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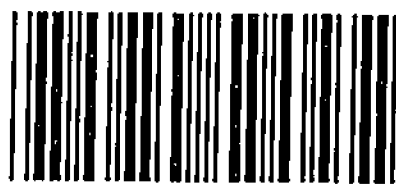
2502

DESCRIPTION:

Birmingham, Ernest

DATE:

05/13/87



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Witnesses:

Justice Woods

M. C. Rogers

Bailed by

Medad W. Stone

Room 50

N. Y. Cotton Exchange
for the reasons stated in the
within report made by me &
recommend that this indictment
be dismissed for the reasons
and authorities

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1892

Scott & Sons

261 N. 3rd

Counsel,

Filed, 13 day of May 1887

Pleads, M. C. Rogers

THE PEOPLE

vs.

B

~~SSA~~

Ernest F. Birmingham

B

[Section Penal Code]

RANDOLPH B. MARTINE,

District Attorney.

A True Bill.

G. A. Men
July 7/89. Foreman

Indictment dismissed

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S. P. Smith. W. Pack Page

STENOGRAPHERS' MINUTES.

N. Y. Superior Court

Justus C. Woods.

vs
William C. Rogers, and ans

Before

James J.

and a jury

New York Jan'y 6 1887

Witnesses:

Direct.

Cross.

Re-Direct. Re-Cross.

Ernest J. Birmingham

✓

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COYRAHAN,
STENOGRAPHER,
NEW YORK, N. Y.

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N. Y. Superior Court.

-----x	:	
Justus O . Woods,	:	Before:
	:	
vs.	:	Truax, J.,
	:	
William C. Rogers & ano.	:	and a Jury.
-----x	:	

New York, Jany. 6th. 1887.

Mr. Stanton appears for plaintiff;

Mr. Blandy appears for defendants.

.

ERNEST F. BIRMINGHAM, a witness called in
behalf of plaintiff, being duly sworn testified as fol-
lows:

Direct Examination by Mr Stanton:

Q You are the Mr. Birmingham about whom these gentlemen
have been speaking, on the witness stand? A Yes

Q Are you engaged in business here in the city?

A Yes.

Q In 1884 you were connected with the newspaper called the
American Queen? A Yes

Q In what capacity were you connected with that paper?

A I was Treasurer of the corporation which owned it and
General Manager^a.

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- Q Do you remember you had a transaction with Mr. Woods, in behalf of the American Queen in the borrowing of this money? A Yes sir
- Q \$500 in February and \$500 in March? A. Yes
- Q You remember those transactions? A. I remember the transactions. I do not remember the exact dates
- Q You gave him those notes (Handing witness papers) A. Yes
- Q And you gave him these assignments of accounts? A. Yes sir. They were signed as treasurer; not as manager.
- Q You gave him these assignments too, did you? A. Yes sir
- Q The paper "The American Queen" was sold out by you soon after that. Can you fix the date? A. It was in the latter part of June 1884.
- Q To whom was it sold? A. To Rogers & Sherwood
- Q Are they in court here now? A. Mr. Rogers is. I do not see Mr. Sherwood
- Q At or about the time of the sale ^{of the} "Queen"---of this newspaper to Rogers & Sherwood, did you have any conversation with Mr. Rogers concerning any accounts which you had assigned to Mr. Woods? A. Yes sir
- Q Did you ^{ever} have any conversation on that subject with Mr. Sherwood? A. Yes sir
- Q Was the conversation which you had with Mr. Sherwood, before you sold the paper to Rogers & Sherwood or after?
- A It was before.

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- Q Where was that conversation? A. Well, I suppose I had several conversation. I remember one was at my office
- Q Before the sale of the newspaper to Rogers and Sherwood?
- A Yes sir
- Q What did you say to him about these accounts of Woods' at that time? A. We went through the books and he examined everything for himself---went right through everything to find the condition the company was in, and I told him just the exact truth in regard to everything
- Q What did you tell him in regard to thses accounts? A. I told him of the assignments to Mr. Woods of certain accounts.
- Q Did you identify the accounts in any way? A. I showed him duplicates of these assignments Exhibits 3 and 4.
- Q That was before the sale? A. Yes sir
- Q Then you had an interview on the same subject with Mr. Rogers, did you? A. Yes sir
- Q When did you have that interview with Mr. Rogers---was it before or after the sale? A. It was before the sale . I could not fix the exact date. I was there in his office almost every day, two or three times a day.
- Q I refer to the time when you went over the list with him. Do you remember whether that was before or after the sale
- A That was after the sale.
- Q How long after? A. Immediately after

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- Q You saw Mr. Rogers in his office? A. Yes sir
- Q What did you say to him upon the subject of these accounts that had been assigned to Mr. Woods? A. I simply asked him what he would do with them
- Q Did you and he have any list of these accounts before you at that time? A. I gave him a list of those accounts before the sale.
- Q Was that list before you at the time of this interview ~~XXXXXXXXXX~~ A. Not that list.
- Q Was there a list of the accounts? A. We had a list of the advertising in the paper at that time and we went off and checked from the other list those which were assigned to Mr. Woods.
- Q Look at the list I show you now and tell me in whose handwriting that list is? A. In mine
- Q Did you make that list? A. Yes sir
- Q What is that list? A. This is a list of the advertising that was in the first number which they were to issue; it was gotten up just before that number went to press.
- Q It contains the names of the parties whose advertisements were to be put in that particular paper? A. Yes sir
- Q Was that list before you and Mr. Rogers at this interview immediately after the sale to Rogers and Sherwood of the paper? A. Yes sir.

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- Q And did you and he go over that list together? A. Yes sir anything
- Q Did you do then in regard to pointing out to him which on that list were the accounts belonging to Mr. Woods, and, if so, what did you do? A. We checked up those which were assigned to Mr. Woods.
- Q Who checked then? A. In regard to that I wont be positive, but they were simply marked "W"; and I would not like to say which one of those it was that checked them
- Q What does that "W" mean? A. Simply to identify them as Mr. Woods' assignments.
- Q Is that "W" in your handwriting? A. Well, I do not think it is. I make a "W" in a different way.
- Q Is it either yours or his? A. It was one or the other of us; yes sir

THE COURT: Mr. Sherwood or Mr. Rogers?

THE WITNESS: Mr. Rogers

- Q What did you say to him when that "W" was put against those accounts? Why was the "W" put against those accounts
- A I was employed by Rogers & Sherwood from that date as General Manager of the company, which included such book-keeping as that branch required, and the sending out of bills; and I asked him in regard to the sending out of bills what he intended to do for those. I told him just what was due at that time or what would be due during the

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next thirty days and asked him what I would do, and then that lead to the checking up of what belonged to Mr. Woods

Q Is that what that "W" meant? A. Yes sir, that is what that "W" meant

Q You then informed him that those accounts were the ones that belonged to Mr. Woods? A: I had previously informed him, but we checked them up again in order to exclude the rest--in order to make a list of collected bills.

Q Now, then, I will read to you the names and amounts of the accounts that are set out in the complaint, and ask you if you find them in that list. Take the first one--- the International Banking Company on which \$75 was collected. Do you find that on that list? A. Yes sir

Q Which one is it? A. It is the ninth.

Q Is that marked "W"? A. Yes sir

Q Take the next one---Frank Kiernan & Co.---A. Yes sir; that is marked "W".

Q W.S. Kimball & Co.? A. That is marked "W".

Q Schmer & Co.? A. That is marked "W".

Q Kidder & Laird? A. Yes.

Q J.C. Ayre & Co.? A. Yes.

Q H.P. Hubbard? A. Yes sir. Those are all marked "W"

List offered in evidence and marked "Ex.12"

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Q Now let me ask you first---when Rogers and Sherwood bought this paper out, I understood you to say you went in there as their General Manager and bookkeeper?

A I was not bookkeeper in any great sense because they had a bookkeeper, but I was the manager and I opened the bills and sent out the bills for advertising. The bills for subscriptions I did not send

Q Can you remember when the first check was received by Rogers & Sherwood on any of the accounts which had been assigned to Mr. Woods? Can you remember which check was first received? A. I remember the first check that was received was one from Dr. J.C. Ayer & Co. which came in within a few days

Q Did you open the letter containing that check? A. Yes

Q What did you do with that check? A. I took it to Mr. Rogers with whatever else there was at the time.

Q You took it to Mr. Rogers? A. Yes sir

Q Did you say anything to him in regard to that check?

A I called his attention to the fact that it was one of Mr. Woods' checks so that he might not perhaps deposit it with the others without knowing.

Q What did he say? A. He said that he guessed he would let it take the regular course. I asked him what he would do with it. He simply said he would let it take the regular

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course. It was something that was none of my business at that time of course.

Q And it was deposited in his bank account? A. I do not know

THE COURT: What was that \$165 for---for work that had been done prior to the time of the assignment to the defendants? A. That I could not say. It was not \$165---this check was not. This was a check for one month's payment. They paid monthly in that case and it was one---I think it was for a month in advance. They are very prompt pay~~ers~~ and I think they paid in advance

BY THE COURT:

Q Then this check would be for services that were to be rendered after the time that the defendants got possession of the paper? A. Well, that is discoverable from the paper.

Q Wont you discover it to-night after court adjourns in reference to all of the claims---that is, whether the amounts of money collected by the defendants were for services that had already been rendered at the time of the assignment to them or whether it was for services that were to be rendered, advertisements that were made after the assignment to the defendants.

MR. STANTON: I do not think it ^{is} in his power

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to do it he is not in their employ.

A If I had that paper, that list with the "W's" on, I could do it (After examining paper) That check was for the month beginning June 15th. ^{ending} and July 15th.

Q When was the assignment? A. June 27th.

Q What was the amount of the check? A. \$55

Q And half of it was for services that had been rendered and the other half for services that were to be rendered?

A It was the tenth month out of the twelve monthly payments
BY MR. STANTON:

Q Who owned the paper at that time? A. It was owned by the corporation

Q At the time this bill of sale was made did you make another agreement with them in regard to your having an option to buy it back again? A. Yes sir

Q Let me call your attention again to the interview you had with Mr. Rogers when that Dr. Ayer's check was handed in, whether he made any remark in regard to paying it to Mr. Woods now or at any other time. / What did he say in regard to having to pay it or not having to pay it? A. I asked him if it were deposited if Mr. Woods would not have a claim against him for it ; and he said if that was the case it would not be any worse later than it was then. The fact of its having gone into the bank account would not involve any wrong in the matter. I do not know what be-

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came of it after that.

Q Well, now did you have any conversation or agreement of any kind with Rogers & Sherwood in regard to their con-
carrying
tinuing or rather ~~xxxxxx~~ out these contracts that were running for advertising? A. Certainly.

Q When was it you had any talk with them on this subject?

A Before the sale

Q How long before? A. Well, if I remember rightly the sale was done up in a very few days and it must have been immediately preceding it.

Q What was the arrangement between you and them in that particular? A. The agreement was that they should carry out all contracts whether paid or unpaid so that the paper should not lose anything, and they did not wish to give any publicity to the fact of the change if possible

Q But they did agree you say as a part of this sale that they would go on and complete all these advertisements that were running. Is that so? A. Yes

Q Did you want that to be done yourself? A. Certainly

Q You had an option to buy it back? A. Yes

Q Within how long a time? A. I do not remember the exact time I remember they extended the time afterwards for us

Q If those advertisements had not been kept going what would have been the effect upon the value of this news-

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paper if they had all been stopped? A. Why we should have lost them all together. They would never have come back again probably.

Q Then your option would not have been as valuable? A. It would not be of any value at all

Q A part of this sale of the Queen to them---a part of it was this agreement that they should carry out these advertisements? A. Yes

Q Did they make that agreement with you after they knew you had transferred certain of them to Mr. Woods?

A Yes sir

Q They knew that fact at that time? A. Yes sir, certainly they knew everything. I opened the books right up to them.

Adjourned to 10.30 A.M. To-morrow.

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January 7th. 1887, 10.30 A.M.

Court met pursuant to adjournment:

Direct-examination of the witness Ernest Birmingham, continued by Mr. Stanton as follows:

- Q Mr. Birmingham, when you made this transfer of the paper and the business to Messrs. Rogers & Sherwood, there were a large number of these advertising contracts in your possession, were there not? A. Yes
- Q Did you deliver those contracts to them? A. Yes sir, everything except what Mr. Woods had of course
- Q Is this the fact: That before you made the transfer to Mr. Woods your company owned quite a large number of these contracts all over the country? A. Yes sir---well, mainly in New York City
- Q And those that we had here yesterday---those covered by the assignments to Mr. Woods you delivered to Mr. Woods?
- A Yes sir
- Q And the rest of them you delivered to Rogers & Sherwood?
- A We delivered all the rest to Rogers & Sherwood
- Q When you delivered these contracts to Rogers & Sherwood was their attention called to the fact that you did not deliver to them the contracts which had been assigned to Mr. Woods? A. Certainly. Those contracts were missing

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Q They were not among the bunch that was delivered to them?

A No sir, they were not

Q And they knew that fact, did they? A. Yes

Cross-examination by Mr. Blandy:

Q The matter of making this assignment to Rogers & Sherwood was somewhat hurried was it not? A. Well, it occupied I guess about a week

Q What occupied a week? A. The arrangement for the sale to Rogers & Sherwood. I will not be positive about the number of days. It did not take very long.

Q When you speak about the arrangements you mean the preliminary negotiations between yourself and Rogers & Sherwood looking to devising some plan by which the continuance of the paper could be assured. That is what you mean, is not it? A. Yes sir. We had been conferring for about that some time ahead.

Q Rogers & Sherwood printed this paper for you long before they took this assignment, did not they? A. Yes

Q And in June your relations with Rogers & Sherwood had reached a point where you were largely indebted to them and they refused to publish the paper any more? A. No

Q Is not that so? A. No sir--well, it is part so; we were indebted to them but they did not refuse to publish the paper.

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Q Are you sure about that? A. Yes sir

Q Did not the paper default in June? A. No sir

Q When was the paper published---on what day of the week?

A I really have forgotten the day. I think it was dated Saturday.

My impression is
Q When did it come out? A. it came out a day or two ahead.

Q Now the publication prior to the 27th. day of June, did not it default? A Well, I do understand exactly what you mean by defaulting.

Q Did it come out? A. Yes sir

Q What day of the week was the 27th. of June? A. I do not remember; I know that there was no number missed. That is all.

Q You are sure about that, are you? A. Yes sir

Q Do you remember the date of the assignment to Rogers & Sherwood? A. You speak of the assignment?

Q The bill of sale. (Handing witness paper) Is that the bill of sale? A. Yes sir

Defendant's counsel offers the bill in evidence

Admitted and marked "Ex. A"

Q This is dated the 27th. of June. You have read it since you have been on the stand? A. I glanced over it.

Q By its terms you observe that you bargained sell, grant, convey, assign and set over unto Rogers & Sherwood the newspaper called the "American Queen", and also all the

copy-rights thereof and all contracts of advertisers together with all moneys due and to grow due upon the said contract and the wood-cuts and subscription lists of the said newspaper and the good-will of the same" and then follows what we lawyers call a warranty in these words: "That you warrant and defend the property sold and assigned unto the party of the second part against all and every person and persons whomsoever." Now that, is the purport of that, is not it? A. Yes

Q Now the 27th. of June---the date of that---was on a Friday Assume that to be so.. Had your paper been published on the preceding Thursday---that is, the day before? A. I am not able to state whether Thursday was the day of publication. I do not remember

Q Was it published the day that this contract was signed which was Friday--now this is all on the assumption that that was Friday? A. Well, there is nothing that fixes that in my mind. I know it did not miss an issue. I know it was published.

Q Was the "Queen" published on Friday or was it in existence as a publication on Friday the 27th. of June 1884?

Objected to.

THE COURT: Objection overruled; Mr. Blandy stated that that was the date. Mr. Blandy assumed it was the day but the witness said he did not know

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it was the day.

Q Now was this paper the "Queen" in existence as a publication on the 27th. of June 1884? A I should say it was in existence.

Q Would you say that the paper was out on saturday which was the 28th.? A. My impression is that it was on that day

Q Then it ^{is} your present recollection that the "Queen" for the week ending on the 28th. of June 1884, that it was published on the day that it was usually published, namely, Thursday, and that it was in existence as a publication on the day that this contract was signed between you and Rogers & Sherwood? A. Well, I do not say that it was published on Thursday. I think it was published at the usual time, whatever time that was.

Q The paper was dated Saturday. Don't you know that it came out on the Thursday preceding? A. Now, thinking it over, I rather doubt that. On second thought I do not think it came out as far ahead.

Q When did it come out? A. I do not remember exatly when it came out.

Q Did not you tell the jury that it came out one or two days ahead? A. I am under that impression. I have no reason to be positive about it.

Q If it came out one or two days ahead and it was dated

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Saturday--

THE COURT: How is this important?

MR. BLANDY: I wish to ask these questions

for the purpose of testing the witness' memory.

Q If it came out one or two days ahead and it was dated Saturday, it would follow that it was published as early as Thursday, would not it?

Objected to as calling for a conclusion.

Objection overruled.

Q I will put a fresh question to you. You told this jury that your paper was dated on Saturday, that it came out one or two days ahead----A. I did not tell them that.

Q What did you say? A. I said my impression was that it came out ahead. Now let me make an explanation----

Q I do not wish it. Did not you tell this jury that that paper came out one or two days ahead? A. No sir. My business now---

Q I do not wish any explanation from you. Had you been sued by Rogers & Sherwood for the amount of the indebtedness to them before you executed this bill of sale?

A I think not with

Q Had not you been served a summons and complaint? A. I think not.

Q Who represented you in the negotiations looking to an ad-

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justment of your matters with Rogers & Sherwood before this bill of sale was signed? A. I think Edward S. Hatch.

Q And who represented Rogers & Sherwood? A. A gentleman that signed that--I forget his name---Mr. Benedict.

Q Did you have any interviews with Mr. Benedict?

A Yes sir

Q How many? A. I do not know as I had but one

Q Where did you have it? A. In the Safe Deposit vault of the Nassau Bank. I think I was at his office also.

Q At his office? A. I think so.

Q And that was before this bill of sale was made? A. Probably it was.

Q Do you tell this jury that before this bill of sale was signed you exhibited to Mr. Benedict or to Rogers & Sherwood, a list of contracts? A. Did I tell Mr. Benedict so?

Q No. Do you tell this jury that before you signed this bill of sale you exhibited to either Rogers & Sherwood or to Mr. Benedict a list of the contracts? A. Certainly. I exhibited ^{it} to Mr. Rogers. I do not remember about Mr. Benedict; he was attorney and quite likely saw it.

Q Was this bill of sale read over to you before it was signed? A. I should say so. It probably was. I do not

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usually sign things without reading them

Q By the language of this bill of sale, you sold all contracts of advertisers^{together} with all moneys due and to grow due upon the said contracts; if ~~you~~ you had arranged with Rogers & Sherwood or had notified Rogers & Sherwood that certain of the contracts with the Queen had been assigned to Mr. Woods, why did not you make exception in this bill of sale? A. We dont sell there anything we dont possess.

Q Is that your answer to that? A. That my answer. We simply sold what was ~~xxx~~ in our possession.

Q There is no schedule annexed to this? ^{is there} A. No sir

Q I understand you to say that you notified Mr. Rogers before signing this bill of sale that you assigned certain of these contracts to Mr. Wood? A. Yes sir

Q Did you also notify Mr. Sherwood? A. Mr. Sherwood came to the office and made an examination of the books.

Q With the exception of the examination of the books, you did not tell Mr. Sherwood that you had not assigned any of these contracts to Mr. Woods? A. I certainly did. I showed him duplicates.

Q Have you the books with you? A. No sir

Q Where are the books? A. I do not know where they are.

Q Are they not accessible? A. Well, they were not to me, the last time I tried to get at them.

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- Q How would an examination of those books bring to Mr. Rogers' notice or Mr. Sherwood's notice that these contracts had been assigned to Mr. Woods? A. I do not mean that he would derive that from the books, but he could examine all the finances of the company, not only the books but its entire financial condition to see whether it was in condition to carry over.
- Q Then an examination of the books would not show that certain contracts had been assigned to Mr. Woods? A. Yes sir
- Q Did not you say a moment ago it would not? A. If you confine yourself strictly to the account books I cannot remember where it came in but certainly it came in somewhere. Yes, certainly it did. They appear on the face of the ledger ---
- Q What was there on the face of the ledger account or any other account to show the contracts that had been assigned to Mr. Woods? A. A statement of the facts.
- Q Is it stated? A. It must be
- Q Is it? A. I cannot say that it is. It must be stated just the same as everything of the company was kept in due form.
- Q Why do you say that? A. Because I never discovered any errors previously in the book.
- Q Did you keep those books? A. I did to a certain extent
- Q Tell the jury whether you wrote anything in the page of

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the ledger in substance that this contract had been assigned to Mr. Woods. Do you mean to say the ledger bears that memorandum on its face ? A. I do not think it does on the contract; but I think in Mr. Woods' account in the ledger it has a memorandum to that effect---that certain contracts had been assigned and a reference to the paper of the assignment.

Q Then there was a ledger account opened with Mr. Woods?

A There was a ledger account opened with Mr. Woods

Q Can you bring us that ledger? A. I do not know that I can.

Q Who has it? A. It in the possession of the counsel of the company

Q Who is that? A Mr. Hatch

Q And you insist in saying that the ledger and the other books of the company are in the possession of Mr. Hatch?

A I suppose they are

Q You said yesterday that you showed duplicates of the assignments to Mr Woods, to Rogers & Sherwood. To which of the firm did you show the duplicate? A. To Mr. Sherwood

Q When? A. In our office

Q What date? A. I cannot state the exact date, but previous to the sale

Q Previous to what sale--previous to the 27th. of June?

A Previous to the sale; yes sir

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Q Where are those duplicates? A. I cannot say whether they are in my possession or whether they are in the possession of Mr. Hatch

Q The assignment in question is a printed form. Who is the author of that? A. The handwriting?

Q No. Where does the printed form come from? A. Mr. Woods

Q It is a form that is peculiar to Mr. Woods---used by him in his business, is it? A. I think so. I do not know but it may have been bought from a stationer.

Q Did you ever see one like it before? A. I never had occasion to use one like it before or since.

Q When these assignments were executed were they executed in duplicate? A. That I cannot say.

Q When did you procure this duplicate? A. At the time this was made.

Q I ask you whether it was signed in duplicate? A. I am not sure whether it was signed or whether it was simply a copy to keep the record straight.

Q Independently of the question whether it was signed, do you claim that you were furnished with what was a substantial copy of this paper at the time it was executed?

✓ A Yes sir

Q And do you claim that that paper was before either Mr. Rogers or Mr. Sherwood before this bill of sale was sign-

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ed on the 27th. of June? A. Yes sir--Mr. Sherwood.

Q Did you ever exhibit that to Mr. Benedict, the counsel?

A I dont remember about that.

Q Did you ever show one to Mr. Rogers? A. I dont remember about that.

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Q Now, your negotiations looking to a settlement of the affairs of the "Queen" with Rogers & Sherwood were had with Mr. Rogers? A Well, they were had with both of the gentlemen.

Q But with Mr Rogers principally? A Mr Rogers being the senior member I suppose he had the final decision in the matter.

Q Most of the interviews were with him were not they?

A Well I was in the habit of going there every day on various matters, and I cannot say how that was.

Q Before you made this bill of sale to Rogers & Sherwood through had not you, ~~to~~ your counsel proposed to Rogers & Sherwood to adjust your differences with them by an assignment of all the contracts the "Queen" held, and had not that proposition been refused? A No sir, I think not. I do not think we made any such proposition. I think the proposition came from them to purchase

Q Is your recollection of what took place on the 27th of June good, or is it vague? A Well, it is somewhat vague I can remember the principal points of it

Q (Handing witness paper) Will you be kind enough to look at that letter and state if that letter was not received your ~~then~~ then counsel from the counsel of Rogers & Sherwood upon this subject? A I cannot say what was received by him.

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Q Did not you have an interview with Mr Hatch on that same day? A This speaks of accepting advertising contracts as security for continuing. That would not include Mr. Wood's contracts

Q You have read that letter? A Yes sir.

Letter marked Ex. B

Q (After reading letter, Ex. B) Now, I ask you whether matters between you and Rogers & Sherwood had not reached a point prior to the execution of this bill of sale where Rogers & Sherwood had refused to further publish the paper unless some arrangement was made by which they could be secured in the indebtedness of the "Queen" to them? A Well, I do not remember exactly about that, but I am sure they were not the first ones to take that measure, because they treated us very kindly throughout in the matter. I understood you to ask me if they did not take the initiative.

Q I wanted to know if the situation was not this; before the bill of sale: That the Queen was financially embarrassed; that Rogers & Sherwood had refused to further publish it unless they were made some way secure for their indebtedness in the past as well as in the future

A The situation was that another dealer, a paper manufacturer had cut off the credit of the company. And at that juncture both Mr Rogers and myself ~~both~~ realized

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that it would not be fair to ask them to continue it without some arrangement being made; and Mr Rogers made the proposition to take the paper provided he could be secured in some way.

Q Do you mean to tell this jury in reference to this letter I have read to you that your relations with Rogers & Sherwood had not reached a point where Rogers & Sherwood refused to further publish this paper unless they were secured for their past indebtedness and for the future expense of publishing that paper? A I never heard of that paper before

Q I ask you whether having heard that letter read that whether ^{your} relations with them had not reached a point where they refused to publish the paper unless they were secured for their past indebtedness and future expense.

Objected to. Objection sustained. Exception to Mr. Blandy.

Q What was the amount of your indebtedness to Rogers & Sherwood just prior to the execution and at the time of the execution of this bill of sale? A I am unable to state

Q About how much? A I would not like to hazard a guess where I do not remember.

Q Was there not in addition to the consideration in the

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bill of sale running notes given by the "Queen" or your corporation to them, that had not matured.

Objected to. Objection overruled

A I suppose they were

Q Look at that and state if that is your handwriting?

(Handing witness paper) A That is my handwriting I should say

Q State what was the financial condition of your company before the execution of the bill of sale--the liabilities? A The financial condition was this.

Q Give me the figures? A \$9,744.77

Q And the assets of the company consisted of the paper?

A Nothing said of the assets

Q The assets of the company consisted of the paper?

A They consisted of the plant and the contracts too

Q What did the plant amount to? A Speaking of the plant I mean more particularly the prestige of the paper and the name and all that sort of thing

Q How long had the "Queen" been going? A I think five or six years.

Q How long had you had it before that date? A We had had it a little over a year

Q And run it in debt to the extent of \$9,000 in a year?

A I do not say that that represents debt. It represents gross liabilities. I do not think that was the net liability.

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Q How long had Rogers & Sherwood been printing the paper

A I am unable to state the exact time. I think for a month or two or perhaps two or three months.

Q What did you do with these duplicate assignments after they were shown to Mr Sherwood? A I do not remember what I did to them.

Q Did you leave them with them? A I think not; I do not know why I should. They were simply copies, records. That is all

Q Do you know where these copies are? A I do not know where they are. I cannot say whether Mr Hatch has them or I. If I have them they are at your disposal

Q You stated yesterday that you went over a list of these contracts with Rogers & Sherwood

When did you do that? A That is when we checked up this "W" you mean?

Q No. When did you first go over a list of the contracts with Rogers & Sherwood? A I cannot state when the date was

Q Was it before this bill of sale? A We had those contracts in the books —

Q Try and answer the question please. You stated yesterday that you went over a list of the contracts with Rogers & Sherwood. When did you ^{go} over that list? A Well, with Mr. Sherwood at least before the sale

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Q Were is that list? A That list is in the regular advertising book of the company

Q Where is that? A That is in the possession of Mr Hatch

Q Cant you get the papers that belonged to this company, from your attorney? A I tried to get them once, but he had a bill against the company and wished the bill settled

Q Have you tried to get them yesterday? A No.

Q Did you try to get them within the past few days? A I am only a witness here. I have had no request to do so.

Q The list you went over, you wish the jury to understand is a list that was in the books of the company? A Yes

Q When did you first exhibit the books of the company to Rogers & Sherwood? A The first time when he exhibited the private matters was just before the---

Q When did you first exhibit the books or any book of the company to Rogers & Sherwood? A I cannot remember Our relations were very confidential and I may have told them something previous to this time I do not remember whether I did or not

Q Did you go over any list of the ^{contracts} with Rogers & Sherwood after the bill of sale? A Yes.

Q What list? A I made out the list which bears the initials "W"

Q Is this the only list that you went over with Rogers &

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Sherwood after the bill of sale was made? A I prepared from this another list

Q Is that the only list in writing that you went over with Rogers & Sherwood after the making of the bill of sale--- yes or no? A I do not know what you mean by "went over"?

The list was made for them and put in their possession

Q Is that the only list in writing that you ever showed or furnished to Rogers & Sherwood of the contracts after the bill of sale was signed? A It is not the only one; but it is the first one.

Q It is the first one? A Yes

Q When did you go over it for the first time? A I cannot say

Q When did you first show it to them? A That resolves itself into a question of when this was made. This is a copy from the books.

Q When did you first exhibit that paper to Rogers & Sherwood? A It was some time before the sale and the going to press of the next number.

Q Now we have the sale ~~be~~ as being the 27th of June. You can associate any date two, three, four, five or ten days before that date, and tell me when your best recollection is of any of those dates that you showed that list to Mr Rogers or to Mr Sherwood? A Well, if the paper did not come out until Saturday which according to your fig-

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ures was the following day, I should say this must have been gone over within twenty four hours.

Q What would that take you to?

The Court: That would be the 28th, then?

A It must have been gone over before the 28th.

Q If the paper did not come out until the following Monday?

A It must have been gone over before it came out.

Q If the paper did not come out until the following Monday when do you say that list was exhibited to Rogers & Sherwood? A Before it came out
think

Q Sunday? A I should ~~not~~ not Sunday; no sir.

Q Saturday? A Saturday or Monday

Q Well Saturday would be one day after the bill of sale was made? A I have said that this was after the bill of sale was made

Q But that is the first list you say you ever exhibited to Rogers & Sherwood? A I did not say that. The first list exhibited was the list in our books from which this was copied. Afterwards I made a third copy.

Q When you went over the list in your books that was before the bill of sale was made? A Yes.

Q Did you mark "W" on the margins of the contracts in the books? A I do not think I did. I do not know why I should because I showed him the contracts.

Q Then does it not follow from that that the first time

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you called Rogers & Sherwood's attention to the fact that Mr. Woods had these contracts was when you exhibited that list? A No sir, I have said distinctly not

Q Well, if you had shown Rogers & Sherwood the contracts which Mr. Wood held before exhibiting that list, what occasion was there for putting the "W" on there? A This list purports to be a list of advertising which was included in the first number to be published after the sale. Now, it was important to know what "Ads" had expired for instance, and therefore this list was made. Then it was important to know what bills should be sent out, because they wanted to collect money as soon as possible. That was the reason I went over this list with Mr Rogers. This was prepared for an office copy---just simply for use in the office, for reference; it is not a part of the bill of sale at all; it has no legal existence.

Q How come you with that paper in your possession if Rogers & Sherwood succeeded to the Paper and all its property and if that was part of the office property? A I will tell you why: Because Mr Rogers thought that the mechanical execution of this Paper might be a little better. It was drawn up in a hurry and he thought I could make out a copy that could be more easily read by outsiders.

Q I want to know how it is that you--- A I am telling you. I made another copy for him and this of course, would have

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been destroyed except by some chance I kept it.

Q Then you claim you made another copy of that? A Yes

Q And gave that to Rogers & Sherwood? A I made it for the use of their clerk in the office

Q And does the copy you gave Rogers & Sherwood bear the initials "W" on it? A I do not remember

Q Whose "Ws" are those? A I have said that I am not sure whether they are mine or Mr. Rogers.

Q What is your best impression? A My best impression is they are Mr Rogers?

Q Do you think you saw Mr Rogers write them? A I remember Mr Rogers stood at his bookkeeper's desk and that we had the papers between us, and that it was checked up—I do not remember in what way.

Q Will you swear they are not yours? A No

Q You will not? A No

Q How came this paper in possession of Mr Woods counsel?

A I gave it to him

Q When? A That I dont remember. It was about the time this suit was commenced when they asked me for information

Q Then you furnished Mr Woods with the information and data upon which this suit is brought? A Only in such a way as would defend myself from the attacks which he said had been made upon me. Mr Woods told me that they represented that I had sold the contracts to them which I

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had previously sold to him. That, of course, I was obliged to defend myself in some way.

Q That is true is not it? A It is not true

Q And for the purpose of defending yourself you furnished Mr Woods with this statement? A Yes, certainly.

Q Were those "Ws" on when you handed it to Mr Woods?

A Yes.

Q Had Mr Woods threatened you with proceedings? A He had previously

Q Wont you be kind enough to look at this letter (handing witness paper). Read to that point (indicating) Do you remember receiving that letter? A Yes sir, I remember something of that kind came up and it is addressed to me.

Paper offered in evidence. Admitted and marked Ex. C.

Q (After reading Ex. C) Do you remember making a pencil memoranda upon the foot of this letter in the following words---

Objected to. Objection sustained. Exception.

Mr. Stanton: I dont-object to his putting in evidence the pencil memoranda that the witness made on the back of my letter

Q After you made these assignments to Mr Woods of the contracts and before the bill of sale to Rogers & Sherwood---

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that is during the interval between--did you collect any of the moneys on these assignments under the contracts?

Mr. Stanton: Which assignment are you referring to?

Mr. Blandy: Your assignments.

Mr. Stanton: I object to that question as immaterial

Objection overruled. Exception to plffs.

Counsel

A I do not remember about that.

Q Dont you remember whether you collected any money at all on any of the contracts that are included in the assignments to Mr Woods for the two \$500 notes? A I certainly never collected any wrongfully.

Q Well, did you collect anything rightfully? A I suppose whatever was right to collect I did collect it. We had to collect it as close as possible to get in what money was necessary

Q It appears by this contract "Ex. 3" that there were some twelve or fifteen contracts assigned from the time that assignment was made up to the time of the bill of sale. Can you tell me how much on these contracts you had collected in money? A. No sir. I have no means of telling

Q Will the books of the company show that? A I suppose

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they would

Q Is there any other way by which you can tell? A. No sir
BY THE COURT:

Q As a matter of fact, had you collected any money? A. There
had been money collected on some of these accounts.

Q And had been kept by you and not given to Mr. Woods?

A No moneys had been kept by me that were due to Mr. Woods
BY MR. BLANDY:

Q Had you paid any over to Mr. Woods? A. I think we had;
yes sir

Q How much? A. I do not remember.

Q Had you paid anything? A. I think we had paid something
to Mr. Woods

Q Then you mean to tell the court that whatever moneys you
collected from the 18th. of February up to the time of the
making of this bill of sale on the 27th. of June under
any of the contracts that are included in "Ex.3", you
paid over to Mr. Woods?

Objected to.

Objection overruled; exception.

A If we collected any and it was due Mr. Woods, we paid
him.

Q But if you collected any money under any of the contracts
that are included in that Exhibit 3 after the 18th. of

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February ~~1934~~, it would belong to Mr. Woods, would not it? A. Well, we had other business with Mr. Woods

Q What other business? A. It is apart from this suit. I had known Mr. Woods before and had had business with him

Q That does not answer my question. Whatever money you collected under any of those contracts after the 18th. of February, would belong to Mr. Woods under that assignment would not it?

Objected to as a conclusion of law

Objection overruled; exception

BY THE COURT:

Q It is your understanding that the money belonged to Mr. Woods? A. Well, I should say that that is a question of law.

Q I am asking if that was not your understanding?

A There were certain moneys on this that belonged to Mr. Woods.

Q Did not all the moneys belong to Mr. Woods under that assignment. Did not you agree to give all the moneys to Mr. Woods?

Objected to as immaterial.

Objection overruled; exception.

A I do not know how I can answer that question very well, because I am not a lawyer. I am not able to say.

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Q When you sell a man a thing you know whether you have sold it to him or not? A. Yes sir

Q And you know whether it is or not? A. Yes sir

Q Then why do you quibble about it? A. I do not quibble about it; but I had other business with Mr. Woods

BY MR. BLANDY:

Q Do you mean by that that you had an arrangement with Mr. Woods by which he permitted you despite that assignment to collect some of these moneys, and that you were not bound to pay it over to him? A. Under certain conditions

Q Will you tell the jury how much of these several moneys you collected before you made the assignment to Rogers & Sherwood? A. I cannot say.

Q Is that your handwriting (Handing witness paper) A. The inside is. I do not know about the cover.

Q Look at the cover? A. I think quite likely it was

Q Is not that your production on the outside? A. I should think it might be about

Q Have you any doubt it? A. I do not know who else would make it up. about

Q Have you any doubt[^] it? A. No.

Q Is that your handwriting? A. That is my handwriting. That I can swear to.

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Q Do you remember delivering this to Rogers & Sherwood?

A That is the copy I referred to. I do not remember the exact date

Q Associating it with the 27th. of June, the date of that sale, when was it? A. Let me see that list of contracts

Q When did you witness "Ex.12". A. I should say that would have been after July 5th, because there is a contract entered here July 5th.

Q You think that this was furnished to Rogers & Sherwood after July 5th)---this paper that I hold in my hand?

A That was a copy of this in more mechanical shape.

Q Do you remember the circumstance of delivering this--what transpired at the time? A. I have told you that

Q To whom did you give it---to Mr. Rogers or Mr. Sherwood?

A I did not give it to anybody; I kept it as bookkeeper. I left it in a desk and simply filled it up.

Q Do you remember the circumstance of at any time delivering this paper to Mr. Rogers or Mr. Sherwood---a matter of memory now? A. Handing it to him in his hand?
No sir.

Q Will you say you did not? A. No, I will not. I was at that time a clerk in the office and it was my duty to keep it

Q When you say you were a clerk in the office you mean what? A. I mean I was Manager of the "Queen" with cer-

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tain clerical duties

Q Connected with the "Queen"? A. Connected with the "Queen" only.

Q And what business did Rogers & Sherwood run independently of that? A. They had a printing business. But my desk was inside their private office, and that remained there in their private office. To that extent it was delivered to them

Defendant's counsel offers the paper referred to in evidence.

Admitted and marked "Ex.D"

Q Going back for a moment: Is it really true that the contracts covered by the other assignment, "Ex.4", the one dated the 29th. of March, under the same arrangement that you spoke of a moment ago, you were permitted to collect

A This expired in May.

Q You dont answer my question. (Is it true that your arrangement with Mr. Woods also gave you the right under certain circumstances which you have stated, to collect the moneys under the contracts that are included in "Ex.4"?)

A Under certain circumstances, yes sir

Q Then the same arrangement substantially existed as to both of those assignments? A. Yes sir

Q Now, you say you have nothing here which will enable you to tell the jury how much money you collected under any

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of these contracts included in Exhibits 3 and 4 before the bill of sale to Rogers & Sherwood? A. I have nothing here whatever.

Q. Look at Exhibit D and answer the question?

Plaintiff's counsel moves to have the last answer stricken out

Motion denied; exception.

Q. Look at that list and tell me how much money between the 28th. of February and the 27th. of June you had collected on the International Bank Co. contract? A. It is marked here "Two-quarters paid"

Q. And how much would that be? A. That would be \$75

Q. Now have recourse to the same paper and state how much

you had collected from Francis Kiernan & Co.? A. Three-quarters paid. It is marked here.

Q. How much? A. That would be three-quarters of \$75, whatever that is

Q. \$56.75? A. \$56.75

Q. Now take the case of W.S. Kimball & Co.? A. It is marked three-quarters paid---three-quarters of \$145.60

Q. That would be \$109.20? A. I suppose so

Q. Sohmer & Co.? A. Four months paid; that would be \$50

Q. Kidder & Laird? A. Three-quarters paid---three-quarters of \$150, that would be \$112.50

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Q Dr. J.C. Ayer & Co.? A. Nine months paid out of \$660, would be three-quarters of that.

Q That would be \$495. I have made a calculation, if you adopt my figures? A. I suppose it is correct.

Q H.P. Hubbard? A. Two-quarters paid. That would be \$100.

Q Shepard Knapp & Co.? A. Sheppard Knapp is marked paid

Q That would be \$150? A. \$150

Q That is an instance of collecting the money in advance, is not it, accommodation or something of that kind?

A I think so; yes sir. There was the purchase of office carpet or something of that kind which was offset against it.

Q Now H.H. Warner October 8th. 1883? A. It is not in the list. I do not find it

Q C.L. Downs? A. Nothing paid on that.

H.H. Warner is one of the accounts that you purport to have

assigned to Mr. Woods, is not it? A. I remember that

there was such an advertisement. Of course the paper will show whether it is there or not

Q Take that paper (Handing witness Exhibit 4) and look at the second line? A. Yes sir

Q And what is the aggregate of the contract? A. \$325.

Q Can you tell from memory or any other source how much of that \$325 you had collected from H.H. Warner after the

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28th. of February and before the 27th. of June? A. I cannot.

Q But do you remember that you collected some? A No sir. I remember that that firm was always pretty hard to get anything from. That is all I remember about that.

Q Let me refresh your recollection. Did not you collect \$47.07 and \$277.93? A. Hardly, because that would have made more than the total.

Q \$47.07 before making the notes---that is, before the assignment to Mr. Woods--and \$277.93 between the making of the notes and making the bill of sale to Rogers?

A I don't know about that.

Q You have not, anything that would inform you of that?

A No sir, I have here certain figures which show what would be due during that time.

THE COURT: If there was anything due on the Warner contract why was not it on this paper?

THE WITNESS: Because there was nothing due

Q Then had not it all been collected? A. My impression is that it has not been paid yet.

Q Will you swear that it had not all been collected before this bill of sale was made to Rogers & Sherwood?

A I will swear that it had not all been collected.

Q Is not H.H. Warner the Safe Cure man? A. Yes.

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- Q Eminently responsible? A. We did not deal directly with him; we dealt with a certain man in his employ, who was pretty hard to get along with and who did not pay his bills regular.
- Q Does not it follow that because it is not on that list that you made out, that H.H. Warner and Co. had paid their claim? A. The only reason I omitted it from that list was because Rogers and Sherwood had nothing to do with it
- Q Why had they not anything to do with it? A. Because the time of the advertisement had expired. That is what I should judge
- Q But it was one of the claims that had been assigned to Mr. Woods? A. But we did not sell Rogers & Sherwood those that were assigned to Mr. Woods.
- Q But it was one of the contracts that was assigned to Mr. Woods? A. It appears to be.
- Q If you had collected all the money that is due under that contract with Wardner; what did you do with it? A. I dont know.
- Q Did you pay it over to Mr. Woods? A. If we had collected it?
- Q Yes. If between the 23th. of February and the 27th. of November---which are the two outside dates of the first note and this Bill of Sale---if you had collected all

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this money from Mr. Wardner---\$325 what did you do with it? A. The answer to that is covered by my previous answer---that if anything was collected by us which was due to Mr. Woods and was not covered by any other agreement with Mr. Woods it was paid over. That covers the whole question.

Q Now, reason that out in your own mind; did you pay any of that money to Mr. Woods? A. I cannot give any other answer than the one I have given.

THE COURT: Yes, you can answer. Did you pay any of it to Mr. Woods?

THE WITNESS: Not as an individual account I don't think.

Q Did you pay any of the other moneys that you collected between the 23th. of February and the 27th. of June, over to Mr. Woods? A I can only say conditionally if it was due, and not covered by other agreements. That is all I can say about it. Mr. Woods has sworn that we did not pay him. I have no reason to doubt his veracity in the matter.

Q You surely have memory sufficient to know whether you went to Mr. Woods' office and took him a check for \$100, \$200, \$500 or \$1,000 after the 23th. of February 1834?

Objected to as immaterial.

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Objection overruled; exception.

THE WITNESS: These that I have read off are not necessarily between these dates.

THE COURT: They are all before the 27th. of June?

THE WITNESS: Yes sir, but whether they were between that time and the 27th. of February there is nothing to show.

Q (Question repeated) A. In reply to that I did answer that I was in the habit of passing checks back and forth and at more than one time passed checks of \$1,000, or so, and I cannot say on what date

BY THE COURT:

Q Did you ever tell Mr. Woods that you had collected any of this money? A. I suppose we did. Yes sir.

Q Do you have any present recollection of that

A Not of any distinct time but I suppose we did.

Q What did Mr. Woods tell you to do with the money after you collected it? A. Well, I do not remember just what was done about it. There was a misunderstanding which this letter shows and we are not allowed to state what the result of it was.

Q What was your understanding? A. My understanding was that by putting other contracts in the place of these and

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keeping that good we could collect on them. That was the understanding under which we had been running and Mr. Woods did not understand it that way and that led to this rather sharp letter but afterwards the matter was explained satisfactorily, as I understood it; and I had no motive in coming here to-day except I had been subpoenaed and had to come. I did not come voluntarily.

BY MR. BLANDY:

Q / Then your understanding was with Mr. Woods that notwithstanding this assignment of these contracts you had the right to go on and collect the money under the contracts and that you could replace the contracts so pledged by those two assignments by other contracts with your company

A That was my understanding, yes sir

Q Then you did, notwithstanding these assignments go on in the regular and ordinary way and collect from time to time, whenever you could and whenever it was due the monies under these different contracts that are hypothecated, by these assignments? A. That made no difference in the ordinary course of business.

Q And you went on and collected in the ordinary course of business just as if the assignments had never been made?

A Keeping all the time, that assignment good by other contracts?

Q By the substitution of other contracts? A Yes.

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Q Then do I understand that these assignments are renewals of prior assignments? A. Yes---not exact renewals but we had been getting assistance from time to time and the contracts were changed

Q And are these two notes for five hundred dollars, each renewals of former notes? A. Well, they follow the payment of other notes. Whether they were the exact amounts or not, I am not quite sure.

Q Did you get five hundred dollars on the 23th. of February in cash from Mr. Woods and did you get five hundred dollars in cash on the 29th. of March from Mr. Woods, that being the amount of the two notes?

Objected to, objection overruled; exception.

A I don't remember about that.

Q Then you cannot tell us whether those two notes are original notes or renewal notes? A. I cannot state positively no sir

Q How long had the transactions between you and Mr. Woods been going on prior to the 23th. of February? A. I think probably there had been half a dozen previous notes.

Q Did you have any after the 29th. of March? A. No sir

Q That was the last? A. We intended to renew those as usual but through other matters we did not, and that is the way this question dropped? A. I expected they would be renewed in May.

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Q But in June the paper collapsed in the way you have stated?

A Practically, yes sir

Q The questions that I have propounded to you in reference to the list only includes the claims that are set out in the complaint. I make myself understood by saying that?

A I thought it included one or two others.

Q Only one other?

A Was Shepard Knapp & Co. in that list?

THE COURT: "Shepard Knapp" is not in the complaint.

Q Then I think Wardner and Shepard Knapp among my questions are the two that are not included in the complaint, but there are other contracts assigned by these two assignment. Now, can you tell me taking the others---that is, taking those that I have not questioned you about---how much money you had received on those from the 23th. of February to the 27th. of June?

A No sir, I cannot.

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Q This paper will give you some information? A These amounts that are marked "paid" were paid previous to the 27th of June; and I cannot say whether they were paid during that period or not. They may have been and may not.

Q Then I will take it that way. Give me before the 27th of June? A I should say ~~that~~ that is what is meant. I dont say the 27th of June. I say before the date that this was made (indicating Ex. D).

Q Now, take the next in order--- A You asked me a while ago on what date this paper Ex. D was prepared. I said I did not know, I thought it was about July 5. Now, I find the date on it July 5.

Q Now come to C. C. Ford?

Mr. Stanton: Is this confined to the collection of moneys before the assignment of sale to you?
the bill of

Mr. Blandy Yes sir.

A Yes sir.

Q Now, how much in C. C. Ford's case---how much had been received on the contract before? A The only one I find here is one in October 1884.

Q Dont you find one June 7, 1883? A No sir

Q Then it would follow that all that had been paid, would not it? A Paid or accounted for.

Q Which would be equivalent to payment by some arrangement?

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A Yes sir

Q How much was that? A. I dont find it here. I do not know.

Q It appears by the assignment you executed to be \$100. That would be right, would not it? A. Whatver is there I suppose it is right

Q It would be \$100. That is right not it? A It seems to be there (indicating) \$100

MR. STANTON: Did the witness collect that \$100?

MR. BLANDY: It was paid or accounted for before the assignment

MR. STANTON: Who was it paid to?

THE WITNESS: It was paid to the company or accounted for in some way.

Q Take the name of A. Groboff? A. I dont find that here

Q That is \$22.68? A. I dont think I shall find any of these here you mention.

Q Because they were paid? A. Because they expired before the date

Q And they would be either paid or accounted for? A. They would be either paid or accounted for

Q I want to get the figures. That is \$22.68? A. Some of those have not been paid yet as I understand. One or two parties failed I think,

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Q Now, I am trying to get some figures to form a basis?

John F. Phillips & Co.---A. \$10

Q No---\$23.40? A. That is another account.

Q That would be paid or accounted for? A. Yes

Q The United States Mutual Accident Association? A. I
dnt find that here.

Q \$125? A. I dont find that here

Q That would be paid or accounted for? A. I suppose so.

Q Hiram Sibley & Co. \$30. That you dont find there? A. I
dont see it

Q That was either paid or accounted for to the company?

A Yes

Q Samuel Budd \$30? A. I dont find that

Q That would be paid or accounted for? A. Ye sir, I
suppose so. Jr

Q N.W. Gileston, \$18.95. Do you find that there? A. My
impression is it has not been collected, the party failed
I do not know whether it is collected or not

Q Now, I am going to Exhibit 4, beyond what we have already
had I think. The gastrine Manufacturing Company \$60

A I dont find that here.

Q You do not?

A No. I do not think that was paid. I think those parties
failed

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Q Let me show you a memorandum in your own handwriting. You collected \$15 and as to the \$45 they ran away? A That may have been the case. I have had some such impression.

Q That is \$15 of the \$50? A Yes

Q There is J. L. Shaw \$37.50? A I don't find that.

Q That would be paid or accounted for to the company?

A I don't find that here. I suppose so.

Q Then when you told Mr Rogers or Mr Sherwood at the time that you said you checked over this account and marked "W" opposite, or at any other time, that you brought to the notice of Rogers & Sherwood, as you say, that particular contracts had been assigned to Mr Woods, did you tell Rogers & Sherwood at the same time that you had an arrangement with Mr Woods by which you had the right to go on and collect these moneys, and to substitute other contract? A I should think that I must have told him that.

Q Are you sure you did? A I would not like to swear to it but I should think that would have been the probable course anyone would pursue.

Q But you have not any decided recollection on the subject?

A No, I have not

Q When you told Mr Rogers that that \$55 that was collected from Dr. Ayers was money that belonged to Mr Woods, and you asked Mr Rogers whether he had not better give it

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over to Mr Woods, what occasion was there to tell him---

Q You made a mistake. That is not what I asked him

Q What did you ask him? A I simply jogged his memory that that was one of those assigned, to call his attention to the difference between that and the others.

Q But you have just told us that there was an arrangement that notwithstanding these assignments to Mr Woods that you could go on in the regular way? A I did not suppose that would apply to Rogers & Sherwood? A

Q Why would not it? A It did not occur to me it should

Q Any of the moneys you collected from time to time before the "Queen" passed into the hands of Rogers & Sherwood and after the execution of these two assignments.—Did you make an exceptional entry in the books of the "Queen" that the "W" opposite was to indicate that these moneys were the property of Mr Woods? A I don't remember about that. I may have done so and I may have not.

Q What do you think about it? A Well, I have no distinct impression.

Q Did you regard it as the exclusive property of Mr Woods? when you received moneys on those different contracts,—before our bill of sale I am questioning you about now. The moneys which you collected from time to time on any of these contracts named in those two assignments to

Mr. Woods---when you received those moneys did you keep them separate and apart from the other moneys of the "Queen" or did you do any thing to distinguish them? A. I did I kept some mark on them so that when the note became due there was the amount which had been collected and that amount was reported to Mr. Woods and was made good by other contracts /

Q By other contracts? A. Yes sir

Q Have you an account of those moneys? A. I have not now

Q Tell the jury in round numbers how much money you collected after the 28th. of February 1884 and before the 27th. of June 1884, in that way from any of those contracts so hypothecated? A. I have not the slightest idea. I do not know how you could think I could have an idea at this date

Q But you have called off from this list those sums, and have not you formed any idea in your mind what they amount to?

A No sir and besides a great portion of that was before February. I cannot keep track of those figures.

Q Can you tell the jury what proportion of the aggregate of the sums you have read off as being paid before the 27th. of June, what proportion of that aggregate was collected by you before the 28th. of February?

MR. STANTON: Before the 18th. of February
you mean?

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MR. BLANDY: Yes, that should be the 18th. all the way through.

A No, I cannot. I suppose you have it figured there

Q You can tell very largely about that by looking at this schedule that is on the two assignments where it says "Due in ninety days". Now take that schedule at February 18th.? A. If all those were paid on the date when they were due, it would have represented \$602.19

Q That is on that exhibit? A. If all those had been paid on the date of maturity, that would have been \$602.19

Q On Exhibit 3? A. Yes

Q Which is the note of February 18th? A. Yes

Q Now then answer the same question in reference to Exhibit 4?

Objected to on the ground that it has been proven here that they were not all collected.

Objection overruled.

A Let me say that this list of figures was made up, he gave us some idea of the proper amount of collateral to be placed on this assignment, and I suppose that was rather an estimate than a calculation as to what was unpaid. Now, some of that may have been paid previously

THE COURT: It would be about the amount?

THE WITNESS: The idea was to get about 25 per cent above the face value. The face value being

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\$500

Q If that be so why did you have fractions. Here is a balance of \$602.19. That represents the actual sum that was due under the contract, assuming that would be paid.

A This ~~is~~ one (indicating) don't say ⁱⁿ ninety days. It is the amount that would be due during a period of ninety days. This (indicating) is supposed to be the amount that would naturally fall due in sixty days. This may have been paid previously or it may not

Q Previously to what? A. To the making of the assignment

Q This purports to be the sum that would become due between the 18th. of February the date of the making of the assignment and ninety days does not it? A. Yes sir, but the assignment covers the whole contract.

Q But there is another column for the whole amount A. You don't understand me. This \$50 may not be the last \$50 it might be right in the middle

Q You mean to say that the contract ran and covered a period that would go beyond ninety days from the date of the making of that contract? A. Some of them did and some did not go ninety days.

Q Now give me the aggregate of the amount that would become due on the contracts that were pledged under Exhibit four within sixty days? A. \$640.40

Q At some time between 18th February 1884 and the 27th.

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of June 1834 those two several amounts were collected, 53
were not they? A. No sir, I should think not

Q They were collected with the exception of the instances
of failure? A. Well, I don't think so, because perhaps
some of those amounts were paid before. As I said, this
column was simply meant to guide us in forming an estimate
of the amount of collateral we should put in.

Q I wish you would not throw in these uncertainties unless
you have a reasonable belief that they exist Do you mean
to swear now that any of the sums which are in this
last column and which in Exhibit 3 ~~put up~~ foot up
\$602.19, that the payment had been anticipated before
the 13th. of February 1834 . Now I am asking you to
swear to a fact? A That is an uncertainty and therefore
I cannot swear to it.

Q And you won't swear they had? A. No sir

Q And is that also true ~~xx~~ in regard to Exhibit 4.

Q Now don't you know that none of those sums in that column
had been anticipated or paid before the execution of that
paper Exhibit 3? A. No sir I do not

Q You do not mean to say that you would make an assign-
ment ~~of these sums~~ over to Mr. Woods of sums and set out in
the assignment that those sums would become due in ninety
days - if the sums had been previously paid? A. The
upper part of the assignment would show what amount was
due.

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Q You do not mean to tell this jury that you would deliberately make a statement of that kind and make an assignment of a claim to Mr. Woods that had been previously paid? A. Certainly not. I would not make an assignment of what had been previously paid.

Q Does not it follow from that answer and this statement that these several sums, footing up on Exhibit 3, \$602.19 would fall due in the ordinary course of events within that 90 days? A. Yes sir, and then there is the evidence itself. I do not know why I should swear to what I do not know. The assignment is for the portions not paid, and whatever was not paid was assigned to Mr. Woods.

Q Now, do you know that the figures which you have called off as having been paid on these contracts---I mean the contracts hypothecated by Exhibits 3 and 4--between the 18th. of February 1884, and the 27th. of June, foot up \$1,587.08? A. You figure them up. I will take your figures.

Q Have you any doubt of that? A. I have no doubt of your figures?

Q Can you tell the jury what proportion of that \$1,587.08 had been received by your company before the 13th. of February 1884? A. No sir, I could not tell without

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putting in a calculation as to what was probable in the matter. That is all anybody can tell.

Q By footing up the amount due in this "due" column, and taking the amount of the aggregate of the contract, does not it show that at least those two sums \$640.40 and \$602.19, were due between the 13th. of February and 27th. of June? A. That is what it purports to show.

Q I want you to give the Court, the amount of the loss by failures. They are all figured there.

A That I cannot tell.

Q You will find them there?

A One is marked "Failed H.P.Hubbard \$50 and \$14.04"

Q Under the column of the amount due in 90 days?

A \$64.04

Q A loss?

A Yes sir, H.P.Hubbard. That is the only one I see so marked on this paper.

Q Take the other paper?

A Then there is Gastrine Company \$45.

Q Those two sums, so far as your best recollection serves you, are the only two sums that resulted in failure under that "Due" column?

A No sir

Q What other is there, A. I don't like to stand up here and cast reflections upon any of these advertisers here, but

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there is one other that I do not think was paid.

Q Who was that? A. C.L. Downs & Co.

Q How much was that? A. \$13.20. I do not think that that has been paid.

Q Is there any other? A. Then there are two more here from Hubbard There are \$115.52.

Q But did not you get that before the failure? A. No sir This was not through failure; but it was through a dispute on their part, which dispute was transferred to Messrs. Rogers & Sherwood.

Q I am trying to simplify matters so that we can get something in the shape of a balance; of those two several sums of \$640.40 and \$602.19, how much was lost? A. Well, besides those figures I have given here I should say here (indicating) ^{on} Hubbard \$115.52. Then on Warner & Co. I am under the impression that something was lost, but I cannot remember how much it was

Q Can you give the jury what proportion of that twelve hundred and odd dollars was lost? A. \$277 --- it was a certain proportion of that whatever it was

Q You do not give us the information now? A. I should say it might have been about one month on that contract, which would have been perhaps \$25, and if those were added up that would give the total.

Q Tell the jury how much in the aggregate of those two

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sums were lost? A. Let me add this: N.H. Eggleston Jr \$18.95

Q I repeat my question.

MR. STANTON: I object to that. He gives the items and Mr. Blandy can add that up.

Objection sustained.

Q You told us yesterday that the first check that was received by mail, which was Dr. J.C. Ayre & Co.'s, which came in within a few days of the making of this assignment; that you took it to Mr. Rogers and you called his attention to it; that it was Mr. Woods'; and that he then said that he guessed he would let it take the regular course? A. Yes

Q Is that true? A. That is true, yes sir

Q How much was the check? A. Well, I suppose it was \$55

Q Is this Mr. Rogers the gentleman sitting second from me (indicating) A. Yes

Q And you know him very well? A. I knew him simply at that time

Q So, as to pick him out from any other men? A. Although I have not seen him since to my recollection.

Q Where did that interview take place? A. That took place in his private office

Q You are quite sure that check came by mail? A. It always was in the habit of coming by mail.

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Q But this is a circumstance that you are testifying to now as an actual recollection? A. I dont recollect how it came

Q Did not you tell the jury yesterday that it came by mail? A I said I was in the habit of opening the mail, and I supposed it was among the mail. A man does not usually walk over from Boston to pay a check

Q I ask you, are you sure, that the mail brought in a check from Dr. Ayer for \$55 and that it fell to your lot to open it; that you opened it and that you found the letter containing the check and you took it to Mr. Rogers?

A I am sure about all that except as to the mail.

Q And why is your recollection indistinct----

THE COURT: How is this material.

A I am pretty positive about the mail because they lived in Lowell, Mass.

Q What is that?

A I will say that I am positive that it came by mail if it is of any advantage to you.

Q Have you any date when it came?

A Not exactly.

Q Only that it was two or three days after the assignment?

A In regard to the date, my recollection is that they were

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the promptest pay of all our customers. It was a large contract and we were always glad to have checks come in and they were always in the habit of paying very promptly the first of the month. Just as soon as a bill was sent a check came back. That is the reason I remember it

Q What date will you pick out as the outside date when that check was received? A. That I would not like to guess

Q But you said it was within two or three days? A. Yes sir I will say that---within a few days within the first of the month. Perhaps one month it may have run up to the 10th. or 15th. Generally it came in about the 4th. or 5th.

Q You think to the best of your recollection that it was about the 10th. day of July? A. My recollection is that it was earlier than that. I think so.

Q Then you made out this statement to Rogers & Sherwood on the 10th. of July. Was it before you made that (Exhibit D) out or afterwards? A. It must be after this was made out because it is not credited here as paid. I see it is marked "Due July 1st. \$55" This was apparently a check which came in and that was crossed off by the ruler. That is evidently not my crossing because I never use a ruler.

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- Q Then later, when Mr Stanton asked you to remember a little more that took place in that same interview---that is the interview when that \$55 check came---you also stated that you asked Mr Rogers if Mr Woods would not have a claim, and that he stated in substance (I am not taking the exact words) that Mr Rogers stated that if he had any claim it would not be any worse later on. That was part of the same interview? A Yes sir
- Q At the time that check came? A Yes
- Q Are you sure that that interview took place with Mr Rogers? A Yes
- Q And that it came about at the time that \$55 was paid?
- A Yes
- Q Up to that time had Mr Woods made claim on you? A He made this claim of which you have shown me the letter, which as I have said was based on a misunderstanding, which was afterwards made right.
- Q Made right by his forbearing to sue you? A By my stating there was a misunderstanding and he told me he did not understand it the same way as I did; and we agreed the best way was not to come to hostilities.
- Q Up to the time of your having this conversation with Mr Rogers had Mr Wood seen Mr Rogers? A That I cannot say
- Q You know---you were in the office every day? A No, I do not

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- Q Were you not there when Mr Woods first called in and notified Mr Rogers that he had these assignments? A I was not there at that time
- Q But you know who called in? A I heard Mr Woods testify so yesterday
- Q That is not the first you heard of it? A He told me before he had done so, but my recollection is I was not there when he called.
- Q Just as soon as Mr Woods saw Mr Rogers and told him he had these claims, did Mr Rogers speak to you about it?
- A After seeing Mr Woods?
- Q Yes. A I dont remember. Well, we had conversation about it, but whether he brought that up at once I do not remember. We had conversation over the matter
- Q Did not Mr Rogers have a conversation with you after Mr Woods had called upon him, and did not he tell you that Mr Woods had called and had formally notified him that certain of the contracts included in the sale to them had been claimed by Mr Woods and did not you say to Mr Rogers "That is a private matter between myself and Mr Woods; there is an understanding existing between myself and Mr Woods; there ~~is~~ ~~an~~ ~~understanding~~ has always been an understanding; I had certain rights notwithstanding those assignments, and it is a matter that I will go and adjust

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with Mr Woods". Did not you have a conversation of that ⁶⁷ kind? A No sir, I never said anything of that kind

Q Did you tell Mr Rogers that this was a private ^{matter} between you and Mr Woods, and that notwithstanding the language of the assignment to Mr Woods that there was an arrangement between you and Mr Woods by which you were to go on and collect the moneys? A It is quite likely that I told him of the arrangement which I understood existed between myself and Mr Woods as to the previous matters.

Q Did you tell him that before this \$55 check came in from Dr Ayer, or did you tell him afterwards? A That I dont remember because it was really a matter that was not of importance to Rogers & Sherwood. They understood that they were responsible for what came in after that day. That I believe they understood distinctly, and they did not say that Mr Woods had claimed this matter at all.

They never used such an expression to me. That would not imply that they did ^{not} believe they owed it.

Q Where did Mr Woods get the data of the several sums that are set out in his complaint, that Rogers & Sherwood collected? A That I dont know

Q Did not he get it from you? A I understood him to say that he got it from Mr Rogers

Q Dont you know that when Mr Woods first called on Mr Rogers, that Mr Rogers showed him his books and papers

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and showed him what moneys had been received on those contracts which Mr Woods said had been assigned to him?

A That I dont know anything about.

Q You ~~had~~ know they had an arbitration proceeding with a view to submitting to two gentlemen their differences?

A When you mentioned that yesterday I had a faint recollection of something, but I have only a faint recollection and I do not know exactly what it was; but my recollection agreed with what Mr Woods testified on the stand yesterday, and that was that they ^{thought they} had some claim in equity to the matter which they might not have in law. They admitted that in law they would have no claim; but he thought that having carried the paper over the summer, he ought to help them out

Q Do you pretend that you were present at any interviews between Mr Woods and Mr Rogers? A No

Q Then you do not know what took place? A Not between them; no.

Q Do you know how long Rogers & Sherwood ran the "Queen" after this bill of sale? A About six months

Q And do you know what was the result of their running?

A Financially?

Q Yes?

Objected to. Objection sustained.

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Q Do you know that they ran it at a loss? A Yes sir. Well I do not know; I suppose they did.

Q And do you know what ultimately became of the paper?

Objected to. QUESTION not pressed

Q You stated yesterday I believe in answer to Mr Stanton that simultaneous with the bill of sale to Rogers & Sherwood there was another contract called a privilege of re-purchase executed by Rogers & Sherwood to you?

A Yes

Q (Handing witness paper) Is that it? A This appears to be executed by both parties.

Q That is it, is not it? A That appears to be an option for three weeks

Q That was the paper that was executed at the same time that you or your company executed the bill of sale to Mr Rogers? A Yes

Pliffs counsel offers the paper in evidence

Admitted and marked "Ex. E"

Q At the time of the execution of the bill of sale to Rogers & Sherwood, what papers passed, or documents of any kind passed, from you representing your company to Rogers & Sherwood beside the bill of sale. What did you hand over? A We handed over everything except the private books of the company

Q When I say "Handing" I mean what did you do with your

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own hands deliver? A I do not think I delivered anything. We had wagons to transfer the furniture and every thing

Q When were the books and the furniture and the other property delivered over to Rogers & Sherwood under this bill of sale? A Of that I am not positive of the date.

Q Now I want you to tell the jury of all the papers of every character that passed between Rogers & Sherwood and you or you and Rogers and Sherwood on the 27th of June?

A Why, I could not remember what they were

Q Was there anything except the bill of sale to Rogers & Sherwood and this privilege back to you? A You mean legal papers connected with the sale?

Q Legal papers or any other papers---pass one from the other and delivered one from the other. I mean actual physical delivery? A All papers were handed over

Q What did you hand over? A Every paper that was in the office

Q What were they? A That I dont know; I simply said "here is your property, gentlemen, and take them".

Q Where was the bill of sale signed? A In the Nassau Bank Safe Deposit Vault

Q And Rogers & Sherwood's office was in Barclay Street?

A Yes

Q At the time of the delivery of the legal papers, what was

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down to that point. You understood

E was drawn that that was a bind.

Rogers & Sherwood and your comp.

re-convey to you upon the terms

the matters that are referred to

you? A. Yes sir

Q You never availed yourself of the privilege

to this extent that we asked to have it extended. Th
is all.

Q It was extended? A. It was extended.

Q And within the extended time you were further urged by
Rogers & Sherwood to avail yourself of your privilege?

A I might have been

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actually then delivered between the parties in the Nassau Bank? A. I don't remember whether anything else was delivered or not

Q Where did you go from there A. That I don't remember

Q Did you go over to Rogers & Sherwood's office? A. That I don't remember

Q When did any other document or any other character or any other paper passed between you and Rogers & Sherwood after the papers that passed to the Nassau Bank? A. I don't remember

Q Was not it this Exhibit D? A. That was another paper that passed between us at all

Q Was not this Exhibit D the next paper writing or printing or whatever you like to call it that passed from you representing your firm over to Rogers & Sherwood after the signing of the two contracts? A. No sir

Q What in the meantime passed between you? A. This Exhibit D did not pass---

Q Now understand my question. From the time of the delivery of the papers at the Nassau Bank up to the time of the delivery of Exhibit B what in the meantime had been placed by your own hands in the hands of Rogers & Sherwood? A. That I do not remember.

Q (After reading Exhibit E) Now, I have read Exhibit E

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Folio 1.

Superior Court of the City of New York.

Justus O. Woods,
plaintiff,

against

William C. Rogers and James M. Sherwood,
defendants.

Complaint.

The plaintiff complains against the defendants and alleges:

I. The plaintiff is informed and believes that at all the times hereinafter mentioned Ernest F. Birmingham & Co. was and still is a corporation created by and existing under the laws of the State of New York.

II. That on or about the 18th. day of February, 1884, at the City of New York the said Ernest F. Birmingham & Co. made its certain promissory note in writing, dated on that day wherein and whereby it promised to pay, ninety days after the date thereof to the order of the plaintiff the sum of \$500. and delivered the same to the plaintiff for value; and the same is still owned and held by him, no part of which has been paid.

III. That contemporaneously with the making and delivery of said note, and for the purpose of securing the payment of the same, the said Ernest F. Birmingham & Co. executed and delivered to the plaintiff a certain other instrument in writing, a copy of which is hereto annexed, marked "A", and made part of this complaint, wherein and whereby it assigned and transferred to the plaintiff certain contracts therein specified, for advertisements to be

Just advised.

*Answer
Clause 1
no known*
2

*Answer
Clause 1
no known*
3

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inserted in a newspaper then owned and published by the said Ernest F. Birmingham & Co. and entitled "The American Queen", and of all monies due or to become due upon said contracts. And the said Ernest F. Birmingham & Co. further agreed in and by the said instrument to fully perform such of the said contracts for advertising as had not been performed at the date of the execution of the said assignment.

IV. That on or about the 29th. day of March, 1884, at the City of New York the said Ernest F. Birmingham & Co. made its certain other promissory note in writing, dated on that day, wherein and whereby it promised to pay, ninety days after the date thereof to the order of the plaintiff the sum of \$500. and delivered the same to the plaintiff for value; and the same is still owned and held by him, no part of which has been paid.

V. That contemporaneously with the making and delivery of said last mentioned note, and for the purpose of securing the payment of the same, the said Ernest F. Birmingham & Co. executed and delivered to the plaintiff a certain other instrument in writing, a copy of which is hereto annexed, marked "B" and made part of this complaint, wherein and whereby it assigned and transferred to the plaintiff certain contracts therein specified for advertisements to be inserted in a newspaper then owned and published by the said Ernest F. Birmingham & Co. and entitled "The American Queen", and of all monies due or to become due upon said contracts. And the said Ernest F. Birmingham & Co. further agreed in and by the said last mentioned instrument to fully perform such of the said contracts for advertising as

Answer
Clause 1,
No knowledge

Answer
Clause 1
No knowledge

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 had not been performed at the date of the execution of the said assignment.
 x

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 VI. The plaintiff is informed and believes that after the execution and delivery of the said assignments of the said contracts and monies as aforesaid and on or about the 26th. day of June, 1884, the said Ernest ^F Birmingham & Co sold and transferred to the defendants, who were at that time, and still are, copartners doing business in the City of New York, the said Newspaper, together with said contracts and the defendants took possession of the said Newspaper, and thereafter carried on the business of publishing the same.

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 VII. The plaintiff is informed and believes that at the time of the sale of the said newspaper to the defendants, as aforesaid, and at divers other times, the defendants were notified by the said Ernest F. Birmingham & Co. of the assignment to the plaintiff of the said contracts and monies and of the agreement of the said Ernest F. Birmingham & Co. to complete and perform said contracts, subject to the rights of the plaintiff.

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 VIII. That soon after the sale of the said newspaper to the defendants, as aforesaid, the plaintiff duly notified the defendants of the said assignments to him of said contracts and moneys, and of the agreement of said Ernest F. Birmingham & Co. to complete and perform said contracts.
 x

IX. That prior to the 1st. day of February, 1885, and after the defendants were notified as aforesaid, of said assignments to the plaintiff of said contracts and moneys the defendants collected upon certain of said contracts, from the following named persons the sums set opposite their

*Amended
 in the
 original*

*Amended
 in the
 original
 since notice
 was given
 in the original
 with the
 original*

Not denied

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names, respectively.

Name.		Amount Collected.
International Banking Co.		\$ 75.00
Frank Kiernan & Co.	2	18.75
W. S. Kimball & Co.	3	36.40
Sohmer & Co.	4	100.00
Kidder & Laird,	5	37.50
Dr. J. C. Ayer & Co.	6	165.00
H. P. Hubbard,	7	20.00
		\$-----
		\$452.65

X. That the plaintiff has frequently demanded from the defendants the payment of the said sum of \$452.65, but they have neglected and refused to pay the same or any part thereof.

Wherefore plaintiff demands judgment against the defendants for the sum of \$452.65, with interest thereon from the 1st day of February, 1885 together with the costs and disbursements of this action.

Shanton & Cass
Attys
3-1 Nassau St. N.Y.

City and County of New York, ss:

Justus O. Woods being duly sworn says: that he is the plaintiff above named, and that the foregoing complaint is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

Sworn to before me this :
13th day of Oct., 1885. :

J. O. Woods,

John Tully
Notary Public
N.Y. Co.

*Answer
Clause 11
Admits collection
no knowledge whether
they are the same
parties as those
named in the
complaint.*

No doubt

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These Presents Witness

that we have sold, assigned and delivered, and do hereby sell, assign and deliver unto Justus O. Woods the herewith stated accounts, amounting to Twenty hundred and sixty seven 71/100 dollars, which are lawfully owing and against which there are no deductions, offsets or just defence to be held by the said Justus O. Woods or his assigns, as collateral security for the payment of a Promissory Note for Five hundred (\$500.00) dollars, made by us in favor of said Justus O. Woods and bearing even date herewith, payable in monthly days hereafter, the interest of the same being at the rate of six per centum per annum, and in default of the payment of said Note, according to its tenor we hereby give to the said Justus O. Woods, or his assigns or legal representatives, full power as our lawful attorney in his, their or our name to collect or receive the several sums due ^{on} said ^{contracts} accounts, and give valid receipts therefor, or to settle or compound the same as we might have done had not this sale or assignment been made, or to sell said collateral securities, or any portion thereof, at public or private sale, at his option or his assigns', on the non-payment of the above described Note, without advertising the same, or otherwise giving us any notice; and to apply the proceeds of said collateral security to the payment of said Note, and the interest due thereon, together with all expense attending said sale or collection of said ^{contracts} accounts, accounting to us for any surplus, if any. And in case the proceeds thereof shall be insufficient to pay the principal, interest and expenses aforesaid, we promise to pay to the said Justus O. Woods or his assigns the amount of said deficiency forthwith after such sale with interest; and it is hereby understood and agreed, that any excess of collaterals upon this Note shall be applicable to any other note or claim herewith held by said Justus O. Woods against us and in case of any exchange of, or additions to the collaterals stated, the provisions and conditions of this assignment shall extend to such new or additional collaterals.

Twenty words interlined and six words erased before signed
Signed, Sealed and delivered.

NEW YORK, February 18, 1884.

Ernest F. Birmingham & Co. L.S.

May 1884.

by Ernest F. Birmingham,

Treasurer.

Following is a list of the contracts specified above, all of which are for advertising in THE AMERICAN QUEEN.

Signed by	Date.	Amount.	Due in 90 days.
H. P. Hubbard,	April 18, 1883	\$ 200.00	\$ 50.00
H. P. Hubbard,	July 31, 1883	56.16	14.04
N. W. Ayer & Son	Nov. 15, 1883	40.95	20.47
International Banking Co.	Oct. 31, 1883	150.00	37.50
C. C. Ford	June 7, 1883	100.00	25.00
Azro Goff,	Oct. 9, 1883	22.68	22.68
Frank Kiernan & Co	Oct. 19, 1883	75.00	18.75
W. S. Kimball & Co.	Nov. 3, 1883	145.60	36.40
Jno. F. Phillips & Co	Nov. 7, 1883	23.40	23.40
Sohmer & Co.	Feb. 1, 1884	150.00	37.50
Sheppard Knapp & Co.	Feb. 18, 1884	150.00	75.00

(Over)

75,

5675

109.20

11570

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112.50

Kidder & Laird	July 30, 1883	150.00	37.50
U.S.M. Accident Association	Jan. 23, 1884	125.00	125.00
Hiram Sibley & Co	Feb. 6, 1884	30.00	30.00
Samuel Budd	Feb. 20, 1884	30.00	30.00
N. H. Egleston, Jr.,	Jan. 12, 1884	18.95	18.95
		<hr/>	<hr/>
		\$1467.74	\$ 602.19

Ernest F. Birmingham & Co.

by Ernest F. Birmingham,

Treasurer.

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These Presents Witness

that we have sold, assigned and delivered, and do hereby sell, assign and deliver unto Justin O Woods

the herewith stated ^{contracts} accounts, amounting to Twelve hundred & Eighty Four 48/100 dollars, which are this day lawfully owing us and against which there are no deductions, offsets or

just defence to be held by the said Woods or his assigns, as collateral security for the payment of a Promissory Note for Five hundred

dollars, made by us in favor of said Woods and bearing even date herewith, payable in sixty days hereafter, the interest of the same being at the rate of six per centum per annum,

and in default of the payment of said Note, according to its tenor we hereby give to the said Woods, or his assigns or legal representatives, full power as our lawful attorney

in his, their or our name to collect or receive the several sums due ^{on the above} on said accounts, and give valid receipts therefor, or to settle or compound the same as we might have done had not

this sale or assignment been made, or to sell said collateral securities, or any portion thereof, at public or private sale, at his option or his assigns', on the non-payment of the above described Note,

without advertising the same, or otherwise giving us any notice; and to apply the proceeds of said collateral security to the payment of said Note, and the interest due thereon, together with all

expense attending said sale or collection of said ^{and} accounts, accounting to us for any surplus, if any. And in case the proceeds thereof shall be insufficient to pay the principal, interest and

expenses aforesaid, we promise to pay to the said Woods or his assigns the amount of said deficiency forthwith after such sale with interest; and it is hereby understood and

agreed, that any excess of collaterals upon this Note shall be applicable to any other note or claim ~~herewith~~ held by said Woods against us and in case of any exchange

of, or additions to the collaterals ^{herewith} stated the provisions and conditions of this assignment shall extend to such new or additional collaterals.

Justin Woods fulfilled and signed, Sealed and delivered.

NEW YORK, March 29, 1884.

Ernest F. Birmingham & Co (R)
by Ernest F. Birmingham
Treasurer.

Description of above mentioned contracts for advertising in

The American Queen:

Dr. J.C. Ayer & Co	Aug. 30, 1883.	\$ 660.00	\$ 165.00
H. H. Warner & Co	Oct. 8, 1883	325.00	277.93
H. P. Hubbard	Sept. 27, 1883	200.00	50.00
H. P. Hubbard,	Nov. 8, 1883	65.52	65.52
Gastrine Mfg. Co.	June 24, 1883	60.00	45.00
C. L. Downes & Co.	Sept. 6, 1883	36.40	18.20
J. L. Shaw	June 1, 1883	37.50	18.75
		<u>\$1384.42</u>	<u>\$ 640.40</u>

Ernest F. Birmingham & Co.

by Ernest F. Birmingham,

Treasurer.

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"B."

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Fol.1 SUPERIOR COURT
X
of the City of New York.

John C. Wiggins,

1. *Phragmites australis* (Cav.) Trin. ex Steud.

SECRET

Witness: G. Robert and John H. Smith, Jr.,
Deputy Sheriffs.

Unrevised
Answer

The above information, jointly received from
our informant and the above named person, is
of the confidential nature,
For all other information, please refer to the
above person.

I: Said defendant deny that they have an knowledge or information sufficient to substantiate the allegations of items II, III, IV and V of said complaint.

II: Said defendants deny that as alleged in paragraph numbered VII of said complaint, at the time of the sale of the said newspaper to the defendants or at any time prior thereto, the defendant ~~was~~ notified by the said Ernest F. Birmingham and Company of the assignment to the plaintiff of the said contracts and proposals and of the agreement of the said Ernest F. Birmingham & Co. to complete and perform said contracts, subject to the rights of the plaintiff

III: Said defendants admit that prior to the first day of February, 1935, said defendants collected from the persons mentioned in paragraph numbered IX of said complaint the sums therein set opposite to their names respectively upon certain advertising contracts, but as to whether said contracts were

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the same as those now used or used for "A" and "B" or a
3 ~~of~~ ~~the~~ ~~same~~ ~~kind~~ ~~and~~ ~~that~~ ~~the~~ ~~defendants~~ ~~know~~ ~~the~~ ~~defendants~~ ~~have~~ ~~the~~ ~~knowledge~~ ~~or~~ ~~information~~ ~~sufficient~~ ~~to~~ ~~form~~ ~~a~~ ~~belief~~.

Second: For a recent and separate and distinct and
logically connected series of letters thereon, in which
the defendants,

I: That on or about the 27th day of June, 1934, Ernest
F. Birmingham & Co., a corporation, duly organized, or intended
to be, the owners of certain newspaper publications known
at the City of New York under the title of "The American
Queen, a Journal of Home and Society" together with the copy-
rights thereof issued by the Librarian of Congress, and all
the contracts with advertisers and money due or to grow due
thereon, and all wood-cuts and subscription lists of said
newspaper and the good-will of the same, and said Ernest F.
Birmingham & Co. were then in the actual possession of the
same.

II: That said defendants, believing such to be the fact
on the same day agreed with said Ernest F. Birmingham & Co.
4 for the purchase thereof for the price of Three Hundred and
Eighty-five Dollars and Forty cents; whereupon the said
Ernest F. Birmingham & Co. sold, assigned and set over to
said defendants, the said newspaper, copyrights, contracts
with advertisers and the money due or to grow due thereon,
wood-cuts, subscription lists and good-will, by an instrument
in writing bearing date on the same day and filed thereafter
and on the same day, in the Office of the Register of the
City and County of New York.

III: That said sum of \$385.40 was actually paid by said

0398

5 defendants to said Ernest F. Birmingham & Co. at the time of
the date of said instrument.

X
IV: That said defendants had not, at or before the time
of the said assignment and transfer, or of said payment of
the purchase money, any notice whatever either express or
implied, of the said assignment of certain of said contracts
now claimed by said plaintiff to have been made to him by
said Ernest F. Birmingham & Co.

Third: For a third and separate defense to the al-
leged cause of action therein, said defend-
ants allege,

I: That at the time of the transfer and assignment of
the said property hereinbefore referred to, said Ernest F.
Birmingham & Co. were in an insolvent condition and unable
to carry on said newspaper and a stoppage of the publication
of said newspaper was imminent and said defendants purchased
the said property, as set forth in the second defense herein,
under an agreement to re-convey the same to said Ernest F.
Birmingham & Co. after continuing the publication thereof
6 for three weeks, provided the advances of said defendants
were repaid; and it was agreed that said defendants should
have a lien upon the said property so transferred and as-
signed, for all moneys which they might expend in the pub-
lication of said newspaper, and for their services as print-
ers and publishers of said newspaper.

II: That only a small amount of money was due and un-
collected upon said advertising contracts at the time of said
assignment thereof and all the moneys which thereafter became
due and which were collected by said defendants thereon, were

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earned and produced by the services and disbursements of said defendants in continuing the publication of said newspaper.

7 III: That said defendants expended, in carrying on and continuing the publication of said newspaper and in completing the advertising contracts so as aforesaid assigned to them, large sums of money, greatly in excess of the amounts received by them from said advertising contracts so assigned to them and the moneys received from said last named advertising contracts were expended in printing and publishing said newspaper, under the aforesaid agreement.

IV: That said plaintiff had knowledge of the continued publication of said newspaper and permitted said defendants to continue said publication and to give their services therein and to incur expense therefor.

V: That by virtue of the premises said defendants have a lien upon said advertising contracts for their said services and expenditures in the printing and publication of said newspaper.

8 WHEREFORE said defendants ask that said complaint may be dismissed with costs.

Russell Benedict,

Defendants' Attorney,

132 Nassau Street,

New York City.

0400

State of New York, :
City and County of New York. : ss:

William C. Rogers being duly sworn, says: I am one of
the defendants in this action and acquainted with the facts
in this action. The foregoing amended answer is true of my
own knowledge, except as to the matters therein stated to be
alleged upon information and belief and as to those matters
I believe it to be true.

Sworn to before me this :
(17th) day of December, 1885. :

Wm. C. Rogers.

Jas. W. Hyde,

Notary Public,

N. Y. Co.

N.Y. Superior Court.

Justus O. Woods

against

William C. Rogers

Etal

Copy.

Pleadings

STANTON & CASS,

Attorneys for Plaintiff

32 & 34 Nassau Street,

(Mutual Life Building.)

New York City.

Due service admitted

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Attorney for

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Ext. 4.
(Burr)**These Presents Witness** that we have sold, assigned and delivered, and do hereby sell, assign and deliver unto Justin O. Woodsthe herewith stated ^{contracts} ~~accounts~~, amounting to Thirteen Hundred and Eighty Four 43/100 ^{according to the tenor thereof, and which we agree to faithfully execute} dollars, which are ~~this day~~ lawfully owing us, and against which there are no deductions, offsets orjust defence to be held by the said Woods or his assigns, as collateral securityfor the payment of a Promissory Note for Five Hundreddollars, made by us in favor of said Woods and bearing even date herewith, payablein Sixty days hereafter, the interest of the same being at the rate of six per centum per annum,and in default of the payment of said Note, according to its tenor we hereby give to the saidWoods, or his assigns or legal representatives, full power as our lawful attorneyin his, their or our name to collect or receive the several sums due on said ^{contracts} ~~accounts~~, and givevalid receipts therefor, or to settle or compound the same as we might have done had not

this sale or assignment been made, or to sell said collateral securities, or any portion thereof, at public

or private sale, at his option or his assigns', on the non-payment of the above described Note,

without advertising the same, or otherwise giving us any notice; and to apply the proceeds of

said collateral security to the payment of said Note, and the interest due thereon, together with all

expense attending said sale or collection of said ^{sums} ~~accounts~~, accounting to us for any

surplus, if any. And in case the proceeds thereof shall be insufficient to pay the principal, interest and

expenses aforesaid, we promise to pay to the said Woods or his assigns the

amount of said deficiency forthwith after such sale with interest; and it is hereby understood and

agreed, that any excess of collaterals upon this Note shall be applicable to any other note or claim

~~herewith~~ held by said Woods against us and in case of any exchangeof, or additions to the collaterals ^{herewith} stated, the provisions and conditions of this assignment shall extend

to such new or additional collaterals.

Twenty words interlined and 6 words erased before signing
Signed, Sealed and delivered.NEW YORK, March 27, 1884 Ernest F. Birmingham & Co
Ernest F. Birmingham
Treasurer

Description of above-mentioned contracts, for advertising in The American Queen:

6	Dr J Cagwin & Co - Aug 30, 83 - \$660.00 - \$165.00	
	H H Warrin & Co - Oct 8, 83 - 325.00 - 277.93	no adv
7	H P Hubbard - Sep 27, 83 - 200.00 - 50.00	
	H P Hubbard - Nov 8, 83 - 65.52 - 65.52	
	L Gastine Mfg Co - Jan 24, 83 - 60.00 - 45.00	from adv.
	C & Downes & Co - Sep 6, 83 - 36.40 - 18.20	
	J L Shaw & Co - Jan 1, 83 - 37.50 - 18.75	id
	<u>\$1384.42</u> <u>\$640.40</u>	

Ernest F. Birmingham & Co
Ernest F. Birmingham
Treasurer

"B"

0403

Ex 13
Bm

These Presents Witness that we have sold, assigned and delivered, and do hereby sell, assign and deliver unto Justus O. Woods the herewith stated ^{contracts} accounts, amounting to Fourteen Hundred and Sixty Seven 74/100 dollars, which are ~~this day~~ ^{or to become due} lawfully owing us, and against which there are no deductions, offsets or just defence to be held by the said Justus O. Woods or his assigns, as collateral security for the payment of a Promissory Note for Five Hundred (\$500.00/100) dollars, made by us in favor of said J. O. Woods and bearing even date herewith, payable in ninety days hereafter, the interest of the same being at the rate of six per centum per annum, and in default of the payment of said Note, according to its tenor we hereby give to the said J. O. Woods, or his assigns or legal representatives, full power as one lawful attorney in his, their or our name to collect or receive the several sums due ^{on said accounts} on said ^{contracts} accounts, and give valid receipts therefor, or to settle or compound the same as we might have done had not this sale or assignment been made, or to sell said collateral securities, or any portion thereof, at public or private sale, at his option or his assigns', on the non-payment of the above described Note, without advertising the same, or otherwise giving us any notice; and to apply the proceeds of said collateral security to the payment of said Note, and the interest due thereon, together with all expense attending said sale or collection of said ^{contracts} accounts, accounting to us for any surplus, if any. And in case the proceeds thereof shall be insufficient to pay the principal, interest and expenses aforesaid, we promise to pay to the said J. O. Woods or his assigns the amount of said deficiency forthwith after such sale with interest; and it is hereby understood and agreed, that any excess of collaterals upon this Note shall be applicable to any other note or claim herewith held by said J. O. Woods against us and in case of any exchange of, or additions to the collaterals stated, the provisions and conditions of this assignment shall extend to such new or additional collaterals.

Twenty Woods interest and six Woods lived before signed
Signed, Sealed and delivered.

NEW YORK, February 18, 1884

Ernest F. Birmingham
by Ernest F. Birmingham
Witness

Following is a list of the contracts specified above, all of which are for advertising in The American Queen:

Signed by	Date	Amount	Due in 90 days
St. P. Hubbard ✓	April 18/83	\$200.	\$50.
St. P. Hubbard ✓	July 31/83	56.16	14.04 - paid
W. W. Ayer & Son ✓	Nov 15/83	40.95	20.47
International Banking Co ✓	Oct 31/83	150.	37.50
C. C. Galt ✓	June 7/83	100.	25.
Agro Goff ✓	Oct 9/83	22.68	22.68 - paid
Frank, Kinnan & Co ✓	Oct 19/83	75.	18.75
W. S. Kimball & Co ✓	Nov 3/83	145.60	36.40
Geo. F. Phillips & Co ✓	Nov 7/83	23.40	23.40
Solomon & Co ✓	Feb 1/84	150.	37.50
Sheppard Knapp & Co ✓	Feb 18/84	150.	75. - paid
Kiddie & Laid ✓	Jul 30/83	150.	37.50
U. S. M. Accident At ✓	Jan 23/84	125.	125. - paid
Isidore E. Lippin & Co ✓	Feb 6/84	30.	30. - paid
Samuel Bond ✓	Feb 20/84	30.	30. - paid
W. H. Egleston, Jr ✓	Jan 12/84	18.95	18.95
		<u>1467.74</u>	<u>602.19</u>

Ernest F. Birmingham
by Ernest F. Birmingham
Witness

TORN PAGE

0404

Bill of Sale

File No. 10506 - 1881

Ernest A. Birmingham & Co.
In consideration of \$385.40 in hand
paid by Rogers & Sherwood have
bargained, sold granted and con-
veyed, a certain newspaper known
as the American Queen

also the copy right thereof issued
by the Librarian of Congress.

all Contracts with advertisers;
together with monies due and to
become due on said Contracts.

The Wood Cuts and subscription
list of said paper and the good
will of the same: to have and to
hold the same, to the said ~~part~~ Rogers
& Sherwood, their survivors and as-
signs forever, and the said party
of the first part and its successors
covenant and agree to and with the
said party of the second part to
warrant and defend the said property
hereby sold and assigned, unto
the said party of the second part and
survivors and assigns, against all
and every person or persons whatever.

Signed Ernest A. Birmingham & Co.

by E. F. Birmingham
Treasurer

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2 of the Company

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The Board
against

William J. ...

Carroll

REPORT.

For the District Attorney.

Dated November 11 1887

W. H. ...

Assistant.

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-----X
The People
against
Ernest W. Birmingham.
-----X

The defendant has been indicted for perjury alleged to have been committed under the following circumstances:

On or about the 10th day of February, 1904, and the 20th of March, 1904, Ernest W. Birmingham & Co., a corporation, made its promissory notes in writing for the sum of \$5000 respectively to one Justus W. Woods. In addition to the said notes the said corporation at the said times delivered to said Woods certain assignments in writing of outstanding contracts which the said corporation had with various parties for advertising in a paper published by said corporation and known as the Queen. The assignments of these advertising contracts were delivered as collateral security for the payment of said notes. An important element in the consideration of this case may here be noted, and that is that these contracts were executory. The advertisers simply promised to pay certain sums of money for advertisement in this paper at the expiration of certain specified periods of time, while on the other hand the corporation undertook and agreed to print said advertisement in said paper during the periods mentioned.

Thus it will be seen that the advertisers' liability did not accrue until the advertisements had run

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For these certain periods of time and that in order to hold the advertisers to any liability the corporation was bound to do its part of the work, printing, publishing, etc., and it is apparent that if the publishers of the paper failed to print the advertisements or to publish the paper no liability attached to the advertisers.

These promissory notes matured in ninety days from the making and they were not paid by the makers. Subsequently and on or about the 12th day of June, 1934, the said Ernest W. Birmingham & Co. sold and assigned to the firm of Rogers & Sherwood the said newspaper, the Queen, together with all the advertising contracts. Rogers & Sherwood continued the publication of the newspaper and inserted the advertisements called for by such contracts. Some of these advertising contracts had already been assigned as collateral security to Woods as above mentioned. Rogers & Sherwood collected money on these advertising contracts. Woods claimed that they should account to him for the money so collected. They denied their liability to him on the ground that they had had no transaction with him and had no knowledge of a prior assignment.

Woods claimed that the defendant, Ernest W. Birmingham, who appears to have been the head and front of the corporation above named, notified Rogers & Sherwood that he had assigned said advertising contracts to him and that they took the contracts subject to that assignment.

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On this claim Woods commenced an action against Rogers & Sherwood in the Superior Court of this city. The action was founded on assumpsit and on the plaintiff's case being concluded it was dismissed by Judge Thumax, then presiding. On the trial of the action the defendant was examined as a witness for the plaintiff, and on that examination the perjury for which he stands indicted is assigned.

To sustain this indictment four essential elements must be present. The testimony must have been wilful, corrupt, false and material. If the latter element is not present, then it becomes immaterial to consider the three preceding ones, and as it is the preliminary essential I will first give it consideration.

The testimony given at the trial by Birmingham may be divided into two classes, the first as to statements alleged to have been made by him to Rogers & Sherwood prior to and up to the time of the sale of the newspaper, the Queen, and the second as to statements made by him to Rogers & Sherwood and declarations made by them to Birmingham subsequent to the said sale and assignment.

The rule of evidence that the declarations, statements or admissions made by a person after he has parted with his interest to or in a certain thing cannot be received in evidence against the assignee or vendee, is not only elementary but authoritatively established by our Court of Appeals in a number of decid-

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ed cases. Consequently all of Birmingham's testimony relating to transactions or conversations had between himself and Rogers & Sherwood touching these assignments at any time subsequent to the transfer must be excluded, and even though that testimony was admitted on the trial I do not find any objections on the record to its materiality and no ruling was asked for. Testimony not so admissible for some purpose and yet not be material to the issue. The issue in that civil action was whether Rogers & Sherwood took these assigned contracts with notice and knowledge that they had already been assigned as collateral security to Woods, and what Birmingham may have said to them after the transaction was completed could not have affected their title one way or the other. If they had notice, what he said subsequently would not make it any stronger; if they had not notice, a subsequent notification by Birmingham to them would not affect their interests.

This exclusion reduces the compass of the testimony to be considered to those declarations which Birmingham is alleged to have made to Rogers & Sherwood at or before the time that the same took place. The transaction between Birmingham and Rogers & Sherwood was reduced to writing, the bill of sale was executed and delivered together with a schedule referred to in the bill of sale containing these advertising contracts. Neither the bill of sale nor the schedules make any reference whatever to the prior assignment to Woods.

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The question is, was it competent to receive testimony of oral statements prior to and leading up to the written contract? Is it not a well-established rule of evidence that all prior declarations are merged in the written contract, and that oral declarations made at the time of the written contract are also merged unless said oral declarations have reference to some collateral or independent matter connected with the contract and resting upon a separate consideration?

I do not find on the record of the trial in the Superior Court any objections raised to Birmingham's testimony on these points, and consequently no ruling of the learned Judge; but I am of opinion that if objection as to incompetency had been raised it would have been sustained, as the testimony given by Birmingham had a direct tendency to modify or vary the written contract between himself and Rogers & Sherwood.

It is true that even though testimony may be considered incompetent, yet if admitted and it has a tendency to affect the result and the element of its materiality being present, perjury may be assigned. But, assuming the testimony of these oral declarations to be incompetent as tending to vary or modify a written contract, the testimony could not have been material inasmuch as the question of notice had to be mainly determined upon the written record of the transaction which was the best testimony, to wit, the bill of sale and the assignments.

There is, however, a phase of the civil ques-

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tion which if the defense had been called upon at the trial might have been presented and doubtless would have had an important bearing upon the case. Conceding for the purposes of illustration that Rogers & Sherwood had notice of the prior assignments, what were the positions of the prior assignee and the subsequent assignee? The contracts were executory as hereinbefore shown. Woods, the first assignee, acquired no separate, independent, vested interest which could be liquidated; all that he acquired was the right to collect the money in the event of the work being done and the material furnished by Birmingham. That was a contingency. If Birmingham failed to do that the advertisers owed nothing and Woods could not collect anything. Rogers & Sherwood, the subsequent assignee, so far as these contracts were concerned, stood in Birmingham's shoes; before they could collect on these contracts they had to perform certain work. Now having performed that work these advertisers became liable for it. To whom did they become liable? Clearly to the party that had performed the work, and that party was the firm of Rogers & Sherwood. They having run the paper and continued to publish it and furnished the labor of printing and all other details necessary to its publication were clearly entitled to the money which they earned, and no suggestion is made on the record or in the pleadings that Rogers & Sherwood were to perform this work without compensation to themselves.

This view I urge simply as having a bearing

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upon the question of the materiality of Birmingham's testimony on the trial.

To meet the issue squarely, however, the alleged false testimony of Birmingham would rest for proof of its falsity upon the testimony of Rogers and Sherwood. Neither of these defendants was examined at the trial; therefore their testimony on the trial of this indictment has to be taken as indicated by themselves. The record shows that Birmingham had these alleged conversations with Mr. Sherwood. The statement is not made directly that it was with Mr. Sherwood, a member of the firm of Rogers & Sherwood, that can only be gathered by inference. As a matter of fact, however, all persons having any cognizance of this transaction agree that Birmingham never did have any conversations with Mr. Sherwood ^{the} ~~apart~~. He is an old man and gives but little personal attention to the business of the firm. He is represented in the firm, however, by Lamberson Sherwood, who is either a son or a nephew, and it is with this Sherwood Junior that Birmingham claims he had the conversations testified to by him. No pretense could be made that it was with the senior. Now if Birmingham testified that he had certain conversations with Mr. Sherwood and on the trial of this indictment it would appear that he meant with Mr. Sherwood, junior, who represented Mr. Sherwood senior, it would be clearly such a mistake as to identity of names and persons as would exonerate the defendant Birmingham from the charge of wilful and corrupt false swearing.

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The doctrine relating to idem sonans has been always held to apply to such cases and to be a good defense to a charge of wilful and corrupt perjury.

As to any conversations relating to these assignments ^{which} ~~with~~ he had with Mr. Sherwood, junior, it does not appear that they were deliberately and absolutely false, and that Mr. Sherwood ^{junior} would or could truthfully testify that such conversations, if not in the form mentioned by Birmingham, were not in some other form had between them. This is also true in relation to Mr. Rogers, the other member. His statement to me is that his conversations with Birmingham were general, and that if under oath on the witness stand the specific question were put to him whether or not any particular statement which ~~which~~ Birmingham alleged to have made to him was in fact made to him, he could not deny that that specific statement was made; in other words, though a very intelligent and conscientious gentleman, his memory and recollection of these transactions and conversations are in such a condition that a definitive denial or affirmation cannot be made by him.

Considering therefore the conditions attendant upon a trial for perjury and in obtaining a conviction, I am of opinion that the trial of this case would involve much time and labor and in the end the People would fail to secure a conviction, mainly on two grounds: First, that the testimony was not material; and, second, that even if it was material, the proof of

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its falsity would not be sufficient to carry the case to the jury. I am therefore of opinion that the interests of public justice would not be served by entering upon the trial of this case, and I recommend that the indictment be dismissed.

Respectfully submitted.

Jan 12-1889

John W. Coffey

Assistant District Attorney.

04 15

Part of General Sessions.

THE PEOPLE OF THE STATE OF
NEW YORK,

against

Ernest P. Brimley Lane

Report

JOHN R. FELLOWS,

DISTRICT ATTORNEY,

No. 32 CHAMBERS STREET,
NEW YORK CITY.

John W. Goff
Arch. Dick atty

0416



New York,

1884

Received of the
two cases of the
first piano is the
Queen of the
to pay the sum of \$1250
for the year ending on the 31st of Dec 1884

Accepted

Sohmer & Co
East 14th St

E. H. Birmingham Esq
per C. F. Barnes,

0417

STANTON & CASS,
Attorneys & Counsellors

32 & 34 Nassau Street,
(Mutual Life Building.)
New York.

February 6th., 1885.

Sohmer & Co.,

149 E. 14th. St., City.

Gentlemen:

A client of ours, Mr. Justus O. Woods of this City, is the owner by assignment made to him by Ernest F. Birmingham & Co. of the amount due or to become due under your contract with them for advertising in "The American Queen," which assignment is at our office and subject to your inspection at any time. We are requested by Mr. Woods to notify you to make all future payments to us for him and not to Ernest F. Birmingham & Co. and to ask that you will be kind enough to inform us what amounts have been paid on your contract and what the present state of your contract is.

Yours &c.,

Stanton & Cass
Dear Sir, - Please take notice that our contract for the "American and Queen" was only for one year, and has expired February 1st 1885, as per our duplicate of contract we hold in our office. We do not want to renew same at present.
Yours respy
Stanton & Cass

0418

MEMORANDUM.

To

Justin Wood, Esq.

HENRY STANTON.
CHARLES W. CASS.LAW OFFICES OF
STANTON & CASS,
33-34 NASSAU ST., (MUTUAL LIFE BUILDING),
New York, Dec. 15th 1884.

"Ernest F. Birmingham and Company" is a corporation organized under the Act of 1848. The incorporators were E. F. & D. W. Birmingham, and James B. Townsend. Townsend is now president. Capital Stock \$10,000. Paid \$300 in cash and \$9700 in property. Principal office N.Y. County. The time for filing the annual report will not expire until Jan'y 1st 1885. Certificate of incorporation filed March 20 1883.

Yours truly
John Tully.

0419

\$30.00

ERNEST F. BIRMINGHAM & Co., Publishers,

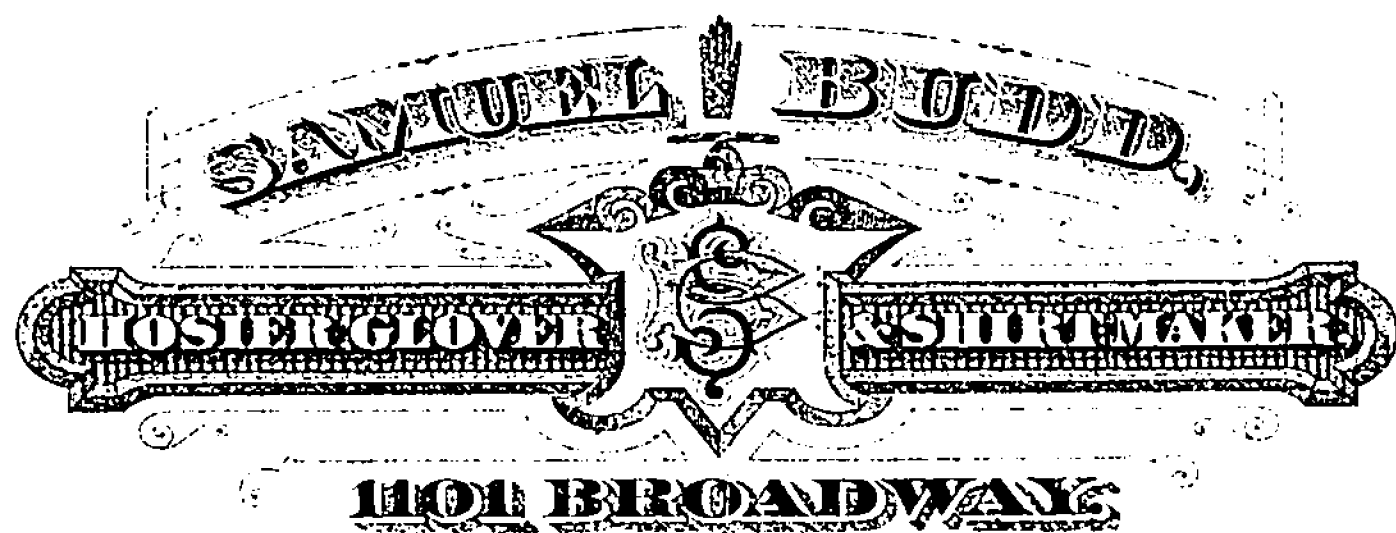
140 NASSAU STREET, NEW YORK

February 20 1884

Please insert my Advertisement of *Shirts, etc* occupying space
of *14* lines, agate, in *THE AMERICAN QUEEN* *17* times, beginning *February 23 1884*
for which *I* agree to pay the sum of *Thirty 00/100*
dollars.

J. M. Smith

0420



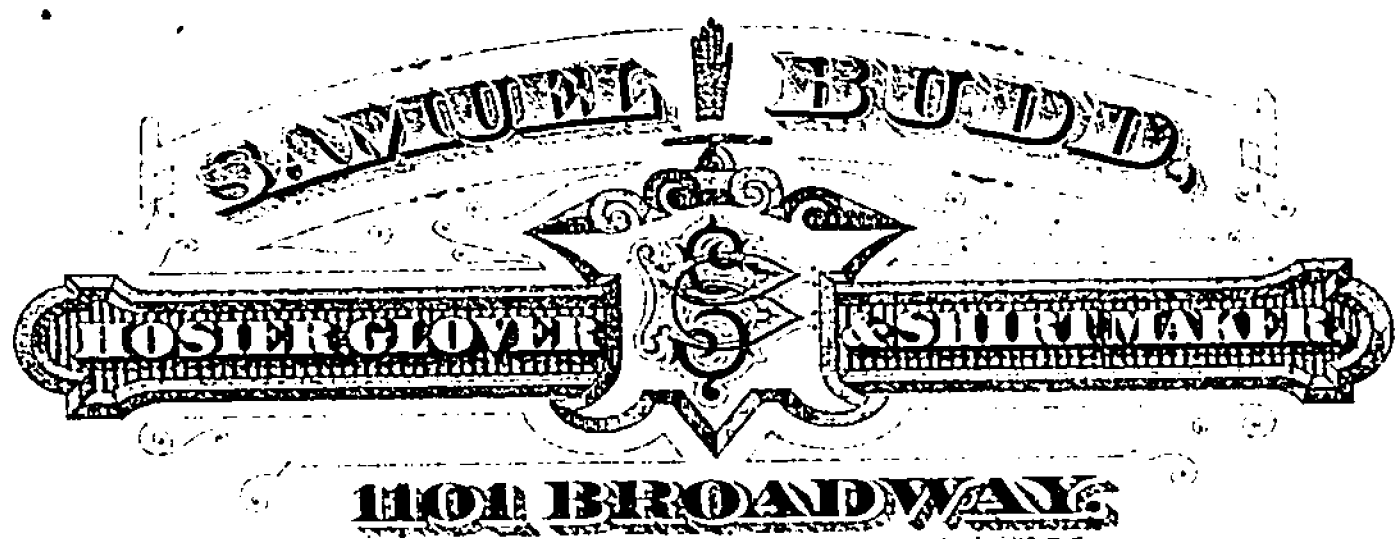
1101 Broadway New York N.Y. C. 1885

Wm. Wood & Co.
New York

Check dated
July 24, 1884. Drawn to the
order of the Am. Insur.,
and Indemnity Co., The Am. Insur.,
Ernest A. Birmingham & Co.
Am. Insur. Co.

James Wood
Ernest A. Birmingham & Co.

0421



New York Aug 7 1885

Miss - Hunter & Co

Gentlemen,

Your order for 1000
"Am. Gals", 1000 each
I have - (estimated) 1000 each
They last lot, for H. M.
Spring 1884 paid
Birmingham for same
\$90. July 25th 1884. The other
contract, yours sincerely,

J. D. Smith

0422

130000

110000

0423

\$ 145 ⁶⁰/₁₀₀

We Hereby Agree to insert Wm. T. Kimball & Co.'s
advertisement in American Queen

to occupy 2 inches

for the term of one year for the sum
of One hundred and forty five ⁶⁰/₁₀₀ dollars

No. of Insertions 52

Signed Ernest H. Birmingham Jr.

Advertisement commences November 3, 1883

Address The American Queen
140 Nassau St., New York

188



It is a condition of this order that a COPY of EACH ISSUE containing
our Advertisement be forwarded to us.

0424

(Advertising Contract.—Form C.)

Contract of Dec. 28/82, to be cancelled on commencement of this contract.

\$660⁰⁰ I hereby agree, for the sum of Six Hundred & Sixty 00 Dollars, to PUBLISH in the American Queen published at New York, N.Y., the advertisements and notices of DR. J. C. AYER & CO., of Lowell, Mass., and of R. P. HALL & CO., of Nashua, N. H., during the ensuing twelve months from this date, in matter, arrangement, space, and display, according to copy furnished by them on their printed slips, the advertising matter and the number of insertions to be as specified below, viz:

One of their advertisements from "Series 500c" each alternate week in the Weekly issue, 26 insertions. electros
And the same advertisement times same week in the Daily issue, on

One of their advertisements from "Series 52" each week in the Weekly issue, 52 insertions. electros.
And the same advertisement times same week in the Daily issue, on

— ALSO —
Their special advertisements numbered 3 65 } In pure reading matter style to
To appear as follows, in the Daily issue, Nov 17 Dec 15 } among pure reading matter.
And in the Weekly issues of the same weeks, of

— ALSO —
The AGUE CURE advertisement (No. sheet No.), each week during the months of in the Weekly issue, insertions.
And the same adv't times each week during same months in the Daily issue, on

The above-named advertisements to be published at the times indicated on copy, and to be the first display ad in each issue of the paper. to appear adjoining pure reading matter in each issue, at the head of a column, on the page of the Weekly and on the page of the Daily.

— ALSO —
 notices from sheets numbered , each notice to have one insertion in the Weekly and insertions in the Daily on during the same week, the notices to appear in the news type and miscellany of the paper, apart from other local notices and advertisements, and changed as marked on the copy sheets.
I also agree to mail one copy of every issue of the paper containing the advertisements or notices, to

J. C. AYER & CO., Lowell, Mass.

Circulation, Weekly,
" Daily,
" Sunday,

Advt's \$
Notices \$
Payments Quarterly
Monthly.

Duplicate
Accepted for Circulation
Dec 28/82
New York, Aug 30th 1883
Wm. H. Birmingham & Co
Publishers

0425

Est. 10.
Brew

AL
10/10/10
10/10/10
10/10/10

POOR QUALITY
ORIGINAL

0426

In reply to yours of

ADVERTISING DESK.

Dr. J. C. Ayer & Co.

Lowell, Mass.,

July 12, 1885.

Wm. W. Loring Esq.
132 N. Museum Street
New York, N. Y.
Dear Sir

In reply to your favor of the
11th inst. would say that we have no
contract with Messrs. Birmingham
and Co. advertising in the American
Queen. The last contract we had with
the above parties was under date of
Aug 30, 78 and has been paid in
full, the last payment on same
having been made Sept 1, 78.

Very Truly Yours.

J. C. Ayer & Co.

0427

\$150⁰⁰

July 30 1883.

ERNEST F. BIRMINGHAM & CO., Publishers,

140 NASSAU STREET, NEW YORK

Please insert *an* Advertisement of *Bloom of Youth*
occupying space of *50* lines agate, in THE AMERICAN QUEEN — *52* — times beginning
August 4 188 *3*; for which *we* agree to pay the sum of *One Hundred Fifty*
dollars.

P3 John St.

Kidder Laird.

0428

No.

FRANK, KIERNAN & CO.,
GENERAL ADVERTISING AGENCY,
No. 149 Broadway,

P. O. BOX, 3367, New York,

Publisher: The American General.

Please insert the following order:

Advertisement	Space	Time	Position	Gross Price
<i>Cantrell</i>	<i>1/2 inch cut</i>	<i>1 year</i>	<i>right</i>	<i>Net \$100.00 payable quarterly</i>

Yours very truly,

0429



NEW HAVEN, CONN. U.S.A. 7/31/1883

Publisher of *Am Queen*
N.Y. City

You are hereby authorized to insert adv'g of **Dr. Graves' Heart Regulator**, as per specifications on this order, in each issue of your **Weekly Edition**, for **one year**; and charge the same to me at \$ 56-16 ¹⁰⁰ ~~gross~~, (~~less usual commission~~). *net.*

2 Reading notices (total average space of 4 lines), to be set in reading matter type, scattered on different pages or columns and to appear in with or immediately following pure reading matter (not notices.)

☒ Read the specifications on the reverse, which are hereby made a part of this order.

AWAITING YOUR ACCEPTANCE,

I am, Yours Truly,
H. P. Hubbard

Form 137.

*In My Own
Only can 1002 words be*

0430

SPECIMEN ADVT.

SAMARITAN
NEVER FAILS.
NERVINE

THE GREAT

NERVE

CONQUEROR

A SPECIFIC FOR

Epilepsy,
Spasms, Convul-
sions, *Falling*
Sickness, St. Vitus
Dance, Alcohol-
ism, Opium Eat-
ing, *Syphilis*,
Scrofula, *Kings*
Evil, Ugly Blood
Diseases, *Dyspep-*
sia, Nervousness,
Sick Headache,
Rheumatism,
Nervous Weakness, Brain Worry, *Blood Sores*,
Biliousness, *Costiveness*, Nervous Prostration,
Kidney Troubles and Irregularities. \$1.50.

Sample Testimonials.
"Samaritan Nervine is doing wonders."
Dr. J. O. McLeomin, Alexander City, Ala.
"I feel it my duty to recommend it."
Dr. D. F. Laughlin, Clyde, Kansas.
"It cured where physicians failed."
Rev. J. A. Edlie, Beaver, Pa.

Correspondence freely answered.
THE DR. S. A. RICHMOND MED. CO., ST. JOSEPH, MO.
At Druggists. C. N. Crittenton, Agent, N. Y.

0431

Specimen Instructions.

SAMARITAN
NEVER FAILS.
N-E-R-V-I-N-E

ADVERTISEMENTS.

These electrotype advertisements occupy 3 inches space and are to be inserted (one at a time) in each issue ordered and must appear next (alongside) pure reading matter. The adv'ts to alternate weekly and rotate in their order as numbered. The reading notices are carefully prepared and average precisely as stated in contract.

A full supply of copy for adv'ts and notices will be sent upon receipt of your acceptance contract.

See "SPECIMEN COPY" (adv'ts) on reverse.

0432



NEW HAVEN, CONN. U.S.A. *April 18 1883*

Publisher of *Andrews One Queen*
New York N.Y.

Please insert advertising of **The Dr. S. A. Richmond Medical Co.**, as per specifications on this order, and charge my account \$ *20.00* gross, (less usual commission of 25 per cent.).

3 inches (electro) adv't. and a *4* line (average) reading notice in each issue of your **Weekly and Editions**, for one year: the adv't to be entirely next (alongside) pure reading matter.

Read the specifications on the reverse, which are hereby made a part of this order.
AWAITING YOUR ACCEPTANCE,

Yours Truly,
H. H. Hubbard

Form 133.

252.72

Ca.

0433



NEW HAVEN, CONN. U.S.A. 7/29 1883

Publisher of Am. Sun

My City

You are hereby authorized to insert advertising of **Hop Bitters**, as per specifications on this order, in each issue of your **Weekly and** **Editions**, for one year, and charge the same to me at \$ 2.00 ^{nts} ~~gross~~, (less commission).

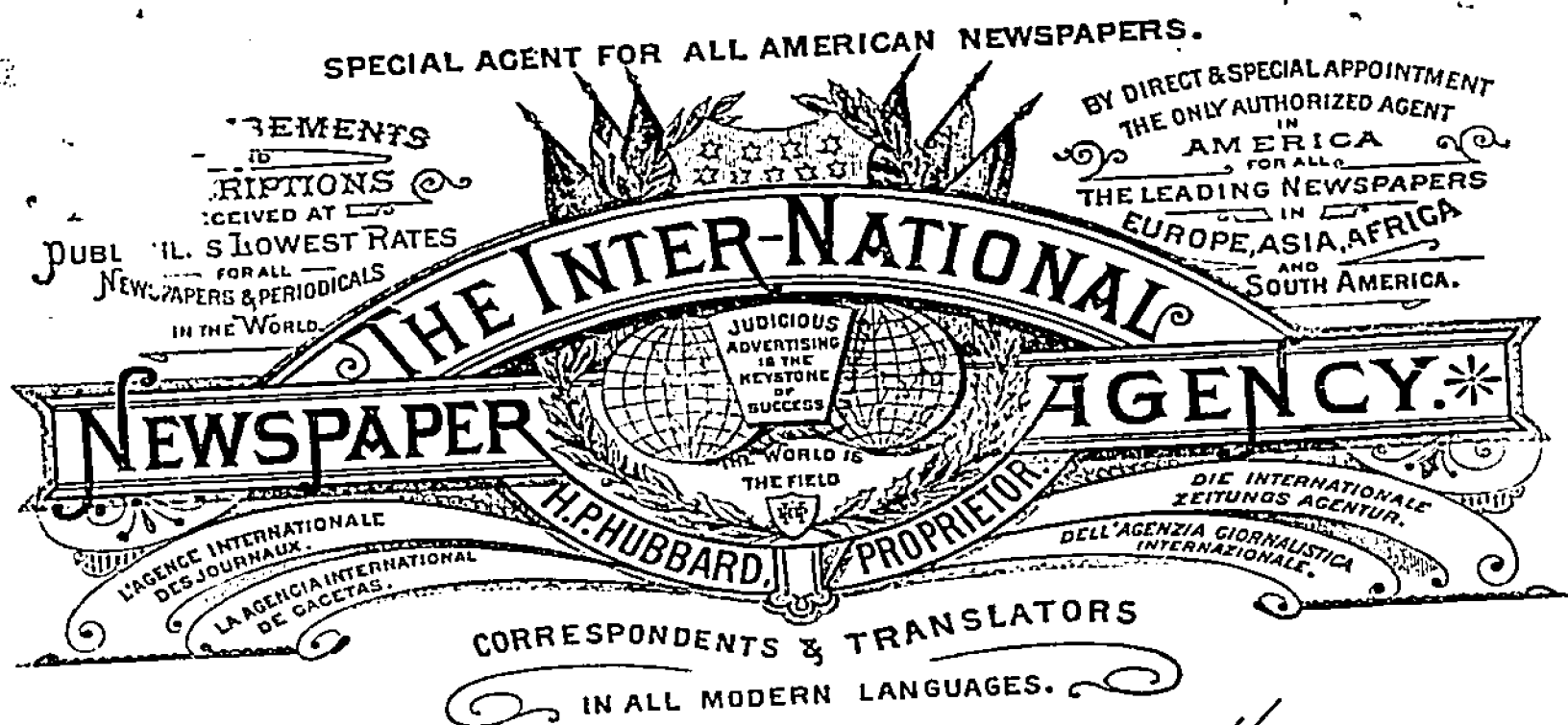
Six inches advertisement, the same to appear at top of full or broken column. ~~not (along side) page containing matter~~

Read the specifications on the reverse, which are hereby made a part of this order.

AWAITING YOUR PROMPT ACCEPTANCE,

I am, Yours Truly,
H. P. Hubbard

0434



NEW HAVEN, CONN. U.S.A. 11/8 1883.

Publisher of *Am. Queen.*

New York.

Please insert enclosed advertisement of
Wells, Richardson & Co.

in your *W* edition, to occupy the space
of *times,* *2* inches.

same to me at \$ *65.52* *26* times and charge the
gross.

A copy of the paper must be mailed to me regularly
during the continuance of the advertisement as a part of
this contract.

Yours Truly,

Electrotype Sent.

H.P. Hubbard.

20th

0435

STANTON & CASS,
Attorneys & Counsellors.

32 & 34 Nassau Street,
(Mutual Life Building.)
New York.

February 6th., 1885.

H. P. Hubbard, Esq.,
New Haven, Conn.

Dear Sir:

A client of ours, Mr. Justus O. Woods of this City, is the owner by assignment made to him by Ernest F. Birmingham & Co. of the amount due or to become due under your contract with them for advertising in "The American Queen," which assignment is at our office and subject to your inspection at any time. We are requested by Mr. Woods to notify you to make all future payments to us for him and not to Ernest F. Birmingham & Co. and to ask that you will be kind enough to inform us what amounts have been paid on your contract and what the present state of your contract is.

Yours &c.,

*I owe the Am Queen
nothing paid char
in full Jan 24/85
H.P.H.* *Stanton & Cass*

0436

HENRY STANTON,
Attorney & Counsellor.

15 Broad Street.
(Mills Building)
New York.

January 11th, 1889.

Hon. John R. Fellows,
District Attorney,

Dear Sir:--

Since making my complaint at your office, which resulted in the indictment of Mr. Ernest F. Birmingham for perjury, I have heard Mr. Birmingham's explanation of the matter, from which I am inclined to believe that there is room to doubt if he was guilty of corrupt and wilful perjury on the occasion referred to. While entertaining such a doubt I prefer not to prosecute him and I have to ask, if agreeable to you, that the case against him may be dismissed.

Very respectfully yours,

J. O. Woods,

0437

Folio 2.

Sohmer

Budd.

Budd Case

Contract with Budd was assigned with
note dated Feb. 18/84 - ^{& due about May 17th 84} - acct dated same.
This contract for 30¢ was collected by Birmingham
Feb. 23/84 - was paid by check of Budd's (see checks)
was not turned over to Mr. Woods.
Note - acct of contract - contract - check of Budd
& Budd & Woods.

Saw Budd
34
& Woodward

Sohmer Case

Contract with Sohmer & Co. was assigned same
as above - was for \$150 ^{monthly \$5.00}. Birmingham collected of
this 37th as follows; on May 4/84 12.50
" June 4/84 12.50
" July 4/84 12.50
none of which was paid to Mr. Woods.

Ernest F. Birmingham was Treasurer & manager of
Ernest F. Birmingham & Co., ^{owners} editors & publishers of
Ann. Quen - Mr. Woods loaned to Birmingham for his company
1000¢ in two notes & assigned as collateral certain contracts
for advertising. Birmingham then collected amounts
due on the contracts & failed to turn it over
to W.

0438

Exam:

Deft. was an agent to manage bank office.
will prove agreement.

Justin C. Woods
128 East 12 St
Samuel Budd
24 St & Broadway

International Banking Co.
 Frank Keenan & Co.
 W. S. Kimball
 Lohmer & Co.
 Keaden Laird & Co.
 Dr. J. C. Tyner & Co.
 H. O. Hubbard (4)

for which the said Rogers & Sherwood
 received the sum of 452.85
 by virtue of said sale, that lawfully
 belonged to said Woods by virtue of
 said assignments & that said Woods
 is without legal redress against
 said ^{Rogers} Rogers & Sherwood as has
 been decided by a verdict & award of
 the Superior Court of this City on
 the ground a defendant believes
 that said Birmingham gave at
 the time of said sale no notice of
 said previous assignments to said Woods.

The said Woods further Com-
 plains & deposes that said Bir-
 mingham did, without the knowl-
 edge or consent of said Woods Col-
 lect ^{or receive} & convert money owing to
 said Woods by said assignments
 beside a part of the money due & re-
 ceived on the contracts set forth
 above as sold & assigned to the
 said Rogers & Sherwood

The following:

Shepherd Knapp & Co	150.00
Johnson & Co.	50.00
Kidd & Co.	37.50
International Harboring Co.	37.50
Samuel Reed	20.00

all the sums are on said contracts assigned ^{to said} ~~to said~~ together with other ~~sums~~ ^{as the said} Woods believes are set forth in the books of said Everest & Birmingham & Co., which said Woods believes are in the possession of said Birmingham & Co. his home in Richmond County, which said Woods may be seized & removed, as several of the largest sums are due from persons residing out of this state & their collection is difficult, both in time & cost.

The said Woods further complains & deposes that at the time of the sale & assignment of Contracts for advertising as aforesaid the following Contracts were not good & void with the persons due or to become due thereon as stated in said affidavits:

H. P. Hubbard (4)

M. S. Mutual Accident Co.

A. H. Eglington, Jr.

H. K. Warner & Co.

Gastineau & Co.

& that said Birmingham knew that said was the case when he so sold & assigned them & said Woods, & the money loaned thereon was procured by false pretenses & the damage of the said Woods.

9.

The said Woods further complains & deposes that the said Ernest H. Birmingham as Treasurer of Ernest H. Birmingham & Co. sold & assigned to said Woods by two deeds of Assignment dated respectively Feb. 18 & Mar. 29 1884 twenty three Contracts for advertising in the American Queen as collateral security for the payment of the promissory notes bearing same dated with the said Assignments of \$500 each, the first due in 90 days the latter due in 60 days from the date thereof neither of which has been paid & that the said Contracts for advertising thereupon became the absolute property of said Woods by the terms of said Assignments to gether with the money due & to become due on said Contracts from the date of said Assignments.

That on the 27 day of June 1884 the said Birmingham as aforesaid without the Consent or knowledge of said Woods sold to Messrs Rogers & Herwood printers doing business in the City of New York on the 18 & 21 Barclay St. without informing said Rogers & Herwood that said Contracts were the property of said Woods. list of said Contracts as follows

201155
10011

4-14
Reading

0442

2 - Then your understanding was with Mr. Woods that notwithstanding this assignment of these Contracts you had the right to go on & collect the money due under the Contracts & that you could replace the Contracts so pledged by those two assignments by other Contracts with your Company?

A - That was my understanding. Yes, Sir.

2 - And you went on & collected in the ordinary course of business just as if those assignments had never been made? A - Keeping all the time that assignments good by by other Contracts?

2 - By the substitution of other Contracts? A - Yes.

2 - Do you mean to say (in substance as above)

A - Under certain conditions,

2 - Is it true (in substance as above)

A - Under certain circumstances. Yes, Sir.

2 - Then the same arrangement substantially existed substantially as to both of these assignments? A - Yes, Sir.

Deponent believes & deposes that the replies to the foregoing questions are material to the issue there being tried & that they are well and truly so.

that he guessed he would let it take its regular course. I asked him what he would do with it, he simply said he would let it take the regular course.

2 - What did he say in regard to having to pay it or not having to pay it? A - If asked him if it were deposited if Mr. Woods would not have a claim against him for it & he said if that was the case it would not be any worse later than it was then. The fact of its having gone into the bank account would not involve any wrong in the matter.

2 - Do you tell this jury that before you signed this Bill of Sale you exhibited to either Rogers or Sherwood a list of the contents, & A. Certainly. I exhibited it to Mr. Rogers.

2 - Where did this interview take place?

A - It took place in his private office.

2 - Only it was a few days after the assignment? (That this interview took place)

A - Yes Sir. I will say that within a few days, within the first of the month.

2 - Are you sure that ~~the~~ interview took place with Mr. Rogers? A - Yes.

(Question repeated) A - In reply to that I did answer that I was in the habit of passing checks back & forth (with Mr. Woods) & at more than one time passed checks of \$1000 or so & I cannot say on what date.

0444

Q - And did you go over that list together? Yes Sir.

Q - Did you do anything then in regard to pointing out to him which on that list were the accounts belonging to Mr. Woods? What did you do? A - He checked off those which were assigned to Mr. Woods.

Q - I asked him in regard to sending out officials who he intended to do for them. I told him just what was due at that time or what would be due during the next thirty days. I asked him what he would do when that had to do with checking up officials belonging to Mr. Woods.

Q - What did you do with that check (referring to a check received from Dr. J. C. Ayres) which came within a few days after the sale to Rogers? A - I took it to Mr. Rogers with what else there was at that time.

Q - You took it to Mr. Rogers? Yes Sir.

Q - Did you say anything to him in regard to that check? A - I called his attention to the fact that it was one of Mr. Woods' checks so that he might not perhaps deposit it with the others without having it.

Q - What did he say? A - He said

57
 Q. - Would the Commission the Company was in and told him just the exact truth in regard to every thing.

Q. - What did you tell him in regard to these accounts? A. - I told him of the assignments to Mr. Woods of certain accounts.

Q. - Did you identify the accounts in any way? A. - I showed him duplicates of these assignments Exhibits 3 & 4.

Q. - That was before the sale? A. - Yes Sir.

Q. - Then you had an interview on the same subject with Mr. Rogers did you? A. - Yes Sir.

Q. - When did you have that interview with Mr. Rogers - was it before or after the sale? A. - It was before the sale.

Q. - You saw Mr. Rogers in his office? A. - Yes Sir.

Q. - Did you have any list of ^{these} accounts before you or that time? A. - I gave him a list of these accounts before the sale.

Q. - Was that list before you at the time of this interview? A. - Not that list.

Q. - Was there a list of the accounts? A. - We had a list of the advertisements in the paper at that time & we went off (over) & checked from that other list those which were assigned to Mr. Woods.

Q. - Was that list before you & Mr. Rogers at this interview immediately after the sale to Rogers & others? A. - Yes Sir.

inferred that said ~~Mr. Sherwood~~ ^{Mr. Sherwood} were
 duly notified as aforesaid & agreed to pay
 the proceeds of said Curbact, to said Woods
 or that said Woods had retained or forfeited his lien
 in said ^{Copyright} ~~the said~~ Birmingham testified on said
 trial respecting said sale of the ^{and on other points} ~~Lucas~~ to
 Messrs Rogers & Sherwood, in answer to ques-
 tions ^{relating to the} ~~on~~ issue on said trial the following
 answers

2. At or about the time of the sale of the
 Lucas or this newspaper to Rogers & Sher-
 wood did you have any conversation with
 Mr. Rogers concerning any accounts which
 you had assigned to Mr. Woods? A - Yes, Sir.
2. Did you ever have any conversation
 on that subject with Mr. Sherwood?
 A - Yes, Sir.
2. - Was the conversation which you had
 with Mr. Sherwood before you sold the paper
 to Rogers & Sherwood or after? A - It was before.
2. - Where was that conversation?
 A - Well, I suppose I had several con-
 versations, I remember one at my office.
2. - Was the conversation which you had with Mr.
 Sherwood before you sold the paper to
 Rogers & Sherwood or after? A - It was before.
- ~~2. - Where was that conversation? A - Well, I~~
~~had several conversations, I remember~~
~~one at my office.~~
2. Before the sale of the newspaper to Rogers
 & Sherwood? A - Yes, Sir.
2. - What did you say within about these
 accounts of Mr. Woods at that time?
 A - I went through the books & he exam-
 ined every thing for himself & went
 right through every thing.

0447

3.

Dr. J. C. Ayres
 & D. Hubbard
 on which Contracts were paid 452.65
 to the said Rogers & Sherwood

165.00
 20.00

The said Birmingham subsequently informed said Woods that he had duly notified said Rogers & Sherwood at the time he sold them the Queen that said Woods was the owner of said Contracts & that the money due to him come due thereon belonged to said Woods & that they agreed to pay the proceeds of said Contracts to the said Woods.

Upon the said Rogers & Sherwood refusing to so pay the ^{said} proceeds to the said Woods he sued said Rogers & Sherwood in the Superior Court of the City of New York for said amount.

The main points or issues in said suit as shown by the pleading & the testimony were whether the said Birmingham at the time of said sale of the Queen to Messrs Rogers & Sherwood duly notified the said Rogers & Sherwood that the said Contracts belonged to the said Woods & that they agreed to pay the proceeds thereof to the said Woods, whether said Woods had waived his claim to the proceeds of said Contracts.

The Complaint in said suits was dismissed by the Court because as the defendant believes ^{the evidence did show} ~~it did not~~ satisfy the Court.

their terms. The said notes were not paid when due & have not been paid since, and the said Contracts for advertising became the absolute property of the said Woods.

On the 7th day of June 1884, the said E. F. Birmingham as Treasurer of E. F. Birmingham & Co. sold the said journal to Messrs Rogers & Sherwood printers, doing business at 21 Barclay street New York by an absolute Bill of sale with warranty without the consent or knowledge of said Woods, and the right title interest in said journal the same with the advertising Contracts then existing & the money then due or to become due thereon without any notice to said Rogers & Sherwood or either of them that said Woods had any interest in any of said Contracts.

Among the Contracts sold to Rogers & Sherwood were the following named which said Birmingham had previously sold & assigned to said Woods, to wit:

International Printing Co.	(sub paid R & S.)	75.00
Mack Keenan & Co.		18.25
H. L. Kimball		36.40
Shiner & Co.		100.00
Kidd & Land & Co.		75.00

C. F. Birmingham
1884

Rogers & Sherwood
1884

Woods
1884

June 10. 13000
128 East 12 St.

Mr. C. Rogers }
 J. W. Greenwood }
 21 Barclay St




Amesbury

THE PEOPLE OF THE STATE OF
NEW YORK

against

Wm. L. X 27

Ch

RANDOLPH B. MARTINE,
DISTRICT ATTORNEY,

No. 32 CLIMBERS STREET,
NEW YORK CITY.

0450

0451

People
 " } Rev.
 Birmingham

In this case the complainant
 was justified in sending through
 into the office charges of larceny
 and perjury against the defendant
 which were regularly referred to
 assistant Dist. atty. Davis.

Mr Davis filed a written
 report favorable to the submission
 of the matter to the Grand Jury
 which report was approved by
 the Dist. atty.

At Mr Davis' request I then
 examined the case for the purpose
 of ascertaining which of the charges
 would be better set forth in the
 indictment, and decided that the
 perjury charge was the safest and
 best. The indictment was accordingly
 drawn for perjury and the Grand
 Jury found a true bill for that
 offense.

Respectfully

J. W. D. Hudson

Deputy

Nov 11/87

0452

Peerless Tobacco Works
ADVERTISING DEPARTMENT.

Rochester, N.Y.,

188

Publisher of *American Quin* -
New York

Please examine attached Contract, sign and return to our address.

Respectfully yours,

W. S. KIMBALL & CO.

0453

WM. S. KIMBALL & CO.,
VANITY FAIR TOBACCO & CIGARETTES,
THIRTEEN FIRST PRIZE MEDALS,
PEERLESS TOBACCO WORKS,
ROCHESTER, N. Y.

Messrs Stanton & Cass,

Feb. 10, 1885.

New York City.

Gentlemen:-

Yours of the 6th inst received, and in reply have to say that our contract for advertising in the "American Queen" expired Nov. 1st '84, and has not been renewed; the terms of same were as follows: 2 inches, 52 insertions, for \$145.60, payable quarterly, and payments were made Mar. 12th '84, \$72.80, May 14th '84, 36.40, Sept. 10th, '84, \$36.40, total \$145.60, thus balancing our account.

Resp'y yours,

Wm Kimball
Down

0454

New York Dec. 28, 1888

John W. Poff, Esq.
Dist. Atty. Office, City
of Birmingham
Dear Sir -

I find I cannot
get my attorney to mail
me to your office upon
so short notice. Can you
be so good other day, &
oblige

Yours truly
J. O. Woods
161 Madison Ave.

Wrote in answer Appointing
Monday Dec 31 - 11. A.M.

0455

TORN PAGE

District Attorney's Office.
City & County of
New York.

People
vs.
Birmingham

POOR QUALITY
ORIGINAL

0456

District Attorney's Office.

PEOPLE

vs.

Ernest C. Kinnaman

John L. King

*I hereby certify
that the above is a
true and correct copy
of the original*

0457

Grand Jury Room.

PEOPLE

vs.

John Doe

Julius Woods

W C Rogers

Sherwood

0458

District Attorney's Office.

PEOPLE

vs.

Ernest T. Birmingham

Robert Calverton Part I

Exhib. 6ⁿ

Arthur D. Giff and others

vs. Calverton

0459

Grand Jury Room.

PEOPLE

PS.

John Doe

Subpoenaed for

Grand Jury

Friday May 13

in this case

Witnesses

Justus O. Woods

128 E. 12 St

Wm C. Rogers

Gas M. Sherman

21 Broadway

0460

District Attorney's Office.

PEOPLE

vs.

Ernest F. Birmingham

Attorney for Examination

Wright

Justus O. Woods
128-2nd 12-

0461

INTERNATIONAL BANKING CO.,

COR. BROADWAY & FULTON ST.

No. 617

\$150 ⁴⁰/₁₀₀

New York, October 31 1883

Messrs C. F. Birmingham & Co

You will please insert our advertisement in the American Queen
for the period of One year to occupy 50 lines, for which we agree
to pay One hundred & fifty — dollars, payable quarterly after expiration.
Change of text monthly, and copy of paper to be sent free after each insertion

This contract expires October 31 1884

International Banking Co.

[Signature]

0462

District Attorney's Office.

PEOPLE

vs.

Birmingham

note to Mr. Woods
Cuyler and Scott Linn
Counsel for Dept. to
call in reference to
above on Dec 28. at
10/30 pm respectively

Wm. L. Linn

Dec 26/88

Count of General Sessions of the Peace
of the City and County of New York

The People of the State
of New York,
against
Ernest E. Ciminogian

The Grand Jury of the City and
County of New York, by this indictment
accuse Ernest E. Ciminogian of the
crime of Perjury, committed as follows:

That to wit: on the first
day of January, in the year of our
Lord one thousand eight hundred
and eighty seven, at the City of New
York, in the County of New York, a certain
action of debt for money had
and received, was depending in the Superior
Court of the City of New York, wherein
one Arthur O. Woods was Plaintiff
and William R. Rogers and James
M. Sherwood were defendants, and on
the day and in the year aforesaid, at
the City and County aforesaid, before the
Honorable Charles H. Evans, then
being one of the Justices of the said
Superior Court, the issues before then
undisputed in the said action between
the parties aforesaid, came on to be

tried in due form of law, and were then
 and there in due form of law tried before
 the Honorable
 the said Charles H. Tracy, Justice as
 aforesaid, and being sworn by the said
 County of New York, in that behalf
 duly summoned, empanelled and sworn
 between the parties aforesaid.

And upon the said trial of the said
 issues in the said action, the said
 Ernest E. Cinnamond, late of the
 City and County aforesaid, then and
 there appeared and was produced as
 a witness for and on behalf of the
 said Arthur O. Woods, such plaintiff
 as aforesaid, and was then and there
 duly sworn, and did take his corporal
 oath, before the said the Honorable
 Charles H. Tracy, Justice as aforesaid,
 that the evidence which the said
 Ernest E. Cinnamond should give
 to the said Justice and to the said
 jury, touching the matters in question
 between the said parties, should be
 the truth, the whole truth, and nothing
 but the truth, and the said the Hon-
 orable Charles H. Tracy, Justice as
 aforesaid, then and there having sufficient
 power and authority
 and competent to administer the said
 oath to the said Ernest E. Cinnamond
 in that behalf.

and at and upon the said trial of the
 said issues no issue between the said
 parties as aforesaid, to wit: on the day
 and in the year aforesaid, at the City
 and County aforesaid, the following questions
 respectively became and were material
 thereto, that is to say: Whether at or
 before the time of the sale and transfer
 by the said Ernest E. Birmingham and
 Company, a corporation then duly existing
 under the laws of the State of New York,
 to the said William R. Rogers and
 James M. Sherwood, of a certain
 newspaper entitled "The American Democrat"
~~and the~~ together with certain
 contracts for advertisements to be
 inserted in the said newspaper, and of
 all money then due or to become due
 upon the said contracts, on or about
 the twenty-first day of June in the
 year of our Lord one thousand eight
 hundred and eighty-four, the said
 William R. Rogers and James M.
 Sherwood, or either of them had
 any knowledge or notice of a prior
 assignment or transfer ^{of certain of} of the
 same contracts above mentioned
 and of all money due or to become
 due thereon to the said Arthur C.
 Wood, certain of which said contracts
 and of the money so due or to become
 due thereon, were by the said Ernest

T. Birmingham and Company assigned
 and transferred to the said Arthur O.
 Woods on the eighteenth day of
 January, in the year last aforesaid,
 and the remainder thereof on the
 twenty-first day of March, in the
 same year, for the purpose of
 securing the payment of certain
 promissory notes for the payment
 of certain money by the said
 Ernest T. Birmingham, to the
 order of the said Arthur O. Woods,
 and whether the said Ernest T.
 Birmingham, at or prior to the
 time of the said sale and transfer
 of the said newspaper, and of the
 said contracts and money due or to
 become due thereon to the said
 William R. Rogers and James M.
 Sherwood as aforesaid, had notified
 the said William R. Rogers and James
 M. Sherwood of the said prior
 assignments and transfers.

And the said Ernest T. Birmingham,
 being so sworn as aforesaid,
 then and there, testified on the said
 eight day of January, in the year
 of our Lord one thousand eight
 hundred and eighty-seven, at the
 City and County of London, on the

said trial of the said issues in
 the said action, upon his oath
 & affidavit, before the said the
 Honorable Charles H. Tracy,
 Justice as aforesaid, and before the
 said jurors so empanelled and sworn
 as aforesaid, & demanding judgment
 intelligently and knowingly, did & do hereby
 swear & depose and say (amongst
 other things) in substance and to
 the effect following, that is
 to say:

That before the sale and trans-
 fers by the said Ernest E. Birmingham
 and Company to the said William R.
 Briggs and James M. Sherwood of
 the said newspaper, and the said
 contracts and money due or to become
 due thereon as aforesaid, the said
 Ernest E. Birmingham had a
 conversation with the said James
 M. Sherwood in which the said
 Ernest E. Birmingham told him
 the said James M. Sherwood of
 the said prior assignments and
 transfers of certain of the same
 contracts and of all the money due
 or to become due thereon to the said
 Arthur O. Wood, and that the same
 line showed to the said James M.

Sherman's duplicates of the in-
 struments whereby the said contracts
 and money due or to become due
 thereon, had been assigned and
 transferred to the said Justice O.
 Woods; that before the said sale
 and transfer to the said William
 R. Rogers and James W. Sherman,
 the the said Ernest E. Birmingham
 had an interview on the same
 subject with the said William R.
 Rogers, that immediately after
~~the said sale and transfer and~~
 agree to the said William R. Rogers
 a list of the said contracts so
 assigned and transferred to the
 said Justice O. Woods; that im-
 mediately after the said sale and
 transfer to the said William R.
 Rogers and James W. Sherman,
 the the said Ernest E. Birmingham
 had an interview with the said
 William R. Rogers, during which
 the the said Ernest E. Birmingham
 and the said William R. Rogers
 went over the said list together,
 and checked up such of the said
 contracts as had been assigned
 and transferred to the said Justice
 O. Woods, -
~~the said James W. Sherman and~~

Whereas in truth and in fact the said Ernest E. Birmingham had not had a conversation with the said ~~James~~ Mr. Sherwood before the said sale and transfer by the said Ernest E. Birmingham and Company to the said William R. Rogers and James M. Sherwood of the said newspaper, and the said contracts and money due or to become due thereon as aforesaid, in which the said Ernest E. Birmingham told him the said James M. Sherwood of the said prior assignments and transfers of certain of the same contracts and of all the money due or to become due thereon to the said Arthur O. Woods, and did not at the same time show to the said James M. Sherwood duplicates of the instruments whereby the said contracts and money due or to become due thereon had been assigned and transferred to the said Arthur O. Woods, the said Ernest E. Birmingham then and there well knew.

And whereas in truth and in fact, before the said sale and

transfer to the said William R. Rogers and James M. Sherwood the said Ernest F. Birmingham did not have an interview with the said William R. Rogers, and did not give to the said William R. Rogers a list of the said contracts so assigned and transferred to the said John O. Woods, as the said Ernest F. Birmingham then and there well knew.

And whereas in truth and in fact the said Ernest F. Birmingham did not have an interview with the said William R. Rogers immediately after the said sale and transfer to the said William R. Rogers and James M. Sherwood, during which the said Ernest F. Birmingham and the said William R. Rogers met over the said list together, and checked up and the said contracts so assigned and transferred to the said John O. Woods, as the said Ernest F. Birmingham then and there well knew.

And as the Respondent further alleged and averred that the said

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Ernest F. Cunningham, in manner
and form aforesaid, and in order
therein, and in order to prevent
and prevent and prevent
perjury, 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.

Charles F. Martin,
District Attorney.