

0238

BOX:

155

FOLDER:

1586

DESCRIPTION:

Summer, Perrin

DATE:

10/31/84



1586

POOR QUALITY
ORIGINALS

0239

BW Oct 31/88

Walter C. Stewart

Counsel

Filed 31 day of Oct 1888

Please *W. C. Stewart*

THE PEOPLE

B
P. B. Olney

PETER B. OLNEY

Attorney at Law
City of New York

A True Bill.

City of New York
James B. Kisson

Foreman.

City of New York
James B. Kisson
Foreman.
Sept 23/88

with a view to bail in a civil action in & across the line in charge of

W. C. Stewart

for
at \$3,500

for

Ordered in
Shubert & Noble
13th St. & 6th Ave

For the reasons stated in
annexed report of clerk and
dist. atty. hereby I recommend
that within indictment be
dismissed and that bail
be discharged

Sept 23/88
Richard B. Martin
Dist. Atty.

0240

The Second District
Police Court

The People on the Complaint
Superior Court,
of Daniel M. Davidson
OF THE CITY OF NEW YORK.
against
Perrin H. Sumner

DANIEL M. DAVIDSON,
Plaintiff,
against
PERRIN H. SUMNER,
Defendant.

Affidavit.

City and County of New York, ss.:

DANIEL M. DAVIDSON, being duly sworn, says:

1. I am the plaintiff herein.
2. I was born in Leith, Scotland, and am forty years of age; I am by trade and profession a mechanical engineer; after a service of five years in the War Department of the Chinese Government in its works for the manufacture of percussion caps and gunpowder, and an honorable discharge from such service, I engaged in business for a term in Edinburgh, Scotland, where I became specially interested in schools, colonization and mining.
3. In furtherance of my interest in these special subjects I commenced the organization at Edinburgh of a colony to locate on lands in the United States; in the spring of 1881, with an associate, I made a purchase from an American in London of 13,000 acres of land, in West Virginia for the use of such colony; I sold out my business in Edinburgh and came to the United States; I arrived in June, 1881, with the intent of becoming an American citizen and permanently residing in this country, and with the purpose of carrying out my colonization scheme and engaging in some pursuit congenial to my interest in the subjects named. I immediately proceeded to the location of my purchase of lands in West Virginia, and soon found that my supposed title was practically worthless for the use of my proposed colony, and was forced to wholly abandon my plans for the same. I returned to New York City in September, 1881, and soon after temporarily, as I then supposed, rented three rooms, at a rent of \$10 per month, at No. 66 Charlton street, where I have since continuously resided with my wife and five children, losing a sixth child by death in May, 1882.
4. When I returned to New York I had about \$5,500 in cash and a promissory note payable to my order for the sum of £500, by one Jessie R. Irwin, an American, who had given me the note for a valuable consideration in London, and which note fell due March 4th, 1882, and was payable in London; this cash and note were all the property I had in the world, and I was without a single friend or acquaintance in this city. I at once began seeking some honorable and profitable employment and investment indicated by my tastes, qualifications and experience. In such endeavor, after my disappointment and loss in West Virginia, I felt that I required some reliable and trustworthy agent and counsellor, in whom I might place implicit confidence, and who, familiar with the laws, customs and methods of business in this country, could aid me in preventing another imposition and loss.

0241

- 7 5. Thus feeling and seeking, in October, 1881, I noticed in the New York *Herald* an advertisement offering inducements to parties willing to invest in iron mining in the Hudson River Valley, and directing that applications for further information should be made to one Perrin H. Sumner, at room 8, No. 206 Broadway; having had a desire to become interested in the mining and manufacture of iron, I was attracted by the opportunity so offered and decided to investigate it.
6. I called as directed in such advertisement and found one Perrin H. Sumner, who was then and still is doing business at said address, No. 206 Broadway, as a broker in real estate and general property, and who is the defendant herein. At the interview then had with said Sumner, I fully stated to him the facts as to my qualifications, experience, my disappointment and losses in West Virginia, the amount and nature of my assets, and my purposes, substantially as I have hereinbefore stated them to have been, and also informed him of my desire to secure the services of some one to act as my agent and trustee in obtaining for me position and investment. Sumner expressed much interest in my welfare; said that the tables ought to be turned in my favor, and that he could and would aid me materially in carrying out my purposes in coming to this country. He introduced me to one Joseph L. Campbell as a prospective owner of an iron mine situated in Rockland County, this State, then owned by one John L. Davis, and desirous of selling an interest in the same. At the solicitation of Sumner, I visited the mine with Campbell and other parties, but finding it in a very poor condition and producing only a low grade of ore, I declined to invest therein.
7. As at our first interview, so also on several occasions immediately after such investigation, Sumner continued his expressions of interest in my welfare and repeated his assertions of his ability to aid me in the way and for the purpose as I have stated. He declared that he would soon find some advantageous opportunity whereby I could secure an acceptable business engagement and investment and that he would act as my agent and trustee and every way for me, and I said I would put myself entirely in his hands.
- 10 8. The first act of Sumner in the confidential relation so established was to advise me to place said Irwin note in his hands for collection. He said the note would be more readily paid to an agent than to me, and that he would send it over to London to have it ready to be presented when it became due. Acting solely upon his suggestion, on October 26th, 1881, I endorsed said note to the order of Sumner, and delivered it to him without consideration, for collection, and took from him a receipt, a copy of which is hereto annexed, marked "Exhibit A."
- 11 9. On or about November 1, 1881, Sumner announced to me with great show of satisfaction that he had found a purchaser for the Davis mine, and exhibited to me what purported to be a letter from John L. Davis, offering him one-quarter of the proceeds of a sale of the mine, if effected by him. He declared that such sale would be consummated in a very few days, and that his commissions would amount to between six and eight thousand dollars. He then said he was "just now pressed for ready cash," and offered me one-half of such commissions for \$500. He further said the sale was already arranged, and that he would guarantee the payment of the commissions within a few days. Relying solely upon his representations and at his urgent solicitation, I accepted his offer. He also advised me to open a bank account at the National Park Bank, where he said he kept an account, and that I had better bring up my money the next day, open the account, and make the advance to him as agreed.
- 12 10. On November 2, 1881, Sumner introduced me to the Park Bank, and I opened an account therein by depositing on that day to my own credit \$5,461.33, Sumner having knowledge of the full amount so deposited. On the same day Sumner drew, executed and delivered to me an instrument in writing purporting to assign to me one-half of said commissions. I had previously advanced to him in small sums \$39, which amount was then due from him to me, and I drew and delivered to Sumner my check on the Park Bank to his order for \$461, which check was duly paid upon his endorsement, thus making the

0242

13 amount advanced by me to him \$500, which amount was so advanced by me, relying solely on his representations and guaranty as aforesaid concerning the sale and commissions.

11. Closely following such transfer of \$500 of my money to Sumner, he solicited me to loan him \$2,000, offering me as security property on Long Island, which he represented to consist of seven or eight lots of five acres each, in a place named Sayville, and showed me a map on which he pointed out the lots and said they were worth about \$500 apiece. He also proposed if I did not like such security, to give me for the sum of \$2,000, a half interest in his real estate business, which he said he was willing to sell at a sacrifice, as he was pushed for money. After taking a night's consideration of the proposals, I declined to make the loan or the purchase, telling Sumner that I did not wish to invest in any speculative business, but desired some engineering or mining interest, where my services as well as capital might be made available.

12. During the latter part of October, and early part of November, 1881, whenever the subject was mentioned, which was almost as often as I saw him, Sumner assured me that he could and would furnish the opportunity I sought. At this period I met him at his office daily, and very often upon representations by him, wholly relied on by me, that some arrangement was about to be made, whereby I should secure a position and investment in business. Sumner often invited me to lunch, and occasionally to visit his house and meet his family which invitations I sometimes accepted. In conversations I had upon such, and other occasions, Sumner learned from my own statements that I had taken a deep interest in the welfare of poor children in Edinburgh, and he had shown me some newspaper slips giving account of his interest in boys in this city, and in the church known as the "Madison Avenue Congregational Church," and told me that his position in the church was a guaranty to me of his integrity. He manifested great interest in the welfare of my family, and repeatedly asserted his earnest desire to serve me by procuring a safe and acceptable opportunity for the investment of my capital, and the employment of my services.

13. At his office on a day early in November, 1881, Sumner introduced me to one Colonel James A. Austin, who, Sumner said, had recently made \$70,000 in mining; that Austin had just come in and that it was a surprise to him; that Austin had returned from Colorado, where he had a valuable property, of which he, Sumner, owned a quarter interest; Austin held in his hand a specimen of galena ore, which Sumner declared was produced at their mine in Colorado, and which assayed, he said, 15 per cent. silver, and that he, Sumner, had paid \$7,500 for his quarter interest in the mine; Sumner recommended me to take an interest in the mine; Colonel Austin spoke highly of it, and then went away; after Colonel Austin had gone Sumner told me that he and Austin had expended \$10,000 during the past year in developing this mine, and that it was ready to be successfully worked without further delay; Sumner said he was very anxious that I should participate in the glorious prospects of the property, but feared that Austin would not consent to sell any portion of his three-quarter interest, as it was so uncommonly rich, containing, as Sumner then asserted, a vein of ore, which their recent workings had rendered immediately available, at least two feet in thickness, of the finest quality of galena ore, assaying 15 per cent. of silver; Sumner also suggested that a position as working superintendent of the mine would be very desirable for me, and congenial to my wishes for employment.

14. The next day or the day after the next—it being November 9, 1881—Sumner invited me out to lunch. He was in fine spirits because, as he said, Colonel Austin had consented, at his earnest solicitation, to sell a quarter interest in their mine to me for the same price which he, Sumner, had paid for his quarter interest which he then declared to have been \$7,500. Sumner congratulated me on the excellent opportunity thus obtained and said he had labored hard to secure this offer from Austin because by the purchase of the one-quarter interest offered I would become equal owner with him, and we, Sumner and myself, would thereby own one-half of the entire mine and being equal owners with Austin would have equal voice with him in its management, and by remaining firm friends we could resist any attempt on the part of Austin to invade or control our rights in the premises. I begged time to consider the proposition, and stated to Sumner that having already invested \$500

0243

- 19 with him (as hereintofore related) I had not the amount of capital required for such proposed purchase ; that it was an investment that would take more than all I had. To meet this difficulty Sumner proposed to sell me some property on Long Island on such terms that I might in turn sell it to Austin at a handsome profit, thereby increasing my resources for purchasing the mining property of Austin. Sumner further said that he would induce Austin to accept as part of the purchase money of said property, the said Irwin note to be valued at \$2,500. He further and as the principal inducement to me to make such purchase, declared to me that Austin had agreed to have a stock company organized to work his mine and that if I purchased one-fourth as proposed, I should be guaranteed permanent employment as chief engineer in the development of such mine, at a salary of \$500 per month, and that he, Sumner, was so anxious to favor me that he had induced Austin to allow me to pay \$500 of the proposed purchase price in services on the property at terms to be mutually agreed upon. Although favorably impressed with these representations, I still hesitated to invest every dollar I had in the world hastily, and so told Sumner, but he continued his importunities, declaring it to be the most advantageous opportunity I could expect ever to receive, and urging that the specimen of ore exhibited was proof conclusive of the wealth of the mine, and that the recent expenditure of \$10,000 by himself and Austin had put the mine in condition to make large returns at once without further expense, and that the fact that he, Sumner, had invested \$7,500 in the purchase of one-quarter interest, ought to satisfy me that it was a safe and profitable investment. He said as further inducement to make the proposed purchase, that if I would take two of his lots on Long Island at \$1,000, he would put them in to Austin on account of the purchase at \$1,500 ; that he would put in the Irwin note at \$2,500, and that he would endeavor to get the amount of cash to be paid by me as low as possible. He showed me a map of the lots and said they were valuable and likely to increase in value, as they were at a watering place, and that I would have to be the owner of the lots, the same as of the Irwin note, before I could go on with the negotiation with Austin. I then told Sumner I would take the lots and see what terms could be made with Austin. Whereupon Sumner drew, and we jointly executed, an agreement for two certain lots in the town of Islip, concerning which lots I had no other information than the representations so made to me by Sumner. A copy of such agreement is hereto annexed, marked, "Exhibit B;" and relying solely upon the above-mentioned representations of Sumner, I then and there paid him \$1,000.
- 22 15. On November 11, 1881, Sumner again invited me out to lunch, constantly discoursing on the grand opportunities offered by a purchase of the quarter interest in the Colorado mine, and asserting repeatedly, "It will make us all rich;" holding out many inducements to me to make the purchase, and promising that the Stock Company to work the mine should be organized at once, and declaring that he could and would place \$20,000 of the stock of such Company with parties in Chicago at very advantageous rates; that when he went to Chicago he could place the stock so that he and I could each make \$20,000 on a part of our stock, and that I should be commissioned soon after to go to Europe to place the stock on the European markets. When we returned to his office Sumner produced a letter, which apparently had been received in our absence, from Austin, addressed to Sumner, and in effect declaring to him that "your friend *must* decide at once," if he wished to purchase the quarter interest in the Colorado mining property, because it was becoming known that he, Austin, had consented to sell an interest and that he had a party who had offered to take the quarter interest and pay a higher price than the \$7,500 named to me. Sumner read this letter to me and asked what I thought about it. I replied that it was a big risk for me. He said it was no risk at all; I said I did not see how I could make such a big risk; Sumner said it would be a grand thing for me; that he was my friend and that I would get a position. He advised me to make the purchase and said he would see if he could not get the cash to be paid reduced. Soon after Austin came in and Sumner told him that I had certain property which I could put in as part payment on account of the one-quarter interest. Sumner then figured up and showed Austin that if any trade was made I wanted to put in the Irwin note at \$2,500, the two lots on Long Island at \$1,500, with services at \$500; making \$4,500 of \$7,500, the proposed purchase price, and leaving a balance of \$3,000. Sumner then asked Austin if he could not take \$2,000 in cash, and let me make up the balance in services. Austin replied that he could not do that; that as much as he could do was to let me pay \$500 in services, and that he must have \$3,000 in cash, and that he would not do this if he had not promised Sumner that he would allow Sumner to choose a party for the one-quarter interest and that he should stand by his word. After further parley Sumner said to

0244

- 25 me, "Colonel, you had better take the chance"; and I replied, "I'll do it Mr. Sumner, but
 "I leave it entirely to you to see that it is correct, as I am a stranger and you know all
 about it." Sumner said to me, "You'll find it all right, Colonel." Whereupon Sumner
 drew an agreement purporting to convey a one-quarter interest in said mining property
 from Austin to me which agreement was executed and delivered, and a copy of which
 is hereto annexed marked "Exhibit C," save that the number and names of the claims
 as they now stand in such Exhibit are the number and names which were subsequently
 substituted for the number and names which were inserted at the date of the execution of
 such agreement as will be hereinafter shown; and relying solely on the representations
 of Sumner as aforesaid, and confiding in his care—as my agent and trustee—of my inter-
 26 ests, I paid to Sumner the sum of \$3,000. It was also agreed and understood that Sumner
 was to deliver the Irwin note to Austin on account of the purchase so made and
 that he was to make the deeds for the two lots described in our agreement of
 date November 9, 1881, direct to Austin, and pay to Austin the \$3,000. After said
 agreement for the mining interest was executed and delivered and the money paid,
 Sumner said to Austin: "Colonel, this deserves a treat to the theatre," and it was then
 arranged that Sumner, his wife, son and daughter, my wife and myself and Austin should
 attend the Park Theatre that evening. After this arrangement was made Austin left.
 Sumner then said that considering it was advantageous to him for me to take said one-fourth
 interest, he should not charge me any commission on the purchase, but that he would like
 some small recognition of his services as a memento of the transaction, and suggested that
 27 I call with him at Tiffany's on the way up that afternoon and buy him a gold chain for his
 watch. About 4 P. M. we went up to Tiffany's and Sumner selected a chain for which I
 paid Tiffany & Co. \$47, and which he took and attached to his watch. In the evening we
 went to the Park Theatre, as arranged as hereinbefore described; I also gave to Sumner
 for his daughter, a pair of ivory and silver bracelets, for which I had paid £5 sterling in
 Hong Kong, China.
16. The next day, November 12, 1881, when I came to Sumner's office, he showed me
 what purported to be a letter from Colonel Austin to the effect that he, Austin, had learned
 that the lots on Long Island were likely to be valuable, as they were at a good watering
 28 place; and inquiring if I had any more, and if so, that he would take one or two at the same
 price as he had paid for the others, or he would not mind paying a little more. Sumner
 said to me: "Colonel, this is a fine opportunity for you to make a few hundred dollars;
 "evidently Austin has got a market, and this will be a cash transaction; I'll let you
 "have three lots for a thousand dollars, and you can sell them to him for at least
 "\$500 each; you can pay me \$500 down and the remainder when you get the cash from
 "Austin." I told him that I had used \$4,500 of my money already and I did not see my
 way clear to part with any more without absolute security that it would come back and pro-
 posed that he convey the lots direct to Austin when the sale was made, simply allowing me
 to stand as the owner of the lots. This he said could not be done; that I had to be the actual
 owner of the lots; that he was letting me have the lots at a sacrifice in order to let me have
 29 a chance to make a little money; and that it was a sure thing that Austin would not ask
 for the lots if he had not a purchaser. I told Sumner that it would leave me very bare; he
 said, no, it didn't; that I had a few hundred dollars left; that this would be a cash transac-
 tion, and that he was virtually giving me a chance to make \$500, because I had made a pur-
 chase of a few thousand dollars in the mine and aided him; that he wanted to help me
 make a turn and put a few hundred dollars in my pocket, and that I had done him a good
 turn, and he was doing a good turn for me. I said to Sumner, "Suppose Austin shouldn't
 "sell the lots, would you take them back and refund me my \$500?" he replied, "There is
 "no use of thinking of that, he has got his parties or he wouldn't write." Relying solely
 upon such representations, and confiding in the agency and trust in my behalf which had
 30 been assumed by Sumner, I accepted his offer and the agreement, a copy of which is hereto
 annexed marked "Exhibit D," was drawn by Sumner, executed and delivered to me, and
 I paid him \$500, and he said he would get the deeds made out and as soon as they were
 ready would get the money from Austin.

17. Later on during the same day, November 12, 1881, an agreement, a copy of which
 is hereto annexed marked "Exhibit E," between Sumner, Austin and myself was entered
 into for the organization of a stock company to own and work the Colorado mine, which
 agreement provided for \$1,000,000 capital stock; \$200,000 of the stock to be placed in the
 treasury, \$400,000 of the stock to go to Austin, and \$200,000 each to Sumner and myself.

0245

31 18. With the completion of these transactions of November 12, 1881, I had conveyed directly to my agent and trustee, the defendant, Perrin H. Sumner,—he having required in all of the transactions described that all payments should be made to him, and all payments were so made—the sum of \$5,008 in cash and the Irwin note nominally worth nearly \$2,500, amounting altogether to nearly \$7,500, or within a few hundred dollars, all the property I had in the world when I arrived in New York in September; not a dollar of assets had been so conveyed save upon representations made by Sumner to me, wholly relied on by me, and in the most implicit confidence on my part in his ability and in his integrity of purpose to serve me with fidelity and zeal in the relation he held to me of agent and trustee. For the assets so conveyed to Sumner I had received in return, and then held, an assignment of a half interest in Sumner's commissions on a supposed sale of the Davis mine; 32 an agreement for a quarter interest in a Colorado mining property of which I had no knowledge other than the statements of Sumner; and an agreement for the title to three lots on Long Island, which lots were supposed to be sold to Sumner's friend, Austin, but with no knowledge on my part concerning such lots or supposed sale other than the statements made to me by Sumner as aforesaid.

19. Immediately following the transactions with Sumner on November 12, the deeds of the lots described in the agreement of that date were made out by Sumner, and executed by himself and wife to me, and by myself and wife to Austin. Sumner kept possession of such deeds, and said he would not give them up to Austin until he got the money. There- 33 after I asked Sumner daily if he had got the money from Austin. At first his replies were to the effect that Austin had failed to get the money from his parties, but expected it in a day or two. After a few days of such excuses, Sumner began to declare that Austin was using me badly, and that he, Sumner, went to Austin's hotel every morning on his way down; sometimes, as he said, finding Austin in, and at others, out.

20. I had brought to New York in September, with my wife, five children, and on November 26, 1881, a sixth child was born to us. I remained at home most of the time for two weeks after this event, occasionally during such periods running down to Sumner's office for a brief call, on which visits I was told by him that my wife's sickness just at that time was very unfortunate for me—that I would have been out in Colorado doing business but 34 for that. About the 1st of December, Sumner showed me a map of the property, and gave me to take home to read what purported to be the report of a mining expert as to its value. On an inspection of this map and report, I found that the names of claims were different from those mentioned in the agreement of November 11. I asked Sumner what this change meant. He said that there were other mines of the same names as those originally designated in such agreement, which, he added, was a common thing in mining property, and that the names had to be changed. Prior to that he had told me that Austin had added two claims to the original purchase. At Sumner's direction, I then changed the number of claims in the agreement of November 11, 1881, from "five" to "eight," counting "3 mill sites" as one claim, and, erasing the names of claims as originally used, 35 inserted the names of claims as they appear in "Exhibit C.," leaving the location of the same to stand "Silverton, San Juan County." Subsequently I began to notice that the new claims were described as at "Silver Cliff," and to understand that "Silver Cliff" was a different location from "Silverton." I asked Sumner what this difference meant, and he said Austin had mixed up the claims, having so much mining property in hand, and that this was the original property with the two claims which Austin had added. About three weeks from the birth of the child, I told Sumner that I was ready to start for Colorado. He then said that it was a bad time to go, that nothing could be done at the mine at that season, as the snow was usually very heavy in the location of the mine, and that we had better go on with the organization of the company. After the resumption of my daily visits to Sumner's office in December, I was for a while in fine spirits, being led by Sumner 36 to believe that a company would be organized soon, a position given to me, and I make rich return for my investment by a sale of a portion of my stock in such company. At Sumner's suggestion, I went around to several printers to get proposals for the printing of the stock, and to each proposal I brought in, Sumner would declare that he knew of a place where he could get it done for half the money. I was enthusiastic about the company, and suggested it be called the "Black Watch Mining Company," after the famous regiment "42d Highlanders."

21. December 24, 1881, at the suggestion of Sumner, an agreement, a copy of which is hereto annexed, marked "Exhibit F," was drawn by him and executed by Sumner, Aus-

0246

37 tin and myself, placing the interests held by Austin and myself in the Colorado property in Sumner's possession in trust.

22. On the morning of December 29th, 1881, when Sumner came to his office, he said to me, "Colonel, I want to be as good friends with you ten years hence as I am now, and "I'll make out a deed of your one-fourth interest in the mining property." He then caused a quit-claim deed from him to me of such interest to be made and executed, and delivered it to me the next day, a copy of which is hereto annexed, marked "Exhibit G." Sumner told me to send this deed to Colorado for record, and dictated a letter of transmittal, which I wrote; told me how to address it, and to get the letter enclosing the deed registered, which I did.

38 23. During December I had made constant inquiry of Sumner for the money from Austin for the lots agreed for as aforesaid, November 12, and had demanded of Sumner towards the last, the return of my \$500 paid him on that date. I had not spoken with Austin about it, and I began to feel that something was wrong somewhere. Sumner severely censured Austin, and at last I told him I would see Austin for myself. About January 2d, 1882, I went to the Fifth Avenue Hotel, where Sumner had informed me that Austin was staying, and met him. At first, when alone with me, Austin said that he understood that he was to take the lots for an interest in another group of mines in Colorado. I insisted that it was to be a cash transaction. I had not been long with Austin when Sumner came in, and in reply to my demand if it was not a cash transaction, said it was, and 39 asked Austin if it was not, and Austin said, "Well, if it is cash I shall stand by it; as soon "as my parties get their money I shall be able to fix you up all right, Davidson." Sumner then came out of the hotel with me and said, "I told you, Colonel, that I was all right, "that it was Austin's fault, and I'll see that he don't back out of it, and that you get your "money; the trouble is, Austin's parties don't come forward; they're in the country."

24. After the visit to Austin at the Fifth Avenue Hotel, I began to press Sumner for the money for the lots or the return of my \$500. On the morning of January 4, 1882, he came into his office in a big flurry and said he had had a long interview with Austin that morning, and had had great difficulty in persuading him to let me have a one-eighth interest in the Colorado property for the three lots, instead of the money. I said to Sumner, 40 "Now, Mr. Sumner, I don't want another one-eighth of the property; I've got a one-quarter already. I want the money. If Austin cannot pay the money then I want my \$500 back from you." Sumner said "I haven't got the money; it is a big bargain for you; "you are virtually getting a one-eighth for \$500." Feeling I had no alternative but to take that or nothing, I accepted it. Sumner was in a fearful fuss and said, "Now I have "to set about this right away, in case Austin should pop in and back out." Sumner thereupon caused to be drawn a quit claim deed from him to me of a one-eighth interest in the Colorado property which he executed and delivered to me, a copy of which is hereto annexed marked "Exhibit H," and he told me to send it out for record just the same as I had done with the other deed, which I did.

41 25. Sometime, after the date of the last mentioned transaction, in January, 1882, as I now think—I cannot recollect the precise date—Sumner proposed to me to give me a one-eighth interest in the Colorado property for the \$500 I had paid him. Nov. 2, 1881, for an interest in his commissions for a sale of the Davis mine, as that affair, he said, was not coming to anything. I said that I didn't want a one-eighth, that I considered one-sixteenth would be ample for the \$500. He said that was very kind of me, and that few men would have done that. Two or three days later Sumner, to my surprise, came to my house at seven in the evening and called me out, declining to come in. He said he wanted to fix up about that one-sixteenth, and that he would wait for me at the foot of the stair. When I went down he said to me, "It's a miserable place you are living in, Colonel, and 42 it vexes me to see it." I said, "I want to keep down expenses." He said, "In a day or two it will be all right, we'll have the company going," and then inquired, "Do you know of any place where we can write?" I said, "no," and he suggested we go into a drug store, which we did, and he then drew, signed and delivered to me an agreement for a one-sixteenth interest in the Colorado property, and I gave him some paper prepared by him releasing my claim to the commissions. I brought the agreement to the office the next day, as I recollect, but have no recollection of seeing it since. Sometime in March, after a most diligent search for such agreement, and not finding it, I several times urged Sumner to give me a paper to show that I had a one-sixteenth, and finally on March 24, 1882, he gave me a writing, a copy of which is hereto annexed, marked Exhibit I.

0247

43 26. By the latter part of January, 1882, all my money was gone. During that month and the next I increased in my finding fault to Sumner at the situation in which I had been placed. He declared he was doing all in his power for me, and that it was all Austin's fault and repeatedly stated that all my money had gone to Austin; that he, Sumner, had not got a cent of it; and that it was Austin's fault that the company was not organized. He said Austin was a bad man; that he, Sumner, had incurred Austin's ill will by standing up for me; that Austin was trying to freeze us both out; and that Austin prevented a sale of the property by throwing cold water on any one Sumner got interested in it; that Austin had got his money as well as mine; and that he wished he had never introduced me to Austin, or seen him himself, and that he wished to be clear of Austin, and that he thought we had
44 better sell the property. I told Sumner, "Anything to get my money back; I parted with my money to get a position, and I want it back." I suggested that we prosecute Austin and Sumner said, "No use in doing that, you are not a fighting man, it will take years." In February, Sumner advertised the property in the *Herald* for sale, but nothing came of it. About this time I began to get little sums of money from Sumner to live on. At first he loaned me sums from \$2 to \$5, but soon reduced the amount, and several times I went home without a cent, and not knowing where to get food for my wife and children.

27. I complained many times to Sumner during the earlier months of 1882, that my money was locked up and that I had no position. He would reply that it was Austin who
45 had the money and should give me the position, and I then believed him. At last, in April, 1882, Sumner called my attention to the "Index Gold and Silver Mining Company," supposed to own a property in Inyo County, California. He urged me to convert my three-eighths interest in the Colorado property into the stock of that Company. He said that Austin would do nothing about organizing a company for our Colorado property; that he didn't care to be connected any longer with such a man as Austin; that Austin wanted to freeze us out; that he was going to convey his three-sixteenths interest and get a position in the Index Company as Secretary; that it was a live Company; that it had a good property; that the stock was worth \$2 per share market value; that money could be borrowed on it to the amount of \$1 per share; that he could get 15,000 shares for my three-eighths interest and a position for me with the Company as mechanical engineer; that I could get \$1½ per
46 share for my stock any day, and that if I were to "slaughter" the stock I could get more than my money back. He introduced me to one Edward Webb as the Vice-President and Secretary of the "Index Company." Webb said, in the presence of Sumner, that the machinery was ordered and all ready to go out to the mine; that in about a fortnight's time my services would be required, and that I would have a salary of from \$300 to \$500 per month. Sumner further said that it would not do to let Austin find it out as one word from him would stop the deal. Relying solely on the representations of Sumner as aforesaid and at his urgent request on the same day he introduced me to Webb, I exchanged my three-eighths interest in the Colorado property for 15,000 shares of the capital stock of the said "Index Company," of the par value of \$150,000, and, as I
47 believed, of the market value of \$30,000.

28. During the spring of 1882 I had little or nothing for my family and myself to live on save the pittance which, from time to time, I was enabled to borrow from Sumner, and which in the entire amount so borrowed from him aggregated, up to some months later, only \$282; our food was poor and scant in amount, and from want of nourishment our infant pined away and died May 15, 1882; Sumner made a prayer at my house as a funeral service for the child, and loaned me \$16, with which I paid the funeral expenses; the doctor's bill has not yet been paid. During the summer Sumner occasionally employed me at the rate of \$2 a day to do menial work at his house, such as emptying and filling mattresses, taking up and laying down carpets and cleaning furniture, and there were many days I worked
48 for him for which I have never been paid.

29. As the summer wore away I began to feel that I must look out for myself and get my business with Sumner into better shape; I had never obtained receipts from Sumner for the moneys I had given him, and in August with great difficulty I obtained from him four receipts with endorsements thereon in his own handwriting, copies of which are hereto annexed, marked "Exhibits" "J," "K," "L," "M."

30. The originals of the agreements concerning the Colorado property had been retained by Sumner, and I endeavored to obtain them from him; on September 8, 1882, Sumner told

0248

49 me that Colonel Austin had them ; on the same day I saw Austin and was told by him as follows: "I never had these agreements from Sumner, and Sumner came to me and told " me to tell you a lie ; to say that I had got them."

31. On September 9, 1882, I met Colonel Austin at an office where he was engaged in the Equitable Building, and he then and there informed me that he had never received from Sumner one cent for his, Sumner's one-quarter interest in the Colorado property, and that he had only received title to one, out of the five lots which I bought from Sumner and transferred my right therein to him, which information I had never received prior to such interview; this interview was had upon a suggestion made to me a day or two before by Austin, who ran after me in the street and said he wanted to make a clean breast of it to
50 me ; that I had been badly used by Sumner, and that he would make an affidavit, and that Sumner would not make a cat's paw of him any longer, and that he would go in Court or do anything necessary to show the truth of the transaction.

32. On September 14, 1882, one George B. Sherwood informed me that he had secured the Colorado property for Austin, and was to receive for such property \$500 in cash, and \$500 of the purchase price in stock of a contemplated stock company, and that Austin had paid only \$100 on account of such purchase.

33. On September 18, 1882, I received from the said George B. Sherwood an affidavit, of
51 which the following is a copy:

" STATE OF NEW YORK, }
" City and County of New York, } ss.:

" GEORGE B. SHERWOOD, being duly sworn, deposes and says, that in or about the month
" of November, 1881, last past, this deponent (then being engaged in placing mining proper-
" ties on the market for sale and in the examination and reporting upon the same as a
" mining engineer) was solicited to furnish, through the agency of R. Parker Pierce, certain
" mining property for a prospective or intended sale to parties not then named or known
" to this deponent ; that thereupon this deponent made inquiries for said property, and
52 " secured certain property of the value of about \$4,000, and handed a description of the
" same to said Mr. Pierce for his acceptance or the acceptance of his principal in the
" transaction ; that subsequently and within a day or two thereafter, Mr. Pierce returned
" said descriptions to this deponent, saying that the price was considered too high by his
" parties and that the said parties desired cheaper property, 'mere claims' that had the
" assessment work done for the year 1881, and that said parties would not be willing to
" pay more than \$1,000 therefor, and that the property desired was only intended for de-
" velopment purposes, etc. ; that this deponent accordingly prosecuted his enquiries fur-
" ther, and finally succeeded in securing from a Mr. Wallace, then of Custer County,
" Colorado, several mining locations or claims, to wit, Kansas City, J. O. Voorhies, Lady
" Flossie, Gate City, Maymein, Lady Gertrude, Sadie F. and three mill sites situated in the
53 " Silver Cliff Mining District, in the said County of Custer, and State of Colorado, and
" offered the same to said Pierce, at the nominal value of \$1,000 for the whole thereof ; at
" which time or soon thereafter this deponent was apprised that the real or intended pur-
" chaser was one James A. Austin, and as this deponent was then informed that he, said
" Austin, would pay this deponent and the owners thereof for said property, the sum of
" five hundred dollars in cash and the remainder in certain shares of the capital stock of a
" company then about being organized for the development of said property, the same
" to be delivered to the then owners of said property on the delivery of the deeds
" or proper conveyances for the same ; that the said Austin thereupon or soon
" thereafter paid to this deponent on account of said five hundred dollars, the sum of one
54 " hundred dollars, and this deponent thereupon placed the deeds and other papers relating
" to said sale of said property in Escrow for and until the compliance of the agreement then
" made as aforesaid, and until the payment of said sum of four hundred dollars balance
" as aforesaid should be paid and a certificate should be issued and delivered, entitling the
" then owners to receive said stock. And this deponent further saith that at a subsequent
" time the said Austin came to this deponent and informed him (this deponent) that certain
" parties (to this deponent then unknown) would meet on that evening and would close a
" sale which he, the said Austin, had made to them of the property as aforesaid and re-
" quested this deponent to let him have a deed of said premises (which this deponent
" then had in his possession). That this deponent hesitated at first, but having confidence

0249

55 "in the integrity of said Austin, gave him the deed with the understanding that he should
"return the deed or the sum of four hundred dollars balance as aforesaid on the morning
"next following, but instead thereof as this deponent is informed and verily believes the
"same to be true, the said Austin did at said meeting close the said sale of said property
"with said persons then unknown to this deponent, and then and there delivered the said
"deed to them, and then and there received a considerable sum of money, to wit, the sum
"of three thousand dollars in cash, besides other properties amounting in all to \$7,000, for
"a one-fourth interest in said mining property, and did at various times thereafter pretend
"to this deponent and to divers other persons, that he had received no money consideration
"therefor. And this deponent further saith that the said Austin has paid only the sum
56 "of one hundred dollars in cash on his said contract with this deponent, and that the bal-
"ance of said sum, to wit, the sum of four hundred dollars remains still unpaid, and that
"no stock has been delivered as in said agreement was mentioned.
"And this deponent further saith that he is informed and believes the same to be true,
"that the said Austin claimed at the time of the closing of said sale, as aforesaid, that he,
"the said Austin, had paid this deponent the sum of one hundred and fifty dollars for ser-
"vices for maps furnished and reports made for said property by this deponent, and this
"deponent avers and so states that no payment has ever been made to him, this deponent,
"for the said services.

"GEO. B. SHERWOOD.

57 "Sworn to before me, the 18th day }
"of September, 1882. }

"ARTHUR C. BROWN,

"Notary Public,

"N. Y. Co."

58 34. On September 18, 1882, I learned from Sumner that he had received a letter from
one Wallace to the effect that three of the claims constituting the Colorado property had
been re-located, because of a failure to do what is known as "assessment work;" I knew
nothing about what "assessment work" meant, until some time in 1882, long after the
aforesaid quit claim deeds had been made and delivered to me; and Sumner had finally
given me to understand that claims could be "jumped" under the laws applicable to
mining claims unless work to the amount of \$100 per year was performed upon them in
their development, and that such required work is known as "assessment work;" on Sep-
tember 26, Sumner showed me another letter from Wallace, stating that most of the Col-
orado property had been relocated, but if the money for assessment work was sent at
once, it could be made all right. Whether Sumner sent any money, or not, I do not know;
I strongly advised him to do something.

59 35. On September 12, 1882, I met Austin again and he told me that he had received
only \$1,500 from Sumner, out of the \$3,000 I had paid Sumner as part payment for the
seven mining claims at Silver Cliff; that he had received one only out of the two lots that
I had bought from Sumner, to go as part payment for my one-quarter interest in the Colo-
rado property, and had received only half of the Irwin note. He also told me that he had
not received one cent of the \$500 I had paid Sumner on account of the three lots bought by
me November 12, 1881, nor had he received any of the lots, and that he never gave his
consent or authorized Sumner to convey a one-eighth interest in the Colorado property
for the lots and did not know of such conveyance until I told him of it at this interview.

36. On or about September 29, 1882, I received from Austin a letter of which the fol-
lowing is a copy :

60

"D. M. DAVIDSON, Esq.,
N. Y. C.

Sept. 29, '82.

"Dear Sir: In reply to your inquiries as to the sum of money paid me by P. H.
"Sumner, I will state that I received from Mr. Sumner the sum of fifteen hundred (\$1,500)
"dollars (by check), and one lot in Sayville, Long Island, and one-half of the Irwin note
"of (2,400) or \$1,200. I still hold of the Irwin paper \$600, and no part of the 1,200 has
"been paid, so far as I know. The above sums and property embrace all that was ever
"paid me by Mr. Sumner on account of the Silver Cliff mining claims at Silver Cliff, Col.,

0250

61 "the title to the same having been made to Mr. Sumner as trustee for your interest, myself, and others.

"Yours truly,

"JAS. A. AUSTIN."

37. On October 2, 1882, Edward Webb told me that the trade for the Index stock was a made up job of Sumner to get rid of me; that Sumner did not part with his three-sixteenths interest in the Colorado property at all, and that Sumner went to the Index Company and said I was bothering him about the position, and wanted me to exchange my interest for Index stock.

62

38. On October 3, 1882, Webb told me that he gave Sumner, at Sumner's request, some time ago, a receipt for \$2,250, purporting to be for the price of half of 62,500 shares of the stock of the "Index Gold and Silver Mining Company," but that in reality he, Webb, had not received one cent from Sumner for such stock.

39. On October 25, 1882, I received from Austin an affidavit, of which the following is a copy:

63 "COUNTY OF NEW YORK, }
"City and State of New York. } ss.:

"JAMES A. AUSTIN, being duly sworn, deposes and says as follows, to wit: that he is 40 years of age, and is a resident of the city, county and State of New York, viz:

64 "Said deponent, James A. Austin, having learned that one Perrin H. Sumner, doing business in real estate at No. 206 Broadway, in the said city of New York, has upon sundry times and occasions to various persons, but chiefly to one D. McKenzie Davidson, announced, declared and maintained that said deponent, James A. Austin, was the originator, instigator and 'responsible' party concerned in arranging a certain sale of mining property to the said D. McKenzie Davidson, which statement and declaration is false and wholly untrue, therefore, this deponent, James A. Austin, desires, and has long been desirous, to make a full and complete deposition of all facts bearing on the said transaction for his (deponent's) own protection, and to prove the falsity of the assertions made regarding this deponent by the said Sumner.

65 "Deponent, James A. Austin, therefore relates as follows: On November 1st, 1881, he, deponent, was engaged in a general brokerage business on mining properties. That about the said time, November 1st, 1881, the Perrin H. Sumner hereinbefore mentioned called several times at the Fifth Avenue Hotel, where deponent was then boarding, seeking an interview. Deponent, having no special desire to meet the said Sumner, several days passed before an interview was convenient, but at earliest opportunity granted, said Sumner announced to deponent that he (Sumner) was the agent and trustee of a certain party, then to deponent unknown, who had money to invest, and proposed deponent should offer any mining claims he might have for sale, and he (Sumner) would arrange a sale for one-half the profits thereof. Deponent, James A. Austin, had then no property available for such sale and so stated to Sumner, who then requested deponent to make diligent inquiry for some party having such property then in the market. Deponent, James A. Austin, then applied to one R. Parker Pierce, known to be a dealer in mining interests and claims, stating his desire to procure a mining claim for prospective purchaser, as authorized by said Sumner; in due time the said R. Parker Pierce offered deponent for the consideration of his parties, the description of a certain mining claim held at \$4,000, and truly valuable at said price; but to this proposal said Sumner objected strongly and declined to present it to his (Sumner's) principal (now known to be D. McKenzie Davidson). The grounds of objection raised by said Sumner being that the property was too valuable, saying all they required was 'mere claims' upon which assessment work had been done for 1881, and the price must not exceed one thousand dollars; and he (Sumner) repeatedly stated to deponent that no development work was required because his (Sumner's) principal, viz.: D. McKenzie Davidson had such unlimited confidence in him (Sumner) that he had constituted him agent and trustee without reserve, and would promptly invest his money in anything he (Sumner) should recommend. When the property valued at \$4,000 was declined by Sumner, the said R. Parker Pierce soon after offered to deponent certain claims and properties said to be mines prospected in Colorado, under various names and titles; and the sum

0251

- 67 "total of said properties was offered for sale at one thousand dollars; deponent reported
"the same to Sumner who then asked if a specimen of ore from any of these mines could
"be shown; he was informed that none could be readily obtained; he, Sumner, then
"asked deponent as a personal favor to procure for him (Sumner) a specimen of good
"ore from any where that was convenient; whereupon deponent went to a friend
"at the Astor House, who was interested in well paying mines, and procured from him a
"first-class specimen of Galena ore said to contain 15 per cent of silver; this he delivered to
"said Sumner, who then in presence of this deponent exhibited the same to the prospective
"purchaser, Davidson, as bona fide product of the mines offered for sale, and thereupon
"recommended the said Davidson to purchase an interest in said mines, saying to said
68 "Davidson that he (Sumner) had already purchased one-fourth interest in the same for the
"sum of \$7,500. While these arrangements were pending the said Sumner made the fol-
"lowing propositions to deponent, which were accepted, viz.: The said Perrin H. Sumner
"was to take one-half the said mining property, and give deponent one-half the proceeds
"that he (Sumner) should realize from the sale of one-fourth interest in the entire property.
"This being the definite contract and agreement between the said Perrin H. Sumner and
"deponent, James A. Austin, made and concluded before the sale or transfer of any por-
"tion of the said property to the said D. McKenzie Davidson. Therefore this deponent,
"James A. Austin, hereby and herein most positively asserts and maintains that he, depo-
"nent had no part, lot or interest in placing the fictitious value upon said property,
"with which it was endowed upon presentation to the said prospective purchaser, D. Mc-
69 "Kenzie Davidson, but that the said Perrin H. Sumner, did of his own free will and design,
"and to best serve his own purposes, declare the said property, entire, to be worth the sum
"of thirty thousand dollars, and announced to deponent that he had arranged a sale
"of one-fourth thereof to D. McKenzie Davidson before mentioned for the sum of
"\$7,500. Deponent then procured from one George B. Sherwood, through the agency of
"R. Parker Pierce, before mentioned, the true and proper deeds and conveyances of cer-
"tain properties located in Custer County, Colorado, viz.: mines prospected and so called
"Kansas City,' 'J. O. Voorhies,' 'Lady Flossie,' 'Gate City,' 'Mayier,' 'Lady Gertrude,'
"and 'Sadie F.', together with three mill sights, all located in the Silver Cliff Mining Dis-
"trict of Custer County, Col., and known as the 'Silver Cliff Mining property';
70 "through the agency of deponent said property was placed in the hands of said Sumner as
"trustee for all parties concerned; the said Perrin H. Sumner then proceeded to execute
"to the said D. McKenzie Davidson a deed of one-fourth interest in the said 'Silver Cliff
"Mining property,' for the sum of \$7,500. Terms of sale as follows: Three thousand dol-
"lars cash, two (2) lots situate at Sayville, L. I., valued at \$750 cash, and a certain promissory
"note, given March 4, 1880, by one Jesse R. Irwin to D. McKenzie Davidson, for the pay-
"ment one year after date of the sum of £500 sterling (\$2,433.25), and valued at the same
"in said sale. The balance of the \$7,500, price of purchase, was to be paid by
"Davidson in services on the property purchased, at terms afterwards to be mutually
"agreed upon; the said Sumner also proposed to deponent and said Davidson
"that he (Sumner) should form a stock company for the purpose of developing said
71 "'Silver Cliff property,' to which both deponent and Davidson heartily agreed, with the
"full and fair understanding that deponent should own and control one-half the
"stock of said company, Davidson one-fourth interest, and said Sumner the
"remaining one-fourth interest. But all details and arrangements of such organiza-
"tion were left wholly to the said Sumner. Deponent also understood by conversa-
"tions between Sumner and Davidson in his (deponent's) presence that one consideration
"of the sale to Davidson was that he (Davidson) should receive permanent employment in
"the working of said property at a salary of \$6,000 per annum. Deponent, James A. Aus-
"tin, is now fully satisfied and does herein and hereby solemnly declare it to be his candid
"opinion and firm belief that the said Sumner made no effort whatever to establish or or-
72 "ganize the said stock company before mentioned, and had never any intention to establish
"such a company but simply agitated the subject as an additional inducement to the said
"Davidson to invest in the said property, and deponent further states that under no con-
"sideration whatever would he (deponent) have consented to any association with the
"aforenamed transactions except under the belief at that time that said Sumner would
"well and truly perform his contract and organize a stock company, as before described.
"When said sale and transfer to Davidson was complete, then the said Sumner paid over to
"deponent as per original agreement one-half the proceeds of said sale, viz., \$1,500 cash,
"(check of the National Park Bank, drawn by Perrin H. Sumner, to the order of James A.
"Austin) the deed of one lot of ground at Sayville, L. I., valued at \$750, and certain accep-

0252

73 "tances representing one-half the promissory note mentioned before in terms of sale to said Davidson, said acceptances being drawn by D. McKenzie Davidson on Jesse R. Irwin duly accepted and payable at the National Park Bank for the sum of \$1,200. These amounts viz. \$3,450 would have been considered by deponent a fair price for the entire property had not the proposed stock company in connection therewith greatly enhanced its value. But after receiving the above named payment from Sumner, deponent retained the ownership and control of one half of the said property as per original agreement. After said transactions were complete the said Sumner demanded of deponent same facial evidence that he, Sumner, was the owner of one-fourth interest in the "Silver Cliff Mining property," and whereby the said Sumner could prove to the said Davidson his previous assertion that he (Sumner) purchased one-fourth interest in said property for the sum of \$7,500, being the same amount paid by Davidson for the one-fourth interest purchased by him. Deponent then at the dictation and request of said Sumner gave to him (Sumner) receipts duly acknowledging the payment by said Sumner to deponent of the sum of \$7,500 for one-fourth interest in the said "Silver Cliff Mining property" this step the said Sumner declared to be imperative, as Davidson was doubting the value of the said purchase. Deponent further relates that about a month after the aforesaid transactions the said Sumner again sought an interview with deponent asking as a personal favor to him (Sumner) that deponent should write a letter for him (Sumner) which would be of much financial advantage to him (Sumner) and upon deponent consenting he (the said Sumner) dictated a letter to himself purporting to be original from deponent asking the said Sumner to ascertain, if "Mr. Davidson had any more lots at Sayville, L. I., for sale," saying the writer had learned of an expected rise in the said property and wished to purchase; and such letter was then written at the request and dictation of said Sumner and mailed by himself. Deponent, James A. Austin, also declares that at sundry other times and occasions the said Perrin H. Sumner dictated various letters addressed to himself, which deponent wrote at his (Sumner's) request, expressing favorable opinions as to the present and prospective value of the said "Silver Cliff mining property," but this deponent, James A. Austin, positively denies ever writing or dictating or causing to be written or delivered any letter or communication of whatsoever name or nature, addressed to the said Perrin H. Sumner, or any other person or persons regarding the value of said property in question, except the letters dictated by the said Sumner himself, as hereinbefore described. And deponent, James A. Austin, further relates that upon the settlement of said matters the said Sumner demanded of deponent a receipt for the sum of three thousand dollars for the purpose of showing the same to the said Davidson, owner of one-fourth interest of the property in question, as a matter of proof to the said Davidson of the final disposition of funds paid by the said Davidson to the said Sumner for the purchase of the said claims, and deponent further declares to the best of his recollection a receipt was also given to the said Sumner for the full amount of the Irwin note, i. e., \$500, for the same purpose, viz., for exhibition to the said Davidson. In conclusion, this deponent, James A. Austin, does hereby and herein most positively declare and maintain that the amounts hereinbefore named, viz.: \$1,500 cash, \$1,200 value of Irwin paper, and the said one lot of ground at Sayville, L. I., is every dollar of money, security or value of any sort, kind or description ever received by deponent, James A. Austin, from the said Perrin H. Sumner, for the said mining property, or for any other property, or on any other transaction whatever, and any and all receipts, releases or documentary evidence purporting to the contrary, is false and was procured or given at the request and dictation of the said Sumner, and to serve his personal ends and aims, and further this deponent saith not. In witness whereof, I, James A. Austin, the deponent hereinbefore named, have hereunto set my hand and seal this twenty-fifth day of October, in the year eighteen hundred and eighty-two.

78 "Signed and delivered in the presence of JAMES A. AUSTIN. [SEAL.]
[NOTARIAL SEAL.] RUFUS K. McHARG."

"COUNTY OF NEW YORK, }
"City and State of New York, } ss.

"Before me personally came this twenty-fifth day of October, in the year eighteen hundred and eighty-two, James A. Austin, to me known and known to me to be the James A. Austin, deponent hereinbefore mentioned, and being duly sworn, does acknowl-

0253

79 "edge that he is the deponent, James A. Austin, mentioned in this instrument, and he
"does of his own free will and design, execute the same for the purposes and intent there-
"in set forth.

RUFUS K. McHARG,
Notary Public,
137 Broadway, N. Y. City."

40. The petty sums I had borrowed from Sumner sufficient to just keep life in my family from early in the year 1882, amounted altogether on or about November 1st, 1882, to \$282. I had never received the deed for the one-sixteenth of the Colorado property which Sumner
80 had agreed to let me have on account of the \$500 I paid him November 2, 1881, for an interest in his commissions for a sale of the Davis iron mine, and after the developments above set forth in September and October, 1882, I refused to take such deed. I told Sumner I wanted to apply on account of such \$500, the \$282, borrowed from him and that he should pay me the balance of that amount; this he refused to do unless I gave him a general release. I told him I would release the \$500 but no more. My family and myself were pushed to the verge of starvation. I had had no employment since my arrival in New York in September, the year before, save a few temporary jobs from which my income had not been altogether as much as \$75. At last I told Sumner that I had either to get some money and start in life, or I would take ways and means to get it. After a good deal of
81 parleying, he said he had from fifteen hundred to two thousand dollars' worth of clothing in a store in Owego, New York, and that he had a market for the Index Stock at 65 cents a share. He then proposed and caused to be drawn an agreement, a copy of which is hereto annexed marked, "Exhibit N" which he requested me to sign. I still had hope, relying solely upon the statements made to me by Sumner that from the "Index" stock I should get my money back and get on my feet again. The agreement as prepared and finally signed gave me \$218, ready money; at least \$1,500 worth of clothing, for which I paid in stock; and also furnished me a market for enough of my "Index" stock to produce me \$2,500 in cash, additional; and left in my possession nearly 10,000 shares of the "Index" stock. I had begged Sumner for ten days for \$10 to pay my rent, and had
82 been refused by him, unless I would give him a general release, and at last, in despair of getting anything to live on, or a start in life, and in fear of being turned into the street with my wife and children, I signed such agreement, relying so far as I had any knowledge or reliance whatsoever in the transaction, solely upon the statements of Sumner as to the value of the clothing, as to his undisputed title to the same, and as to his opportunity and ability to sell a portion of my "Index" stock at 65 cents per share. A general release of Sumner was also drawn by him, and at his request, and relying upon his statements as to the value of the clothing, and as to the market for 5,000 shares of the "Index" stock, was signed by me.

83 41. I received \$218 cash from Sumner, as provided in the last mentioned agreement. Sumner caused the clothing referred to in the agreement, to be shipped and stored in his own name in New York City, and never put me in possession of the same. No valuation of the said clothing has ever been had, as required by said agreement, although repeatedly demanded by me of Sumner, and I have received altogether about, and not to exceed \$200 worth of such clothing, and I am informed and believe that Sumner has sold and converted to his own use, all of the same not delivered to me. I have been ready at all times to comply with the terms of said last mentioned agreement, as to the "Index" stock, but
84 although frequently demanded by me of Sumner, no action has been taken by him with reference to the sale of such stock, as provided in such agreement, and no share of such stock has been sold by him on my account or by myself, and I am informed and believe that no share of such stock can be sold at 65 cents per share, or at any other price, as I have made diligent effort to do without success in the various ordinary channels and markets for the sale of mining stocks in this city, and I am informed and believe that Sumner at the time the last mentioned agreement was entered into, had no market for the said "Index" stock, and the sources of my information for such beliefs are the statements made to me by Sumner, several mining brokers, James A. Austin and Edward Webb.

42. In the latter part of November, 1882, at a date several days subsequent to the execution and delivery of said agreement of said date, November 4, 1882, Sumner told me that Webb

0254

85 was going to prosecute me because of the defective title I had given to the Colorado property, and advised me to get my "Index" stock placed in the name of some third person where it could not be tied up by any action Webb might take. Acting upon Sumner's suggestion I went with my Index stock to the office of the Company, surrendered the old shares, and asked that certificates be made out in the name of a friend of mine. This was done so far as the Secretary of the Index Company had power, but the president of the Company, one S. S. Berrie, refused to sign the new stock, saying that the old had been obtained from him by Webb without consideration, and that the stock belonged to him, Berrie, and I now hold the new certificates signed by the secretary of the Company and unsigned by its president.

86 43. In the foregoing affidavit I have used the terms, "Colorado property," or "mine," or "the property," to signify the mining claims and three mill sites, described in the agreement of date, November 11, 1881, a copy of which is annexed hereto, and marked "Exhibit C," and also described in the deeds of date December 29, 1881, and January 4, 1882, copies of which are hereto annexed, marked "Exhibits G and H." In all of the transactions referred to and described in the foregoing affidavit between the defendant, Perrin H. Sumner, and myself, I had no adviser and counsel other than the said Sumner himself.

87 44. I am informed and believe that the former owner and possessor of said clothing was Mrs. Malvina A. Holdridge, and the sources of my information are the statements made to me by Sumner, and one Edgar P. Holdridge, the husband of said Malvina. I am further informed and believe that Sumner has been arrested for obtaining said clothing upon false pretences and the sources of my information are the statements made in the daily newspaper published in this city known as *The Sun*, in its issue of date, April 18, 1883, of which the following is a copy:

"ACCUSING PERRIN H. SUMNER."

"THE SHERIFF OF TIOGA CARRIES HIM OFF TO OWEGO ON A BENCH WARRANT."

88 "Perrin H. Sumner was arrested yesterday afternoon at 206 Broadway, where he has an office as a real estate broker. The arrest was made by Burr J. Davis, Sheriff of Tioga County, and a deputy; on a bench warrant, Mr. Sumner was taken by the 3 o'clock train to Owego, where he has been indicted on a charge of false pretences preferred by Mrs. Malvina A. Holdridge of Owego.

89 "Edgar B. Holdridge the husband of the complainant, said yesterday that last year his wife was the owner of a merchant tailor's shop in Owego. The stock of goods was valued at \$5,500. Mr. Holdridge saw an advertisement offering to exchange property, and, being anxious to get rid of his wife's stock of goods, answered it, and met with Mr. Sumner. Mr. Holdridge says that Mr. Sumner offered to exchange a house and lot at Orange, N. J., belonging to David W. Robinson, of Worth street, for the goods and a piano belonging to Mrs. Holdridge. Before the exchange was consummated, according to Mr. Holdridge, Mr. Sumner said that Zoe Baggs, of 534 Sixth avenue, had bought the house at \$6,000 and paid \$50 down, but that he would turn over the cash instead of the house and lot in exchange for the goods. Mr. Sumner got possession of the goods last September, and Mrs. Holdridge has not seen them since, nor has she received the house or money.

"Mr. Holdridge says that when Mr. Sumner visited Owego he talked to the Sunday School children in the Baptist church in the place. He is at the head of the Audubon Society for poor boys connected with the Sunday school of the Rev. Dr. Newman's church.

90 "Mr. Sumner's son said last evening that his father wanted some one to take charge of his own home at 52 West Forty-seventh street last fall. Mr. Holdridge saw his advertisement and answered it, and in that way met Mr. Sumner. Afterward he told Mr. Sumner that he was compelled to get rid of his wife's stock of goods, and he consented to take, and did take a quantity of stock in a gold mine in exchange for them. The son said that there was no other transaction between his father and Holdridge."

45. On Apr. 23, 1883, I showed a portion of the specimen of the ore shown to me by Sumner and Austin early in November, 1881, as aforesaid, to said George B. Sherwood, a mining expert in this city, and he said that he knew that such ore could not come from the locality of the said Silver Cliff property.

My expert says that said Sumner may be arrested and a bench warrant for the law arrests

Sworn to before me,

this 24th day of July 1883

0255

91

Exhibit A.

New York, Oct. 26, 1881.

Received from D. M. Davidson for collection, a note of five hundred pounds, dated March 4, 1881. Payable one year after date, made by Jesse R. Irwin to said Davidson.

P. H. SUMNER.

"Exhibit B."

92 Memorandum of an agreement made and entered into this 9th day of November, 1881, between P. H. Sumner, of the city, county and State of New York, party of the first part, and Daniel M. Davidson, of the same place, party of the second part, in the manner following: The said party of the first part, in consideration of the sum of one thousand (\$1,000) dollars to him in hand paid, the receipt of which is hereby acknowledged, hereby agrees to sell unto the said party of the second part, all his right, title and interest, also all the right, title and interest of his wife, Emma A. Sumner, in and to those two certain lots, pieces or parcels of land, containing five acres, more or less, and numbered "17" and "18" on a certain map made by R. B. Wheeler, now on file in the Clerk's office of Suffolk County, in said State of New York, said lots being in said Suffolk County, town of Islip, 93 in said State of New York. Said lots front on Lincoln Avenue, as per map of the "Edwards and Green Tract," as per map of said tract now in the hands of P. H. Sumner, to which map reference is hereby had.

And the said party of the second part hereby agrees to purchase said interests of the party of the first part, and the interest of his wife, Emma A. Sumner, in and to the said above-described lots, and to pay for the same as above stated.

The said party of the first part having received the above-mentioned payment, hereby agrees to execute, acknowledge and deliver to the said party of the second part, or to his assigns, a deed conveying and assuring to him or them all the right, title and interest of the said Emma A. and P. H. Sumner to the said lots "17" and "18" above described, and which 94 deed shall be delivered within five days after a demand shall be made for the same, said deed to be delivered at the office of P. H. Sumner, 206 Broadway, New York City, and it is understood and agreed that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties.

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

P. H. SUMNER, [L.S.]
D. M. DAVIDSON. [L.S.]

Sealed and delivered in the }
presence of }
ARTHUR E. SUMNER.

95

"Exhibit C."

In consideration of \$3,000.00 to me in hand paid, the receipt of which is hereby acknowledged, and the further consideration hereinafter expressed, I hereby sell, transfer and assign to Daniel M. Davidson, a full one-fourth interest in and to the eight Mining claims known as the "Gate City," "Kansas City," "Lady Flossie," "J. O. Vorhies," "Maymie," "Lady Gertie," "Sadie F," and mill sites near Silverton, San Juan County, 96 State of Colorado, one-fourth of which was formerly sold to P. H. Sumner, I still hold three-quarters of the said property consisting of about forty acres of land, for which I have good title and hereby agree to convey to the said Davidson the said one-fourth interest, clear of all incumbrance. The said one-fourth interest being sold to said Davidson for the sum of seven thousand five hundred dollars, as follows: \$3,000 cash on execution of this agreement, Lots 17 and 18 as per map of Edwards and Green Tract, Suffolk County, New York, consisting of about ten acres of good land, being the same land purchased from P. H. Sumner, the said lots being valued in this exchange at the sum of one thousand five hundred dollars, and to assign to the owner of said mines a note made by Jesse R. Irwin to said Davidson, for the sum of two thousand five hundred dollars (\$2,500.00), and to become

0256

97 due March 4, 1882. These sums amounting to \$7,000.00. The remainder, \$500, to be paid by services to be rendered hereafter, as may be hereafter agreed, said Davidson, however to receive title to the said one-fourth interest in said mining immediately.

In witness whereof, we hereunto set our hands and seals this, the 11th day of November, 1881.

In presence of
ARTHUR SUMNER.

JAMES A. AUSTIN, [SEAL.]
D. M. DAVIDSON, [SEAL.]

98

Exhibit D.

Article of Agreement made and entered into the 12th day of November, 1881, between Perrin H. Sumner, of the City, County and State of New York, party of the first part, and Daniel M. Davidson, of the same place, party of the second part, in the manner following: The said party of the first part in consideration of the sum of five hundred and $\frac{00}{100}$ dollars to me duly paid, the receipt whereof is hereby acknowledged, hereby agrees to sell unto the said party of the second part, all of the right, title and interest of P. H. Sumner and Emma A. Sumner, in and to those three certain lots, pieces or parcels of land situate, lying, and being in the Town of Islip, County of Suffolk, and State of New York, said lots
99 fronting on Lincoln Avenue and numbered "14," "15" and "16," as per Map of the Edwards and Green Tract, said Map in the hands of P. H. Sumner, and which Map is hereby referred to for a fuller description of said lots, each lot containing five acres (more or less), for the sum of one thousand dollars, which the said party of the second part hereby agrees to pay to the said party of the first part, as follows: Five hundred dollars (\$500) on the execution and delivery of this agreement, and the remainder (five hundred dollars) to be paid on or before the 16th instant (November 16, 1881); and the party of the first part on receiving such payment at the time and in the manner mentioned above shall, at his own proper costs and expenses, execute, acknowledge and deliver to the said party of the second part, or to his assigns, a deed for the conveying and assuring to him or them all the
100 interests of the said P. H. and Emma A. Sumner in and to said three lots, to said party of the second part. And it is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties.

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

P. H. SUMNER. [SEAL.]
D. M. DAVIDSON. [SEAL.]

In presence of
ARTHUR E. SUMNER.

101

Exhibit E.

Memorandum of an agreement made and entered into this the 12th day of November, 1881, by and between James A. Austin, Daniel M. Davidson and P. H. Sumner, all of the City, County and State of New York. This agreement being in addition to and a continuation of former agreements between said parties, for and in consideration of one dollar to each in hand paid, it is hereby agreed as follows: to wit, That as the said parties are owners in fee of the five mining claims referred to in an agreement made between said Davidson and Austin, it is hereby agreed to organize a mining company to be named hereafter,
102 to be stocked for \$1,000,000 of \$10 each, principal office to be in New York, 20,000 shares of said stock to be donated to the treasury of the company as a working capital, the said Davidson to have 20,000 shares, P. H. Sumner 20,000 shares and James A. Austin to have 40,000 shares. The company is to be organized as soon as practicable. In witness whereof the parties hereto have hereunto set their hands and seals.

In presence of
ARTHUR SUMNER.

D. M. DAVIDSON.
JAMES A. AUSTIN.
P. H. SUMNER.

0257

103

"Exhibit F."

NEW YORK, Dec. 24, 1881.

Received from James A. Austin a deed (or deeds) for the following mining claims: Kansas City, J. O. Voorhies, Lady Flossie, Gate City, Maymie, Lady Gertie, Sadie F. and three Mill sites, all of said claims and Mill sites said to be located in Custer Co., Colorado. The said claims and Mill sites are conveyed to me as trustee for three-fourths interest in the same, the three-fourths of the said claims being owned as follows: one-fourth interest as above conveyed I am to hold in trust for D. M. Davidson, and one-half or two-fourths I am to hold in trust for James A. Austin, the remaining fourth being the property of said P. H. Sumner, the holder hereof, the three fourths interest to be held by me until the for-
 104 mation of a mining company or to be conveyed as the said Austin and Davidson may desire me to do.

P. H. SUMNER.
 D. M. DAVIDSON.
 JAMES A. AUSTIN.

"Exhibit G."

THIS INDENTURE made the twenty-ninth day of December in the year one thousand eight hundred and eighty one (1881), between P. H. Sumner, of the City, County and
 105 State of New York, party of the first part, (as Trustee) and D. M. Davidson of the same place, party of the second part, witnesseth. That the said party of the first part for and in consideration of the sum of one dollar lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged hath remised, released and quit claimed, and by these presents doth remise, release and quit claim, unto the said party of the second part and to his heirs and assigns forever, all of an undivided one-fourth interest in and to the following described property, the "Gate City" mining claim lying between the "Dover," "Hawkeye," "Heenan," and Solid Muldoon mining claims and eastward of the Heenan claim as the same was claimed February 21st, 1880, and Recorded
 106 in the Recorder's office in the County of Custer, Colorado, April 3, 1880, in book "E," page 207. Also the equal and undivided five-eighths ($\frac{5}{8}$) part and share in the "J. O. Voorhies" mining claim lying west of the North Star mine adjoining it at the west foot of Round Mountain in section 10, Town 22, South of Range 72, West Custer County, Colorado, Silver Cliff, as the same was claimed March 5th, 1880, and recorded in the Recorder's office March 27th, 1880, in book "E," page 188, Custer County, Colorado.

Also the "Maymie" mining claim lying east of the Dover claim, and south of the Solid Muldoon claim as claimed February 21st 1880, located in section 15, Town 22, south of Range 22, West Custer County, Colorado, and near Silver Cliff and recorded in like Recorder's office for said Custer, April 3, 1880, in book "E," page 207. Also the "Lady Gertie" mining claim
 107 lying west of the Dover claim and between that and the legal tender claim south of the Wing claim as claimed February 10, 1880, and recorded in the Recorder's office for the County Custer, February 20, 1880, in book "E," page 126, together with a claim of relocation or resurvey and record which the said party of the first part hereto has made of this claim.

Also the "Kansas City" mining claim 720 feet N. 57° W. of the location shaft and 780 feet South 57° E. of same (var 15° E.) with 150 feet on each side of center line and bounded by Koekuk on the west, and on the southeast by St. Mary's Claim the southeast corner of section 6, Town 22, S. 72 W. Custer Co. in the claim about 75 feet. Together with the mill site bounded north by "Bird of Paradise" claim west by I. X. L. claim, and southeast by Koekuk, Sea Lion and Brooks claims as claimed May 1st, 1880, and recorded in said Recorder's office, Custer County, May 12th, 1880, in book "E," page 237. Also the "Lady Flossie"
 108 claim of mineral, running N. 77° W. 385 feet from the location cut to St. Thomas' claim and S. 77° East of the same 1115 feet with 150 feet on each side of center line excepting such portion thereof as conflict with the St. Thomas' claim at the northwest corner, with end lines running S. 14° West, said claim is situate on Round Mountain in the southwest quarter of Section 10, Town 22, S. R. 72 W. Custer County, Colorado, together with Mill site consisting of the vacant ground between the Laura F. and Silver Leaf claims and the Plata Verde Mill sites in the northeast quarter of section 16 in said Township and County as claimed January 7, 1881, and recorded in said Recorder's office of Custer County, March 18,

0258

109 1881, in book "H," page 83; also a triangular piece of vacant ground which lies south of the claim hereinbefore described as the "Maymie" claim containing about one and one-fourth (1 $\frac{1}{4}$) acres for the purposes of a Mill site; also a Mill site which is bounded on the north by a public highway leading from Silver Cliff to Bassick, and on the south by the Gate City claim herein before described and being about 300 feet in width east and west, together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz rock, and earth therein and all rights, privileges, and franchises thereto incident appendant and appurtenant or therewith, usually had and enjoyed. Also the Sada F. mining claim lying south of the "first venture" and "Cloride" Claims east of the "Silver Star" claim, and west of the Mammoth and Legal Tender claim. In section 15, Township 22, South Range 72, West Custer County, Colorado, near Silver Cliff as claimed December 6, 1879, and recorded January 13, and March 3, 1880.

110 Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, interest courtesy, right of courtesy property, possessions, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances. To have and to hold all and singular, the above mentioned and described premises, together with the appurtenances unto the said party of the second part, his heirs and assigns forever. In witness whereof, the said party of the first part hath hereunto set his hand and seal the day and year first above written.

P. H. SUMNER. [L. s.]

Sealed and delivered in the presence of

THOMAS B. CLIFFORD.

STATE OF NEW YORK, }
City and County of New York. } ss.:

112 I, THOMAS B. CLIFFORD, a Commissioner of Deeds for the state of Colorado in the State of New York within and for the county of New York aforesaid, do hereby certify that P. H. Sumner who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as that party hereto appeared before me this day in person and acknowledged that he executed the same for the uses and purposes herein set forth.

Witness my hand and seal this thirtieth day of December, 1881.

[L. s.]

THOS. B. CLIFFORD, 206 Broadway,
Commissioner of Deeds for the State of Colorado in
the State of New York.

113

"Exhibit H."

THIS INDENTURE made the fourth day of January, in the year one thousand eight hundred and eighty-two, between Perrin H. Sumner as trustee, of the City, County, and State of New York, party of the first part, and Daniel M. Davidson of the same place, party of the second part,

114 WITNESSETH. That the said party of the first part, for and in consideration of the sum of one dollar lawful money of the United States of America to him in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has remised, released and quit-claimed, and by these presents does remise, release and quit-claim, unto the said party of the second part, and to his heirs and assigns forever, all or an undivided one-eighth interest in and to the following described mining claims and Mill sites situated, lying and being in the County of Custer, and State of Colorado, The Gate City mining claim lying between the "Dover," "Hawkeye," "Heenan" and "Solid Muldoon" mining claims and eastward claim as the same was claimed February 21st, 1880, and recorded in the Recorder's Office, for the County

0259

- 115 of Custer, Colorado, April 3d, 1880, in book "E," page 207. Also the equal and undivided five-eighths ($\frac{5}{8}$) part and share in the "J. O. Vorhies Mining Claim, lying west of the "North Star" mine adjoining it at the west foot of Round Mountain in Section 10, Town 22, South of Range 72, West Custer County, Colorado, near Silver Cliff, as the same was claimed March 5th, 1880, and recorded in the Recorder's Office March 27th, 1880, in Book "E," page 188, Custer County, Colorado. Also the "Maymie mining claim" lying east of the "Dover" claim, and south of the "Solid Muldoon" claim, as claimed February 21st, 1880, located in Section 15, Town 22, South of Range 72, West Custer County, Colorado, and near Silver Cliff, and recorded in the Recorder's office for said Custer County, April 3d, 1880, in book "E," page 207. Also the "Lady Gertie" mining claim lying west of the "Dover" claim and between that and the legal tender claim South of the "Wing" claim as claimed February 10th, 1880, and recorded in said Recorder's office for the County Custer, February 20th, 1880, in book "E," page 126, together with a claim of re-location or re-survey and record which the said party of the first part, in deed Stypes to Sumner dated 21 day of November, 1881, had made of this claim. Also the "Kansas City" Mining claim: 720 feet N., 57° West of the location Shaft, and 780 feet S., 57° E. of same (Var: 15° E.) with 150 feet on each side of Center line and bounded by Keokuk claim on the West, and on the Southeast by St. Mary's claim on the S. E. C., 6 Town 22 S., 72 W. Custer County being in the claim about 75 feet, Together with the Mill site bounded N. by the Bird of Paradise claim, W. by I. and G. claim, and S. E. by "Keokuk" "Sea lion" and "Brooks" claims as claimed May 1st, 1880, Also the "Lady Flossie" claim
- 116 of mineral running north 77° W., 385 feet from the location, cut to the St. Thomas claim, and S. 77° E. of same 1,115 feet with 150 feet on each side of center line, excepting such portion thereof as conflicts with the St. Thomas claim at the N. W. corner, with end lines running S., 14° W., said claim is situated on Round Mountain in the S. W. quarter of Section 10, Town 22 S. R. 72° W. Custer County, Colorado, together with mill site consisting of vacant ground between the Laura F. and Silver leaf claims and the Plata Verda mill sites in the N. E. quarter of Section 16 in said township and County, Also a triangular piece of vacant ground which lies South of the claim herein before described as the Maymie claim, containing about one and $\frac{1}{4}$ acres for the purposes of a mill site. Also a mill site bounded on the North by public highway, leading from Silver Cliff to Bassick and on the south by the Gate City claim herein before described and being about 300 feet in width East and West. Also the Sadie F. mining claim as described in deed made by
- 117 to the party of the first part, said claim located and claimed by M. A. Messick, Dec. 6th, 1880, filed from record the 3rd, day of March, 1880, and recorded in book "E" page 140.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. And also all the estate, right, title, interest, property, possession, claim and demand whatsoever as well in law as in equity of the said party of the first part, of, in, or to the above described premises, and every part and parcel thereof with the appurtenances. To have and to hold all and singular the above mentioned and described premises, together with the appurtenances unto the said party of the second part, his heirs and assigns forever. In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Sealed and delivered }
in the presence of }

PERRIN H. SUMNER. [L.S.]

ROBERT C. CORNELL.

120 STATE OF NEW YORK, }
City of New York, } ss.:
County of New York. }

On the Fourth day of January, in the year one thousand eight hundred and eighty-two, before me personally came Perrin H. Sumner, to me known and known to me to be the individual described in, and who executed the foregoing instrument, and who acknowledged that he executed the same.

[L.S.]

ROBT. C. CORNELL,
Notary Public 26,
New York County.

0260

121

"Exhibit I."

Col. D. M. DAVIDSON.

NEW YORK, MARCH 24th, 1882.

Dear Sir: This certifies that I hold a one-sixteenth interest belonging to you, in seven Mining Claims, and three Mill sites in Custer Co., Colorado. I having rec'd a quit-claim deed as trustee, I hereby agree to convey the same by quit-claim deed to you or your assigns whenever you desire me to do so.

The above $\frac{1}{16}$ th interest in said claims being all that I now have belonging to you.

P. H. SUMNER.

122

"Exhibit J."

NEW YORK Nov. 2d, 1881.

Received from D. M. Davidson five hundred and $\frac{90}{100}$ dollars, as per agreement, dated Nov. 2, 1881, in regard to commissions due me from John L. Davis, on sale of lands \$500.

P. H. SUMNER.

(Endorsed).

The interest of Davidson in the commissions of Davis were afterward exchanged for one-sixteenth of Sumner's interest in mining claims, in Custer County, Colorado.

P. H. SUMNER.

123

"Exhibit K."

NEW YORK, Nov. 9, 1881.

Received from D. M. Davidson, one thousand and $\frac{90}{100}$ dollars, as per agreement of this date for lots Nos. 17 and 18, Suffolk County, N. Y. \$1,000.

P. H. SUMNER.

(Endorsed).

Davidson afterwards exchanged his interests in the lots to Austin, for interests in mining claims, Custer Co., Colorado.

P. H. SUMNER.

124

"Exhibit L."

NEW YORK, Nov. 11, 1881.

Received from D. M. Davidson, three thousand dollars, being amount due in cash for $\frac{1}{4}$ of my interest in mines, (Custer Co., Colorado).

JAS. A. AUSTIN.

\$3,000.

125

"Exhibit M."

NEW YORK, Nov. 12, 1881.

Received from D. M. Davidson five hundred and $\frac{90}{100}$ dollars, as per agreement for Lots 14, 15, and 16, said agreement bearing even date herewith. \$500.

P. H. SUMNER.

(Endorsed).

Davidson's interests in the lots were afterwards exchanged for mining interests to J. A. Austin, Custer Co., Colorado.

P. H. SUMNER.

126

"Exhibit N."

Article of Agreement entered into on this 4th day of November, A.D. 1882, by and between D. M. Davidson of the first part, and P. H. Sumner of the second part, both of the City of New York, Witnesseth: In consideration of one dollar by each of said parties to the other paid receipt whereof is acknowledged, the said parties agree by and with each other as follows to wit.

0261

127 On execution hereof, the said Sumner pays to the said Davidson the sum of two hundred and eighteen and $\frac{10}{100}$ dollars and delivers to him a small box of clothing now in his office. And sells to him the stock of ready-made clothing, coats, vests, and pants, now in his clothing store in Owego, N. Y., same to be invoiced at their wholesale cost price, and delivered as soon as invoiced at said store.

In consideration of the foregoing, the said Davidson agrees to accept and does accept such transfers, sales and payment and to make payment therefor as follows. Pay one-half the sum to which the value invoiced as above mentioned amounts in the capital stock of the Index Gold and Silver Mining Company at the rate of 65 cents per share of said stock. And deposit five thousand shares of said stock with such person or Institution as may be agreed upon, to be held subject to the sale of the same as made by said Sumner, he, Sumner, undertaking to effect a sale of the same, and on the same terms he sells his own stock in said Company, at a rate not less than 65 cents per share, and that out of the money he may receive for said stock, he is to first deduct the balance, the one-half of the invoice value of said clothing, and pay over the balance to the holder of said stock or to said Davidson. He, Davidson, agreeing to at call give an order on the holder of said stock for such an amount of stock rated at 65 cents per share of said stock as will pay for the balance of the value of such clothing.

128 And in consideration of the foregoing the said Davidson receipts an acknowledgement of full accord and satisfaction of all claims and demands of every name and nature against said Sumner, and the said Sumner acknowledges satisfaction and accord from said Davidson.

129 To the faithful performance of the conditions hereof, the parties bind themselves, their heirs, and representatives by these presents.

In witness whereof, they have hereunto set their hands and seals the day and year first above written.

Lines 1 to 6 inclusive on this page erased before execution.

D. M. DAVIDSON. [L. S.]
P. H. SUMNER. [L. S.]

Signed and delivered in presence of

ARTHUR HOLMES.

130 I covenant and agree that there is no mortgage lien or incumbrance on the clothing specified and sold in the above instrument.

P. H. SUMNER.

AFFIDAVIT OF JAMES A. AUSTIN.

City and County of New York, ss :

JAMES A. AUSTIN being duly sworn says :

1. I reside at No. 137 East 21st Street, New York City. My business is dealing in mining properties.

131 2. I first made the acquaintance of the above-named defendant, Perrin H. Sumner, about the beginning of the year 1881, when he introduced himself to me at the Fifth Avenue Hotel, claiming to have some customers for a large mining property I then represented. I transacted no business with him at that time and saw no more of him until nearly Nov. 1, 1881. At about that date Sumner's card was left for me at the Fifth Avenue Hotel three or four times before I met him. In fact I had really forgotten the man, but one morning about nine his card came to me when I was at the breakfast table and I saw him.

132 3. At such interview Sumner's first inquiry was whether I had any cheap mining claims for sale. I told him I had not, that I had none at all. He then asked whether I could not get some, and said that he knew I knew all the mining men and knew very well I could get them. Sumner then went on to say that he wanted the claims for a Scotch party whose agent he was, who would do anything he, Sumner, might direct; that the party had \$5,000 in bank that he, Sumner, knew of and he didn't know how much more, but thought he had at least \$10,000 at his command; that he could realize at least \$3,000 cash for any property I might present; that he would divide the proceeds with me, and that he would organize a stock company, and that he and his party would float all the stock. While he did not expressly so state he led me to believe that his party would make a purchase of from \$10,000 to \$15,000. Sumner stated however, explicitly, that he did not

0262

133 want the claims to cost him, Sumner, over one thousand dollars. I told him I thought I could procure him such a property as he desired and that I would report to him in a few days, which ended the interview.

4. In a few days thereafter, through one R. Parker Pierce, a broker in mining properties, I got track of a mining property which could be had for \$4,000. As the property seemed to give excellent promise and as my impressions of the ability of Sumner's principal would warrant the sale of such a property I reported it to Sumner at his office at No. 206 Broadway. When I stated the price—\$4,000—Sumner said the property was too high; that it must not cost over \$1,000, and that "prospects" would do. He repeated his statement that he was
134 the agent of a Scotch party, and said further that this party was getting his mail and making his head-quarters at his, Sumner's, office, and that he, Sumner, was transacting all his business; and also repeated that this party would do anything that he, Sumner, advised.

5. About two days later I learned of several claims down in the San Juan country near Silverton, in the State of Colorado, which could be had for a little less than a thousand dollars. I dropped Sumner a note and he came to my hotel and I explained to him that they were simply prospects, with the assessment work done on them. Under the laws applicable to mining claims the owner of a mining claim must do development work each year to the amount of \$100 or his claim may be "jumped" or lost, and such work is known as "assessment work." These claims had had one year's assessment work done on them. Sumner said they would answer every purpose. At this time he said he could get from his
135 party at least \$3,000 in cash, and some other property.

6. After this property was accepted by Sumner it was finally arranged by him at my hotel one evening after many previous changes of plan that he, Sumner, should sell one-quarter interest in this property to his party for \$7,500; that he, Sumner, should own another one-quarter interest for which he would claim he paid the same amount, \$7,500, and that I should own the remaining one-half; that I should meet at Sumner's office the next
136 afternoon this Scotch party; that I was to come in as though I had just arrived from Colorado, and that after talking with Sumner awhile he would introduce me to his party and lead the conversation up to the purchase of an interest in our mine and that I was to insist on at least \$3,000 being paid in cash; that he, Sumner, held for his party the promissory note of a man named Irwin for \$500, which note fell due in March, 1882, and that such note could be taken in part payment; that his party owned some lots on Long Island which could also be taken in part payment; that his party could be made Superintendent of the mine at a salary of \$500 per month, and that he, Sumner, would organize a company, with a capital of 100,000 shares of \$10 each, par value, to take the claims; that he wanted, I should say that he, Sumner, paid \$7,500 for his one-quarter interest in this mine; that when I
137 came to his office I was to talk with him awhile and then he was to ask me to sell one-quarter interest to his party; that in addition to the \$3,000 cash which I was to insist on, I should agree to take the Irwin note at \$2,500, the Long Island lots at \$1,500, and \$500 in the services of his party; that he, Sumner, wanted me to consent to such a purchase on the terms so proposed and arranged by him, after my showing at the proposed interview some hesitation; and that I should insist on the conclusion of the bargain at the interview and the payment of \$3,000 cash on the spot. He said that he wanted I should call about 2 P. M. the next day for the interview. He also said he wanted a sample of ore from this mine, and I told him I didn't think I could get any but would try.

7. The next morning I called at Sumner's office after learning from Pierce that no sample
138 of ore from the Colorado property could be had and so informed him. Sumner replied, "I must have a sample of ore; get me a sample of good lead ore no matter where it comes from." I went right over to the Astor House and got a rich sample of galena ore from a friend and at once took it to Sumner, and told him I didn't know where it came from and he said it didn't make any difference, that it was a good sample and would answer, and I thereupon left the sample so obtained with him and agreed to call again at two P. M.

8. I went to Sumner's office at two P. M. as arranged. Sumner had not given me the name nor had I seen his Scotch party during all the time our negotiations and arrange-

0263

139 ments had been progressing. When I entered Sumner's office a gentleman whom I had never seen before was sitting near the window within four or five feet of Sumner's desk. Sumner greeted me with apparently great surprise, and asked, "When did you get in the city?" to which I answered, "I have been here a few days." He then said, "How's our property looking?" I replied, "It is looking very well indeed and every probability of developing into a fine mine. I see no reason why it won't develop into a property equal to a property near by which has sold for a million and a half." The conversation was carried on in this vein,—these and other questions and answers given in a voice so that they could be readily heard by the only other person present, the gentleman at the window, concerning whom Sumner had managed to say to me in a low tone, "that's the party;" Sumner finally 140 enquired, "Would you be willing to sell a quarter interest in this property?" I said, "I don't think I care to, but I might for the use of some ready money." Sumner then turned to the gentleman at the window, and introduced me to Daniel M. Davidson, the plaintiff above-named. Our conversation with Davidson was brief. Sumner, who had previously passed to me the specimen of ore which I had taken him in the morning, said to Davidson that I had just arrived from Colorado; that I had a valuable property out there in which he, Sumner, held a quarter interest; and that the sample of ore which I held in my hand was from the property and was very fine ore. Sumner told Davidson that he had paid \$7,500 for his quarter interest, and said to him, "You had better take a quarter interest." As Davidson did not seem to come up to a bargain point I very soon went away.

141 9. On the night before Nov. 11th, 1881, Sumner came to my hotel and said that it would be necessary for me to write a letter and that the sale to Davidson would carry if I would consent to Davidson that he should be the Superintendent of the mine on a salary of \$6,000 a year. He then dictated a letter to himself from me which I then and there wrote and handed him and he took it away with him to the effect that his party must decide at once whether he would take the quarter interest as I had other parties ready to take an interest. I had no other parties and had made no effort to secure any. Sumner arranged for a meeting at his office with Davidson the following afternoon and said he would have Davidson close it up then, and outlined to me just what the terms would be which he would propose on the 142 part of Davidson on the next day, which terms were to the effect precisely as he did so propose. He also said that if a company was organized it would be for the trustees to designate for Superintendent whom they pleased, and that our assent to Davidson's being Superintendent would not bind the company.

143 10. On November 11th, 1881, in the afternoon, I went to Sumner's office, and there found Sumner and Davidson. Sumner at once began making a statement to me that if Davidson took an interest it would have to be on certain conditions. These conditions were the same as he had stated to me the evening before and were to the effect that Davidson wanted to put in the Irwin note at \$2,500, two lots on Long Island at \$1,500, services at \$500, and that Davidson wanted to pay only \$2,000 in cash. After some hesitation and saying I didn't like to take that class of securities I said I would close the transaction at \$3,000 for the cash payment, and the other payments as proposed. Sumner then advised Davidson to accept the proposition as I had made it, and Davidson said to Sumner, "I'll do it, Mr. Sumner, but I'll leave it entirely to you to see that it is correct as I am a stranger and you know all about it;" and Sumner then told Davidson, "You can depend upon it being all right," or words to that effect. Sumner and Davidson then went into a private room for a few moments and then came back and Sumner sat down and drew an agreement, a copy of which is annexed to the foregoing affidavit of the plaintiff, and marked "Exhibit C," and which Exhibit I have read. While Sumner was drawing this agreement I had some conversation with Davidson. During 144 the negotiations thus consummated, I had not had 15 minutes' talk with Davidson, and what had passed between us had been of the most general character and amounted to no special inquiry concerning the Colorado property. At this time Davidson told me that he had relied entirely on Sumner's judgment in the matter and had the utmost confidence in him, and that he hoped that every one connected with it would make some money. After the agreement was executed I saw Davidson draw and deliver to Sumner a check to Sumner's order for \$3,000, Sumner afterwards, when Davidson was not in the room, drew a check to my order and delivered it to me for \$1,500. After the day's transaction was closed Sumner suggested that I should take a party consisting of himself and family, and Davidson and his wife to the theatre that evening, which I did, paying for all

0264

145 the tickets myself. Before and after this transaction, several times, Sumner told me that Davidson was a confiding kind of a man and if he didn't get Davidson's money somebody else would.

11. The next morning, Nov. 12, 1881, Sumner called at my hotel and requested me to write a letter to him to the effect that I desired to purchase one or two more of the Long Island lots at the same price I had paid Davidson the day before. I objected to writing this but Sumner said it didn't bind me legally, that I could change my mind at any time, and that he should show it to a party and then destroy it. He said that he had a party who lived out of town to whom it would enable him, Sumner, to make a sale, and I had not the remotest idea who it was. He then dictated and I wrote a letter and handed it him to the effect as he had requested.

12. I did not see Sumner again for ten days or two weeks and had nothing to do with him save as he would send me word occasionally or call upon me and request me to step in and "say something." I was ready at all times to organize the proposed stock company, and told Sumner to go ahead, and that any arrangement he and Davidson might make I would consent to. At the time I secured the San Juan claims I had learned, and informed Sumner, of a group of claims at Silver Cliff, Custer County, Colorado, which could be had on about the same terms as those at Silverton. Sumner had said to me after the sale to Davidson of Nov. 11, 1881, that it would be necessary in organizing a company to have a report concerning the property from some mining expert; I found in the course of a week or ten days after such sale that no such report concerning the San Juan claims could be had, but that one George B. Sherwood, a mining expert, would make a favorable report concerning the group of claims at Silver Cliff, and so informed Sumner. After some delay, about Dec. 1, 1881, Sumner decided to substitute the claims at Silver Cliff for those in San Juan County, and I heard him on or about that date, tell Davidson that he proposed to make such substitution; that there were two claims and three mill sites more at Silver Cliff than at Silverton, and that the Silver Cliff property was on a railroad and near mills and reduction works which the former was not. Davidson replied to Sumner that he left the matter wholly with him. This group comprised three mill sites and the claims known as "Gate City," "Kansas City," "Lady Flossie," "J. O. Voorhies," "Maymie," "Lady Gertie" and "Sadie F.," and in our subsequent dealings and conversations was known as "the Silver Cliff property," or "the Colorado property," or "the mine," or "our mine," and I shall hereinafter refer to such claims in like terms. I never received at any time from Sumner any conveyance of any interests in the Colorado property. I received accepted drafts on Irwin for one-half of the Irwin note from Sumner on December 24th, 1881, and a deed to one of the Long Island lots about May 1st, 1882. The cash, \$1,500, the half of the Irwin note, and the one lot were all that Sumner ever paid or delivered to me. I never received at any time any deed from any one to myself of any of the Colorado property.

13. Sometime about the close of the year 1881, or early in January, 1882, Sumner came to my hotel in the afternoon and told me that Davidson was coming up soon to see me about more of the Long Island lots, and that if I would carry out to him, Davidson, the same as the purport of the letter I had written for Sumner some time before, which letter, referring to such lots, in effect I have above set forth, it would enable him, Sumner, to sell some more of these lots. Sumner wanted I should tell Davidson that my parties had not got in the city yet, and that I had no question but what a sale could be made to them when they came. Very soon after Sumner left, Davidson came in and I carried out in effect the request of Sumner saying what he had dictated to me to say. Sumner never said to me he was making a sale or proposed to make a sale of these lots to Davidson, and I had the impression all the way through this last mentioned interview that Davidson was aiding Sumner to sell to other parties.

14. Early in January, 1882, in the first week I think, Sumner came to my hotel in the morning and said that Davidson was annoying him, and wanted I should join with him in conveying an additional interest in the Colorado property to Davidson in order that he, Sumner, might be rid of Davidson and get him out of his office. This I refused to do and told Sumner that if he would go on and do what he agreed to do there would be no need of doing that. Sumner then said, "Davidson hasn't got any more money, and I want to get

0265

151 "rid of him." I then told him I should have no more to do in the matter, except that I was ready to carry out the organization of a company to take the property.

152 15. At all times during the winter of 1881-2 whenever the subject of the Colorado property was broached to me by Sumner or Davidson, I always expressed myself as anxious, and did stand ready, to carry out the original agreement to organize a company. Sometime in February Sumner told me he thought there would be no use in organizing a company and that he had better convey each party their interest. I then said to him that it would be much better to carry out the original agreement, but if he and Davidson preferred the course proposed, they could take any course they might elect, and that I didn't care to be annoyed any more about it.

16. During the Summer of 1882 I saw Sumner frequently and he told me that Davidson was annoying him terribly. In May or June Sumner told me that he had got "Davidson fixed," and was turning his, Davidson's, interest in the Colorado property into some mining stock, and that he had gotten rid of Davidson.

17. In September Davidson came to me and asked for the original agreements about the Colorado property. The first time he came I evaded him, and the second time I told him that I had never had them and that Sumner had been to me and requested me to lie to him about it; which statement so made to Davidson was true. One day, early in September, 153 I saw Davidson in the street and told him that he had been badly used and that I wanted to make to him a clean breast of my connection with the whole thing, and soon after told him what sums I had received from Sumner, which was as I have hereinbefore stated.

18. September 29th, 1882, I handed a letter to Davidson, a copy of which is set forth in the 36th section of the foregoing affidavit of the plaintiff which I have read, and the statements made in said letter were and are true. October 25th, 1882, I made and handed Davidson an affidavit setting forth the facts, concerning my transactions with Sumner, a true copy of which affidavit is shown in the 39th section of the foregoing affidavit of the plaintiff which I have read, and the statements made in my said affidavit were and are true with the excep- 154 tion of such inaccuracies as are shown by the statements herein made.

19. I never at any time told Sumner that I had made \$70,000, or any other sum in mining or any other business; Sumner never asked me to convey a one-eighth interest in the Colorado property to Davidson, and I did not know of the conveyance as set forth in "Exhibit H," annexed to the foregoing affidavit of the plaintiff, which I have read, until Davidson told me of it in June or July, 1882. I never at any time anywhere conversed with any other person, other than the plaintiff and Sumner, concerning the formation of a stock company to take the Colorado property, save in a general way with one Edward Webb, who some time after the transaction of Nov. 11, 1881, came to be an occupant of Sumner's office, and to no person have I ever said, nor have I anywhere done, anything in opposition to the 155 formation of such company or "thrown cold water" on any effort in that direction.

20. All papers relating to the transactions had with Davidson so far as I was concerned, were kept by Sumner; he took the deeds of the Colorado property, and some weeks after the sale of Nov. 11, 1881, at his dictation, I gave him receipts, dated about a year prior to that date, to show that he had paid me \$7,500 for his one-fourth interest in such property, although he had never paid me that, or any other sum other than as herein stated. Sumner told me those receipts were necessary for his protection with Davidson. Before Sumner gave me the \$1,500 on Nov. 11, 1881, he drew and I signed a receipt for \$3,000 as from Davidson, and Sumner kept such receipt; several months after the transaction of Nov. 11, 1881, hereinbefore set forth, Sumner asked me for a duplicate of such receipt with 156 the words "Custer Co., Colorado," added, which I gave him, and a copy of such receipt is annexed to the foregoing affidavit of the plaintiff, marked "Exhibit L," which I have read.

Sworn to before me

May 1884

John J. Austin
John J. Austin
John J. Austin

0266

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

guilty thereof, I order that he be held to answer the same and ~~he be admitted to bail in the sum of~~
~~Hundred Dollars, and be committed to the Warden and Keeper of the City Prison of the City of New York, until he~~
~~give such bail.~~

Dated June 28th 1884 John Homan Police Justice.

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

Dated _____ 188 _____ Police Justice.

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

Dated _____ 188 _____ Police Justice.

0267

adgt. at dept. of no
defendant to June 4
adgt. June 7. 2 P.M.
13 2 P.M.
adgt. by consent
June 24. 2 P.M.
" 28 9 A.M.

BAILED.

No. 1, by Shepherd Knapp
Residence 53 West 4th St. Street.

No. 2, by 32 West 56th
Residence _____ Street.

No. 3, by _____
Residence _____ Street.

No. 4, by _____
Residence _____ Street.

Bail \$3000
now.

Police Court 2 District. 1527

THE PEOPLE, &c.,
ON THE COMPLAINT OF

David M. Davidson
66 Charlton St.
Peru St. Summer

Dated May 29 1888
Wormian Magistrate.

James A. Smith Officer.
Precinct.

Witnesses James A. Smith
No. 137 E 28th Street.

No. _____ Street,

No. _____ Street,

\$ _____ to answer _____

0268

Copy

The Summer Exposure

The Crimes of the Persecution
of Parrish

A Villain in the Cloak of Sanctity.
It is unnecessary for us to publish
the exposure of the conspiracy of P.H.
Summer to ruin the Reverend Parrish,
and how the conspiracy was foisted out
by Delectus Lees, and the confessions
of the conspirator - we have no doubt
that nearly every reader of the Transcript
has read the full reports which occupy
nine columns of the evening Post of Saturday.
The Express shows that the attempted

assassination of Summer, which through
this city into consternation last winter
was a sham and a fraud a put up
affair to make it appear that Parrish
had hired assassins to waylay Summer
out of range for the part Summer took in
Parrish's trial. The letter of warning
he pretended to have received was all written
by himself and was a part of the same
deep laid conspiracy. His dying confes-
sion was a villainous sham, and a blas-
phemous lie. His journey east for his
health was a part of the same conspiracy
as well as the offering of a reward for the
apprehension of his assassins. But the
cunning villain fell in the hands of one

of the sharpest detectives in the world we
referred to Capt. Lees - and the conspiracy was
all unraveled. He hired a man to impersonate
the assassin and confess to the deed, charging
- that it was done at the instigation of
Rev. J. M. Parshall. He paid the fare of this
man to Healdsburg in order to win some
expression of ill feeling from Parshall as
also to be seen in Parshall's company
at Healdsburg in order to show that the
assassin was in some manner connected
with Parshall. He wrote letters to this man
purporting to come from Parshall
in regard to the attempted assassination.
These were compared with the pretended
letters received by Sumner in Oakland
and to be all written by the same hand.
Purvis was fully instructed in the part
he was to play but the plot, well
laid as it was, did not deceive the
wily detectives - who was engaged by Col
Barrie to work up the case.
Finally, when Sumner had told his whole
story and Purvis had gone over his several
times Capt. Lees informed Purvis that it
would be better for him now to tell the truth
as he was not deceived by his tale whereon
Purvis confessed to the conspiracy and that he
was in the employment of Sumner relating
the whole plot from beginning to end.

0270

Another job came out. If Mr Adams was selected by Sumner to employ a frail woman to go to Haldsburg and under the guise of religion in the name of Mr Parrish to San Francisco and to a place of ^{local} unquestionable character and there have him discovered and secure his wig. Adams was just the villain enough to carry out this conspiracy. Sumner was sent for by Capt. Lee and made his appearance at Col Barnes office and when informed that the whole plot was divulged by Sumner, Adams, and Hopkins, coolly denied any participation in the plot. He finally wound up and took the parties to his office delivering up papers to Capt Lee which fix upon him the conspiracy set forth. He expressly admitted that he had concocted the whole plan conspiracy and that the attempt assassination and anonymous letters was his own invention. Now for the reason of this prosecution of Parrish and the motive which actuated this bad man. see copy from the Post as follows

copied from
Alameda
County
Gazette
Calif July 10
1875

0271

Mr. Martin

or
any Representative of
Dist. Atty.

0272

Regle & Son

Charles Howard Williams

29. Victoria St.

Counsellor at Law

0273

Dr Sir

Col Fellows & myself have
been in consultation evening this
morn. Gurney was one of
the principal witnesses out of the
state. After my great difficulty
I think we shall have him here on
Monday. Please get on early and
The civil case is on up stairs & I have
to attend. Reply. C. H. Wallis

0274

Rooms 41 & 42,

LAW OFFICES OF
JOHN O'BYRNE,
TEMPLE COURT,
5 Beekman Street.

The People
vs
Samuel
Crown

New York,

Sept 11

1885

My dear Hollows

In both of these cases, there are
Civil Rights pending - preceding
in order of time, the indictment.
The Cause of action in both cases
are alike, in Samuel I believe
something is suppressed. The
Samuel case is at the head of the
calendar for tomorrow (Monday)
(My Nephew is Samuel). I will
not therefore be ready to try. In
addition I leave on the 3rd
train for Albany and will not
be able to get through my engagement

0275

Before tomorrow evening
I write this in - Thus to save
You from any apprehensions &c.

Mr. Holloway stated in Open Session
that he would not try, and did
not think it right to try. Cases of
this kind until the civil proceedings
were ended.

Hon

Respectfully

Res. Ralph B. Martin

Wm. B. Byrne

Res. Atty

Very respectfully
Yours
Wm. B. Byrne

Wm. B. Byrne

Wm. B. Byrne

JOHN O. BAYNE
FIVE OFFICES OF

0276

LAW OFFICES OF
EUGENE F. DALY,
170 BROADWAY,

NEW YORK,

Sept 14

1887

R. J. Martine &

My dear Sir:

Have you yet had the opportunity of looking into the matter of the indictment against P. H. Sumner, in relation to which I called upon you & filed an application to quash with papers in support?

The bondsman Mr. Sheppard Knapp has spoken to me several times upon the subject & I have stated to him that you had promised to give attention to the matter, but I fear not having heard from you, that you have forgotten all about it.

Will you favor me by devoting a few minutes to the matter & informing me of your determination?

Yours truly

E. F. Daly

0277

List of Witnesses in re Perrin H. Sumner.

David M. Davidson	119 Varick St.
James A. Austin	137 E. 21 St.

0278

People

no.

Cervin H. Sumner

List of Witnesses
for the People

0279

SUPERIOR COURT
OF THE CITY OF NEW YORK.

-----X
DANIEL M. DAVIDSON :
Plaintiff :
--against-- : Complaint.
PERRIN H. SUMNER, :
Defendant :
-----X

The plaintiff alleges:

1. I am a native of Scotland, and came to the United States in June, 1881, with the intention to become a citizen of this country, and have resided in New York City since September, 1881.
2. In the month of October, 1881, I made the acquaintance of defendant, Perrin H. Sumner, who then was, and has since continued, doing business as a broker in real estate and general property at No. 206 Broadway, in said city.
3. At our first, and at subsequent interviews, I told the defendant that I had been defrauded in the purchase of lands in West Virginia; that I had about \$5,500 in money and a promissory note for \$500, due in London March 4th, 1882 that I was specially interested in schools, colonization and mining, and had special qualifications and experience as a mechanical engineer; and that I wanted some one to act as my agent and trustee in securing an opportunity for the employment of my services and the investment of my money. At our first and subsequent interviews defendant declared

0280

to me that he would soon find some advantageous opportunity whereby I could secure an acceptable business engagement and investment, and that he would act as my agent and trustee and every way for me, and I said I would put myself entirely in his hands.

4. Thereafter and while acting as such Agent and Trustee, and on and about certain days early in November, 1881, the defendant falsely and with intent to deceive and defraud me, represented to me as follows:

That he had paid seven thousand and five hundred dollars (\$7,500) for a quarter interest in certain mining claims in Colorado, which claims were spoken of in such representations frequently as "the mine", "our mine", "the Silver Cliff property", and "the Colorado property", and which were more fully described by the defendant as the claims "Gate City", "J. O. Voorhies," "Maymie", "Lady Gertie", "Kansas City", "Lady Flossie", and the "Sadie F." together with three mill sites, all situate at Silver Cliff, Custer County, Colorado; that a certain specimen of galena ore exhibited to me by him, was from such mine, and assayed fifteen per cent silver; that defendant and his associate in the ownership of such mine had expended ten thousand dollars (\$10,000) in developing the same the past year; that it was ready to be worked without further delay; that the mine was uncommonly rich, containing a vein of ore at least two feet in thickness, of the finest quality of galena ore assaying fifteen per cent of silver, which the recent workings of himself and his associate had rendered immediately available that he had with great difficulty induced his associate,

0281

one James A. Austin, to part to me with a quarter interest out of Austin's three-quarters interest in such mining property at the same price, the defendant had, paid for his quarter interest, to wit: Seven thousand and five hundred dollars (\$7,500) ; that he had arranged with Austin that I should pay \$500 of such purchase price in services on the property; that said promissory note should be taken by Austin on account of the same at \$2,500; that certain lots which defendant owned on Long Island were very valuable and if conveyed by him ^{to me} for \$1,000 cash, would be taken by Austin on account of said purchase price at the sum of \$1,500; that a stock company to work such mine would be organized by defendant and Austin; that he, defendant, had special facilities for disposing of large blocks of the stock in such company at very advantageous rates; that I should be chief engineer of such mine, for such company, at a salary of \$500 per month; that I should be sent to Europe to place the stock on the European markets; that it was the best opportunity I would ever obtain; that I would get a position by such purchase; that he was my friend; that I would find it all right; and many other representation to the effect that the chance to purchase such quarter interest was a glorious opportunity for me.

5. Relying solely on such representations and wholly confiding in the defendant as my agent and trustee, and declaring to him that I trusted to him to see that it was all right, and upon his assurance that it was all right, I paid to the defendant on November 9, 1881, one thousand dollars for said lots, and on November 11, 1881, I paid to

0282

him three thousand dollars to be paid by him to said Austin and authorized him to pay over to said Austin said promissory note, and through the defenant assigned my interest in said lots to said Austin, and received therefor a contract for a one-quarter interest in said mining property, and I further paid \$47 in cash for a gold chain at defendant's request, which chain he took instead of commissions on such purchase for me, and I delivered to him in further consideration of such commissions a pair of ivory and silver bracelets, which were of a reasonable value -- not less than \$25.

6. All of said representations so made by the defendant were false, and by him well known to be false, and in truth said mining property consisted of mining claims undeveloped, which had been secured and purchased through a broker in New York City by the defendant, in November, 1881, after his relation of agent and trustee for me had been assumed by him, for an agreement to pay \$500 in money and \$500 in stock, and only \$100, in fact, had been paid thereon; the defendant and Austin had not spent \$10,000, or any other sum in developing said property; defendant had not paid nor agreed to pay \$7,500, or any other sum, for his alleged quarter interest in the same; the ore shown me by defendant as a specimen of the ore on said property had not been obtained on said property but had been procured by defendant at the Astor house, in the City of New York for the purpose of exhibition to me; and such purchase of said property was made by defednant for the express purpose of selling an interest in the same to me; and the

0283

defendant never conveyed to said Austin the cash, note and lots conveyed to defendant on account of such purchase, but divided a portion of the proceeds of the same with said Austin.

7. On or about November 12, 1881, defendant, while acting as such agent and trustee and with intent to deceive and defraud me, showed me a letter purporting to be written by said Austin and addressed to defendant, to the effect that said Austin desired more of the lots on Long Island, of which I had already sold him two as aforesaid, and defendant represented to me that said Austin would pay to me at least \$1,500 in cash, for said lots, at once; that defendant would let me have them for \$1,000 -- \$500 cash, and the balance when Austin took the lots; that defendant gave me the opportunity of making the profit and quick turn of the sale to Austin out of consideration for my having made a purchase of the quarter interest in the mining property as aforesaid.

8. Relying solely on such representations mentioned in the last foregoing clause, and wholly confiding in the defendant as my agent and trustee, I paid the defendant the sum of \$500 on November 12th, 1881, on account of a purchase of these lots from defendant.

9. All of the representations set forth in the preceding clause numbered 7, were false, and known by the defendant to be false, and in truth said letter was written by said Austin at the dictation of defendant, for the purpose of being shown to me by defendant and inducing me to

0284

purchase said lots; said Austin did not intend to purchase said lots either for himself or any one else and has never so purchased them, and said lots have never been sold by defendant to Austin, or any one else, on my account.

10. Thereafter, on January 4th, 1882, the defendant conveyed to me one-eighth interest in said mining property for and on account of said last mentioned payment to him by me of \$500, and in lieu of any interest I might have in said last mentioned lots which conveyance I received, relying upon his representations as aforesaid concerning the purchase, development and value of said mining property.

11. In the month of April, 1882, defendant falsely and with intent to deceive and defraud me, represented to me as follows:

That said Austin would not organize a company to work our said Colorado property: that he, defendant, was going to exchange his three-sixteenths interest in such property for stock in the "Index Gold and Silver Mining Company," and take the position of Secretary of such company; that it was a live company; that its stock had a market value of \$2 per share; that money could be borrowed on such stock as collateral to the amount of \$1 per share; that he could get 15,000 shares of such stock for my three-eighths interest in the Colorado property, and secure for me a position with such company as mechanical engineer at a salary of from \$300 to \$500 per month; that I could get \$1.50 per share for the stock at any time; that I could "slaughter" the stock and get more than my money back; that the machinery was ready to go out to the mine; and that my

0285

services would be required in a fortnight's time.

12. Relying solely upon the representations as made by the defendant, and set forth in the last preceding clause I conveyed my three-eighths interest in said Colorado property to one Edward Webb, Vice-President of such "Index" Company, for 15,000 shares of the capital stock of said "Index Gold and Silver Mining Company."

13. All of said representations set forth in the preceding clause numbered 11, were false, and known by the defendant to be false, and in truth, said Austin did not oppose the organization of a Company to own our said Colorado property; defendant had secretly arranged with said Webb on the ground I was "bothering" him, the defendant, to let me have some of the stock of such "Index" Company for my interest in such Colorado property; such "Index" Company was not, and is not now a "live company," and has not, and is not now doing anything in mining, save that in December last, as I am informed and believe, it borrowed \$100 to do what is known as "assessment work;" as I am informed and believe it was in debt and unable to pay the sum of \$700; its stock had no market value for sale or as collateral security; my services as mechanical engineer were not and have not since been required; and as I am informed and believe, the stock then conveyed to me was then known to defendant to have been obtained by said Webb without valid consideration.

14. By reason of said premises I have wholly lost the money, note, and other property by me conveyed to the defendant as aforesaid, and sustained damages to the amount

of

0286

of fifteen thousand dollars.

WHEREFORE, I demand judgment against the defendant
for the sum of fifteen thousand dollars, and the costs of
this action.

Charles Howard Williams,
Plaintiff's Attorney,
99 Nassau Street,
New York City.

City and County of New York, ss:

DANIEL M. DAVIDSON being duly sworn, says:

I am the above named plaintiff, and know of my own
knowledge that the foregoing complaint is true, 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.

Sworn to before me :

May 3rd, 1883 :

D. M. Davidson.

Henry J. Schenck,

Notary Public

Kings County.

0287

Fol. 1 SUPERIOR COURT.

-----X
: DANIEL M. DAVIDSON :
: --vs-- : Answer.
: PERRIN H. SUMNER :
-----X

The defendant in the above entitled action for his answer to his complaint herein states:

1st. That he denies each and every allegation of said complaint not hereinafter specifically admitted.

2 2nd. Defendant admits that plaintiff became acquainted with defendant in or about October 1881 that defendant did business as alleged at 206 Broadway, N. Y.

3 3rd Defendant admits that he negotiated with plaintiff or between plaintiff and one James A. Austin a sale and purchase of a certain interest in mining claims in the West, but he denies that in such negotiation or in any way he acted as Trustee and agent for plaintiff, but defendant acted as the agent or broker for said Austin -- and defendant alleges that he acted fairly and did not make any false or fraudulent representations to plaintiff, but stated to him only what said Austin stated and claimed to be true and also told him that all defendant's information was derived from said Austin.

3rd Defendant admits that he sold plaintiff some lots on Long Island for \$1,000 and that plaintiff turned them over to Austin at the price of \$1500 in said purchase of mining claims, but he denies that there was any

0288

false or fraudulent representation made by defendant in that transaction.

4 ✓ 4th Defendant admits that plaintiff gave him a gold chain and a pair of bracelets but their value defendant does not know.

5th Defendant admits that he sold to plaintiff two other lots on Long Island and that plaintiff paid \$500 thereon but denies all allegation of fraud or false or fraudulent representation by defendant in connection therewith, and he admits that he afterwards exchanged certain mining interests with plaintiff for said lots.

5 6th Defendant admits that plaintiff exchanged the said mining interests he had theretofore purchased from Austin and defendant for Index Gold and Silver Mining Stock but denies that he did so through any false or fraudulent representation of defendant.

6 7th And for a further defence defendant alleges, that after plaintiff had full knowledge of all the facts and circumstances alleged in said Complaint and after he made all of said charges of frauds and false and fraudulent representations against defendant, the plaintiff duly and for a legal and due consideration to him paid by defendant fully released and discharged defendant of and from any and all claims and demands arising in any way out of any sale of the transactions in said Complaint stated or referred to and from and of all claims and demands of whatsoever kind, nature and description in any way existing or claimed to exist in favor of plaintiff against the defendant.

WHER

0289

WHEREFORE defendant demands that the Complaint be
dismissed with costs.

Miller & Savage

Defts Attys.

202 Broadway,

N. Y. City

N. Y.

State of New York :
County of New York : ss:

PERRIN H. SUMNER being duly sworn, deposes and says,
that he is the defendant in this action; that he
has read the foregoing Answer and knows the contents
thereof; that the same is true to the knowledge of depo-
nent, except as to the matters therein stated to be all-
eged on information and belief, and as to those matters,
he believes it to be true.

P. H. Sumner

Sworn to before me, this :
5th day of June 1883: :

Frank W. Miller

Notary Public

N.Y.Co. N.Y. (107)

0290

In the matter of the
indictment

- of -
Perrin H. Sumner, on the
Complaint of Daniel M.
Davidson

Sheppard Knapp of the City of
New York bondsman of the said
defendant, hereby respectfully ap-
plies to Hon. R. F. Martin for
the dismissal of said indictment
and his said Knapp's discharge
as such bondsman, upon the
following grounds:

First: That it appears that the
indictment ^{is based} upon a charge of
obtaining money fraudulently, and
that at about the date of said
indictment, a civil suit was
commenced in the Superior Court
of the City of New York by the Com-
plainant Davidson against the
defendant Sumner, to recover the
same moneys mentioned in the
indictment.

Second: That the trial of said
civil suit early in 1885 before
Hon. C. H. Tamm and a jury, resulted

0291

in the dismissal of the complaint with costs and that the defendant was thereupon discharged from civil arrest in said action third: that as appears from the annexed certificate of Messrs Miller & Savage, defendants' attorneys in said civil action, notice of motion at General Term ^{for a new trial} was served on behalf of plaintiff, but that the plaintiff has omitted to cause the necessary papers to be printed and served and that plaintiff has been in default for upwards of one year.

Fourth: That an examination of the pleadings in said civil suit, copies of which are herewith submitted, will show conclusively that the civil suit covered the same subject matter as the criminal charge; and it is reasonable to conclude, in view of the complainant's omission to press the criminal charge, that the indictment was caused to be found in aid of the civil suit, and the verdict in defendants' favor should be deemed a conclusive answer to the plaintiff.

0292

charge that he had been defrauded
by the defendant

N.Y. Sept 27th 1886

J. F. Daly
attn J. Knapp

0293

Matter of J. H. T. H.
dictated

— of —

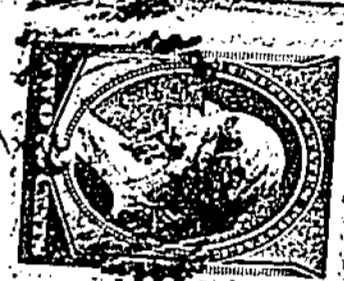
Percy W. Hammer

Application of Sheppard
Knapp, bar owner for
dismissal of indictment

Per J. D. Oak,
att for P. H.
170 307
47

0294

EUGENE F. DALY,
COUNSELOR AT LAW,
170 BROADWAY,
NEW YORK.



R. B. Martine {

Dist. Atty
Court House
city

Personal

0295

Dear Sir,
I have the honor to acknowledge the receipt of your letter of the 14th inst. in relation to the case of the *St. Louis* & *St. Paul* & *Northwestern* R.R. Co. vs. *St. Louis* & *Northwestern* R.R. Co. I have been advised that the same has been referred to the Board of Directors of the *St. Louis* & *Northwestern* R.R. Co. and I am sure that they will do all in their power to give you satisfaction.

L. H. Linn
Secretary

Sept. 18, 1886

MILLER AND SAVAGE,
COUNSELLORS AT LAW,
280 BROADWAY, N. Y.,
STEWART BUILDING.

George W. Miller,
Edward S. Savage.

0296

for over a year -

Miller Savage

0297

City & County
of New York } 575

David M Davidson
vs
Percy H Summer } John Prentiss,

The defendant, Summer was arrested on
the Complaint of David M Davidson
and committed in the 2nd District Police
Court in default of \$3000 Bail. for an
Examination to be held on June 4, 1884 at
2 P.M. That on the 3rd day of June 1884
Shepherd Knapp of No 32 West 56. became
the surety for the appearance of Summer
for the appearance of said Summer for
said Examination. That on said
day the Examination was adjourned
to the 7th then to the 13th, from then by
Consent to the 24th and then to the 28th day
of June at 9 o'clock A. M.,
The case was called at the 3rd District
Police Court for Examination, and it
was understood that the Examination
must proceed that day in said Court,
where said Percy H Summer did not
appear after being called twice, and
said Shepherd Knapp was called
to bring forward said Summer.

0298

to answer in said Examination, when
both the defendant and said Quilty
failed to answer, and the undertaking
here to annexed was forfeited

John Gorman

Deputy

0299

Second District
Police Court

The People ^{and}
Daniel M. Davidson
Complainant
vs
Perth N. Sumner
Defendant

Before Hon
John J. Gorham
Deputy Justice
June 1st 1884.

Appearances
Asst Dist Atty Fitzgerald for People ^{and}
Messrs Williams ^{and} Ripley for Complainant
Davidson;

Messrs Miller ^{and} for defendant Sumner

All parties being present.
Daniel M. Davidson Complainant called
on behalf of the people being duly sworn
deposes ^{and} says.

By the Court.

Q What is your name?
A Daniel M. Skingle Davidson.

Q Where do you reside?

A 119 Vabick Street.

Q What is your age?

A 42 years.

Q What is your business or profession?
A I am a mechanical engineer

0300

Direct Examination By Mr Fitzgerald
Q You are the complainant in this matter
against Sumner the defendant?
A Yes sir

Q The complaint that you make against him
is stated in these affidavits that you made
before the judge (showing witness affidavits
attached to the complaint)?
A Yes sir

Q And that is a full & complete statement of
your case?
A Yes sir

Q And those facts therein stated are all true of
your own knowledge?
A Yes sir they are.

Mr Miller defendants Counsel.

He move to strike out from the affi-
davit of Daniel M Davidson upon which
this arrest is founded, that in which
said affidavits purports to be a copy of an
affidavit made by George B Sherwood.
Sworn to on the 18th day of September 1882 &
found at folios 51. to 57 of the affidavit of
said Davidson.

By the Court. Motion

He also move the same motion in
regard to the letter purporting to be or

0301

which is purported to be a copy of the letter
from James J. Austin to said Davidson dated
September 29th 1852. As found at folios 65 and
66 of said affidavit of said Davidson
By the Court Motion

We also move the same motion in regard
to that which purports to be a copy of an affi-
davit made by one Austin on the 20th day of
October 1852. to which by the same appear
papers never to have been sworn to but
merely to have been acknowledged. By said
Austin, which affidavit is found at folios
68 to 79 of said Davidson's affidavit
By the Court Motion

We also move the same motion in regard
to that which purports to be an extract from
the New York daily paper of New York City to be
found at folios 88 to 90 of said Davidson's
affidavit

By the Court Motion.

Cross Examined by Mr. Miller

Q where were you born Davidson?

A I was born at Leith Scotland.

Q How old are you?

A I am 42 years of age.

Q What was your business in Scotland?

0302

4

3

Q Was a mechanical engineer
in Scotland?

A Yes sir

Q Were you engaged in any other business there?

A Of course I was.

Q What?

A I was engaged in the wine & spirit business
there?

Q A good number of years ago.

Q How long as you can tell?

A Prior to my coming to this country.

Q Just prior?

A About 2 or 3 months before I came here.

Q How long were you engaged in that wine &
spirit business?

A About 9 years

Q Consistently?

A Yes sir nine years running straight on
Q And you only quit that business a short time
before coming here?

A About 2 or 3 months before coming here
that is a rough idea of it.

Q And you arrived in this country when?

A About June 1881.

Q You had never seen the defendant (Sumner
there) before coming to this country?

A No sir I never did.

0303

Q When did you first see Sumner?

A I think it would be about October 1881.

Q Is that as near as you can fix the time?

A As near as I can recollect.

Q Now Sir when did you first see these printed affidavits which is the complaint in this case?

A I don't exactly remember when I first saw them
Q Look at them, examine them, & see if they will refresh your recollection? (Witness taking paper & looking at them).

A I cannot tell definitely.

Q About what time did you see the article of that affidavit (referring to complaint in this case) or the original of those, or other printed papers exactly like them? Similar in substance as to the printed matter like these?

A I think it would be about 6 months ago.
I cannot say for certain.

Q You think about 6 months ago?

A I cannot say for certain I didn't take any notice of them.

Q But you swore to your complaint in this action did you not on the 27th of May?

A Yes about that time.

Q And you made your complaint in this proceeding on that day did you not?

0304

6

Aldont understand what you are driving for
Q Aldont suppose you shall understand?

Aldont understand your question

Q Ask you if you made this affidavit at or
about the time that you commenced this
proceeding?

Aldont understand you Sir

Q Your affidavit is dated the 27th day of May¹⁸⁹⁰
that the time that you made the complaint
against Perry W. Sumner the defendant here?
Answer that is there.

Q And you say that you had seen these, or similar
papers as much as six months ago?

A I think so.

Q You commenced a civil suit founded on
this same matter against Sumner at one
time did you not?

Answer

Q And was it you commenced your suit?
Aldont have any memorandum of it.

Q As near as you can tell, give your best
recollection of that subject.

A It is some time ago since the civil suit was
taken up.

Defendants Counsel to Mr. Williams Counsel
for Complainant. We have no objection to your
stating it, will you give us the date?

0305

7

A Mr William to defendants counsel. The date of the summons is May 15th.

Q what year?

A 1883. the complaint is sworn to May 5th 1883.

Q Now Mr Davidson was it in May 1883?

A It was something over a year ago, it would be about that time

Q That case was never brought to trial was it?

A Not to my knowledge.

Q You have been informed by your counsel.

That it was at issue and it has been upon the calendar here. you not? and it is ready for trial and it has been.

A I believe it was on the calendar and if it was ready for trial I don't know.

Q It was not moved when it was reached?

A It was passed.

Q Now when did you first see James A. Austin the first time you ever saw him?

A I cannot say exactly without looking over my papers.

Q About the time as near as you can state

A In the papers, I cannot remember the exact times. there is such a time elapsed

Q About the time, were are not asking the hour, the day?

A It would be two weeks after I saw Sumner

0306

8

I would not be sure unless I would look at my papers.

Q These papers here?

A My own papers.

Q Have you the papers here to refresh your memory?

A I think it was in November that I saw Al. Austin in Mr. Summers office.

Q Can you say positively whether or not you did see Austin before you saw Summers at all.

A I am positive I never saw him at all until I saw him in Summers office, and that is where I first saw him.

Q And within a few weeks of the same time?

A A few weeks after I was introduced to him.

Q Did you come to this country with or at the instance of a man by the name of Dowin?

A I came to this country with a man by the name of Bruce to colonize a colony down in Virginia.

Q Did you come to this country with or at the instance of Dowin, and he induces you to come?

A No sir he didnt induce me to come. we bought the land from him.

Q From whom?

0307

9

A we bought the land from Irwin

Q And you were to meet him here were you not?

A Irwin was not to meet him here.

Q Did you land in New York?

A Yes sir.

Q And when you went down to Virginia?

A Yes sir I was a week or eight days in New York before I went down, I didn't see him until I came back.

Q So when you went down there for was for land?

A Yes sir but we could not locate the land.

Q Was that the occasion of the thing falling through?

A Yes sir we could not locate the land nor get possession of it.

Q Another land that you supposed you had bought?

A Yes sir I supposed that you bought land there.

A Yes sir.

Q And when you came to go there you could not find it?

A Yes sir we could not find it.

Q Was this land, land that he has a title to which was to come through him or in any way that he had anything to do with it?

A The title was to come through Irwin.

Q Did you understand that Irwin was in London at the time you came here?

0308

10

Ayes I saw him in London but I didn't know
that he was in London when I left
Q You saw him in London before he had negotiations
with him before?

Ayes sir

Q And your negotiations with him were in reference
to this land, was it all free though?

Ayes sir

Q And you came here and then went on to Virginia
and you could not locate it so you came back
to New York. is that it?

Ayes sir

Q Now when you came to New York had you
in the meantime seen Levine after you
got to this country?

Ayes sir

Q Had you seen him before you got back from
Virginia?

Ayes sir

Q Had you seen him after you got back to New
York?

Ayes sir

Q Now when you got back to New York from
Virginia how long was it before you
first saw Sumner?

A After I got to New York from Virginia, it would
be two weeks; perhaps a couple of weeks

0309

or so

Q Before you first saw Sumner?
Answer

Q What property do you have when you got
back to New York from Virginia?

A Do you mean in the way of money?

Q I mean everything except your clothes?

A I had about fifty five hundred dollars
possibly six thousand and some few hundred
dollars as far as I can remember.

Q Where was it?

A I had it at home

Q In money?

A I had so much in money and so much in
paper.

Q What do you mean by paper?

A Well to draw in New York.

Q A draft?

Answer Exchange.

Q You had it in your own possession it was not
in the bank?

A I had it in my own possession

Q Did you at any time put it in the bank?
Answer

Q When relative to the time that you saw Sumner?
A It was a little while after I saw Sumner.
except a few dollars to run along with.

0310

Q Where was he ?

A In the National Farm Bank.

Q How much did you put in there ?

A Over Ten thousand dollars. I cannot say exactly without looking through my books & papers.

Q You say it was over Ten thousand dollars ?

A You don't know exactly how much over. I was not far from that if I remember right it was Ten thousand & some few hundred dollars.

Q You have the means of telling exactly ?

A Yes sir it down on record.

Q What other property had you besides that ?
A I had a fine bill on Lewis in London for Five hundred pounds.

Q Was that all ?

A That was all.

Q That was all that you possessed at that time
A Yes sir.

Q Do you know a man by the name of Harefoot
A Yes sir.

Q Have you seen him ?

A Never seen him to my knowledge.

Q Do you know a man by the name of
Syng ?

A I have seen him once or twice.

Q Where did you first see him ?

0311

A Yes him about a fortnight ago.

Q Is that the first time you ever saw him?

A Yes about a fortnight ago, or 3 weeks ago the very next.

Q Had you ever seen what was presented to the magistrate here and what was called the history of Perrie H Summer?

A I don't know what you call it.

Q Did you furnish any papers to the justice or to the judge here upon making this complaint besides this affidavit?

A That is all that I furnished.

Q Did you present any papers to the judge?

A None except through my counsel.

Q Then you don't know what was presented?

A No more than what I see there.

Q You saw that you never saw a paper purporting to be a history or a bundle of papers purporting to be a history of Perrie H Summer?

A I have seen papers in Mr Williams office

Q Relating to Summer?

A Yes sir

Q Had you seen any of them here?

A No sir

Q How recently had you seen those papers?

A It is some time ago I cannot exactly say

03 12

14

when it was.

Q Have you any papers which will show the exact time when you first went to Sumners office?

A The exact date?

Q You have you any such papers?

A All the papers I have are in Mr Williams office

Q Have you any papers that will enable you to tell the precise time when you first went to Sumners office?

A I think there is one paper there that will tell.

Q Defendants counsel to Mr Williams, Mr Williams can you furnish it, We ask that the witness be put in a position or be put in possession of his papers so that he can find that paper.

Q What is the paper?

A I dont know what it is, I think some of those papers could tell if they were looked through

Q You could not tell from memory?

Answer:

Q Then you didnt refer to that particular paper when you spoke?

A No sir it is in some of those papers

0313

15

Q You don't know particularly in what paper it is in?

A Yes sir

Q Did you go to Summers office alone the first time you went there?

A Yes sir

Q What took you there?

A I read an advertisement in the Herald about some mining property and I went there and made an inquiry about it, as I wanted something to do.

Q Where did you go to?

A Room 211 the Evening Post Building

9206 Broadway?

A Yes sir

Q Who did you see?

A I saw Sumner there.

Q Introduced yourself to him?

A I told him the purpose I went there for.

Q Have you got that advertisement?

A Yes sir

Q Did you notice a sign on Summers office on the door?

Q Yes.

A Yes.

Q What was it?

A Person Sumner real estate.

0314

16

Q You understood him to be a real estate
broker's agent?

A I understood him to be something like that
Q What was the first thing you said to him
after you got in there?

A I told him I came to make inquiries about
the advertisement that was in the Herald.

Q Did you have it with you?

A Yes sir

Q You showed it to him and told him you came
to make inquiries about that?

A Yes sir

Q What did he say about that?

A He said he would refer me to one Campbell

Q As the owner of the property?

A As the prospective owner I think he said

Q Did you see Campbell?

A Mr. Sumner sent his son for Campbell.

I don't know where he sent to.

Q Did you see him?

A He was brought into the office

Q The first time you went there?

A Yes sir

Q And you were put in communication with
Mr. Campbell?

A He introduced me to Campbell and I talked
a little while with him.

03 15

97

Q Didnt Sumner tell you he never saw this property and referred you to Campbell.

A I dont know he didnt say he claimed it

Q He told you where it was situated?

A It was in Rockland county

Q And you had talks with Campbell about it

A Yes sir

Q Did you go to see it?

A Yes sir a little while after that Mr Campbell and Sumner went up to see it with two other gentlemen, I forget their names there was one or two I forget now which

Q If you went up there with Sumner, Campbell and others to see it? And you did see it?

A Yes sir

Q And you concluded not to have anything to do with that?

A Yes sir

Q That was an Iron mine property was it not

A Yes sir

Q Sumner told you at that time that he was the agent and he was for Campbell or some one else in regard to it?

A I think he said he was the agent for Davis.

Q And do you remember anything more than you have now stated what was said there

03 16

18

at that time?

A In reference to the name

Q In reference to anything?

A Yes sir

Q State it,

A The first time I saw Sumner I told him
Sumner a little of my history and what
I came to this country for and in the way
I was used in not finding the land. And I
told him I had a due bill for five hundred pounds
on Dr. Brown and he said he would collect it for me.

Q That was the first time you ever saw him?

A Yes sir

Q And that he would collect it?

A Yes sir and that it was much better for an
agent to collect that than an individual

Q What else did he say?

A I don't remember exactly every thing else
that was said that was a part of the story.

Q Is that all you remember?

A I think so.

Q How did you come to tell him that you had
a due bill?

A I told him I came from Virginia and that I was
disappointed in not finding the land.

Q Did you tell him who Dr. Brown was?

A I told him he was the gentleman over in London.

03 17

19

T

that we bought the land of
Q How did you come to have that due bill on
Lewis?

A It was services rendered in Scotland for
colonizing this land in Virginia

Q Was Lewis an American?

A I believe he was.

Q This was the due bill that he gave you for
services, in Scotland, before you came
over here to this country for the purposes of
colonizing?

A My partner and I Mr. Brush, were were going
to colonize Mr Lewis land and we had two
or three hundred people engaged who were
coming over here to colonize and Lewis wanted
his annies developed. and we had some
expenses in colonizing and in agreeing to get
the colony to come here. and we were here
some nine months before we ever saw
him, we were to put our interests in it
for him he put up the interest, and he wanted
his annies developed.

Q Did he tell you where his lands were?

A In West Virginia in Boone County.

Q Did you have a description of them?

A We did and a record of the deed from the time
it was taken up; and had considerable expenses

0318

20

in printing ^{and} advertising ^{and} getting the thing in shape that he gave me the due bill to get the people to come over.

Q. you told Sumner about that transaction?

A. Yes.

Q. And told him you had been to Virginia ^{and} that you could not find the land?

A. Yes.

Q. And that it all fell through?

A. Yes.

Q. And that you were now looking for some other occupation?

A. Yes.

Q. Did you tell him you were acquainted with the mining business?

A. Yes. In running a train or colonizing.

Q. And it was seeing this Iron mining advertisement of his that was what brought you there?

A. Yes.

Q. And that mining you didn't go into, for reasons of your own you didn't go into it?

A. Yes.

Q. How long after you first saw Sumner was it you went with him ^{and} these other gentlemen to see this other mine?

0319

51

A 2 or 3 weeks I cannot say, exactly
Q And you see him in the morning?
A I saw him most every day after I first saw
him.

Q The second time you saw him what did
you see him about?

A I forget now exactly, unless I look at my
papers. I think he showed me land of Mr Davis
if you mean these affidavits?

A My scraps of papers.

Q Have you any memorandum of transactions
that you kept at the time these transactions
occurred.

A Not at that time, it was mostly after them
before I made any memorandum.

Q Have you any memorandums in your
possession that you know of or in the
possession of your counsel that was
made at that time?

A No Sir

Q And you kept no book for the purpose of
putting down these things at that time or
for the purpose of putting down transactions
A Not at that time

Q The second time you say there was
something that you think of of Mr Davis
in connection with the Iron mine

0320

92

Q Yes I believe he was the owner of the mine.
Q There was a talk the second time you saw
him?

A Yes sir.

Q Was there any other talk?

A He said he would give me something to
do for my services, I told him I wanted
employment for myself and an investment
for my money.

Q Did you tell him what you would like?

A I told him I would like mining or colon
izing or engineering or any thing else if
I could not get that or any thing in the
manufacturing line so that I could get
my engineering experience into play.

Q Was that in the first interview with
Sumner that you told him that?

A Yes sir and also afterwards.

Q And he said he would undertake to help
you?

A Yes sir.

Q Did you tell him that on the second
meeting?

A Not exactly in the same words. He knew
it.

Q What did you say?

A I cannot tell exactly what was said if

0321

213

is eighteen months ago

Q Can you tell anything that was said in the second interview with Sumner or can you discover that from anything that you know of the matter?

A I can from looking over the papers. I cannot keep those things in my memory.

Q The third interview can you remember that?

A Not without looking at some of my papers.

Q What papers - papers you have before you now? - you say you made no original entries at the time?

Answer

Q Do you remember this affidavit (showing entries)?

Answer I do not

Q Your counsel drew the affidavits from statements made by you to him, did he not?

Answer

Q And about the time or just before the time that you commenced the suit against Sumner was it not?

A Sometime before that.

Q How long before?

A It was a good while before that.

0322

24

Q How long?

A Several months.

Q The suit was commenced before these affidavits were drawn were they not?

A The information was given before the suit was commenced. The affidavits took some time to draw.

Q ^{Then} If they were drawn, by that I mean completed about the time or a short time before the commencement of the suit?

A I don't remember when they were completed.

Q You remember then that it was about the time the suit was commenced.

A Sometime before the suit was commenced.

Q Not a great while before.

A It was sometime I cannot say exactly.

Q How long?

A I cannot say just this minute.

Q Now for you say for two or three weeks before you went to see the hon. man you were in Sumners office almost every day?

A I cannot say exactly the time.

Q You say it was 2 or 3 weeks?

A It might be a week or a fortnight.

Q You say you were in his office during that 2 or 3 weeks nearly every day?

0323

25

Ayesen

Q Can you select ~~any~~^{one} day at all or any day and give the conversation that took place between you and Sumner?

A It was the first day.

Q We have been over the first day. Can you select any other day before you went to see the Iron mine can you give the conversation and what it was?

A I cannot without looking at the affidavits.

Q Did you see Austin before you went to see the Iron mine?

A Not to the best of my knowledge. It was after;

Q Had you had any talk with Sumner upon the subject of any other mine than the Iron mine in Rockland County up to the time you saw that?

A Not that was the only time Mr Sumner and I talked about it until Austin came to the front.

Q And prior to seeing that mine?

A That was the only mine we talked about up to that time.

Q How long was it after you went up there that you saw Austin?

A I cannot say exactly, I think it was a

0324

26

little while, I cannot say the exact time.

Q/A little while after going to Rockland County
you saw Austin?
A Yes sir

Q Where did you see him?
A Sumner's office

Q Who introduced you to him?
A Sumner.

Q Do you remember that occasion?
A Pretty well.

Q Who was present besides yourself and
Mr Austin?

A Mr Sumner's son.

Q What time of the day was it?

A It was in the forenoon.

Q Had Sumner previous to that told you
there was such a man as Austin?

A Never I never knew him until he came
in the office that day.

Q When he introduced you to Austin what
did he say?

A He said this was Colonel Austin from
Colorado and he showed me a specimen
that he brought from Colorado and he
said he and Austin were interested in
this mine and he said he never thought any

0325

my

thing of it until he saw this specimen and he was surprised to find that it contained about fifteen percent of silver and I looked at it and it looked very nice

Q who showed you the sample?

A Summer.

Q where did he get it from?

A Austin; Mr Summer showed it to me and said it looked very nice and Arthur Mr Summers you said it looked very nice

Q what did Austin say?

A He didn't say much he was introduced to me by Summer, Summer said the most I don't remember Austin saying much at all.

Q do you remember anything that he said?

A Not on that occasion

Q you don't remember a single thing that Austin said on that occasion?

A He stood by and didn't say anything at all that I remember except in a casual way.

Q Did he say he was at Colorado or not?

A Not to my hearing.

Q did Summer say he was at Colorado?

A No sir

Q did he ever tell you that?

0326

Q. who?

A. Summer

Answer

Q. On that occasion or on any other occasion?

Answer

Q. He told you that did he not that Austin had brought it, (meaning specimen) that Austin had brought it from the mine in Colorado. Answer he said Austin came in and he was agreeably surprised, he came in with a sample of ore from Colorado and he didn't expect it would come to anything and that the Colonel Austin discovered it was a rich mine.

Q. And Austin stood there and heard it did he?
A. He was standing there at the time close by.
Q. Did Austin make any reply that you know of?

A. I will give it to you as I remember it. I don't remember if he said anything or not; my attention was attracted to Mr. Summer.

Q. Was that all that was said at that time?
A. I think that was all that was said at that time.

Q. That was the very first time you saw Austin?
Answer

0327

29

Q Did you never had any talk with Mr Sumner
or Austin before that time?

A No sir.

Q Or about any western mines or any thing
else?

A No sir.

Q When did you next see Austin?

A I think it was a day or two after words I think
so.

Q Where?

A Sumners office

Q Who was present then?

A Mr Sumner, myself and Mr Austin, I think
Arthur was in the office the other office

Q Where were you in the front office?

A We were in the front office facing Broadway
and I think Arthur was in the back office
what I call the front office is fronting
on the street.

Q By Arthur whom do you mean?

A Mr Sumners son.

Q Can you remember any thing that was
said on that occasion? I don't ask you
what was said, I ask you if you remember
what was said on that occasion.

A I think I do remember.

Q Do you remember any thing that Austin

0328

30

said?

A Aristis said very little

Q Did Aristis say anything on that occasion
A Yes he made some remarks about
the weather.

Q What did he say about the weather?

A It was a good day or that sort of thing, it
was a casual conversation

Q Could you tell what he said?

A Not in particular

Q Can you tell anything that he said?

A I don't exactly remember now what he
did say.

Q May you mean to say that he said nothing
at all except about the weather?

A He said something about the mine but
I don't remember exactly what he said

Q What did Aristis say about the mine on
the second occasion that you saw him?

A I don't exactly remember now what he did
say. Q Did he mention any particular mine

A Yes he mentioned the Silver Cliff property

Q What did he say about it?

A I don't remember exactly what he said
about it?

Q Did he mention the Silver Cliff property
at the first meeting?

0329

31

A He didnt mention it in the first meeting
it was the second meeting he mentioned
it. the first was colorado.

Q What did he say as near as you can
remember or give us about the Silver Cliff
in the second conversation?

A I think he mentioned the names of several
of the plains.

Q Can you remember what they were?

A They were on paper.

Q Did he show you a map?

A I didnt see the map until some time
afterwards

Q But not at the second conversation?
Answer

Q Can you remember anything definite in
that conversation except that the silver
cliff property was mentioned?

A Mr Sumner said it was a good thing
for me ^{and} that I could become prominent

Q What did Austen say to that?

A He didnt object to it if Mr Sumner was
agreeable to it Mr Sumner said it was
a good thing for me to invest my money
as an engineer. And he said he would take
either part if Mr Sumner would keep
his quarters and give me the other quarters

0330

32

Q And if Mr Sumner was agreeable to let me have one quarter of it, he didn't object and it would leave him half of the mine

Q Was that all that was said then ^{and there}?

A There was plenty of conversation going on that morning; it was very friendly

Q Can you state anything else that was said?

A Nothing else of any importance

Q Did Austin state ~~to~~ in that conversation that he had sold to Sumner or that Sumner had a quarter interest in it?

A No, he didn't say that. Sumner told me he had a quarter interest in it which he bought. ^{and} paid seventy five hundred dollars for it for his quarter interest.

Q When did he tell you that?

A At the time he showed me the ore.

Q The first day?

A The first or second day I don't remember which

Q Didn't you just answer here to the question when I asked you what Austin said that he said Sumner had a quarter interest, ^{and} that he was willing that Sumner should let another party have a quarter ^{and} he wanted should keep the remaining

0331

33

quarter?

A It was either the first or second day.

Q Now I will ask you if Austin didn't state to you that Sumner said he had sold ^{him} a quarter interest in that property?

A Austin didn't say that. I said Sumner told me that.

Q Now Davidson I don't want you to give me one word that Sumner said in answer to this question. I want you to state now whether you can what Austin said in this second conversation?

A He said that he gave Mr Sumner the option for any party to take a quarter interest.

Q Did he say anything about retaining his half?

A It would then be that Sumner would have a quarter and I would have the other quarter.

Q What did Austin say?

A He said she was agreeable if Sumner to let me have a quarter.

Q Austin said that?

A Yes if Sumner was agreeable.

Q Did he Austin name any price?

A No sir.

0332

34

Q Did Austin name any price at which he was willing that you should have a quarter interest in it?

A No, he didn't mention the price.

Q Did anybody mention the price there ^{anywhere}?

A Yes, sir.

Q Who named it?

A Mr. Sumner.

Q Did he name the price at which you could have the quarter interest in that property?

A Certainly.

Q Was the property previous to this been described by either Sumner or Austin?

A No, sir.

Q Had you seen any kind of a description of it?

A No, sir.

Q Had you seen a map of it?

A Not up to that time.

Q Will you state all that was said up to that time about it to you?

A All that I remember.

Q What was the sum claimed by Sumner as the price at which you could have the quarter interest?

A Seventy five hundred dollars.

Q Did Austin say anything to that?

A He said he was agreeable if Sumner

0333

35

was, he gave Sumner the option ^{and} he would not go back on his word.

Q That was in response to the price named?
A Yes sir

Q Is that all the conversation you remember?
A That is all I remember.

Q Did you say anything at all during that conversation?

A I said very little

Q Did you say anything?

A I said very little it was a casual conversation
I left it with Sumner

Q Can you give anything at all that you said in that talk?

A No sir I don't think I said anything
before me
This 7th day of June 1884

Police Justice

The Further Hearing was adjourned
to Friday June 13th 1884 2 P.M.

0334

I David C. Settnum, hereby certify
that the within copy of testimony
of Daniel M. Davidson as taken
shorthandly by me on said
examination is a true & correct
copy of said Examination

Sworn to before me
this 28th day of June 1884

John L. Gorman

Notary Public

David C. Settnum

0335

Sec. 192.

2^d

District Police Court.

Undertaking to appear during the Examination.

CITY AND COUNTY } ss.
OF NEW YORK,

An information having been laid before John J. German a Police Justice
of the City of New York, charging Perrin H. Sumner Defendant with
the offence of False Pretences

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 Perrin H. Sumner Defendant of No. 52 West
47 Street; by occupation a Real Estate Broker
and Sheppard Knapp of No. 32 West 56
Street, by occupation a Merchant Surety, hereby jointly and severally undertake that
the above named Perrin H. Sumner Defendant
shall personally appear before the said Justice at the 2^d 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 Thirty
Hundred Dollars.

Taken and acknowledged before me, this 3^d
day of June 188 43

John J. German POLICE JUSTICE

Perrin H. Sumner
Sheppard Knapp

0336

CITY AND COUNTY
OF NEW YORK, ss,

Police Justice.

day of June 1884

Sworn to before me, this

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 Sixty 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 No

105 West 13th street, north Ten
Thousand Dollars over all encumbrances
Sheppard Knapp

District Police Court.

THE PEOPLE, &c.,

ON THE COMPLAINT OF

Undertaking to appear during
the Examination.

ss,

Perri Knapp

Taken the

day of

June 1884

Gorman Justice.

0337

-----Z
The people

vs.

Perrin H. Sumner
-----X

The Grand Jury of the Court of General Sessions, on the 31st of October, 1884, on the complaint of one Daniel M. Davidson, found an indictment against the above-named defendant, of larceny by false pretenses, under Section 53, Third Revised Statutes. The alleged offense having taken place before the passage of the Penal Code, that Act has no application to this case. It will be noted, however, that the alleged false pretenses are stated to have taken place in the month of October, 1881 - a period of about three years before the finding of the indictment. It also appears, that in May, 1883, a civil action involving the same questions had been brought by the complainant Davidson against Sumner in the Superior Court of the city of New York, for the sum of \$15,000 damages, and that while that civil action was pending and had been pending and not tried, for over a year, this indictment was found. It appears that the indictment was moved for trial in the Oyer & Terminer, but that when it was ascertained that a civil suit was pending, the then District Attorney declined to prosecute until the termination of the civil action. It also appears that in the early part of 1885, before Judge Truax and a jury the civil action was brought

0338

to trial and the complaint thereon dismissed.

From the above facts it appears satisfactory to my mind that the civil action having been begun and while pending the indictment was found as an aid to the civil action, either to force a settlement from the defendant or to place him at a disadvantage in the trial of that action: both of which efforts seem to have failed. The same issue ~~is~~ being involved in the civil action, and that having resulted in the acquittal, so to speak, of the defendant, it would seem that some six years having elapsed since the date of the alleged offense, and some four years since the finding of the indictment, no trial having been had, that on these facts alone the District Attorney would be justified in ^{entering a} nolle prosequi ^{to} the indictment.

But on an examination of the facts in the case it is clear to my mind that a conviction at any time would have been extremely ^{doubtful} if not entirely impossible. The alleged false pretenses, as claimed by the complainant were, that the defendant had paid \$7,500 for a quarter interest in certain mining claims in Colorado; that such claims were spoken of as "The Mine", "Our Mine", "the Silver Cliff property, and the Colorado property" and also as the "Gate City", "J.O. Voorhies", "Maymie ", "Lady Gertie", "Kansas City", "Lady Flossie" and the "Sadie F." together with three mill sites, all situate at Silver Cliff, Custer Co., Colorado; that the defendant and his associates had expended on such mines \$10,000; that they were ready to be worked without further delay, and that the mine was un-

0339

commonly rich; that if the plaintiff would pay to one Austin the sum of five hundred dollars and give a promissory note of two thousand five hundred dollars that certain lots of Long Island property would be conveyed to the complainant for one thousand cash; that a stock company of such mine would be organized by the defendant and Austin, and that he the defendant, had special facilities for disposing of large blocks of the stock in such company at advantageous rates, and that the complainant should be chief engineer of such mine at a salary of five hundred dollars per month; and that complainant should be sent to Europe to place the stock on the European markets; that it was the best opportunity the complainant would ever obtain; that complainant would get a position by such purchase; that the defendant represented to complainant that it was "all right." These are the alleged false pretenses. It will be observed that the greater portion of them are in the nature of a promise to do an act, or to bring about a result after the payment of such money, and are clearly within the decisions, that a promise to perform a certain act, or a representation of a certain accomplishment to be brought about in future is not a representation of an existing fact such as would bring the person making the representation within the purview of the criminal law. It is conceded that certain mines did exist in Colorado, and it is admitted that the defendant had certain interests in such mines. Whether such mines were as valuable as represented

0340

by the defendant would be, in my judgment, a very difficult thing to prove. A mine undeveloped and in the bowels of the earth is ^{nothing} very difficult to ascertain the value of. The foregoing applies, I think, to all the representations alleged to have been made by the defendant.

It appears that the defendant was engaged with one Austin in mining enterprises, and it is probable that in describing these enterprises to the complainant with a view to have him invest his money in them, as has been the custom with persons engaged in mining speculations, the value and prospects of the mines were greatly exaggerated. But from a full examination of the evidence in the case, the determination of one tribunal as to the merits, the great delay that has occurred and all the facts and circumstances, I have no hesitation in saying, that in my judgment, the County of New York ought not to be put to the expense of trying this indictment, and for that reason and in justice to the defendant, who has been kept for this long period of years under indictment without any trial, I submit that the ends of justice would be best subserved by a nolle prosequi being entered to the indictment, and thus finally end a litigation which seems to have been substantially abandoned by those who were first interested in prosecuting it.

Respectfully,

AN Purdy

0341

THE PEOPLE OF THE STATE OF
NEW YORK,

against

Perrin H. Sumner,

Report.

RANDOLPH B. MARTINE,
DISTRICT ATTORNEY,
C. 32 CHAMBERS STREET,
NEW YORK CITY.

Approved
Sept 23/97

0342

Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK

against

Perrin D. Summer

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

- Perrin D. Summer -

of the CRIME OF Obtaining goods by means of false pretenses, -

committed as follows:

The said Perrin D. Summer, 7

late of the - First - Ward of the City of New York, in the County of New York aforesaid, on the 2nd day of November, in the year of our Lord one thousand eight hundred and eighty-one, at the Ward, City and County aforesaid, with force and arms, and

with intent feloniously to steal and defraud one Daniel M. Davidson, did then and there feloniously, unlawfully, and designedly, falsely pretend and represent to the said Daniel M. Davidson, -

That one John D. Davis, who was then the owner of an iron mine in Rockland County, was desirous of selling the same, and that one George H. Davis, Perrin D. Summer, was to negotiate the sale thereof.

That the said Perrin D. Summer had found a purchaser for the said mine.

That a certain letter and writing

0343

which the said Perrin & Summer
 had then and there exhibited to
 and delivered to the said Daniel
 M. Davidson, and wherein was
 reported to be contained an offer
 made by the said John D. Davis
 to the said Perrin & Summer, to
 pay the said Perrin & Summer one
 quarter of the amount which
 might be received from the sale
 of the said mine, if such sale
 should be consummated through
 the said Perrin & Summer, a more
 particular description of which said
 letter and writing is to be found
 among the records of the mine, and
 cannot now be given, but has been
 written by the said John D. Davis,
 and has been received by the
 said Perrin & Summer from the
 said John D. Davis then residing
 there.

That the sale of the said mine
 had then and now been and shall
 already arranged and agreed upon
 and upon terms favorable to him
 the said Perrin & Summer con-
 siderable expenses amounting to
 between six and eight thousand

0344

dollars.

That the said Person & Summer, was then the owner of an undivided one-quarter interest in certain very valuable mining property situated in the State of Colorado; that such property ~~was~~ consisted of mining claims, called respectively "Cotton City", "C. O. Goodrich", "Mangrove", "Glaucus City", "Gladys Grove" and "Gladys", together with other small pits, all situated at Silver Cliff, Custer County in the said State of Colorado.

That the said Person & Summer had paid \$20,000.00 for the said one-quarter interest in the said mining property the sum of seven thousand and five hundred and no dollars;

That one James A. Austin was then the owner of the remaining three-quarters interest in the said property.

That the mine upon the said property was operated and tended to the owner by him the

0345

said Perry E. Summer and the
said James A. Austin, was in-
commonly in the river one, and
that the same then contained a
piece of one or two feet in
thickness, of the light quality
of, which is commonly called and
known as splined one, and that
the one from the said mine
contains a piece of one or two feet
in thickness.

That the said Perry E. Summer
and the said James A. Austin,
had expected, during
the year just past, the
sum of ten thousand dollars,
in developing the said mine,
and that the same was then
in process of being developed
and was in a very
favorable condition, and that
they the said Perry E. Summer
and James A. Austin had some
amount of work to be done
on and upon the said mine and
that no injured the same, that
the said one was immediately
available.

0346

That an undivided one-quarter interest in the said ~~property~~ ^{land} was then worth at least seven hundred and fifty dollars.

That the said Perin & Co. Summer had induced the said Jones to sell a one-quarter interest in the said property to the said David M. Rainey for the sum of seven hundred and fifty hundred dollars.

That the purchase of such one-quarter interest in the said property was ^{not} a sale of ^{the} property but an investment.

That a certain sample of ore which the said Perin & Co. Summer then and there exhibited to the said David M. Rainey and which was then and there rich in silver ore of unusually high quality, was a sample of ore taken from the said mine upon the property of said and was a fair specimen of the ordinary quality of ore produced from the

0347

said mine.

That he the said Perrin D.
Burrer was then the owner
of eight lots of land containing
five acres of land each situated
at Sayville, Long Island, in the
State of New York, and that the
same was of the value of about
five hundred dollars each.

0348

And the said Daniel H. Davis
now, then and there delivering
the said notes, and
representations, as made as above
said by the said Daniel H. Davis,
and having received therefor, now
in hand, the sum of the said
notes and representations as
made as above said, to deliver,
and did then and there deliver
to the said Daniel H. Davis,
One written instrument and
evidence of debt, to wit: an order
for the payment of money of the
said bank, payable to the order of
Daniel H. Davis, in the sum of
Twenty Dollars, and in full of
the said bank's indebtedness to
Daniel H. Davis, and directing the said
bank to pay to the order of
Daniel H. Davis, the sum of
Twenty Dollars, the same
being signed by the said
Daniel H. Davis, now
1881, and being numbered 1, the
same being then and there
by him signed and of the value
of Ten Hundred and fifty one

0349

dollar, -

one other written instrument
and evidence of debt, to wit: a
certain order order for the pay-
ment of money of the said com-
monly called bank order, the
same being also drawn upon the
said the National Bank Bank
of New York, and directing the
said bank to pay to the order
of P. B. Summerhayes One Thousand
Dollars, the same being signed
C. M. Garrison and bearing
date New York, Nov 19th 1891,
and being numbered 4. The same
being also a bank order
issued by the said bank and of the value of
one thousand dollars, -

one other written instrument
and evidence of debt, to wit: a
certain order order for the pay-
ment of money of the said com-
monly called bank order, the
same being also drawn upon the
said the National Bank Bank
of New York, and directing the
said bank to pay to the order

0350

of P. H. Summer 1891. The same being
paid to the same being
received of J. M. Davidson and being
dated Nov 11th 1891 and being
numbered 5. The same being then
and there wholly satisfied
and of the value of five hundred
dollars.

one other written instrument
and evidence of debt, to wit a
certain other order for the
payment of one of the said
commonly called bonds. The same
being dated and being
the said the National Bank of
New York and City and being
paid to the order of
P. H. Summer 1891. The same being
dated Nov 12th 1891 and being
numbered 7. The same being
then and there wholly satisfied
and of the value of five
hundred dollars.

one other written instrument
and evidence of debt, to wit a
certain other order for the

0351

The first of these is the fact that the
 value of the property is not the same
 as the value of the land. The value of
 the property is the value of the land
 plus the value of the improvements. The
 value of the land is the value of the
 land as it is, and the value of the
 improvements is the value of the
 improvements as they are. The value of
 the property is the sum of these two
 values. The value of the land is the
 value of the land as it is, and the
 value of the improvements is the value
 of the improvements as they are. The
 value of the property is the sum of
 these two values.

The water chain of the value
of $2\frac{1}{2}$ years ago, -
The water chain of the value of
 $2\frac{1}{2}$ years ago, -

and a sum of money to wit:
the sum of seven thousand
and five hundred dollars in
money paid on the 1st of
the 1st of January of 1861
the sum of seven thousand
and five hundred dollars,

0352

of the paper money, notes
and coins, debts, credits, general
property and effects of the said
David M. Davidson. And the
said Rev. W. Summer did
then and there examine and
inspect the same and certify
the said paper money, notes
and coins, debts, credits, general
property and effects of the said
David M. Davidson, by means
of the proper officers and
persons, and did in
testimony of the same
and signed the said David
M. Davidson of the same.

And whereas in such
and in fact the said John D.
David was not then
of the said said man in
Rockland County in the State of
New York, and had not
right the said Rev. W. Summer
to accept the said sum.

And whereas in such
and in fact the said Rev. W.
Summer had not found a
purchaser for the said sum.

0353

And whereas in trust and
in part the said letter and
writing with the said Perin &
Summer then and their exors
has to and delivered to the said
David M. Davidson as aforesaid,
and has been written by the
said John D. Davis, and has
not been received by the said
Perin & Summer & from the
said John D. Davis then & by
before.

And whereas in trust and
in part the said letter and
writing has to and delivered to the said
David M. Davidson as aforesaid,
and has been written by the
said John D. Davis, and has
not been received by the said
Perin & Summer & from the
said John D. Davis then & by
before.

And whereas in trust and
in part the said Perin & Sum-
mer then and their exors
has to and delivered to the said
David M. Davidson as aforesaid,
and has been written by the
said John D. Davis, and has
not been received by the said
Perin & Summer & from the
said John D. Davis then & by
before.

0354

in the state of Colorado, consisting
of the mining claims and lode
interests owned by the
estate, together with the
rights of said estate, as an
estate, and as a result of
the estate, the state of
Colorado.

And whereas in and
about the said mining
claims and lode interest
the said estate has a
quasi interest in the
property and the
estate has a right to
the same and the estate
has no interest in any
of the same, X

And whereas in and
about the said mining
claims and lode interest
the said estate has a
quasi interest in the
property and the
estate has a right to
the same and the estate
has no interest in any
of the same, X

And whereas in and
about the said mining
claims and lode interest
the said estate has a
quasi interest in the
property and the
estate has a right to
the same and the estate
has no interest in any
of the same, X

0355

in fact uncommonly poor in ore,
and also so: then so that a vein
of ore at least two feet in width:
very, of the highest quality of
ore, and the ore from this
mine did not average 25%
per cent of pure iron.

Oct 31
And whereas in fact and
in fact the said Perine & Summer
and James A. Austin had not
expected during the year the
first part, the sum of ten
thousand dollars in gold:
and the said mine, and the
same was not the reason
of, and such expenditure of
on the part of the said Perine &
Summer and James A. Austin,
in any manner of ore and
condition.

And whereas in fact and
in fact the said Perine &
Summer and James A. Austin
had not caused any such
expenditure to be made in the
said mine, and had not so in-
creased the same that the ore
thereof was immediately available

0356

And whereas in trust and in
fact an individual one-quarter
interest in the said mining
property was not then owned
or held by any person and
said interest, valued at \$100,000,
was then in the hands of
said person and no other.

And whereas in trust and
in fact the said Person D.
Summer had not since then
been at interest in the
said property and a one-quarter
interest in the said property
was then owned by said Person
D. Summer and said interest
valued at \$100,000.

And whereas a further
one-quarter interest
in the said property was not
then owned by any person and
said interest, valued at \$100,000,
was then in the hands of
said person and no other.

And whereas in trust and
in fact the said Person D.
Summer had not since then
been at interest in the
said property and a one-quarter
interest in the said property
was then owned by said Person
D. Summer and said interest
valued at \$100,000.

0357

as a person, was not a sample
of a person from the property
of a person, and was not a fair
specimen of the ordinary quality
of a person from the said
mine.

Two persons in fact, and
in fact the said person, James
H. was not the owner of
eight lots of land containing
five acres of land each, situated
at Sangre, Colorado, in the
State of New Mexico, and of the
value of about \$100,000
each, and was not the
owner of any real property situated
situated at the place last aforesaid,

0358

[illegible]

And so the day passed. The
rain was not so bad as
the day before, but it was
still raining. The wind
was not so strong as
the day before, but it
was still blowing. The
sun was not so bright
as the day before, but
it was still shining.
The clouds were not so
dark as the day before,
but they were still
there. The water was
not so calm as the day
before, but it was still
there. The trees were
not so green as the day
before, but they were
still there. The birds
were not so loud as the
day before, but they
were still there. The
insects were not so
many as the day before,
but they were still there.
The world was not so
perfect as the day before,
but it was still there.

0359

~~The said~~ Wm. Fairbank,
with intent feloniously to steal
and defraud sum of the same:
against the form of the Statute
in such case made and provided
the 2nd day of May 1870.
County of Clark State of Nevada.

Peter B. Denny

District Attorney

0360

BOX:

155

FOLDER:

1586

DESCRIPTION:

Sweeney, William

DATE:

10/27/84



1586

Westchester
 James Walsh
 618 Hicks St
 Brooklyn
 Admitt C. Tower
 287 Hart St
 Brooklyn
 Hugh D. M. Crane
 51 William St
 Bail spread at
 \$15000
 Oct 29/94
 Bailed by Joseph
 Binn, 183 Pearl St
 vide Guide
 Indictment
 G.M.

1912
 Counsel,
 Filed day of Oct
 Pleads Chitquilly (29)
 1884
 THE PEOPLE
 vs.
 William W. Sweeney
 and second
 PETER B. OLNEY,
 JOHN MCLEOD,
 District Attorney.
 Indictment
 A True Bill. Dismissed
 Jonas B. Kassar
 Foreman
 Just J. J. J.
 J. J. J.

INDICTMENT.
 Grand Larceny in the
 (MONEY)
 degree.

0361

Mr. James Walsh,
 the complainant
 tells me that the
 defendant is a
 man of family
 that he is, & has
 been some time
 a hard working
 man - as the
 indictment is now
 9 years old - I
 respectfully ask
 that the indictment
 be dismissed, as
 as to give the
 defendant a chance
 more that he has
 reformed - I ask that
 this, predicting
 be dismissed G.M.
 Feb 20 1893 20a

0362

Sec. 151.

District Police Court.

CITY AND COUNTY }
OF NEW YORK, } ss

In the name of the People of the State of New York; To the Sheriff of the County of New York, or any Marshal or Policeman of the City of New York:

Whereas, Complaint on oath, has been made before the undersigned, one of the Police Justices in and for the said City, by

of No. 45 Nassau Street, that on the 14 day of May 1888 at the City of New York, in the County of New York, the following article to wit:

Four Hundred Dollars Lawful Money
of the value of Complainant and Thomas J. Watson
the property of William M. Sweeney
was taken, stolen, and carried away, and as the said Complainant has cause to suspect, and does suspect and believe, by

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 every of you, to apprehend the body of the said Defendant and forthwith bring him 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 12 day of May 1888

POLICE JUSTICE.

POLICE COURT. DISTRICT.

THE PEOPLE, &c.,
ON THE COMPLAINT OF

vs.

Dated 12 day of May 1888

Magistrate

Officer

The Defendant

taken, and brought before the Magistrate, to answer the within charge, pursuant to the command contained in this Warrant.

Officer

Dated 12 day of May 1888

This Warrant may be executed on Sunday or at night.

Police Justice.

Warrant-Larceny.

REMARKS.

Time of Arrest,

Native of

Age,

Sex

Complexion,

Color

Profession,

Married

Single,

Read,

Write,

0363

Sec. 192.

18 District Police Court.

Undertaking to appear during the Examination.

CITY AND COUNTY }
OF NEW YORK, } ss.

An information having been laid before Audrey J. White Esq a Police Justice
of the City of New York, charging William M Sweeney Defendant with
the offence of Fraud Larceny

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, William M Sweeney Defendant of No. 174 Livingston Street; by occupation a Brooklyn
and Maggie E Newhall of No. 426 Vanderbilt Avenue
Brooklyn Street, by occupation a Married Surety, hereby jointly and severally undertake that
the above named William M Sweeney Defendant
shall personally appear before the said Justice, at the 18 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 fifteen
Hundred Dollars.

Taken and acknowledged before me, this 14

day of August

1884

Andrew J. White POLICE JUSTICE.

W. Sweeney
Maggie E. Newhall

0364

CITY AND COUNTY
OF NEW YORK, } ss.

Sworn to before me, this
14th day of August, 1881
Charles J. Smith, Police Justice.

Maggie E. Newhall

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 house and lot of land situated and known as No 134 - South Avenue in said city of the value of fifteen thousand dollars. mortgage of seventy five hundred dollars upon said property

Maggie E. Newhall

186 District Police Court.

THE PEOPLE, &c.,
ON THE COMPLAINT OF

Undertaking to appear
during the Examination.

vs.

Taken the day of 1881

Justice.

TORN PAGE

0365

214 & 216 BROADWAY.

No. 653

NEW YORK May 14 1884

Just Stopped

THE NATIONAL PARK BANK
OF NEW YORK.

PAID TO THE ORDER OF *W. J. Walsh and Son*

Four hundred

\$ *400.00*

MAY 16 1884

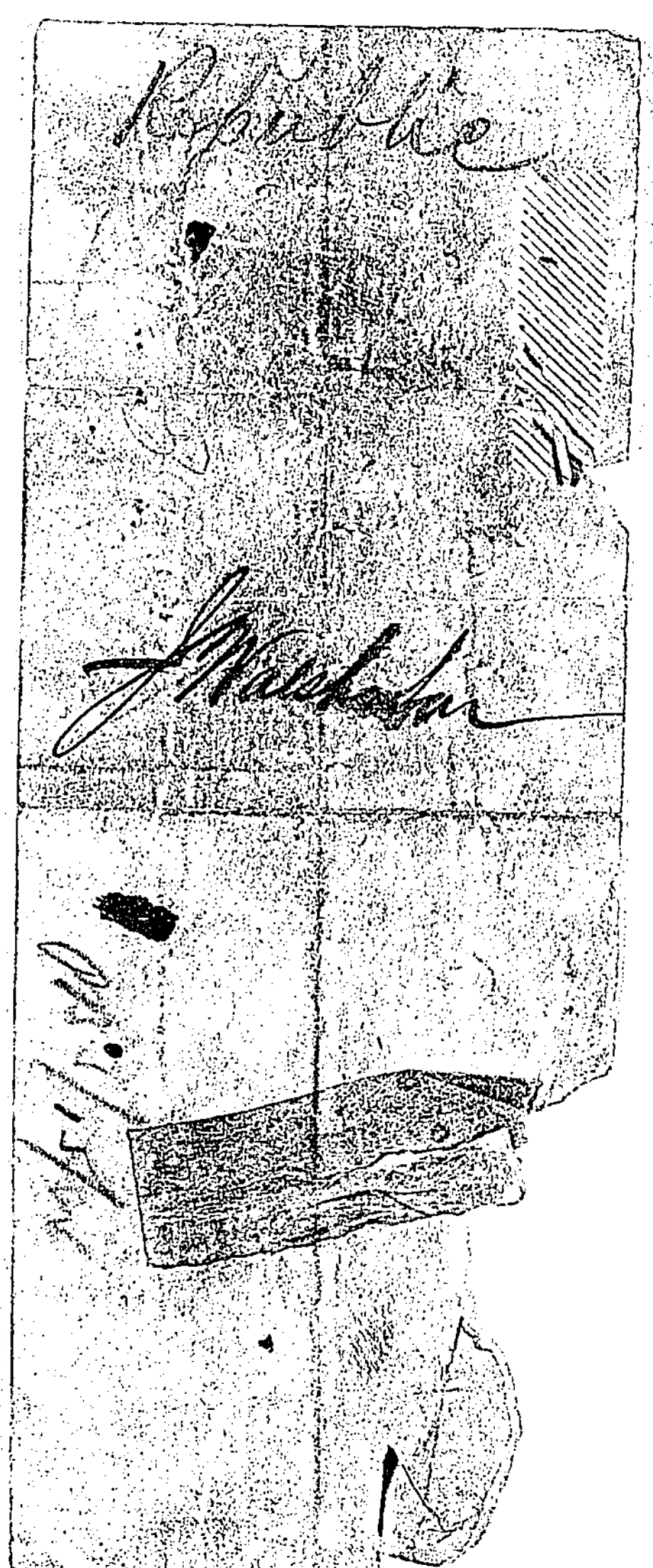
W. J. Walsh

DOLLARS

Cut Dies, Moulds & Co. Stationers, 39 N. 2d St.

TORN PAGE

0366



0367

Police Court—

District.

Affidavit—Larceny.

City and County } ss.:
of New York,

of No.

occupation

Street, aged 49 years,

being duly sworn

deposes and says, that on the 14 day of May 1888 at the City of New

York, in the County of New York, was feloniously taken, stolen and carried away from the possession
of deponent, in the time, the following property, viz:

Bank Notes of various denominations
lawful money, to the amount and
value of four hundred dollars

the property of

Deponent, & Thomas J. Walsh
doing business under the name of
J. Walsh & Son and that this deponent

has a probable cause to suspect, and does suspect, that the said property was feloniously taken, stolen,
and carried away by William M. Sweeney, who

presented this deponent the annexed
check, drawn by said Sweeney
on the National Park Bank—

Deponent was informed by said
Sweeney that he Sweeney had
money in said Bank to meet

Sworn to before me, this 1888 day

Police Justice.

Said Check, whereupon deponent
 believing said representations so made
 by said Greeny and that said
 Check would be paid on presentation
 at said Bank, gave her (Greeny)
 the Amount aforesaid. - That when
 deponent presented said Check at the
 said Bank for payment he was
 informed by one Mr Pitt paying teller
 at said Bank that said Greeny had
 stopped payment of said Check and drawn out
 the funds from said Bank - James W. Smith.

It appearing to me by the within depositions and statements that the crime therein mentioned has been committed, and that there is sufficient cause to believe the within named _____ guilty thereof, I order that he be held to answer the same and he be admitted to bail in the sum of Hundred Dollars _____ and be committed to the Warden and Keeper of the City Prison of the City of New York, until he give such bail.

THE PEOPLE, &c.,
on the complaint of

on the complaint of
James Macdon
William M. Green

Dated

Wm. J. Magistrate.

Officer.

Clerk.

Witnesses,

042

27

1

Yo.

15118

Ch 1115

100

1000

0369

J. P. MANN, Printer, 84 Nassau St., N. Y.

STENOGRAPHER'S MINUTES.

1st Dist. Police Court.
N. Y. SPECIAL SESSIONS.

THE PEOPLE

vs.

M. M. Sweeney

BEFORE

Hon. Andrew J. White
Police Justice.

September 15th 1884.

WITNESSES.

	Direct.	Cross.	Re-called.
<i>James Finn</i>	1	4	—
<i>Dewitt C. Tower</i>	25	29	—
<i>James Walsh</i>	53	53	—

DAVID S. VEITCH,
Official Stenographer,
101 CENTRE ST., N. Y.

0370

FIRST DISTRICT POLICE COURT.

City and County of New York

THE PEOPLE on the complaint of

JAMES WALSH

vs

WILLIAM M. SWEENEY

Before

HON. ANDREW J. WHITE,

Police Justice.

September 15th 1884.

JAMES FLYNN, ESQ. for the plaintiff

GEORGE H. FOSTER, ESQ. for the defendant.

City and County of New York ss

JAMES FINN a witness called by the people and
sworn, deposes and says.

Q (MR. FLYNN) In whose employ were you in May last?

A In the employ of James Walsh & Son, 5 Wall Street.

Q Are you still in their employ?

A Yes, sir.

0371

2

Q Did you ever see that check before (showing witness check No. 653 on the National Park Bank, dated May 14th 1884.)

A Yes, sir.

Q State under what circumstances you first saw it?

A Mr. Sweeney's young man came to our office before nine o'clock in the morning of the 14th of May and asked to have the check cashed for Mr. Sweeney.

Q Do you know in whose handwriting that check is? Do you know who made it?

A I know the signature but not the handwriting.

Q Whose signature is it?

A Mr. Sweeney's.

Q Have you seen checks of his before?

A Yes, sir.

Q What time of day was it when that check was presented at your place?

A About nine o'clock.

Q Was Mr. Walsh in the office at the time?

A No, sir.

0372

3

A He laid down the check and asked to have it cashed for Mr. Sweeney. I gave him the money for it.

Q How much did you give him?

A Four hundred dollars.

Q What did you next do with the check?

A I put it in the drawer and then I afterwards sent up to the Bank to have it certified. They refused to certify it on that day's deposit. I went around to Mr. Sweeney's office and demanded the money from him. He opened the door of the safe and he said that he did not have the money in the office. He asked me to deposit the check and to tell Mr. Walsh to have no fear, that the check would be all right. I then afterwards brought the check to the office and deposited it on that afternoon with our regular depositor. The next day the check was returned and "Payment Stopped."

Q Do you know whether or not the check has been paid?

A The check has never been paid since.

0373

4

CROSS - EXAMINATION.

Q When this check was brought to the office of Walsh & Son
it was on the 14th of May?

A Yes, sir.

Q You say it was in the morning?

A Yes, sir.

Q Mr. Walsh was not in?

A No, sir.

Q What time did he arrive?

A Mr. Walsh did not arrive on that day at all.

Q You were in charge of the office?

A No, sir; his son was.

Q You were in charge of the office when this check was
brought in?

A No, sir; Mr. Walsh's son was there alone.

Q Was this check brought to you?

A Yes, sir.

Q And what was your duty there?

0374

A: My duty was to wait on customers who came in and attend to the office in a general way.

Q: Was there anything else brought besides this check?

A: Yes, sir; some other specie.

Q: How much specie?

A: I could not say the exact amount.

Q: What kind of specie?

A: Foreign silver.

Q: Sovereigns?

A: There was mixed specie.

Q: To what amount?

A: I do not know the amount.

Q: Who brought it in?

A: Mr. Sweeney's clerk.

Q: Do you know his name?

A: No, sir.

Q: Had he been to the office before?

A: Yes, sir.

Q: Had he brought checks and specie there before?

A: Yes, sir.

0375

C

Q Had he received the money for it?

A Yes, sir.

Q Did you hand him the money?

A I handed him the money.

Q Did you ask Mr. Walsh about it before doing it?

A He was not in the office.

Q Well, did you ask him about it before doing it?

A No, sir.

Q What kind of money did you hand out to him?

A United States bills.

Q What was the total amount that you handed him?

A I handed him the four hundred dollars separately.

Q What was the total amount which you handed him?

A I paid him separately; I paid him the check separately,
and I paid him the specie separately.

Q How much currency did you hand him?

A I cannot say how much over the four hundred dollars.

Q Was it three hundred dollars or four hundred dollars?

A I do not believe it was so much.

0376

Q Was it two hundred dollars?

A I could not say whether it was or not.

Q To the best of your recollection it was about two hundred dollars?

A I do not think it was two hundred dollars.

Q What is the young man's name who asked to have the check cashed?

A I do not know.

Q Was his name McGlone?

A Yes, sir.

Q Had you before that? given him currency when he came in there for checks like this, and for sovereigns and other foreign money?

A I had paid him for specie.

Q You had also given him currency for checks?

A I may have paid him under Mr. Walsh's directions.

Q On this occasion, the 14th of May, you got no directions?

A Not from Mr. Walsh, no, sir.

Q What did McGlone say to you when he came in there?

A He asked me to cash the check for Mr. Sweeney.

0377

8

Q Did he say anything else relative to anything else?

A He may have passed several casual remarks.

Q Didn't he put down some sovereigns and ask you for the cash for them too?

A Yes, sir.

Q Did he say anything else except that he wanted cash for the check and the sovereigns?

A No, sir.

Q Add a transaction like that occurred frequently before?

A Yes, sir.

Q Did you on the 8th of April have a similar transaction with Mr. McGlone?

A I do not recollect personally.

Q Did you on the 19th of April have a similar transaction?

A I know of checks being cashed but I do not recollect the dates.

Q Did you on the 12th of April?

A No, sir.

Q Did you on the first of April have a similar transaction?

0378

9

A I never cashed any of these checks before that I remember unless it was through Mr. Walsh's directions.

Q You think this transaction on the 14th of May was the first time you cashed any check?

A Yes, sir; without consulting Mr. Walsh.

Q You did not consult anyone about this transaction on the 14th of May?

A No, sir.

Q Then you did whatever you did on your own responsibility?

A Yes, sir.

Q Well now hadn't you the same transaction with Mr. McGlone previously?

A No, sir; I never cashed them on my own responsibility.

Q You cashed them for the firm of Walsh & Son before?

A Not until Mr. Walsh said to cash them.

Q In all the other cases?

A Yes, sir.

Q And when the checks was cashed before in the other cases you also paid over cash for sovereigns or foreign money?

A I cannot say always.

0379

10

Q Generally?

A Yes, sir.

Q What was the business of Mr. Sweeney at that time?

A Specie.

Q And what was the business of Walsh & Son?

A Brokers.

Q And in the course of business Sweeney & Co. brought in sovereigns and other exchange and got cash for it?

A Yes, sir.

Q They frequently brought in the checks of W.M. Sweeney on the Park Bank and got cash for them?

A Yes, sir.

Q And that had been running on for several months, hadn't it, since Sweeney had been on his own individual account?

A I do not know, sir.

Q Had it not been all the time since you were with Mr. Walsh?

A No, sir.

Q What time was this check brought in?

A About nine o'clock.

0380

II

Q You say you put it in the drawer?

A Yes, sir.

Q Did the Metropolitan Bank fail on that day about noon?

A Yes, sir.

Q Did not Hatch & Foose fail on that day about noon?

A They failed on that day.

Q Did not Wisk & Hatch fail on that day?

A Yes, sir.

Q Wasn't there a severe panic in Wall Street on that day?

A Yes, sir.

Q The most severe panic you have ever known?

A Yes, sir.

Q It commenced after you had cashed this check and these sovereigns?

A That was the first outbreak of it?

Q After that panic did Mr. Walsh get notice that he could not draw against checks deposited until they were collected?

A I do not know, sir; I did not receive any notice of that.

Q Well, don't you know that it was a fact that the banks of New York adopted that practice on that day?

0381

12

A No, sir.

Q That time was it that you went to Mr. Sweeney's office with this check?

A About one o'clock?

A Yes, did you go personally?

A Yes, sir.

Q Did you see Mr. Sweeney?

A I did, sir.

Q Did Mr. Sweeney tell you that his bank had notified him that he could not draw against checks that he deposited until they were collected?

A No, sir; Mr. Sweeney did not tell me anything of that kind.

Q Did Mr. Sweeney's bookkeeper?

A No, sir.

Q Did you see Mr. Sweeney when you went down there at one o'clock?

A Yes, sir.

Q Did he tell you that he had a notice from the Park Bank?

A No, sir.

0382

13

- Q Did his bookkeeper tell you so?
- A No, sir.
- Q You did not get that information at all?
- A No, sir.
- Q You say Mr. Sweeney about one o'clock?
- A About that time.
- Q Did you see anyone else?
- A Yes, sir.
- Q Who did you see?
- A Bookkeeper who was in the office.
- Q Who was your conversation with?
- A Mr. Sweeney.
- Q You had heard of the panic in Wall Street when you went down there with this check?
- A I had heard so previously.
- Q You heard of it at the time you went down with this check?
- A Yes, sir.
- Q Did you go to the Park Bank before or after you went to Mr. Sweeney with the check?
- A Before.

0383

14

Q Immediately before?

A Yes, sir.

Q You saw the paying teller?

A Yes, sir.

Q Did he tell you that he could not certify the check until Mr. Sweeney's deposits had been collected?

A He said that he could not certify the checks on that day's deposits.

Q That is, he could not certify until the checks deposited had been collected?

A Yes, sir.

Q Then you went down and saw Mr. Sweeney after that piece of information?

A Yes, sir.

Q Did you tell Mr. Sweeney that the teller at the Park Bank had told you that he could not certify that check until Mr. Sweeney's deposits on that day had been collected at the bank?

A No, sir.

Q You knew that when you went there?

0384

15

A I told Mr. Sweeney that the bank would not certify the check.

Q You did not tell him the reason why the teller would not certify the check?

A No, sir.

Q Was it in consequence of the panic that you went down to the bank instead of depositing it?

Objected to.

Q Were not all the other checks, during the time that you had been with Walsh & Son, which had been received from Mr. Sweeney and cashed as this was, deposited in the bank without any request for certification by Walsh & Son?

A I would not say all.

Q Well as far as you know were not all those checks prior to the 14th of May received from Sweeney & Co. deposited without certification?

A As far as I know.

Q Wasn't it in consequence of this panic which took place between nine and one o'clock that you went down to the Park Bank to have this check certified out of the ordinary

0385

16

course of business?

A It has something to do with it.

Q It was not until after that that this check was deposited?

A No, sir.

Q Do you know what time this check was deposited in Walsh & Son's bank?

A I do not recollect what time.

Q Well, about three o'clock?

A It was about three o'clock.

Q It was not deposited after banking hours?

A No, sir; it was before?

Q It was about three o'clock?

A Yes, sir.

Q Did Mr. Sweeney say anything X to you about his deposits on that day, the fourteenth ~~month~~ of May?

A He said that he had made deposits.

Q This check is No. 653?

A Yes, sir.

Q You are sure you received it at nine o'clock on that morning?

A About nine o'clock.

0386

17

Q (REDIRECT) You say you cashed it about nine o'clock in the morning?

A About nine o'clock.

Q You went around to have it certified?

A They refused to certify it?

A Yes, sir.

Q You say Mr. Sweeney?

A Yes, sir.

Q And demanded the money?

A Yes, sir.

Q Mr. Sweeney requested you to deposit it in your bank and said it would be all right the next day?

A Yes, sir.

Q You did deposit it in your bank?

A Yes, sir.

Q What knowledge of the cashing of the other checks have you?

A I was there when the checks were cashed.

Q Do you know of your own personal knowledge whether any of those checks were cashed for credit?

0387

18

A. There was some six?

Q. You know that of your own personal knowledge?

A. Yes, sir.

Q. Under what circumstances were the checks cashed?

A. Some were under business transactions.

Q. Well, do you know of any of them having been brought around as early as nine o'clock in the morning?

A. Yes, sir; and sometimes in the afternoon.

Q. You never cashed one without directions from Mr. Walsh?

A. No, sir.

Q. Before this one?

A. No, sir.

Q. You do not know the circumstances under which they were cashed?

A. I know some?

Q. What do you know?

A. Well I know there were trade dollars brought down there in the form of a loan

Q. And collaterals?

A. Yes, sir.

0388

19

Q They were cashed in that way?

A Yes, sir.

Q (RECORDED) Do you mean that there were any trade dollars or collaterals for these checks?

A No, sir. not for these checks.

Q The trade dollars were brought down to get other currency?

A The checks were brought down to be cashed.

Q There was no collateral for the checks?

A No, sir.

Q The way his business was conducted was by having cash and currency in the drawer to pay out for sovereigns and trade dollars and other money that customers came in to sell?

A Yes, sir.

Q And that is what he has this currency for early in the morning?

A I could not say that?

Q In your business you did the same way? You had currency in the drawer?

A Yes, sir.

0389

20

Q. You paid it out to customers?

A. Yes, sir.

Q. He brought in to you trade dollars and at times sovereigns
and other specie for which you gave him currency?

A. Yes, sir.

Q. And he brought in these checks for which he received
currency?

A. Yes, sir.

Q. All these checks were cashed for currency?

A. Yes, sir.

Q. Look at them and see if they were not all endorsed by Mr.
Walsh, Senior?

A. No, sir.

Q. Some by the senior and some by the son?

A. They are both members of the firm?

Q. They are all endorsed by one or other members of the firm?

A. Yes, sir.

Q. None of these checks are certified, are they?

A. No, sir.

0390

21

Q They were all deposited by J. Walsh & Son ~~walk~~ in their bank account?

A Yes, sir.

Q Where did they keep it?

A In the National Bank of the Republic.

Q This check for four hundred dollars No 653 by whom is that endorsed?

A By young Mr. Walsh.

Q The gentleman who was in the office at the time you cashed it and ~~walk~~ also gave the cash for the sovereigns?

A Yes, sir.

Q You said he was in the office at the time?

A Yes, sir.

Q You did not consult him about the transaction at all?

A No, sir.

Q You did the transaction in the ordinary course?

A Yes, sir.

Q (REDIRECT) Do you mean to say that you did it in the ordinary course? Did you have instructions to cash checks of that kind?

0391

22

A No, sir.

Q You took the responsibility of cashing this check yourself?

A Yes, sir.

Q It was cashed about nine o'clock in the morning?

A Yes sir.

Q What was given for the checks or what was the understanding when they were cashed?

A Some of them were presented to Mr. Walsh with the request to be cashed.

Q What do you know about the cashing of those checks?

A I know Mr. Sweeney came down and requested Mr. Walsh to cash them.

Q Do you know if he had given him collaterals to cash them?

A I do not know, sir.

Q You do not know anything except they were cashed?

A That is all.

Q (RETROSS) Didn't Mr. McGlone present all the checks to be cashed?

A I do not know, sir.

0392

23

Q Did you see Mr. Sweeney come down there any time for cash?
A Didn't McGlone always come down with the checks?

A To my knowledge, all that I have seen of them.

Q Isn't it a fact that all the writing of Mr. Sweeney on the check is the signature?

A It may have been his writing but it is not like his signature.

Q And that is like that check too?

A Yes, sir.

Q Do you know the name of the bookkeeper?

A Yes, sir.

Q What is his name?

FA Power.

Q Well, isn't all the writing on that check except the signature Mr. Power's writing?

A I do not know, sir.

Q When McGlone brought sovereigns, beads or any other sort of exchange into the office to get cash or currency for it?

Did you give him the cash or currency for it without consulting anybody about it?

0393

24

A I paid it myself.

Q On your own responsibility?

A Yes, sir.

Q And that was a part of the ordinary course of your business?

A Yes, sir; it was my business to stand at the desk and wait on the customers and take what they handed in.

Q Without consulting Mr. Walsh about it?

A Yes, sir. that is my business.

Q (REPHRASE) You know what the price was to be paid for the things offered for sale?

A Yes, sir.

Q Do you know in whose handwriting that is in "payment stopped?"

A No, sir.

Sworn to before me this

15th day of September 1884.

Police Justice.

0394

25

city and county of New York ss.

D E W I T T J. T O W E R a witness called by the people and sworn deposes and says:

Q (Mr. FLYNN) Where do you reside?

A 287 Hart Street, Brooklyn.

Q What is your business?

A Broker.

Q In whose employ were you in May last?

A Up to the 15th of May in Mr. Sweeney's!

Q Which Mr. Sweeney?

A W.H. Sweeney.

Q The gentleman who signed that check?

A Yes, sir.

Q Did you ever see that check before?

A Yes, sir.

Q On or about the 14 or 15th of May did you have any conversation with Mr. Sweeney or Mr. Sweeney with you in reference to this check?

0395

26

A No, sir; only that he told me to make it out.

Q Is the body of this check in your handwriting?

A Yes, sir.

Q What was done with the check afterwards?

A I gave it to Mr. Sweeney and he gave it to the boy.

Q After that was anything said to you about the check?

A No, sir.

Q Do you recollect this young man (Finn) coming there?

A No, sir; he may have been there but I did not see him.

Q Well, what conversation was had between yourself and Mr. Sweeney at any time subsequent?

A Yes. The next morning he gave me orders to stop payment.

Q Explain what he told you in full?

A He told me to stop payment on other checks also---- three different checks.

Q State what he said to you and what he did?

A He said that he wished me to stop payment on certain checks; to go to the paying teller of the Park Bank and tell him to stop payment on the check of Walsh & Sons.

0396

27

Q What time of day did he tell you that?

A In the morning about a quarter of ten o'clock.

Q On what morning?

A On the 15th.

Q The 15th of what?

A May.

Q Did you go to the bank?

A Yes, sir.

Q Did you see the paying teller?

A Yes, sir.

Q What did you tell him?

A I wrote on a piece of paper the memorandum of three different checks, their amounts and the numbers and I handed the paper to him.

Q You asked him by Mr. Sweeney's directions to stop payment on this check?

A Yes, sir.

Q What did the bank teller say to you?

Objected to; objection sustained.

0397

28

Q This was at a quarter of ten o'clock on the morning of the 15th?

A Yes, sir.

Q Was that all the conversation had between Mr. Sweeney and You?

A That is all I remember.

Q Do you know whether or not he had an account there on that morning sufficient to meet the check before the payment was stopped?

A Well I could not say decidedly because I did not really have charge; I was not posted.

Q Do you remember that he made payments upon other checks drawn on the day before and collected them?

A You mean issued checks on the day before?

Q Yes.

A Yes, sir; there were several issued on the day before.

Q Do you know whether he received other checks from other people and collected them in the same through his bank in the same way on the 15th.

0398

29

A No, not on the 13th I do not think.

Q When was it then?

A On the 14th.

CROSS-EXAMINATION.

Q How long have you been bookkeeper for Mr. Sweeney? You said you ceased on the 13th of May--- How long have you been bookkeeper with him prior to that?

A From 1882 on the 8th of January.

Q Had you been his bookkeeper all the time?

A Yes, sir.

Q Had you had charge of his check book?

A He attended to it himself. He did the balancing himself.

Q Did you have charge of the check book?

A Yes, sir.

Q Were not the blank checks in the check book left in your charge?

A Yes, sir.

Q For you to fill out as the business required or as he directed you?

0399

30

A Yes, sir.

Q If he directed you you had the checks already signed?

A Yes, sir.

Q You filled out without instructions from him if the exigencies required it?

A Yes, sir.

Q Look at these checks endorsed by Walsh & Son?-- they are signed by Mr. Sweeney?

A Yes, sir.

Q Are they filled out as by him in that way?

A Yes, sir.

Q All of these checks are in that way are they?

A Yes, sir.

Q Signed by Mr. Sweeney but made out and filled out by you in your own handwriting?

A Yes, sir.

Q Now did you personally go down to Walsh & Son to get cash for any of these checks?

A No, sir; not that I remember.

0400

3 I

Q Your part of the business was in the office?

A Yes, sir.

Q Who attends to that part of the business? to go down there?

A Mr. McGlone.

Q This young man who is in court this morning?

A Yes, sir.

Q When cash was got what was done with it?

A Well as I understand it was brought to the office for office use.

Q To the office of W.H. Sweeney?

A Yes, sir.

Q What was done with it?

A It was put in the cash drawer.

Q How was it paid out, in the ordinary course of business?

A It was used in banking business for cashing checks.

Q Mr. Sweeney did a business of people keeping accounts with him and drawing checks on him?

A Yes, sir.

Q And some of those checks were paid out of cash in the drawer?

0401

32

A Yes, sir.

Q Were others of them paid out in any other way?

A Yes, sir.

Q Did you some times pay those checks by stamping on them to pay them at the bank?

A Yes, sir; Mr. Sweeney did that.

Q There was a stamp in the office?

A Yes, sir.

Q There is one of those checks, is it? (Showing the witness)

A Yes, sir.

Q There was a stamp in the office by which instead of paying the checks at the office they were paid at the National Park Bank?

A Yes, sir.

Q I understand that you drew this check of May 14th 1934 and filled it out?

A Yes, sir.

Q For the purpose of getting some cash?

A Yes, sir.

Q What time of day did you fill it out?

0402

33

- A On the morning of the 14th of May I think before ten o'clock.
- Q How long before ten o'clock?
- A Well, between half past nine and ten o'clock.
- Q Did you see Mr. Sweeney hand it to McGlone?
- A Yes, sir.
- Q Did he hand McGlone anything else?
- A That I cannot say; of course, he handed him something else.
- Q Do you know if he handed him any sovereigns to get cashed at the bank?
- A I do not know whether he did or not?
- Q Was that a frequent thing in the course of business between Sweeney and Walsh & Son?
- A Yes, sir.
- Q Did you count the currency that the boy brought back that morning?
- A It did not pass through my hands at all.
- Q You do not know what amount it was?
- A Only from the check, that is all?
- Q You do not know what else was sent down by the boy?

0403

34

A No, sir.

Q You think that the cashing of sovereigns between Sweeney and Walsh & Son happened sometimes three and four times a day?

A Generally twice a day and sometimes once a day.

Q When checks were cashed by Walsh & Son for Mr. Sweeney what time of the day was that generally done?

A In the morning.

Q So as to have the cash in the drawer to pay out to the customers?

A Yes, sir.

Q Was it usually done about ten o'clock?

A The deposit was made---

Q I am speaking now about cashing the checks of Walsh & Son--- was it usually done about ten o'clock to get cash in the drawer?

A Yes, sir.

Q And the cash came back and was put in the drawer?

0404

345

A Yes, sir.

Q Did you keep charge of the bank account?

A No, sir.

Q Did you attend to making deposits?

A Yes, sir.

Q Now this check is No. 653--- You filled that check out?

A Yes, sir.

Q Was it filled out by you in its regular order?

A Yes, sir.

Q And the regular order according to the practice?

A Yes, sir.

Q Look at check 654, is that also in your handwriting?

A Yes, sir.

Q Did you issue it?

A Yes, sir.

Q How long did you issue it after the other one to Mr. Walsh?

A The Fifth National Bank usually came in between ten and eleven.

Q What did they come in for?

0405

30

A. To get cash for other checks.

Q. What checks?

A. Checks drawn on Mr. Sweeney by his depositors.

Q. They were in the habit of ~~zavvyngvum~~ coming in every day?

A. Yes, sir.

Q. What time did they come in on that day?

A. About eleven o'clock.

Q. You drew that check for them?

A. Yes, sir.

Q. And that check was drawn about an hour after the check of

Walsh & Son was drawn?

A. Yes sir.

Q. Was this check, 654 paid?

A. Yes, sir.

Q. Was check 655 drawn by you?

A. Yes, sir.

Q. When was that drawn?

A. That was about half past ten o'clock I think in the morning.

Q. What was that drawn for?

A. For office use.

0406

37

Q. What do you mean by office use?

A. For cash in the drawer.

Q. It was sent down banked and collected?

A. Yes, sir.

Q. Take check 657?

A. Well this was made out in the afternoon.

Q. What time in the afternoon?

A. Probably about three o'clock?

Q. You made it out?

A. Yes, sir.

Q. Was that check paid?

A. Yes, I believe it was.

Q. It was given to Mr. Tower about three o'clock on the 14th of May?

A. Yes, sir.

Q. Did you hear of the failure of the Metropolitan Bank, of the firm of Hatch & Foote and Fisk & Hatch on that day?

A. Yes, sir.

Q. When?

A. Soon after it occurred.

0407

30

Q Were you present at the office when anyone came down from the bank on that day with a notice about checks?

A No, sir.

Q Were you in the room here and did you hear the testimony of the previous witness?

A No, sir.

Q He said that the teller of the Park Bank when he called upon him with this check on the 14th of May at one o'clock, said that they could not certify checks on the deposits of that day until the checks were collected the next morning-- did you hear of any such notice from the Park Bank?

A No, sir.

Q Did you go to the Park Bank at all on the 14th?

A Yes, sir I was there several times?

Q What for?

A To get money on a two hundred dollar check.

Q You collected that two hundred dollar check yourself?

A Yes sir.

Q Didn't you about twelve o'clock tell Mr. Sweeney that the Park Bank had sent word or notified you that they would

0408

39

not certify against deposits?

A I do not remember telling him that; I knew nothing about that until the next morning.

Q Well who told you about it the next morning?

A The paying teller.

Q What did he tell you the next morning?

A He said it was one of the rules of the bank since the panic happened that they would not pay any money on the checks until they got their money.

Q When did he tell you that?

A About ten o'clock.

Q And that was the first you heard of it?

A Yes, sir.

Q When did he tell you that they made that rule?

A He did not designate any time; he said it was a rule adopted by the bank.

Q What were you doing there?

A I was up there to stop payment on the checks.

Q You went there to give notice in regard to the stopping of the pay-ment of the checks?

0409

40

A: Yes, sir.

Q: And he then told you that fact?

A: Yes, sir.

Q: Now with regard to the practice of making the deposits what time did Mr. Sweeney make his deposits?

A: Well as a rule he made it in the morning just before bank opened, ten o'clock.

Q: His entire deposit?

A: Yes, sir.

Q: Checks that came in during the day were they kept until the next day?

A: No, sir; they were made up on different occasions. As occasion occurred or necessitated the making up of different deposits in the afternoon.

Q: Didn't he always draw checks during the day as the day as the business required?

A: Yes, sir.

Q: And didn't he make a deposit about three o'clock to make his account good?

A: Yes, sir.

04 10

41

Q And that was the course every day?

A Yes, sir.

Q And after that deposit had been made, ^{good} he did not carry over any large balance at all in the bank, did he?

A That I cannot say.

Q You do not recollect his carrying over any large balance ~~in~~ in the bank, do you?

A Some times I suppose that there was.

Q Do you remember what the balance was on the morning of the 13th of May?

A No, sir! I do not.

Q Do you remember what the balance was on the morning of the 14th of May?

A No, sir; Mr. Sweeney had charge of that himself.

Q Do you know what deposits he made? Did you make them?

A Yes, sir.

Q Well what deposits did he make on the 13th of May? Just state what deposits he made on the 13th--- Give each deposit?

A There was one of \$657.40 and \$1347.40 --

Q Is that all?

0411

42

A. Yes sir.

Q. What deposits did he make on the 14th of May?

A. \$341.25 , \$735.92, and \$359.00

Q. Is that all?

A. Yes, sir; three deposits on that day.

Q. At the time that Mr. Sweeney told you to go around to the bank and give the notice with regard to the three checks it was as I understand before ten o'clock on the morning of the 15th?

A. Yes, sir.

Q. It was before checks could be paid in the clearing house?

A. Yes, sir.

Q. Don't you know as a fact that after the failure of the banks and the brokers it was entirely impossible to borrow any money?

A. I understood so.

Q. Didn't you understand that after making these three deposits on that day of the amounts you have stated that Mr. Sweeney had been unable to raise any more money to make good his account?

04 12

43

A: I do not know how his account stood at that time except by the figures.

Q: Did you figure up the matter yourself?

A: No, he had charge of the bank account.

Q: Well you made figures in the bank account too, didn't you?

A: I think not.

Q: You enter all the checks don't you? Are not the entries in the pass-book of the checks in your handwriting?

A: Certainly.

Q: Now isn't it a fact that owing to the failure to be able to make any further deposits on that day or to borrow any money after twelve o'clock that his bank account would have been overdrawn by the payment of either one of these three checks which you went around to stop the payment of?

A: Well I was not acquainted with the exact amount that he had in the bank.

Q: Well didn't he tell you that when he told you to stop the payment of these checks?

A: He simply told me to stop the payment of the checks.

04 13

44

Q Tell what were the other checks besides this one that he told you to stop payment on?

A One was to the order of the Fifth National Bank for \$287.50 --

Q And the other one was to the order of the North River Bank?

A Yes, sir.

Q Those were two checks which you drew?

A Yes, sir.

Q Before you gave this notice this check to the order of the Fifth National Bank had been certified?

A Yes, sir.

Q You did not know it?

A No, sir.

Q It came back afterwards?

A Yes, sir.

Q And that overdrew his account, didn't it? Didn't that check which you had been asked to stop payment on overdraw his account?

A I could not say because I was not acquainted with it.

04 14

45

Q. Didn't you learn it afterwards?

A. Yes, sir.

Q. Can't you say from what you learned afterwards that one of the three checks which you directed the bank to stop payment on on that day overdraw his account?

A. I do not know, sir.

Q. You subsequently learned that it was paid?

A. Yes, sir; after the failure.

Q. And that it overdraw his account too?

A. That I could not say.

Q. You learned afterwards that it overdrawed his account?

A. Didn't you figure up that it overdraw his account?

A. Yes, sir.

Q. Now, as I understand, the other checks which were included in this notice to the bank, one was to the order of the Fifth National Bank, \$287.50 which you had drawn at eleven o'clock on the 14th of May to meet checks which they had drawn on Mr. Sweeney by his customers?

A. Yes, sir.

04 15

40

Q And the third check which you stopped was drawn in favor of the North River Bank \$185.83?

A Yes, sir.

Q And that was drawn for a similar purpose?

A Yes, sir.

Q To meet small checks which they had of Mr. Sweeney's customers?

A Yes, sir.

Q And that was stopped?

A Yes, sir.

Q It was not paid?

A No, sir.

Q But the check on the Fifth National Bank was certified and paid and that overdraw his account?

A Yes, sir.

Q Now don't you know that there was a run on Mr. Sweeney by his customers on that day?

A I do not think there was anything unusual.

Q Do you remember Henry Nichols, a person who had a deposit with him as a banker?

04 16

47

A Yes, sir.

Q Do you remember his coming in there and drawing out 800 dollars in different payments?

A Yes, sir.

Q Didn't you pay out 500 dollars to Nichols out of the currency which was obtained in the morning from Mr. Walsh?

A Well I could not state decidedly; I do not remember paying him that much-- I do not think I did.

The prosecution admit that the witness did do this by direction of Mr. Sweeney; counsel for the defense said that he was not willing to take the admission in this way.

Q Don't you recollect that the amount of currency which was received from Mr. Walsh by the sale of the exchange and the cashing of this check on the 14th of May was between seven and eight hundred dollars?

A That I do not know.

Q Don't you remember it was deposited in the drawer where the currency was kept when McGlone brought it back on that morning?

04 17

48

A. I do not recollect seeing it.

Q. Don't you recollect Mr. Sweeney being out in the midst of the excitement of this panic and coming in and you told him that you had paid Nichols 500 dollars out of the drawer? He came in in a state of excitement and you told him that you had paid him five hundred dollars?

A. I do not remember.

Q. How many drafts did Mr. Nichols draw on that day from Mr. Sweeney?

A. I have not his account here.

Q. Those drafts were all paid?

A. Yes, sir.

Q. Didn't he have a run from other customers too on that same day?

A. Nothing unusual.

Q. Well he had ^{the} usual amount of customers in?

A. Yes, sir.

Q. And they drew the money?

A. Yes, sir.

04 18

49

Q And this amount of Nichols' was unusual?

A Yes, sir.

Q What was the total amount drawn out by his depositors on that day?

A I cannot say.

Q Mr. Nichols drew out between eight and nine hundred dollars?

A Yes, sir.

Q And did not the other depositors in all draw out about 2,200 dollars?

A I could not say; the figures will show; I cannot say decidedly.

Q Well is not that about it according to your recollection?

A I will not answer because I cannot answer decidedly; if I had the figures I could answer.

Q Where are the figures?

A They should be in the journal and also in the deposit.

Q Where is the journal?

A It is in the assignee's hands.

Q Are you with him?

A No, sir.

0419

30

Q Then did you leave him?

A The assignee employed me one week after the failure.

Q When was the failure?

A On the 13th.

Q And the assignee took charge when?

A In the afternoon.

Q And the employer you for a week to aid him in regard to the books?

A Yes, sir.

Q You have had nothing to do with it since?

A No, sir.

Q You do not recollect whether the amount of the deposits

which were drawn out by Mr. Nichols and others on that day were between two thousand and three thousand dollars?

A I do not recollect.

Q There was 800 dollars drawn by Mr. Nichols?

A Yes, sir.

Q Tell me in regard to Mr. Nichols' drafts on that day? Was the 500 dollars the last or the first of his drawing?

0420

51

A I could not say.

Q Well hadn't he made all the drafts all the drafts that he made on that morning before twelve o'clock?

A I think so.

Q The whole of the 800 dollars he drew out before twelve o'clock?

A Yes, sir.

Q (REDIRECT) Who is the Mr. Nichols that you are talking of?

A He was one of the depositors.

Q What is he now? Is he the same man who conducts the business in the same office which Mr. Sweeney had formerly?

A Yes, sir.

Q How is Mr. Sweeney with him still?

A I understand so.

Q He does the same kind of business that Mr. Sweeney formerly did?

A I understand so with one or two exceptions.

Q What are the exceptions?

0421

52

A I understand that they do not deposit accounts.

Q Is Mr. Sweeney there?

A Yes, sir.

Q Mr. Nichols when you testified to as having drawn out 800 dollars on that day is now in the same office in business with Mr. Sweeney?

A Yes, sir.

Q Who is the principal if you know?

A I understand Mr. Nichols is.

Q And Mr. Sweeney is a clerk there?

A Yes, sir.

Q You spoke of a failure--- who failed?

A Mr. Sweeney made an assignment on the 15th of May.

Q And this was after he stopped payment of the check?

A Yes, sir.

Q Now these other checks which have been shown you here, neither of them are to the order of Mr. Walsh, subsequent to the time of this check drawn on the order of Mr. Walsh?

A No, sir.

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

0422

53

City and County of New York ss

JAMES WALSH a witness called by the people and sworn
deposes and says:

Q (MR. FLYNN) Where do you reside?

A 72 Columbia Heights, Brooklyn.

Q What is your business?

A Specie broker.

Q Are you the complainant in this matter?

A Yes, sir.

Q Has that check (No 653) ever been paid?

A No, sir.

CROSS - EXAMINATION

Q Mr. Walsh, you were not at the office when this check was
presented?

A No, sir.

Q What time did you arrive there at the office?

A I did not arrive there on that day, I was sick.

0423

54

Q You swore to the complaint here, did you?

A Yes, sir.

Q You were not present and had no personal knowledge of the transaction at your office?

A No, sir.

Q You had no personal knowledge of what took place on the 14th of May?

A No, sir; my son told me when he came home.

Q You swore to the complaint?

A Yes, sir.

Q Your son is your partner?

A Yes, sir.

Q Now those checks which have been produced here, are they endorsed by you or your son?

A By my son.

The witness now examined a number of checks and said "Those dated October 12th and 15th, November 3rd and 10th and December 15th bear my signature.

0424

55

Q They are all your son's endorsements except five?

A Yes, sir.

Q None of these checks are certified?

A No, sir.

Q They were all deposited in the bank in the ordinary way?

A Yes, sir.

Q How long had you known Mr. Sweeney?

A A couple of years.

Q That is, you first made his acquaintance about two years ago?

A I knew him by reputation, personally I was not acquainted with him.

Q Your business during the year 1883 and 1884 was what?

A Specie broker.

Q And he had been a specie broker?

A Yes, sir.

Q Did he frequently send down to your place sovereigns and other exchange for cash?

A He did.

Q And did he also send checks down for cash?

0425

50

A Yes, sir; he would send the checks in the morning before ten o'clock because his bank would not be opened and it would be an accommodation to him to get them money.

Q You deposited the checks in the usual way?

A Yes, sir.

Q You had done that during the period shown by these checks?

A Yes, sir.

Q While you were there?

A Yes, sir.

Q And the people in your office knew you had been in the habit of doing that?

A Yes, sir.

Q Your son knew you done it?

A Yes, sir.

Q And your bookkeeper who was here to day knew it?

A Yes, sir.

Q As I understand all these checks given for cash were given in that way? They were brought into the office before ten o'clock?

0426

57

A Some of these were to redeem trade dollars. He would borrow money on trade dollars. He would sell them some where else and get me to deliver them. I would take that check and give them to his boy and he would sell them through the street.

Q How frequent were those transations?

A They occurred right along.

Q You had transactions of some sort or other with Mr. Sweeney every day?

A Not every day.

Q You had specie transactions sometimes two or three times every day?

A Yes, sir.

Q You had some transaction with him pretty much every day?

THE COURT. That is immaterial.

Q You had them frequently?

A Yes sir.

Q (REDIRECT) Did your clerk have any instructions to cash this check?

A No, sir.

0427

58

Q And the other checks which you received were they for value in every instance?

A Yes, sir.

Q I understand you to say that you had some sort of a conversation with Mr. Sweeney?

A Yes, sir.

Q When was that?

A It was when he came down to have his checks cashed-- before ten o'clock.

Q Did you have any conversation about this check since that date?

A Mr. Sweeney called down to my office---

Q I do not care about any other transaction--- did you have any conversation with reference to this check?

A Mr. Sweeney told me to be easy about it for a few days or a month and he would straighten it out as soon as possible.

Q (THE COURT) Did I understand you to say Mr. Walsh that Mr. Sweeney was in the habit of sending down checks before ten o'clock in the morning to have them cashed?

0428

A Yes, sir.

Q You cashed them?

A Yes, sir.

Q They had been paid?

A Yes, sir.

Q You do not know what amount?

A They would not exceed 500 Dollars.

Q You often had at ten o'clock in the morning cashed his checks?

A Yes, sir.

Q (REPHRASE) Was the payment ever stopped upon any one of them?

A No, sir.

Sworn to before me this

15th day of September 1884.

POLICE JUSTICE.

0429

60

Prosecution now rested.

Defendant's counsel now moved for the dismissal of the case and the discharge of the defendant on the ground that no case has been made out against him. This check was presented in the usual course of business. It was the habit of Mr. Sweeney, as an accommodation to his business, to send down to Mr. Walsh's office a check for five hundred dollars, for which he received cash. Then in the afternoon Mr. Walsh would deposit the check in his bank and it would come out all right. The check which was sent down on the day in question was for the sum of four hundred dollars, on which the money was obtained and put in the drawer for use. At eleven o'clock on that day one of the most serious panics that has ever taken place occurred in the city of New York. Mr. Sweeney's account was largely drawn upon, and as a result he was unable to meet this loan.

Mr. Justice White said that there is nothing in the evidence to show intent to defraud and he would therefore dismiss the complaint and discharge the defendant.

1st Dist Police Court.

N. Y. SPECIAL SESSIONS

THE PEOPLE

VS.

Wm. M. Sweeney,

Stenographer's Transcript,

September 15, 1884,

DAVID S. VEITCH,
OFFICIAL STENOGRAPHER,

101 CENTRE STREET, N. Y.

0430

0431

Sessions of the Peace


THE PEOPLE
OF THE STATE OF NEW YORK,

against

William M. Sweeney

Bench Warrant for Felony.

Issued *October 28th* 1884

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

TORN PAGE

0432

CITY OF NEW YORK, SS.

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

An indictment having been found on the 27th day of October
1884, in the Court of General Sessions of the Peace, of the County of
New York, charging William M. Sweeney

with the crime of Grand Larceny in the second degree

You are therefore Commanded forthwith to arrest the above named William M. Sweeney and bring him before that Court to answer the indictment; or
if the Court have adjourned for the term, that you deliver him into the custody of the Keeper of the
City Prison of the City of New York,

New York City, the 28 day of October 1884.

By order of the Court,


Clerk of Court.

TORN PAGE

0433

Sessions of the Peace

THE PEOPLE
OF THE STATE OF NEW YORK,

against

William M. Sweeney

Bench Warrant for Felony.

Issued *October 28th* 1884

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

0434

Court of General Sessions of the Peace

OF THE CITY AND COUNTY OF NEW YORK.

THE PEOPLE OF THE STATE OF NEW YORK,
against

William M. Sweeney

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

William M. Sweeney

of the crime of GRAND LARCENY IN THE *Second* DEGREE, committed as follows:

The said *William M. Sweeney*

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

four promissory notes for the payment of money, being then and there due and unsatisfied (and of the
kind known as United States Treasury Notes), of the denomination of twenty dollars, and of the value of twenty dollars
each; *ten* promissory notes for the payment of money, being then and there due and
unsatisfied (and of the kind known as United States Treasury Notes), of the denomination of ten dollars, and of the value
of ten dollars *each*; *ten* promissory notes for the payment of money, being then and there due
and unsatisfied (and of the kind known as United States Treasury Notes), of the denomination of five dollars, and of the
value of five dollars *each*; *ten* promissory notes for the payment of money, being then and
there due and unsatisfied (and of the kind known as United States Treasury Notes), of the denomination of two dollars,
and of the value of two dollars *each*; *ten* promissory notes for the payment of money, being
then and there due and unsatisfied (and of the kind known as United States Treasury Notes), of the denomination
of one dollar, and of the value of one dollar *each*; *three* promissory notes for the payment of
money (and of the kind known as bank notes), being then and there due and unsatisfied, of the value of twenty
dollars *each*; *ten* promissory notes for the payment of money (and of the kind known as bank
notes), being then and there due and unsatisfied, of the value of ten dollars *each*; *ten* promissory
notes for the payment of money (and of the kind known as bank notes), being then and there due and unsatisfied, of
the value of five dollars *each*; *three* promissory notes for the payment of money (and of the kind
known as bank notes), being then and there due and unsatisfied, of the value of two dollars *each*; *four*
promissory notes for the payment of money (and of the kind known as bank notes), being then and there due and
unsatisfied, of the value of one dollar *each*.

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

James Walsh

— then and there being found,

— then and there

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

PETER B. OLNEY,

JOHN McKEON, District Attorney.