

0624

POLICE COURT—SECOND DISTRICT.

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

Robert G. Stevenson aged 38 years
freight agent of the New York Central and Hudson River Rail Road
and says, that on the ~~about~~ ^{reventeenth} day of September 1881
at the City of New York, in the County of New York, was feloniously taken
stolen and carried away from a freight car
of said New York Central and Hudson River Rail
Road, then standing on the track of said Rail
Road on Eleventh Avenue in said City
a quantity of ~~the~~ cloth the property of the
"Globe Woolen Company" of 79 & 81 North
Third Street and then and there in de-
pendent charge and custody, said goods
consisting of two pieces of cloth in all of
the value of one hundred and fifty three dollars
That on the 22^d day of November 1881 by
officers Stephen Carmick and William J. Dwyer
bath of the 20th Precinct Police, found
said ~~two pieces~~ cloth in possession of —
Isaac Witkaski (here present) That deponent
was informed by Augustus Miller here
present, that on the 17th day of September
1881 he said Augustus Miller did offer
said cloth unto said Witkaski for sale
that he then stated unto said Witkaski
that said cloth had been stolen from
a car of said Rail Road; that thereupon
said Witkaski offered to buy said cloth
of him said Miller and did buy and
receive said cloth from said Miller
paying to said Miller thirty two dollars
cash money, and in addition to said money gave
to said Miller one coat, one vest and
two pairs of pantaloons, all this in consideration

0625

from & before me this 23rd day of November 1881
 from & before me this 23rd day of November 1881

Robert D. Smith
 Police Justice
 Robert D. Smith
 Police Justice

for said cloth, which cloth he said Wittkaski
 did then and at his said Wittkaski's
 store in No 487 - 8th Avenue, receive
 from said Miller. - Dependent therefore
 charges that said Isaac Wittkaski
 (here present) did then and there
 unlawfully buy and receive upon
 the consideration hereinbefore stated
 said good to wit said two pieces of cloth
 the property of said Globe Woolen Company
 feloniously taken stolen and carried away
 from the charge and custody of dependent,
~~that~~ he said Wittkaski knowing said
 property to have been stolen

Robert D. Stevenson

City and County of New York ss. Augustus Miller being
 duly sworn says he is 28 years of age, by occupation a
 dealer in fancy birds and dogs and resides 350. 8th Avenue
 and City; that on the 17th day September 1881, he received
 from Richard Burrus the two pieces of cloth mentioned in
 foregoing affidavit, that said Burrus informed then
 dependent that he said Burrus had stolen said cloth from
 a car of the New York and Hudson River Rail Road. Dependent
 further says that he on said day did sell said cloth
 unto Isaac Wittkaski the prisoner here present, informing
 him that said cloth had been stolen as aforesaid.

A. Miller

Police Court - Second District.

THE PEOPLE, &c.

ON THE COMPLAINT OF

Offence.

188

Justice.

Officer.

Dated,

Witnesses,

Committed in default of \$

Bailed by

No.

Street.

0626

POLICE COURT—SECOND DISTRICT.

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

Stephen Carmick an officer
of 20th Precinct Police Station, being duly sworn, deposes
and says that on the 22nd day of November 1871
at the City of New York, in the County of New York, he arrested Isaac

Witkaski (here present) in whose possession
deposited found a quantity of cloth
claimed by Robert G. Stevenson the com-
plainant named in foregoing affidavit
as goods belonging to the "Globe
Woolen Company" mentioned in said
affidavit, and ~~which~~ which cloth has
been taken stolen and carried away
from the care and custody of said
Robert G. Stevenson. That said cloth
was since identified as by Stanley H.
Ray here present as the property of
said Woolen Company, which property
had been delivered to said Rail Road
as freight goods. Stephen Carmick
City & County of New York

Stanley H. Ray being duly sworn says
he is 28 years of age, a salesman in the
employ of the "Globe Woolen Company" of
79 & 81 North Street, and residing in Brooklyn —
that he has examined the cloth mentioned
in foregoing affidavit and identified the
same as part of a quantity of cloth, manu-
factured by said Woolen Company and the pro-
perty of said Globe Woolen Company =

Stanley H. Ray

Isaac Witkaski
November 22nd 1871
before me this 23rd day of
November 1871

Isaac Witkaski
23rd day of November 1871
before me this

0627

Sec. 198-200.

CITY AND COUNTY }
OF NEW YORK, } ss.2nd DISTRICT POLICE COURT.

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

Question. What is your name?

Answer. Isaac Witkowski

Question. How old are you?

Answer. 27 years

Question. Where were you born?

Answer. New York City

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

Answer. 339 West 50th Street for about 3 years

Question. What is your business or profession?

Answer. Chilax

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

Answer. I ~~decline answering~~ I purchased the goods and gave for them a suit of clothes a pair of pants worth forty two dollars and seventy two dollars in cash and took receipt for same. Miller representing to me that he was a commission salesman. Isaac Witkowski

Taken before me, this 23rd

day of January

1887

Police Justice.

0628

City and County
of New York } ss.

Augustus Miller 28 yrs ^{old} Dog fancier \$350. 8 1/2 am
being duly sworn and cross examined says.
I have been in that business for about 16 years.
I have lived in New York for 16 years except
one day. I have been arrested once. About
8 or 9 weeks ago. I was accused of stealing a
bag of pennies in a lager beer saloon.
I was accused of larceny. I have never been
tried on the charge. I am on bail yet for the
charge. A party named Platt made the charge.
Byrne lived in 26th St. He is now in the
Penitentiary at Albany, charged with stealing.
I saw him about two weeks ago. I had a
glass of beer with him in 8 1/2 am. I have
known Byrne about a year. I don't know if
he was arrested before. I have known him work
about 12 years. I went to his store on the 17th
of Sept and had two samples of cloth one was
light and the other dark. He asked me
how much I wanted for the cloth. I said
one hundred dollars. He asked him what
there was in it. I told him I did not know
they were full rolls and were stolen from
the Hudson River Railroad that day. He
said the goods were rather light & he
would have to keep them till next Spring
but he would give me \$700 dollars for
them.

0629

2

I asked him if he could not do better than
60. I said if he would give me 70 dollars
for them he could have them I went
by his store that evening & he asked me if
I had sold the goods yet. I said no. He
told me to bring them goods in that night
& he would give me 70 dollars for it.
I went and told Ben what I could
get for them & he was satisfied. He
gave me the goods and told me to get
the money. I took the goods there & he said
he only had 25 dollars. He said you sign
a receipt for 70 dollars and take the
balance in clothes. I asked him what
he charged for clothes. I wanted a Sunday
suit and a pair of pants. He charged
me 35 dollars for the suit & for the pants
and gave me 7 dollars three weeks after
he gave me the 25 dollars, that made up the
70 dollars. I am not in the habit of
getting drunk. I drink once in a while.
Two or three drinks a day. I have been
a bar tender - I don't drink often but
3 or 4 times a day. That day I had several
drinks with Ben. I had 7 or 8 beers -
I drank nothing else that day - I did not
drink more.

0630

3

Benn told me the goods were stolen. I was not with him when they were stolen. I did not steal them myself. I did not tell Urkovskii they were stolen. I called on him between 11 & 1:30 in the forenoon. Benn came to my house and brought the samples there. He wanted me to sign a receipt. He told me to keep my mouth shut & he would do business with me all the time. He said not to say anything on account of his brother being arrested. He said if he had a receipt it would look better. I said a receipt would be as good as he knew the goods were worth more money. The receipt then is in my handwriting. I signed it as a bill and receipt - I got 32 dollars in money and the balance in cloth. In all 70 dollars. I don't know what the cloth was worth. I am sure the first price I asked was one hundred dollars. The last time I saw Benn was in 8th avenue about 2 weeks ago. It is then or four months ago since he escaped. I knew his character when I dealt with him. I have had other transactions with him in cloth. He asked me to buy it & I did not do it. He offered to sell me cloth before I told him I had no use for it. I don't know how he got it.

0631

4

I suppose he got it the same way as he got the cloth. I had no other business with him. I never bought anything from him. I did not buy the from him I took it from him. and paid him the money when I got it. He offered me goods three or four times before. I knew what he was. I had no use for the goods before I first met Burns about a year ago & had drinks with him. I did not talk business with him then. I had a talk about business about five months ago. He wanted me to do goods business with him as I knew sold men. Well now I knew as he had often wanted me to get goods for him such as lining and buttons. A few months ago I sold him a ticket for some cloth that was in pawn. I gave him a pair of suspenders the day he gave me the money.

A. Miller

Sworn to before me
this 28th of November 1893.

Solomon B. Smith

Police Justice

0632

5

Isaac Witkowski being duly sworn says.
 I am a tailor at 487. 8th Avenue. I saw
 August Miller first about the 15th or 16th of
 Sept. 1897. He brought me samples of the goods.
 He asked me if I could use those goods.
 I said yes I could use them but they were
 out of season and light weight, for me to
 use. He said he could sell me the goods
 so I could afford to carry them, that he was
 a commission merchant and had goods to
 sell some time that was a little light
 weight. I asked him what he wanted for
 them. He said 175 a yard. I said I did
 not think they were worth that but at 150
 I thought I could use the goods as they would
 have to lie some time before they could be
 sold. I told him I would give him 150
 for the goods. He said he would let me know
 in the afternoon or next morning. He came in
 in the afternoon & said I could have them
 there was between 45 & 50 yards. They were
 worth from 175 to 180 a yard. I paid him
 the night he came in seventy dollars in cash.
 I told him to come in later & I would pay
 him the balance. He said he would take a
 suit of clothes. I made him a suit of
 clothes for thirty five dollars and a pair
 of pants for seven dollars. I took a receipt
 full from him.

0633

C

I made out a bill for him and he signed it. There was a balance due of thirteen dollars. When the vest came in he wanted to take it and show it to his wife. I let him do so. Then he wanted a diagonal suit and he said he would pay the difference. He paid me a difference of six dollars. In all I paid him one hundred and twenty five dollars. I made him a suit for thirty five dollars which he did not take. I then made him a suit for 41. I never saw him before the time he came in and offered me the goods. He did not tell me the goods were stolen. I have been in my present place since May last. Before that I was at 275 8th Avenue. I have been in business between 6 and 7 years.

X E

I have been in business at my present place since last May. The business is done in my wife's name. I have never had a partner. I had a misfortune and had to fail.

Seen to before me
this 6th of Dec 1891. } Louis Wittroski
Solomon Smith

Police Justice

0634

(7)

Benjamin Harris - 17 yrs. Clerk of 300.
 West 40th St. being duly sworn says -
 I know Arkonski. I remember in September
 a man named Miller came to the store
 and I heard Miller say he was a
 German merchant. I did not hear any
 thing about the price for the goods. I saw
 seven dollars paid to Miller a few weeks
 after he came in first. I know he was
 measured for a suit and pair of pants
 for 42 dollars. He got the clothes. He
 came in and wanted to take the vest
 & show it to his wife. He said when he came
 back he wanted a suit of diagonal suit
 and said he would pay the difference -
 I know the diagonal suit was made for
 him and he got them.

Benjamin Harris

Sworn to before me
 this 6th day of Dec 1886

Solomon B. Smith

Police Justice

0635

Sec. 208, 209, 210 & 212.

Police Court - 2 DISMISS

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Robert G. Stevenson
228 West 38th St
Charles V. Litchner

Offence: Receiving
stolen goods

Dated Dec 23 188 /

Swick Magistrate.

Lavender Deputy Officer
20 Clerk.

Residence _____ Street,

No. 4, by _____

Residence _____ Street,

No. 3, by _____

Residence _____ Street,

No. 2, by _____

Residence _____ Street,

No. 1, by _____

FILED

Mayer & Co.

Residence 144 Columbia Street,

Witnesses Augustus Miller -

House of Detention

No. 1, by _____ Street,

No. 799 81 West Street,

Garnett D. Freeman

No. 457 West 104th St.

John D. Strickland

At John D. Strickland

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

Isaac Kortroske

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

Dated Dec 8 188 /

Isaac Kortroske
Solomon Strickland Police Justice.

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

Dated _____ 188

Police Justice.

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

Dated _____ 188

Police Justice.

Dec 28/88
The people at large
g. At present will
be. people at large
Dec 28/88

Police Court - 2 District

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Robert G. Stevenson
228 West 38th St.
Isaac Bittoni
Offence: Receiving
Stolen Goods

Dated: Nov 23 / 188

Smith Magistrate.

Carminer Deputy Officer 51
20 Clerk.

FILED, May 1st 1881
No. 1, by
Residence 744 Columbia Street,
No. 2, by
Residence
No. 3, by
Residence
No. 4, by
Residence

Witnesses
Mr. Wm. J. D. Carey
Off. Sec. of the Police
Dne Sec. of the
J. D. Carey Miller
the papers at the
F.S.
Dec 28 1881

Witnesses
Augustus Miller
House of Detention
Street,
St. John's
Garrett D. Jackson
No. 457 West 10th St.
John D. Miller
St. John's
St. John's
St. John's

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

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

Dated Dec 8 / 1881

I have admitted the above named _____

to bail to answer by the undertaking hereto annexed.

Dated _____ 1881

There being no sufficient cause to believe the within named _____

guilty of the offence within mentioned, I order he to be discharged.

Dated _____ 1881

Police Justice.

9390

0637

COUNTY OF NEW YORK, ss.

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

An indictment having been found on the 15 day of Decr.
1881, in the Court of General Sessions of the Peace, of the County of
New York, charging Isaac Mitkoski

with the crime of Grand Larceny

You are therefore Commanded forthwith to arrest the above named Isaac

Mitkoski and bring him before that Court to answer the indictment; or
if the Court have adjourned for the term, that you deliver him into the custody of the Keeper of the
City Prison of the City of New York.

New York City, the 28 day of Decr. 1881.

By order of the Court.

Whisper
Clerk.

0638

N. Y. General Sessions of the Peace

THE PEOPLE
OF THE STATE OF NEW YORK,


against

Isaac Witkoski

Bench Warrant for Felony.

Issued

Dec. 28 1881

 The officer executing this process will make his
return to the Court forthwith.

0639

TORN PAGE(S)

St. Miller

0641

PART I.

THE COURT ROOM IS IN THE SECOND STORY AND FRONTING THE PARK.
If this Subpoena is disobeyed, an attachment will immediately issue.
Bring this Subpoena with you, and give it to the Officer at the Court-Room door, that your attendance may be known.

[SEE OTHER SIDE FOR OTHER DIRECTIONS.]

457 W. 104th Street
Mrs. Lockwood **SUBPOENA**
FOR A JURY TO APPEAR AT THE
Court of General Sessions of the Peace.
She has gone on a pleasure tour
and will not return till October
The People of the State of New York
to *Garret W. Lockwood* *Hunter*

of No. *457* *W 104th* Street,

GREETING :

WE COMMAND YOU, That, all business and excuses ceasing, you *appear* in your proper person, before the Court of General Sessions of the Peace, to be holden in and for the City and County of New York, at the Sessions Building, in the Park of the said City, on the *18* day of *Sept.* instant, at the hour of eleven in the forenoon of the same day, to testify the truth and give evidence in our behalf, against

Isaac Witkowski
in a case of Felony whereof *he* stands indicted. And this you are not to omit, under the penalty of Two Hundred and Fifty Dollars.

Witness, Hon. FREDERICK SMYTH, Recorder, of our said City, at the City Hall, in our said City, the first Monday of *Sept.* in the year of our Lord 188 *8*

JOHN McKEON, *District Attorney.*

0642

My dear Sir,
I have the pleasure to
acknowledge the receipt of
your letter of the 11th inst.
and in reply to inform you
that the same has been
forwarded to the proper
authorities for their
consideration. I am,
Sir, very respectfully,
Yours,
J. B. [Signature]

0643

City & County of New York.
Stephen Carmick, an
officer of Police attached
to the 20th Precinct, on
oath says: That he is
informed and believes
that ^{on} the 16th day
of September 1881 a
freight car of the N.Y.
Cent. & Hudson River
Railroad Co. was broken
into and entered
and fifty yards or
thereabouts of woolen
cloth of the value of
\$2.50 cents each yard
was stolen therefrom,
the property of the Robt
Manufacturing Co.
in the custody of the
Oats Railroad Co., and
that thereafter, to wit,
on the 22nd November
1881 defendant and
other officers of agents in
possession of one brace
of it took forty seven
yards of cloth which

0644

was ~~and~~ identified by
Mr. Ray and Mr.
Lockwood of the said
Graham? C., as a por-
tion of the stolen prop-
erty. That one August
Grilled, now in the
House of Detention, has
stated to defendant and
others that he sold
this cloth to Wikki
to for \$70. at the re-
quest of Richard Buss
not yet arrested for this
offence but now sen-
tenced at Long, and
that he told Wikki
that the property was
stolen. Stephen Carmick

Sworn to before me
the 13th November 1887.

John Dwyer

Notary Public N.Y.C.

Papers from Knapp's tent
misland

0645

People

near
Shipkrohi

Witnesses:
Mr. Hanson
Deborah Parks
Angela Miles
Hans of Dept
Mr. Ray
79 + 81 North
Mr. Lockman
79 + 81 North

931
22
84

0646

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

THE PEOPLE OF THE STATE OF
NEW YORK,

Richard Burns ^{against} *Isaac Wittrock*

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

Richard Burns and
Isaac Wittrock

of the crime of

larceny
committed as follows:

The said

Richard Burns and
Isaac Wittrock

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

*forty-seven yards of
cloth of the value of
two dollars and eighty
cents each yard, of
the goods, chattels and
personal property of
The New York Central
and Hudson River
Railroad Company,
a corporation organized
and doing business
under and pursuant
to the laws of the
State of New York*

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

then and

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

0647

And the Grand Jury aforesaid, by this indictment, further accuse the said
Richard Burns and
Isaac Wittkowski
of the CRIME OF *Receiving stolen goods*

committed as follows:

The said

Richard Burns and
Isaac Wittkowski

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,

forty-seven yards of cloth
of the value of two dollars
and eighty cents each
yard of the goods, chat-
tels and personal prop-
erty of the New York
Central and Hudson
River Railroad Company
a corporation organized
and doing business
under and pursuant
to the laws of the State
of New York

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

by a certain person or persons to the Jurors aforesaid unknown, then lately before feloniously
stolen of the said

The New York Central and
Hudson River Railroad Company

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

Richard Burns and Isaac Wittkowski

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

DANIEL C. ROLLINS,

~~BENJAMIN C. PHELPS~~, District Attorney.

0648

BOX:

53

FOLDER:

616

DESCRIPTION:

Byrne, Charles

DATE:

12/21/81



616

0649

counsel,

Dec 21 day of

1882

ends

THE PEOPLE

vs.

Charles A. Byrne

Defendant
of Pyra and Coroner
for said County

DANIEL G. ROLINS

Dist. Attorney

divorce order
followed by

A True Bill

George P. Dwyer

Foreman

Monday Dec 21 1882

Printed by

Geo. W. Parker

Frederick Office

Printed and

July 12 1883

George Q. Waller

Hot Springs

0650

December 8th 1881

Start
ms
Byrne)

Gustave Hecker, Recalled
by Mr. Howe.

Q Mr. Hecker, this Eytinge affair
was about how long; how
many years, was it before the
alleged embezzlement, took
place.

A I can safely say, over one year
Q and Miss Eytinge picture was
in the Dramatic News, about
that time?

Yes Sir, being and dated about
that time.

Cross Examination

Q Mr. Hecker you have said a
year, before? a year before
what?

A To the question Mr. Howe asked
me

Q when it was I got this money.

0651

Q and did you retain the same position after that?
answer

Q after the Elyse affair you retained the same position?

A No Sir I have been promoted since.

Q In what way?

A I was then the publisher, I have now been made the publisher and business manager

Q Did you continue to have the same control over the financial matters, as you did before?

answer

Q That is to collect bills now as you did then?

answer

Q Did you ever have any conversation with Mr Richardson during the time you had editorial charge over that paper in relation to money transactions between yourself and Mr Tony Pastor?

A Never

Q Did you state to Mr ^{Richardson} Pastor that

0652

you had sent a bill to Mr.
Pastors office and collected
the amount of it and that
you subsequently sent a second
bill for the same amount
and got it?

a never.

I and show him the money
you had received and ask
him to divide with you?

a nothing after said it has
never occurred.

Given to before me
this 7th day of December 1888

Augustus L. Neckles

John B. Smith
Police Justice

0653

Frederic P Richardson recalled
by Mr Fellows,

Q Mr Richardson you have here
testified as to the date when
you had Editorial Charge of
the paper at that time?

A The approximate date.

Q Regarding the circumstances
that you described did
you at any time have any
conversation with Mr. Healy,
the witness (who has just
left the stand) in relation
to the collection of certain
monies from Mr. Tony Pastor
an being due to the Dramatic
news?

Objected to as clearly irrecompe-
tent, immaterial & irrelevant
and also upon the ground its up
Cross Examination of their own witness.
By the Court Excluded.

Plffs. & Defts Counsel announce
they rest their case

Sworn to before me
this 9th day of December 1881

Frederic P Richardson

Solomon B Smith
Police Justice

0654

Examination of Joseph Hart
Continued.
By Mr Howe.

October 4th 1881.

Q Mr Hart at any time since the
year 1875, has the defendant
Byrne been a partner in the
Dramatic news?

A Not since - some time in October
1875

Q Not since October 1875?

A No sir

Q Have you in your possession and
can you produce a letter written
by Byrne to you dated September
2^d 1880?

A Yes sir

Q Will you produce it?

A Yes sir (producing letter)

Envelope marked Ex 1. reads.

" Mr Josh Hart Esqr

" Truth Office

" 142 Nassau Street.

Letter marked Ex 2. reads

" Office of the²⁰⁴ Dramatic News

" 866 Broadway.

" New York Sept. 2^d 1880

" My Dear Hart, for a

0655

"year or more you have paid me
"my salary of Fifty dollars a week
"regularly of the Dramatic News
"but I must confess that while
"I agreed to the arrangement
"and carried it out in good
"faith, I have pined for the ~~possession~~
"of partnership, that is to say I
"think I am entitled under the
"circumstances seeing that I
"worked very hard on the ^{news} Dramatic
"to have an interest in it,
"I now formally request it. If I am
"expected to continue this work
"for you allate me fifty shares of
"the stock of the paper. You know
"that sometimes this would amount
"to less than fifty a week and
"some times to more, but I am
"certain it would add an in-
"terest to my work and accrue
"in the end to the benefit of the
"paper. Its hard to think that if
"I were to die I should leave
"nothing of this paper behind
"me. Please give me an answer
"in writing.

Your Friend.

L. A. Byrne
Joseph H. Hart Esq.
Truth Office

0656

Q Mr Hart have you any further statement which you wish to make upon the statement of your Cross examination?

A There are two or three things that I do not fully understand that day. Two years having elapsed since I had occasion to refer to them in these matters and at the request of Col Fellows to search for papers. I found several papers relating to the case and I think it would be necessary for me to state under what circumstances Mr Byrne resigned his position as the Dramatic news, this is merely to set my evidence on the Cross Examination straight.

Mr Byrne had got into some difficulty domestic

objected to:

Mr Howe It seems to be an offer to explain certain papers.

Q To what papers did you refer Mr Hart. Just now?

A One was the paper that was called here a stock paper, ^{and the other a letter} and that I have

0657

not found up to the present time
but I made search for it. It must
have been of little or no value
and I tore it up.

Q Have you anything to state
Q Have you any other paper?

A The other paper was a paper
called a contract which Mr
Post had;

Q But you have obtained possession
of it since the last adjournment?
Answer

Q You produce a paper which is called
a contract and which paper bears
date the first day of October 1845
Is that so Mr Post.

Answer That's the paper; marked Ex 3.
Q You now produce Ex 3. at the request
of counsel for the defendant?
Answer

Q Have you any statement to make to
the Court in reference to the paper
Ex 3. 7.

Answer.

Q Proceed and do so

A In speaking of that paper I was
asked if that paper was not ante
dated and I answered no and

0658

2

Still answer No. that was a contract made when first the Dramatic News was started. It was made between Byrne and myself. I think or between he and my ^{late} wife. That paper was immediately, then and there upon the spot transferred with her permission to his then wife "Mrs Laura Byrne. That paper remained in her possession from that time forth until it became an Exhibit in a suite with Mrs Byrne for the ownership of the paper.

Q Do you recollect in what Court that was?

A Common Pleas.

Q Before whom?

A Judge Larnmore.

Q That was a suite brought by whom against whom?

A That was a suite brought by Mrs Byrne claiming the entire ownership of the paper

Q Under that contract?

A No Sir, oh no. in a supplementary proceeding case; that contract

0659

is my contract.

2 That contract was the base of it?
A No Sir I cannot say that it was
& I. —

2 Before you proceed to explain any
further, at the end of the contract
do you find this, wait. — I ask
you to read from that contract
those last lines and tell me
in whose handwriting it is
I mean this "I do hereby this 2^d"
"day of October 1875 give my Con-"
"sent to Mrs Sarah Hart above"
"named that she the said Sarah"
"Hart may transfer all her"
"right title and interest in the"
"shares mentioned in the within"
"agreement to her husband Joseph"
"Hart; Signed L A Byrne."

Now Mr Hart in whose hand-
writing is it?

A Mr Byrne's.

2 And that is dated October 2^d 1875
is it not?

A Yes Sir.

I will you explain the circumstance
under which that agreement or
contract was given and what

0660

occurred since that date?

A. It was some two years after that before the trouble arose which caused the cancellation of that contract; I stated there was some trouble Mr Byrnes and I had, and from the time of that contract up to 1849 there was no reference made to it; He came to me in that year and stated he had to sign all his right title and interest to his wife, she had possession of his contract and all the interest he held under that contract, and that he was going to try and get that contract from her, and he finally told me he had it. And as he had assigned his right title and interest in it he wanted something done to destroy that ^{from him to her} Codicil, and he asked me if I knew somebody; and I did not know anybody and certainly there was nobody; and his wife came to me and wanted me to dismiss Mr Byrnes from that paper

representing one or two parties whom she wanted to represent her, in this place. I told her by doing that it would deprive her of any interest in it. And I went to another compartment and took some boxes down and took out this paper. She then told me to try and amicably adjust the trouble that was between them. I took upon myself the task to arrange the matter, she claimed to have this interest; and he claimed to have it; and I don't know who owned it; well I brought them together and a proposition was made by them to me, selling all their right title and interest jointly in the Dramatic News for the sum of fifty dollars a week. 3. Have you that contract?

a I have a copy of it.

2 That was dated October 9th 1849?

was it?

Answer sir.

I go on.

a I stated I brought them together and I agreed to give him a salary

0662

of fifty dollars a week; Thirty of
which I was to be responsible
for to her in lieu of all dower
in the stoppage of all divorce
and scandal proceedings which
she contemplated bringing; That
contract was signed and carried
out the first week, the whole
of the Thirty dollars was paid.
In the meantime she had a
consultation with some of her
friends and at ^{their} advice
and dictation ^{there having been a suit}
~~which had been previously brought by~~
~~in which Mr Daily was made~~
~~a party~~; she claiming that she was
the owner of that ^{paper} ~~contract~~ and
he also claiming that she was.
Byrne having sworn that she
was the sole owner of the paper
I was there any decree made.
A I went to Court and swore that
Mr Byrne didn't swear to what
was so, they asked that that
contract be set aside ^{we consented to} ^{we set aside} and the
Court granted their motion.
If she had any interest in that
paper it was in 1879.

0663

Q And that decree is now in file?
A Yes sir

Q From that time on have you ever
taken Byrne into partnership?

A No sir I have not in the dramatic
news.

Q Have you any other explanation
to give on that subject?

A Yes sir

Q Well?

A In asking me if any act was
done with reference to issuing stock
of the Electric company which was
to purchase the stock. - Since look-
ing it over I recollect we did; Five
shares to Louis J Post. Five shares
to A H Hummel and ninety shares to
Joseph Hart, we failed to comply with
what was in that act - or to do
under that act - and we have
never done an act, or deed under
that corporation act since.

Q So that nothing was done?

A We never acquired it.

Q And at the time of this subjugation
to whom did the dramatic news
belong?

A To the estate of Sarah Hart

0664

2 Exclusively?
Apex in

2 And did any other person have
or any other person a future estate
have any interest in the estate
in question?

A None in question;

Ex. 3. offered in Evidence

" This agreement made and entered
" into this first day of October in
" the year One thousand Eight Hundred
" and Twenty five, by and between Sarah
" Hart wife of Joseph Hart of the
" City County and State of New York,
" and Charles A. Byrne of the same
" place, Witnesses, who as in
" consideration of the premises
" hereinafter set forth the said
" Sarah Hart and the said Charles
" A. Byrne for the purpose of es-
" tablishing, publishing, issuing
" and conducting in the City of
" New York a weekly newspaper to be
" devoted to the Drama, Music Arts
" and Society to be known desig-
" nated and published as the
" Dramatic News " do hereby covenant
" contract and agree by and

0665

between themselves as follows:

"Whereas the said Sarah Hart has
"contributed various sums of money
"amounting in the aggregate to
"the sum of three thousand dollars
"for the purpose of founding, editing
"conducting and establishing
"said Dramatic News, and whereas
"in consideration thereof said
"Charles A. Byrne agrees to devote
"his time, labor skill and atten-
"tion to the sole and exclusive
"editing, conducting and publish-
"ing of the said Dramatic News
"as a newspaper to be devoted to the
"Drama, Music, Arts and Variety.
"And it is further agreed by and
"between the respective parties to
"these presents that the said Charles
"A. Byrne shall so conduct, edit
"and publish said newspaper with-
"out compensation except such as
"may accrue from the profits
"to be derived from the earnings
"of said Dramatic News.
"And it is further agreed by and
"between the said parties to these
"presents that all the right, title

0666

and interest in and to said
newspaper and everything thereto
appertaining shall be represented
by One Hundred Shares, of which
said Sarah Hunt, her heirs execu-
tors, administrators and assigns
shall own fifty^{five} shares and the
said Charles A. Byrne, his heirs
executors, administrators and
assigns shall own forty five shares
and it is further agreed by and
between the said parties to these
present that if the said Charles
A. Byrne shall at any time during
the existence of said newspaper
said Dramatic News, write for
contribute to edit or publish any
other newspaper journal, book or
any other printed matter whatso-
ever, save and except said news-
paper said Dramatic News or
if said Charles A. Byrne shall
neglect or omit to fulfil any
of the duties, obligations and
labors agreed to be performed
by him as herein before and
hereinafter mentioned and
covenanted, then the said

0667

"Charles A. Byrne does hereby for first
"surrender and deliver to the said
"Sarah Hart for her use, benefit
"and control and as her exclus-
"ive property the said forty five
"shares so set apart for the use
"of said Charles A. Byrne.
"And it is further agreed by and
"between the said parties to these
"presents that the said Charles
"A. Byrne shall not engage,
"hire or retain any additional
"Editor or Editors, reporters or re-
"porters or employees of any kind
"whatsoever in addition to those
"now employed in and on said
"Dramatic News to aid in the
"Editing, publishing or conduc-
"ing of said Dramatic News
"without the consent in writing
"of said Sarah Hart or her duly
"authorized Agent.
"And it is further agreed by and
"between the said parties to these
"presents that the holders of said
"shares shall at all times be
"consulted in the management
"of said newspaper, and nothing

0668

"shall be published in or appear
"in said newspaper without the
"mutual consent of each of said
"holders of said shares.

"And it is further agreed by and
"between said parties to these
"present that the net profits
"of said business shall be di-
"vided on the Thursday of every
"week, each owner of the said
"shares to receive one hundredth
"part of said profits for each
"and every share.

"And it is further agreed by and
"between said parties hereto,
"that just and correct Books of
"account shall be kept of said
"business by said Charles A. Byrne,
"in which said books shall at
"all times be open to the inspec-
"tion of the said holders of said
"shares and their duly authorized
"agents or attorneys.

"And it is further agreed by and
"between said parties to these pres-
"ents that none of said shares
"shall be assigned, transferred,
"sold or otherwise disposed of

0669

"without the consent in writing
"of the owner of the residue of
"said shares, and that should
"such shares be sold or any part
"thereof sold, assigned or other
"wise disposed of, according to
"the terms of this agreement,
"or shall the same by death or
"otherwise, cease, the owner
"by either of the parties to these
"presents, the other party shall
"not thereby be released from
"any of said obligations by
"selling, transferring or assigning
"or otherwise disposing of said
"shares or any part thereof whether
"by operation of law or otherwise.
"And it is further agreed by and
"between the parties hereto that
"the name and designation
"of said newspaper known as the
"Dramatic News" shall not be
"changed altered or amended
"without the consent of both
"parties to these presents.
"In Witness whereof the said parties
"to these presents have hereunto
"personally set their hands and

0670

" affixed their seals the day and
" year first above written.

"Signed sealed and
"delivered in presence of } Sarah Nash (L)
"A H. H. H. } L A Byrne (L)

" S H Samuel

Notary Public (44)

" New York City and County.

" I do hereby this second day of
" October 1875 give my consent to
" Mrs Sarah Hart above named
" that she the said Sarah Hart
" may transfer all her right title
" and interest in the shares men-
" tioned in within agreement to
" her husband Joseph Hart.

E A Byrne

Paper marked L^t 4. Offered in
Evidence.

Reason Examination.

2 Mr Hart it appears by a memorandum attached to the end of the articles of partnership that one of the parties to that partnership gave his consent in writing and then the other party thereto Mrs Sarah Hart would transfer

0671

acc of her interest of the whom
mentioned, and then to her hus-
band! Was that consent upon
the ~~part~~^{part} of Mr Byrne ever consum-
mated?

Q Yes sir

Q Was there any transfer made?

A Not to me.

Q When did you obtain your dis-
charge in bankruptcy?

A September two years ago?

A 1879?

Q Yes sir

Q Was there any objections filed
on the part of any of your credi-
tors to your discharge from bank-
ruptcy?

A Not that I am aware of.

Q Did Mr Monday a lawyer of this
city interpose any objections to
your discharge?

A I think he did, but he didn't
follow it up. I am not positive
I don't remember the circumstances.
I know nothing further than he
opposed it and withdrew his
proposition.

Q Do you remember that he appeared

0672

for Mr Skidmore, for the estate of
that matter, and Mr Skidmore
was the receiver of that estate?
Yes sir

Q And you were aware that estate
some four thousand dollars?
Yes sir

Q Was that claim paid?

A The ^{from my own estate that I transferred to my credit} estate, paid the claim, that
is the property, and the executor
or man who had charge of the
property didn't carry it out,
didn't carry the conditions out.
I didn't have anything to do
with it.

Q Was that claim paid Mr Hart or
a full and complete arrange-
ment made for its payment before
Mr Munday would consent to
your discharge?

A No sir not that I am aware of
I don't know that it is paid to
day.

Q Had you any personal difficulty
with Mr Munday I don't mean
by coming to blows?

A We had one or two conversations
I went to Mr Munday ^{to him} if he had been

0673

paid the money coming to him from the estate, of that property.

Q Do you know Mr Hart whether or not the proceedings in bankruptcy contained any record of this claim held by Mr Munday?

A I cannot say affirmatively knowing Mr Shepherd came to me in Philadelphia on my return trip, having been at the time I learned that the same (Byrne) that the Dramatic News belonged to his wife he came to inform me that the man Saunders who had charge of the property did not perform his trust and when I came to New York I sent for Mr Munday and he told me, whether Mr Munday opposed my discharge in bankruptcy or not I know that I was discharged without the opposition of any creditor. Do you not know that Mr Munday had made objections?

A Mr Munday said he was going to oppose, whether he did or not I do not know.

0674

6

Q In your schedule filed in bankruptcy
the Dramatic News was not con-
tained?

A Not that I remember.

Q In your interviews with Mr
Munday didn't he state to you
that he should oppose your
discharge upon the ground that
you were the owner of the Dra-
matic News and that he was
prepared to show it and that
unless that claim was paid in
full, he should appear in Court
and oppose your discharge. And
as a result of that conversation
wasn't that claim paid in full?

A I must emphatically say no.

Q Have you made diligent search
Mr Hart for the letter, which
you stated in your last exami-
nation you had recently written
to Mr Byrne offering him forty
five in the Eclectic publishing
company; which letter also
stated that the Eclectic publishing
company was the owner of the
Dramatic News.

A I say in answer to that, that I

0675

have searched but up to the present time I have not found it but the language set forth there is close if not precise to the letter I sent Mr Byrnes I can find it; It was returned to me by Mr Byrnes as no value.

Q That letter contained the statement did it not that the Electric publishing company of Connecticut was the owner and publisher of the Dramatic News of this city?

A I think it did.

Mr Stone: I refer the witness to Ex 3 a et of the which was marked for identification but since then offered in evidence

Q was you present Mr Hart when that contract was drawn?

A I think I was there, It was done at my house.

Q at the time that contract was brought to you who was present.

A I think Mr & Mrs Byrnes.

Q was Mrs Byrnes there?

A I am pretty sure she was.

Q was it at your house or Mr Harrell's

0676

house.?

A At my house the contract was drawn
at Mr Hemmels office I stopped in
and asked them to draw it

Q At the time when you stopped
in who was the parties present
A Mr Hemmel myself and Mr Howe.
Q When was that contract brought
to you Mr Hart?

A I think on the same day it was
drawn. I was signing the contract
for same time and Mr Hemmel
brought it up in the house.

Q The date of the contract is Oct.
1st 1875 is it not?

A Yes sir

Q Do you mean to say that that
is the date on which it was
brought to your house?

A That day & the next, I cannot
say.

Q Mr Hart don't you know that
that contract was drawn and
signed a few years later than
that?

A No sir

Q And you think it was drawn
on the day it bears date?

0677

As that I cannot say. I know I went
in several times to have it
drawn, I was negotiating to have
the matter settled.

Do you say you had been working
the drawing for the contract
for a long time, for how long
I from the time we first con-
cluded to start the paper.

When was it started?

I think sometime in the latter
part of September or first of
October, it was just about
time it came out.

I swear to before me
this day of . 1881

2. Must have you instituted civil
proceedings against Mr Byrne for
the amount of that appears in
this suit?

Ayes sir.

I swear to before me
this 20th day of October 1881

Solow B Smith
Police Justice

0678

7

Augustus Healer.

Press Examination Continued.

Q What is your business upon the
Dramatic news?

A Publisher and business man-
ger.

Q Did you have authority to collect
money?

A Yes sir

Q And you did collect money?

A Yes sir

Q You were authorized to collect
any money due that paper?

A Yes sir

Q Have you examined the subject
matter of this complaint?

A I have sir

Q Had you collected those monies
charged to Mr Byrne, and afterwards
used for himself?

A Yes sir

Q And the monies came into your
hands?

A Yes sir

Q And paid to Mr Byrne?

A Yes sir

Q How long have you been con-
nected with that paper?

0679

a more than 3 years.

Q. Was you ever accused of stealing any monies belonging to that paper?

A. Never.

Q. Do you know a person in the dramatic ~~news~~ profession known as Pearl Ettinge?

A. Yes.

Q. Did you ever receive from her a sum of money amounting to fifty dollars for the miserting after photograph?

A. The paper did

Q. Did you receive it?

A. No sir

Q. Did you receipt for it?

A. No sir I receipted for the first \$25.00 dollars and no more because Mr Byrne receipted for the second.

Q. Now Sir did not Mrs Etting in your presence produce a receipt for fifty dollars showing it had been paid to you by her.

A. I stand corrected under that last question, she did

0680

Q And after that money did the records show more than \$25.00 dollars?

A The records showed \$25. or 20. they did not show \$50. Dollars.

Q Do you know Mr Gordon?

A I do sir

Q Was he in any way connected with that paper?

A He was

Q Was he present at the time this receipt was presented?

A No sir not at that time

Q Was he present at the time that when yourself Mrs Pearl Etting and Mr Byrne were there?

A No sir

Q Did you at any time in Mr Gordons presence state that you had received this money and did not return it?

A I do not remember.

Q Do you think it possible that an incident after that kind had expedited your memory?

A I could remember it if it had occurred; I don't remember any such thing occurring to my knowledge.

0681

Q It could hardly have occurred within your knowledge?
Answer

Q Did you confess in the presence of Mr Gordon and Mr Byrne and also to Mr Richardson that you had collected monies belonging to that paper and appropriated them to your own use?

Answer

By Mr Howe.

Q Have you explained the circumstances of the 25 and 50 Dollars of Pearl Etting?

A. I met Mrs Etting at Union Square one day and she asked me why the Dramatic News was constantly pitching into her and I said I cannot tell you; and I said to her she better give me her picture to put in the paper and I would be able to fix it with Mr Byrne to stop it. (She will bear me out in this) She says very well how much will it cost; Fifty Dollars that was price I said if you think you can do that Pearl it-

0682

8

would be to your interest to do it, and she said all right I will. She didn't appear for two weeks and the second week she came in and said I have brought you a nice picture and said to her excuse me a minute and went into the other room where Mr Byrne was and I said to him I have Pearl Ettinger's picture or can get it will you put it in for \$25.00 dollars and he said certainly, we have nothing for next week and we may do it. Cal Fellows. was Mr. Kane present; at that interview or any of those interviews?

A. No sir, and I went out in back office, and she gave me \$50. dollars and I gave her a receipt for it. That day I turned over to Mr. Byrne what by the way owed me \$130. Dollars for the same thing being commissions for pictures I had received and received no commissions on that day. I turned over \$25.00 dollars and was allowed \$5.00 dollars as part of my com

0683

missions; about a week later Pearl Etting came into the office and met Mr Byrne, to whom she said she ^{had} given me a card along with the picture for which I had given her a receipt for it - and he had failed to put it in; and that she paid me \$50. dollars for the picture and \$50 for the card and the result was that Mr Byrne asked her to remain until I came in and she did, when I came in he asked me how much money I had received from Mrs Etting and I said \$2500 dollars and she said you have kept \$2500 for yourself? I said yes and I did

I and the contract with Byrne was for \$2500 dollars?

yes

I and you charged her \$50 dollars?

yes

I was there any commissions due you from Byrne at that time?

I said One hundred and thirty dollars

0684

Q And you took that method of remembering yourself?

A I did

Q Did you ever know Byrnes for many years past to be there in any other capacity than clerk Apessini not as clerk.

Q In what capacity was he there?

A For the first two years I was connected with him I thought he was part proprietor.

Q Is that the whole of the conversation?

Apessini.

Re cross.

Q For some years you looked upon Mr Byrnes as part owner, and treated him as such?

Apessini

Q Did Mr Byrnes tell you he was no partner?

Apessini

Q When?

A Over a year ago

Q When?

A At one time there was a row between Byrnes & Hart and in the presence of Byrnes Hart

0685

said there is no partner ship in this paper, and he said let you distinctly understand that I am the proprietor and only me. for the reasons I was receiving cross orders which I could not obey without offending the other

I you have stated now that Mr Hart on that occasion of the quarrell told you that Mr Byrne was not a partner of that paper and instructed you to receive orders only from him, I asked you whether Mr Byrne told you he was no partner and you go on telling what Mr Hart said. did Mr Byrne say that. A Mr Byrne said you must obey me and Mr Hart said I want you to understand I am proprietor.

Q What is Mr Hart's statement?

A Yes sir

Q Did Mr Byrne state to you that he was not the proprietor?

A He did

Q When did he say it?

0686

9

A About two years ago in Court Office in
presence of Mr Byrne and Mr Hart
~~and some other men who were~~ I said,

Q you knew at the time Mr Byrne
was the proprietor?

A yes sir

Q and Mr Hart also?

A no sir; for two years I was with
Mr Byrne and I didn't know
anything about Mr Hart;

Q Mr Byrne during that year
and more took charge of the
paper?

A yes sir

Q and his orders were the orders
which you obeyed?

A yes sir

Q and the only orders?

A yes sir

Q when was it Peter Eting paid
you this bill?

A I cannot say the books will
show.

Q was it during them two years?

A It was a long time.

Q was it during that time you
looked upon Mr Byrne as the
sole proprietor?

A yes sir

Q you were an Salary and Commission

0687

Apesini

I authorized to collect money
for the paper to retain such part
as you chose and make no account
of it to your employer?

Answer

You did admit you?

In that one case.

You received \$50.00 from Pearl
Itting for the publication of her
picture for herself in the
Dramatic News?

Answer

I as business manager of that
paper and collector you knew
that money belonged to the
proprietors of that paper?

Answer I did not.

You did not?

Answer I made a contract with
Mr Byrne and he agreed with
me

I now what did you do with the
after \$250.00?

Answer I retained them.

You kept them?

Answer

I But you at another subsequent

0688

16

time turned that money in?
a It was taken out of my salary
for 2 weeks following.

Q Did you state in Mr Gordon's
presence that you had appro-
priated the money to your own
use?

A No sir

Q Did you state to him that you
done it in other instances?

A No sir

Q Did Mrs Pearl fitting complain
of it?

A No sir

Re direct

Q You say you looked to Byrne as the
proprietor for 2 years?

A Yes sir

Q Do you remember the time that
Mr. Richardson assumed the
Editorship of the paper?

A Yes sir

Q How long ago is it?

A A year ago.

Q Ever since that did you look
upon Mr Byrne as the proprietor
of that paper?

A No sir

0689

Recess.

Q Did you know what Mr Byrne received?

A I did;

Q you knew he received fifty dollars a week?

A I knew he received 60 dollars for his services as Editor.

Q Did you know as a matter of fact that during that time he received one half of the proceeds of the paper?

A Yes sir

Q And from the time he came to it until the time he left he received one half of the profits?

A I believe he did.

Q In what form were the statements of the moneys put in?

A A single slip with a receipt of the same slip

Q Then when the monies were received you put it down on slips?

A Yes sir

Q And paid it over to Mr Byrne?

A Yes sir

Q And you kept them yourself

0690

and they have been constantly
in your custody until they went
to Mr Hart?

Answer

Re direct

Q By whose direction did you
keep slips in place of books?

A By me.

Q When was it?

A It was during that suit I was
ordered by the Court —

Q Will you look at this paper
"New York Dramatic News" October
25th 1879. look at that article
headed "To my readers and
signed Charles A Byrne"
Do you remember Mr Byrne
writing that letter?

Answer

Offered in evidence at 3rd.
Re cross.

Q I understood you to say you
never gave these slips to Mr
Byrne?

A I did every night and he returned
them to me. and I kept dupli-
cates in the book.

Q And these were the slips that you

0691

referred to Mr Hart in your affidavit in a proceeding recently begun in one of the Civil Courts against Mr Byrne in which an order of arrest was granted against Mr Byrne?

a. Those are the same slips, Proceedings adjourned to.

October 13th 1881

Given to before me
the 20 day of Oct 1881

Augustus L. Newman

Solow B Smith
Police Justice

0692

Qr' 20 = 1 PM
Mar 16 - 10am

0693

Sec. 198-200.

CITY AND COUNTY }
OF NEW YORK } ss.

2 DISTRICT POLICE COURT

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

Question. What is your name?

Answer.

Charles A. Byrne

Question. How old are you?

Answer.

Thirty three years

Question. Where were you born?

Answer.

London

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

Answer.

174 West 58 St - 6 or 7 weeks

Question. What is your business or profession?

Answer.

Journalist

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

Answer. As manager of the dramatic news during the time that this embezzlement was supposed to have taken place I did not collect the bills nor receive the money directly from those who owed bills. Mr. Becker received the money; he would show me slips of paper with the receipt.

0694

He stated he had each day; He kept the custody of those slips thereafter; and I doubt think I ever saw them again.

He would hand over to me money received in the course of business; He would pay a number of bills; while I would pay others, without accounting to him what I paid.

On this particular week I must have given the printer about One hundred and forty dollars (\$140.00) more than I can state. It frequently happened that I paid notes and bills coming due without their appearing as paid on the slips.

It has also happened that monies were actually paid to the Dramatic News; I had not been put down by Mr Hecker as paid. Such was in one case; a bill paid by Mr Reagan. a certain amount of goods had been received from him by the complainant and myself, and this appeared as one of the receipts on the paper. though

0695

actually as money never existing. there are simply instances in the manner in which business was conducted.

Mr Hickey lent me some seven hundred and fifty dollars. (\$750^{00/100}) which I turned over to Truth; Mr Hickey subsequently running a bill of advertising in the Dramatic News. the money which I owed Mr Hickey and Truth owed me was counted as against his advertising in the Dramatic News; and Mr Hecker put it down as one of the receipts of the office.

It often happened that I not-keeping any books would pay bills; and they would not appear on Mr Hecker's slips or on his books; whether anything of the kind happened this particular week or not I don't know. But at the end of every week I religiously took what money was in my possession and gave Mr Hart either the whole or one half of the profits. If the whole

0696

3

he would give me one half back; If the half I had kept the other half; sometimes it was one way and sometimes it was another. But in every instance he received the full half of the legitimate profits of the paper. Never in any single instance did I take so much as one cent that was his; and by his I mean the one half that was always given. Every Saturday afternoon I would find how much I had left; I would calculate what sums I had spent during the week and put them against my one half; (or in other words the one half that I always received) I would then collect the whole amount of the profits and turn them over to Mr. Hart, either as a half or a whole. But during the entire period I was with the Dramatic News from 1875 until September 5th 1877 I never took one penny that did not rightly and by arrangement

0697

belong to me.

Mr Hecker kept the books and
Mr Hecker signed receipts and
paid bills; he moved simply
turn over to me what he said
were the receipts and show
me the slips which he said
contained all that came in
more might have come in
and I not know it; as he
had entire charge of the de-
partment

Taken
Went to phone me
this 5 days of Dec 1881
Solon B. Smith
Police Justice

C.A. Byrne.

0698

14

Leander P Richardson. called
by defendant. being duly sworn
deposes and says.

Q Mr Richardson where do you
reside?

A 156. East 55th Str.

Q What is your age?

A 25 years

Q What is your business?

A Journalist.

Q You say that your business is
that of Journalist Mr Richard-
son?

A Yes sir

Q Have you ever been connected
with the "Dramatic News"?

A Yes sir

Q In what capacity?

A Journalist

Q How long?

A Several years.

Q As what?

A I am a reporter to the managing
Editor.

Q What time were you managing
editor of that paper?

A During Mr Byrnes absence
at all times.

0699

Q Do you know of any number of days of any time Mr Byrnes was absent?
A Yes it is difficult to fix the dates; It was during I think October and November or thereabouts two years ago, I am not positive about the date.

Q Do you remember a period of Mr Byrnes absence when the paper published an editorial notice that he had discontinued his connection with it?

A Yes

Q And during that time and at that time after publishing of that notice did you act as Editor?

A Yes

Q The sole managing Editor?

A Potentially

Q Was there any other?

A I always recognized Mr Byrnes as the Editor above me and I always took my ~~directions~~ ^{directions} from him

Q During this period included by that notice in the paper?
A Yes; Mr Byrnes even wrote

0700

my introductory editorial.
Q Do you recollect how long a
time that continued?
A I think between two and three
months.

Q Then Mr Byrne resumed his con-
nection with the paper?

Answer

Q During the time covered by this
Editorial charge of yours, did you
have any conversation with Mr
Hart - in regard to the Editorial
charge or business conducted of that
paper?

A Very little.

Q Very little?

Answer I was told to consult with
Mr Byrne.

Q Told by whom?

A Mr Hart.

Q To consult with Mr Byrne with
reference to any particular thing?

A With reference to any thing that
I wished advice?

Q Do you know Mr Keebler?

Answer I do.

Q The one who was a witness in
this case?

0701

yes sir

Q Did Mr Keesler make any statements to you regarding his taking money from the paper?

A Objected to upon the ground of it being immaterial irrelevant and incompetent, and upon the further ground that the counsel now examining the witness had made Mr Keesler his witness on cross examination on collateral matter and that he is bound by the answer and cannot now call a witness to deny the answer so given?

Mr Stone: If your Honor upon deciding the motion when the testimony closes, should allow the question I ask for an exception; If you disallow it I ask you leave to strike it out.

A He did

Q What did he say in reference to that? I want the conversation that took place between you?

A I came into the office and found Mr Keesler in a great

0702

6
State of excitement, he had just come from the front room where Mr Byrne and Pearl Ekking were and I think Mr Gordon; ~~Mr Gordon~~ and I asked him what the trouble was and he said that Mr Byrne, had caught him stealing and I asked him what the case was, and he told me Mrs Ekking had paid him fifty dollars for a picture a part of which he had kept, and had given her a receipt for the full amount and that receipt she had brought to the office and shown to Mr Byrne, and I asked him why he did it. ~~for~~, and he said because he was a damn fool.

Q Do you know the time of that occurrence?

A I think it was in March? or anyway it was in the spring of the year of 1879.

Q Mr Richardson during the time that you ^{had} editorial charge

0703

of the paper, did you have a conversation with Mr Hart in reference to Mr Byrnes having any interest in that paper & how it stood?

A At about the time when Mr Byrnes returned, whether he did without any notice what came from Mr Hart to me I asked Mr Hart one day in the office shortly after Mr Byrnes returned & said if it was true that Mr Byrnes was to resume his old position, and he said yes, and I asked him upon what conditions and he said the same conditions which ~~was~~^{surrounded} them formerly, and I asked him then if he was a partner and he reiterated his statement as formerly - It was the same conditions that governed them prior to this time & I understand you then when Mr Byrnes returned, he did it

0704

omit any notices on the
part of Mr Hart. to you?
At once whatever.
Mr Howe.

We ask the right of
Cross examining the witnesses
on some future day. as it
is necessary that some docu-
ments be produced.

The further hearing was then
adjourned to Wednesday.
November 16th 1881. at 11 o'clock.

November 16th 1881.

The further hearing was then
adjourned to. Wednesday
November 23rd 1881. at 10³⁰ o'clock.

November 23rd 1881. The further
hearing was adjourned to
Friday November 25th at 10³⁰

0705

Friday November 25th 1881.
Cross Examination of
Leander P Richardson
continued; In the absence
of Col Fellows, Defendants
counsel; he was represented
by Mr James his clerk.
By Mr Stone.

Q Mr Richardson on October
19th 1879 did you receive from
Mr Joseph Hart a letter as
follows. I exhibit this as a
copy.

" 41 Lexington Avenue
October 19th 1879.

" Leander P Richardson Esq
Dear Sir

" You are now in sole charge
" of the Dramatic News; And
" in behalf of those I repre-
" sent I require that you
" should not permit any
" intrusion from any person.
" Mr Byrne has now no right
" there, other than his promise
" to assist you to get out
" the news paper.

" Mr Byrne has no business there.

0706

to you that he had resigned
from the paper?

A I don't know.

Q you don't know.

A I do not.

Q did he not call you in
and so state to you?

A He may have done so. I
am not quite positive about
the language.

Q I suppose know that he did so
without reference to the
language; did he in terms
say that to you, that he
had resigned from the
paper?

A Yes, sir, - he asked me to
take the Editorship of the
paper;

Q my question is did he or
did he not?

A I cannot answer that ques-
tion.

Q Have you not sworn Mr
Richardson that he did
call you into his office
and state to you that he
had resigned from the paper?

0707

A Very likely

Q Did he ask you if you would accept the editorship of the paper if Mr Hart were to offer it to you?

A He did or words to that effect; he asked me if I would accept the Editorship of the paper?

Q That Mr Hart would ask you to?

A Very likely.

Q Did you tell him that you would?

A I did - I told him I would accept the editorship.

Q Did not Mr Byrne tell you at that time; - did he not state to you that the reason of his leaving the paper was his family trouble?

A I don't recollect that either.

Q You don't remember?

A I do not.

Q Will you swear that you have not so sworn?

A I will not.

0708

I don't know in the contrary
what you have to know of
a doctor's visit.

I don't know what came into that
office of the Dramatic News.
Two hours after that conver-
sation and repeat substan-
tially what Mr Byrnes had said
to you?

a I don't know about that. He
came in sometime, to repeat
it substantially - what had
been said to me; that's my
recollection of it.

I don't Byrnes say then that he
had twice refused to remain
on the paper, and that he
could not remain on it
owing to the trouble with his
wife and that you should
accept the position as editor?
Either Mr Byrnes or Hunt in
Byrnes presence?

Yes I think so. Mr Hunt re-
peated that so often to me
I am not positive about
that occasion.

0709

Q You will not say it was
not so?

A Oh no.

Q Do you remember a day or two
after that, that Hart in Mr
Byrnes presence and in yours
offered to replace Byrnes on
the paper, but Byrnes positively
declined, two days after?

A I am not positive about
that Mr Hart told me those
things over and over again,
at that time things like that
were fresh in my mind.
After that I never put much
importance on them, I don't
remember them now.

Q Do you believe on the 19th day
after December 1879 your associa-
tion was as good as its to-
day?

A I presume it was.

Q And better?

A Yes sir

Q Did you induce Byrnes, or en-
deavor to induce him to
remain on the paper, and
did you beg him to do so?

0710

a not with any degree of sincerity?

Q Did you?

A I never begged any man

Q Did you almost beg him to stay?

A No sir I suggested to him the advisability of doing it for the papers sake.

Q Did you almost beg him to remain on the paper?

A I don't know that I did, I don't think I did.

Q Did not Byrnes say that he would not consent under any circumstances that any portion of his earnings should go to Mrs Byrnes?

A Yes sir Mrs Freeman

Q Did he say Mrs Freeman?

A I think he called her that woman.

Q And by that woman you understood him to refer to that person who claimed to be his wife?

A Yes sir

Q And you have heard her spoken of as Mrs Byrnes?

0711

Answer

Q will you look at the signature
I now show you; (showing witness
a paper; can you tell whose
that is?

Answer

Q Is the Seander P Richardson
there your signature?

A Yes sir that's my signature

Q It purports to be an affi-
davit sworn to on the 19th
day of November 1879. by you
before Morris Lemons Notary
public of the state and county
of New York is it not?

A I believe so. I didn't read
the paper I merely looked at
my signature;

Q Is it so?

Answer

Q When you mean at the time you
swore to it - you didn't read it?

A Oh no.

Q Did you read it before
you swore to it?

Answer

Q you knew its contents wholly?

Answer I did

0712

**POOR QUALITY
ORIGINAL
DOCUMENT(S)**

0713

Q And you know it is being true
and you not Mr Richardson?
A Yes sir

Q I repeat the question on that
day your recollection of what
has passed was much greater
than what had possibly occurred.
It was much greater than I have
it is to day?

A Oh yes sir

Q Is that affidavit true or false
A I presume it is true.

Q Do you know if it is true?

A I cannot recollect those cir-
cumstances now.

Q Is that the best answer you
can give us?

A It is undoubtedly true.

Q Some weeks after that did you
send to Mrs Joseph Park
a memorandum in those
words?

" Every one dramatic news.

" 866 Broadway.

" November 17th 1879.

" Memorandum for Mrs Joseph Park
" with the compliments of Leander
" P. Richardson. I intended to have

0714

arranged these accounts and
sent them to you Saturday
night, but was prevented.
Please accept my apologies for
the neglect. It shall not occur
again.

Very Respectfully Yours.
Leander B. Robertson

I do thank you for guidance and
do as you send it?

A. I fear I do it send it and
that is my signature.

I am accompanying this with your
and a statement to the fol-
-lowing effect in your handwriting
Statement Saturday November
15th 1879.

Received.

Monday November 10th	\$26.50
Tuesday " " 11th	74.75
Wednesday " " 12th	8.20
Thursday " " 13th	128.
Friday " " 14th	150.37
Wednesday Paper draft " 12th	50.
Saturday November 15th	15.75
Total	\$453.57

0715

13

Paid.		
Monday;	Stamps	\$ 1. 50
Tuesday	Rent	67 50
" "	Burns	3.
" "	Gordon	2.
Wednesday	Printer	29. 50
" "	Draftman Pope	50.
Thursday	Printer	130 00
Friday	" "	10.
Wednesday	Byrne	2.
Friday	Byrne	2.
Saturday	Daly	50.
" "	Leggo	10.
" "	Printer	94.
Total		\$ 1152. 05.
Total receipts		\$ 453. 57.
" Paid		452 05
Short.		\$ 1. 52

Statement to Saturday Nov 8th 1879.			
Received.			
Monday November	3 rd		\$ 23.
Tuesday "	4 th		53
Wednesday "	5 th		38
Friday "	7 th		119
Saturday "	8 th		23.
Total			\$ 256.

0716

Paid			
Monday	3 ⁰⁰	Prison	\$ 10.
Tuesday	5 ⁰⁰	" "	64
Wednesday	8	" "	69.
Thursday	6	" "	38
Friday	8	Byrne	25.
Saturday	8	Dacy note	50
Sunday	7.	Telegram Mr Hart:	25.
Fees for Gordon.			3.
Total			\$ 264.25
Total receipt-		\$ 256.	
" Paid		\$ 264.25	

Put back from clerk's salary 10.00

Due office from me. \$ 1.75

2 now Mr Richardson. I ask you if they were the statements which you in your handwriting sent to Mrs. Hart accompanied by that letter or memorandum.

Objected to.

Mr. Name. This is offered to impeach the credibility of the witness, this is an cross examination; By the court. I allow it. I will send them.

0717

14

Mr. Thorne. I now offer them in evidence
deposited to

By the Court. returned.
Counsel. accept.

marked. Ex. 56 & 7.

Mr. Thorne. I also offer the affidavit
in evidence

"

My Counsel Pleas.

Sandra E. Byrne. }

Joseph Hunt. }
impeached &c

City and county of }
New York ss }

I, Daniel O. Richardson
being duly sworn says. The first time
I knew or heard of Charles A. Byrne.
being off the Dramatic news was on
Saturday October 18th 1879 when Mr
Byrne called me into his private
office and said to me that he
had resigned from the paper and
asked me if I would accept the
position of Editor if Mr Hunt were

0718

"to offer it to me - I told him I would
"there was some additional con-
"sideration about the reason of his
"leaving the paper which was his
"family trouble and need of rest
"about two hours after Mr Stark
"came in repeated substantially
"what Mr Byrnes had said and
"offered me the position of Editor
"after Mr Byrnes (in my presence and
"after Stark's solicitation to remain)
"had twice refused to remain I
"accepted the position. a day or two
"after Stark offered Mr Byrnes in
"my presence to replace him on the
"paper but Byrnes positively declined
"Mr Stark seemed to be anxious
"to have Mr Byrnes remain because
"he had built up the paper and
"Stark thought him the best man
"to keep it up and was anxious
"about it in other and various
"hands."

I endeavored to induce Mr Byrnes
to remain - I almost begged him
to do so but he would not hear
me and said that he would not

0719

" consent under any circumstances
" that any part of his earnings should
" go to Mrs Byrnes.

" I know nothing more about
" Byrnes leaving the paper than I
" have stated above either through
" conversations or in any other manner
" except a rumor which came to me
" from parties not connected with
" the paper. about five days before
" the first conversation mentioned
" above to the effect that Mr Byrnes
" was about to resign and that
" the Editorship was to be offered
" to me.

" I know nothing more about
" the matter even by way of rumor.

" Leander P Richardson
" sworn to before me)

" this 19th day of November 1879)

" Morris Jimmoids

" Notary Public 118

" (Seal)

" State & County of
" my

marked Ex 8; after Evidence.

0720

Richard

Q Mr Richardson you have said in
" answer to the question " whether
" you begged Mr Byrne to remain
" on the paper, you didn't do it with
any degree of sincerity" can you
say what you mean by that an-
swer?

A I was engaged in the office there
and it didn't make any difference
to me whether he stayed or not
and didn't care particularly except
that I thought it would be
to the advantage of the paper
for him to remain

Q During the time that these papers
and affidavits were made by
you and sent to Mr & Mrs Hart
there was a suit going on
between Sam E Byrne and Mr
Hart. was there not?

A I believe so.

Q when was the time that you say
that Mr Byrne or believe that he
told you he had nothing to do
with it, that he would resign
from it. - you testified on cross.

0721

examination that Mr Clark told you that Mr Byrne told you. he had nothing more to do with the paper, that he was going to resign from it.

Q The first I believe according to the affidavit is Mr Byrne told me and Mr Clark came and told me at that time this suit was going on?

A I suppose so.

Q Now did Mr Clark come to you after that and say that Mr Byrne was to return to that paper?

A Yes sir.

Q Not after October 19th 1879?

A No sir;

Q When was it?

A He came to me after Mr Byrne had returned to the paper I was served with no notice of Mr Byrnes coming back.

Q And he told you he was to return?

A He didn't come to me I met him in the office, he didn't seek me for any such purpose.

0722

Q was that the time Mr Hart said
Mr Byrne was to return to his
former capacity?

A Yes.

Q and that was how long after
October 19th 1879?

A about the first of the succeeding
year. It was a short time after
my name went down; a few
days afterwards and that was
close to the end of the year.

Q and did you know that the
suit of Laura E Byrne against
Mr Hart was in progress?

A I did not know anything about
that suit.

Q During the time Mr Byrne returned
to the paper, did he contribute
to it, did he write for the
paper? did he write articles
for it?

A Yes.

Q now in regard to this affidavit
and this matter of Mrs Byrne
or the woman called Mrs Timmie
did Hart have anything to say
to you about the writing letters or

0723

making affidavits?

A The affidavit if I recollect rightly was given to me one day or night at Mr. Hart's house I was told to read it sign it before a notary public and return it, and I carried it in my pocket several days before I came in the vicinity of a notary public, I was not in a hurry. with regard to the other matters I think I was told by Mr. Byrne and Clark to make my returns to Mrs. Clark.

Q Did they say for what reason?
A No sir, they told me to do it
Q Was it not by Hart's directions that you sent to Mrs. Clark the letter and statements?

A I don't recollect about that
Q Why did you send it to Mrs. Clark?
A Directed to.

Q Who was it that directed you to send it to Mrs. Clark, was it Mr. Hart?

A Mrs. Hart never gave me any directions.
Q Who was at that time the owner of the paper?

0724

A I don't know who was the owner of it.

Q You paid Mr Byrne money from the time he was off of the paper what was it for, do you know? of your own knowledge?

A I gave him whatever money he wanted without asking him any questions.

Q He came to you and asked you for it and you gave him whatever money he wanted?

Answer

Q Did you pay him a stated salary at that time?

Answer

Q Was Mr Hart aware of it? Did Mr Hart at that time know that you were paying money to Mr Byrne?

A I did not tell him anything I simply put it in my returns and then I gave him them.

Q And Mr Hart saw them returns?

A I don't know if he saw them or not. I sent them to Mrs Hart I know I had a devil of a row

0725

18

with Mr Byrne.

2 when Mr Byrne returned to the
paper, shortly after he returned
you had a conversation with
Mr Hart.

Answer

3 Did he tell you Mr Byrne had
returned? Did he at that time
tell you he had returned with
the same privilege and in the
same capacity as he was before
appealed to.

Given to be done 25th
the 25th day of November, 1881

Solomon Smith

Police Justice

James P. Richardson

0726

1941

511

Archibald Gordon, called
for Defence. being duly sworn
says.

Q what is your age?

A 33 years

Q where do you reside?

A 163. 26th Street.

Q what is your business?

A Journalist

Q Mr Gordon were you at any
time connected with the
Dramatic news?

A For some long time yes sir

Q can you give the time?

A I cannot.

Q about how long.

A Continuously taking it on and
off three years about.

Q Beginning when?

A I think it was almost the
first year of its conception

Q During that time was Mr
Hecker connected with it?

A not at first

Q During what time, oh for a
greater part part of the time

Q In what capacity?

0727

A Business manager, publisher
I understand

Q Mr Byrne was also connected
with it?

A Yes sir

Q In what capacity?

A Do you ask me for my knowledge
or impression?

A Your knowledge.

Q Mr Byrne was at all times the
editor to my knowledge.

Q Do you recollect any occasion
when Mr Byrne charged Mr
Decker with being a thief?

A Yes sir

Q Were you present?

A Yes sir

Q Who else was present?

A The same thing made an
impression on my mind at
the time, I struck Pearl Eytzinger

Q Give us what you heard or
saw?

A I had a little room connected
with the back part of the
office and the door was

0728

20

always open to the room where
Mr Byne sat, Miss Ething came
in and had a conversation
with Mr Byne for some length
of time and then Mr Byne
called Miss Ething came into my
room 3 or 4 times and said
he had found out Hecker
and didn't say what it was
and I didn't pay any atten-
tion to it, and I went on with
my work and Hecker came
in on Saturday and Mr Byne
was at his desk, and Byne
returned to me and said
he wanted me to come in
it was a sort of hall bed
room and Mr Byne was
standing in the door way
and Mr Hecker inside and
I am not sure I think Miss
Pearl Ething sat in the
inner room it was an ab-
solute room and Mr Byne
said I want Gordon to hear
this, and Mr Hecker was in
a great deal of excitement

0729

and Byrne said then you took my money, and Mr Hecker hesitated a moment and he replied; yes. ~~Then~~ ~~Byrne~~ says "that you stole my money" and Hecker said yes, and I turned to go and Byrne said I will explain every movement and then Mr Byrne said you are a thief and Mr Hecker said ^{I am a thief} yes and I could not stay any longer and I went into my room or office.

Q Was Mr Hecker present when you repeated what was said here?

A Ah yes.

Q Did Hecker make any response to it?

A Ah yes.

Q After the time Mr Byrne came in and told him what you repeated?

Answer

Q Do you know of Hecker drawing any money of the concern

0730

21

and lending it to others?

a I don't know after drawing any money

2 Did he ever say he retained any of the money belonging to the concern?

objected to

a I will tell you exactly what occurred; on December was one day complaining of a hole he was put in by one of the contributors of the paper he had got some money for the paper which was paid on account, I never took ~~notice~~ ^{of how much} notice, he let the gentleman have this money and promised to make it good on some day and he didn't make it good to me Byrne.

2 Do you know the amount?

a I think it was a slight sum. I think either 7 or 11 dollars;

from to before me

on 25th day of November 1881

Solomon Smith Melbaus Douglas Gordon
Police Justice

Further hearing adj to Nov, 30th 1881.

0731

Jeffers. The article of copartnership
 then showed that Mr Byrnes was not an
 owner in the paper. The copartnership
 article was rendered null and void
 by Mr Byrnes failing to comply with
 the agreement. The papers were then
 destroyed. Mr Byrnes then resigned his
 position against my solicitation -
 That condition of copartnership was ^{under} ~~under~~
 then Mr Byrnes went back on a salary
 of 50 dollars a week as editor. The paper
 at that time was just about paying. ~~at~~
 Mr Byrnes did not ~~edit~~ edit it for
 some weeks. In his absence Mr Richardson
 edited the paper. During the past two
 months I gave Mr Byrnes 45 shares of the
~~Electric~~ ^{Electric} stock. Mr Byrnes knew there was
 no value to it, and returned it to me
 as he promised to do. Within two or
 three weeks Mr Byrnes ~~had~~ ^{had} after the
 paper was started Mr Byrnes had 45
 percent of the paper. Then after two or three
 months Mr Byrnes again received 45
 shares of the Electric stock - who were the
 owners of the ~~Electric~~ ^{Electric} news. Mr Byrnes
 knew the Electric Company did not acquire
 the possession of the property. It was organized
 by myself Mr Howell and Mr Post we
 were the original incorporators we had

0732

a charter according to the laws of Connecticut.
The company never had any real existence.
There had a meeting never ^{out of Connecticut} did any work.
The Brancho News Stationer 1875. Then
a few weeks after Mr Byrne became a
partner to the extent of 40 percent. The
articles of partnership were signed after long
drawn and the partnership ended in 1879.
The original articles are attached to the
papers in a suit. I do not know that the
articles of copartnership were signed and
made some time after the copartnership
was found and were not dated back.
The true incorporation of the Electric Publishing
Company was organized in Hartford ^{Connecticut} because we could organize there cheaper
than in New York. We organized a local
publishing company of which I was the
owner. The Electric Company was not
started as a mythical concern or to
cover up some transaction. It was found
to purchase the Brancho News from my
late ^{wife} ~~husband~~. We went to Conn to ^{organize} purchase
a daily paper I failed to buy the Brancho
News as I wanted to because it was in
litigation. I am the sole executor and
trustee of my late wife. She was alive
when the Electric Co ~~was~~ was found
and refused to sell it to me.

0733

I would not sell the Dramatic News to the Company because my wife refused in her life time to sell. I have not sold it to the company because the courts have decided the prints in litigation and there is no need to assume it for the estate Company. I never was the owner of the Dramatic News. I have often said I was the owner - I never said the paper was in my wife's name because I wanted to avail my self of the bankruptcy law.

Ques.

Mr Byrne was the one who as the officer said my wife's death. I had the right to direct control over my wife's death as I had the right to direct control. The action of Mr Byrne which terminated his connection with the News was because Mr Byrne refused to go on with his part.

X 7.

Mr Hecker was there as bookkeeper collector & publisher. He went out & collected my money when bills were due Mr Byrne has given me money - Mr Hecker has sent me money by the office boy without passing through Mr Byrne's hands. When I receive my money from Mr Byrne I receive statements from him of the money paid and collected. I have them all. They were lost as I know of - I don't remember seeing any of the slips were lost that were given me by Mr Byrne.

0734

5

Redness

Mr Richardson was editor for some weeks. There was a notice in the paper once Byns signature that he had discontinued his connection with the paper. I ^{commenced} ~~ceased~~ paying him 50 per week about Oct 79. That was included in his statement to me.

The incorporators of the Eclectic Publishing Co are ~~Mr Byns~~ Mr Post & Mr Hamill and myself. None of the stock holders even received any money from the company.

Mr Byns often asked me to give him something to show his wife that he had an interest in the paper. He asked me to give him a paper saying he had 45 shares of the stock. I gave it to him and ~~he~~ returned it to me as he promised to do.

He did not hold any such shares in the company on Nov 18 - 1880. I ^{ordered} ~~gave~~ Mr Hepler to give Mr Byns his salary while he was absent and send the balance to me.

He did so. The original agreement of Mr Mrs Byns sent on file may be a copy.

X 42

Mr Byns had a copy & I had one.

At one time I prepared a will but destroyed it. It was about a year ago. In that will I did not devise to Mr Byns 45 shares in the Eclectic company. There was never any stock published that I knew of.

They never did any thing but go to

0735

Hampden and Orange. In 1875 Mr. Bynum
 was in a great deal of trouble and
 the copartnership ceased by his own volition.
 There were no steps taken in court to
 dissolve the partnership. Mr. Bynum wrote
 that he would do no more work on the
 paper. There was no cancellation except
 on Mr. Bynum's part. He did discontinue
 his partnership and entered on a new
 contract at a salary of 50 dollars per
 week as editor. During the time Robinson
 was editor Bynum was writing letters for
 the paper and being paid for it. I do
 not know that while he was at work
 Bynum drew for the profits from the
 paper. All the time Mr. Bynum was
 connected with the paper up to two or
 three weeks ago he received one half of
 the profits ^{including} his salary when the
 paper afforded it. I gave it to him
 as a gratuity because he did more
 work than his salary would pay him
 for. Some weeks it amounted to more than
 a hundred dollars including his salary.
 When it did not pay he got his
 salary any way.
 Mr. Bynum said he would not work
 on account of his suit.

S

Given to before me the
 20th of Sept 1871

John N. Smith

Notary Public

Recd.

0736

City and County of New York. ss-

Joseph Hart of No 20 E 42d buy cross
and says.

Sarah Hart deceased was the owner of the
Dramatic News from its foundation. The
ownership changed in 1879. I don't remember
the date when it started. It was started
as a private publication. My wife was sole
owner for a few weeks only. Then Mr Byrne
became associated with her as a partner.

He received an equal interest in the profits.
There was no stock. He had 45 percent
ownership but an equal share in the profits.
There were copartnership articles drawn up.

I don't know as they were filed. They were
drawn up and signed but not filed.
One of those articles is attached to the
papers in a suit Mr Byrne & Belton
has the other. The articles of copartnership
were drawn up in duplicate and
one copy given to each party. The

copy belonging to my wife is the one
attached to the papers in a suit where
Mrs Byrne applied for the property being
claimed to own it. I appeared but
my wife appeared by affidavit. Mrs

Byrne brought the suit claiming to own
the property. The parties to the suit were
Mr Byrne myself and Mr Hemmell.

Mrs Byrne did not appear to

0737

September 28. 1881

Defendant arraigned, counsel
for defendant moves to discharge
on the ground that the warrant
is defective in that it does not
set forth the offence charged.
Motion denied.

Exception taken.

Solon B. Smith
Police Justice

0738

Police Court, Second District.

State of New York

City and County of New York ss:

I ^{George Robertson} ~~am~~ ^{39 years of age} being duly sworn says; I reside at 204 York Street in the City of Brooklyn and am business manager and bookkeeper for James M^cWilliams whose printing establishment is at N^o. 242 Centre Street in said City of New York, and who is printer for the Dramatic News.

I have kept true and correct books of account for the said M^cWilliams ~~of~~ the dealings between said M^cWilliams and the Dramatic News, and did keep such accounts for the week ending November 27, 1880. —

During said week the payments made to said M^cWilliams for printing said Dramatic News were in the aggregate Two hundred and ninety dollars, (\$290⁰⁰/₁₀₀) and no more as appears by said books of account, the payments being as follows; — On November 22^d, 1880, \$50⁰⁰/₁₀₀; on November 23^d, 1880, \$65⁰⁰/₁₀₀; On November 26th, 1880, \$100⁰⁰/₁₀₀; and on

0739

November 27th 1880, \$7500.00.
Sworn to before me
this 27th day of September 1881
Solon Smith
Police Justice.

Geo Robertson

0740

City and County of New York ss: Augustus L. Steckler ^{aged 35 years by occupation a publisher} being duly sworn says: I reside at No 610 Sixth Avenue in the City of New York, I have been cashier and business manager of the Dramatic News, a weekly newspaper published in the City of New York of which Joseph Hart as Trustee and Executor is proprietor, and Charles A Byrne was until on or about the 5th day of September 1880 the editor and general manager.

I kept the accounts of the business of said paper and receiving all monies due said paper and paying all the bills of said paper except a portion of the printers bill each week.

I kept true and correct daily statements of amounts received by me and paid out by me and have such daily statements for the week beginning Monday November 22nd 1880 and ending Saturday November 27th 1880. Such statements are full true and correct reports of all money received during said week and all money paid out except a portion of the printers bill. Said statements I have delivered to Joseph Hart.

The total receipts of said business of said paper during said week were nine hundred and thirty nine dollars (\$939 ¹³/₁₀₀); of this amount I paid out three

0741

hundred and forty eight dollars and five cents in expenses and delivered the balance being five hundred and ninety one dollars and eight cents (\$591.08) at different times during said week and in different sums to Charles A. Byrne. Included in the expenses above mentioned was the sum of one hundred and fifty (\$150.00) dollars which I paid to the printer during the week aforesaid. The printer to whom I refer is James Mc Williams whose business manager was and is George Robertson.

Sworn to before me this } Augustus L. Heckler
27th day of September 1881 }
Solow Smith
Police Justice

0742

TORN PAGE(S)

0743

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

POLICE COURT, Second DISTRICT

Aged 46 Years and by occupation a publisher
No. 866 Broadway Street, being duly sworn, deposes andsays that on the 27th day of November 1880

at the City of New York, in the County of New York, Charles A. Byrne not

being an apprentice and person under the age of 18 years, then, ^{and} there being the Clerk Agent and servant of this Deponent ^{who is} acting as Executor and Trustee of the Estate of Sarah Hart deceased, and ^{that said Byrne was being} then and there authorized and empowered to receive monies for this Deponent ^(who was and is) such Executor and Trustee) did take and receive into his possession and keeping for and on behalf of this deponent, ^(separated from) such Trustee and Executor as aforesaid) from one Augustus L. Heckler, good and lawful man of the United States of America, amounting to the sum of Ninety five $95/100$ Dollars, and of the value of Ninety five $95/100$ Dollars.

And deponent further says that the said Charles A. Byrne then and there having received the said sum of money and having the same in his keeping and possession for and on behalf of this deponent as such executor as aforesaid, without the consent of this deponent did feloniously and fraudulently take, make away with and secrete the same with intent to convert the same to his own use and has held, converted and appropriated and converts the same to his own use.

And deponent further says that the 22^d day of May, 1880, he ^{and his} ~~deponent~~ was duly aff

0744

of said Will and Trustee of
 frequently letters testamentary
 to this deponent by the Surrogate of the
 of New York.

That among the assets of said Estate was the
 newspaper known and called the "New York Dramatic
 News and Society Journal"; and Deponent employed
 the said Charles A. Byrne as the manager thereof.

That deponent is informed by Augustus L.
 Heckler who was and still is publisher employed
 by deponent on said New York Dramatic News and
 Society Journal that on the preceding week ending
 November 27th 1880, he said Heckler delivered to
 said Byrne the sum of Five hundred and ninety one⁰⁸
 Dollars, which he said Heckler had received in
 said business.

That from the returns made by the said Byrne
 it appears that said Byrne has embezzled and converted
 to his own use the said sum of Ninety five 98/10
 Dollars, and deponent has never received the said
 sum of money so embezzled and converted as aforesaid.

Wherefore deponent prays that said Byrne may
 be apprehended and dealt with as the law directs.

Sworn to before me this
 27th Day of September 1880
 Solon Smith
 Police Justice

Joseph Hart
 at

Police Court District.

THE PEOPLE, &c.

ON THE COMPLAINT OF

Joseph Hart

vs.

Charles A. Byrne

Dated September 19th 1880

Smith Magistrate.

Officer.

Witness,

Dispensation,

0745

N. Y. Court of General Sessions.

The People etc } Indictment
against } for Perjury.
Charles A. Byrne }

Byrne was on the limits in the suit
of Augustin Daly in the Superior Court
of the City of New York on an unsatisfied
Judgment for libel.

On the 22^d day of April 1879 he
made application for a discharge from
the limits under what is familiarly
known as the 14 day act.

The matter came up before Mr.

0746

2.

Justice John Sedgwick sitting at Special Term on May 1st 1879 where the attorney for Daly (Mr. George L. Rives) demanded an examination of the applicant as to his property and to ascertain whether his proceedings had been just and fair.

On that examination the defendant swore that his wife Laura Byrne owned the Dramatic News; that she had started the paper; that he was positive she was the sole owner; that he was her employee; that he received about 8 or 10 dollars a week for his services as editor; that he owned no property of any

Wife
owned
paper

0747

3.

kind excepting his wearing apparel;
and that he had no interest whatever
in the paper excepting as an employee
and that he never had an interest in it.

Thomas Boese Clerk Superior Court

Produces the defendant's examination.

Benjamin Steinhardt

Will prove that Byrne was sworn
by Judge Sedgwick.

Joseph Hart will prove the falsity of Byrne's
testimony. He will swear
that

Byrne and Mrs. Hart were the joint
proprietors of the paper, Byrne having

0748

4.

forty five and Mrs. Hart fifty five shares.

This appears by the contract between the parties October 1st 1875. See printed copy annexed.

During the whole time Byrne would render weekly statements to Hart acting as his ^(Hart's) wife's representative and would deduct "his" share of the profits paying over the balance.

And even the statements of the two weeks preceeding the time of this examination shows that Mrs. Byrne was paid by Byrne a commission for procuring advertisements.

0749

5.

During the month of October 1879 the defendant and his wife quarreled and Mrs. Byrne brought suit against Mr. Hart, Charles A. Byrne and Mr. Hummel, claiming to be the owner of the paper, basing her claim on the testimony given by the defendant and in the suit Mrs. Byrne applied for the appointment of a receiver.

To resist that suit, Byrne made affidavit a printed copy of which is annexed. In the affidavit Byrne swears that the testimony he gave was untrue.

The testimony of Byrne in the suit

0750

6.

of Hart against Byrne for embezzlement
also shows the testimony given in the
Daly suit to have been false.

See pages 293 to 306 of that testimony.

John R. Potts was the stenographer in the
suit of Hart against Byrne for em-
bezzlement and will prove the correctness
of his notes.

As to Materiality.

It was material to know whether
Byrne was the owner of the paper and
to follow the property in order to apply
it to the Judgment if it could be so
applied.

0751

This Agreement made and entered into this first day of October in the year one thousand eight hundred and seventy-five, by and between *Sarah Hart*, wife of Joseph Hart, of the City, County and State of New York, and *Charles A. Byrne*, of the same place *Witnesseth*, whereas, in consideration of the premises hereinafter set forth, the said Sarah Hart, and the said Charles A. Byrne, for the purpose of establishing, publishing, issuing and conducting in the City of New York, a weekly newspaper, to be devoted to the Drama, Music, Arts and Society to be known, designated and published as the "*Dramatic News*," do hereby covenant, contract and agree, by and between themselves as follows : Whereas the said Sarah Hart has contributed various sums of money amounting in the aggregate to the sum of Three Thousand Dollars, for the purpose of founding, editing, conducting and establishing said "*Dramatic News*," and whereas in consideration thereof said Charles A. Byrne agrees to devote his time, labor, skill and attention to the sole and exclusive editing, conducting and publishing of the said "*Dramatic News*" as a newspaper to be devoted to the Drama, Music, Arts and Variety.

And it is further agreed by and between the respective parties to these presents that the said Charles A. Byrne shall so conduct, edit and publish said newspaper without compensation, except such as may accrue from the profits to be derived from the earnings of said "*Dramatic News*."

And it is further agreed by and between the said parties to these presents, that all the right, title and interest in and to said newspaper, and everything thereto appertaining shall be represented by one hundred shares, of which said Sarah Hart, her heirs, executors, administrators and assigns shall own fifty-five shares, and the said Charles A. Byrne, his heirs, executors, administrators and assigns shall own forty-five shares.

And it is further agreed by and between the said parties to these presents that if the said Charles A. Byrne shall at any time, during the existence of said newspaper, said "*Dramatic News*," write for, contribute, edit, or publish any other newspaper, journal, book or any other printed matter whatsoever, save and except said newspaper said "*Dramatic News*," or if said Charles A. Byrne shall neglect or omit, to fulfil any of the duties, obligations and labors agreed to be performed by him as hereinbefore and hereinafter mentioned and covenanted, then the said Charles A. Byrne does hereby forfeit, surrender and deliver to the said Sarah Hart, for her use, benefit and control, and as her exclusive property the said forty-five shares so set apart for the use of said Charles A. Byrne.

And it is further agreed by and between the said parties to these presents that the said Charles A. Byrne shall not engage, hire or retain any additional editor or editors, reporter or reporters or employees of any kind whatsoever in addition to those now employed in and on said "*Dramatic News*," to aid in the editing, pub-

0752

lishing or conducting of said "*Dramatic News*" without the consent in writing of said Sarah Hart or her duly authorized agent.

And it is further agreed by and between the said parties to these presents that the holders of said shares shall at all times be consulted in the management of said newspaper, and nothing shall be published in or appear in said newspaper without the mutual consent of each of said holders of said shares.

And it is further agreed by and between said parties to these presents that the net profits of said business shall be divided weekly on the Thursday of every week, each owner of the said shares to receive one hundredth part of said profit for each and every share.

And it is further agreed by and between said parties hereto, that just and correct books of account shall be kept of said business by said Charles A. Byrne, which said books shall at all times be open to the inspection of the said holders of said shares and their duly authorized agents or attorneys.

And it is further agreed by and between said parties to these presents that none of said shares shall be assigned, transferred, sold or otherwise disposed of, without the consent in writing of the owner of the residue of said shares, and that should such shares be sold, or any part thereof sold, assigned or otherwise disposed of, according to the terms of this agreement, or shall the same by death or otherwise, cease to be owned by either of the parties to these presents, the other party shall not thereby be released from any of said obligations by selling, transferring, assigning, or otherwise disposing of said shares or any part thereof, whether by operation of law or otherwise.

And it is further agreed by and between the parties hereto that the name and designation of said newspaper, known as the "*Dramatic News*" shall not be changed, altered or amended without the consent of both parties to these presents.

In witness whereof the said parties to these presents have hereunto severally set their hands and affixed their seals, the day and year first above written.

Signed, Sealed and delivered }
in presence of }

SARAH HART,
C. A. BYRNE.

A. H. Hummel,

Notary Public, (74),

New York City and County.

I do hereby this second day of October, 1875, give my consent to Mrs. Sarah Hart, above named, that she, the said Sarah Hart, may transfer all her right, title and interest in the shares mentioned in within agreement to her husband, Joseph Hart. C. A. BYRNE.

0753

Weekly statement from Mr. Byrne to Mrs. Hart, of the business of The *Dramatic News* (in the handwriting of Charles A. Byrne), for the week ending Saturday, April 18, 1879, being the week immediately preceeding that in which Mr. Byrne testified in the examination in Daly vs. Byrne in the Supreme Court, that The *Dramatic News* was solely the property of Mrs. Byrne :

Week ending April 18, 1879			
Am. News Co.,	\$250.40	McWilliams,	\$307.00
Advertising,	345.00	Folding,	8.20
Sub'n,	11.35	Gordon,	25.00
	<hr/>		
	\$561.75	De Nyse,	10.00
		Philp,	4.00
		Boy,	4.00
Profit, \$140.		Heckler,	15.00
		Leggo,	8.70
		Thomas,	7.50
		London,	5.00
		Office,	12 00
		Mrs. Byrne Com ,	15 50
			<hr/>
			\$421.90

Weekly statement from Mr. Byrne to Mrs. Hart, of the business of the *Dramatic News* (in the handwriting of Charles A. Byrne), for the week ending Saturday, April 25, 1879, being the same week in which Mr. Byrne testified in the examination in Daly vs. Byrne in the Supreme Court, that the *Dramatic News* was solely the property of Mrs. Byrne, and the day immediately following that in which he gave such testimony :

Week ending April 25, 1879.			
Am. News Co.,	\$212.48	McWilliams,	\$303.25
Subscription,	16.50	Folding,	8.00
Advertising,	336.07	Gordon,	25.00
	<hr/>		
	\$554.00	De Nyse,	10.00
(5)		Heckler,	15.00
Profit, \$130		Boy,	4.00
		Thomas,	6 75
		Leggo,	9 25
		London Man,	5.00
		Office,	11.75
		Binding Vols.	10.50
		Com. Mrs. Byrne,	15.00
			<hr/>
			\$424.00

The foregoing statements form part of a series of statements of the business of the *Dramatic News*, rendered weekly by Charles A. Byrne, in his own handwriting to Mrs. Hart, from May 31, 1878, to September 26, 1879, both dates inclusive.

0754

THE PEOPLE on Complaint
of
against
CHARLES A. BYRNE.

CITY AND COUNTY OF NEW YORK, ss.

Joseph Hart being duly sworn, says, that he resides at No. 20 East 42d Street, in the said City and County, that on or about the month of April, 1877, one Augustine Daly, duly recovered a judgment for about twenty-five hundred dollars against the above named Charles A. Byrne in the Superior Court of the City of New York, for libel and thereafter an execution was duly issued upon said judgment, and against the property of the said Charles A. Byrne, and was returned wholly unsatisfied and thereafter an execution was duly issued upon said judgment, against the person of the said Charles A. Byrne, upon and by virtue of which the said Charles A. Byrne was duly arrested, and thereafter was admitted and confined to the liberties of the said jail of the said County of New York. That thereafter and while arrested and admitted and confined to the said jail liberties under the execution last formed, the said Charles A. Byrne made an application to the said Court, under and pursuant of article 5, chapter 5, title 1 and part 2 of the Revised Statutes of the State for the purpose of being discharged from his debts and from imprisonment therefor, and from such arrest and confinement as aforesaid, and on the 22d of April, 1879, and pending said application, it became necessary for the said Charles A. Byrne to be examined upon oath to and before the said Court in pursuance to the statute in such case made and provided in regard to his said application, and the justness and fairness of all his proceedings in said action, application and all other matters, lawfully connected therewith, and the said Charles A. Byrne was on the said 22d day of April, 1879, at the City and County aforesaid, duly examined in and before said Court, at which the Hon. John Sedgwick was presiding as the Justice, and was then and there duly sworn by and took by Corporal Oath, before the said John Sedgwick as such presiding Justice as aforesaid, to speak the truth, the whole truth, and nothing but the truth, touching the matters in said application contained and the justness and fairness of all his proceedings as aforesaid, and being so duly sworn then and there on his examination aforesaid did willfully, wickedly, falsely, feloniously and corruptly say, swear, testify and depose among other things in substance and to the effect following, that is to say, that his, Byrne's, wife owned the Dramatic News & Society Journal, the same being a Journal and public print then published in the City and County aforesaid and that his wife Mrs. Byrne, owned the said journal and public print ever since it was established as far as said Charles A. Byrne knew, that his wife furnished the money to start and support the said public print, that he submitted all he did in regard to the said Journal and its conduct and business to her. That the net proceeds are paid to his wife equally; each and all of which said matters so sworn to as aforesaid were then and there material, and were then and there false and willfully, falsely and corruptly sworn to as aforesaid by the said Charles A. Byrne, and that deponent charges the said Charles A. Byrne with committing willful and corrupt perjury in so swearing as aforesaid.

Sworn to before me this day of
18

Ap 22 79

ought to
have copy
of document

0755

N. D. Common Pleas.

LAURA E. BYRNE

against

JOSEPH HART, CHARLES A. BYRNE
AND ABE H. HUMMEL.

CITY AND COUNTY OF } ss.
NEW YORK.

CHARLES A. BYRNE, one of the above named

defendants being duly sworn, says ;

I have read the complaint and affidavit of the plaintiff herein and know the contents thereof, as well as of the exhibits thereto attached.

The statement in the first paragraph of the complaint is untrue. Plaintiff did not establish the paper, she didn't have \$500 nor one-tenth part of it and did not advance a cent except \$20 which was subsequently repaid to her; she borrowed no money for that purpose, and for every advertisement she procured she was paid the usual advertising agent's commission of 20 per cent and 25 per cent, according as the advertisement so produced was 15 cents or 20 cents per line. All these commissions were paid her in cash and accounted for to Mrs. Hart as part of current expenses.

The plaintiff did not employ me as editor as stated in the 2d paragraph of the complaint. The paper was originally mine and Mrs. Hart's, with whom I entered into a written agreement in which the paper was represented by 100 shares of stock, of which Mrs. Hart had fifty-five and I forty-five. Mr. Hart, representing his wife, but in his own name joined me in signing the American News Co's books, and obtaining the copyright. Thereafter I desired to assign my interest to the plaintiff, and as my contract with Mrs. Hart prohibited me from making an assignment without her consent in writing, I had her give me that consent subject to the conditions of the original contract, and in return I gave her my consent to assign her interest to the defendant, Hart, which I am informed she never did. I assigned my interest to the plaintiff without consideration. For eighteen months the paper lost money, all losses being paid by Mrs. Hart personally and through Mr. Hart. Among the expenses so paid by Mrs. Hart during this time was an allowance of \$6.00 per week for my personal support, which I paid to the plaintiff who was keeping a boarding house, for my board.

The first profit was in April, 1877, and was \$30.00. I was allowed to take one-half in pursuance of a verbal arrangement, by which it was agreed that the interests for purpose of control, of Mrs. Hart should be 55 per cent, but that I should have half the income or net profit.

I never directed or requested the plaintiff to consult Hummel, nor in any way intimated or suggested that she should. She went to him without any knowledge on my part that she had done so, and took with her a letter written to me by Mrs. Merrill, which plaintiff had intercepted and I had never seen. This was long before I left her. Hummel continued to be her counsel thereafter, and once effected a reconciliation between us which lasted over a month, and was terminated by the plaintiff upon her hearing rumors that Dr. Merrill had commenced a divorce against his wife.

Och 1875
76
77
Hue
1877

0756

I deny that I lived many years happily with the plaintiff as her husband. Plaintiff was at all times violent and given to drunkenness, at times assaulting me with household ornaments and utensils. On one occasion, while in a violent state of drunkenness she struck me with a mantel vase of stone—causing a dangerous wound on my head; on another, with an ice pitcher; again with an iron clock; at other times, with bottles, &c. I bore this for a long time, until I saw I could have no peaceful home with this woman as a wife, when I left her giving her all my household furniture, horses, wagons and a maintenance of \$30 per week. One installment of this I paid to Wm. Sangster, whom she authorized to receive it for her. No other installments have been paid because she harassed me in every way until I determined to earn no more money for her support, and withdrew from my position. Since then I have had no money to pay her.

Upon information and belief, I deny that she is or ever was my wife. I originally met her in the street, in October, 1870. She asked me to call on her at No. 61 West 15th Street; I did so and found the place to be a house of prostitution, kept by a Mrs. Sanford, and of which plaintiff was a regular inmate. She informed me while I visited her there, that she had before kept a house of prostitution in 18th Street; I then lost sight of her. About a month after, receiving a letter from her, asking me to meet her in the street, she told me that she was living with her husband, Louis Timian, in 10th Street, and invited me to call on a friend of hers there, one Mrs. Dr. Sass. I did so and formed the acquaintance of her husband. Some three months after, late at night, she came to my rooms in 12th Street, and told a deplorable story of how her husband had turned her out because of his discovery of her intimacy with me. I took her in and from that time continued to live with her. About one year after, she informed me that Timian had died in Germany, and from that time forth implored me to make her my wife. I married her in March, 1873, and from then her nature seemed changed, she became violent and addicted to drink. I am now informed and verily believe that said Timian is still alive.

The only property about The *Dramatic News* office of any value is a large revolving desk, which belongs to Mrs. Hart, and which she put in the office without charge. There is also another desk there belonging to Mrs. Hart, for which she was never paid, and a carpet and some chairs put in by the plaintiff for which she was paid her own price (\$30.), and the amount charged to expenses.

My explanation of the statements made by me in the examination in Daly vs. Byrne, is as follows:

When I spoke of the ownership of the paper, my supposition was that under the original agreement which had been in Mrs. Byrne's possession, and which she refused to let me see on one excuse and another, for very nearly three years, the paper became hers after the payment of a certain sum, as well as I can recollect \$10,000. When about a month ago or less Mr. Hart threatened to apply to the Courts for a Receiver, my wife surrendered to me for \$1.00. the original agreement she had in her possession as aforesaid. I then, on reading the paper found that Sarah Hart had an absolute ownership in 55 per cent, of the business. And this explains also my agreement to take a salary of \$60 a week.

Sworn to before me this 29th }
day of October, 1879. }

C. A. BYRNE.

A. A. CALDWELL,
Notary Public,
N. Y. City.

0757

The People
in
Lehas. v. 12 p. 1

Pres. Jackson

W. H. W. W.
for the People

0758

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

The People on the Complaint of
Joseph Hart
—against—
Charles A. Byrne

City and County of New York ss:

Joseph Hart
of said City being duly sworn deposes and
says: That he is the complaining witness
in the above action.

That Deponent was once briefly
examined before a Grand Jury but two
of Deponent's most important and ma-
terial witnesses, to wit; The Clerk
of the Superior Court of the City of
New York, and Benjamin Steinhardt,
were absent, and were neither called
or examined, neither said Steinhardt
or said Clerk having, through mistake,
been subpoenaed.

Deponent therefore prays that
said case may be presented to the
Grand Jury, so that it can properly
be enquired into.

Sworn to before me } Joseph Hart
this 7 day of Sept 1882 }

0759

Albert C. Aubrey
Notary Public
King Co.
Certif. filed in N.Y. Co.

0760

THE PEOPLE
LAW OFFICES
OF
FRANK J. DUPIGNAC,
Charles A. Byrne
EQUITABLE BUILDING,
120 Broadway,
NEW YORK, June 1st 1883

Dear Sir:

Mr. Frederick Rullman
has just sent me a notice
that he received a day or two
since to produce the defendant
in the above matter on the 21st
day of May last to set a day for
the trial of the indictment
the notice having been sent
to him under the mistaken
idea in your office that Mr.
Rullman is Byrne's bail.

I was counsel for Byrne
and my recollection is, that
several months ago Byrne gave
a new bond and that Mr. Rull-
man was released from further
liability.

0761

I am not correct in this as
Mr. Rullman has been ill for
a long time and is still con-
fined to his house and feels
nervous on the subject I hav-
ing assured him that when
the new bond was given his
liability ceased.

Yours very resptly
Frank J. Dupiquae
W-

John M. Keon Esq.
District Attorney

Sept

0762

Sec 612 & 619.

SUBPOENA

Fifth DISTRICT POLICE COURT,

CITY AND COUNTY }
OF NEW YORK. } ss.

In the Name of the People of the State of New York,
To John M. Keon Esq. District Attorney of the City and County
of New York Street.

You are Commanded to appear before Hon. Butler St. Ripley
one of the Police Justices in the City of New York, at the Fifth District Police Court
125th Street near Lexington Avenue in the said City on the 21st day of January
1882 at 11 o'clock in the forenoon of that day, as a witness in a criminal action prosecuted by the
People of the State of New York, against Charles A. Byrne and you ^{have} there and then a
certain deposition made by Joseph Hart in a proceeding against
Charles A. Byrne on a charge of subornation taken before Hon. John Blunt
And for a Failure to attend, you will be deemed guilty of a Criminal Contempt, and liable to a Fine of Two
Hundred and Fifty Dollars, and Imprisonment for thirty days.

Dated at the City of New York, this 20th day of January 1882
B. M. M. M. Police Justice.

0763

Fifth District Police Court

The People on the complaint
of Joseph Hart

— against —

Charles A. Byrne

subpoena

To:

John M. Keon Esq.
Dist. Atty of the City and
County of New York.

0764

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

The People of the State of New York
— against —
Charles A. Byrne —

Charge Embezzlement

The defendant Charles A. Byrne now coming into Court upon an Indictment which purports or is claimed to charge an offense against him for special plea by way of demurrer to the alleged Indictment states:

First: That the facts stated in the said alleged Indictment do not constitute a crime.

Second: That the said Indictment does not allege and specify that the crime was committed against any private person or any partnership or any incorporated company.

Dated New York June 19th 1882.

Frank J. Dupignac
Atty for Def't & of Counsel
120 Broadway
N. Y. City

C. A. Byrne

Sumner
married.

W. G. Sumner.

June 5

1882.

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

The People of the
State of New York

— we —

Charles A. Byrne

—
defendant to
Indictment

Frank J. Murphy
Att'y for Plaintiff of Counsel
120 Broadway
N. Y. City

To: John W. Horn Esq.
District Attorney
of New York County

New York City
N. Y.

0765

0766

COURT OF GENERAL SESSIONS.

JUDGE'S CHAMBERS.

32 CHAMBERS STREET.

New York, Sept 14 1882

Dear Mr McKean

Can't the case of Cha^s
A Byrne for Embezzlement
be put on Calendar to morrow
to fix a day for trial? They
are pressing me to death
about it. I can't have it
on my Calendar as I was
learned below.

Very Respectfully
J. H. McKeen

0767

Fifth District Court

The People on the complaint
of Joseph Hart
— against —
Charles A. Byrne

To: John M. Keon Esq:
Dist. Atty City & County of New York
Sir:

You will please take notice, that the defendant will require upon the examination before the Hon: Butler H. Rixby Police Magistrate etc. a certain deposition taken before Hon: Solon B. Smith Police Magistrate, on Saturday January 14th 1882 at 11 o'clock in the forenoon, at the 5th District Police Court in a proceeding of The People on complaint of Joseph Hart against Charles A. Byrne charged with embezzlement, which deposition is in your custody, and that upon your failure to produce such paper upon such examination secondary evidence will be given of its contents.

Dated New York January 12th 1882.

Yours etc.

Frank J. Dupignac
of counsel for the defendant
120 Broadway
New York City

0768

The People on complaint
of Joseph Hart

— against —

Charles A. Byrne

copy

Notice to produce

Frank J. Lysipague
of counsel for the Defs.
120 Broadway
N. Y. City

To: John W. McKeon Esq.
Dist Atty City & County
of New York.
Recd. Apr 13/82
Admitted (J.W.)

0769

John M^c. Keon Esq.
District Attorney.

The People on the Complaint of
Joseph Heart
agst
Charles A. Byrne
Perjury.

On the Fifteenth day of December 1886, I made Complaint before Police Justice Bixby, against Charles A. Byrne, charging the defendant with the offence of Perjury. -

A warrant was issued for the arrest of Byrne, and after eluding the Police for sometime, he finally was arrested; and taken before the Police Magistrate where he demanded an examination.

This was accorded him; and several days was consumed therein. -

After testimony in substantiation of my Complaint was given, and the case for the People was closed, the defendant offered ~~no~~ evidence, ~~in~~ ⁱⁿ explanation of the charge against him, nor did he avail himself of the opportunity of taking the witness stand

0770

2

in his own behalf, although that privilege was accorded him.

Police Justice Bixby, after carefully investigating the law and facts of the case, held the prisoner to answer at the Court of General Sessions.

Before finally committing Byrne Judge Bixby in a formal examination taken pursuant to law, again extended to the defendant the privilege of explaining the perjury, and again the defendant refused to make an explanation.

The papers were then sent to your office, and when your attention was called to the case, you submitted it to one of your assistants for investigation and he reported that the case was a gross and wilful perjury.

After many persistent efforts, subpoenas were issued for me and my witnesses to attend before the Grand Jury to-day, and I supposed the case was at last to be considered by that body, but just how I was mistaken in this belief, the facts I am about to relate will show.

I attended at the Grand Jury room this morning at the hour stated

0771

3

in the subpoena.

Both of my witnesses were also present. I found that the clerk of the Superior Court, who knew nothing of the facts of the case, but who had in his office the proceedings in which the perjury was committed, had been subpoenaed to attend, but no directions were given him to produce these proceedings.

I then caused the proceedings to be brought to the Grand Jury Room.

Mr. Johnson, who attended with me ^{in the room adjoining Room} ~~before the Grand Jury~~, then requested Mr. Partridge one of the members of the Grand Jury to have the case called. And after a search was made, Mr. Partridge reported that the papers were not in the box where they should have been.

Mr. Partridge then took the trouble to call at your office to see you, but you were absent and he saw Mr. Roberts and afterwards returned to the Grand Jury Room and stated that the papers were not yet ready.

Mr. Johnson then went to your office, and it was stated to him that the papers were in the Grand Jury

0772

4

Another examination was made and still the papers could not be found.

The papers being thus strangely ~~misplaced~~ missing, could not be located until about 12 o'clock, when to my great surprise, Roberts and the defendant walked into the Grand Jury Room together, Roberts holding a subpoena in his hand which he handed to the clerk, I believe his name is Carroll, and then for the first time the papers suddenly appeared to have been found.

The manner in which the papers were found was as follows;

Roberts whispered to Carroll and handed him the Subpoena. Carroll then unlocked the drawer at the side of his desk nearest the private room of the Grand Jury, and commenced writing a slip.

One of my witnesses who sat close to him was in such a position as to be able to see into the drawer, and Roberts who noticed this immediately leaned over on the desk where Carroll was writing and as if to whisper to Carroll but in fact any one from seeing what was being done.

not me
RWP

not so
RWP

not so
RWP

0773

5.

Carroll then went into the private room and came back and stated the papers had been found, when during all this time the papers were in this desk and had been purposely secreted.

After waiting some time my witnesses were told that the Grand Jury had adjourned. I then caused enquiry to be made of Mr. Donnelly and Mr. Roberts as to whether the case would be before the Grand Jury to-morrow, but nothing could be learned about it.

Now Sir, as prosecuting Officer of this County, I desire to ask whether these proceedings as I have related them occur with your knowledge, direction or approval.

Is this case to have a fair investigation by the Grand Jury without the interference of your Clerks, or are obstacles to be thrown in my way so as to prevent my bringing the Defendant to Justice?

Are your Clerks to act as assistants to Byrnes Attorney in order to defeat my efforts to obtain justice, or will you

0774

6

see that this case is prosecuted in the ordinary manner.

I desire also to call your attention to this fact.

The prisoner was subpoenaed by your office before the Grand Jury. I have been told that Mr. Roberts caused him to be served and does not claim that the Grand Jury desired or required it.

I submit that under section 257 of the Code of Criminal Procedure, the right to order the subpoena of any witness on the part of the defendant is solely within the province of the Grand Jury. As the Grand Jury have not directed the defendant to be subpoenaed and especially when he had two opportunities to have made an explanation but of which he declined to avail himself, fearing a cross examination, you will surely agree with me when I say that it is out of place at this time to allow the prisoner

0775

an opportunity to appear before the Grand Jury to say what he pleases, and where no opportunity to cross-examine can be allowed me, when the Grand Jury have not requested that he be called.

I send you this written communication, because by your refusal to see me to-day, I could not tell you orally.

Yours respectfully,
Joseph H. Hart

May 25th 1882.

This letter not answered - The papers were found by Grand Jury - They were read after they reached the Grand Jury Room. I demanded that Byrne should not be admitted to Grand Jury Room unless called for by Grand Jury - The case was not acted upon by Grand Jury as no subpoena or request of Harris came until June Term

0776

People

C.

Ch. Byrne

Wants

to

McKen

9

0777

Second District, Police Court.

Before Hon. L. B. Smith,

Police Justice.

The People & c
— agst —
Charles A. Byrne

On complaint of
Joseph Hart for
Embezzlement.

Brief for Complainant.

The only question raised by the defendant is that the Complainant being an Executor of the Estate of a deceased person, was not a private person within the meaning of the Statute, and therefore no embezzlement could be predicated on an unlawful conversion of his property by the defendant.

This proposition of law is without the slightest foundation or precedent, and certainly absurd so far as a common sense view of the case is concerned.

The property of a deceased person vests in the Executor and the legal

0778

ownership is in him as against all the world except legatees.

As in larceny, the ownership is properly alleged in the person in whose care, custody and control the property stolen was, at the time of the taking.

So, in Embezzlement.

The Statute was passed to provide for the punishment of the conversion of the property of another where such property came into the hands of an agent, Clerk or Servant -

In this case it cannot be said that Byrne was the Clerk of any person other than Hart.

He was not a clerk of the deceased.

If the proposition urged was sound, Byrne could not be punished in any manner for the stealing of this money.

If Mr. Hart was not the legal owner of the property or in other words if the ownership did not

0779

temporarily vest in him, there was no ownership in any body.

The deceased certainly could not be the owner.

The case cited by the Defendant in the 5th Denio (People v. Allen) has no application whatever to the proposition urged here. -

There the embezzlement was from a Constable who was in turn employed by a private individual to collect moneys.

The Constable delegated his authority to a private individual who certainly was not the Clerk of either the private person or the Constable but acted merely on his own responsibility and there the ownership of the money was in the private individual who had no connection with the prisoner, and in that case the Court did not directly pass upon the question

0780

but reversed the conviction on other grounds.

In *Valentine v. Jackson*, 9th Wend. 302 it was held, that an administrator may maintain trover in his own name, for goods of an intestate converted &c. and -

Hollbrook v. White 13 Wend. 591 was to the same effect.

Suppose a person was appointed receiver of a copartnership with authority to carry on a business.

He employed a Clerk who embezzled from the business.

Certainly the Clerk was not a Clerk of the Copartnership, but a Clerk of the Receiver and the embezzlement would properly be charged to be the property of the receiver for the legal property was in him, no matter in whom the actual property was. For the purpose of a criminal prosec-

0784

ution his ownership as receiver
was sufficient.

Respectfully Submitted,

William F. Howe
of Counsel for the
People —

0782

State of New York, }
CITY AND COUNTY OF NEW YORK. } ss.

being duly
sworn, says that he resides at No. Street, in the City of New York,
that he is years of age, that on the day of 18, at Number
in the City of New York, he served the within
on the the by leaving a
copy thereof with

Sworn to, before me

this day of 18 }

N. D. L. Dist. Police Court

The People &c

Plaintiff.

against

Charles A. Byrne

Defendant.

Brief
for Complainant.

W. J. HOWE & ~~Associates~~

ATTORNEYS FOR OF Counsel &c

87 AND 89 CENTRE STREET, NEW YORK CITY.

Due and timely service of cop of the within

hereby admitted

this

day of

18

Attorney.

To

10

0783

TORN PAGE(S)

Sec. 209, 200, 210 & 212. *attached*

Police Court 2 District 168

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Joseph Stark
866 B. Way
Charles A. Byrnes

James J. [unclear]

BAILED,
No. 1, by *Fredrick Rudman*
Residence *Winton Street*

No. 2, by _____
Residence _____
Street _____

No. 3, by _____
Residence _____
Street _____

No. 4, by _____
Residence _____
Street _____

Dated *Sept. 27* 188 *1*
Smith Magistrate.

Officer _____
Clerk _____

Witnesses *Aug & Sheela*
No. *610* *1st* Ave. Street,
George Robertson
246 *Smith* Street,
No. _____
168
169

he within depositions and statements that the crime therein mentioned has been committed

that he ^{filed a motion to be} be admitted to bail in the sum of 200 Hundred Dollars and be committed to the Warden or Keeper of the City Prison until he give such bail.

Dated _____ 188

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

Dated 22-11-18 188

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

Dated 188

Police Justice.

0785

Police Justice.

188

Dated

guilty of the offence within mentioned, I order h to be discharged.

There being no sufficient cause to believe the within named

188

Dated

to bail to answer by the undertaking hereto annexed.

I have admitted the above named

188

Dated

Police Justice.

mitted to the Warden of the City Prison until he give such bail. Hundred Dollars and be com-

the within depositions and statements that the crime therein mentioned has been committed

Police Court--2 District.

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Joseph Stark
566 3rd May
Charles A. Byrne

Fredrick Tindman
Watson House

Dated Sept 27
Smith Magistrate.

Officer.
Clerk.

Witnesses
No. 610 1st St. Street,
George Robertson
No. 242 Central Street,

No. 1314
No. 1441

0786

JOHN D. TOWNSEND,
ATTORNEY AND COUNSELLOR AT LAW,
32 PARK PLACE.

New York, April 28th 1883.

John C. Byrne Esq.
My dear Sir.

My client Mr. Byrne
is compelled in his capacity as an editor
to go to Cincinnati and to be absent
until Friday or Saturday of next week.
I request that you will not permit
the cases against him to be put
upon the calendar until his return.

After that time he and I will be
ready for trial in both of the indict-
ments against him at such time as you
please.

Please let me have a reply so
that I may make Mr. Byrne easy on
his trip.

Very truly yours
John D. Townsend

0787

JOHN D. TOWNSEND,
ATTORNEY AND COUNSELLOR AT LAW,
32 PARK PLACE.

4
New York, Oct. 10th 1883.

Dear Mr. Donnelly,

I have heard that you have in mind the placing on the calendar for trial of the indictments against Charles A. Byrne. An action brought by Joseph Hunt against George Alfred Townsend the Journalist (by the way, no relation of mine) will be tried next week. If Hunt is ready, and Byrne will be used as a witness on that trial. As the indictments were obtained through the influence of Hunt I think you will agree with me that Hunt ought not to be benefitted ^{as} against an outside, by being able to injure testimony. I therefore ask you if you have in mind an intention to put the cases of Byrne upon the calendar that you will delay doing so until after the trial referred to.

Very truly yours
John D. Townsend

Henry B. Donnelly Esq.

0788

JOHN D. TOWNSEND,
ATTORNEY AND COUNSELLOR AT LAW,
32 PARK PLACE.

New York, Mar 1st 1883

Dear Sir,

In the future will you
please have all notices relating to
the indictments against Charles W.
Byrnes sent to me, his attorney, instead
as sent heretofore to his bondsmen
and oblige

Yours truly
John D. Townsend

Hon. John M. Kern
Dist. Atty.

0789

5th Judicial District Police Court.

Charge Pejury.

The People on Complaint of	:	Before
Joseph Hart	:	Mr. Justice Bixby.
vs.	:	January, 1882.
Charles A. Byrne.	:	

BRIEF ON BEHALF OF DEFENDANT.

STATEMENT.

The defendant is sought to be held to await the action of the Grand Jury on a charge of Perjury.

The alleged perjury is sought to be assigned upon the examination of the defendant in proceedings instituted by him in April 1879 to discharge him from imprisonment under the Insolvent Debtors' Act.

The judgment on which he was held under commitment in Civil Proceedings was in favor of one Augustine Daly.

The purpose and object of the examination was to discover what property the defendant Byrne was possessed of at that time, to wit, April 1879.

On such examination the defendant Byrne testified in substance as follows;

That his wife Laura Byrne was and had been from its first publication the owner of a newspaper called the Dramatic News and that he, Byrne, had no

0790

interest or ownership therein except his salary and that the bulk of the money necessary to start the paper had been borrowed by his wife from one Sarah Hart.

On this examination Mr. Hart the complainant testified that Mrs. Hart and Mrs. Byrne were the owners of the Dramatic News at the time it was started.

The contract upon which the paper was started was executed October 1, 1875, by the defendant and Sarah Hart. It provided in substance

1st That Mrs. Hart should have 55 shares in the paper.
2nd That Charles A. Byrne should have 45 shares therein.
3rd That Byrne's interest should cease at once if he failed to edit the same satisfactorily and

At the end of each contract there was endorsed a consent that Mrs. Hart might at any time assign her interest to her husband and that Byrne might assign his interest to his wife.

Hart testifies that immediately upon the execution of this contract Byrne did assign his interest therein to his wife.

This he had a perfect right to do by the terms of the consent endorsed on the contract, and as it does not appear that at that time he had any creditors it was a perfectly valid act and complete and binding upon all parties.

0791

P O I N T S.

I

It is the duty of the magistrate to become fully satisfied that a crime has been committed and that there is probable cause to believe that the defendant committed such crime.

Code Crim. Pro.

Flammer's Com. Magistrate Sec. 102 p.129

II

It has not been shown that any crime was committed.

To constitute the crime of perjury it is essential among other things

That the defendant wilfully and knowingly deposed falsely to a material matter.

The matter inquired about was not material to the proceeding or controversy.

Byrne had assigned all his property as required by the Act.

He had established the paper with money loaned by Mrs. Hart and had transferred to his wife the share or interest which his name represented in the proposed newspaper enterprise at once and BEFORE the paper was started.

This left him absolutely without any interest in the paper when it was started, to wit, October, 1875.

0792

E O I N L E

It was immaterial whether the paper was owned by Mrs. Byrne alone or by Mrs. Hart and Mrs. Byrne.

The sole point of inquiry was---Did Byrne own it at any time ?

The proof is clear both by the assignment by Byrne to his wife BEFORE the paper was started and Hart's own testimony that Byrne never had any ownership or proprietorship in the paper at any time.

It is quite apparent that the making of the contract originally in Byrne's name was an inartistic method of securing Byrne's services. The fact of his immediately assigning to his wife his interest in the contract BEFORE the paper was started shows that she was the real party in interest to the instrument.

The intent to swear falsely must be specific.

Judge Walworth in People vs. Willey,

2 Parker C. C., 19

U. S. vs. Shellmire, Bald. 370; 378.

If through either error, inadvertance, mistake or even through testifying rashly a witness swears untruthfully it is not perjury.

Bishop's Crim. Law, Vol. 2, p. 586.

Colby's Crim. Law, p.678.

0793

RECEIVED THE PROSECUTOR GENERAL AND DEPT. ATT. GEN.

Upon the question of intent the Court is asked to consider the following propositions:

A. It was wholly unnecessary to swear as he did in order to meet the proceeding under investigation.

If he had testified that Mrs. Hart and Mrs. Byrne were the owners of the paper it would have as completely exonerated him from ownership as to testify that his wife was the owner and that Mrs. Hart furnished the bulk of the money.

So that, to hold the defendant for perjury in testifying as he did it must be assumed that he wilfully testified to one fact falsely when it would have served his purpose quite as well to have testified truthfully. It being abundantly established by Hart's evidence that Mrs. Byrne and Mrs. Hart did start the paper and that Byrne, the defendant, rendered all of his services as an employee.

B. At the time he was testifying Byrne had not seen the contract which was executed when the paper was about to be started for upwards of three years, and erroneously supposed that by the terms of the contract the loan made by Mrs. Hart was to be repaid to her in a certain time and that then the paper was to become the property of Mrs. Byrne.

See last paragraph of Byrne's affidavit in Com. Pleas suit.

0794

about the direction of interest the court is asked

This explanation is consistent with Byrne's written statements to Mrs. Hart in April 1879, of money received and disbursed in connection with the paper.

These statements show that there was no division of profits but that Mrs. Hart was receiving ALL the proceeds over and above expenses so as to pay off her LOAN.

The fact of Byrne's rendering such statements at or about the time he was testifying confirms his affidavit of October 29, 1879, that in April 1879 such was his supposition.

C. It is proper for the magistrate to consider the fallibility of the human mind, not only as to recollection but as to the influence thereon exerted by its concentration on a particular subject.

Byrne was testifying upon proceedings looking to discovery of HIS property.

He was testifying about property HE had owned.

The emphasis of his evidence and the concentration of his mind were both fixed that HE WAS NOT and never had been the owner of the Dramatic News. He however inadvertently testified that his wife did own the paper when in fact his wife and a third person owned it. The latter was a subordinate fact even though it had been material.

0795

money received and deposited in connection with the de-
position of the witness to the fact that the witness
with examination in connection with the same.

It is submitted that to hold a citizen for such an "infamous and detestable crime" as that of perjury under such circumstances would be to retard the wheels of justice by rendering conscientious witnesses vacillating and uncertain in giving evidence through the fear that by mere inadvertance they might be put upon trial on a charge of perjury.

Hart, the complainant, has committed grosser errors in giving his testimony on this examination than the one upon which perjury is sought to be assigned. He corrected some of these errors within a week after they were committed.

If Mr. Byrne's counsel who drew the contract and knew its contents had called his attention to the error at the time Byrne committed it as he should have done having been his advisory counsel at that time Byrne would no doubt have done what Hart did, to wit, correct himself within a week.

Finally it is submitted with great earnestness that the gravity of the charge of perjury characterized as the crime is by text writers as "most infamous and detestable" (Bishop Crim. Law, 6 Ed., Vol. 2, p. 585; Colby's Crim. Law, Vol. 1, p. 678) should of itself cause the magistrate to pause and consider very carefully whether through mere inadvertance the defendant should be put to the annoyance, expense, obloquy, disgrace and distress of a trial on such a charge; the

0796

mere trial of which whether he be acquitted or not, would cause his evidence to be thereafter received with little weight and he himself to be regarded with suspicion and distrust by all law-abiding citizens.

If the magistrate should entertain a reasonable doubt, either as to the materiality of the evidence or that the defendant in giving his testimony specifically intended to wilfully and corruptly swear falsely he is entitled to the benefit of that doubt, and the considerations above submitted weighing in his favor should determine that doubt beyond question.

It has become manifest to the magistrate that business differences have arisen between the complainant and the defendant, and it is urged that the animus of this whole proceeding on the part of the complainant is an attempt to disqualify or weaken him as a witness in civil proceedings.

The civil tribunals will afford the parties Hart and Byrne full redress for their various grievances against one another.

Respectfully submitted,

Frank J. Dupignac of Counsel.

Frank J. Dupignac
of Counsel

0797

3rd District Police Court

vs
The People

Charles Byrne

Defendant

Frank J. Duquesne
of Counsel

120 Broadway
N.Y.C.

Ind. Dec. 18/81

6

0798

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

The People of the State of New York
— against —
Charles A. Byrne

Charge Embezzlement

The defendant Charles A. Byrne now coming into Court upon an Indictment which purports or is claimed to charge an offense against him for special plea by way of demurrer to the alleged Indictment states:

First: That the facts stated in the said alleged Indictment do not constitute a crime.

Second: That the said Indictment does not allege and specify that the crime was committed against any private person or any partnership or any incorporated company.
dated New York June 19th 1882

Frank J. Dupignac

Atty for Deft & of Counsel
120 Broadway
N.Y. City.

C. A. Byrne

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

The People of the
State of New York

— vs —

Charles A. Byrne

—
Defendant

Indictment

Frank J. Duquignac

Atty for deft & of counsel

121 Broadway
N.Y. City,

filed June 28. 1882

0799

0800

The People on Complaint
of Joseph Hark
- against -
Charles A. Byrne } Embezzlement

Counsel for defence move for the discharge
of the defendant on the following
grounds.

First That no embezzlement has been shown.

Second That it is not proved that the person
charged with embezzlement received
the money alleged to have been received
by virtue of such employment.

Third That the accused was not a clerk or a
servant.

Fourth That the prosecution is not a private person
but is in reality a representative or a
person acting in an official capacity.

Fifth That this offence if any at all was
committed, is larceny at common law.

And the defendant
basis this motion on the complaint
herein and the affidavits hereto
annexed.

Motion denied
October 28th 1881

Solomon D. Smith
Police Justice

0001

Almost an Outrage.
I feel that it is only necessary to call the attention of District Attorney McKeon to the facts to insure the correction of an error in his office which works injustice and amounts almost to an outrage.
Charles A. Byrne, a journalist of some repute more or less favorable, was subpoenaed since in fact, nearly a year ago. The defendant in that action, who was his former partner, thought it undesirable that he should appear, and to prevent him from doing so, undertook to "railroad" him to State's Prison. One of the Assistant Dis-
and little attempt

NEW OFFICES OF
JUNE & HUMMEL

0802

GLUED PAGES

0803

It is only necessary to call the
attention of District Attorney McKean to the
fact that the correction of an error in
the office which works injustice and amounts
to an outrage.
Charles A. Byrne, a journalist of some re-
putation, more or less favorable, was subpoenaed
to appear in court several months
ago, nearly a year ago. The de-
fence, who was his for-
mer counsel, thought it undesirable
that he should appear, and so pre-
vented him from doing so. Under the
circumstances, it is not surprising that
he should have been so treated. One of
the Assistant District Attorneys
has been instructed to
make a report on the
subject.

LAW OFFICES OF
Wm & Hummel

entre, and 136, 138 & 140 Leonard St.
NEW YORK CITY

Abe. H. Hummel.

March 28th - 1883.

To
John M^cKeon Esq^r


Dear Sir,

On behalf of my Client,
Mr. Joseph Hart, permit me to call your
attention to the following Extract from a
Newspaper, called "Freund's Daily Music and
Drama".

Mr. Hart, as all your assistants will
inform you, has been pertinacious, and perhaps
amusingly so, in his application to have the
perjury Indictment against Charles A. Byrne,
tried and disposed of.

The defence have, from time to time,
obtained a postponement.

Thus you see that not Mr. Hart,
but your Office is responsible for the delay.

Yours very Resp^l
William F. Herz


0004

Court of General Sessions

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK

against

Charles A. Byrne

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

of the CRIME OF

committed as follows:

The said

Charles A. Byrne
late of the First Ward of the City of New York, in the County of New York, aforesaid
not being an apprentice or person within the age of eighteen years, on the *twenty seventh*
day of *November* in the year of our Lord one thousand eight hundred and
eighty *was employed in the capacity of a clerk and servant to one*

and as such clerk and servant, was entrusted to receive

a certain sum of money, to wit, ninety five dollars and ninety eight cents of the value of ninety five dollars and ninety eight cents

and being so employed and entrusted as aforesaid, the said

then and there did receive and take into his possession

Charles A. Byrne
by virtue of such employment

for and on account of

the said Joseph Hart
his said master and employer; and that the said *Charles A. Byrne*

on the day and year last aforesaid, with force and arms, at the Ward, City and County aforesaid, fraudulently and feloniously did take, make away with and secrete, with intent to convert to his own use, and did fraudulently and feloniously embezzle and convert to his own use, without the consent of said master and employer, and did fraudulently and feloniously and without the consent of his said master and employer withhold, appropriate, apply and make use of the said

sum of money

(Over.)

0805

of the goods, chattels, personal property and money of the said

Joseph
which said goods, chattels, personal property, and money had come into his possession and under his care, by virtue of his being such clerk and servant 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.

Daniel R. Rollins
And the Grand Jury aforesaid, by this indictment, further accuse the said

Dist. Atty
of the Crime of

committed as follows :

The said

late of the Ward, City and County aforesaid, afterwards, to wit: on the day and in the year last aforesaid, at the Ward, City and County aforesaid, with force and arms, fifty promissory notes for the payment of money, being then and there due and unsatisfied (and of the kind known as United States Demand Treasury Notes), of the denomination of twenty dollars, and of the value of twenty dollars each: sixty promissory notes for the payment of money, being then and there due and unsatisfied (and of the kind known as United States Demand Treasury Notes), of the denomination of ten dollars, and of the value of ten dollars each: eighty promissory notes for the payment of money, being then and there due and unsatisfied (and of the kind known as United States Demand Treasury Notes), of the denomination of five dollars, and of the value of five dollars each: one hundred promissory notes for the payment of money, being then and there due and unsatisfied (and of the kind known as United States Treasury Notes), of the denomination of two dollars, and of the value of two dollars each: one hundred and twenty promissory notes for the payment of money, being then and there due and unsatisfied (and of the kind known as United States Treasury Notes), of the denomination of one dollar, and of the value of one dollar each: one promissory note for the payment of money (and of the kind known as a bank note), being then and there due and unsatisfied, of the value of one hundred dollars: one promissory note for the payment of money (and of the kind known as a bank note), being then and there due and unsatisfied, of the value of fifty dollars: two promissory notes for the payment of money (and of the kind known as bank notes), being then and there due and unsatisfied, of the value of twenty dollars each: three promissory notes for the payment of money (and of the kind known as bank notes), being then and there due and unsatisfied, of the value of ten dollars each: ten promissory notes for the payment of money (and of the kind known as bank notes), being then and there due and unsatisfied, of the value of five dollars each: ten promissory notes for the payment of money (and of the kind known as bank notes), being then and there due and unsatisfied, of the value of three dollars each: fifteen promissory notes for the payment of money (and of the kind known as bank notes), being then and there due and unsatisfied, of the value of two dollars each: thirty promissory notes for the payment of money (and of the kind known as bank notes), being then and there due and unsatisfied, of the value of one dollar each: two gold coins (of the kind usually known as double eagles), of the value of twenty dollars each: three gold coins (of the kind usually known as eagles), of the value of ten dollars each: six gold coins (of the kind usually known as half eagles), of the value of five dollars each: fifteen gold coins (of the kind usually known as quarter eagles), of the value of two dollars and fifty cents each: ten gold coins (of the kind usually known as three dollar pieces), of the value of three dollars each: thirty gold coins (of the kind usually known as dollar pieces), of the value of one dollar each: thirty silver coins (of the kind usually known as dollars), of the value of one dollar each: sixty silver coins (of the kind usually known as half dollars), of the value of fifty cents each: one hundred and fifty silver coins (of the kind usually known as quarter dollars), of the value of twenty-five cents each: two hundred and forty silver coins (of the kind usually known as shilling pieces), of the value of twelve and a half cents each: three hundred silver coins (of the kind usually called dimes), of the value of ten cents each: six hundred silver coins (of the kind usually known as half dimes), of the value of five cents each: one thousand coins (of the kind known as three cent pieces), of the value of three cents each: three thousand copper coins (of the kind known as cents), of the value of one cent each. One hundred due bills of the United States of America, the same being then and there due and unsatisfied (and of the kind known as fractional currency), of the denomination of fifty cents each, and of the marketable value of fifty cents each: two hundred due bills of the United States of America, the same being then and there due and unsatisfied (and of the kind known as fractional currency), of the denomination of twenty-five cents each, and of the marketable value of twenty-five cents each: five hundred due bills of the United States of America, the same being then and there due and unsatisfied (and of the kind known as fractional currency), of the denomination of ten cents each, and of the marketable value of ten cents each.

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

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

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

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

0006

of the goods, chattels and personal property of one

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

DANIEL G. ROLLINS, District Attorney.