

0002

BOX:

173

FOLDER:

1757

DESCRIPTION:

Morgan, James

DATE:

04/20/85



1757

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FOREIGN

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Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK

against

James Morgan

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

James Morgan of the County of Kings,
committed as follows: That he and wife
to the County of Kings, in the
year of our Lord one thousand eight
hundred and eighty two, a certain action
wherein George W. Deane was plaintiff
and the said James Morgan, John
Henry Wilson, James Morgan as executor
of the last will and testament of Thomas
of Matthews, deceased, the Mechanical Dr-
apinette Company, John De and Richard
Roe, were defendants, was commenced in
the Superior Court of the City of New
York by the service of a summons and
complaint upon the said defendants,
which said action was brought to restrain
and enjoin the said defendants and each
of them from acting, doing any business,
entering into or executing any arrangements
or exercising any rights whatever under or
by virtue of certain patents which had been
granted or pretended to be granted in any way
directly or indirectly from said James Morgan

and John Field, or either of them, whether in their individual or representative capacities since the 12th day of May, 1902; and to have certain assignments made and arrangements entered into declared null and void, and to have the defendants and each of them ordered to execute such papers as might be necessary to clear the title and establish the rights acquired by them and under certain assignments; and to have the defendants Morgan and Field ordered to deliver certain assignments to the plaintiff, or to do the equivalent thereof, and for the costs of the said action. ^{on information and belief} said complaint stated and alleged, among other things in substance and to the effect following, to-wit: is to say:

That on or about the 12th day of May, 1902, Andrew H. Hammond and the defendants James Morgan and John Field, for good and valuable consideration, duly executed and delivered to the Lawrence Music Company, a corporation existing under the laws of the State of Massachusetts, assignments of numerous letters patent, and interests in and licenses under letters patent, therein specifically described, and also of all claims which said Hammond, Morgan and Field, or the estate

of Mason G. Matthews then had or might have against the defendant, the Mechanical Organette Company, or against any other party or parties, under or by virtue of contracts relating to the manufacture and sale of musical instruments.

And the said James Moragan, late of the City and County of New York, do hereby said, of Records, to wit: on the 11th day of December, in the year of our Lord one thousand eight hundred and eighty two, at the City and County aforesaid, did personally appear and appear before one William D. Warren Esquire, then and there being a Commissioner of Records, in and for the City and County of New York, and did then and there produce and exhibit to the said William D. Warren Esquire, Commissioner of Records, as aforesaid, ^{point and reveal} the answer in writing of him the said James Moragan and the said John Field, and the said James Moragan as executor of the last will and Testament of Mason G. Matthews deceased, to the said complaint, which said answer then and there stated and alleged amongst other things, in substance and to the effect following, that is to say:

That on or about the 15th day

of May, 1902 (or at any other time,) the
 said James Morgan and John Richard, to-
 gether with Andrew H. Hammond, did
 not execute and deliver to the said Sam-
 uel Music Company, or to any person
 for its benefit, a certain (or any assign-
 ment of numerous patents, assignments
 of letters patent and licenses under letters
 patent therein specifically described, and,
 also, all claims which said Morgan, Richard
 and Hammond, or the estate of said Matthew
 then had or might have against the Me-
 chanical Organette Company of New York,
 or against any other party or parties, under
 or by virtue of contracts relating to the
 manufacture and sale of mechanical mus-
 ical instruments; and that the said
 alleged assignment, or any similar as-
 signment was never executed and delivered
 by said Morgan, Richard and Hammond
 to the said Samuel Music Company
 or to any person for its benefit, or for
 the said patents, patent rights, assign-
 ments or licenses in the said complaint
 referred to, or of any patents, patent rights
 assignments or licenses whatever, whether
 with or without the said alleged claims
 or any of them; and that the said alleged
 or any similar assignments either of said

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alleged and referred to patents, patent rights, assignments, and licenses, or any of them, with or without the said alleged claims to any of them, was never executed and delivered by said Moragn and Vick to the said Seymour Music Company, or to any person for its behalf, either with or without the said Andrew D. Hammond; and that no assignment whatever was ever at any time executed or delivered, or executed and delivered by them the said James Moragn and John Vick, or any of them, with the said Hammond or by themselves, unto the said Seymour Music Company, or to any person or party in its behalf, of the said letters patent, or assignments of letters patent, licenses or claims mentioned, described or referred to in said complaint, or of any of said letters patent, assignments of letters patent, licenses or claims; and that no such assignment had ever been drawn or executed or delivered.

And the said James Moragn, on the said twelfth day of December, in the year aforesaid, did then and there further produce and exhibit to the said William D. Warren Esquire, commissioner of deeds as aforesaid, a certain affidavit

of verification in writing, & the said answer, the same being duly signed and subscribed by him the said James Monaghan in his own proper handwriting, and there containing certain allegations and statements of and concerning the ~~truth of the~~ matters stated and alleged in the said answer.

And thereupon, the said James Monaghan was in due form of law sworn, and did make this corporal oath, by and before the said William B. Warren Esquire, Commissioner of Deeds as aforesaid, touching and concerning the truth of the matters contained in his said affidavit of verification, the said William B. Warren Esquire, Commissioner of Deeds as aforesaid, then and there having full and complete power and authority to administer an oath to the said James Monaghan in that behalf. And the said James Monaghan, being so sworn as aforesaid, and being then and there required to declare and depose the truth, upon his oath aforesaid, in and by his said affidavit of verification, before the said William B. Warren Esquire, Commissioner of Deeds as aforesaid, touching and concerning the matters contained

in the said answer, then and there, to wit: on the day and in the year aforesaid, at the City and County aforesaid, by his own act and consent and of his own most wicked and corrupt mind, feloniously, knowingly, wickedly, fully and corruptly did he boldly swear, depose and say, (amongst other things) in substance and to the effect following that is to say:

That he (himself) the said James Moragan thereby meaning) has read the foregoing answer (the said answer thereby meaning) and knows the contents thereof (the contents of the said answer thereby meaning) and that the same (the said answer thereby meaning) is true to him (the said James Moragan, thereby meaning) own knowledge, except as to the matters therein (in the said answer thereby meaning) stated to be alleged as information and belief, and as to those matters he (himself) the said James Moragan, thereby meaning) believes it (thereby meaning the said answer) to be true.

Whereas in truth and in fact the said answer was not true to the intent

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knowledge of the said James Monaghan, except
as to the matters therein stated to be
alleged or information and belief, as he,
the said James Monaghan then and there
well knew.

And whereas in Kentucky and in fact
it was not true to the knowledge of the
said James Monaghan, as in the said
answer stated and alleged in substance
and effect, that on or about the 15th day
(or at any other time, the same James
Monaghan and John Richard, together
with the said Andrew H. Hammond
did not execute and deliver to the said
Sonnayhane Music Company, or to
any person for its benefit, a certain (certain)
assignment of numerous patents, assign-
ments of letters patent and licenses
under letters patent therein specifically
described, and also of all claims which
said Monaghan, Richard and Hammond
or the estate of said Matthews, then had
or might have against the Mechanical
Organette Company of New York, or against
any other party or parties, under or by
virtue of contracts relating to the manu-
facture and sale of mechanical musical
instruments; as he the said James
Monaghan then and there well knew.

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And whereas in truth and in fact it was not true to the knowledge of the said James Moragn, as in the said answer stated and alleged in substance and effect, that the said alleged assignment or any similar assignment was never executed and delivered by said Moragn, Nichol and Hammond to the said Lawrence Music Company or to any person for its behalf, or for the said patents, patent rights, assignments or licenses in the said complaint referred to, or of any patents, patent rights, assignments or licenses whatever, whether with or without the said alleged claims or any of them; as the said James Moragn knew and there well knew.

And whereas in truth and in fact it was not true to the knowledge of the said James Moragn, as in the said answer stated and alleged in substance and effect, that the said alleged assignment or any similar assignment, either of said alleged and referred to patents, patent rights, assignments and licenses, or any of them, with or without the said alleged claims or any of them, was never executed and delivered by said Moragn and Nichol to the said Lawrence

may have written or caused to be written
 by him, either with or without the
 said Andrew St. Hammond, or the
 said James Morgan then and there well
 known.

And whereas in truth and in fact it
 was not true to the said facts of the said
 James Morgan, as in the said answer
 stated and alleged in substance and effect,
 that no assignment whatever was ever at
 any time executed or delivered, or executed and
 delivered by them the said James Morgan
 and John Field, or any of them, with the
 said Hammond, or by themselves unto the
 said Lawrence Curtis Company, or to
 any person or party in the said facts of the
 said letters patent, assignments of letters
 patents, licenses or claims mentioned, de-
 scribed or referred to in said complaint,
 or of any of said letters patent, assignments
 of letters patents licenses or claims; as the
 the said James Morgan then and there
 well known.

And whereas in truth and in fact,
 it was not true to the said facts of the
 said James Morgan, as in the said answer
 stated and alleged in substance and effect,
 that no such assignment had ever been
 drawn, or executed or delivered; as the the

said James Morgan, then and there
well known.

And so the said James Morgan, do
say that the said James Morgan, in
manner and form aforesaid, by his own
act and consent and of his own most
wicked and corrupt mind, feloniously,
indecently, lewdly, wickedly, and
corruptly, did commit, will and
corruptly perjury, to the great disgrace
of Almighty God, to the evil example of
all others in like cases offending, 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.

Randal P. Martin

District Attorney

**POOR QUALITY
ORIGINALS**

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Date June 6 1888 X W. J. Duffy Police Justice

THE PEOPLE OF THE STATE OF
NEW YORK,

against

James Morgan

Recount

RANDOLPH B. MARTINE,

DISTRICT ATTORNEY

Subscribed and sworn to before me this 15th day of May 1932
at New York City

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The People

vs. : Perjury.

James Morgan

--o--

Hon. Randolph E. Martine,
District Attorney.

Sir :

The action wherein the perjury charged in this indictment, ~~is~~ alleged to have been committed, was one brought in the Superior Court of this City, in December, 1882, by one George H. Seeley against the defendant herein, and others, for an injunction against ~~other~~ defendants from doing business, or exercising rights under certain assignments alleged to have been made by this defendant and one John Nicoll to others of the defendants in said action, and that said assignments be declared null and void &c.

This defendant, in his answer, denied that any such assignments as those mentioned in the complaint, were ever drawn, executed or delivered by him, and had never been in existence. Upon the trial of the cause, however, assignments to the effect charged in the complaint were produced, and the defendant admitted his signature thereto.

It appears, however, that the virtual plaintiff in that action, Andrew H. Hammond, to whose company the

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assignments in question had been made, had so little recollection of them that he declared they had been obtained possession of by the defendant herein, and were then in his possession, he retaining them wrongfully, whereas they were subsequently found in the safe of said Hammond's company.

The testimony in the case taken before the Police Magistrate, which is very voluminous, discloses the fact that many papers were signed upon the day of the signing of the assignments in question, and the particulars surrounding the meeting on that day at which the various papers were signed would indicate that the whole transaction was the result of an amicable understanding, and that little attention was paid to the papers executed.

There appears to be considerable conflicting testimony as to the date of the signing of the alleged assignment. The preponderance of this testimony is on the part of the defendant, and it would appear therefrom that the assignments in question were executed to the assignee company before said company was formally incorporated under the laws of Massachusetts, of which state it was a corporation.—A fact which would of itself, I apprehend, be sufficient to avoid the charge of wilful false swearing on the part of the defendant in stating that he had never executed any such assignment to said company.

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At meetings several months subsequent to the execution of said assignments, in which said Hammond was a participant, the testimony is very strong that he denied the existence of any such assignments when questioned in regard thereto. All the testimony exhibits considerable vagueness of recollection upon the part as much of said Hammond as of defendant.

There is, moreover, among the papers an application by said Hammond for Nolle Prosequi to the indictment, in which it is stated that the witnesses necessary to establish the charge against the defendant herein, are without the jurisdiction, or dead, and cannot be obtained for the purposes of trial. I have personally ascertained the truth of this latter statement in regard to some of the witnesses in the matter.

Upon all these facts, I am of opinion that it would be impracticable to obtain a conviction in the case, and I therefore, recommend that the application of said Hammond be granted, and that a Nolle Prosequi be entered to the indictment herein.

Yours respectfully,

March 15, 1887.

A. J. Barker

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NEW YORK GENERAL SESSIONS

People on my complaint

versus

James Morgan.

The undersigned hereby respectfully requests that a Nol. Pros. be entered for the following reasons.

The charge against the defendant Morgan was for perjury, in connection with other parties, in cases wherein the Tournaphone Music Co., a corporation organized and doing business in Worcester, Massachusetts, under the laws thereof, of which the undersigned is President, and duly empowered manager, and the perjury, if committed as alleged, was so done in signing some of the numerous pleadings in one or more of the litigations going on between the opposing parties, and it may be forcibly urged, that the defendant, in signing such formal papers as his attorney drew for him, may not have fully realized that, in doing so he was committing the crime charged.

Furthermore, all the witnesses necessary to establish the charge against the defendant, permanently live without the State of New York, or are dead and gone, and therefore it will be practically impossible to produce the needed proof to convict the defendant.

Wherefore the undersigned, being the moving complainant in this case, while the nominal one, of record, was but his attorney and representative, respectfully requests, that, as it seems to him no public or other interest can be served by forcing this case to a trial, and as the proof to sustain the charge cannot be at this late date obtained, a "Nol. Pros." be entered, and he hereby prays the District Attorney to cause such action to be taken as will

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so dispose of this case.

A. H. Hammond

Massachusetts
State of ~~New York~~

Worcester S.S.

On this *27th* day of *January* A.D. 1887 before me personally came Andrew H. Hammond to me known, and known to be the individual described in and who executed the foregoing instrument, and acknowledged to me that he executed the same for the purposes therein mentioned.

David Manning Jr.
Notary Public

On the Matter of

the People vs

= vs =

James Morgan

Application for
close pros.

0022

City ^{and} County of New York

John Nichol.

a 61. born in Scotland
residing 62 Perry
Street / New York City

Q How long have you
lived in this County?

A Since 1843

Q You are the defendant
for

Q You were at Worcester
on Friday 12 May 1884

A Yes

Q What day did you
leave Worcester

A Afternoon same day

Q Was you during Saturday
13 May 1884

A No Sir

Q Do you remember signing
any such paper as the
assignment which has
put in evidence

A The only paper that I
signed was for the
organization of the
Thompson-Morris Company

as I was informed by Mr
Blackman. Mr Hammonds
attorney

Q. Did you ever know of
until that assignment
was produced on the
reference ~~reference~~ ^{reference} ~~reference~~ ^{reference}
of Seely vs Morgan &
others in January or
February 1883. that you
had ever signed such
paper

A. I had no knowledge
it is the first time I
saw it

Q. Did you ever deliver that
paper or see it delivered to
any officer of the Trust
Co

A. I never did.

Q. ~~In what condition was~~
~~the power of attorney~~

Q. When the complaint was
served in Seely vs Morgan
what did the Morgan
say to you in regard
as to whether or not

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- the assignment mentioned
in that complaint. Had
ever been delivered
- A He said he never delivered
any assignment
- Q How long have you known
Mr. Morgan
- A I have known him 12 or 13
years
- Q What did you ascertain
in regard to the
recording of that assignment
before you put in your
answer in July of 1934
- A I ascertained with Mr.
Morgan that no such
record had been
made. No assignment
had been recorded
at the time you made
your answer in July of
1934. What was
your honest belief as
to whether the assign-
ment mentioned in the
complaint had been
signed & delivered
- A I have no doubt in

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- the assignment mentioned
in that complaint had
ever been delivered
- A He said he never delivered
any assignment
- Q How long have you known
Mr. Morgan
- A I have known him 12 or 13
years
- Q What did you ascertain
in regard to the
recording of that assignment
before you put in your
answer in July at Morgan
- A I ascertained with Mr.
Morgan that no such
record had been
made. No assignment
had been recorded
at the time you made
your answer in July at
Morgan what was
your honest belief as
to whether the assign-
ment mentioned in the
complaint had been
delivered or delivered
- A I have no doubt in

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my mind no such
paper had been
presented or delivered
Q Have you since before
been charged with
any criminal offense
A No in my life

Confederation
Q Were you not a
director of the Tennessee
Mining Co from May 13
1882 or thereabouts until
the following October
A I was so informed but
I never attended the
meetings

Q Did you not take part in
some business of the
Tennessee Mining Company
at its various offices at West
14 Street New York City during
that period

A I have no recollection
of taking part in
any of the business

Q Did you not take part
in filling up the form

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room in the month of
May & June 1884
a I did on the request
of Mr. Hammond
I did you not hold \$5,000
of the stock of the Memphis
Municipal at that time
from May to October 1884
at \$1.00 but I did not
pay anything for it.
~~I did not know~~
~~for what purpose the~~
~~Memphis Municipal~~
~~was buying for~~

John M. Nichol

Sum to Refuse me
the 3 day of June 1884

Police Justice

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First District Court

In the Matter of
James Morgan
and John Nichol

Before Hon. P. G. Deffy
Police Justice

Appearances: Marshall P. Jefford
for complainant
Mr. George F. Betts, for defendants.

Tuesday, June 30, 1884.

It is agreed that all the testimony
taken against Morgan, be
considered as taken in the case
of Nichol.

Prosecution rests on the
evidence offered in the case of
Morgan.

The Defendants ~~request~~
in addition to the
evidence of Morgan in
that case call

Oleiv A. Harran residing
159 West 15 street being
examined. I reside in

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New York City. I have known
the defendant Michael for
12 years & well
Q Do you know his acquaintance
Q What is his standing
Q Good as far as I know
Q What is his reputation
for honesty & integrity
Q Good as far as I know
I ought to be
in a position to
know

Sum to Refr. Oliver A. Farnham
this 3 day of June 1888

City of New York
of New York

John J. Cosgriff
residing No 122 Park
Street being sworn says
that he is in the Coal
business. I have known
the defendant 30 years
well & I know his acquaintance
his character is as good
as I know. I know no
better in this city

Q What is his reputation
 for honesty & veracity?
 A Good John G. Coagran
 says to report some
 thing of some 1887

Wm. H. Coagran
 City of New York
 of New York 1887

Charles D. Thompson
 residing No 35 Charlton
 street, New York says
 I have known Mr. Nichols
 well for nearly five
 or thirty years & done
 business with him.

Q Do you know his acquaintance

A Yes
 Q What is his standing
 in the community?

A Good

Q What is his reputation
 for honesty integrity and
 veracity?

A Good says to report some
 thing of some 1887

Wm. H. Coagran
 Charles D. Thompson

0031

120 Nassau Street,
New York.

April 25th 1885

Dear Sir,

Since you were kind and frank enough to tell me this morning what has been said by the attorneys who have been to you in the interest of James Morgan, I feel desirous of fortifying myself with you and satisfying you that they rather than I am the partial, prejudiced and interested speakers.

I brought an action in the Superior Court to recover the possession of two important documents from James Morgan. There, as in the case for which he is now indicted, he put on in his answer & as a witness on the stand, repeatedly & in the most unqualified terms, that there were never any such papers as that suit was brought to recover. He and his attorney attempted to palm off some other & entirely different papers as being the true ones. The case was tried twice. The first trial lasted

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Before judge Sugrham
& the jury disagreed, standing 8 for
me & 4 for defendant. The second
trial was before judge O'Gorman
and lasted four days. The jury were
out only ten or fifteen minutes
and brought in a verdict for
plaintiff as to both papers, thus
virtually convicting Morgan of
the most wilful & deliberate per-
jury. This was a different plaintiff
that in which he committed the
perjury for which he is now indicted.
I think both judge Sugrham
& judge O'Gorman will tell
you that they think ^{him} a very hard
perjurer. There were some quite
prominent & very intelligent men
on the last jury, & they all told
me they thought him a hardened
villain & that he deliberately perjured
himself. If you desire it, I will
undertake to get letters from judges
O'Gorman & Sugrham as to what
they think of him, & I will also
get a statement signed by the
jurymen in the case spoken of
that they think him a man who
will perjure himself without the
slightest hesitation, & that he did so in the case
before them. I think I can get several reputable
members of the bar who will tell you of several
other stories of Morgan's for years back. Then
not the big thing that he is as miserable
and wilful a perjurer as ever lived and is a very
dangerous man to allow to go unpersecuted. I can
now see why the matter was postponed under your
production. Though I was personally much better acquainted
with both Mr. Casey & Mr. Davis than I am with you,
they neither of them ever told me what you have so frankly
& fairly told of your own acquaintance with them. I
suppose if a man can stand to be put up for perjury, I
doubt Morgan also. Which is equally surely, & from
what one of the Grand Jurors told me, I think that if you
will send the papers back to him, their attention called to
it they will in no respect. My informant called to
that there was a charge against him.
Yours truly
John Campbell
Wm. M. Campbell
Wm. M. Campbell
Wm. M. Campbell

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the People
as
Morgan

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0034

In the Matter of

James Morgan
& John Michael,
held on a charge
of perjury.

Matter of
James Morgan and John Nichol.

Charge: Perjury.

Facts.

On or about the 12th day of December, 1882, Morgan and Nichol severally swore to their joint answer in a suit in the Superior Court of the City of New York, in which they with others were defendants, and George H. Seely was plaintiff. The complaint was founded on a certain instrument in writing being an assignment of patents, made by Morgan, Nichol, & one A. H. Hammond to the Cornaphane Music Co. of Worcester, Mass., and which it was alleged an information & belief Morgan had possession of. Their said answer denied in five different forms and in the most positive terms that the alleged assignment, or any similar assignment, or any assignment whatever, was ever delivered, or ever executed, or ever drawn between the alleged parties. The perjury was in thus swearing.

(2)

Evidence.

1. The assignment itself was subsequently found in the possession of the Tournaphone Music Co. & produced by it.
2. Both Morgan & Nichol admit their signatures to it.
3. That they signed it on the 12th day of May, 1882, at Worcester Massachusetts can will be sworn to by Simeon E. King, Andrew H. Hammond & F. L. Faulkner all of Worcester.
4. That Morgan formally delivered this paper to the secretary of the Tournaphone Music Co on the 13th day of May, 1882, will be sworn to by the same witnesses.
5. That Morgan became President & Nichol a trustee of the Tournaphone Music Co. and managed its affairs for five months after such delivery, knowing that the sole business of said company was to manufacture and sell under the patents conveyed to it by this assignment will be sworn to by Faulkner & Hammond.
6. The original answer and oath of Morgan & Nichol is on file in

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the office of the Clerk of the Superior Court, & has been by him placed in a safe as a matter of precaution against theft or mutilation.

7. The notary before whom they swore to the answer is William B. Warren, who has an office at No. 7 Warren Street, New York City.

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Police Court of the
City of New York

Before Hon. Justice Duffy

The People of the
State of New York
— against —

James Morgan

vs.

Brief on behalf
of Defendant

Geo. F. Betts
of Counsel

for defendants
229 Broadway

Police CourtBefore Hon. Justice Duffy

The People vs }
 James Morgan }

The accused, who is a citizen of the very highest respectability and position as proved by the undisputed testimony of five of his acquaintances and neighbours ^(p. 52-56) is charged with 'perjury' in swearing to his answer in the suit of Seeley vs Morgan & others pending in the N.Y. Superior Court. His real prosecutor is Andrew St. Hammond who is also the actual plaintiff in that pending suit, although he puts forward his attorney Mr Stafford to swear to this Criminal Complaint.

The Complaint in Seeley vs Morgan claimed title to numerous Patents, and interests in and licenses under Letters Patent - under and by virtue of an alleged Assignment alleged to have been duly executed and delivered to the Gramophone Music Company on or about May 13th - 1882 (fol. 9-10) and which assignment it alleged Morgan

got possession of and wrongfully refused to deliver to the Gramophone Music Co. fol. 11. - The answer of Morgan denies the execution and delivery of such an assignment fol. 25.

Points.

First.

The suit of Seeley vs Morgan is still pending and undetermined. ^{p. 769} Only one witness has yet been Examined in it and that was on behalf of the Plaintiff.

The plaintiff has not sustained any injury from the alleged perjury - and he ought not to be aided in this effort to forestall the judgment in the civil suit by invoking to his assistance the provisions of the criminal law.

Certainly where his purpose is so evidently selfish he should be required to establish a very clear case by overwhelming testimony before he can be allowed thus to strike down an opposing witness.

Second

The prosecution have not proved that the answer was untrue.

They must prove this by two credible witnesses.

I Mr Hammond is the only one who can be claimed by the prosecution as sustaining its case. But

- (1) He is shown to be utterly unworthy of credit.
- (2) He is contradicted by Morgan ^{pp. 111-112}
- (3) He is proved by three witnesses — ^(p. 85-88, 114-115) Ketchum, Jones, & Tremain to have admitted in September 1882 that "no assignments of any kind had been made to the Tournaphone Company."
- (4) He is shown to be unworthy of belief because he denies ^{p. 117} that he made this statement, which is sworn to by these three witnesses of high character and respectability.
- (5) He is proved by Bradshaw ^{p. 117} to have heard his lawyer Mr Blackmer say in October 1882 "that the Tournaphone Co. had not yet got the Assignment."
- (6) And he is further shown to be unworthy of belief by swearing ^{p. 50} that Mr Blackmer never said so.
- (7) He is proved by Babcock to have admitted in September 1882 that "the Tournaphone Co. had not yet got the Assignment" but claimed ^{pp. 105-106} they could get them in 15 minutes, and Babcock is corroborated in this by Morgan.
- (8) And he is further proved to be un-

worthy of belief by swearing that he did not say so. ^(p. 47-48) If it be argued that Babcock is Counsel for Morgan, still Hammond is more interested against Morgan than any counsel can be in his favor.

(9)

Hammond is shown to have committed direct perjury - for he swore in the complaint in "The Gramophone Music Co vs Morgan" ^{Deft. 33 + page IV} and in the affidavit to obtain an injunction in ^{Seely vs Morgan} ~~that case~~ that "After the delivery of the Assignments Morgan got possession of them - and still wrongfully refuses to deliver the same to the Gramophone Co". He swore to this "positively" ~~not~~ "on information and belief". ^{p. 35} He now admits this was false, and on the hearing he himself produces the Assignment which he swore Morgan was retaining.

The testimony of a witness so contradicted and impeached is not worthy of a moment's consideration - especially when his interest is so strong to break down Morgan so

that his testimony shall not avail
against him in the two suits he

has against him p. 10. 6-7 + 10-11.
(80) Hammond is also shown to have committed direct perjury in another important par-
ticular - He swore in the Complaint of the Telephone Music Co vs Morgan (Defts Ex 1 foot of p. 10)
that Morgan had "executed and delivered an assignment of foreign patents" - This he swore
"possibly" not "on information and belief" - and this is now admitted by him to be false (p. 36-7)

II

Mr King was called to corroborate
Mr Hammond - but he fails to do so, and
contradicts him in the most material
points. (1) As to the date - being quite
positive it was the 12th of May (Friday),
while Hammond makes it surely the 13th
(Saturday). (2) As to whether Mr Nichol
was present - Mr King swearing "he was
sure that he was - as sure as that he was
alive" p. 9. while Hammond swore Nichol
was not there - it being important for
Hammond to swear so - to deprive Mor-
gan of a valuable witness as to what
actually occurred.

If Mr King was mistaken as to Mr
Nichol being present - Hammond swearing
that Nichol was not - How can Ham-
mond ask us to believe what Mr King
states in regard to Mr Morgan.

If Hammond asks us to discredit and
disbelieve King's testimony as to Nichol
(which he does) how can he ask us to credit
King's testimony as to Morgan

Mr. King's memory has been shown

to be utterly unreliable - and can not form the basis for any finding by the Magistrate.

III.

Mr Morgans admission of his signature to the paper shews his honesty but it does not shew that he "executed and delivered" it.

He had forgotten that he ever signed it - He knew that he never "consciously" signed such a paper - and he knew that he never executed and delivered knowingly such an instrument.

IV

The absence in the minutes of May 13th of the Tournaphone Co (Ex 4 March 12, 1884) of any mention of the execution and delivery of this assignment - shews strongly that no such execution and delivery occurred.

V

The failure to record the Assignment in the Patent Office in Washington, is convincing proof that no such execution and delivery occurred - For, if it had, the first act of the Grantee would have been to record so important a muniment of title. U.S. Rev. Stat. § 4898.

VI

The admissions by Hammond^{pp. 74-87-96-105} and by Blackmer in Hammond's presence^{p. 67} four and five months after May 13. that "the Sournaphone Co had not yet got the Assignment" shows also conclusively that it had not been executed and delivered on May 13th.

Third.

Even if the evidence shows that Mr Morgan did execute and deliver the Assignment - it fails entirely to show that he "wilfully and knowingly" declared falsely in regard to it -

This is requisite - Penal Code § 96
Elevell's Case - 1. C. H. Rec. 155

I

At the time of the organization of the Sournaphone Co at Worcester - May 12th & 13th a great many papers were signed. Mr Morgan had no conscious knowledge that he executed and delivered this Assignment^{pp. 711}. He honestly believed when he put in his answer that he had not^{p. 77}. The assignment had never been recorded in Washington in the Patent Office, as it naturally should have been. The Complaint^{Ex 4 p. 21} charged that he (Morgan) had taken it and retained it which he knew to be untrue - and he justly considered this

to be a part of the description of the paper - as if the Complaint had read "Morgan executed and delivered that assignment which he wrongfully took and still retains" - and he knew there was no such assignment.

II Moreover Hammond cannot complain that Morgan had forgotten the execution and delivery of the paper for he (Hammond) had himself forgotten the fact in the Fall of 1882 - when he told Babcock - Bradshaw Ketchum - Jones and Dremain, five persons, that no assignment had been made. pp 74, 87, 96.

III And how can Hammond have the audacity to demand that Morgan shall be held for what at most is mere forgetfulness when he himself swore twice falsely as to Morgan's taking the assignment and keeping it!

or how can he claim that the error of King as to Nichol being present - of which King is as positive as that he is alive - is mere forgetfulness - while ^{he} demands that Morgan's want of memory as to a transaction of the same

date is wilful perjury.

IV

Mr Morgan's high character for "honesty integrity and truthfulness" here comes strongly to his aid - and taken in connection with all the circumstances shew that even if he were mistaken he was so honestly, - and did not "wilfully and knowingly" declare anything that was not true.

Moreover the complaint describes the instrument which it alleges Morgan "executed and delivered" to have been "an assignment of interest in and licenses under Letters Patent" as well as of "numerous Letters Patent."

Now the Assignment relied on by the prosecution (Ex 1.) above produced does not correspond with that description - It does not contain any assignment whatever of "licenses under Letters Patent" And Mr Morgan in preparing his answer relied upon and had a right to rely upon this description of the Assignment he was alleged to have "executed and delivered."

He knew he never executed and delivered such an Assignment and the proof is clear that he never did. The prosecution does not contend that he did.

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Fourth

The Complaint should be dismissed
and m^r Morgan should be discharged.

Geo. F. Betts
counsel for defendant.

0049

GRANVILLE P. HAWES,
COUNSELLOR AT LAW,
NO. 2 NASSAU STREET,
ROOM 13, FOURTH FLOOR.
TELEPHONE NO. 762.

to the People
James Morgan

New York, July 7 1887

My Dear Martin

I have finally
obtained a proper & respectful
application for a writ in
above matter which we tried
on as you remember. I
trust it will be satisfactory
if for any reason it is not
please let me know & I will
amend it

Truly Yours
Granville P. Hawes

0050

In the office of
Granville P. Hawes, ^{for} ~~will be~~
Counsellor at Law. ² ~~am~~ Morgan

Telephone No. 100.

No. 2 Nassau Street,
Room 13-14th floor.

New York

188

My Dear Sir

Here you had
done & look over the office
of Mr. Kimmel in case of
Loren Morgan in reference
to which I shall say in

Very truly
Granville P. Hawes

R. B. Kintner

POOR QUALITY
ORIGINALS

0051

The People vs

vs

James Morgan

Supplemental Brief

Geo. F. Petto
Counsel for
Defendant

Application to
dismiss denied.
Let case be tried
among early fall
cases. R.S.M.
Jan 18. 1886

The People vs }
James Morgan } Supplemental Brief

The action of the District Attorney's office while Mr. Hughes was its incumbent seems to me to render a further discussion of the merits of the case at this present time unnecessary. - But as an impression might be formed by a cursory view of the evidence, that it is strange or improbable that Mr. Morgan should forget that he executed the assignment (Ex 1), while he admits on its presentation that the signature to it is his, I ask permission to make a few suggestions in support of my view that this forgetfulness is not strange or improbable.

I. The first suggestion I make is that Mr. Hammond who executed the same paper (Ex 1), who is the prosecutor, and who now contends that Mr. Morgan should not be credited with such forgetfulness, himself actually forgot that he had executed it...

He testifies (pp 27-29) that for months he forgot it - and at bottom of p 29, uses

this language "The whole existence
of these papers faded out of my mind
after the 13th of May when they were
put in the Townshome Company's safe".

II If Hammond had not admitted this, the
testimony of Babcock, Bradshaw, Ketchum,
Jones and Freeman (pp 74, 87, 965 104)
shows that in the Fall of 1882 Hammond had
forgotten it.

III The uncertainty of memory as to such
past transactions is further illustrated
by Mr Hammond's testimony that he
cannot recollect whether he swore to
the Complaint (pp 78 31).

Why should he not remember that
as well as Mr Morgan remember signing
Ex 1?

IV Ex 1. is dated May 14th - which is a Sunday,
and is subsequent to the day in which the
prosecuting intruders state the paper was execu-
ted. This shows that the paper
was altered or filled in after the signature
of Mr Morgan was written. A clerk
may through inattention write a preceding
date, never a coming one.

All this corroborates what Mr Morgan says
that he never consciously signed such
an assignment - but only papers to organi-
ze the Corporation.

V Mr Morgan had no Counsel of his own there at Worcester with him. But he considered it all a friendly arrangement, and he signed - as parties under such circumstances do - whatever papers the Lawyers laid before him to sign.

VI There is another strong circumstance in this case

The Corporation was not in a condition to transact business under the Laws of Massachusetts until the certificate was filed with the Secretary of State that its Capital Stock was paid in in Cash (p 41)

Now this certificate was not filed until Monday the 15th of May 1882 - while the alleged execution of Ex 1 was on the 12th or 13th of May - And I have the certificate to show to the District Attorney to establish this.

This presents two Considerations
(1) The Legal one - that ^{as} the Corporation could not transact business on the 12th or 13th Morgan was legally correct in his statement that he did not at that time execute and deliver an assignment to it.

(2) The Practical one - that Mr Morgan having been assured by the Lawyer that this was the Law (p 41) believed that all

that was done by him on the 12th and 13th was preliminary to the organization, and did not understand that he was executing any assignment or final transfer to a non-existing Corporation.

VII

In view of these considerations, and of the others submitted by my original Brief - remembering also how the false statements of the Complaint as to the execution of the assignment by Mr. Morgan of Foreign Patents (p. 37) and as to the carrying away of Ex. by Mr. Morgan (p. 38) were so blended with this statement of the execution and delivery of Ex. as to fairly lead Mr. Morgan to more readily assume the falsity of this statement from the conceded falsity of these other statements - and giving to a life-long good character (pp. 52-66) that weight it is justly entitled to, and which calls for belief in an upright man's statements as to his memory, or intention, or operation of his mind. It is submitted that Mr. Morgan should not be subjected to the mortification of a public trial, but that a nolle prosequi should be entered.

Geo. F. Betts
Counsel for Defendant

POOR QUALITY
ORIGINALS

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OFFICE OF
PETER B. OLNEY.

EQUITABLE BUILDING
180 BROADWAY.

NEW YORK,

Dec. 14th 1885.

The People *vs*
or.
James Morgan

My dear Sir

George F. Pitts Esq.

Requests me to write you a
note relation to above matter
in which the defendant
was charged with perjury.
And I feel it is very proper
that I should comply with
his request.

While I was District Atty Mr.
Pitts as Counsel for Mr. Morgan
Came to me and asked me
to look into this charge before

POOR QUALITY
ORIGINALS

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allowing the papers to go
before the Grand Jury -
I refer the matter and papers
to my assistant Mr. Parris
with instruction to examine
the matter thoroughly and
report to me. This Mr.
Parris did reporting that
in his judgment there was
no reasonable ground to
expect a conviction upon
the facts as he found them
to be. I think likely Mr.
Parris' report was in the

form of a letter to me
He will probably be able
to tell you about what
points are also about
other matters relating
to the examination into the
facts which remain to be
made as above mentioned.
After the report to me
by Mr. Parris I concluded
it was not expedient
to pursue the matter
further, and of this I con-
cluded Mr. Nettles was

POOR QUALITY
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0050

also says that I remarked
that nothing further must
be done in the matter unless
new facts were presented.

Although I cannot now
recall this fact it is ex-
tremely probable that I
did make that remark.

I think it likely Mr.
Parris was present during
the whole or a part of my
interview with Mr. Bell and
he may recollect more exactly
as to this point. My action
in this matter was of course
official. Very truly yours
Hon. R. B. Anderson
Robert B. Owen

POOR QUALITY
ORIGINALS

0859

229
ROOM NO. 229
ADWAY,
FIRST FLOOR.

New York, Dec 21st 1885

Hon R. B. Martine
District Atty
Dear Sir,

I submit herewith
a statement of Mr. T. B. Olney
that while he was District Attorney
he caused this case of the People
vs James Morgan to be carefully
examined by his Assistant Mr. Harris
and that as the result of that
examination he officially de-
cided to proceed no further
with the case, and so informed
me.

I presume you will agree
with me that such official
action remains effective although
a change occurs as to the individ-
-ual who holds the office, and
that you will carry out the
decision which your predecessor
made while he had the proper

POOR QUALITY
ORIGINALS

0060

you would correct the
decision of this
office - and I trust that you
will correct the accidental
error that has occurred, by
restoring the case to its former
status, and by entering a
nolle prosequi in the indict-
ment.

Yours Very Truly

Eu. F. Bates

POOR QUALITY
ORIGINALS

0061

Sec. 192.

District Police Court.

Undertaking to appear during the Examination

CITY AND COUNTY } ss.
OF NEW YORK, }

An information having been laid before
of the City of New York, charging
the offence of

Patrick G. Duff
John Michael Defendant with

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

We.

John Michael Defendant of No. *92*
Perry Street, by occupation a *carpenter*
and *Jackson A. Michael* of No. *234* Street
Street, by occupation a *Book Keeper*, hereby jointly and severally undertake that

the above named *John Michael* Defendant
shall personally appear before the said Justice, at the District Police Court in the City of New York,
during the said examination, or that we will pay to the People of the State of New York the sum of *ten*
Hundred Dollars.

Taken and acknowledged before me, this

188

28
John Michael
Patrick
POLICE JUSTICE.

POOR QUALITY
ORIGINALS

0062

CITY AND COUNTY
OF NEW YORK, } ss.

Sworn to before me, this

188

John A. Nichols
District Police Justice

the within named Bail and Surety being duly sworn, says, that he is a resident and
holder within the said County and State, and is worth Twenty Hundred Dollars,
exclusive of property exempt from execution, and over and above the amount of all his debts and
liabilities, and that his property consists of House and lot

number 224 9 Street
New York City value
five thousand dollars
Twenty one thousand
dollars

J. A. Nichols

District Police Court.

THE PEOPLE, &c.,
ON THE COMPLAINT OF

ss.

John A. Nichols

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Taken the

28 day of May

Justice.

POOR QUALITY
ORIGINALS

0063

Sec. 192.

District Police Court.

Undertaking to appear during the Examination.

CITY AND COUNTY }
OF NEW YORK, } ss.

An information having been laid before Patrick G. Duffy a Police Justice
of the City of New York, charging James Morgan Defendant with
the offence of willful and corrupt Perjury

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

We, James Morgan Defendant of No. 223, 9th
Jackson A. Nichol Street, by occupation a Bookkeeper
and 224 Ninth Street Brooklyn of No. 224
Street, by occupation a Bookkeeper Surety, hereby jointly and severally undertake that
the above named James Morgan Defendant
shall personally appear before the said Justice at the 1st District Police Court in the City of New York,
during the said examination, or that we will pay to the People of the State of New York, the sum of 50
Hundred Dollars.

Taken and acknowledged before me, this 25th
day of February 188 8

my own POLICE JUSTICE,

POOR QUALITY
ORIGINALS

0064

CITY AND COUNTY
OF NEW YORK, } ss,

Sworn to before me, this
day of February 1881
at New York
Police Justice

the within named Bail and Surety being duly sworn, says, that he is a resident and
holder within the said County and State, and is worth thirty Hundred Dollars,
exclusive of property exempt from execution, and over and above the amount of all his debts and
liabilities, and that his property consists of a house and lot of

land at No. 224 Myrtle Street - Brooklyn
and other property being of the value of
the amount aforesaid or all encumbrances

Jackson A. Nichols

District Police Court.

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Undertaking to appear during
the Examination.

vs,

Taken the day of 1881

Justice,

POOR QUALITY
ORIGINALS

0065

Sec. 151.

Police Court _____ District.

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

Whereas, Complaint in writing, and upon oath, has been made before the undersigned, one of the Police
Justices for the City of New York, by Marshall P. St.afford
of No. 140 Nassau Street, that on the 12th day of December
1882 at the City of New York, in the County of New York,

James Morgan and John Nichol
falsely swore that they executed no
assignment of patents to the Tournaiphone
Musical Company on or about the 13th
day of May, 1882, which was a material
matter in a suit pending

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

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

Dated at the City of New York, this 23 day of February, 1884

POLICE JUSTICE.

Police Court _____ District.

THE PEOPLE, &c.,
ON THE COMPLAINT OF

vs

Warrant-General.

Dated Feb. 23^d 1884

John P. Smith Magistrate.

Joseph F. White Officer.

The Defendant James Morgan & John Nichol
taken, and brought before the Magistrate, to answer
the within charge, pursuant to the command con-
tained in this Warrant.

Joseph F. White Officer.

Dated _____ 188

This Warrant may be executed on Sunday or at
night.

Police Justice.

REMARKS.

Time of Arrest, 11:45 AM Feb 26/84

Native of Sweden

Age, 56

220 Wm. May St

Sex, Adam White

61 W. 1st Street

Complexion, 62. Brown

Color, W

Profession, Importer

Married, Yes

Single, _____

Read, Yes

Write, Yes

223. 9th Street Brooklyn

POOR QUALITY
ORIGINALS

0057

City & County of New York ss.

Marshall P. Stafford being
duly sworn says: I am an attorney
and counsellor at law, practising in
the City of New York and having
my office at No. 140 Nassau Street
in said City. The following is a
copy of a complaint the original of
which is now in my possession

14

SUPERIOR COURT,

OF THE CITY OF NEW YORK.

GEORGE H. SEELEY,

Plaintiff,

against

15 JAMES MORGAN, JOHN NICHOL, HENRY
WILSON, JAMES MORGAN, as executor
of the last will and testament of
Mason J. Mathews, deceased, the
Mechanical OrguINETTE Company,
John Doe and Richard Roe,
Defendants.

The plaintiff complains and alleges:

16 I. On information and belief, that at all the times
hereinafter mentioned, the defendant, The Mechanical
OrguINETTE Company, was and still is a corporation ex-
isting under the laws of the State of New York.

II. On information and belief, that Mason J.
Mathews departed this life in or about the month of
August, 1880, leaving a last will and testament, of
which the defendant James Morgan, at all the times
hereinafter mentioned, was and still is a duly appointed
and qualified executor.

17 III. On information and belief, that on or about the
13th day of May, 1882, Andrew H. Hammond and the
defendants James Morgan and John Nichol, for good
and valuable consideration, duly executed and delivered
to the Tournaphone Music Company, a corporation
existing under the laws of the State of Massachusetts,
assignments of numerous letters patent, and interests
in and licenses under letters patent, therein specifically
described, and also of all claims which said Hammond,
Morgan and Nichol, or the estate of Mason J. Mathews,
then had or might have against the defendant, The
Mechanical OrguINETTE Company, or against any other
18

**POOR QUALITY
ORIGINALS**

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party or parties, under or by virtue of contracts relating to the manufacture and sale of mechanical musical instruments; and that on or about the same date an assignment was duly executed and delivered by Andrew H. Hammond, to the Tournaphone Music Company, for good and valuable consideration, wherein and whereby the said Hammond conveyed to said Tournaphone Music Company, the exclusive right, title and interest in and to certain letters patent, therein specifically described, relating to the manufacture of mechanical musical instruments. 19

IV. On information and belief, that after the execution and delivery of said assignments to the Tournaphone Music Company, as aforesaid, and before the same or any of them had been recorded, the defendant Morgan got possession of each and all of them, and has wrongfully refused and still wrongfully refuses to deliver the same to the Tournaphone Music Company.

V. On information and belief, that each and all of said assignments are now under the control of the defendant Morgan, and in the actual possession of himself, or the defendant Nichol, from each of whom delivery thereof has been duly demanded. 20

VI. On information and belief, that none of said assignments were ever recorded in the Patent Office or elsewhere, nor are there any duplicates or copies thereof.

VII. On information and belief, that after the defendant Morgan got possession of said assignments, as aforesaid, he and the defendant Nichol executed and delivered, or joined in executing and delivering, to the defendant Henry Wilson, a paper purporting to be an assignment to him of the same interests in patents which they had previously assigned, or joined in assigning, to the Tournaphone Music Company, as aforesaid.

VIII. On information and belief, that the defendant the Mechanical OrguINETTE Company claims to have a license from the defendant Wilson to manufacture and sell under the patents assigned to said Tournaphone Music Company, as aforesaid, and subsequently fraudulently assigned to said Wilson by the defendants Morgan and Nichol as aforesaid, or some arrangement between it and the defendants Wilson, Morgan and Nichol, whereby said company claims and exercises the right to manufacture and sell under said patents, and to prevent others from manufacturing and selling thereunder.

IX. On information and belief, that the execution of the assignment to the defendant Wilson, and the license by him to the Mechanical OrguINETTE Company, and the arrangement between said company and the defendants Morgan, Nichol and Wilson, as aforesaid, was a fraud upon the Tournaphone Music Company, and was collusively entered into and arranged for the purpose of preventing the Tournaphone Music Company from regaining possession of the assignments made to it, and wrongfully retained from its possession as aforesaid, the defendant Wilson being a mere tool of the defendant Morgan for the said purpose, and the defendant the Mechanical OrguINETTE Company well knowing the claim of the Tournaphone Music Company in the premises, and uniting in said arrangement for the purpose of rendering said claim ineffectual.

POOR QUALITY
ORIGINALS

0069

X. On information and belief, that the defendants Wilson, Morgan, Nichol and the Mechanical Organette Company have, either jointly or severally, entered into other arrangements, or granted other rights and privileges, under said patents, in violation and fraud of the rights granted to Tournaphone Music Company as aforesaid, with parties whose names are unknown to plaintiff and who are therefore designated as John Doe and Richard Roe. 25

XI. On information and belief, that the assignments made to the Tournaphone Music Company, and the possession of which is wrongfully retained by the defendant Morgan as aforesaid, are of great value, and that the retention thereof and the assignments and arrangements made in violation thereof as aforesaid, has worked and is still working great damage to the Tournaphone Music Company. 26

XII. That the claim and rights of the Tournaphone Music Company, growing out of the premises, have been duly assigned to the plaintiff, who is now the owner thereof.

Wherefore plaintiff demands judgment, (1) that the defendants and each of them be restrained and enjoined from acting, doing any business, entering into or executing any arrangements, or exercising any rights whatever under or by virtue of said patents which have been derived or pretended to be derived in any way, directly or indirectly, from said James Morgan and John Nichol, or either of them, whether in their individual or representative capacities, since the 13th day of May, 1882; (2) that the assignments made and arrangements entered into as aforesaid, be declared null and void, and the defendants and each of them, be ordered to execute such papers as may be necessary to clear the title and establish the rights acquired by, from and under the assignments made to the Tournaphone Music Company as aforesaid; (3) that the defendants Morgan and Nichol be ordered to deliver to the plaintiff the assignments made to the Tournaphone Music Company as aforesaid, or do what is the equivalent thereof; (4) that plaintiff have judgment against the defendant for the costs of this action. 27 28

STAFFORD, GRAFF & ROMAN,

Plaintiff's Attorneys,

City and County of New York, ss.: 140 Nassau street.

GEORGE H. SEELEY, being duly sworn, says: I am the plaintiff named in the above entitled action; I have read the foregoing complaint and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

GEO. H. SEELEY.

Sworn to before me, }
December 5th, 1882. }

HOWARD CAMPBELL,

Notary Public, Kings Co.

Certificate filed in N. Y. County.

POOR QUALITY
ORIGINALS

0070

party or parties, under or by virtue of contracts relating
to the sale of mechanical

*The defendants James Morgan and John
Nichol interposed in said suit an answer
of which the following is a copy, to wit:-*

9

SUPERIOR COURT

33

OF THE CITY OF NEW YORK.

GEORGE H. SEELEY,

Plaintiff,

against

JAMES MORGAN, JOHN NICHOL, JAMES
MORGAN, as Executor of, &c., of MASON
J. MATHEWS, deceased, impleaded
with THE MECHANICAL ORGUINETTE
COMPANY, HENRY WILSON, JOHN DOE
and RICHARD ROE,

Defendants.

34

The joint and several answer of James Morgan, John
Nichol and James Morgan, as executor of the last will
and testament of Mason J. Mathews, deceased, the
above-named defendants, to the complaint of the plain-
tiff herein. 35

These defendants, answering, say that they admit
and allege that the defendant, The Mechanical Orgui-
nette Company, was and is a corporation duly created
and existing under the laws of the State of New York,
and a resident of said State; and they also allege that
it was organized and engaged in the business of mak-
ing and selling mechanical musical instruments under
the patents and patent rights referred to in the com-
plaint for some years prior to the existence of The
Tournaphone Music Company, mentioned in the com-
plaint, and during all such years owned or claimed
rights under the said patents, licenses and patent
rights, of all which said Tournaphone Music Company
had knowledge at the time of its alleged creation. 36

And they admit and allege that said Mason J. Mat-
thews departed this life leaving a last will, of which
the defendant James Morgan was at all the times men-

POOR QUALITY
ORIGINALS

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party or parties, under or by virtue of contracts relating
to the sale of mechanical

*The defendants James Morgan and John
Nichol interposed in said suit an answer
of which the following is a copy, to wit:-*

10

tioned in said complaint, and still is, a duly qualified
executor.

And these defendants, further answering, deny that
on or about the 13th day of May, 1882 (or at any other
time,) the defendants, James Morgan and John Nichol,
together with Andrew H. Hammond, executed and de-
livered to the said Tournaphone Music Company, or to
any person for its behalf, a certain (or any) assignment
of numerous letters patent, assignments of letters
patent and licenses, under letters patent therein
specifically described, and, also, of all claims
which said Morgan, Nichol and Hammond, or the estate
of said Matthews then had or might have against The
Mechanical Organette Company of New York, or
against any other party or parties, under or by virtue of
contracts relating to the manufacture and sale of me-
chanical musical instruments.

And these defendants deny that the said alleged or
any similar assignment was ever executed and deliv-
ered by said Morgan, Nichol and Hammond to the said
Tournaphone Music Company, or to any person for its
behalf, or for the said patents, patent rights, assign-
ments or licenses in the complaint referred to, or of
any patents, patent rights, assignments or licenses
whatever, whether with or without the said alleged
claims or any of them. And they deny that the said
alleged or any similar assignment either of said alleged
and referred to patents, patent rights, assignments and
licenses, or any of them, with or without the said al-
leged claims or any of them, was ever executed and de-
livered by said Morgan and Nichol to the said Tourna-
phone Music Company, or to any person for its behalf,
either with or without the said Andrew H. Hammond.
And they deny that any assignment whatever was ever
at any time executed or delivered, or executed and de-
livered by these defendants, or any of them, with the
said Hammond or by themselves, unto the said Tour-
naphone Music Company, or to any person or party in
its behalf, of the said letters patent, assignments of let-
ters patents, licenses or claims mentioned, described or
referred to in said complaint, or of any of said letters

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patent, assignments of letters patents, licenses or claims.

And these defendants allege, and upon the trial here-
of will maintain, that no such assignment has ever been
drawn or executed or delivered, and that if any such as-
signment had ever been prepared and executed, the same
ought not in equity and good conscience to be delivered
to the said The Tournaphone Music Company, or any
person or party claiming under it, and that if any such
assignment, or any paper purporting to be such,
exists (which defendants deny), and the same
should by any chance come into the manual
possession of the said Tournaphone Music
Company, or any of its servants or agents, or of this
plaintiff that the same has never been delivered by
these defendants or any of them with intent to take
effect, and is without consideration, and ought to be
cancelled and delivered up, so far as these defendants
or any of them are concerned.

And these defendants further answering say, that
they have no knowledge nor any information sufficient
to form a belief as to whether the said Andrew H.
Hammond on or about said 13th day of May, or at any
other time executed and delivered to the said The
Tournaphone Music Company an assignment of all his
right, title and interest, or of any right, title and inter-
est, whatever, in to or under certain Letters Patent
therein specifically described, relating to the manufac-
ture of mechanical musical instruments, and they there-
fore leave the plaintiff to make such proof thereof as he
may be advised; but these defendants' allege and upon
the trial will maintain that said Hammond has and had
no right, title or interest, legal or equitable, which he
ever could or did convey or assign to the said Tourna-
phone Music Company in or under any Letters Patent,
or patent rights, which related to such instruments and
which these defendants or the estate of Mason J.
Mathews, deceased, or any or either of them have or
ever had the legal title to or equitable ownership of,
or of any part thereof, or in which they were ever in-
terested, which are the letters patent and patent rights
referred to in the complaint, and if the said Hammond

PAGE
POOR QUALITY
ORIGINALS

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party or parties, under or by virtue of contracts relating
scale of mechanics

*The defendants James Morgan and John
Nichol interposed in said suit an answer
of which the following is a copy, to wit:-*

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45 has indeed made and delivered any such assignment to
The Tournaphone Music Company purporting to con-
vey or transfer any such last described patents or
patent rights or any interest therein, then that such as-
46 signment was and is without foundation of or in any
right, title, property or ownership upon the part of him,
said Hammond, in such patents and patent rights and
passed nothing to said Tournaphone Music Company,
and, is and was a mere device to give color to the pre-
tended claims of said Tournaphone Music Company,
and its assignee, the plaintiff herein.
47 And these defendants, further answering, deny the
said defendant Morgan, on his corporal oath, and said
Nichol, upon information and belief, that the defendant
James Morgan did on or about said 13th day of May,
1882, or at any other time get possession of all or of
any of said alleged assignments after the same or any
of them were delivered to the said Tournaphone Music
Company, and they in like manner deny that said de-
fendant James Morgan ever had possession of the said
or any such assignments which had ever been delivered
48 to the said Tournaphone Music Company, and they in
like manner deny that said defendant James Morgan
ever had, or has, or got possession of the alleged as-
signments in the complaint described, whether the same
had ever been delivered or not, and they in like manner
deny that he has wrongfully refused to return the same
to the said Tournaphone Music Company, and they
utterly, upon their corporal oaths, deny that the said
Tournaphone Music Company, or its alleged assignee,
the plaintiff herein, is in any manner entitled to the
possession of said alleged, or any such assignments, or
49 of any of them (if any such there be, or ever were);
and they admit that said Morgan has refused and still
refuses to deliver the said alleged, or any such assign-
ments; and they deny that such refusal was wrongful;
and they admit, that delivery of such alleged assignments
has been demanded, both of said Morgan and said Nichol,
on behalf of the said Tournaphone Company, but not
on behalf of this plaintiff; and these defendants, further
answering, deny that said pretended assignments in the

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complaint alleged, or any or either of them are now or
ever have been under the control of, or in the posses- 49
sion of, these defendants, or either of them.

And these defendants, further answering, admit, and
on information and belief allege, that no such assign-
ments as these alleged in the complaint herein, nor
any such assignments, were ever recorded in the Patent
Office, or elsewhere; and they admit and aver, that
there are no duplicates, copies or drafts, of any such
assignments in existence, and they say, and upon the trial
hereof will maintain, that the true reason why there is 50
no such record, nor any such copies, duplicates or
drafts, is that there never were any such originals as
alleged to be recorded or duplicated, or drafted, or
copied.

And these defendants, further answering, say that
they have heretofore conveyed certain patents, patent
rights and licenses, which they believe are those re-
ferred to in the complaint herein, unto the defendant
Wilson, as hereinafter set forth in this answer, but they
wholly deny that said Wilson was or is, or in purchas-
ing such patents and patent rights, acted as the mere
tool of said defendant Morgan, or so acted and did, by
virtue of any arrangement with the defendant, the Me- 51
chanical OrguINETTE Company.

And these defendants, further answering, say that
the Mechanical OrguINETTE Company has a license from
the defendant Wilson, under the letters patent and
patent rights mentioned and referred to in the complaint
herein, but they deny that the same was obtained or
negotiated for, in, with or by any fraud, conspiracy, or
deceit towards or against the said Tournaphone Music
Company, or the plaintiff herein, and allege that the 52
same was granted and obtained prior to the commence-
ment of this suit and without any knowledge or notice
either by said Wilson or said OrguINETTE Company of
the said alleged rights and claims of the said Tourna-
phone Music Company, or its alleged assignee, the
plaintiff in the premises, and was so granted and ob-
tained for a full and valuable consideration.

And these defendants, upon information and belief,

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party or parties, under or by virtue of contracts relating
to the sale of mechanical

*The defendants James Morgan and John
Nichol interposed in said suit an answer
of which the following is a copy, to wit:-*

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53 deny that the defendant, the Mechanical Organette
Company, had any knowledge of the said alleged rights
of the said Tournaphone Music Company, in the com-
plaint alleged, unless and at the time of the service of
and by the service of original process on the 2d day of
November, 1882, in a suit in this Court, wherein the
said Tournaphone Music Company was plaintiff, and
all the now defendants, except Henry Wilson, John
Doe and Richard Roe, were defendants, which suit was
for the same cause of action as herein alleged, and they
aver, and upon the trial will maintain, that for some
54 time prior to said 2d day of November, 1882, and up to
that time the said defendant, the Mechanical Organette
Company, in any and all its matters, things, transac-
tions and dealings in relation to the patents and patent
rights referred to in the complaint, acted and dealt
upon the faith of express admissions, statements and
declarations made by officers of the said the Tournaphone
Music Company, and amongst others, by Andrew
H. Hammond, to the effect that no such conveyance or
assignment, as in the complaint is alleged, had ever
55 been made to said Tournaphone Music Company, and
that said Tournaphone Music Company had and owned
nothing in the premises.

And these defendants, further answering, say that
heretofore and on or about the 25th day of October,
1882, they sold and assigned for a large and valuable
and money consideration, unto the defendant, Henry
Wilson, all their right, title and interest in and to all
the letters patent of the United States, and licenses
under or interests in such letters patent, being the
same referred to in the complaint herein, and conveyed
56 the same to him by an assignment duly executed and
acknowledged and delivered on that day, and duly re-
corded in the U. S. Patent Office, according to law, on
the 27th day of October, 1882, in Liber M. 28, page
485 of Transfers of Patents, and subsequently and on
the 30th day of October, 1882, and before this suit or
any suit by said Tournaphone Music Company was
brought, and without any notice or reason to believe
that such a suit could or would be brought, the said

15
Wilson executed and delivered to said defendant, the
Mechanical Organette Company, an exclusive license 57
for the whole United States to sell in and for the
United States mechanical musical instruments made
under or embodying the improvements described in
said letters patent, referred to in the complaint herein,
and to manufacture the same for its business, which
things were all done in good faith and for very great
and valuable considerations and without any deceit,
fraud or conspiracy against the said pretended or any
rights of the said Tournaphone Music Company, or of 58
the plaintiff herein, and without notice of any such
rights or claims and with the full assurance and belief
that no such right existed.

And these defendants, further answering, deny that they
now have or ever had in their possession either jointly or
severally, any assignment whatever of letters patent,
or of any rights or interests thereunder belonging to
the said Tournaphone Music Company, or the plaintiff
its alleged assignee, and they deny that they or either
of them wrongfully or otherwise detain any such as-
signment or assignments from the said Tournaphone
Music Company or from any other person. 59

And these defendants further answering, upon infor-
mation and belief, deny that the claim and right of the
said the Tournaphone Music Company, in the premises
(if any claim or right it ever had), has been duly or
otherwise assigned to the plaintiff herein, and they
deny each and every allegation in said complaint con-
tained, and not hereinbefore specifically admitted or
denied.

II. And for a further and separate defense, these
defendants allege that the plaintiff herein is not the 60
real party in interest, but that the Tournaphone Music
Company, in the complaint mentioned, is the real party
in interest.

Wherefore the defendants demand judgment that the
complaint of the plaintiff herein be dismissed with
costs.

Dated December 11, 1882.

EDWIN S. BABCOCK, Defts Atty,
Office and P. O. address, 7 Warren st, N. Y. City.

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ORIGINALS

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party or parties, under or by virtue of contracts relating
to the sale of mechanical

*The defendants James Morgan and John
Nichol interposed in said suit an answer
of which the following is a copy, to wit:-*

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61 *City and County of New York, ss.:*

JAMES MORGAN, being duly sworn, says that he is one of the defendants in the above-entitled action, as well in his own behalf as also as executor of &c., of Mason J. Mathews, deceased; that he has read the foregoing answer and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

JAMES MORGAN.

62 Subscribed and sworn to before
me, this 12th day of Decem-
ber, 1882.

WILLIAM B. WARREN,
Commr of Deeds,
N. Y. City.

City and County of New York, ss.:

63 JOHN NICHOL, being duly sworn, says he is one of the defendants in the above-entitled action; that he has read the foregoing answer and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

JOHN NICHOL.

Subscribed and sworn to before
me, December 12, 1882.

64 WILLIAM B. WARREN,
Commr of Deeds,
N. Y. City.

The original of the foregoing answer is now on file in the office of the clerk of the Superior Court of the City of New York forming a part of a judgment Roll filed in said office on the 17th. day of August, 1883, in the action in which said answer is entitled

Two of the original assignments described in the complaint and the drawing, execution, and delivery of which is repeatedly denied in the foregoing answer of James Morgan and John Nichol are now in my possession, the same having been delivered to me by the Gournaphone Music Company and the signatures of James Morgan, John Nichol, and A. H. Hammond appear thereon

On the trial of the action in which the foregoing complaint and answer are entitled before Hon. William H. Arnoux, the referee appointed to hear and determine said cause, said Morgan and Nichol when under examination as witness on said trial and while under oath duly administered by said referee,

POOR QUALITY
ORIGINALS

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both admitted that their names upon said original assignments were put there by themselves and that they signed said documents

It was further testified upon the trial of said cause by G. Y. Blackmer, G. L. Gaulkner, E. P. Carpenter, and Andrew H. Hammond while they were each and all under oath duly administered by said referee in said cause, that James Morgan personally made formal delivery of said assignments to the Gournaphone Music Company on the 13th day of May, 1882. On said trial and while under oath as aforesaid on the 19th day of January, 1883, James Morgan testified that he never delivered said assignments or either of them to the Gournaphone Music Company.

Sworn to before me
February 13th, 1884

Frank Z. Demarest

Chm. of Trade

N. H. G. J. P.

Marshall P. Gafford

Sworn to before me this
23 day of February 1884

[Signature]
Notary Public

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ORIGINALS

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Sec. 198-200.

District Police Court.

CITY AND COUNTY OF NEW YORK, } ss

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

Question. What is your name?

Answer

James Morgan

Question. How old are you?

Answer

56 years

Question. Where were you born?

Answer

Scotland

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

Answer

223 9 street Brooklyn, S.D. (resided there 9 years)

Question. What is your business or profession?

Answer

Importer of Granite

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

Answer

I am not guilty

James Morgan

Taken before me this

day of

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Police Judge

0070

Superior Court of the City New York

The Gramophone
Music Company
plaintiff
against

James Morgan, John
Nichol, James Morgan
as executor of the last
will and Testament
of Mason J. Matthews
deceased, and the
Mechanical Organette
Company
defendants

Defendants Et. al
March 12/84

The plaintiff complains
and alleges

I. That at all the times herein
after mentioned the plaintiff
was and still is a corporation
existing under the laws
of the State of Massachusetts
and the defendant the
Mechanical Organette
Company was and still is
a Corporation existing under
the laws of the State of New York

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II. On information and belief that Mason J. Matthews departed this life on or about the day of August 1880 leaving a last will & testament of which the defendant James Morgan at all times hereinafter mentioned was and still is a duly appointed and qualified executor.

III That on or about the 13th day of May 1882. James Morgan, John Nichol and Andrew H. Hammond executed and delivered to the plaintiff a certain assignment of numerous letters patent, assignments of letters patent and licenses under letters patent therein specifically described and also of all claims which said Morgan, Nichol and Hammond or the Estate of Mason J. Matthews then had or might have against the

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Mechanical Orgumette
Company of New York or a-
gainst any other party or
parties under or by virtue
of contracts relating to the
manufacture and sale of
mechanical musical in-
struments

And on or about the
same date Andrew H. Hammond
duly executed and delivered
to the plaintiff an assign-
ment of all his right title
and interest in to or under
certain letters patent there-
in specifically described
relating to the manufacture
of mechanical musical
instruments

And on or about the
same date James Morgan
John Nichol and Andrew
H. Hammond, duly executed
and delivered to the plaintiff
a certain assignment of patent
for the Empire of Germany
the Republic of France
the Kingdom of Great Britain

L and Ireland and the Channel Islands

IV That on or about the said 13th day of May 1882 the defendant James Morgan of got possession of all the above mentioned assignments and has wrongfully refused to return the same to the plaintiff, who is entitled to the possession thereof and said Morgan still wrongfully refuses to deliver the same to the plaintiff although delivery thereof by said Morgan has been duly demanded; and the plaintiff alleges on information and belief that said papers are now under the control of said Morgan and in the actual possession of himself or the defendant John Nichol, from ^{whom} delivery thereof to plaintiff has been duly demanded & refused

V That said assignments

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ORIGINALS

0002

were never recorded in the Patent office at Washington or elsewhere nor are there any duplicates, copies or drafts thereof in existence

VII. On information and belief that the defendants Morgan and Nichol have entered into negotiations with the defendant the Mechanical Arguette Company looking to a conveyance to said Company by the said Morgan and Nichol of rights and privileges in fraud of plaintiff's rights under said assignments and that such negotiations have been so far consummated that said defendant, The Mechanical Arguette Co claims rights and privileges acquired from said Morgan and Nichol in fraud of plaintiff's rights under said assignments, said the Mechanical Arguette Co well knowing plaintiff's rights

before said negotiations were entered into.

VIII. That said asseignments are of great value to plaintiff and the wrongful detention thereof by the defendants has worked and is working and will continue to work great damage to plaintiff.

Wherefore plaintiff asks judgment that the defendants The Mechanical Orguette Company be restrained & enjoined from acting or doing business under or by virtue of any rights or privileges pretended to be derived from the defendants Morgan and Nichol in any way in violation of plaintiff's rights under said asseignments. That the defendants Morgan and Nichol be restrained from negotiating, disposing or granting any rights in violation of plaintiff's

rights under said assignment
 That all rights, grants and
 privileges heretofore granted
 by said Morgan and Nichol
 to the Mechanical Ornette
 Company be declared void?
 That the defendants Morgan
 and Nichol be ordered to deliver
 said assignment to plaintiff
 or to do what is the equivalent
 thereof and that plaintiff
 have judgment against
 the defendants for such
 damages for the wrongful
 detention thereof as a reference
 for the purpose may es-
 tablished that the plaintiff
 has suffered and for costs
 of this action

Stafford, Croft & Remond
 Plaintiffs Atty.
 140 Nassau St.

City & County of New York ss: New York
 Andrew H. Hammond
 being duly sworn says, I
 am superintendent and
 general manager of the
 plaintiff. I have heard read

the foregoing Complaint and know the contents thereof & am familiar with the matters therein alleged to and the same is true of my own knowledge, except as to the matters therein stated to be alleged upon information & belief and as to those matters I believe it to be true

Sworn to before me
this 2nd day of November } A. H. Harrison
1892

Howard Campbell
Notary Public Kings Co
Certificate filed in NY Co

Superior Court
of the City of New York

The Town of
Muncie Company
Plaintiff

Against
James Morgan
John Michael
et al

Defendants
Copy of
Inverness Complaint

Stafford, Grafton & Sons
- Plaintiff's Atty
140 Nassau

Superior Court of
the City of New York

George H. Seeley
Plaintiff
against

James Morgan
Defendant

copy
Injunction
and Affidavit

Stafford, Graft & Roman
Plaintiffs Attys
140 Nassau

0005

0007

Superior Court of the City of New York

George H. Seeley
plaintiff

against

James Morgan, John
Nichol, Henry Wilson
James Morgan as Executor
of the Last Will of Mason
J. Matthews, deceased,
The Mechanical Organette
Company, John Doe & Richard
Roe.

Defendants

On the complaint herein
and on the annexed affidavit
of Andrew H. Hammond, the
defendants are and each of
them is hereby, and until the
further order of the Court in
the premises, enjoined and
restrained from acting, doing
any business, entering into
or carrying out any arrange-
ment or exercising any right
or rights, claim or claim
whatsoever under or by virtue

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of any assignment, transfer, license or authority derived or pretended to be derived, directly or indirectly from the defendants James Morgan and John Nichol, or either of them, whether in an individual or representative capacity, and whether alone or jointly with others, since the 13th day of May 1882, relating to or assuming to convey any interest in or right under the patents in said complaint and affidavits mentioned.

And the defendants James Morgan, and John Nichol are and each of them is hereby, and until the further order of the Court in the premises enjoined and restrained from negotiating, selling, transferring or granting any right, privilege or interest in, to or under certain letters patent, rights under and interests in the patents conveyed to the Townaphone

Music Company by said
defendants and Andrew H. Ham-
mond on or about May 13th 1882

The ground of this injunc-
tion is that any and all
such business, exercise of
rights, transfer, sale or grant
would be in violation of the
rights of the plaintiff, in, to
and under said patents, as
~~afforded~~ appears by said
complaint and affidavits

And it is further Ordered
that the defendants show
cause at a Special Term at
Chambers of this Court to be
held at the County Court
House in the City of New York
on the 15th day of December
1882 at 10 o'clock A.M. why
the foregoing injunction should
not be continued pending this
suit.

Dated New York
December 5th 82

} Wm H. Aronson

Justice of the Superior
Court of the City of
New York

Reps. 2
March 12/84

City and County of New York ss:
Andrew H. Ham-
mond being duly sworn, says
I am Superintendent and
General Manager of the
Toumaphone Music Company
a corporation existing under
the laws of the State of Mass-
achusetts.

On or about the 13th day
of May 1882, the above named
defendants James Morgan
and John Nichol and myself
for good and valuable con-
sideration, duly executed
and delivered to the Tou-
maphone Music Company
assignments of numerous
letters patent and interests
in and licenses under letters
patent, therein specifically
described and also of all
claims which we or the Estate
of Mason J. Matthews then
had or might have against
the defendant the Mechanical
Orguette Company, or against

any other party or parties, under or by virtue of contracts relating to the manufacture and sale of mechanical musical instruments; and on or about the same date an assignment was duly executed and delivered by me to the Tournaphone Music Company for good and valuable consideration, where in and whereby I conveyed to said Tournaphone Music Company, the exclusive right like and interest in and to certain letters patent therein specifically described, relating to the manufacture of mechanical musical instruments.

After the execution and delivery of said assignments to the Tournaphone Music Company, as aforesaid and before the same or any of them had been recorded the defendant Morgan got possession of each and all of them and has wrongfully

POOR QUALITY
ORIGINALS

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refused and still wrongfully
refuses to deliver to the Tourna-
phone Music Company

None of said assign-
ments were ever recorded in
the Patent Office or elsewhere
nor are there any duplicates
or copies thereof.

The assignments
made to the Tourna-
phone Music Company, and the
possession of which is wrong-
fully retained by the de-
fendant Morgan as afore-
said, are of great value and
the retention thereof as afore-
said, has worked and is still
working great damage to the
Tourna-
phone Music Company

Subscribed and sworn to before me } A. H. Hammond
this 5th day of }
December, 1892

Howard Campbell
Notary Public, Ky. Co.
Certificate filed in N. Y. Co.

POOR QUALITY
ORIGINALS

0893

Superior Court of
the City of New York

George H. Sealey
Plaintiff
against

James Morgan
Defendant

copy
Injunction
and Affidavit

Stafford Grafts Roman
Plaintiff's Atty's
140 Nassau

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ORIGINALS

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Copy

Def. Ex. 3.

March 12/84

0095

23/5/82
 Defendants Ex. Third
 March. 12/84

A. H. Hammond & Co
 Manufacturers of Organ Reeds

James Morgan
 Ex. H. M.

Worcester Mass.

May. 22nd '82

James Morgan Esq.

Dr Sir.

I was in Boston
 This morning and saw Mr
 Quon he said they were waiting
 your order to stop sending
 Music to Mech. Org. Co.
 and would comply when it
 came. I suppose your
 position as President of
 Townaphone Co. entitles you
 to give such order and the
 more so as no official notice
 of conveyance of your rights
 to the new Company has been
 made. I do not at this writ-
 ing remember whether the
 votes passed at our last
 directors meeting would
 give me authority to take
 any action in this matter or
 not and I would not like
 to act without a clearer

perception of our rights and
their grounds. If you are
able to make a statement
to Auto. Paper Co, that all
contracts & rights were passed
over to the new Company
and give such notice as
is proper regarding the
sale of paper and would
enclose it or a copy to me
that I may see your views.
I think it would be a wise
thing.

If you are not able to come
here soon I will try to come and
see you, I would not have
you be imprudent but if you
could come here for a few
days I should be glad

Yours

A. H. Hammond

Copy of Exhibit
one (1) being sub-
stituted in place of
the original by
consent of counsel for
the prosecution and
defense in consequence
of the original being
an exhibit in an action
in the Superior Court
in the City of New York;
this copy has been
compared with the orig-
inal by the stenographer
who hereby certifies this
to be a true copy of the
original

Jas. D. Taylor

Stenographer

1st Dist. Police Court

101 Centre St. N.Y.C.

April 4th 1884

0097

Whereas Letters Patent of the United States numbered 72,129 on the 10th day of December 1876 were granted and issued in due form of law to George W. Van Dusen of the City of Brooklyn in the State of New York, which patent was by said United States reissued on the fifth day of August 1879 to Elias P. Needham which reissue is numbered 8835 the said patent being for improvements in Mechanical Musical Instruments and

Whereas, said United States in due form of law duly issued to the following parties Letters Patent, all for improvements in Mechanical Musical Instruments which Letters Patent are dated and numbered as hereinafter specified.

Letters Patent to Elias P. Needham dated May 29, 1877 and numbered 187860 Letters Patent to Elias P. Needham of the City and State of New York dated November 13, 1877 and numbered 197048 Letters Patent to Mason J. Matthews of Boston Massachusetts dated January 28, 1879 and numbered 211,634 and reissued September 6, 1881 to James Morgan and James Matthews, Executors of the last will and testament of Mason J. Matthews and

to James Morgan and John Nichol numbered 9861 Letters Patent to Mason J. Matthews dated January 28. 1879 numbered 211635 and reissued to James Morgan and John Matthews as Executors and James Morgan and John Nichol September 13. 1881 and numbered 9876. Letters Patent to said Mason J. Matthews dated January 28. 1879 and numbered 211636. Letters Patent to Oliver H. Arno of Wilmington in the State of Massachusetts dated March 11. 1879 numbered 213160. Letters Patent to Orwell H. Needham of the City and State of New York dated March 18. 1879 and numbered 213442. Letters Patent to said Elias P. Needham dated March 18. 1879 and numbered 213443. Letters Patent to said Oliver H. Arno dated March 25. 1879 and numbered 213604. Letters Patent to Orwell H. Needham and Charles W. Needham dated May 13. 1879 and numbered 215284. Letters Patent to said Elias P. Needham dated May 27. 1879 and numbered 215831. Letters Patent to Mason J. Matthews dated June 17. 1879 and numbered 216662. Letters Patent to George S. Kelley of Boston, Massachusetts and said Mason J. Matthews dated July 22. 1879 and numbered 217798 which was reissued

January 11. 1881 numbered 219.321.
 Letters Patent to said Elias P. Needham
 dated September 2. 1879 numbered
 219.297.

Letters Patent to James E. Great of Boston
 dated October 21. 1879 and numbered
 220.739.

Letters Patent to said Elias P. Needham
 dated November 11. 1879 numbered 221.343.

Letters Patent to said Charles P. Needham
 dated November 18. 1879 and numbered
 221.645.

Letters Patent to said Charles A. Needham
 dated November 18. 1879 and numbered 221.646.

Letters Patent to said Oliver H. Arno dated
 December 30. 1879 and numbered 223.091.

Letters Patent to said Charles A. Needham
 dated April 6. 1880 and numbered 226.341.

Letters Patent to said Elias P. Needham and
 Charles A. Needham dated February 17. 1880 num-
 bered 221.716.

Letters Patent to Robert A. Harris of the City and
 State of New York dated August 5. 1879 num-
 bered 218.308.

Letters Patent to said Oliver H. Arno dated
 September 14. 1880 and numbered 232.165.

Letters Patent to John P. Richardson of Boston
 dated February 22. 1881 and numbered 238.106.

Letters Patent to said Elias P. Needham dated
 February 22. 1881 and numbered 238.146.

0901

Letters Patent to said Elias P. Newham
and Hypo Fowler dated February 22. 1881
and numbered 238.145.

Letters Patent to said Mason J. Matthews
and George B. Kelly dated February 22. 1881
and numbered 231.139.

Letters Patent to said Mason J. Matthews
dated February 22. 1881 and numbered 238.443.

Letters Patent to said George B. Kelly dated
May 31. 1881 and numbered 242.419.

Letters Patent to the said Elias P. Newham
and Charles A. Newham dated July 26. 1881
and numbered 244.922.

Letters Patent to said Orwell H. Newham
dated December 13. 1881 and numbered
250.833.

Letters Patent to said Orwell H. Newham
dated December 13. 1881 and numbered
250.834.

Letters Patent of the United States to
Joseph S. White dated April 27. 1880 and
numbered 227.083.

Letters Patent to Joseph S. White of B. and
U.boro. Vermont dated May 11. 1880 num-
bered 227.461.

And whereas Letters Patent of the United States were in due form of Law issued to Percy D. Korte of Brooklyn, New York for an improvement in music sheets for automatic music instrument dated February 27 1887 and numbered 375,800.

And whereas the undersigned James Morgan of Brooklyn in the State of New York John Nichol of the City and State of New York and Andrew R. Hammond of Worcester in the State of Massachusetts have become the owners of said patents and any renewals and extensions thereof by assignments made in due form of Law.

And Whereas the Gramophone Music Company a corporation established by the laws of the State of Massachusetts and having a place of business in Worcester in said State are desirous of becoming the owners of said patents and any other patents and improvements or inventions relating to the manufacture of Mechanical Musical instruments and perforated music sheets used herewith.

And therefore in consideration of One Dollar and other good and valuable consideration to us said Percy D. Korte Andrew R. Hammond and John Nichol the receipt of which

is hereby acknowledged, we do hereby
 sell assign and transfer and set over
 to said Gramophone Music Company, its
 successors and assigns each and all of
 said Letters Patents enumerated aforesaid
 and all renewals and extensions thereof
 and any and all other Letters Patents
 relating to Mechanical Musical Instruments
 or perforated music paper owned by us
 jointly, by any two of us or by either of
 us individually, also all inventions or
 improvements owned by all, any two or
 either of us relating to the same subject,
 whether the application has been made for
 a patent thereon or not.

And while said Company continues to do
 business we hereby agree to assign to said
 Company, all Letters Patent we may obtain
 jointly, any two of us, or all of us relating
 to the same subject whether said Letters
 Patent are for the United States of America
 or for any foreign country or province or
 also all renewals and extensions of any
 Patent which we hereby assign to said
 Company as aforesaid.

To have and to hold to the said Gram-
 aphone Music Company, its successors and
 assigns to the full end of the term for
 which said Letters Patents are ^{or may}
 be granted as fully and entirely

as (the same would) or might be held had this or any future assignment herein specified not been made. And we do further agree with said Company its successors and assigns that we will each and all of us sign and affix all papers which may be necessary to enable said Company its successors and assigns to obtain extensions or renewals of said patents and also papers and documents necessary to obtain patents upon improvements or inventions now or hereafter made with reference to the subject matter aforesaid.

Witness our hands and seals this fourteenth day of May A.D. 1882.

Witnesses

F. T. Blackmer

James Morgan

(LS)

Edwin P. Carpenter

John Nichol

(LS)

A. W. Hammond

(LS)

Simon O. King, of West
Milbury Mass. being duly
sworn testified as follows on

Direct Exam by W. Stafford

I am 40 years old, a clerk. In
May 1882 I was employed as a
Clerk in the law office of Mr.
M. H. Cowden in Massachusetts.
I was employed also by Mr.
Blackman at the same time
& place. The paper marked
Exhibit 1, Ind. is in my handwriting.
I see the signature James
Morgan written by James Morgan
the defendant here. I identify
him now as the man who
signed it. I saw Mr. Morgan
take the paper in his hand by
instruction of Mr. Blackman who
was the attorney in charge of the
matter & Mr. Morgan said to Mr.
Faulkner "I hereby formally deliver
to you as Treasurer of the Deaf
Journal Music Company this assignment
of various letters patent." & Mr. Faulkner

took it from him & remarked at the time that ~~was~~ there was a good deal of red tape about ^{it} Mr. Blackburn in reply said "there is a right way and a wrong way, I propose to have this done right." This took place on Friday May 12th 1882. Edw

- 2 Was the signature which you say you saw affixed so done on the same day that the paper was delivered in the manner you have testified to?
- A. I am not quite certain - I was present two days, on Friday & on Saturday and I should say the papers were signed between 5 & 6 o'clock on Friday afternoon - I saw the papers delivered in the manner described - it might have been Friday I think it was Friday - it might have been Saturday.

Edw Lawn by Mr. Belts

When Mr. Morgan spoke about red tape I think it was immediately after the delivery. There was some con-

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versation after the delivery that same day but I don't remember any act done. I saw Mr. Nichol sign that paper (Exhibit 1) and also saw Mr. Morgan sign it - Mr. Morgan signed it first. I also seen Mr. Hammond sign it - he signed it after Mr. Morgan. & I saw Mr. Blackmore sign as witness immediately after that. Then the paper was folded but whether the ~~del~~ delivery was made then or the next day I don't know. I think it was delivered at that time. That is my best recollection on the subject - that is what I think. The office of Lordin & Blackmore is not in the same building. I worked for both of them, my headquarters were at Mr. Lordin's & I went to Mr. Blackmore when ever he sent for me. I was there at Mr. Blackmore nearly all day Thursday, Friday & Saturday. I was paid by him whatever he saw fit to pay me. At price by day or folio. I was employed by him before that more or less two months before that Thursday

at home & two weeks before that
at his office. After that Saturday
I was employed at his office
the following Wednesday. I recollect
it was Wednesday from the circum-
stance of the train leaving. I then
~~last~~ resident at West Hillbury
usually left at ten minutes before
five. I staid on Friday, when Ex.
1. was made because I couldn't
catch the last train which left
at 6 1/2 o'clock. - I staid all night.
On Thursday I think I went home
on the 6 1/2 o'clock train & also took
the 6 1/2 o'clock train on Saturday
night. This Exhibit 1 is all in
my handwriting. I think I wrote
it from dictation of Mr. Blackmer
he had a schedule of these letters
patent. The reason I left eight
lines of space was because Mr.
Blackmer told me there might be
one or two more letters patent that
had to go in. He didn't intimate that
anything else had to go in. I finished
copying it at Mr. Blackmer's office
on Thursday. It was in Mr. Blackmer's
possession. I saw it the next morning

about 9 o'clock. I remember seeing that paper on Friday lying ~~on~~ Mr. Blackmer's desk. It was lying there until they came in. I mean Mr. Morgan, Mr. Nichol, Mr. Faulkner & Mr. Carpenter. Mr. Blackmer was there at the time & his brother was coming in & into the room. I seen Mr. Morgan sign paper ~~at~~ between 5 & 6 o'clock on Friday, it was lying on one of the tables in Mr. Blackmer's office. I think Mr. Morgan was there two hours before he signed it & I was there with him all that time. No one asked Mr. Morgan to sign it, but Mr. Blackmer laid it down & said it was ready for their signatures. That is all I heard Mr. Blackmer say to them. Mr. Blackmer read the paper out loud to all the parties before it was signed - he read it maybe a half hour before it was signed but I don't think it was an hour. I didn't hear Mr. Hammond say anything about signing it. That date - the four in fourteenth is in my handwriting & I remember writing that in there. I wrote

it there on that day, after he read
 it he noticed it was dated, I think
 the 13th and I scratched out the
 "thir" in thirteenth & wrote "four" in
 in place of it. It was already dated
 ahead. He said ~~he~~ dated it wrong
 & then I changed it from thir-
 teenth to fourteenth. It was a blunder
 on my part that it was dated as
 it is. It was visible to every body
 as it stands now when it was
 signed by the parties & the witnesses
 and it has remained so since. I
 wrote the instrument with a fine
 Gillots pen ^{No. 404} & made the correction with
 a Falcon pen. I didn't have
 the Gillot pen in the room when I
 made the correction. It was in the
 other room. There were two rooms
 & the one in which it was signed
 was about 18 feet square. Mr. Chick
 sat at ~~the~~ ^{one} end of the table & Mr.
 Hankner sat at the other & Mr.
 Morgan sat opposite Mr. Blackmer
 & Mr. Carpenter stood up near Mr.
 Blackmer. Mr. Hammond sat on
 the sofa. I sat at a desk, side-wise
 to the table & near it & was doing

conversation after the delivery that same
 day but I don't remember any act
 done. I saw Mr. Nichol sign
 that paper (Exhibit 1) and also
 saw Mr. Morgan sign it - Mr.
 Morgan signed it first. I also
 see Mr. Hammond sign it - he
 signed it after Mr. Morgan. & I
 saw Mr. Blackmore sign as
 witness immediately after that. Then
 the paper was folded but whether
 the ~~del~~ delivery was made then
 or the next day I don't know. I think
 it was delivered at that time.
 That is my best recollection on
 the subject - that is what I
 think. The office of Lordin & Blackmore
 is not in the same building. I
 worked for both of them, my head-
 quarters were ^{at} Mr. Lordin's & I
 went to Mr. Blackmore when
 ever he sent for me. I was there
 at Mr. Blackmore nearly all day
 Thursday, Friday & Saturday. I was
 paid by him whatever he saw fit to
 pay me. At price by day or folio.
 I was employed by him before that more
 or less two months before that Thursday

Nothing when it was signed. I was
asking the two hours they waited there.
The table I think was about $5\frac{1}{2}$ feet
by $2\frac{1}{2}$ feet. Mr. Blackmore & Mr.
Morgan sat opposite each other
the width of the table & Mr. Morgan
was about two or three feet from
Mr. Faulkner & when he handed
the papers to Mr. Faulkner he
stood up in imitation of what Mr.
Blackmore had done when he told
Mr. Morgan with what formality
he desired the papers to be delivered.
I didn't hear Mr. Morgan say
that this was Child's pay on any-
thing of that kind. I think I pre-
pared five or six papers in con-
nection with this case - maybe six
or seven - three certainly were pre-
pared. They were all I think ex-
ecuted that same afternoon - ~~at~~ I am
certain there was one other than
this one executed that afternoon -
I think there was more than two
executed, but they didn't all relate
to the TournaPhone Company. I think
not. One I know didn't. I think
"Exhibit 1" was executed first.

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I don't know which was executed
first. There was an agreement
signed that same day between Mr.
Morgan & Mr. Hammond. Mr. Arthur
I think was not a party to that agreement.
I think "Exhibit 1" was executed first.
I think I saw on that same day a
paper executed by Mr. Hammond con-
veying some patents to the Phonograph
Company. I didn't hear it read. I am
quite certain I heard the assignment
of the Matthews' interest read. I
prepared the Hammond assignment
but I don't remember hearing it read.
That afternoon I think the Matthews'
assignment was read first. I saw
papers signed for the organization
of the Phonograph Company - I ain't
certain whether they were signed
that same day - but I think they
were. Mr. Morgan had more than
"Exhibit 1" in his hand when he
handed it to Mr. Faulkner - there
may have been six in his hand.
I think "Exhibit 1" was the paper
that was exposed. My interest cen-
tered on "Exhibit 1" because it kept
me from going home either Wednesday

or Thursday night. I didn't go home Thursday night. I had to write it over three times before it was done to suit Mr. Blackmer.

2. Then when you said that you went home Thursday night at 6 1/2 o'clock you were mistaken?
- A. I don't think I said that - I know it was either Wednesday or Thursday.

I can't say I was employed on either Wednesday at Blackmer's office. The first time I wrote it some omissions were made which necessitated the writing of it over. I can't say when I wrote it first - I was engaged at it several days - I may have been in Blackmer's office two or three hours that day - I won't say it wasn't Monday, or Tuesday or Wednesday. The first draft was destroyed. The corrections in the first draft were in Mr. Blackmer's writing. I made the second draft part from dictation of Mr. Blackmer. Mr. Blackmer was a poor writer. I left similar

0915

spaces in the other draft. I don't remember him saying to leave a space in the third. I don't think there was a date in the first draft. I think I dated the second one on the 13th. It was 4 or 5 hours or may be the next day that I wrote the third draft. Nothing but writing it three times made the impression on me. I didn't compare it but I think he read all the papers to me verbatim. Mr. Carpenter didn't ~~sit~~ stand up the two hours - he hardly sat down - I remarked that. I didn't leave the room from the time I had my dinner - I may have gone to the water closet ~~water~~. I left from the time of the delivery to all left. I am positive I didn't leave the room. I ain't sure whether I went to the water closet or not. I don't remember that Mr. Nichol made any remark at the time. I didn't see Mr. Nichol make any delivery or take any part. ^{Nichol} ~~Mr. Nichol~~ at the time sat directly opposite Paul Kne ^{from him}. I am positive of that and am as positive of that as anything else I have testified - as positive as

about 6 feet ^{from him}

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I am alive: I know the man they
said was W. Nichol - he has
very white hair. I have ^{been} in Worcester
ever since ^{in Louisa's office} I ain't in any way
associated with W. Hammond.
I don't know his lawyers & have
not spoken to them. ~~W. Hammond~~

Re Direct Exam

I am sure W. Nichols was
present on the day of this delivery
& I think he left immediately
after the delivery.

Summ'd before me this } Simon E. King
6th day of March 1884 }

W. H. Justice

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First District Police Court.

In the matter of James Morgan }
and John Nichol

Before Hon. P. G. Duffy - Police Justice
James D. Taylor - Stenographer.

Wednesday March 12th 1884. 2 P.M.

Continued

Present.

Counsel as before for
the respective parties.

It is stipulated between the parties for the purpose of this preliminary examination only, that the printed copies of the summons and complaint contained in the complainant's affidavit in these proceedings are true copies of the original summons & complaint in the suit in which they are entitled and that the defendant James Morgan actually swore to his answer before the Commissioner of deeds as

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appears in the jurat to his²
said answer.

Andrew H. Hammond a witness for the
prosecution being called testified as
follows:

Direct examination by Mr. Stafford:

2. Where do you reside.

A. Worcester, Massachusetts

2 Your age.

A. 53.

2 (Showing witness Exhibit No 1) Look
at the paper now shown you Ex.
No 1 in this proceeding, and state if
you ^{have} ever seen it before.

A. I have.

2 Look at the signatures and state if
you saw them placed upon that
paper

A. I did.

2 Who placed them there.

A. James Morgan, John Nichol
and myself.

2 Which placed his name first.

A. James Morgan first.

2 And he signed his own name.

A. Yes sir; John Nichol next and I

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3

3

signed mine next.

2 When was that done

A. On the 13th day of May, ¹⁸⁸² I would say the 12th day of May.

2 Do you remember where the parties were when these signatures were affixed.

A. In the office of Rice + Blackmore, ¹⁸⁸² Post-office Block, Worcester, Mass.

2 Did you see that paper Exhibit No 1 in James Morgans hands subsequent to the 12th day of May 1882.

A. I did.

2 Did you see Mr Morgan do anything with the paper on that day the 13th of May 1882.

A. I did.

2 State what.

A. He delivered it to Mr F. L. Faulkner the Treasurer of the Townaphone Music Company.

2 State in detail the exact formalities which Mr Morgan went through in making the delivery and what he said.

A. Mr Blackmore handed the paper to Mr Morgan, and said now let us have a formal delivery of this paper to the corporation. Mr Morgan took the

paper in his hand and handed it to Mr Faulkner; he laid it down in front of him, at first; Mr Blackmore said no, I want you to deliver it to Mr Faulkner and say "I deliver you this assignment as Treasurer of the Townaphone Music Company;" then Mr Morgan took the paper up again and laughed in a quiet way and made some remark that they had to speak by card and Mr Morgan said there was a good deal of red tape about this or some such remark as that then Mr Morgan said "I deliver you this paper as Treasurer of the Townaphone Music Company."

2 And this ^{Exhibit No 1} was among the papers he delivered to Mr Faulkner.

A. It was

2 Did you hear Mr Morgan testify in the suit of Seely vs Morgan + or on the reference before Ex-Judge Armour

A. I did.

Defendants Counsel calls upon the prosecution to state whether he elects to proceed upon the charge for perjury in the verifying of the answer, or perjury in testifying upon the reference.

By Mr. Stafford :- I elect to proceed upon the charge of perjury in verifying his answer.

2 Do you know whether or not upon that trial and while Mr Morgan was a witness before Ex-Judge Amory as Referee, this paper Exhibit No 1 was shown to him, and his attention called to his name thereon.

A. That paper was shown to Mr Morgan while testifying on that trial
2 Did he state while a witness before that reference that that was his signature

A. He did.

2 From whose possession is this paper Exhibit No 1 produced upon these proceedings.

A. From the Townaphone Music Company.

Cross examination by Mr George F. Netto
Counsel for the defendant.

2 How much did you pay Mr King for coming here as a witness.

A. Nothing.

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- Q How much did you agree to pay him.
A. Nothing.
- Q How is he to be remunerated for his loss of time in coming here.
Objected to.
- A. There has not been one word passed between us.
- Q What did you state to him to induce him to come.
A. Nothing whatever.
- Q What inducements did you hold out to him to come.
A. None.
- Q You simply asked him to come.
A. I simply said I would like to use him as a witness and he said he would come.
- Q Did he pay his own expenses.
A. As far as I know he did.
- Q He never asked you for any money; there was no understanding whatever he was to be paid between you and him.
A. No sir.
- Q Or between Mr Seely and him.
A. No.
- Q In this suit of Seely vs Morgan & others you are the actual plaintiff are you not.
Objected to.

A. That is a matter I don't feel competent to answer.

2 What is your judgment about it, don't you consider you are under oath

A. Irrespective of my oath in
2 Under your oath do you consider you are the actual plaintiff in the case.

A. I haven't thought anything about it, I will give you any facts that you want to know.

2 Don't you think you are the actual plaintiff in that case.

A. That is a matter of construction —
2 Don't you consider you are the actual plaintiff in the case.

A. I should think you might fairly say so, but still I don't ^{know} what legal construction would be put upon it.

2 The assignment to Mr Seely is merely nominal & formal.

A. That I don't know.

2 Don't you consider it so.

Objected to.

2 There was a suit before that by the Telephone Co against Morgan & others wasn't there.

A. There was one commenced.

2 And you swore to the complaint in that case.

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A. I don't-recollect.

8

2 You can recollect whether you did or not

2 A. At that time I was not familiar with you can't remember whether you swore to the complaint or not.

A. I do not, now.

2 You were really the Townaphone Company were you not.

Objected to.

2 You owned all the stock of the Townaphone Company didn't you.

A. No sir.

2 How much did you own at the time that suit was brought.

A. One quarter I believe.

2 Who owned the rest.

A. Really, I suppose James Morgan & John Nichol owned half of it

2 At the time the suit was brought.

A. Yes sir; that is my understanding of it.

2 Who owned the other one quarter.

A. One quarter stood in the name of H. L. Faulkner which I considered my own the other one quarter ^{was} in E. P. Carpenter.

2 Which you didn't consider your own?

A. No sir.

2 Don't you consider that became your own.

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A. It is now.

2 Did you pay anything for it from that time until now.

A. From what time.

2 From the time you said it was Carpenter's until now.

A. No sir I did not.

2 How is it any more yours now than then

A. It stood in his name at the time and was his property upon the record.

2 When did Mr Carpenter give you these certificates.

A. I can't give you the date.

2 Wasn't it on the 13th 14th or 15th May 1882

A. No sir; I should think not.

2 Are you sure it was a year after.

A. I can't give the exact time.

2 Are you sure it was 9 months after

A. I am not exactly sure.

2 Are you sure it was 6 months after

A. Yes sir.

2 But he gave them to you at your request without any further consideration passing from you to him.

A. He gave them to me by a right which I had.

2 To take them.

A. Yes sir.

Q And that you always had had to take them.

A. Back nearly to the 13th May I had that right.

Q Back to when.

A. I can't fix the date; a few days after the 13th.

Q How did you acquire that right.

A. From him.

Q Now.

A. By a power of attorney.

Q Did you pay anything for that power of attorney which gave you the right to those certificates.

A. Directly not; indirectly I did.

Q How much.

A. Quite an uncertain sum.

Q Isn't it a fact that Mr Carpenter in taking those certificates was simply your representative.

A. It was not so.

Q You have a suit against Mr Morgan now also haven't you.

A. I believe so.

Q Don't you know it.

A. Well sir I hardly know what condition suits are ⁱⁿ here in New York; I believe I have a suit against Mr Morgan for papers he carried off.

2 Do you know it, or do you not know it—

A. I should say, yes.

2 You don't really know it is so.

A. I cannot really swear there is a suit of the kind.

2 What is that suit for.

A. To recover papers he carried off belonging to me personally.

2 Is it not to recover papers which cover & valuable ^{properties} ~~papers~~ in ~~a~~ patents.

A. Nothing of the kind.

2 What is it to recover.

A. He carried off all my private papers and I sued him to recover these papers.

2 These papers are all valuable are they not.

A. I really don't know.

2 Don't you consider them all valuable

A. Yes.

2 In that suit—Mr Morgan is an important witness against you isn't he.

A. I think not; I don't think he is an important witness anywhere.

2 You don't think he is an important witness in the suit of Seely against Morgan & others.

A. No sir.

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2 You recognize he is to be a witness in that suit don't you.

A. I don't know anything about what he is going to be in those suits.

2 The plaintiff called ^{him} ~~you~~ in the case of Seelye agst Morgan & others.

A. Yes sir.

2 That was he called ^{him} ~~you~~ as a witness in that case.

A. Yes sir; in the trial last winter.

2 Can you give about the date.

A. No sir.

2 The Spring of 1883 wasn't it.

A. I should think it would be earlier than the Spring of 1883; January or February I should think.

2 Did you know he was going to be called; wasn't you consulted in regard to calling him.

A. Oh no.

2 Who was the Counsel that called him, was it Mr Stafford.

A. Yes sir

2 Who was present on the 13th of May when this Exhibit No 1 as you say was delivered; give me the names of the parties.

A. James Morgan, H. L. Faulkner, E. P.

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Carpenter, Mr Blackmore, S. E. King and myself.

2 That is all.

A That is all I think were there.

2 Are you positive.

A I can't be positive somebody else might not have been in the room.

2 Wasn't Mr Nichol there.

A No sir.

2 Where did Mr Morgan sit; did they sit around a table.

A Yes sir.

2 All of them.

A I was sitting on a sofa I think + Mr Blackmore was standing, I think, if I remember rightly.

2 Now there was a table.

A Yes sir.

2 What was the size of the table.

A About as large as this one (referring to a circular table about 6 ft in diameter) about 5 ft long by $3\frac{1}{2}$ ft wide.

2 Now where did Mr Morgan sit at that table.

A Over in the corner.

2 What time of the day was this.

A I should think past 6 o'clock in the afternoon.

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2 Did he sit at one end of the table
A. At one corner

2 Who was the next one as you would pass
around the table on his right side.
A. Well my recollection is that ^{it} would be
Mr Carpenter.

2 How far off from you was he sitting
A. About the length of the table on the
opposite side lengthwise.

2 About 5 or 6 ft. off from you.

A. I should think so; that is my best
recollection.

2 This was close to the fire place.

A. Well, a short distance off.

2 Mr Carpenter sat all the time.

A. I cannot fix that at all

2 As far as you can recollect

A. I can't remember whether Mr Carpenter
stood up or sat down; we were there 3 or
4 hours.

2 Was he sitting down during the most of
the conversation or not, or standing up the
most of the time, which was he doing.

A. I should say Mr Carpenter was seated
the majority of the time same as all
the rest except Mr Blackmore I think he
was standing up most of the time.

2 Then Mr Carpenters seat would be corresponding

with that of Mr Stafford in relation to me as I am sitting now; then who would be on Mr Carpenter's right - passing around the table.

A. Going around the table from Mr Morgan to Mr Carpenter the next man would be Mr Blackmore.

2 On Mr Carpenter's right.

A. Yes I think so.

2 Next to Mr Blackmore ^{was} who.

A. Mr King I think sat at the other side of the room at one of the desks where he had been writing.

2 How far off was that.

A. Six or seven feet off.

2 Passing around this table after you came to Mr Carpenter and Mr Blackmore who would be the next one at the table.

A. Mr Paulkner.

2 Anybody else at the table.

A. No sir; not that I recollect of.

2 Who did Mr King sit behind.

A. He sat over at a desk the other side of the room.

2 Who was he behind.

A. Behind Mr Blackmore.

2 And which of these persons were you behind on the sofa.

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A. More nearly behind Mr Compston than any other one I think.

2 How far off were you from Mr Compston
A. Two or three feet.

2 And how far was Mr Blackmore from Mr Morgan.

A. Well it would be about the length of the table, Mr Morgan sat a little distance from the table near the corner and Mr Blackmore was on the other side of the table and I think reached the papers across to him.

2 Well now did Mr Blackmore hand him those papers before he gave them the first time to Mr Faulkner, or did he hand them to him twice.

A. as to the act of handing over from one man to the other, twice, I am not sure of it.

2 When you said he handed them to Mr Faulkner and then took them back again you may be mistaken.

A. No sir; your last question was not directed to that point.

2 I ask you now whether Mr Morgan didn't hand the papers twice to Mr Faulkner

A. Well the best of my recollection is he Mr Morgan laid them down in front of him.

2 Didn't he hand them twice to Mr Faulkner

A. I cannot fairly answer that question; my recollection is he laid them down in front of him the first time, and Mr Blackmore wasn't satisfied with that delivery.

2 And then Mr Morgan took them back again.

A. Mr Morgan took them up again I think.

2 The first time that Mr Morgan handed them to Mr Faulkner did he say anything objected to.

2 When Mr Morgan laid them down before Mr Faulkner did he say anything.

A. I don't recollect anything he said at that first time.

2 Did Mr Blackmore when he first handed these papers to Mr Morgan tell him to say anything.

A. My recollection is he told him to deliver them; no I wouldn't say he told him to deliver them but I think he said Mr Morgan we will have these papers delivered formally; I am not sure whether he handed them to him or whether Mr Blackmore pushed them along on the table.

2 At that time.

A. Immediately before Mr Morgan passed the papers to Mr Faulkner the first time Mr Blackmore said 'we will have these papers formally delivered or something of that kind, I don't know the exact words.

2 Is there anything else that you remember Mr Blackmore said at that time.

A. Regarding the first time Mr Morgan passed them over - I presume he did pass them over - but I don't recollect anything else was said.

2 When this had taken place Mr Morgan stood up and laid these papers before Mr Faulkner.

A. He did the first time.

2 You are sure of that.

A. Ah no; not absolutely sure.

2 You are not sure that Mr Morgan did lay these papers before Mr Faulkner the first time.

A. I am very sure he did, but I cannot swear positively what was done; I know there was something done that Mr Blackmore wasn't quite satisfied with.

2 Hadn't you delivered any papers too, at that same time.

A. The first two times were right-together.

2 Hadn't you delivered papers at that time.

A. I didn't deliver any papers until Mr Morgan had completed his delivery to the Treasurer of the Townaphone Company.

2 And you did deliver papers then did you.
A. Yes sir.

2 Can you recollect how these papers came again into the possession of Mr Morgan

A. Not absolutely; I recollect the act of his passing them over.

2 Tell me what Mr Blackmore said after what you call the first time.

A. I think he said I want you to formally deliver them and say "I formally deliver these papers to you Mr Faulkner as Treasurer of the Townaphone Music Company."

2 What else did he say:

A. Well it lies in my mind that Mr Morgan ~~himself~~ said "there is a good deal of red tape about this".

2 Doesn't it lie in your mind that he said this must be by ^{the} card.

A. No sir;

2 What made you say on your direct-examination that he did say by card.

A. I didn't so state.

2 He did not use the word card.

A. I don't know whether he used the word

card"; I have already stated that he used the word "red tape".

2 Have you any impression that he used the word "card"?

A. Not exactly.

2 Have you any impression that he did use it?

A. I have already stated that, two or three times; I have an impression he used some such language as I have given.

2 Have you any impression he used that word?

A. I have an impression he might have used that word, but I don't know.

2 Have you any recollection of his speaking of it as child's play?

A. No sir; he didn't say that.

2 You are sure of that?

A. There is nothing lies in my mind as to any such language as that.

2 Then such a remark could not have been used without your remembering it?

A. I should have remembered it if he had used it.

2 Did Mr Morgan rise from his seat when he passed these papers over?

A. Yes sir.

2 Then after he had done this, did you pass

any papers over.

A. After Mr Morgan had completed his delivery, I aint sure whether Mr Blackmore asked me to go through the same formalities, but I thought it was necessary and because it had been required of Mr Morgan I did it myself.

2 What did you do.

A. I said "I deliver these papers to you Mr Hankins as Treasurer of the Townaphone Music Company.

2 What was that paper.

A. An assignment of various patents of my own to the Townaphone Music Company.

2 Were they patents that you owned.

A. Yes sir.

2 How long had you owned them.

A. I can't tell you.

2 For sometime.

A. They were my invention, ^{patents} taken out by myself for the most part.

2 Is that paper known as Exhibit-4.

A. I don't know.

2 When had that paper been executed by you

A. on the 12th May 1882.

2 Who had had that paper from that time until you delivered it over.

A. I think it was in Mr Blackmore's possession.

but I am not sure about that, he had all the papers I know.

2 That was the only paper you passed over.
A. That is all I recollect now.

2 How many papers did Mr Morgan pass over.

A. I think three.

2 Can you tell what the others were.

A. Well when you say others what do you mean.

2 What were the others besides Exhibit No 1

A. The other two papers which Mr Morgan delivered; one was an assignment of claims of various Knives ~

2 That had been signed the previous day hadn't it.

A. The other was an agreement to assign foreign patents the assignments of which Mr Morgan said were not quite ready at that date so we took an agreement to assign these.

2 Were there any more than three papers passed at that time.

A. I have no recollection of any more than three being passed by Mr Morgan.

2 But there may have been more, will you swear positively there wasn't.

A. There may have been more but I don't

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think there was any more.

2 At the time of this delivery were there not more papers.

A. I will not swear positively.

2 At what hour of the day before had these papers been signed.

A. I think a little past 6 O'clock on Friday the 12th May 1882.

2 How many papers did you sign then yourself.

A. I think only one.

2 You didn't sign Exhibit No 1 at that time.

A. Yes sir I think I did.

2 Then you signed two.

A. I think so.

2 As you don't recollect signing two may you not have signed several more.

A. No.

2 I want to know whether you didn't sign some papers on Friday in regard to organizing the Townaphone Company.

A. No sir.

2 Didn't you see any signed.

A. No sir; Oh well there was another paper signed on Friday but whether it would be legally constructed to relate to the organization I don't know.

2 You know there was some papers signed

relating to the organization of the Townshend Company don't you.

A. I am not familiar with the dates of the various transactions.

2 Don't you know there was some certificates signed regarding the stock of the Townshend Company.

A. I think there was something of that kind done.

2 You saw it done.

A. I saw the papers at the time but I don't recollect the manual act.

2 But you can remember it as an act of memory.

A. I don't recollect now.

2 What time of the day were those signed

A. Do you refer now to the certificates of payment of stock.

2 Yes.

A. I can't fix that at all.

2 At 12 o'clock in the evening the same time the others were signed.

A. Oh no.

2 Do you know you sent somebody down on Saturday morning to Boston with some proof of the payment of stock.

A. I sent nobody with them; Mr Blackmores brother went.

2 Don't that refresh your recollection with regard to stock, that certificates were signed on Saturday afternoon.

A. Yes sir; when you say certificates of stock.

2 Certificates that the stock had been paid in; that the capital stock had been paid in.

A. The certificates must have been signed in the morning or the day before; I mean the certificate that young Mr. Blackmore carried to Boston. I simply remember they were signed but can't remember when.

2 Mr. Blackmore told you that you couldn't deliver these papers on Friday after you signed them.

A. No sir.

2 Didn't he give you as a reason that you couldn't deliver these papers until the Townshend Company was recognized as being an incorporated Company by the authorities in Boston.

A. No sir.

2 Do you know why he sent his brother off on Saturday morning

A. I know what was said at that time

2 Don't you know why another meeting was postponed until Saturday afternoon.

A. There were two things that lay in my mind as a reason for postponing it until Saturday.

2 What were they.

A. One was that young Mr Blackmore was to go to Boston to deposit the certificate that the corporation was ready to do business, and the other was that Mr Morgan was going to Boston as I now recollect to see Mrs Matthews and get her signature to either the foreign assignment or something else I am not sure about, but I recollect Mr Morgan went to Boston.

2 How long was he gone.

A. I can't tell you, he went in the morning.

2 In the same train that Mr Blackmore's brother went in.

A. I don't know but my impression is Mr Morgan didn't leave until half past 9.

2 What time did he come back.

A. I think about half past 3 in the afternoon.

2 On the 12th how long were you in conversation there that afternoon, on Friday the first day.

A. Well my best recollection would be 3 or 4 hours.

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2 Were the papers prepared after you came there, or did you find them already prepared when you got there.

A. Do you mean when we first got there.

2 Yes.

A. I can't be at all positive but I don't recollect seeing these papers at all until we got together to execute them.

2 At the end six o'clock.

A. Yes sir, I should think so.

2 Did you hear any one of these papers read.

A. I don't recollect whether they were read on that day but I think they were read once or twice ~

2 You don't now recollect any one of them being read.

A. No sir.

2 Now their being read on the next day, Saturday.

A. I don't think they were read on Saturday, I have no recollection of it.

2 Did you remember until quite recently when this exhibit No 4 was shown to you that it was a separate paper that you had executed.

A. I don't remember.

2 Don't you remember that that fact had passed from your memory entirely.

A. No I don't recollect it now.

2 Did you remember until Exhibit One (1) was produced on the hearing before the referee or about that time that it was shown to you by Mr Blackmore that that existed as a separate paper.

A. There is something comes to me that there was a time when I wasn't sure.

2 And how long was that interval in which you was uncertain.

A. I can't tell you.

2 It lasted for a year didn't it.

A. I don't know.

2 It may have been a year.

A. I should say less than a year.

2 Can you say it was 9 months.

A. I can't say, I cannot fix it at all.

2 Had you any recollection of Exhibit No 1 being a separate paper up to the time that it was shown to you just before it was produced at the time of the hearing before the referee.

A. I don't recollect.

2 You don't recollect that you did remember it as a separate paper.

A. No sir.

2 Don't you recollect that you did not so remember it.

A. I don't recollect

2 If you did so testify it was true was it, if you testified on the Seely trial that you had no recollection of Exhibit One (1) as a separate paper until it was produced to you wasn't that true.

A. Whatever I testified to was true; I might possibly be misled by something.

2 Had you any recollection of the transfer of claims existing in the Seely suit as being a separate paper.

A. I don't know, I cannot carry my mind back to that.

2 as far as you can now recollect they may have all existed in your mind as one paper up to the time of their production in the Seely case.

A. I don't think so.

2 What is your present recollection about it, did you remember Exhibit One as a separate paper from the time it was executed up to the present time.

A. The whole existence of these papers passed out of my mind after the 13th May when they were put in the Townsphone Company safe.

2 When.

A. 13th May 1882.

2 By whom.

A. H. L. Faulkner, Treasurer of the Co.

2 Do you know that.

A. I know it as we know a great many things.

2 Did you see it done.

A. I can't say I saw it done.

2 Don't you remember now that you did see it done.

A. No sir; I recollect distinctly that Mr Faulkner took those papers and started for the office, but I have no recollection of seeing those papers again until about the time the trial commenced.

2 When did Mr Faulkner take these papers Exhibit one (1) and the other papers and start for the Townspeople Company's office.

A. Not very far from half past six I think.

2 How far did you go with him.

A. I have no recollection of going with him.

2 How far did you watch him.

A. I didn't watch him at all.

2 How far did you see him go.

A. I can't recollect.

2 When was the next time after that that you saw these papers Exhibit No 1

A. I have no recollection of seeing these

papers until Mr Blackmore brought them to New York the second night before the commencement of the suit.

2 On the reference in the Seely suit.

A. Yes sir.

2 And Mr Blackmore brought them as Counsel for the plaintiff in this suit.

A. He brought them as a messenger.

2 What papers did he bring at that time.

A. The four papers that have been talked about.

2 Didn't you swear to the complaint in the Townaphone Music Company (look at that copy which has been served on the defendants)

A. I don't recollect exactly what papers I signed.

2 Have you any doubt about signing the verification on that.

A. I see my name here but not my handwriting, I have no recollection about signing the verification.

2 Didn't you swear to that paper.

A. I don't know without reading it all through.

Plaintiffs Counsel admits he signed the paper and swore to the complaint in the suit of the Townaphone Music Company agst James Morgan and others.

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in the Superior Court on the 2^d
November 1882.

- 2 You swore in that complaint that on or about the 13th May 1882 the defendant James Morgan got possession of all of the above mentioned assignments in which one included this Exhibit No 1 and has wrongfully refused to return the same; is that true.

A. It was true so far as my understanding and belief was concerned.

- 2 You believed up to the 2^d November 1882 that at that meeting Mr Morgan took possession of this Exhibit No 1 and the other 3 papers and retained possession of them.

A. I don't think I so believed strictly speaking but we were in great doubt where these papers could be, not being able to find them in the safe when we looked for them; the best light we could get was that he either took them off possibly after being delivered to Mr Faulkner, for some purpose or other, or that they had been brought to New York.

- 2 When you say then that Mr Faulkner took up these papers and carried them off to the Townshend Company's office; when did you first remember that.

A. I have no recollection of seeing these papers after Mr Morgan handed them to Mr Faulkner.

2 You have a recollection of seeing Mr Faulkner take them.

A. I have just stated he did take them.

2 You didn't see him take them and go off with them.

A. I know that the papers were delivered to Mr Faulkner, but I didn't watch him, there was no occasion to think of anything but straightforward dealing.

2 When you swore to that complaint the information you got from Mr Faulkner was to the effect that Mr Morgan had taken these papers away with him.

A. No sir; I didn't get any information from Mr Faulkner.

2 You never conversed with him on the subject.

A. Yes sir; Mr Faulkner told me he had put them in the safe.

2 When.

A. When I first brought them to his mind.

2 Mr Faulkner had told you then in the latter part of October.

A. Somewhere near ^{the latter part of} October, when I first discovered we had lost the papers.

2 That was in Worcester.

A. Yes sir.

2 Before you came to New York to consult about this case.

A. Yes sir I think immediately before.

2 So that you now say before you made that complaint that Mr Faulkner claimed to have these papers in his safe.

A. There was no claim about it.

2 He never told you anything to the contrary but what he had them in his safe up to the time you came down to New York to consult Mr Stafford about bringing this suit.

A. I don't know that I had any information from Mr Faulkner until he looked for the papers and told me we all understood they were put in the safe and ought to be there.

2 and he never suggested to you that Mr Morgan had taken them.

A. I cannot recollect what might have been said in a dozen interviews with 3 or 4 all talking at a time.

2 Who did say so, did Mr Faulkner come to that conclusion.

A. I have no recollection of what he said about it, I have no recollection of anything he particularly said, but not finding the

papers we were astounded and thought that Mr Morgan had got possession of them in some way.

2 Do you remember also making an affidavit for an injunction in the suit of Seely vs Morgan & co.

A. I think I did.

It is admitted that this is a copy of the original affidavit made by witness in the case of Seely vs Morgan & others.

2 Don't you remember that in that affidavit you repeated that after the execution and delivery of the said assignments and before the same had been recorded that the defendant Morgan got possession of each and all of them; is that true.

A. It seems not.

2 You admit now that it is not true.

A. I have done so.

2 And all you have to say in explanation is that you supposed it was true at the time you made it.

A. Yes sir we thought it was so.

2 You don't claim there was any other assignment made at that time by Mr Morgan than the 3 you have referred to, any other papers executed which conveyed

any title or interest than this Exhibit No 1 and these 3 papers of the 13th May 1882.

A. I don't now recollect any other.

2 Aint you certain there were no other which conveyed any title or interest.

A. I have no recollection of any other.

2 Was there an assignment of Patents for the Empire of Germany, France, the Kingdom of Great Britain and Ireland executed and delivered by you 3, yourself Mr Morgan and Mr Nichol.

A. I am not sure about that, my first recollection was that Mr Morgan had one or more foreign assignments there on the 13th and that he went to Boston to complete the matter with Mrs Matthews, subsequently I was lead to ~~believe~~ ^{think} he didn't have the foreign assignment there on the 13th.

2 Did Mr Morgan, Mr Nichol and yourself execute to the Townshend Music Co. a certain assignment of patents for these foreign Countries.

A. I don't recollect of any; I have no recollection of any such thing.

2 What do you know to be the fact to-day

A. My understanding of the facts are to-day that I didn't join in any conveyance on the 13th May which carried the assign

ment of foreign patents to the Townaphone Music Company; Mr Morgan said they were not ready, but would be in a few days.

- 2 Neither Mr Morgan or Mr Nichol executed on the 13th May any assignment of those foreign patents did they.

A. I think there was nothing executed on the 13th May, but I am not sure about that, I have always been a little in doubt what Mr Morgan went to Boston for.

- 2 Have you any recollection of any assignment being executed on the 13th May.

A. I have no recollection.

- 2 Have you any recollection on the 13th May of any assignment of foreign patents being made by Mr Morgan or Mr Nichol.

A. I don't recollect any.

- 2 Or about that time

A. I don't recollect it.

- 2 Then what you swore to in the complaint as follows; "that on or about the same date Mr Morgan, Mr Nichol and Mr Hammond duly executed and delivered to the Townaphone Music Company a certain assignment of foreign patents is untrue isn't it

A. It turns out to be untrue.

- 2 When you organized this Townaphone Co.

you went down to the Bank didn't you with Mr Morgan; the First National Bank of Worcester; to see about getting some money.

A. During the formation of the Tomophone Company we did go to the Bank to see about raising some money.

2 When was it; on the 12th May.

A. I think it was.

2 That was on the 12th of May.

A. It was on the 12th of May we raised that money.

2 Don't you know the Bank hadn't any \$60,000⁰⁰ in its vaults at the time.

A. No sir.

2 Wasn't you so informed by the Cashier.

A. I don't think I was that day.

2 Well the day before or about that time; didn't you know as a matter of fact there was no \$60,000⁰⁰ there.

Objected to.

A. No sir I don't know

2 You put in 4 notes there didn't you. The Capital stock of the Company was to be \$60⁰⁰ wasn't it.

A. Yes sir.

2 And the 4 notes were put in to raise that money.

Objected to.

2 The Capital stock of the Company was to be \$60,000⁰⁰

A. Yes sir; it was \$60,000⁰⁰

2 Paid in

A. Yes sir

2 In cash.

A. Yes sir

2 Was a check for \$60,000⁰⁰ good drawn by that Company.

A. It was I believe

2 I ask you whether a check for \$60,000⁰⁰ was good drawn by that Company.

A. I don't know why it wasn't.

2 A check for \$60,000⁰⁰ was good.

A. Yes sir.

2 What was done with that check.

Objected to - Objection sustained.
Exception.

2 Was that check of any value

Objected to.

2 Was not that check given for the delivery of the papers of which you have spoken

Objected to.

2 (Handing witness a letter) That is your hand writing isn't it.

A. Yes sir.

2 And you sent that letter to Mr Morgan didn't you at the time it bears date.

A. Yes sir.

Letter offered in evidence and marked
defendants Exhibit Three March 12th
1884.

2 Mr Blackmore acted as ~~Attorney~~ your
Counsel during that negotiation.

A. He acted for all the parties that
organized the Townsphone Music Company
but where my interest would be specially
guarded he was Attorney for me.

3 Didn't Mr Blackmore advise you and
all others that the Townsphone Company
could not transact any business until the
the Capital Stock of the Company had
been paid in in cash and a certificate
to that effect had been filed in the Secretary
of States office in Boston.

A. No sir; that wouldn't be the construction
that his advice gave us.

2 What is your construction of his advice on
that subject.

A. He told us that to be strictly safe
the certificate of organization ought to
be filed ~

2 That is all is it

A. That is all I recollect.

3 Didn't you testify in the Seely case that
his advice to you and to the others had

been as I state.

2 A. No sir; I think not without qualification
What qualification did you put to it.

A. I think the substance of my testimony before is the same as I give it now.

2 And you state you didn't so swear in the Seely case.

A. I don't think my evidence would bear that construction.

2 Again I ask you, will you say you did not so swear.

A. I did not so swear, and leave it so.

2 Didn't you testify in the Seely case that Mr Blackmore informed Mr Morgan, yourself and Mr Carpenter that under the Corporation laws of Massachusetts we had got to have the whole capital stock paid in in cash and that we could not proceed to transact business until this certificate had been deposited or filed.

A. I think I said that and that there is something more that qualified it right on the end of it.

2 Now was the whole capital stock paid in
Objected to.

2 Was there any pre-arrangement to pay out the whole capital stock.

Objected to.

2 In point of fact was not the whole cash of Utah Company paid out by the 15th of May.

Objected to.

2 In return for these notes which had been formally handed in to the first National Bank for the purpose of creating the stock.

Objected to as incompetent, immaterial & irrelevant.

2 Was that Exhibit - No one (1) ever recorded
A. Yes sir.

2 When.

A. I don't remember.

2 Was it recorded before the 14th March 1883

A. It was recorded about that time I think; I don't remember the exact date.

2 Not until about that time.

A. I think not.

2 Quite sure of that ain't you.

A. Yes; I think so.

2 Had it been recorded when the action of Seelye vs Morgan & Co was commenced.

A. No sir.

It is admitted that the minutes of the meeting as contained from about the middle of page 40 down to the middle of page 42 of the

printed case on appeal, is a correct copy of the minutes of the meeting of the Townaphone Company of May 13th 1882 as set forth in their book of minutes. Marked Exhibit Four, March 12th 1884.

Q Was there any other meeting of the Townaphone Company held at the office of Rice & Blackmore No 8 Post Office Block on Saturday May 13th 1882 at 4 O'clock P.M. except the one you have testified to here this afternoon.

A. I don't recollect any.

Q There wasn't any other.

A. Not to my knowledge.

copy of the minutes above referred to offered in evidence, the pages stated above, and marked Exhibit Four.

Q Will you look at Exhibit Four and tell me at folio 122 what are the two certain conveyances mentioned there as exhibited by you.

A. I don't know that, I cannot tell you now.

Q You cannot say then positively that there were 2 certain conveyances that you shown to them.

A. My recollection is it was merely a matter of form put in to reach the purchase

of these things and used my name instead of anybody's else.

- 2 Didn't you know at this time that Mr Morgan didn't own these entire patents; didn't you know there were licenses outstanding referred to in Exhibit One.

A. My recollection is there were no licenses outstanding at that time.

- 2 Is it your recollection that at that time Mr Morgan and Mr Nichol had entire control of these patents in Exhibit One.

A. Mr Morgan, ^{Mr Nichol} and myself owned the patents specified in Exhibit One.

- 2 Then Mr Morgan and Mr Nichol owned nothing more than rights or licenses and didn't own the title at that time.

A. There was nothing at that time that Mr Morgan and Mr Nichol owned alone I owned all they owned; $\frac{1}{3}$ of all they owned.

- 2 Were there not a number of these patents that are mentioned in Exhibit One (1) which were not owned by either of you three in which there was nothing more than merely rights or licenses under them.

A. The patents themselves were all owned by us three; there was understood to be at that time licenses under one of these patents remaining in the Arquinette Company

- Q Is that the only qualification you make in relation to those patents.
- A. I don't think of anything else.
- Q Do you know Mr Edwin S. Babcock
- A. Yes sir.
- Q Who is here present.
- A. Yes sir.
- Q Do you remember seeing him about the 28th September 1882.
- A. Yes sir I did.
- Q You came to Mr Babcock's office did you not in company with Mr Morgan at that time.
- A. That is my recollection.
- Q You came to consult Mr Babcock in regard to drawing a tri-part agreement did you not.
- A. No sir; the agreement had been drawn in my absence.
- Q Did you come to consult him with regard to it.
- A. No sir; I came to see what they had got drawn.
- Q And did you have a conference with Mr Babcock in connection with Mr Morgan on that subject at that time.
- A. Perhaps you can call them conferences
- Q On the subject of this agreement as drawn.

A. Yes sir.

2 The agreement between the Townaplane Company and Mr Morgan and Mr Nichol wasn't that the subject of the conference

A. There was an agreement there in which these were the parties.

2 And the conference was in regard to that agreement wasn't it.

2 A. Yes sir, if you may call it a conference you don't mean the agreement had been signed and executed.

A. No sir.

2 It was a proposed agreement.

A. Yes sir.

2 And your conferences were in regard to that

A. Yes sir.

2 Now, in one or more of those conferences did not Mr Babcock ask you a question of whether the Townaplane Company had any title to those patents.

A. No sir.

2 Did he not ask you the question whether those patents had ever been assigned to the Townaplane Company.

A. No sir.

2 Did you not say in answer to a question from Mr Babcock, that the Townaplane Company had not acquired title to those

patents but could acquire them at any time.

A. Nothing of the kind.

2 Did not Mr Babcock say to you and Mr Morgan "what shall I say about the title of the Tomaplane Company, the patents have not been assigned have they" and did you not say in answer to that question "No"

A. Mr Babcock never said anything to me in his life.

2 And you never made any such answer.

A. No sir.

2 Didn't you then further say to him, after saying "No" but they can be assigned at any time" and Mr Babcock then say to you "they wont be until you carry out your agreement with Mr Morgan" and didn't you then answer "that can be done in 15 minutes after we find out what can be done with the Arguimette Company".

A. Nothing of the kind was ever said or ever thought of.

2 Do you know Mr Herbert J. Ketchum, Counsel for the Arguimette Company.

A. Yes sir.

2 Didn't you say to Mr Ketchum in the fall of 1882 that these patents had not been

conveyed to the Townaphone Company, or that the title to them was not yet in the Townaphone Company, or words to that effect.

- Q. Never anything said about that at all.
2. Wasn't there a conversation between you and Mr Ketchum up at the rooms of the Arquette Company in which Mr Ketchum asked you if a certain claim had been assigned to the Townaphone Company, and you said it had not, and did he not then ask you whether any assignment had been made to the Townaphone Company, and did you not reply that none yet had been made, or words to that effect?

A. It wasn't as you state it. Mr Ketchum asked me if the Townaphone Company had assigned its claim to me, personally, I said no that they had not, that Mr Morgan had promised it should be assigned to me but it had not yet been done.

2. Is that all.

A. Yes sir.

2. Nothing was said about any assignment to the Townaphone Company on that occasion.

A. No sir; nothing was said about any

- assignment to the Townaplane Company.
- 2 Q. Or any right to the Townaplane Company.
- A. There was something said about the claim being assigned to me.
- 2 Q. Were there any other officers of the Arguimette Company present at this conversation.
- A. Yes sir.
- 2 Q. Who were they.
- A. I think the officers were all there.
- 2 Q. Do you know Mr Madoleau, a lawyer of New York.
- A. I have met him a few times.
- 2 Q. Did you see him at Worcester.
- A. I did.
- 2 Q. Prior to the commencement of the first suit by the Townaplane Company I mean.
- A. I did.
- 2 Q. And was there not an interview between you and he and Mr Blackmore there in Worcester.
- A. There was.
- 2 Q. And did not Mr Blackmore say in your presence, the capital stock of the Townaplane Company was to have been patents which were to have been transferred to it and never were.
- A. Nothing of the kind was ever said.

2 You have spoken of Mr Morgan testifying on his examination on the trial that that was his signature to Exhibit No one.

A. My recollection is he testified so.

2 Didn't he say at the same time he had no recollection of signing the paper.

A. I don't remember his saying so.

2 Will you say he didn't say so.

A. No.

2 Didn't he say on his examination that he never delivered that paper.

A. I think he did.

2 No recollection of ever delivering it.

A. I don't think that is what he said; I think he said positively he never did deliver it.

2 At that interview with Mr Ketchum in presence of the Arguette Company did not Mr Ketchum ask you the specific question, whether an assignment had been made to the Townspeople Co. and did you not reply that none had been made or words to that effect.

A. Nothing of the kind.

Redirect examination by Mr Stafford.

2 You stated on your cross examination

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That Mr Morgan was not an important witness in any suit; what do you mean by that.

A. I wouldn't believe anything he said

2 That is all you mean.

A. And that is what was in my mind

2 Is there anything you wish to explain about any of your answers.

A. No sir.

Sworn to before me this 12th
day of March 1884

J. J. Cleff
Police Justice

J. J. Morgan

Adjourned to Saturday March
15th 1884 at 11 O'clock A.M.

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Saturday March 15th 1884
Continued

Present - The Court and Counsel
as before.

Robert Miller a witness for the defence
being duly sworn testified as
follows;

Direct examination by Mr Belto.

Q Where do you reside.

A. Brooklyn

Q Whereabouts.

A. 274 - Ninth Street.

Q Do you know the defendant James
Morgan.

A. Yes sir

Q How near you does he reside

A. Less than a block.

Q How long have you known him.

A. About 25 years

Q What has been your business

A. Brown Stone business; in that

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business at present.

2 Has Mr Morgan been engaged in a similar business.

A. He formerly was

2 Is he now.

A. No.

2 Have you known him in business relations and associations.

A. Yes sir.

2 Know him well

A. Yes sir.

2 What is his character & standing
Objected to.

A. as high as any man in
Brooklyn, don't except any person.

(This answer was taken
subject to the objection of the
Plaintiffs Counsel)

2 What is his character for honesty,
integrity and truthfulness.

A. Beyond all question.

Cross examination by Mr Stafford.

2 Do you know James Morgan's writing

A. I think I do.

2 If James Morgan signed a paper
and made a formal delivery of

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it on the 13th of May 1882 and some
 six or seven months afterwards
 swore deliberately before a notary
 public, that he never signed any
 such paper, would it surprise you
 as a thing done by James Morgan
 Objected to.

2 Do you believe from your knowledge
 of James Morgan that if he had
 signed and delivered a paper, he
 would afterwards swear and affirm his
 name to a written assertion, that no
 such paper had ever been drawn, no
 such paper had ever been signed, no
 such paper had ever been delivered
 by him.

A. I would make an affidavit he
 would not.

Sworn
 15th to before me this
 day of March 1884

J. H. Claffy
 Police Justice.

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Adam D. Wheeler^{ock} a witness for the defence
being duly sworn testified as follows;

Direct-examination by Mr. Belts

2 Where do you reside.

A. 161 Joralemon Street, Brooklyn.

2 What is your business.

A. Treasurer of the City of Brooklyn.

2 How long have you known Mr James
Morgan the defendant.

A. I should say 25 years, without
absolutely fixing the date.

2 Have you known him well.

A. I have most of the time.

2 Do you know his acquaintances and
associates.

A. Yes sir.

2 Where do you know him, in what
relation.

A. I knew him in the Sunday
School, in the Warren Street Mission
and the Church connected with it.

2 Have you known him socially besides.

A. Yes sir; have known his family.

2 What is his general character &
standing.

A. First-class.

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2 What is his character for honesty, integrity and truthfulness.

A. I should say first class.

2 As high as any man in Brooklyn.

A. Yes sir.

Cross examination by Mr Stafford

2 What business relations have you had with Mr Morgan.

A. None whatever.

2 Have you ever met him in a business transaction

A. No sir.

2 Have you ever heard anybody speak of him in a business transaction.

A. Yes I think I have heard people talk of what he has done in a business way.

2 Have you ever heard anything said as to his fairness, integrity and honesty in business transactions

A. I don't think I have; I don't remember of any.

2 Do you know his signature.

A. No sir.

2 If you saw a document which was signed by James Morgan on the 13th

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of May 1882 and then saw that in a subsequent document seven or eight months later he swore, that he never signed any such paper, that there never was any such paper drawn, and that there never was any such paper in existence, would that fact conflict with what you have testified to as to his character.

Objected to.

Q Would you believe that Mr Morgan would sign and deliver a paper on the 13th May 1882 or thereabouts and six or eight months afterwards swear he never signed any such paper and that there never was any such paper in existence.

A. No.

Redirect examination by Mr Betts.

Q Was not Mr Morgan Treasurer of a church, or of a Sunday School there.

A. That was several years ago I think, I cannot recall it now.

Sworn to before me this
18th day of March 1884

Adullocks
P. J. [Signature]
Police Justice

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William M. Cooper a witness for the defence
being duly sworn testified as follows:

Direct examination by Mr. Belto

- Q Where do you reside
A. My home is in Brooklyn, but I now
reside at 227 Fifth Avenue
- Q Where did you reside in Brooklyn.
A. I resided in Fifth Avenue, Brooklyn
corner Carroll Street.
- Q Up to what time
A. Up to within a few years ago
- Q What is your business
A. Agent for some foreign firms
- Q Where is your place of business here in New
York
A. 168 Pearl Street.
- Q How long have you known Mr James Morgan
the defendant.
A. I should think about 20 years.
- Q Have you known him well
A. I have seen a great deal of him.
- Q Have you known his friends & associates
A. I have seen his friends, but I know him
better than I do any of his friends
- Q Have you known him in a business & social
way.

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A. Yes sir.

Q Do you know his general reputation.

A. I do.

Q What is his character and standing

A. I consider his standing and character excellent.

Q A man of the highest

A. A man of the best.

Q What is his character for honesty, integrity and truthfulness.

A. As far as I have had any knowledge and experience of him I consider his reputation as good as any ones reputation.

Cross examination by Mr Stafford.

Q Have you ever heard anything said as to his crooked transactions.

A. Never

Q What has been your business relations with Mr Morgan.

A. I have had some contracts with him

Q Any now.

A. I have not.

Q How long since

A. Two or three years.

Q Have you ever known him to have trouble in his business matters.

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A. I never have.

2 Would it be consistent with your impression of Mr Morgan's character and reputation that he could sign and deliver a document on the 13th May 1882 and then six or eight months afterwards swear in another paper that he never signed any such document, there never was any such document in existence.

A. I should think that would be entirely contrary to his usual habit.

Sworn to before me this
15th day of March 1884.

J. G. Coffey

Police Justice

W. B. Cooper

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Wallace Dombaw a witness for the defence
being duly sworn testified as follows:

Direct examination by Mr Belto.

- Q Where do you reside.
A 148 West 13th St. New York City.
- Q Do you know Mr James Morgan the defendant
A I do.
- Q How long have you known him.
A Near 5 years; between 4 & 5 years.
- Q What is your business.
A Brokerage & Agent for Perit-Mines on
the continent.
- Q Have you known Mr Morgan in a business
way and social way both.
A Yes sir.
- Q Do you know his associates and friends.
A Not many of them.
- Q Do you know enough of his friends and
associates to say whether or not you know
what his standing and reputation is
A I do.
- Q What is his character & standing.
A A man of the best, very high
- Q What is his reputation for honesty, integrity,
and truthfulness.
A Beyond any doubt I suppose.

Cross examination by Mr Stafford.

Q What have been your business relations with Mr Morgan.

A. Sometime a little over 4 years ago I was interested with him; we separated but while in that business I knew him from the honorable way in which I was treated.

Q State the honorable way in which you was treated.

A. I meant nothing out of the way.

Q What were your business relations.

A. Grinding Paint and Oil

Q How long were you in that business with him.

A. Three years.

Q What were your interests; were you equal partners.

A. Equal with another one, there was a third party.

Q Which party furnished the experience and which the capital.

A. I furnished the experience and they the capital.

Q What was the honorable course, how did you come out, did you have more experience or more money at the end.

A. I had the experience and about the same

capital, but the business was hardly enough for three and we divided up.

2 Whom have you heard speak of James Morgan's character and methods in business matters.

A. I cannot specify any party, any particular person; I never heard anybody speak against him.

Mr. Stafford moves to have the last part of the answer stricken out.

2 Name any person you have ever heard speak of Mr. James Morgan's character & methods in business matters.

A. Well I can hardly answer that question.

2 Name any person if you can.

A. Since I have been notified to come here to testify I heard one gentleman speak of Mr. Morgan and intimate he was beyond doubt.

2 How did he intimate.

A. In speaking of Mr. Morgan and his general character.

2 Who was that gentleman.

A. Joseph Barland.

2 Where is his place of business.

A. In the same place I am in 99 Maiden Lane, but no connection.

2 Name any other person you ever heard

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Speak of him.

A. I can't.

Q. Would it give you a different impression of James Morgan's character if you knew that on the 13th of May 1882 he signed and delivered a document, and eight months or thereabouts afterwards he swore over a written statement that he never had signed any such document, there never was any such document in existence.

A. It certainly would.

Seen & before me this
15th
1884
day of March

Walter Dyer

W. G. Dyer
Police Justice

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George H. Williams a witness for the defence
being duly sworn testified as follows.

Direct examination by Mr. Betts.

- 2 Where do you reside.
A. 132 East 71st Street, New York City.
- 2 What is your business.
A. Pretty hard to tell.
- 2 What has been your business.
A. Stone business; was at one time in the same business with Mr. Morgan as agent.
- 2 You have retired from business now have you.
A. Yes sir.
- 2 How long have you known Mr. Morgan.
A. Ten or Twelve years intimately.
- 2 Have you known him in a social way
A. I have.
- 2 Do you know his friends
A. I do.
- 2 You know enough of or about him to know his character
A. Yes sir.
- 2 What is his character and reputation for honesty, integrity and truthfulness.
A. I have never met or heard of a man of higher character and standing.

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66Cross examination by Mr Stafford.

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2 Have you any dealings with him now
A. No sir.

2 Were you agent for one of his quarries.
A. I was formerly agent for a quarry which dealt with him.

2 Never hear of any of his crooked transactions
A. No.

2 Would it be inconsistent with your impression of Mr Morgan's character that he should sign and deliver a document and take \$10,000⁰⁰ of the capital stock of a corporation in consideration of the document so signed and passed and put his name to it as President of that corporation and do business with it for a period of six months and then in another document after that some six months swear that he never signed any such paper, never delivered any such paper and that there never was any such paper in existence.

A. I should believe what he said.

2 Repeated.

A. I would say it was inconsistent.

Sworn to before me this
15th day of March 1884.

Geo N Williams

[Signature]
Police Justice

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Charles Bradshaw a witness for the defence
being duly sworn testified as follows:

Direct examination by Mr. Belts.

- 2 You are an Attorney & Counsellor at Law
A. Yes sir.
- 2 Where.
A. Brooklyn. N.Y.
- 2 Where is your place business.
A. 213 Montague Street, Brooklyn. N.Y.
- 2 Do you know Mr Andrew R. Hammond
A. I do.
- 2 Did you Mr Bradshaw go to Worcester, Mass
and see there Mr Hammond and Mr
Blackmore.
A. I did.
- 2 About what time.
A. The last week in October 1882.
- 2 The fall of 1882.
A. Somewhere about the end of October
or the first of November.
- 2 Did you on that occasion, or did you not
hear Mr Blackmore say in Mr Hammond's
presence, that the Capital stock of the
Townafone Music Company was to have
been patents which were to have been
transferred to it and never were, or words

to that effect.

Objected to. Answer taken subject to objection

A. I heard words to that effect.

2 State the words as near as you can.

A. A remark was made by Mr Blackmore in response to an inquiry of mine. He had been asking me with regard to the financial responsibility of Mr Morgan + Mr Nichol with a view as he intimated it of holding them responsible for the debts of the Townaphone Company; I said as I understood it the law in Massachusetts is the same as in our own State, that in case the capital stock of the Co was paid up the stock holders were only responsible for the wages of laborers, servants, apprentices &c; he said yes, but in this case the capital stock was to have been patents which were to have been transferred to the Co + never were.

2 Where was Mr Hammond at that time.

A. About the same distance from Mr Blackmore he is now from Mr Stafford in Mr Blackmores private office.

2 Did Mr Hammond take an active part in that conversation

A. Not in that remark.

2 The conversation had been a general one between you

A. Yes sir.

Cross examination by Mr Stafford

2 Did Mr Hammond hear that remark.

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A. Well if he didn't it must have been a sudden attack of deafness.

Q. What was the occasion of your visit to Worcester at that time.

A. The occasion of my visit at that time was to hand in the resignations of the two directors Mr Morgan and Mr Nichol and obtain a transfer of their stock.

Q. How much stock; stock of what.

A. The Townaphone Music Company.

Q. State in detail the business which called you to Worcester at that time.

A. I have already stated that I went up there to transfer some stock of the Townaphone Company from the name of Mr Morgan and Mr Nichol, I don't know how much or what it amounted to however I went up there to transfer the stock for Mr Morgan and Mr Nichol and demanded the transfer, I also at the same time handed in the resignations of Mr Morgan and Mr Nichol, one as Treasurer and the other as a director.

Q. Did you get that transferred.

A. I believe I did.

Q. You have no idea how much that stock was.

A. No, I have not.

Q. Several shares.

A. Yes sir.

Q Did you know at that time that it was one half.

A. I may have known it but I don't recollect anything about the amount of the stock but I recollect being there in that office and the fact that I transferred some stock.

Q Didn't you know at that time that without the capital stock of the Townaphone Music Company standing in the name of Mr Morgan and Mr Nichol there wasn't a majority of the stock voted.

A. I don't recollect anything about that, all ^{resignation of Mr Morgan + Mr Nichol there would be} I recollect was that after the ~~no~~ quorum of the directors.

Q You were paid by Mr Morgan for going up there.

A. I was paid by Mr Nichol and Mr Morgan; I had been doing business for Mr Morgan a great many years.

Q You understood at that time didn't you that there were some difficulties between Mr. Morgan and Mr Hammond in relation to the Townaphone Music Company.

A. I knew there were some antagonistic claims.

Q Prior to that had you drawn an assignment of patents for Mr Morgan and Mr Nichol

to Henry Wilson.

Objected to.

Q Prior to that time had you ever heard of the Needham, Marshman & Matthews patents relating to musical instruments.

A. I had heard some things before that.

Q At that time, at the time of your visit to Worcester and just prior to that had you not drawn an assignment relating to the Needham, Marshman and Matthews patents, under the direction of Mr Morgan and Mr Nichol or both to Henry Wilson

Objected to.

A. I don't think I had; the exact day or time I can't tell.

Q Did you make the draft for it.

A. I made a portion of the draft for it.

Q Do you know on what day you did that.

A. I can't tell you.

Q Do you know what day that was executed

A. I don't recollect the execution of it

Q Do you know what day you went to Worcester.

A. I don't recollect it, the day, except it was the latter part of October or the first week in November, my recollection is it was the 26th or 28th October.

Q Did you know that assignment to Wilson was

signed on the 25th October.

A. No sir.

Q. Didn't you know when you went to Worcester that you had drawn it?

A. If I had drawn it before I went to Worcester I knew it.

Q. Did you counsel Mr Morgan to resign his position in the Townaphone Music Company as president.

Objected to.

Q. Was you going to Worcester and taking with you the written resignations of Mr Morgan and Mr Nichol as Officer and President of the Townaphone Music Company the result of your advice to those gentlemen.

A. I did not advise them.

Q. Didn't you upon that occasion said to Mr Hammond in substance, "if you find out anything crooked about this transaction, these resignations and transfers you shouldn't blame me for it, because I am merely a messenger."

A. No; I said something of that sort.

Redirect examination by Mr Metts.

Q. you were asked whether you advised Mr Morgan to resign. What is the fact.

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A. The fact is Mr Morgan didn't sustain to me the exact relation of client & Counsel.

Re cross examination by Mr Stafford

2 In any of those conferences and conversations on the subject of his resignation was it not said by Mr Morgan, or Mr Nichol or both that if they resigned their offices in the Townaphone Music Company that company would be powerless to pursue them in a legal prosecution.

A. No sir. I never heard that suggested before

known to before me this
15th day of March

1884

Charles Bradshaw.

[Signature]
Police Justice.

Edward E. Jones a witness for the defence
being duly sworn testified as follows.

Direct Examination by Mr. Melts.

- Q What is your business
A. Secretary of the Mechanical Arguette
Company.
- Q Were you such in September 1882.
A. I was then President of the Arguette
Company.
- Q Do you know Mr Morgan and Mr Andrew
H. Hammond.
A. I do.
- Q Do you know Mr Ketchum.
A. I do.
- Q In the latter part of September 1882 was
Mr Hammond in the office of the Mechanical
Arguette Company.
A. He was.
- Q On or about the 30th September 1882 at the
office of the Arguette Company did
you not then hear Mr Ketchum ask Mr
Hammond if a certain claim had been
assigned to the Townaphone Music Company
and Mr Hammond answered that it had
not and did you not then hear Mr
Ketchum ask Mr Hammond whether any

assignment had been made to the Towna⁷⁵ phone Music Company and did you not hear Mr Hammond reply that none yet had been made or words to that effect.

A. In regard to the first part of the question, I don't remember as to the assignment of a claim but the last part I do remember; he asked if any assignment had been made to the Townaphone Music Company.

2 Mr Hammond has testified in this proceeding that on that occasion nothing was said about any assignment to the Townaphone Company; is that true or not.

A. It is not true.

2 Who else were present.

A. Mr Harris; Mr Morgan; Mr Reed; Mr Surtee; Mr Kelly; Mr Tremaine were present, I don't now think of any other.

2 What did you say is your present position

A. Secretary of the Mechanical Organette Company.

2 You have been Secretary how long.

A. Since the latter part of July last.

2 And prior to that what was your position

A. I was President of the Company from the latter part of July 1892 ¹⁸⁹² ~~the organization~~ until last July, since then Secretary.

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- 2 Who is President of it now
A. Mr James Morgan.
- 2 The accused here.
A. Yes sir.
- 2 How long has he been President.
A. Since the latter part of July.
- 2 Did you make an affidavit in the suit of Harris against the Mechanical Argonette Company.
A. I did.
- 2 In regard to some transactions of James Morgan in connection with that company.
Objected to.

Cross examination by Mr Stafford.

- 2 Do you know Mr James Morgans reputation as to his being a man of veracity and integrity and as to his being a very crooked and tricky man in his business relations.
A. I don't think I do.
- 2 How long have you known him.
A. I have known him four or five years.
- 2 Have you been in intimate business relations with him during that time.
A. During a part of the time.
- 2 Wasn't he connected with the Mechanical

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Arguette Company when you first went with it.

A. No sir.

2 How soon after did he become connected with it.

A. I can't now say; within a year I should say.

2 Did he become an officer.

A. Trustee.

2 How long did he remain a Trustee.

A. I don't exactly remember the length of time now.

2 Was he there a good deal of the time during the time he was ~~trustee~~ first director.

A. Not very much.

2 Did you hear his character discussed a good deal during that time.

A. I did not.

2 Wasn't there a good deal of talk and conversation and consultation as to things Mr Morgan had done in business matters.

A. While he was director.

2 Yes; sometime after he ceased to be a director about things he had done while he was a director.

A. Yes a good deal of it.

2 You had later part.

A. I did.

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- 2 You made an affidavit about it.
A. I think I have.
- 2 Do you know from that conversation what his general reputation is for integrity and honesty in business matters.
A. The conversations I had were with one or two individuals chiefly; I don't suppose I can swear to that.
- 2 You formed no impression as to his reputation from all you had heard said about James Morgan.
A. I had.
- 2 What was your impression of James Morgan's character or integrity in business matters at that time as stated by you.
A. At what time?
- 2 At the time you made the affidavit, what was his reputation at that time, the impression you formed at that time.
A. That he would drive a pretty hard bargain.
- 2 That he would do some things that were crooked.
A. Not if he understood them to be so.
- 2 Allowing him to be the judge they were not crooked, but allowing you to be the judge were they crooked.
Objected to.

- 2 Haven't you in substance accused him of dishonesty, rascality and swindling
Objected to.
- 2 Wasn't Mr Morgan accused of swindling the Arguette Company during the time he was a director of it
Objected to.
- 2 Didn't you swear to the complaint charging him with rascality in substance and of swindling the Arguette Company while he was an officer of it
Objected to.
- 2 Didn't you swear to the complaint entitled John C. Harris against the Mechanical Arguette Company, James Morgan & others in which Mr Morgan was charged with fraud as an officer of the Mechanical Arguette Company.
Objected to.
- 2 Mr Jones relate the entire conversation that took place in the office of the Mechanical Arguette Company on the occasion when you say Mr Hammond stated the things you have sworn to in your direct examination.
A. Previous to this question and answer to which I have testified some members of the Company had been holding a conversation with Mr Morgan expressing disgust with certain points of

the business; Mr Hammond sat a little apart from them about as far from me as he is from me now talking with Mr Harris and after they had talked for a while Mr Kelchman asked Mr Hammond some question; I think he asked him if he had any claim against the Argimette Company and wanted to know if he would quit claim against the Argimette Company and he said there is no use to quit claim what he hadn't got illustrated it saying you might as well ask me to quit claim the Astor House; some further conversation was had with reference to other things that I don't now remember distinctly, then followed a question in relation to an assignment; I don't remember all that was said but there was some question which had reference to a claim and a question was asked "had any assignment been made."

Q Is that the exact form of the question
A. I don't remember that.

Q Do you remember any language of a question put to Mr Hammond other than what you have just stated. Was that the whole question as far as you can now remember.

A. I think it was.

Q And the only other question that you remember is as to an assignment.

A. They were talking with reference to an

assignment of that claim

- 2 I want the language. Do you remember any other language used in regard to an assignment being put to Mr Hammond that morning.

Mr Belts called witnesses attention as to whether it was to or from the Townaphone Company.

Mr Stafford Counsel for the prosecution protests against Mr Belts making that suggestion as being a clear piece of prompting to the witness.

A. I think he was asked if any assignment had been made to the Townaphone Music Company.

- 2 Have you now stated all you remember of any language contained in any question put to Mr Hammond on that occasion.

A. There was some question with reference to one point I don't remember now which one, Mr Ketchum asked him some question which I don't remember and he said I haven't turned my mind to it and he said will you please turn your mind to it.

- 2 Is that all you remember.

A. That is all I recollect at this moment.

- 2 Did Mr Ketchum at that time hold a paper in his hands about which that discussion was held.

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A. I don't recollect whether he had a paper or not.

Q Was there a paper there on that morning or on that occasion submitted for consideration or discussion.

A. I think there was.

Q Do you know what that paper was about.

A. It was about an agreement proposed to be entered into between the Argumette Co and James Morgan, John Nichol, the Estate of Mason J. Matthews and Mr Hammond.

X
Q Wasn't the Townaphone Music Company a party to that proposed agreement.

A. I think it was.

Q Do you say there was anything in that paper about the Matthews Estate.

A. I shall not be sure as to that particular paper whether it specified the Matthews estate or not.

Q Did you hear Mr Kelburn ask Mr Hammond if he understood that that paper as drawn included a conveyance of a claim of the Townaphone Music Company against the Argumette Company; a release of that claim.

A. I think there was.

Q Do you remember what Mr Hammond answered in reply to that question

A. I don't remember

2 Do you remember the substance of it

A. I should say it was in the negative.

2 Do you remember he said Mr Ketchum that is a legal question and you are more competent to answer it than I am as you have drawn the paper.

A. I don't remember that.

2 Do you remember Mr George B. Kelley asking Mr Ketchum if he Mr Ketchum understood that that paper covered a release of a claim of the Townaphone Music Company against the Mechanical Arginnette Company.

A. I think there was such a question asked

2 Do you remember Mr Ketchum answered "No" or in the negative.

A. I should say he did.

2 Was that proposed agreement adopted on that occasion.

A. It was not.

2 And did it fail to be adopted because of Mr Ketchum's answering that it didn't contain a release of a claim of the Townaphone Music Company against the Mechanical Arginnette Company.

Objected to.

2 You were an officer of the Mechanical Arginnette Company at that time.

A. I was.

Q Did you refuse to assent to the execution of that paper unless it surrendered or covered a release of a claim of the Townaphone Music Company against the Mechanical Argumette Company.

A. I don't remember just what I said.

Q Do you say you didn't refuse on that ground.

A. I don't say I did not.

Q Do you now remember any other ground of objection on that occasion to the execution of that paper, that was stated.

A. That was the principle one I think as far as I was concerned.

Q Do you remember Mr Ketchum asking Mr Hammond on that occasion if he Hammond would consent to a release of a claim of the Townaphone Music Company against the Mechanical Argumette Company if they would execute that paper on that occasion.

A. I don't recollect that point.

Q Do you recollect Mr Hammonds refusing to consent to the release of a claim of the Townaphone Music Company against the Mechanical Argumette Company on that occasion.

A. I should say he did, he was the speaking

party I don't recollect whether for himself or for others on that subject. 85

2 Did you know at that time that James Morgan was then President of the Townaphone Music Company.

A. I don't remember whether he was President then or not.

2 Had you been negotiating as a representative of the Mechanical Organette Company for two months prior to that with Mr Morgan and or Mr Hammond.

Objected to.

2 Don't you know now that he was President then.

A. I don't now remember the date of his resignation.

2 You knew it up to the time he resigned.

A. About that time.

2 You knew he was President at the time of his resignation.

A. Up to about that time.

2 And did you know that Mr Nichol was also an officer of the Townaphone Music Company.

A. I so understood it.

2 And did you understand that Mr Morgan and Mr Hammond were there on that occasion as representatives of the Townaphone Music Company.

A. Partly so I believe.

- 2 Do you remember Mr Hammond saying that morning in answer to a question from Mr Ketchum as to whether or not the claim against the Mechanical Argonette Company had been assigned to him Hammond and Mr Hammond replying that Mr Morgan had promised that that claim should be assigned to Mr Hammond, but that it had not yet been done.

A. I have heard that language used since, but it was in the trial.

- 2 Do you remember that question and answer having been put on that occasion.

A. I can't tell whether I heard it then or not.

- 2 Will you say you didn't hear it on that occasion.

A. I will not.

- 2 And did Mr Ketchum follow Mr Hammond's answer with the further question "as no assignment been made"

Objected to.

A. I can't say.

- 2 Will you say he didn't.

A. I can't say he did not.

Sworn to before me this

15th day of March 1884

Edw^d E Jones

Police Justice

Herbert T. Ketchum a witness for the
defence being duly sworn testified as
follows:

Direct examination by Mr. Wetts.

- Q You are a Counselor at Law
A. I am
- Q Where
A. 170 Broadway, New York City.
- Q Do you know Mr. Hammond.
A. I do.
- Q Mr. Andrew N. Hammond.
A. Yes sir.
- Q Were you present about the 30th September
1882 in the office, or at the rooms, of the
Mechanical Argonne Company at a conversation
at which Mr. Hammond was present and also
Mr. Jones, the last witness.
A. Yes sir.
- Q Now will you state in that conversation
what you asked Mr. Hammond and what he
replied to you.
A. I asked Mr. Hammond whether a certain
claim arising upon what was known as the
Cabinette Contract against the Mechanical
Argonne Company had been assigned to
him; he said "No" I asked him if that

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claim had been assigned to the Townaplane Music Company" he said there had been an agreement to assign; after asking him with regard to a specific assignment of the claim I asked him towards the close of the conversation "has any assignment of any kind been made to the Townaplane Music Company" he answered "No" those are the only questions that I remember I asked.

2. Mr Hammond has testified in this criminal examination as a witness that on that occasion nothing was said about any assignment to the Townaplane Company. Is that true, or untrue?

Cross examination by Mr Stafford.

2. Who else were present at that conversation?

A. Besides myself, Mr Jones, Mr Kelly, Mr Durkee, Mr Morgan, Mr Hall (interrupted)

2. Are you the attorney for the Mechanical Argonne Company?

A. I am.

2. You have been for two long.

A. Since about September 1882.

2. Is Mr James Morgan the defendant here an officer of that Company?

A. I understand him to be.

2. To be what?

A. To be President.

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2 Have you had interviews and consultations with him as an officer of the Mechanical Argonne Company.

A. I have.

2 Frequently during the time since he became such officer.

A. No; I should say not frequently.

2 How many times.

A. Five or six times.

2 Since when.

A. Since July 1883; my first conversation with him was perhaps a month or two later than that.

2 And you have had how many interviews and consultations with him since.

A. I think five or six with reference to the business of the company.

2 In which you were acting as Counsel under his instructions.

A. No.

Cross-examination by Mr. Stafford

2 Were those interviews in relation to the business of the Company.

A. They were.

2 On this occasion that you have alluded to, the conversation in the office of the

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Q Have you had interviews and consultations with him as an officer of the Mechanical Orgonette Company.

A. I have.

Q Frequently during the time since he became such officer.

A. No; I should say not frequently.

Q How many times.

A. Five or six times.

Q Since when.

A. Since July 1883; my first conversation with him was perhaps a month or two later than that.

Q And you have had how many interviews and consultations with him since.

A. I think five or six with reference to the business of the company.

Q In which you were acting as Counsel under his instructions.

A. No.

Cross-examination by Mr. Stafford

Q Were those interviews in relation to the business of the Company.

A. They were.

Q On this occasion that you have alluded to, the conversation in the office of the

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Mechanical Orgumette Company. was there
a paper which was drawn for execution
as an arrangement between the parties that
were gathered there.

A. Not all of the parties individually
Any of the parties that were there!

2 A. There was.

2 Between what parties.

A. Between the Mechanical Orgumette
Company, the Tournaphone Music Company,
James Morgan and John Nichol and James
Morgan as executor of the estate of Mason
J. Matthews.

2 Any others.

A. I think not.

2 Are you sure.

A. Oh yes.

2 Had you taken part in the drawing of
that document.

A. I had.

2 Did you on that occasion ask Mr Hammond
if he understood that that paper contained
a release of a claim of the Tournaphone
Music Company against the Mechanical
Orgumette Company.

A. Yes sir.

2 And what did he answer.

A. He answered he didn't know.

Q Did he say that as you were a lawyer and drew the paper you were better able to answer than he.

A. No sir.

Q Where you asked by any one if you understood that that paper covered a release of a claim of the Townaphone Music Company against the Mechanical Arguette Company.

A. Yes.

Q By whom.

A. I don't remember.

Q What did you answer.

A. In my judgment it did.

Q Did you ask Mr Hammond to release any claim that morning.

A. I did.

Q What claim.

A. I asked him to give a general release to the Mechanical Arguette Company, the question was asked with special reference to the claim I have described as the Cabinette ~~contract~~ claim.

Q Did you ask him if he would release that Cabinette claim.

A. I think not.

Q What did Mr Hammond reply.

A. He said no he would not release a claim he didn't have, he said it would be

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useless, that I might as well ask him to quit claim the Astor House, he said would you want such a claim as that, and I said I would.

Q Did you ask Mr. Hammond if that claim you speak of as the Cabinet claim had been assigned to him.

A. Yes sir.

Q What was his answer.

A. Rather I asked him if he held a claim, ^{not} any specific, any particular claim and he said "No".

Q Did you say Mr. Morgan had promised to assign that claim, but that it had not been done.

A. I did not.

Q Did Mr. Hammond not say that that claim was not his but was the Townsphone Music Company's.

A. He did not.

Q Were you familiar with all the terms of that proposed agreement at the time.

A. Yes.

Q Was that conference held with the expectation or hope that that paper would be executed as drawn on that occasion.

A. No.

Q Wasn't it drawn and submitted for that purpose.

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A. It was not.

2 Had there been a previous document drawn and conferences held over it at the same place by the same parties.

A. Not the same parties; there had been such a paper proposed at other interviews on what occasion.

A. Within a week.

2 Was not this second document drawn because the first was unsatisfactory to the parties who consulted over it.

A. Yes sir.

2 And you say it was not drawn for the purpose of being executed.

A. No sir.

2 What was it drawn for.

A. For the purpose of being accepted as a draft from which a paper might be drawn to be executed.

2 And if that draft had been satisfactory it or a copy of it was to be executed.

A. No sir.

2 Then what do you mean when you say it was drawn to be accepted.

A. Well I mean this, it was to be drawn to be accepted, but was not to be executed by the Argonne Company unless the Townshone Company owned the patent and ^{had} ^{or}

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right to execute it

2 Was anything said on that occasion.

A. There was at the interview on that day something said about it.

2 Was the chief point of discussion on that occasion the question of the claim which was spoken of and as to its being released by that paper.

A. I don't know.

2 Was that discussed more than any other one question.

A. I don't know.

2 What other point in the discussion was there difference about.

A. The point suggested by my inquiry to Mr Hammond "has an assignment at any time been made to the Townaphone Music Company."

2 Have you not testified in the suit of Seely against Morgan & others that the chief and sole ground of the refusal to agree upon that document was Mr Hammonds refusal to consent to a release of the claim of the Townaphone Music Company to the Mechanical Argumette Company.

A. No sir.

2 Have you not testified in substance that that was the only ground upon which they

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differed and disputed that morning.

A. No sir.

2 Did not that meeting come to an end immediately upon Mr Hammonds refusal to consent to a release of the Townaphone Music Companys claim against the Mechanical Arguette Company.

A. No sir.

3 What was the particular point at which the meeting broke up.

Objected to.

Now before me this 15th day
of March 1884

H. J. Metcalf

Adjournd to Saturday March 22^d.
1884. at 11 O'clock A.M.

Saturday March 22^d 1884. 11 a.m.

Continued

Present - Counsel for the respective parties as before.

William B. Fennell a witness for the defence, being sworn by the Stenographer in the absence of Justice Duffy, by consent of Counsel testified as follows.

Direct examination by Mr Belts.

2 What is your occupation.

A. General Superintendent of the Mechanical Arguette Company.

2 What were you in the fall of 1882, September, or October.

A. I was a Director.

2 In what company.

A. Yes sir.

2 Do you know Mr Hammond.

A. Yes sir.

2 In the fall of 1882 do you remember his coming to the rooms of the Arguette Company and a conversation taking place there at which Mr Kelly and Mr Jones and some others were

present.

Q. Yes sir; do you mean the 30th of September?
A. Yes.

A. Yes sir.

Q. At that time did you hear Mr Ketchum ask Mr Hammond if any assignment whatever had been made to the Townaphone Music Company, and Mr Hammond replied that "none yet had been made" or words to that effect.

Objected to as leading.

Answer taken subject to objection

A. That question was asked; Mr Hammond's reply was "no" as near as I can recollect.

Cross examination by Mr Stafford.

Q. Will you please state as near as you can the exact order in which the questions on that subject was put, and the answers given and used as near as you can, the precise language used by the parties who put the questions and made the answers.

A. The question was "has any assignment of any kind been made to the Townaphone Music Company."

Q. That was put by whom.

A. Mr Ketchum.

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Q What was the precise words of the answer.
A. No.

Q Nothing else.

A. As near as I can recollect "no" is all
was said.

Q Was the subject of the inquiry upon that
occasion; or was one of the subjects of
the inquiry on that occasion, in the
question put by Mr Ketchum and answered
by Mr Hammond, "whether a claim against
the Mechanical Argumette Company had
been assigned to Mr Hammond."

A. Yes.

Q It was.

A. Yes.

Q What did Mr Hammond answer to that
question.

A. No.

Q Anything more.

A. His reply?

Q Yes.

A. I think not.

Q Do you remember whether or not he said
in reply to such a question "that Mr
Morgan had agreed to have that claim
assigned to him, but that it had not yet
been done"

A. I think not.

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Q Will you say positively that he did not.

A. I think I should say positively, not.

Q Was not the occasion of that meeting the coming to an agreement between the Mechanical Organette Company, The Phonograph Music Company, Mr Morgan and Mr Nichol in regard to Musical Instrument business.

A. Yes sir.

Q Had there been numerous discussions and negotiations prior to this date about which you are testifying.

A. Yes sir.

Q Had the matters about which they were to agree; desired to come to an arrangement; been reduced to writing.

A. I think it had.

Q Was there a writing there on that morning

A. Yes sir.

Q Had there been writing on the same subject previously considered at a meeting of those parties.

A. I think so.

Q At the prior meeting was there anything left as to which the parties differed except the matter of a claim against the Mechanical Organette Company.

Objected to.

Q Was not the sole question about which

The parties differed on that morning, the 30th of September, in regard to a claim against the Mechanical Argonne Company. Mr. Belts, defendant's counsel instructed the witness not to answer until directed to do so by the justice.

Q Was Mr. Hammond asked on that occasion, the 30th of September, by Mr. Ketchum, at that 30th of September meeting, if he Mr. Hammond would assign to the Mechanical Argonne Company, any claim that he had, or might have.

A. He was.

Q What answer did Mr. Hammond make to that question.

A. He said he hadn't any claim to release, and wanted to know if he wanted him to release the Astor House, or something of that kind.

Q Did Mr. Ketchum ask Mr. Hammond upon that occasion if he Mr. Hammond understood that the paper then under consideration had the effect of releasing a claim against the Mechanical Argonne Company.

A. No.

Q You are positive of that.

A. Yes sir.

Q Did Mr. George. W. Kelly ask Mr. Ketchum on

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that occasion if he Mr Ketcham understood that paper then under consideration worked a release of a claim against the Mechanical Arguimette Company.

A. That question was asked; I am not sure it was Mr Kelley; I think it was Mr Jones.

Q Mr Jones asked Mr Ketcham that.

A. That is my impression

Q And what did Mr Ketcham reply to that.

A. He thought not.

Q Was there any question on that occasion as to which the parties then present differed and as a consequence of which difference refused to accept the writing as satisfactory except the question of a claim against the Mechanical Arguimette Company.

Mr Belts, defendants counsel, instructs the witness not to answer until directed to do so by the Justice.

Q Was there anything said on that occasion upon any point as to which the parties differed and in consequence of which they would not accept that written agreement as satisfactory, except the question of a claim against the Mechanical Arguimette Company.

A. I can't remember; there was a great deal talked over there; there was other

matters in connection with Mr Morgan
that were a block in the way of consummat-
ing the deal.

2 In connection with Mr Morgan.

A. In connection with the whole thing.

2 What was it.

A. I don't think the conversation was a
general one among the trustees; I don't
remember anything being said there in
the presence of Mr Hammond with the
exception that Mr Morgan and Mr Hammond
were left there to settle some difficulty
between them before the papers could be
signed.

Sworn to before me this 22nd.
day of March 1894.

D. G. Peffer
Police Justice

W. B. Freeman

Edwin S. Mabeck a witness for the defence being called by defendants Counsel, but in the absence of the Judge (Duffy) witness was not sworn, but said he would consider himself under oath, whereupon it was agreed between Counsel for the respective parties and the witness that the oath should be administered at the time of signing this testimony; upon this the witness testified as follows;

Direct examination by Mr. Mello:

- 2 What is your occupation.
A. Lawyer.
- 2 Are you counsel for Mr. Morgan in any matters.
A. I am in several
- 2 In matters of controversy between him and Mr. Hammond.
A. I am in one.
- 2 What is that suit.
A. A suit brought in the fall of 1882 by Mr. Andrew B. Hammond against James Morgan in the Superior Court of the City of New York which suit has been on the day calendar and is

pending and imbrued in

Mr Stafford objects to the witness
stating the condition of the suit.

Q Briefly, what is the general claim or
demand made in that suit.

A. Objected to.

Q Do you know Mr Hammond.

A. I do sir.

Q Mr Andrew H. Hammond.

A. Yes sir.

Q Who has testified in this proceeding

A. Yes sir; I do.

Q Do you remember seeing him, Mr
Hammond, about the 28th of September
1882.

A. I do.

Q Was he at your office in company with
Mr Morgan at that time.

A. He was.

Q And, what did they consult you about
at that time.

A. About the 20th day of September
1882, and to the best of my recollection
on the 15th of that month, Mr Hammond
and Mr Morgan came to my office,
No 7 Warren Street, New York, City, and
requested me to prepare a proposed
tri-party agreement. Objected to.

2 About the 28th of September did they come to consult you in regard to a paper you had drawn.

A. I do not remember that they did especially at that time. They were in my office consulting me about papers which I had drawn several times during the latter part of September 1882, but on the occasion when they first came to have any such paper prepared, it was about the 15th of September. (I said to them) you objected to

2 Did you have several conferences with Mr Hammond in regard to that proposed agreement, during the month of September.

A. I did.

2 In one or more of those conferences did not you ask Mr Hammond the question "whether the Townaphone Music Company had any title to those patents."

A. Upon the first occasion upon which they came to confer with me about such a paper, which to the best of my recollection was about the 15th of September, I did say to them "what shall I say about the title of the Townaphone Music Company, the patents haven't been assigned yet have they" and both Mr Hammond and

Mr Morgan answered "No" and Mr Hammond went on and said "but that can be done any time, or, in a very short time" and then I said "they couldn't be until you have carried out your agreement with Mr Morgan" and Mr Hammond said "let us see what can be done with the Argumette Company, or, if we can make an agreement with the Argumette Company, and that can be attended to, or, done in any 15 minutes". In giving this conversation I do not mean to swear that I re-produce every precise word that was used upon that occasion. Did not Mr Hammond say in one of those conferences in answer to a question from you "that the Townaphone Company had not acquired title to those patents, but could acquire them at any time".

A. He did in substance, but more nearly in the words already given in my previous answer.

Cross examination by Mr Stafford.

2 Mr Babcock, have you ever been arrested.

A. If by the word arrested you mean if a Police officer has ever taken me to

the Station House when I was fourteen years old, one did.

Q As an Attorney & Commissioner at Law do you know what is usually meant by the word arrested.

A. If I were familiar with criminal business I think that I might give it one meaning, and I do not know that ~~from~~ apprehension it is necessarily an arrest.

Q Have you ever been arrested except at the time you were a boy fourteen years old.

A. Not that I am aware of

Q Have there ever been proceedings taken to disbar you.

A. Not that I am aware of

Q Have there been proceedings taken against you as an Attorney & Commissioner at Law for altering and cutting down, or causing and procuring to be altered and cut down an Exhibit in a case in which you were concerned.

A. Not that I am aware of. (As far as I know my 25th objected to were you ever called before a court on a matter of that kind.

A. Not that I know of.

Redirect by Mr. Pello.

Q What has been your length of service at law

A. Twenty five years and a little more;
 25 years ago I was admitted at an
 examination before the General Term, in
 1858. ^{from the office of William Curtis Hayes & Seeley, Powers & Tallmadge} I wish to say that in that
 25 years of continued and active practice,
 with the exception of 4 years, during
 which I was an officer in the army, so
 far as I know my practice as been without
 reproach from any human being until
 possibly the commencement of the litigation
 of Seeley against Morgan and
 Hammond against Morgan during which
 I have been so unfortunate as to meet
 with very bitter and ungracious treatment
 from my opponent Mr. Marshall P.
 Stafford, (who has on several occasions
 been publicly rebuked) objected to.

Ernest S. Bennett

Sworn to before me this 26th.

day of March 1884

J. J. Jeffery
 Police Justice

Adjudged to Wednesday March 26th 1884
 at 2 O'Clock P.M. at 57th St. Police
 Court.

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Wednesday March 26th 1884 ¹⁰⁹
 2 O'clock PM - 4th District Police Court ¹⁰⁹

Continued.

Present - The Court & Counsel.

The Witnesses William M. Tremaine and
 Edwin S. Babcock who testified at
 the last hearing in this case, on the
 22nd inst, without being sworn, by consent of
 Counsel for the respective parties, in the
 absence of the Magistrate upon the understanding
 that they were to be sworn by the Magistrate
 at the time of signing their testimony at to-day's
 hearing; were duly sworn at this hearing.

It is stipulated between the
 parties that the suit of
 Seelye agst Morgan in
 which the answer complained
 of in this present complaint
 was made, is still pending
 and untried on the hearing
 before the Referee at its second
 trial, and that the plaintiff
 has not rested.

James Morgan being duly sworn testified as follows:

Direct Examination by Mr. Belts.

Q Are you the accused in this proceeding?
A. I believe so sir.

Q What is your age.

A. 57.

Q What is your occupation.

A. Importer of Granites

Q Where is your place of business.

A. 99 Maiden Lane, New York City; I am engaged in other business.

Q How long have you been in that occupation.

A. Since about 1846 I think.

Q Where is your place of residence.

223 A. 253 - 9th St. Brooklyn, N.Y.

Q How long have you resided there.

A. Six years.

Q How long have you been in business in New York or Brooklyn.

A. Since 1851.

Q Have you ever been accused of any criminal offence before this in your life.

A. Never that I know of.

Q You have read the complaint in the case

of Seely against Morgan & others.

Q. Yes sir; I read it at the time
2 And you are the defendant named in that suit.

A. I am one of them.

2 Did you on or about the 13th day of May 1882 execute and deliver to the Townaphone Music Company the assignments of numerous letters patent, and interests in, and licenses under letters patent mentioned in that complaint.

Objected to as being incompetent & as leading.

Objection over-ruled. Exception.

A. I did not.

2 (Showing witness Exhibit 1) That is your signature to Exhibit 1 is it not.

A. Yes sir; that is my signature.

2 Did you ever knowingly execute any such paper as that; Exhibit 1.

A. Not that I recollect of; (We signed papers there some of which)

Plaintiffs Counsel moves to strike out that part of the answer enclosed in parentheses

2 Did you ever deliver that paper to Mr. Faulkner, the Secretary of the Townaphone Music Company.

Objected to as being incompetent in consequence

of the word "delivered"

Answer taken subject to objection.

A. Not that I know of; if I did I didn't know it; I don't believe I did.

2 When you swore to the answer in this case had you any knowledge or belief that you have ever executed such a paper as that Exhibit 1.

A. None at all.

2 Or that you had ever delivered such a paper to Mr Faulkner.

A. None at all.

2 What time did Mr Nichol leave Worcester on the 12th or 13th of May 1882.

A. On the 12th of May, if I recollect right.

2 He was not there on the 13th of May at all.

A. No sir.

2 Can you tell how many papers at all you executed on the 12th or 13th of May 1882 at Worcester, Mass.

A. I cannot recollect, probably about 10 or 11 papers; there had been papers executed more than once.

2 At whose request did you execute the papers there.

A. Mr Blackmer, who had charge of the whole matter.

Q Such papers as he requested you to execute you did execute.

A. I did.

Q Did you not honestly believe all the statements contained in this answer in testimony against Morgan at the time you swore to it.

A. I did.

Cross examination by Mr Stafford.

Q Do you know the other signature attached to Exhibit 1.

A. I do.

Q Did you see them placed there.

A. I saw Mr Nichols placed there.

Q When was it placed there.

A. I could not swear to the date; I think the 12th of May.

Q Did you see Mr Hammond's placed there.

A. I don't recollect as to Mr Hammond's.

Q When did you affix your signature.

A. I don't know except that we signed quite a number of papers.

Q Did you put your signature there before Mr Nichols did his.

A. I can't tell that, except that it would indicate it.

- Q Are there any circumstances which enable you to speak so positively of Mr Nichols' leaving Worcester on the 12th of May 1882?
- A I don't recollect all the circumstances now; I remember one thing very distinctly, he left the day before the formation of the Company which was to take place on the 13th of May.
- Q Did he leave you a power of Attorney to sign papers for him after the 12th if necessary?
- A I think he did.
- Q And did you sign any papers for him Mr Nichol under that power of Attorney?
- Objected to.
- Q Do you remember attending a meeting of the Directors of the Townaphone Music Company on the 13th of May 1882 and calling that meeting to order as its President?
- A I think such a meeting was held.
- Q I ask you if you remember attending that meeting and calling it to order.
- A It is my impression it was done, but the form of doing it I don't recollect.
- Q Do you remember a meeting being called and you presiding at it?
- A I think that was done.
- Q Do you remember a vote being passed to

purchase of James Morgan, and John Nichol, and A. H. Hammond the patent rights enumerated in two certain conveyances exhibited to the board by A. H. Hammond.

A. I don't remember such a vote.

Q Do you remember such a vote was not passed.

A. I don't remember.

Q Do you remember a vote being passed at that meeting that the Townaphone Music Company proceed at once to the sale and manufacture of Mechanical Musical Instruments.

A. I do not.

Q Do you remember anything about that meeting.

A. I remember some things about it.

Q State anything in any resolution you remember being passed at that meeting.

A. I don't know that I can state precisely what passed at that meeting.

Q When did you become President of the Townaphone Music Company.

A. I don't know that I ever was.

Q Did you ever preside at a meeting as President of that Company.

A. I did take part in the proceedings at that time.

Q Did you take part in fitting up Ware
rooms for the Townaphone Music Company
in the city of New York subsequent to the
13th day of May 1882.

Objected to.

Q You have been present at the former
hearings in this proceeding and heard the
testimony have you.

A. I have, yes.

Q Did you hear the testimony of Mr
Hammond.

A. Yes sir.

Q Did you hear the testimony of Mr Herbert T.
Keldron.

A. Yes sir; I think I did.

Q Did you hear the testimony of Mr William
B. Tremaine.

A. Yes sir.

Q Did you hear the testimony of Mr Edward E.
Jones.

A. I did.

Q Do you remember that they testified to a
meeting between the Townaphone Music
Company, or its representatives, the Mechanical
Organette Company, or its representatives and
yourself.

A. Yes.

Q Did you take part in any discussions as to

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a proposed arrangement between the Gramophone Music Company, and the Mechanical Organette Company there.

A. Yes, I have taken part in various discussions.

Q Did you take part in this case which Mr Hammond, Mr Jones and Mr Ketchum have testified to.

A. I don't recollect.

Q Were you present.

A. I was.

Q You said nothing.

A. I don't remember taking any active part in the discussion.

Q Did you take any part in the preparation of the papers that were presented and discussed at those meetings.

A. I did take part more or less in all of them.

Q Over how long a time did those negotiations extend.

A. About the formation; about drawing the paper.

Q Yes; from beginning to end.

A. I can't tell you exactly as to that, from 2 to 3 weeks, might be a shorter time; I recollect the instances but not the time.

Q How long did you remain in Worcester

after the 12th day of May 1882.

A. I think I left Worcester on the Monday following.

2 Do you remember what day of the week the 12th of May was.

A. I have no recollection what was the exact time except what I have looked into since.

2 Do you know now what day the 12th of May was; what day of the week.

A. I think it was Friday.

2 Were you in Worcester that day.

A. I was.

2 At the office of Rice & Blackmer.

A. A part of the time.

2 Were you also there on the 13th day of May.

A. I think I was.

2 What part of the day were you in Rice & Blackmer's office on the 13th of May.

A. I think it was in the afternoon.

2 How long were you there.

A. I can't tell; it might have been one or two hours, less or more.

2 What else did you do on that day.

A. I have no present-recollection what I was doing.

2 Do you remember how you passed a portion of the

day prior to being in Rice & Blackman office
 A. I have no distinct recollection of it at present.

2 Do you know where you were stopping at that time.

A. That I am not certain of.

2 What is your best remembrance.

A. My best remembrance would be I probably stopped with Mr Hammond.

2 Do you know where you stopped the night of the 13th of May.

A. That is the night I am speaking of.

2 Where were you on the night of the 13th of May

A. I don't recollect.

2 Do you remember whether or not you were at the house of Mr Hammond.

A. I do not positively.

2 Do you know where you spent Sunday.

A. I don't recollect.

2 Sunday night.

A. I do not.

2 Do you know whether you were in Worcester or not.

A. I do not so that I can swear to it now.

2 When did you leave Worcester first after Saturday the 13th day of May 1882.

A. I think it is only a recollection; I am not certain as to it but think it was on Monday

evening.

2 What makes you think it was Monday evening.

A. Well there is certain things that will turn upon your mind to make you think so.

2 You have no remembrance of anything you did on Saturday the 13th, Sunday the 14th or Monday the 15th days of May 1882.

A. I have a recollection that on the Monday there was stock certificates signed.

2 Stock certificates of what.

A. Of the Townshone Music Company.

2 Did you receive any of them.

A. I did.

2 How many; of what par value.

A. I didn't know that they had any value.

2 What was the par value of the face of them.

A. There were 30 shares I think, or 300 shares not sure which having a value of \$100⁰⁰ a share.

2 Did you sign those certificates.

A. My recollection is I did.

2 As President of the Townshone Music Company.

A. I think so.

2 Did you receive any on that day for anybody else besides yourself.

A. In the number I have given was included what Mr. Nichol was to get.

- Q Do you remember what portion of the stock of the Townshend Music Company was, or was to be issued to you and Mr. Nichol.

Objected to.

Objection over-ruled. Exception.

Question was repeated in another form before answer was made.

- Q What proportion of the capital stock of the Townshend Music Company was issued to you and Mr. Nichol.

A. One half.

- Q You have said that you read the complaint in Seeley against Morgan before you swore to your answer.

A. I believe I did.

- Q Have you written your resignation as President of the Townshend Music Company.

Objected to.

- Q You say you have some other business besides that of importer of Grandes.

A. Yes sir.

- Q What is it.

A. White Lead.

- Q What else.

A. That is the only business I have.

- Q Are you an officer of any Company.

A. I am.

- Q What Company.

A. The Mechanical Arguette Company.

2 What position.

A. President.

2 How long have you been President.

A. Since the latter part of July 1883.

2 Do you devote any time to the business of that company.

A. I do.

2 What portion of your time do you devote to the business of that company.

A. Well it is somewhat uneven, some days not at all.

2 Where do you attend to the business of the company, in Maiden Lane, or at the office of the Mechanical Arguette Company.

A. At the office of the company in Broadway.

2 Have you any regular days or hours for being at the office of the Mechanical Arguette Company.

A. I have not.

Redirect-examination by Mr Belts.

2 At this interview on the 30th of September 1882 in the office of the Mechanical Arguette Company at which Mr Hammond was present, and Mr Kelly, Mr Jones, Mr Fremantle did you hear any one ask Mr

Hammond "whether any assignment of any kind had been made to the Tonophone Music Company."

A. I did.

Q And did you hear his answer.

A. I did.

Q What was it.

A. "No" or words to that effect.

Q Were you present at a conference in the month of September 1882 at which Mr Hammond and Mr Babcock were present, at Mr Babcock's office.

A. I was.

Q Did you hear in one of those conferences Mr Babcock say to yourself and Mr Hammond "what shall I say about the title of the Tonophone Music Company, the patents haven't been assigned yet have they".

he said the patents have not passed yet have they.

A. I don't remember that way. Did you hear Mr Hammond's reply to that.

A. His reply to the best of my recollection was that that could be done at once or any time when the other matters were settled.

Q Did he say whether they had or not.

A. He said that could be done at any time.

Re Cross examination by Mr ~~Betts~~ Stafford

- Q Your memory is very clear about questions put to Mr Hammond on the 30th of September.
A. Yes sir.
- Q And your memory is very clear about questions put to Mr Hammond by Mr Babcock is it.
A. Yes sir; I remember it.
- Q And you remember Mr Hammond's answer
A. I do.
- Q And yet you cannot remember anything about the 12th, 13th or 14th of May 1812.
A. I remember most things that were done on the 13th and 14th but I don't remember about the hours particularly.
- Q Do you remember what you did with the exception of being at Rice & Blackmores office on that day.
A. I remember we idled a great deal of time away around Worcester, Mr Hammond & myself.
- Q Where did you go around Worcester.
A. I have no distinct recollection, but I remember we had time to spend.
- Q What did you do on the 13th of May after you were at Rice & Blackmores' office.
A. That I don't remember.
- Q Do you remember being at the office of Rice & Blackmer on the 13th of May 1812

A. I do.

Q Did you see this paper there, Exhibit 1
A. I have no recollection of seeing that paper there at the time.

Q Have you any recollection of its being handed to Mr Faulkner that day.

A. I think I have.

Q Did you make any remark when you handed him the paper.

A. I think I did.

Q Do you remember what time you left Rice & Blackman's office that afternoon.

A. I don't recollect.

Q Do you remember what you did Saturday afternoon.

A. I do not.

Q How where you stayed.

A. I have no distinct recollection.

Q How what you did Sunday.

A. I have no distinct remembrance.

Q Don't you remember whether you went to Church or not.

A. I do not.

Q Do you remember going to Boston on either Friday the 12th or Saturday the 13th day of May 1882.

A. I remember going to Boston a number of times.

- 2 You don't remember anything about Monday following the 13th day of May 1882.
A. I have no distinct recollection except we to the best of my recollection signed certificates of stock.
- 2 What time of the day.
A. I don't remember.
- 2 Where.
A. Mr. Hammonds office.
- 2 Where.
A. In Worcester, Mass. No 9 May Street.
- 2 You don't remember what time of the day.
A. I think probably in the afternoon.
- 2 Who was present when you signed the certificates of stock.
A. I think Mr. Faulkner was present, I have no distinct recollection of any other.
- 2 Mr. Faulkner signed the certificates of stock.
A. I think he didn't at that time, he was busy filling them out, he wanted to get away, there was quite a good deal to do.
- 2 What was there to do.
A. Filling them out and preparing them.
- 2 How many were there.
A. I don't remember.
- 2 How there more than 4 certificates made out and signed on that day.

A. I think only four.

2 That is all there were made out and signed.

A. My best recollection is Mr. Nichol and I got one each, I don't remember how many I signed as President.

2 What time did you leave.

A. That I can't tell; I know I was in a hurry.

2 How do you know you were in a hurry.

A. Only as I recollect it.

2 Where did you go to.

A. I think to New York.

2 Are you sure.

A. I think my memory would tell me.

2 How did you go down, by Boat or Rail.

A. I don't know.

2 You can't remember anything about the 13th of May except that you signed some certificates of stock.

A. That is all I can remember.

2 All you can remember about Saturday the 13th of May was what you did at the office of Rice & Blackmer.

A. I say we had a meeting in the morning and talked over and discussed what had to be done and I recollect somebody was sent to Boston and that nothing could be done until

he got back.

2 Who was the messenger that went to Boston.

A. I think Mr. Blackmer's brother.

2 Were you there when he returned.

A. I think not.

2 Did you see him that afternoon after you were told somebody had been sent to Boston.

A. I have no distinct recollection of it.

3 Who did you see at the office of Rice & Blackmer on Saturday the 13th day of May 1882.

A. I think Mr. Faulkner and Mr. Carpenter.

2 Any one else.

A. I think that is all.

2 Wasn't Mr. King there.

A. I think Mr. King was busy in another part of the office.

2 Who was there on the 12th day of May 1882.

A. My recollection is the same parties Mr. Carpenter and Mr. Nichol.

2 You have omitted Mr. Hammond.

A. I think he was there on both days.

Redacted by Mr. Betts.

2 You were occupied considerably in organizing the Townspeople Music Company on both Friday and Saturday.

A. Yes sir.

Q Did you go to the Bank in reference to that.

A. I did.

Q Were papers drawn in reference to that.

A. They were.

Q Signed in reference to that.

A. They were.

Q That was the first organization of that Company.

A. Yes sir.

Q It had never been organized previously.

A. Not that I know of.

Recross by Mr Stafford.

Q Do you remember any of the formalities about electing you as President on either the 12th or 13th of May 1882 by a vote of the directors of the Townsphone Music Company.

A. I think I do.

Q What day was it the 12th or 13th of May 1882.

A. I think on the 13th.

Q Where did it take place.

A. In Rice & Blackman's office.

Q Do you remember any voting for directors

of the Townaphone Music Company.

A. I have no distinct recollection of it except that I think it was done.

Q. When do you think that was done, on the 12th or 13th of May 1882.

A. I can't recollect just now.

Q. Do you remember what time of the day Mr Nichol left Worcester on the 12th day of May 1882.

A. I have no precise recollection, my impression is he left in the afternoon

Redeemed by Mr Betts.

Q. Were there votes by ballot for President & Trustees.

A. I think so, yes sir.

Sworn to before me this 26th day of March 1884.

 James Morgan
Police Justice

Adjourned to Tuesday April 1st 1884 at 2³⁰ P M. either at the Towns or at 5th Street Police Courts the Council to be notified by the Stenographer or Clerk at either of the two places.