

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/ H 23

Counsel, *H & C*
Filed 2 day of April 1887
Plends *John C. Dwyer (x)*

INDICTMENT
~~THE PEOPLE~~
vs. *THE PEOPLE*

THE PEOPLE

vs.
1 Mary Foley
2 Frank Foley
3 Frank Parker

James B. Collins
~~DEAN K. PHILLIPS~~
District Attorney.

A True Bill.

Marcus A. Phelps

John S. Foreman

John D. J.

Only Prison 100 days

John T. R.
James O. Legend

0329

FORM 112.

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

Police Court—Third District.

Ference Fox

of No. *23 Damourik* Street, being duly sworn, deposes
and says that on the *24* day of *March* 188*1*

at 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*
deponent

the 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 all

of 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
whose is not arrested, and whose name is
unknown to deponent, for the following reason to wit:
Deponent met said unknown person in the
Basement, and at his request and in his
company deponent visited the Basement at premises
37 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 deponents
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

18

Deputy Justice

0330

with the aforesaid Watch & Chain
 in the right hand Vest pocket of the
 Vest worn upon deponent's 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 aforesaid 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 Shoe taken & stated that
 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
 said Frank Foley came to the Station
 House with deponent's Watch saying
 did you arrest my wife here is the
 Watch a young fellow gave it to me,

Sworn to before me this 24th day of March 1881
 J. J. [Signature] Justice of the Peace

City & County of New York 1881

Etienne Beyer of the 10th Ward
 being duly sworn deposes that he heard read the
 affidavit of Justice J. J. [Signature] and knows the contents
 thereof, that the portions therein referring to deponent
 is true to deponent's own knowledge
 Etienne Beyer

Sworn to before me this
 24th day of March 1881
 [Signature]
 Justice of the Peace

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 _____

~~187~~ at the City of New York, in the County of New York

Frank Papler (now here)
is the person as ^{described} the unknown
person in the hereto annexed affidavit
and who is charged as one of the
defendants with the commission
of the Garvey fraud defrauding person

Terrence Fox

Sworn to and
before me
at _____
City of _____
County of _____
State of New York
this _____ day of _____
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 Rusk Street on
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
John W. Smith
Judge of the Court
Police Justice
1881

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 Eaniday*

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 any thing about
I was asleep when he came to the
house, I am not guilty*

Mary Foley
M. M. M.

Taken before me this
27 day of
March 1881
POLICE JUSTICE.

0335

COUNSEL FOR COMPLAINANT.

Name, _____
Address, _____

COUNSEL FOR DEFENDANT.

Name, _____
Address, _____

POLICE COURT—THIRD DISTRICT.

THE PEOPLE, & C.,

ON THE COMPLAINT OF

*Ernest J. ...
23 ...
27 ...*

AFFIDAVIT—LARCENY.

*James ...
James ...
James ...*

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 *March 27* 18*91*

Magistrate.

Ray ...

Clerk.

Witnesses

Ray ...



at _____

Received at Dist. Atlys Off.

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 ^{taken and carried away} ~~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,) 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 *Sept* 18*77*

THE PEOPLE

vs.

Indictment—Larceny—*Attacker*

John Fredericks

David S. Sellers
~~BENJ. K. PHIBBS,~~

District Attorney.

A True Bill

James Lawrence

Foreman.

Sept 16, 1877

Plenda guilty

S.P. 18 months

0340

FORM 112.

Police Court—Third District.

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

Adolphus Ebenstein

of No. *236 Boreny* Street, being duly sworn, deposes

and says that on the *30th* day of *MARCH* 18*87*
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 steal & carry
away from the possession of deponent. *a husband*

Solomon H. Ebenstein
the following property viz.: *four Silver watches*

of the value of *four 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~~ *attempted to be John Fredericks*
from the fact that a person came
into her husband's store about 9
o'clock last evening & pushed open
a screen door & pushed 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 Rease who pursued & arrested
him. Adolphus Ebenstein

Sworn to, before me this *31st* day of *MARCH* 18*87*
Adolphus
POLICE JUSTICE.

0341

City & County of New York
Remond Kauer 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

Remond Kauer
Sworn to before me
this 31st March 1887

W. A. Pryor

Police Justice

0342

Police Court—Third District
CITY AND COUNTY OF NEW YORK

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 hollered & I was running & a man grabbed me & I happened to come into his arms. He thought I was the man

John Fredericks

Witness before me, this
W. J. Murphy Mayor of
MARCH 1857.
POLICE JUDGE.

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 Frederick

AFFIDAVIT OF LARCENY.

BAILED.

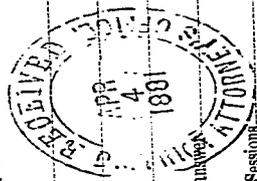
No. 1, by _____
Residence _____
No. 2, by _____
Residence _____
No. 3, by _____
Residence _____
No. 4, by _____
Residence _____
No. 5, by _____
Residence _____
No. 6, by _____
Residence _____

Dated *31st March* 18 *81*.

John Frederick Magistrate.
John Frederick Officer.
10th Street

Witnesses

The officer



\$ *2000.* to make up
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. Epstein

there being found, feloniously ^{attempt to} 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.

David L. Rollin

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

0349

Day of Trial

Counsel,

1881
April 30 day of
The U.S. District Court
District of Columbia
City of Washington
D.C.

THE PEOPLE

vs.
Stephen B. Weeks
Edwin C. Mather
And W. M. ...
William F. ...

DANIEL G. ROLLINS,
Attorney at Law

District Att. ...

A TRUE BILL

Handwritten signature
J. M. ...

Wm. ...
M. C. ...

vs. ...
F. M. ...

vs. ...

F. D.

May 27/81

Handwritten notes
M. C. ...
vs. ...
F. M. ...
May 27/81

Oct 7/81

F. D.

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

vs
William F. Smith, unpleaded
with Stephen V. 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 20th 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 26th 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 prosecution be compelled to
elect between the counts in the Indictment,

0351

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
1st 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

2nd 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 per se or prima facie are not sufficiently excluded or restricted by the averments in each count

3rd 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
4th 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 30th 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 avowed in either count of the Indictment

5th 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 inspections 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

6th That it is so when 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

7th 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 24th 1881

Yours &c.

Wm. J. Smith

Atty for Debt
Wm. J. Smith
231 Broadway
N.Y. City

To
Daniel G. Rollins 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 W. Mason

City & County of New York ss: -

10 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.

11 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 judgment and advice of this deponent's

0356

Council, after a careful and studious exam-
 ination of the aspects of, and law controlling,
 the prosecution, as this deponent has been in-
 formed by his Council, 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 pro-
 ceedings, - 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 do such, was appoint-
 ed in or about the month of December 1879,
 this deponent having no voice whatever in his
 appointment

12

Sworn before me
 May 21st 1881

Wm. Smith

George Watson
 Notary Public
 N. Y. C.

0357

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
appellee &c.

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

W. G. BROWN

Attorney at Law
231 Broadway
N.Y. City

Filed June 20, 1887

0358

The N. Y. Times. Saturday, October 8th 1881.

The indictment quashed.
Col. George Bliss appeared before Recorder Smyth, in General Sessions, yesterday and moved to quash the indictment for misdemeanor 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 willful 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

0359

21

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.

0360

W. J. Simpson

People

- 183 -

W. J. Smith

Revision of Records

Project

W. J. Simpson
Oct. 8/91

0361

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 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 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 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

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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, ^{of} 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, ^{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 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, *Some houses the I have found are new* 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 CLEAN² OR TO BE KEPT CLEAN², 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, UNCLEANNED DIRTY AND FILTHY, AND EACH OF THE SAME CONTAINED THEN AND THERE, AND WAS THEN AND THERE CHOKED WITH AND OBSTRUCTED BY GREAT QUANTITIES

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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 ^{Cleaned,} ~~CLEAN,~~ NOR CAUSED TO BE THOROUGHLY CLEANED OR 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 ^{as} 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, UNLAWFULLY AND CONTEMPTUOUSLY NEGLECT, OMIT AND REFUSE^d 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^d 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 oaths 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 J. 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, aforesaid,
and that on said twelfth day of
March, and ever since, until the
finding of this inquisition, they the
said Stephen B. French, Sidney J.
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 funding 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, ^{and} sweepings of every kind; and that they 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, North Street,
Mulberry Street, Thompson Street,
Nassau Street, Fifth Avenue, First
Avenue, Second Avenue, ^{Third Street} 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 ^{then found there} 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 dives 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
dives days between the said

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twelfth day of March, in the year
aforesaid, and the day of the
funding of this requisition, 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 divers 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 they 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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Said days ^{the} in said City, and
in, ~~xxx~~ on and about the afore-
said streets and Avenues and
the Sidewalks thereof, ^{and} 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, with law & evidence*

THE PEOPLE *vs.*

vs.
Stephen B. French
Sidney P. Nichols
Alec W. Moore
James Matthews

DANIEL G. ROLLINS,
DISTRICT ATTORNEY
DISTRICT OF COLUMBIA

District Attorney.

A True Bill.

James Lewis

Foreman.

Arthur Brauchit

Quashed as true

The Def.

Oct. 7 - 1881

FD

Miss deane and

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Geo. New York Recorder's Chambers
N^o 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 30th 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 Recorder's 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. 6th 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 ^{then} 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 611 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 Removers & Carters
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 26th 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 Recorder's Chambers
No. 317 BROADWAY.

New York 1872

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

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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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Geo. New York Recorder Chambers

NO 311 BROADWAY

New York 1872

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 *Yeaton v. The Schooner
Genl. Puckney*, 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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The New York Recorder & Chambers
NO. 511 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 judgment 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

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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

St. 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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United National Bank of Commerce
No. 611 BROADWAY

New York 187

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.

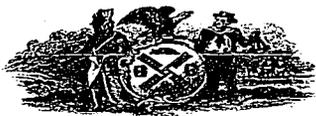
In this opinion he says, "Several interesting questions arise as to the application of this statute to the case before us, first, whether the prisoner can be executed under the provisions of the revised statutes which were in force when the crime was committed and when the trial and conviction took place,

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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^d III, but it contained a clause

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Geo. New York Remond's Chambers

NO 311 BROADWAY.

New York 187

" 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 lay
" 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

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"Should be affected by it. (2 P.S. 179, § 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 case

"(1 Wm Bl. 451) and in Rex vs. M'Kenzie

"(Rex vs. 1139).

"In the last case the prisoners were

"indicted for cheating 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
" (Russ & 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's Chamber
Nº 311 BROADWAY.

New York. 1871

" 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 ~~and~~
" 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 *Hastings*
vs. *The People*.

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

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The New York Recorder & Charities
No. 311 BROADWAY.

New York 1871

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. Eurlay 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. Cardless, 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. New York Remedy Chambers
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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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. 47

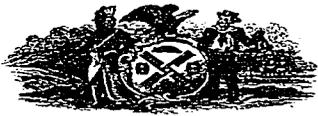
1. State v. W. C. Cudde
4. State v. W. C. Cudde
7. State v. W. C. Cudde

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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City of New York
No 311 BROADWAY

New York

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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 29th

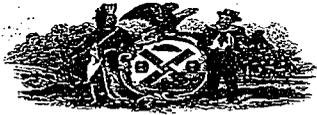
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of April 1873 by the same legislature which passed the Charter, entitled "An Act to limit in certain respects the effect of certain repealing clauses contained in the Act entitled "An Act to reorganize the local government of the City of New York" 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 Remedy Charters
NO. 311 BROADWAY.

New York 1871

"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 30th 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 29th 1871 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 *Remond's Carriages*
NO 317 BROADWAY.

New York 1872

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.

New York 187

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 Receivers Chamber
NO 311 BROADWAY.

New York 186

must be quashed.

F. S. [unclear]
received 10,

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W. General Sessions

The People, &c

vs.

William F. Smith

Impounded &

Opinion of Justice, Remo

in motion to quash

indictment

Order entered

Sept 5/87

filed August 27-1887

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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 ^{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 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 ^{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

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^{Queen} 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

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lawful disposal of ^{it} 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 to 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, Worth 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 ^{or} by 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

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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 J. 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 J. 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 ^{said} ~~same~~ streets and avenues 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.

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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 ^{the City of New York in the County of} ~~New York~~ ^{and in the Police Department} ~~New York~~ 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 of 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, J. 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, J. 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, ~~Stealth Street~~, Roosevelt Street, Morris Street, Leonard Street, Franklin Street, Broome Street, Bayard Street, City Hall Place, ^{and} Baxter Street, North Street, Mulberry Street, Thompson Street, Vestry Street, Tenth Avenue, First Avenue, Second Avenue, Twentieth 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 J. 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 ~~day to wit~~ ^{the next preceding day, to wit, being the expiration of} 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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they, 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, they 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 ^{was} ^{because and} 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 ^{divers} 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 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 ^{the State of} 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. C.

Counsel,

Filed 11 day of April 1881

Pleads *Not Guilty* (12)

THE PEOPLE

vs.

William Rank I

BURGLARY—First Degree, and
Grand Larceny.

Samuel S. Allens
~~PERN. K. PHIBBS,~~

District Attorney.

A TRUE BILL.

John J. [Signature]

Foreman.

Verdict of Guilty should specify of which count,

April 13, 1881
Johnson
William [Signature]

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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

of Stone

and which was occupied by deponent as a store for the race of tin crase
and a place of abode for deponent were **BURGLARIOUSLY**

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

on the night of the 2nd 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 ^{attempted to be} taken, stolen and carried away by

William Funk (now here)

for the reasons following, to-wit: Deponent saw 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 M. [unclear]

Sworn to before me this
30 day of April 1888
R. [unclear]
Police Justice

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Police Court—Third District.

CITY AND COUNTY }
OF NEW YORK, } ss.

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.—Henry

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 Nally

84 Sheriff St.

William Funk

Offence, BURGLARY.

2
3
4

Dated April 3 1881

Reilly, Magistrate.

Mulligan, Officer.

H Trebinick, Clerk.

Witnesses, The Office

in to duty Street

Chenard Street

No. Street

No. Street

No. Street

\$ 1000 to answer committed.

Received in Dist. Atty's Office,



BAILED,

No. 1, by

Residence Street

No. 2, by

Residence Street

No. 3, by

Residence Street

No. 4, by

Residence Street

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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 B. Collins

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