between  
that day and the eleventh day of  
March in the year <sup>of our Lord</sup> one thousand  
eight hundred and eighty-one.

Stephen B. French, Sidney P. Nichols  
Joel W. Mason and William F. Smith  
were <sup>and</sup> each of them was one of the Police  
Commissioners of the City of New  
York in the County of New York aforesaid  
and that on the said fifteenth  
day of November in the year of our  
Lord one thousand eight hundred  
and eighty and at and during all  
times between that day and the said  
eleventh day of March in the year  
of our Lord one thousand eight  
hundred and eighty-one, they the  
~~said~~ Stephen B. French, Sidney P. Nichols

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Joel W. Mason and William F. Smith, each being so as aforesaid one of such Police Commissioners as aforesaid, then and there together as such Police Commissioners, composed, constituted and acted as the Board of Police of the City of New York in the County of New York aforesaid and composed, constituted and acted as the Board of Police of and in the Police Department of and in the City of New York in the County of New York aforesaid.

And the jurors aforesaid, upon their oath aforesaid, do further present that the said Stephen B. French, Sidney P. Nichols, Joel W. Mason and William F. Smith so being, each of them one of the said Police Commissioners as aforesaid and so together as such Police Commissioners composing, constituting, and acting as the Board of Police so as aforesaid, were on the <sup>said</sup> fifteenth day of November and at and during all the time between that day and the said eleventh day of March as such Board of Police as aforesaid

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<sup>Queen</sup> authorized and required and enjoined  
by law to thoroughly clean and to  
cause to be thoroughly cleaned  
and to cause to be at all times  
kept thoroughly cleaned all and  
several the streets, avenues, lanes,  
alleys, gutters, wharves, piers and  
heads of slips in the City of New  
York in the County of New York  
aforesaid; and that they, the said  
Stephen B. French, Sidney P. Nichols,  
Joel W. Mason and William F. Smith  
Police Commissioners so as aforesaid,  
and so together as such Police  
Commissioners composing, constituting  
and acting as such Board of Police  
as aforesaid, on the fifteenth day  
of November in the year of our Lord  
one thousand eight hundred and  
eighty, and at and during all times  
between that day and the eleventh day  
of March in the year of our Lord  
one thousand eight hundred and  
eighty one, had as such Police  
Commissioners and as such Board  
of Police as aforesaid possession and  
control of, and had and at the

lawful disposal of <sup>it</sup> the said Board of Police, and of themselves the said Stephen B. French, Sidney P. Nichols, Joel W. Mason and William F. Smith as Police Commissioners as aforesaid, and so composing, constituting and acting as such Board of Police, sufficient moneys and means, instruments and appliances to enable it the said Board of Police and them the said Stephen B. French, Sidney P. Nichols, Joel W. Mason and William F. Smith, Police Commissioners as aforesaid, and so as aforesaid composing, constituting and acting as the said Board of Police, to thoroughly clean and ~~cause~~ to be thoroughly cleaned, and to cause to be at all times kept thoroughly cleaned each and every of the aforesaid streets, avenues, lanes, alleys, gutters, wharves, piers, and heads of slips in the City of New York in the County of New York aforesaid.

And the Jurors aforesaid, upon their oath aforesaid, do further present: That on the said fifteenth day of

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November, and on each and every day between that day and the said eleventh day of March, certain of the streets and avenues hereinafter named, (the same being then and there streets and avenues of and in the city and county aforesaid,) to wit, Suffolk Street, Harrison Street, Duane Street, Sixteenth Street, Roosevelt Street, Morris Street, Leonard Street, Franklin Street, Broome Street, Bayard Street, City Hall Place, Pearl Street, Baxter Street, North Street, Mulberry Street, Thompson Street, Vestry Street, Fifth Avenue, First Avenue and Second Avenue, Thirtieth Street, Orchard Street, Delancey Street, Jersey Street, Cherry Street, Birmingham Street, Cannon Street, Corlears Street, Ferry Street and North Moore Street were not then and there nor was any of them thoroughly cleaned and were not then and there nor was any of them on the said fifteenth day of November or at any time between that day and the said eleventh day of March, in the year last aforesaid.

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caused by the said Police Commissioners or by the said Board of Police to be thoroughly cleaned or to be cleaned and were not then and there on the said fifteenth day of November or at any time between that day and the said eleventh day of March caused by them the said Police Commissioners or by the said Board of Police to be kept thoroughly cleaned or to be kept clean <sup>on</sup> the contrary that the aforesaid streets and avenues above named were then and there and each of them was then and there on said fifteenth day of November and on each day thereafter until said eleventh day of March, unclean, uncleared, dirty and filthy, and each of them contained then and there and was choked with and obstructed by great quantities of snow, mud, dirt, filth, mire, slush, stagnant water, garbage, ashes, sweepings, refuse, decaying vegetable and animal substances, and divers other unclean and noxious matters; whereby the aforesaid streets and avenues and



each of them were rendered inconvenient and unsafe for the people of the said City and of the State of New York then and there and therein passing, repassing, and being.

And the Jurors aforesaid, upon their oath aforesaid, do further present, That the said Stephen B. French, Sidney P. Nichols, Joel W. Mason and William F. Smith as such Commissioners as aforesaid on the said fifteenth day of November and on divers days between the said fifteenth day of November and the said eleventh day of March met together as and acted as such Board of Police as aforesaid, and at all such times and at all times between the said fifteenth day of November and the said eleventh day of March, they the said Stephen B. French, Sidney P. Nichols, Joel W. Mason, and William F. Smith as such Police Commissioners as aforesaid, and each of them, and is the said Board of Police so constituted, as aforesaid, then and there well knew and had notice,

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that the streets and avenues herein-  
before named were not nor were any  
of them then and there thoroughly  
cleaned, and then and there well knew  
and had notice that the <sup>said streets and avenues</sup> ~~same~~ were  
not then and there nor were any  
of them kept thoroughly cleaned  
nor caused to be thoroughly cleaned  
or to be kept thoroughly cleaned  
but that the said streets and  
avenues, and each of them were  
then and there, at all such times  
unclean, filthy and dirty and  
inconvenient and unsafe as  
aforesaid.

And the Jurors aforesaid, upon  
their oath aforesaid, do further  
present: that they the said, Stephen  
B. French, Sidney P. Nichols, Joel  
W. Mason and William F. Smith and  
each of them as such Police  
Commissioners as aforesaid and as  
such Board of Police as aforesaid  
well knowing the premises so as  
aforesaid and well knowing their  
and his duty in that behalf,  
as such Police Commissioners and as



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such Board of Police as aforesaid, but in no wise regarding it, did at the City of New York in the County of New York aforesaid on the said fifteenth day of November and continually afterward until the said eleventh day of March wilfully, unlawfully and contemptuously neglect, omit and refuse to do that which of right belonged to them, as such Police Commissioners as aforesaid and as such Board of Police as aforesaid, to do, to wit: did then and there neglect, omit and refuse to cause to be thoroughly cleaned and to be kept thoroughly cleaned, the aforesaid streets and avenues, and each of them, and did then and there unlawfully, wilfully and contemptuously, on the said fifteenth day of November in the year of our Lord one thousand eight hundred and eighty, and continually thereafter until the said eleventh day of March in the year of our Lord one thousand eight hundred and

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eighty-one suffer and permit the  
said streets and avenues, and each  
of them, to be, and continued to  
be, so dirty, filthy, unclean and  
uncleaned, as aforesaid, and  
to be so filled, choked and  
obstructed, as aforesaid; against  
the form of the Statute in such  
case made and provided and  
against the peace of the People  
of the State of New York and  
their dignity.

## Second Count.

And the jurors aforesaid, upon their oath aforesaid, do further present, that afterwards to wit, on the fifteenth day of November, in the year of our Lord one thousand eight hundred and eighty, and at all times between that day and the eleventh day of March in the year of our Lord one thousand eight hundred and eighty one, Stephen B. French, Sidney P. Nichols, Joel W. Mason, and William F. Smith were and each of them was one of the Police Commissioners of the City of New York in the County of New York aforesaid, and that on the said fifteenth day of November and at and during all times between that day and the said eleventh day of March, they, the said Stephen B. French, Sidney P. Nichols, Joel W. Mason, and William F. Smith each being so as aforesaid one of such Police Commissioners as aforesaid, then and there, together as such Police Commissioners, composed, constituted and acted as the Board of Police of <sup>the City of New York in the County of</sup> ~~New York~~ <sup>New York</sup> aforesaid and composed, constituted and acted as the Board of Police of and in the Police Department

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of and in the City of New York in  
the County of New York aforesaid.

And the jurors aforesaid  
upon their oath aforesaid do further  
present, that the said Stephen B. French,  
Sidney P. Nichols, Joel W. Mason, and  
William F. Smith so being each of  
them one of the said Police  
Commissioners as aforesaid, and so  
together as such Commissioners composing,  
constituting, and acting as the Board  
of Police so as aforesaid were on  
the said fifteenth day of November,  
and at and during all the time  
between that day and the said  
eleventh day of March as such  
Board of Police as aforesaid fully  
authorised, empowered, required, and  
enjoined by law to remove from  
said City of New York in the County  
of New York aforesaid daily, and  
as often as it should be necessary  
all ashes, garbage, rubbish, dirt, and  
sweepings off every kind,  
and that they the said Stephen B. French,  
Sidney P. Nichols, Joel W. Mason, and  
William F. Smith as such Police Commissioners

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as aforesaid and so together constituting  
as such Police Commissioners as aforesaid  
such Board of Police as aforesaid on  
the said fifteenth day of November  
and on each day thereafter, and  
until the said eleventh day of March  
had as such Police Commissioners and  
as such Board of Police as aforesaid  
in their possession and at the disposal  
of it the said Board of Police and  
of themselves, the said Stephen B. French,  
Sidney P. Nichols, Ed W. Mason, and  
William F. Smith so as aforesaid  
composing, constituting, and acting  
as the said Board of Police, sufficient  
monies and means to enable it  
the said Board of Police, and them,  
the said Stephen B. French, Sidney  
P. Nichols, Ed W. Mason, and  
William F. Smith as so composing,  
constituting, and acting as the said  
Board of Police to remove as aforesaid  
from the said City of New  
York and County of New York  
aforesaid daily and as often as  
it should be necessary all the aforesaid  
ashes, garbage, rubbish, dirt, and  
sweepings of every kind.

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And the jurors aforesaid, upon  
their oath aforesaid, do further present,  
that on the said fifteenth day  
of November there were in the said  
City of New York and County of  
New York aforesaid, and in, on and  
about the following streets, and  
avenues of and in the said City of  
New York in the County of New York  
aforesaid, and in, on and about  
the side walks of such streets and  
avenues, to wit, Suffolk Street,  
Harrison Street, Duane Street, ~~St. Paul Street~~,  
Roosevelt Street, Morris Street, Leonard Street,  
Franklin Street, Broome Street, Bayard Street,  
City Hall Place, <sup>near Street</sup> Baxter Street, North Street,  
Mulberry Street, Thompson Street, Vestry Street, Hols  
Tenth Avenue, First Avenue, Second Avenue,  
Thirtieth Street, Orchard Street, Delancey Street,  
Jersey Street, Cherry Street, Birmingham Street,  
Cannon Street, Coilears Street, Perry Street,  
North Moore Street and divers other  
streets, to the jurors aforesaid  
unknown, great quantities, accumulations,  
and collections of ashes, garbage, rubbish,  
dirt, and sweepings of various kinds  
which it was then and there, necessary  
to remove from the said City



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and which it was the duty of them, the said Stephen B. French, Simey P. Nichols, Joel W. Mason, and William F. Smith, as such Police Commissioners and as such Board of Police as aforesaid to remove from the said City the next succeeding <sup>the next succeeding day, to wit, before the expiration of</sup> day to wit, before the expiration of the sixteenth day of November, in the year of our Lord one thousand eight hundred and eighty.

And the jurors aforesaid upon their oath aforesaid, do further present that in divers other instances, and on divers other days between the said fifteenth day of November and the said eleventh day of March then next following there were in, on and about the Streets and avenues and each of them herein before named, and in, on and about the Sidewalks thereof other great quantities, accumulations, and collections of ashes, rubbish, garbage, dirt, and sweepings of various kinds, which it became and was necessary to remove from the said City, and which it was the duty

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of them, he said Stephen B. French, Sidney P. Nichols, Joel W. Mason, and William F. Smith as such Police Commissioners and as such Board of Police as aforesaid in each of said instances respectively to remove and cause to be removed from the said City before the expiration of the next succeeding day after the ~~said fifteenth day of November and of the next succeeding day after each of the said divers days before mentioned.~~

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Stephen B. French, Sidney P. Nichols, Joel W. Mason, and William F. Smith as such Police Commissioners as aforesaid, on the fifteenth day of November aforesaid and on each of said divers days between the said fifteenth day of November and the said eleventh day of March, met together as and acted as such Board of Police as aforesaid, and on each and every of such days



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then the said Stephen B. French, Sidney P. Nichols, Joel W. Mason, and William F. Smith as such Police Commissioners as aforesaid, and so composing and Constituting the Board of Police aforesaid and at the said Board of Police, then and there well knew and had notice that there were then and there in the said City of New York aforesaid, and in, on and about the aforesaid streets and avenues and in, on and about the sidewalks thereof the aforesaid diverse great quantities and accumulations of ashes, garbage, rubbish, dirt, and sweepings of various kinds and sorts, which it <sup>became and</sup> was then and there necessary (as they, the said Stephen B. French, Sidney P. Nichols, Joel W. Mason, and William F. Smith, and each of them as such Police Commissioners, and at the said Board of Police then and there well knew) to remove from said City of New York, and which it was the duty of them, the said Stephen B. French, Sidney P. Nichols, Joel W. Mason and William F. Smith as such Police Commissioners,

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and as so Composing, Constituting, and acting as such Board of Police as aforesaid to remove from the said City of New York in the County of New York aforesaid before the expiration in each instance respectively of the day next succeeding said fifteenth day of November and the day next succeeding each of the divers days aforesaid.

And the Jurors aforesaid, upon their oath aforesaid, do further present that they, the said Stephen B. French, Sidney P. Nichols, Joel W. Massey, and William F. Smith as such Police Commissioners and as such Board of Police as aforesaid, well knowing the premises so as aforesaid, and well knowing their duty, in that behalf as such Police Commissioners and as such Board of Police, but in no wise regarding it, did at the said City of New York in the County of New York aforesaid on the said sixteenth day of November and afterwards on each of the days

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next succeeding each of the <sup>divers</sup> days  
aforesaid, wilfully, unlawfully, and  
contemptuously neglect, omit, and  
refuse to do that which of right  
belonged to them as such Police  
Commissioners as aforesaid and as  
such Board of Police, as aforesaid,  
to do; to wit, did then and there  
neglect, omit, and refuse to remove  
from the said City of New York  
and from the aforesaid streets and  
avenues, and from the sidewalks  
thereof each and every of the  
aforesaid great quantities and  
accumulations of ashes, garbage,  
rubbish, dirt, and sweepings so being  
as aforesaid on said fifteenth day  
of November and on said divers days  
in said City, and in, on and about  
the ~~sides~~ sidewalks thereof aforesaid  
streets and avenues and in, on and  
about the sidewalks thereof, and  
did unlawfully, wilfully, and  
contemptuously on the said  
fifteenth day of November, and on  
each of the days aforesaid next  
succeeding each of the divers days  
aforesaid, suffer and permit

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each of the aforesaid great quantities  
and accumulations and collections  
of ashes, garbage, rubbish, dirt, and  
sweepings to be and remain for  
many days together and for an  
unnecessary and unreasonable period  
of time in the City of New York  
aforesaid, and in, on and about  
the streets and avenues aforesaid  
and in, on and about the sidewalks  
thereof, against the form  
of the Statute in such case  
made and provided and  
against the peace of the people  
of <sup>the State of</sup> New York and their dignity.

Daniel G. Rollins  
District Attorney.

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**BOX:**

36

**FOLDER:**

426

**DESCRIPTION:**

Funk, William

**DATE:**

04/11/81



426

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70 C. G.

Counsel,

Filed 11 day of April 1881

Pleads

Not Guilty (12)

THE PEOPLE

vs.

William Bank I

Daniel S. Bellus  
DENT. K. PHIPPS,

District Attorney.

A True Bill.

*[Signature]*  
Foreman.

Verdict of Guilty should specify of which count.

April 13, 1881.

Johnson

William Bank

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Police Office. Third District.

City and County of New York } ss.:

No. of 84 Sheriff Street, being duly sworn,

deposes and says, that the premises No.

Street, 11 Ward, in the City and County aforesaid, the said being a dwelling house

Store in part and which was occupied by deponent as a store for the sale of tinware and a place of abode for deponent were **BURGLARIOUSLY**

entered by means forcibly breaking the glass in the window facing on Sheriff Street & in front of said premises

on the night of the 2<sup>nd</sup> day of April 1888,

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

with intent to feloniously take steal and carry away the following property viz  
Two Copper bottom Tin Tea Kettles of the value of fifty cents each, Twelve metal spoons of the value of nine cents each, and six Tin Coffee strainers of the value of four cents each said property being in all of the value Two dollars and thirty two cents  
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 <sup>attempted to be</sup> taken, stolen and carried away by

William Funk (now here)

for the reasons following, to-wit: <sup>saw</sup> Deponent said Funk break the glass in the window aforesaid and reach his arm through the opening made by the breaking of said glass. That when said Funk saw deponent he withdrew his arm from said opening and ran away

John Wolf

Sworn to before me this  
30 day of April 1888  
Justice



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Police Court—Third District.

CITY AND COUNTY } ss.  
OF NEW YORK, }

William Frank being duly examined before the under-  
signed, according to law, on the annexed charge; and being informed that he was  
at liberty to answer, or not, all or any questions put to him, states as follows, viz.:

Question.—What is your name?

Answer.—

William Frank

Question.—How old are you?

Answer.—

18-

Question.—Where were you born?

Answer.—

New York

Question.—Where do you live?

Answer.—

75 1/2 Columbia Street

Question.—What is your occupation?

Answer.—

Cigar Maker

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

Answer.—

I was going home last night  
I was intoxicated & bumped up  
against his window. I  
wanted to pay him, but he  
would not take it & so he  
had me arrested.

William Frank

Taken before me, this

day of

Police Justice.

1891



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Form 11a.

POLICE COURT--THIRD DISTRICT

THE PEOPLE, & C.,

ON THE COMPLAINT OF

Peter Nald

84 Cherry St.

William Funk

Offence, BURGLARY.

2  
3  
4

Dated April 3 1881

Repley, Magistrate.

Mulligan, Officer.

11 Reberick Clerk.

Witnesses,

The Office

an is dephy Street

Cheney Street

No. Street

No. Street

No. Street

No. Street

No. Street

No. Street

No. Street

No. Street

No. Street

No. Street

to answer committed.

Received in Dist. Atty's Office,

BAILED,

No. 1, by

Residence

No. 2, by

Residence

No. 3, by

Residence

No. 4, by

Residence

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CITY AND COUNTY } ss.  
OF NEW YORK,

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

That

*William Junk*

late of the *eleventh* Ward of the City of New York, in the County of  
New York, aforesaid,  
on the *second* day of *April* in the year of our Lord  
one thousand eight hundred and eighty *one* with force and arms,  
about the hour of *eleven* o'clock in the *night* time of the same day, at the  
Ward, City and County aforesaid, the dwelling house of

*Peter Wolf*

there situate, feloniously and burglariously did break into and enter, by means of *forcibly*  
*breaking open an outer window of said dwellinghouse*  
whilst there was then and there some human being to wit, one

*Peter Wolf*

within the said dwelling house he, the said

*William Junk*

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

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

~~And the jurors aforesaid, upon their oath aforesaid, do further present: That~~  
~~afterwards, to wit, on the day and in the year aforesaid, at the Ward, City and County~~  
~~aforesaid, about the hour of~~ o'clock in the ~~time of said day~~  
~~the said~~

~~late of the Ward, City and County aforesaid,~~

~~of the goods, chattels, and personal property of~~

~~in the said dwelling house of one~~  
~~, then and there being found~~

~~in the dwelling house 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.~~

*Daniel L. Rollins*

~~BENJ. K. PHELPS~~, District Attorney.