Circuit Court of the United States.

To the Judges of the Circuit Court of the United States for the District of Massachusetts,-

William H. Kennedy of Brooklyn in the County of Kings and State of New York, a citizen of said State of New York and of the United States, and the Automatic Music Paper Company, a Corporation duly organized and established by law under the laws of the State of Massachusetts and located in the City of Boston in said District, bring this their bill of complaint against John Mc. Tammany Jr. a resident and citizen of Worcester in the County of Worcester in said District, and thereupon your orators complain and say,

I. That your orator said Kennedy, who is known in musical and dramatic circles as Harry Kennedy, being then and at all times herein or hereinafter set forth a citizen of and resident in these United States of America, was and is the first and original owner, composer, writer and inventor, of the words and music of a certain song, musical composition, score and book entitled "Cradle's Empty, Baby's Gone."

II. That on or about the 23rd. day of August, A.D. 1880 and before the publication thereof, your orator, said Kennedy,

did deliver at the office of the Librarian of Congress at Washington, in the District of Columbia, a printed copy of the title or description of the said song, musical composition, score and book in these words

"Cradle's Empty, Baby's Gone."

"Song and Chorus.

"Words and Music by Harry Kennedy."

and that on the same twenty third day of August, A.D. 1880, your orator, said Kennedy, did deliver at the office of said Librarian of Congress two complete printed copies of such copyrighted book, musical composition, and score of the best edition issued, as the statute requires, and, thereupon, the said Librarian of Congress at said Washington did forthwith record the name, description and title of said book, song, musical composition and score in a book kept for that purpose and in conformity with the laws of the United States respecting copyrights, all of which appears from the certificate of said Librarian of which a true copy is hereto annexed marked A.

III. That thereupon and on said 23rd. day of August A.D. 1880, and thereafter, due notice was given by your orator, said Kennedy, of the said copyright by inserting in each and

every of the copies and of every edition thereof published, on the title page and on the page immediately following the title, the words

"Copyright 1880, by Wm. H. Kennedy."

IV. That your orator, said Kennedy, before and since the publication of said book, musical composition, song, words and music, has fully complied with and duly fulfilled all the requirements and provisions of the law and rules in and for such cases made and provided and became and is entitled to and acquired the sole right and liberty to print, reprint, publish, vend and copy, the said book, musical composition, score, song, words and music, for the period of twenty eight years from the said 23rd. day of August A.D. 1880, the time of recording such title, and that said time has not yet expired, nor had it expired at the time of the infringement and piracies hereinafter set forth.

V. That the said book, song, musical composition, score, ~~song,~~ words and music, has been printed, published and supplied to the public at great cost of valuable time in the preparation of the manuscript and at great expense to your orator, said Kennedy, in its publication, and your orator,

said Kennedy, has been in receipt of large sums of money from the proceeds of the sales of said book, song, musical composition, score, words and music, to reimburse his expenses, and remunerate his labor and care bestowed upon the same.

VI. That by recent ingenious inventions and discoveries in musical instruments and appliances for the performance of musical compositions on such instruments, a musical composition may be performed upon certain musical instruments called and known as orguinnettes, organettes and organinas, by means of long sheets or strips of perforated paper, which said sheets or strips of paper are constructed with perforations through which the passage of air coming in contact with reeds or other sounding devices produces a performance of a musical composition;

Such musical instruments consist briefly of an exhaust bellows wind chest, musical reeds arranged in a line across the instrument and according to the scale desired, reed chambers communicating with said wind chest and air passages or ducts leading from said reed chambers, one to each reed chamber, to the outside of a table or raceway on and over which by a suitable feeding mechanism the sheet or strip of perforated paper is caused to move through the instrument

across the line of the outer ends of said air passages or ducts.

The perforations in said sheet or strip are in longitudinal rows, one to each of said air passages, and each row corresponding to a note of the musical scale of the instrument, and with a proper operation of the bellows and the feeding mechanism for said sheet or strip, said sheet or strip is caused to travel through the instrument and over the outer ends of said air passages, and as a perforation in said sheet or strip as it so travels through the instrument, comes to and passes over its respective air passage, air will pass through said passage, (because of the operation of the bellows exhausting the air from the wind chest) to the musical reed and sound the same, and thus with an arrangement of the perforations in said strip or sheet according to and corresponding with the melody or tune and the scale of the musical reeds in the instrument, the said melody or tune will be performed upon said instrument.

VII. Your orator, said Automatic Music Paper Company, has been and is largely engaged in the manufacture and publication of the sheets or strips of paper so adapted to such musical instruments by such perforations corresponding to the

score of such musical compositions as are desired to be performed upon such instruments.

Vlll. In the prosecution of their said business your orator, said Automatic Music Paper Company, have sought to obtain licenses from the authors and proprietors of copyrighted musical compositions and in consideration of certain royalties paid by said company to said Kennedy, said company on or about the first day of June A.D. 1882, received from said Kennedy an exclusive license to make, publish and vend said sheets or strips of paper designed for such musical instruments by perforations corresponding to the score of his copyrighted musical composition entitled as aforesaid

"Cradle's Empty, Baby's Gone."

and due notice has been given by your orator, said Automatic Music Paper Company, upon each and every of said perforated sheets or strips of paper so made, published and sold by them, by printing upon each and every of said sheets or strips the words "Cradle's Empty, Baby's Gone. Copyright 1880 by Will. H. Kennedy; used by permission of Will. H. Kennedy, Brooklyn."

IX. That the defendant well knowing the premises and that your orator, said Kennedy, was the author of said musical composition, score and music and the proprietor of said copyright and that your orator, said Automatic Music Paper Company, was the sole and exclusive licensee of the right to make publish, and vend said musical composition and score in the form which the same is or may be produced upon said sheets or strips of perforated paper, one of which with the score of said copyrighted musical composition represented in the arrangement of its perforations is filed with this bill and marked Exhibit B, and well knowing that both your orators are largely interested in the sale of said perforated sheets containing said musical composition and score and wrongfully intending to infringe and pirate said copyright and the said copyrighted musical composition and score of which your orator, said Kennedy, is author and proprietor and said company his exclusive licensee as aforesaid, as said defendant well knew, deliberately and after due notice did on or about the eighteenth day of May A.D. 1883 and at divers times both before and since said eighteenth day of May A.D. 1883, without the allowance or consent of either of your orators

and in open violation of their rights did make, prepare, publish and sell said musical composition and the score of said music in the form of perforated sheets copied from those sold by said company under said license then and now copyrighted by your orator, said Kennedy, and by him licensed to said company.

X. That said perforated sheets containing the score of the music of said musical composition and song as aforesaid so manufactured, published and sold by defendants are a piracy of the copyrighted work and composition of your orator said Kennedy, and contain the musical composition and musical score of the work and book owned and copyrighted by your orator, said Kennedy, almost verbatim.

XI. That your orators have sustained great damage, detriment and injury from the infringement and piracy herein referred to, and have warned defendant to desist from said infringement and piracy, but that defendant has neglected and refused, and still neglects and refuses, to desist from said infringement and piracy, notwithstanding.

XII. That defendant has sold large numbers of said infringement

and piracy, to wit, the said perforated sheets containing the musical score of said book, musical composition and song, by him, said defendant, manufactured, published and sold, under the name and title

"Cradle's Empty, Baby's Gone."

"Song and Chorus.

"Words and Music by Harry Kennedy."

in violation of the Acts of Congress of the United States relating to copyrights, and have made great profits for himself thereby; all of which actings, doings and pretences are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators in the premises.

XIII. To the end, therefore, that the said defendant may, if he can, show cause why your orators should not have the relief hereby prayed for, and may, upon his corporal oath and according to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the several interrogatories hereinafter numbered and set forth, -that is to say:

I. Whether it is not a fact that this complainant, said Kennedy, is the author, composer and writer of the words and music of the book, musical composition and song entitled,

"Cradle's Empty, Baby's Gone."

2. Whether it is not a fact that this complainant, said Kennedy, did, before the publication thereof, and on the 23d. day of August, 1880, deliver at the office of the Librarian of Congress, at Washington, in the District of Columbia, a printed copy of the title or description of said song, musical composition and book in these words:

"Cradle's Empty, Baby's Gone.

"Song and Chorus.

"Words and Music

"By Harry Kennedy."

3. Whether it is not a fact that this complainant, said Kennedy, did thereafter, and on the 23d. day of August, 1880, and within ten (10) days from the publication thereof, deliver at the office of the Librarian of Congress, at Washington, in the District of Columbia, two complete printed copies of such copyrighted book, song and musical composition of the best edition issued, as the statute requires.

4. Whether it is not a fact that thereupon and on said 23d. day of August, 1880, the said Librarian of Congress, at Washington, in the District of Columbia, did forthwith record the name, description and title of said song, musical

composition, words and music, in a book kept for that purpose, in conformity with the laws of the United States respecting copyrights.

5. Whether it is not a fact that thereupon and on said 23d. day of August, 1880, and thereafter, notice was duly given by your complainant, said Kennedy, of the said copyright by inserting in each and every of the copies and of every edition thereof published, on the title page, and on the page immediately following the title, the words, "Copyright, 1880, by William H. Kennedy."

6. Whether or not it is a fact, that this complainant, said Automatic Music Paper Company, has since said first day of June and always since receiving from said Kennedy said license to make, publish and vend said perforated sheets or strips of paper designed for musical instruments as aforesaid given due notice of said copyright by printing upon each and every of said sheets or strips the words "Cradle's Empty, Baby's Gone." Copyright 1880, by Will H. Kennedy used by permission of Will H. Kennedy, Brooklyn."

7. Whether or not it is a fact that musical instruments are constructed in large numbers and that perforated sheets

or strips of paper are manufactured and so adapted to such musical instruments by such perforations corresponding to the score of such musical compositions as are desired to be performed upon such musical instruments substantially as described in this bill.

9. Whether or not the defendant has made, published and sold such perforated sheets entitled,

"Cradle's Empty, Baby's Gone"

substantially like those sold by said Automatic Music Paper Company under said title.

10. Whether or not it is a fact that defendant has sold perforated sheets or strips of paper so adapted to such musical instruments as have been described in this bill as to produce substantially on said instruments the same musical composition as that written, composed, owned and copyrighted by complainant Kennedy, entitled "Cradle's Empty, Baby's Gone."

11. Whether or not it is a fact that defendant has sold such sheets or strips of perforated paper with the imprint thereon of the words,

"Cradle's Empty, Baby's Gone."

12 Whether or not it is a fact that such sales have been without the consent or authority of these complainants or either of them.

Your orators pray that the defendant be compelled by a decree of this Honorable Court to account for and pay over to your orators all such gains and profits as have accrued or arisen to or have been earned or received by the defendants, or to which they may be entitled by reason of such unlawful manufacturing, publishing and selling of the piratical infringement of the copyrighted book, song and musical composition of your orator, said Kennedy, entitled "Cradle's Empty, Baby's Gone," by means of said perforated strips or sheets of paper, and all such gains and profits as your orators would have received but for said unlawful acts and doings of the said defendant, and such damage as by said unlawful and wrongful acts they have sustained, And may it please your Honors to direct and decree that the defendant discover and disclose how many copies of the piratical infringement manufactured and published by defendant of the said copyrighted song, book and musical composition of your orator, said Kennedy, called "Cradle's Empty, Baby's Gone," by

means of said perforated strips or sheets of paper, the said defendant has on hand or had on hand unsold at the time of the filing of this bill.

And may it please your Honors to decree that such copies on hand be delivered up to be cancelled and destroyed.

And may it also please your Honors, the premises being considered, to grant unto your orators the writ of injunction issuing out of and under the seal of this Honorable Court, or issued by one of your Honors according to the form of the statute in and for such cases made and provided, perpetually enjoining and restraining the said defendant, his clerks, attorneys, agents, servants, workmen, and each and every other person and persons by his leave or with or by his consent or authority from, directly or indirectly, manufacturing, publishing, selling, exposing for sale, giving away or distributing any copies of the perforated strips or sheets of paper of the book, song and musical composition called "Cradle's Empty, Baby's Gone," written, composed, owned and copyrighted by your orator, said Kennedy.

And that your orators may have such other or further order, judgment or relief in the premises as the nature of the circumstances of this case may require, and to this Honorable Court shall seem meet, just and equitable.

And may it please your Honors to grant unto your orators a provisional or preliminary injunction issuing out of and under the seal of this Honorable Court, or issued by one of your Honors according to the form of the statute in and for such cases made and provided, enjoining and restraining the said defendant, his clerks, attorneys, agents, servants, workmen, and each and every other person and persons by his leave or with or by his consent to the same purport, tenor and effect hereinbefore prayed for in regard to said perpetual injunction.

And may it please your Honors to grant unto your orators a writ of subpoena of the United States of America issued out of and under the seal of this Honorable Court, directed to the said John Mc. Tammany, commanding him on a day certain, therein to be named, and under a certain penalty, to be and appear in this Honorable Court, then and there to answer to all and singular the premises, and to stand to and to perform and abide such further order, direction and decree as may be made against him.

Augustus Russ of Counsel

William A Kennedy
Automatic Music Paper Co.
By Geo B Kelly Pres

~~Geo W. Dalton Notary Public~~
~~Kings Co. Cty filed in Ny.~~

Henry E. Mellus
Notary Public Kings Co

Exhibit A.

(L.S.) Library of Congress.

No.12958 L. Copyright Office,Washington.

To wit: Be it Remembered,

That on the 23d day of August anno domini 1880 Will.H.Kennedy of Brooklyn,N.Y. deposited in this office the title of a Musical Composition the title or description of which is in the following words,to wit:

Cradle's Empty,Baby's gone.

Song and Chorus

Words and Music by

Harry Kennedy

the right whereof he claims as proprietor in conformity with the laws of the United States respecting Copyrights.

(Signed) A.R.Spofford.

Librarian of Congress

Two copies of the above publication deposited Aug.23,1880.

I,A.R.Spofford,Librarian of Congress,hereby certify that the foregoing is a true copy of the original record of copyright in the Library of Congress.

In witness whereof I have hereto set my hand and affixed the seal of my office this 21st. day of June,1883.

(L.S.) A.R.Spofford,Librarian of Congress.

United States of America, Southern District of New York
~~Southern District~~ State of New York, ss.:
~~State, City and~~ City of Brooklyn County of ~~New York~~ Kings.

William H. Kennedy, being duly sworn, says: I am the complainant in the foregoing bill named. I have read the same and know the contents thereof. The same is true of my own knowledge except as to those matters which are therein stated to be alleged upon information and belief, and as to those matters I verily believe it to be true. William H. Kennedy

Subscribed and sworn to before me this 31st day of July, 1883.

~~Geo. W. Dalton~~
~~Notary Public~~
~~Kings Co. Cty filed in Ny~~

Henry E. Mehne
Notary Public
Kings Co

United States of America
District of Massachusetts
County of Suffolk, } ss

George B Kelly being duly sworn deposes and says I am the President of the Automatic Music Paper Company one of the complainants named in the foregoing bill

I have read the same bill and know the contents thereof.

All the allegations of said Automatic Music Paper Company therein contained I know of my own knowledge to be true and all other allegations in said bill I believe to be true.

Automatic Music Paper Co
By Geo B Kelly Pres.

Subscribed and Sworn to before me this Twenty Seventh day of August A. D. 1882.

Edwin W. Brown
Notary Public.

Ct. Term 1887

William H Kennedy
et al

v

John McTammany Jr

1933

Bill of complaint.

Subpa. issd Sept. 29. return Nov. 1 R
Ord. Nov. 5 1883

C.C.M.S.
Chas Dist. Oct. 7. 1883

No 1933 Mrs A. Kennedy Adm. v. John McCummery Jr.

Defts Costs.

Vs. 2 Terms May & Oct. 7. 1883

	2 Terms @ 2.64	5.28	
Atty.	" " " .33	.66	
Sr.	2 Rules " 2.64	5.28	
Atty.	2 " .33	.66	11.88
Attorney Fee			2.00
			31.88

Clerk's Fees:

Fil.	.60
D.B.	1.20
D.J.	2.00
Cond.	.90
Dec.	.50
Rec.	6.00
	11.20

1933

Oct. 5. 1883

Cost
& Electric fees

Old

Boston, Feby 6th 1888

J. C. Maynadier

To John S. Stetson, Dr.

CLERK UNITED STATES CIRCUIT COURT, MASS. DIST.

Estimated costs:

Due now:

Clerk's fees on disposition of cause	20 40
On preparing transcript for Supreme Court	54 00
Deposit for Clerk of Supreme Court	25 00
Preparing bond & copy	2 00
Citation & copy	2 00
	$ 113 40

Del Mar 19

1933

Costs

of appeal

United States of America
Massachusetts District ss.
Circuit Court
In Equity

William H. Kennedy and the Automatic Music Paper Company - Complainants

vs

John McTammany Defendant.

Demurrer of the said defendant to the amended Bill of Complaint of said William H. Kennedy and others.

This defendant, by protestation, not confessing all or any of the matters and things in the complainants amended bill of complaint contained, to be true, in such manner and form as the same are therein set forth and alleged, doth demur to said bill, and for cause of demurrer

Shows:
(1) That the said bill doth not contain any matter of equity, upon which this Court can ground any decree, or give to the complainants any relief against this defendant -
(2) That the said bill doth not, nor does anything therein alleged or set forth, show any infringement or piracy whatever of the words or music or song, musical composition, score or book entitled "Cradles Empty Babys Gone" or the alleged copyright thereof; nor any copyrighted work or composition or copyright of the complainants, or either of them, as set forth and alleged in said bill.
(3) That the said bill doth not contain or set forth any matter of equity or thing entitling the complainants to the discovery claimed or upon which this Court ought or can

make any decree or which entitles the complainants to the relief prayed for or any relief. —

(4) That the complainants have not made or stated such a case as entitles them to the relief prayed for or any relief in a court of equity —

Wherefore and for other good causes of demurrer appearing in the said bill the defendant doth demur thereto and humbly prays the judgment of this court whether he shall be compelled to make any further or other answer to said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained —

By his Solicitors
C. T. & W. H. Russell
& of Counsel for defendants

I certify that in my opinion the above demurrer is well founded in point of law.
Chas. The Rapsel of counsel —

I John McTammany defendant in the above named cause, on oath do say that the foregoing de-murrer is not interposed for delay

John McTammany

Worcester ss. Subscribed and sworn to before me this twenty-fourth day of October A.D. 1884

W. B. Harding
Justice of the Peace

1930

Wm H Kennedy Jr

v.

John McTimmey

Defts Demurrer

to amended Bill.

4

Circuit Court of the United States
District of Massachusetts

William H. Kennedy et al
John McCammany Jr } vs. Equity

Answer of John McCammany

Answer

And now comes John McCammany the defendant in the above entitled action, reserving to himself now and all rights claimed under the demurrer filed in this case and makes answer as follows:

1st The defendant does not know of his own knowledge, and has no means of knowing except from the allegations in said bill, whether the said Kennedy is a citizen and resident of the United States of America, nor whether the said Kennedy was ever the author and composer of the words and music of a certain song, musical composition, score and book entitled
"Cradle's Empty. Baby's Gone"
but will require complainants to prove the same.

2" The defendant upon his best information and belief denies that on or

the 23rd day of August A D 1880, and before the publication thereof the said Kennedy did deliver at the office of the Librarian of Congress at Washington in the District of Columbia, a printed copy of the title or description of the said song, musical composition, score and book in these words.

'Cradle's Empty. Baby's Gone
Song and Chorus
'Words and Music by Harry Kennedy'"

And the defendant has no means of showing except from the allegations contained in said bill, that "on the said 23rd day of August A.D. 1880 the said Kennedy did deliver at the office of the said Librarian of Congress two complete printed copies of such copyrighted book, musical composition and score, of the best editions issued, as the statute requires, and thereupon the said Librarian of Congress at said Washington, did forthwith record the name, description and title of said book musical composition and score, in a book kept for that purpose and in conformity with the laws of the United States respecting copyrights, and the defendant will require the complainants to prove the same.

3rd The defendant can neither admit nor deny that "thereupon and on said 23rd day of August A D 1880 and thereafter due notice was given by said Kennedy of the said copyright by inserting in each and every of the copies and of every edition thereof published, on the title page and on the page immediately following the title the words

'Copyrighted 1880 by Wm H. Kennedy"

11th The defendant can neither admit nor deny that the "said Kennedy, before and since the publication of the said book, musical composition, song, words and music, has fully complied with and duly fulfilled all the requirements and provisions of the law and rules in and for such cases made and provided and became and is entitled to and acquired the sole right and liberty to print, reprint, publish vend and copy the said book, musical composition score, song, words and music from the said 23rd day of August A. D. 1880."

5th The defendant can neither admit nor deny that the said musical composition, score, song, words and music has been printed and supplied to the public at great cost of valuable time in the

preparation of the manuscript and at great expense to the said Kennedy, in its publication, and that the said Kennedy has been in receipt of large sums of money from the proceeds of the sales of said book, song, musical composition, score, words and music to reimburse his expenses and remunerate his labor and care bestowed upon the same"

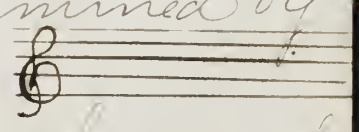
6th The defendant denies that the exhibit filed by the complainants and marked "B" is a new style of sheet music, but says that the same is a purely mechanical manufacture and an appliance for and a separate and distict part and portion of a musical instrument and is not in any sense used as ~~and~~ or in the place of sheet music But he avers that it is true as stated in the original bill that "by means of certain ingenious inventions in musical instruments for the performance of musical compositions on such instruments, a musical composition may be performed upon certain musical instruments called and known as organettes, orguinettes and organinas &c. by means of long ~~[illegible]~~ strips of perforated paper, which ~~[illegible]~~

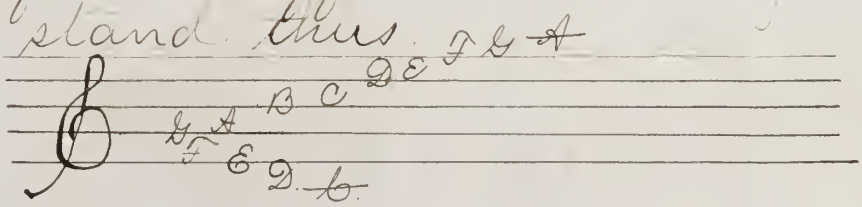
said sheets or strips of paper or [illegible]
ed with perforations through which
the passage of air coming in contact
with reeds or other sounding devices
produce a performance of a musical
composition. Such musical instru-
ments consist briefly of an [illegible]
bellows, wind chest, musical reeds
arranged in a line across the instru-
ment, according to the scale desired,
reed chambers communicating with
said wind chest, and air passages or
ducts leading from said reed chambers,
one to each reed chamber, to the outside
of a table or raceway on and over
which by a suitable feeding mechanism
the sheet or strip of perforated paper
is caused to move through the instru-
ment across the line of the outer ends
of said air passages or ducts. The perfo-
rations in said sheet or strip are in
longitudinal rows, one to each of said
air passages and each row corresponding
to a note of the musical scale of the
instrument, and with a proper
operation of the bellows and the feeding
mechanism for such sheet or strip,
said sheet or strip is caused to travel
through the instrument and over

the outer ends of said air passages and as a perforation in said sheet or strip as it so travels through the instrument comes to and passes over its respective air passages, air will pass through said passages (because of the operation of the bellows exhausting the air from the wind chest) to the musical reed and sound the same, and thus with an arrangement of the perforations in said strip or sheet according to and corresponding with the melody or tune and the scale of the musical reeds in the instruments the melody or tune will be performed upon said instrument." These musical instruments (the invention of this defendant), make use of an old and well known mechanical appliance in the shape of perforated paper, first patented in this country by Hunt & Bradish in 1849 as shown in Patent 6006 of the United States, and as shown in various foreign patents in England and France. The difference between the musical composition shown in the printed score of the song entitled

"Cradle's Empty, Baby's Gone"

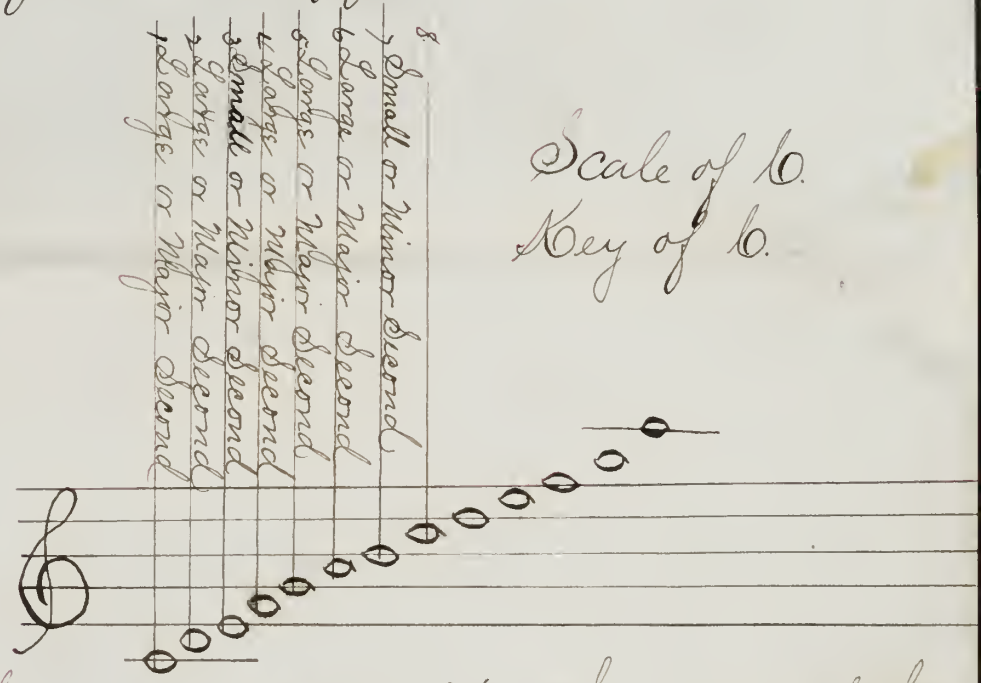
and the exhibit of Complainants marked "B" are so great there is no comparison between them.

In the printed score of all music the musical staff consists of five parallel lines with their intermediate spaces, each line and space of which is called a <u>degree</u>. The staff therefore comprises <u>nine</u> degrees viz: five lines and four spaces. The staff may be extended and the number of degrees augmented by adding short lines above and below as may be desired - such additional lines being commonly called "<u>ledger lines</u>" The degrees of the staff are named after the first seven letters of the alphabet and the location of these literal names, afforded by the letters, is determined by a sign, called a "<u>Clef</u>" thus  which fixes the name "G" to the second line, and it is therefore called the G Clef. The literal names given to the degrees of the staff, as located by the G Clef, stand thus



A note, thus o, represents a tone. The tones of the scale are represented by notes

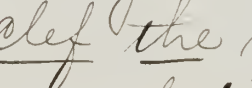
following each other on consecutive degrees of the staff.



Scale of C.
Key of C.

Numerals	1. 2. 3. 4. 5. 6. 7. 8.	or the names of the tones of the scale as such.
Letters	C. D. E. F. G. A. B. C	or the literal names by which the pitch of the tone is designated
Syllables	Do. Re Me. Fa. Sol La Si Do.	indicating the vocalities to which the scale is sung

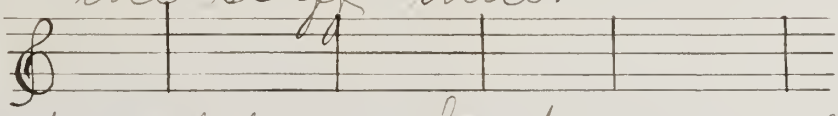
By common consent the first tone of the scale is represented on C the first line below, the second on D, the first space below, third on E the first line &c. The intervals between the letters correspond to those between the tones of the scale as illustrated in the diagram. The pitch of a tone is designated by the literal name of the degree of the staff on which it is represented. For example, if the note be written on G the pitch of the tone represented thereby is called G, irrespective of any other attribute or quality that may be imparted to the tone.

The clef is, therefore, essential, for however complete the representation of a tone may be otherwise, in the absence of a clef the notes on the staff have neither relative nor positive pitch. The literal names of the degrees of the staff may also be indicated by a sign thus  , which fixes the place of the letter F and is therefore called the F clef. Under this sign, F, the clef letter, is on the fourth line and from which the letters are reckoned upward in alphabetical order and downward by the inversion of that order.

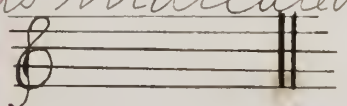
In contradistinction to the G and F clef above mentioned there is also the C clef which locates the pitch of C on the third space.

The characters used to represent tones are called notes. From the fact that tones may be longer or shorter, arises the necessity for notes of different shapes and names. The note thus 𝅝, represents the longest tone and is therefore called a whole note; that representing a tone half as long, thus 𝅗𝅥, is a half note; that representing a tone one quarter the length of the whole note thus ♩, is a quarter note and so with the eighth note, the sixteenth,

, thirty-second, and sixty-fourth notes
To each of these notes there is a corresponding rest, known as the whole rest, half rest, quarter rest &c
A dot after a note or rest, adds one half its original length or value, and to this "dot" may be added another dot which has the effect of adding to the duration of the first note one half
It will therefore, be seen that there are not less than eighteen notes or characters made use of in representing length of tones and an equal number representing silence or rest, or a total of thirty-six characters. There are still other characters that increase or diminish length of notes but which need not now be enumerated.
The accent in music is technically called Rythm. The rythmical structure of a piece of music is indicated by Bars or perpendicular lines drawn across the staff thus:

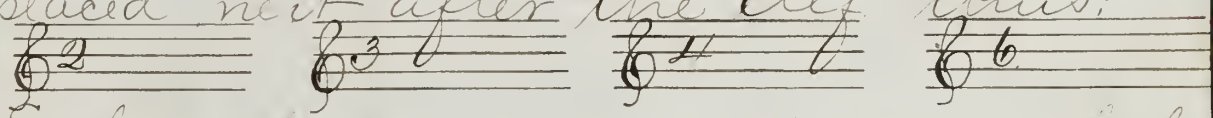


Each space between the bars is called a measure. The end of a piece of music is indicated by a close thus:



Every measure in music has two, three, four or six

Counts; the number of Counts being indicated by a numeral or figure placed next after the Clef thus:



Each kind of measure is distinguished by the number of Counts that may be given it. Two counts distinguish one kind, three another, four another &c. There are therefore a number of kinds of measures. The foregoing figures indicate that 2-3-4 or 6 parts are contained in a measure. Music, also, is accented and the accent or pulsation of music is represented by the rythmical structure of the tune, that is the ~~t~~ rythm enters into the composition of the tune, as such whereas the accent is expressed in the performance of it. The rythm is addressed to the eye, the accent to the ear. The figure "2" following the clef indicates what is known as Double measure, the figure "3" Triple measure, the figure "4" Quadruple measure and so on. Double measure may be represented by two half notes or by two quarter notes, hence arises the necessity for a sign by which to indicate the value of the count or note.

From the fact that all the degrees of

the staff are employed inclusively from one to eight in representing the major scale, and that the so-called intermediate tones must from necessity be noted on the degrees with the other tones, there arises a demand for characters or signs by which to indicate a difference of pitch between two notes written on one and the same degree of the staff - these signs are called Sharps and Flats. A sharp, thus (#) before a note elevates the pitch of that note to the next tone of the chromatic scale, and a Flat (b) before a note depresses the pitch thereof to the next tone of the chromatic scale. A natural is a sign thus (♮) used to cancel the effect of either a sharp or a flat. The agreement between the letters on the degrees of the staff and the tones of the scale represented thereon is effected by means of the sharps and flats. There are also used characters to indicate force, such as Piano for soft. Forte. for loud &c. together with a large variety of signs for indicating the expression. Such are some of the laws which govern the construction of a musical

composition and to which all musical compositions must and do conform. In the composition entitled "Cradle's Empty Baby's Gone" the author employs the staves which are joined by a brace, next he uses the G clef to locate the pitch of the letters on the upper staff and the F or bass clef to designate the Bass Clef. Immediately after the clef there is the letter "C" showing the time and number of parts in a measure. Above the upper staff appear the words, "Moderato con Express" indicating the movement of the piece, while between the two staves, there are the letters "mf" to indicate the power. There are also other marks of expression, such as. Crescendos. Diminuendos slurs, ties &c. In addition to the foregoing there appear Bars. Double Bars. Rests. sharps, naturals &c. In this composition all the foregoing (including the notes) are essential to a proper interpretation of the piece and the absence of any one of them would make the piece unintelligible.
In the perforated paper used on the musical instrument none of these characters or signs are used. There is

no clef, to locate the pitch, no sharps or flats to indicate the key, no bars or measures to show its rythmical structure, no figures or letters to designate the kind of measure, or the accent. nothing to show expression, nor in fact any of the many signs or characters that become absolutely necessary to even convey an impression or conception of the author of the musical composition. It becomes true as is stated in the complainants amended bill that it "is adapted and intended for a use wholly different from any use possible to be made of the printed music" The length of the perforation is no indication of the length of the note, as the length of the perforation to produce a given length of note must vary with the feeding mechanism of each style of instrument, and there is no standard which can be used as a guide. The defendant denies that "any person skilled in the manufacture of sheet music and also skilled in the manufacture of the perforated sheets or strips can produce either from the other" or that "a person skilled in the use of the ordinary sheet

music can readily learn to use the perforated sheets or strips without the aid of the special musical instrument for which they are designed" or that "any person familiar with both can translate the one into the other or could use the perforated paper as he would the printed music"

7th The defendant can neither admit nor deny that the perforated sheets or strips of paper have been largely used during the past seven or eight years, but avers on his information and belief that the sales of the perforated paper similar to complaimants exhibit "B" has been very limited.

8th The defendant can neither admit nor deny "that the Automatic Music Paper Company has been and is largely engaged in the manufacture and sale of the perforated sheets or strips of paper, that that is their sole business and that all such perforated sheets or strips sold by them has been copied from the printed sheet music with such alterations as are necessary to suit the compass of the instrument with which it is to be used, and that in the course of their business the said

Automatic Music Paper Company have obtained many exclusive licenses from the proprietors of copyrighted musical compositions to copy their copyrighted musical compositions in perforated sheets or strips and to vend such copies, and that in consideration of a certain royalty paid by said Company to said Kennedy. said Company on or about the first day of June A.D. 1882. received from said Kennedy the exclusive license to copy the musical composition copyrighted by said Kennedy, as above mentioned into the perforated sheets or strips and to vend such copies" And the defendant avers that if said Kennedy ever gave any such license as is alleged in complainants bill, the same was and is of no force or effect and conferred no right exclusive or otherwise, as against the defendant or any other party.

And the defendant can neither admit nor deny that the said Automatic Music Paper Company gave due notice on each and every copy of said musical composition sold by them by printing upon each and every copy the words

Cradle's Empty, Baby's Gone
Copyrighted 1880 by Will H. Kennedy
Used by permission of Will H. Kennedy"

9th The defendant denies that "well knowing the premises and that the said Kennedy was the author of said musical composition, score and music and the proprietor of said (alleged) copyright, and that the said Automatic Music Paper Company was the sole and exclusive licensee of the right to copy and vend said musical composition in the shape of perforated sheets or strips as shown in Complainants exhibit "B," and well knowing that both said Complainants are largely interested in the sale of said perforated copies of said musical composition and score, and wrongfully intending to infringe and pirate said copyright and the said copyrighted musical composition and score of which said Kennedy is author and proprietor and said Company his exclusive licensee as aforesaid" he "did deliberately and after due notice on or about the eighteenth day of May 1883. and at divers other times, both before and since said eighteenth day of May

A.D. 1883 without the allowance or consent of either of said complainants and in open violation of their rights copy, make and vend said musical composition by making and vending exact copies of the perforated strips or sheets made and vended by said Company. And the defendant denies that the Complainants or either of them have any exclusive right to manufacture and sell said perforated sheets or strips like complainants exhibit "B" and denies that said alleged copyright on the printed musical composition entitled "Cradles Empty Baby's Gone" extends to or could by any means be extended to and embrace the said perforated strips or sheets as shown in Complainants exhibit "B" or that said perforated sheets or strips are any infringement or piracy of the Complainants Kennedy's copyright, if any he has, in said musical composition entitled

"Cradles Empty, Baby's Gone"

And the defendant further says that he is not now and has not been engaged in the manufacture of said perforated sheets or strips since June A.D. 1882, and that he does not, now

and never has made or sold any of said perforated sheets or strips like Complainants exhibit "B" and denies that he has made any profit thereby.

To the several interrogatories propounded by the Complainants the defendant replies

1st To the first interrogatory the defendant says he has no means of knowing except as stated in complainants bill, "whether or not it is a fact that the said Kennedy is the author composer and writer of the words and music of the book, musical composition and song entitled

"Cradle's Empty Baby's Gone"

2" To the second interrogatory the defendant says he has no knowledge except from the allegations in said bill contained "whether or not it is a fact that said Kennedy did before the publication thereof and on the 23rd day of August 1880 deliver at the office of the librarian of Congress at Washington in the District of Columbia a printed copy of the title or description of said song musical composition and book in these words. Cradle's Empty Baby's Gone

Song and Chorus.

Words and Music by Harry Kennedy"

3rd To the third interrogatory the defendant says he has no knowledge except the allegations contained in said bill, "whether or not it is a fact that said McDennedy did thereafter and on the 23rd day of August 1880 and within ten (10) days from the publication thereof deliver at the office of the Librarian of Congress at Washington in the District of Columbia, two complete printed copies of such copyrighted book, song, and musical composition, of the best edition issued, as the statute requires."

4th To the fourth interrogatory the defendant says he has no knowledge save as alleged in said bill "whether or not it is a fact that thereupon and on said 23rd day of August 1880, the said Librarian of Congress at Washington, in the District of Columbia, did forthwith record the name, description and title of said song, musical composition, words and music, in a book kept for that purpose, in conformity with the laws of the United States, respecting copyrights"

5th To the fifth interrogatory, the defendant says he has no knowledge save as alleged in said bill, "whether or not it is a fact that thereupon and on said

23rd day of August 1880 and thereafter notice was given by said Kennedy of said Copyright by inserting in each and every of the copies of every edition thereof published ~~and~~ on the title page and on the page immediately following the title the words.

"Copyright 1880 by William H. Kennedy"

6th To the sixth interrogatory the defendant says he has no knowledge except from the allegations in said bill contained "whether or not it is a fact that the Automatic Music Paper Company has since the said first day of June 1882 and always since receiving from said Kennedy the (alleged) said license to copy and vend said musical composition in the shape of perforated sheets or strips given due notice of said copyright by printing upon each and every of said copies the words.

"Copyright 1880 by Will H. Kennedy
Used by permission of Will H. Kennedy"

7th To the seventh interrogatory the defendant says upon his information and belief that there is no market whatever for perforated sheets or strips of paper so perforated that they are substantially

copies of and correspond to the score of such musical compositions as are desired to be performed, for the reason that none are so made and that it would be impossible to perforate paper so that it would be substantially copies of and correspond to such score."

Wherefore the defendant prays that he be hence discharged and with his costs.

J. M. C. Tammany

6 Tremont Row Boston

Solicitor

Suffolk ss. Boston May 2nd 1885

Personally appeared the above named John M. Tammany and made oath that he has read the foregoing answer to said bill of complaint and knows the contents thereof: and that the same is true except as to those matters therein stated on information and belief and as to those he believes it to be true

Before me

Wm. V. Russell

[SEAL]

Notary Public

Wm H. Kennedy vals
vs
John McTammany Jr

Deft's answer to Amended
Bill

1955

William H. Kennedy et al

v.

John McTammany, Jr.

Answer

United States of America
Massachusetts District ss.
Circuit Court -
In Equity -
William H. Kennedy and the
Automatic Music Paper Company
complainants
vs
John Mc Tammany Junior -
Defendant

Demurrer

Demurrer of the said defendant to the Bill of complaint of said William H. Kennedy and others

This defendant, by protestation not confessing all or any of the matters and things, in the complainants' bill of complaint contained, to be true, in such manner and form as the same are therein set forth and alleged,

doth demur to said bill, and for cause of demurrer shows:
(1) That the said bill doth not contain any matter of equity, upon which this Court can ground any decree, or give to the complainants any relief against this defendant;—
(2) That the said bill doth not, nor does any thing therein alleged or set forth, show any infringement or piracy whatever of the words, or music, or song, musical composition, score or book entitled "Cradle's Empty Babys Gone", or the alleged copy right thereof — nor any copy righted work or composition or copy right of the complainants, or either of them, as set forth and alleged in said bill;—
(3) That the said bill doth not contain or set forth any matter

of equity or thing entitling the complainants to the discovery claimed, or upon which this Court ought or can make any decree, or which entitles the complainants to the relief prayed for, or any relief;—
(4) That the complainants have not made or stated such a case as entitles them to the relief prayed for, or any relief in a Court of Equity.—

Wherefore, and for other good causes of demurrer appearing in the said bill, the defendant doth demur thereto, and humbly prays the judgement of this Court whether he shall be compelled to make any further or other answer to said bill; and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained

Chas. Thos. Russell
Solicitor and

of Counsel for defendant

I certify that in my opinion the above demurrer is well founded in point of law

Chas. Thos. Russell. Of counsel for deft.

I John W. Tammany Jr defendant in the above named cause, on oath ~~deny~~ say that the foregoing demurrer is not interposed for delay —

J. W. Tammany

Commonwealth of Massachusetts
Worcester ss Subscribed and sworn to before me this 19th day of November A. D. 1883

Henry F. Harris.
Notary Public

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U. S. Circuit Court

William H. Kennedy et al

vs

John Wm Tammany Jr.

Demurrer of the Defendants —

1

2

C. D. & W. H. Rupell
of counsel for Defts

Receipt for printing
Bill
Demurrer
Amended Bill
Demurrer to Amended Bill
Answer and
Replication in
Kennedy et al. v. McCammany, Jr.
No. 1933, Circuit Court, Equity.
J. E. Maynard
by Edward S. Reach

1933

Receipt for papers

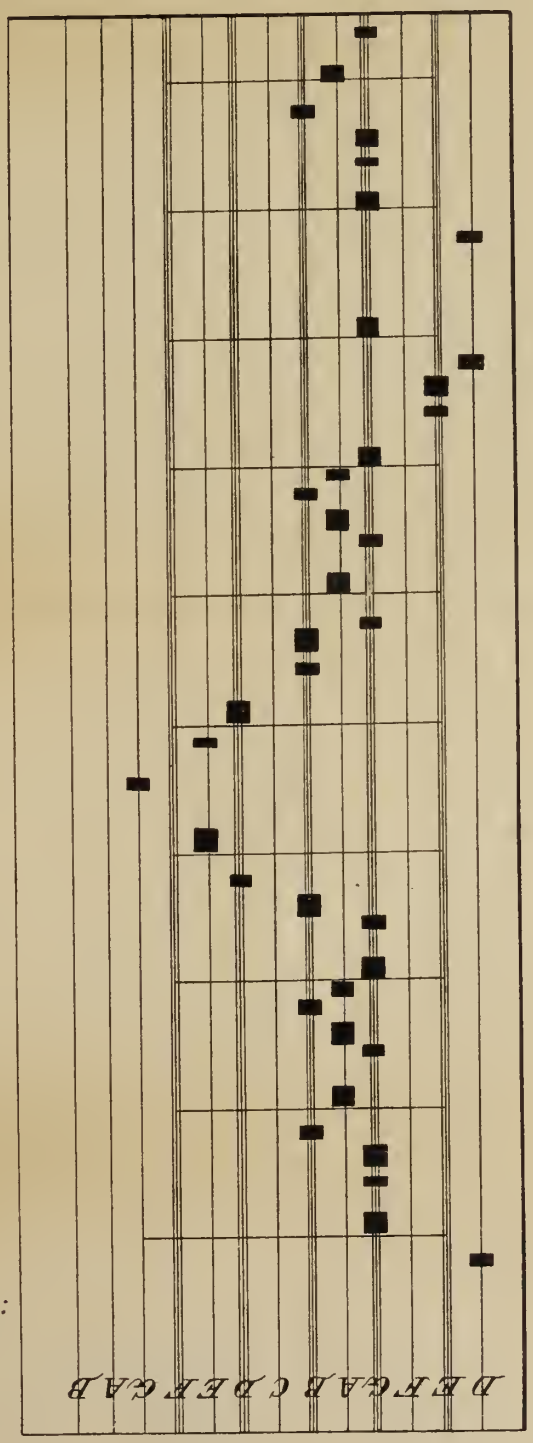
4 Sheets Sheet 4

Hunt & Bradish,

Musical Instrument.

No. 6,006. Patented Jan. 9, 1849.

Draft No. 10.



Witnesses:

Inventor:

Circuit Court of the United States
District of Massachusetts.
In Equity.

No. 1933.

Wm. H. Kennedy et al.
v.
John McTammany, Jr.

Replication.

These repliants saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of said answer, for replication thereunto say, that they will aver and prove their said bill to be true, certain and sufficient in the law, to be answered unto, and that the said answer of the defendants is untrue and insufficient to be replied unto by these repliants; without this, that any other matter or thing in the answer contained, material or effectual in the law to be answered unto, confessed and avoided traversed or denied is true, all which matters and things these repliants are and will be ready to aver, maintain and prove as this Honorable Court shall direct, and humbly pray as in by their bill of complaint they have already prayed.

By their Solicitor,

J. E. Maynadier

1955

U. S. C. C.
Mass. Dist. } In Eq.

Wm H. Kennedy et al
v.
John McTammany Jr.

Replication.

United States of America.

Circuit Court for the Mass District.

In Equity
No. 1933.

Jan. 10th A.D. 1884.

William H. Kennedy et al. vs. John McTammany Jr.

Joinder in Demurrer.

And now comes said plaintiffs and join issue in law on the demurrer of the defendant filed in said case.

By their solicitor

Augustus Rich

No. 1933.

Wm. F. Kennedy et al.

v.

John McCormany Jr.

Plaintiff's Joinder in Demurrer.

List of Exhibits sent Judge Colt

Kennedy vs Tammany.

In Equity No. 1933.

Complainants Exhibit.

- √ Common Sheet.
- √ Strip Sheet.
- √ Stencil Sheet.
- √ Copyright Certificate.
- √ Copyright License.
- √ Carpenter Strip Music.
- √ Boer Music.
- √ Tonic Sol Fa.
- √ Strip Music No. 2.
- √ Strip Music No. 3.
- √ Strip Music No. 4.
- √ Wood's Model.
- √ 1st. and 2nd. Measures.
- √ 7th. and 9th. Measures.
- √ 10th. Measures.
- √ Strip Music No. 5.
- √ Strip Music No. 6.
- √ Strip Music No. 7.
- √ Strip Music No. 8.
- √ Strip Ordinary Notation.
- √ E Chelius.
- √ In Misses defunctorum.
- √ A Chelius.
- √ Orchestrone Music.
- √ Orchestrone Music No. 2.
- √ Orchestrone Music No. 3.
- √ Aeolian.

Defendant's Exhibit.

- √ Metzger Patent No. 247,771.
- √ Perforated Sheet A.
- √ Perforated Sheet B.
- √ Perforated Sheet C.
- √ Perforated Sheet D.
- √ Perforated Sheet E.
- √ Roller F.
- √ Organ Barrel G.
- √ Chelius Dec. 8, 1886.
- √ Sheet Music used in Deposition. Taken Dec. 8, 1886.
- √ Metallic Ink Sheet

Record
Title Page
Complete point
Arguments of
J. Maynard
Counter Moore - Dec 3. 1884
Stipulation as to Testimony
of Mr. H. Newell

CIRCUIT COURT OF THE UNITED STATES.

District of Massachusetts.

In Equity.

No. 1933.

William H.Kennedy, et al.

vs.

John McTammany, Jr.

STIPULATION.

It is hereby agreed that the said William H.Kennedy, if called as a witness for complainants, would testify that he is a citizen of the United States and a resident therein and has been a citizen of and a resident in the United States since August 23, A.D. 1880, and for many years before that; that he is and has for many years been known in musical and dramatic circles as Harry Kennedy; that he is the author and composor of the words and music of a certain musical composition entitled "Cradle's Empty, Baby's Gone"; that on the 23d day of August A.D. 1880, and before the publication thereof, he delivered at the office of the Librarian of Congress at Washington, District of Columbia, a copy of the title of said musical composition in the following words, to wit:

"Cradle's Empty Baby's Gone.

Song and Chorus.

Words and music by

Harry Kennedy."

that on the 23d, day of August , and within ten days from the publication thereof, he did deliver at the office of the Librarian of Congress at Washington, two copies of said musical composition; that he gave notice of said copyright by inscribing upon some vis-

ible portion of each and every copy thereof published, the words:-

"Copyright 1880, by Wm. H.Kennedy."

that on or about the first day of June A.D. 1882, he executed the exclusive license to the Automatic Music Paper Company referred to in the bill of complaint, and it is agreed that the above may be taken and used with the same force and effect as if the said Kennedy were called as a witness and testified to the same.

It is also agreed for the purposes of this brief that the defendant, on or about the 18th day of May A.D. 1883, and at divers times before and since that day, made and sold ~~large numbers of~~ paper strips of which the one herewith produced is a sample. The strip produced has upon it a stamp with the following words in an ellipse: "J.McTammany, Jr., Inventor & Manuf'r of Organettes, Orguinettes, Melopeans, Automatic Organs & Music, Worcester, Mass."; and above the stamp the words, " Cradle's Empty, Baby's Gone".

J. E. Maynadier

Solicitor for Complt's.

W. D. H. Rufell

Solicitors for Defendants.

1933

Kennedy

v.

McTammany, Jr.

Objections to the testimony of Wm. H. Kennedy

CIRCUIT COURT OF THE UNITED STATES,

District of Massachusetts,

In Equity.

No. 1933.

William H.Kennedy et al.

vs.

John McTammany, Jr.

In the above entitled suit, the complainant, having appealed from the decision of the Court and the decree in pursuance thereof dismissing the bill, assigns the following errors in the said decision and decree, to wit:-

FIRST. In finding that the perforated strips made and sold by the defendant are not copies of complainants' copyrighted musical composition.

SECOND. In not finding that the use to which said perforated sheets are put by defendant is immaterial.

THIRD. In not finding that it is immaterial whether said perforated strips made and sold by defendant are recognized by the trade as sheet music.

FOURTH. In not finding that said perforated strips might be used as sheet music.

FIFTH. In finding that the intent of the defendant was material.

SIXTH. In not finding that the absence of the cleff and of bars or lines or spaces, or other minor marks which are found in common printed music was immaterial.

SEVENTH. In not finding that a true test whether the perforated strip was or was not a copy of the copy-right-

ed musical composition is whether the former can be read by the eye or by the hand; or whether the former is a record of substantially the same intellectual production of which the latter is a record.

EIGHTH. In not finding that any marks or character whatever which are the sign of an intellectual production, or which in any way whatsoever convey to the intellect an intellectual production, is a copy of the marks or characters of the copyrighted composition.

Wherefore complainants pray that said decision be reversed.

By their Solicitor,
J. E. Maynadier

ed musical composition is whether the former can be read by the eye or by the hand; or whether the former is a record of essentially the same intellectual production of which the latter is a record.

EIGHTH. In the finding that the words or characters whereon were the sign of an intellectual production, or, which is only saying whatsoever comes in an intellectual production, is a part of the subject matter of the copyright composition.

Therefore certificants pray that said decision be reversed.

Ben Eq

UNITED STATES OF AMERICA.

Massachusetts District, ss.

To John McTammany Jr.
a resident and citizen of Worcester
in the County of Worcester in said
District

GREETING:

FOR CERTAIN CAUSES, offered before the Circuit Court of the United States of America, for the first Circuit, within and for the Massachusetts District, as a Court of Chancery, WE COMMAND AND STRICTLY ENJOIN YOU, laying all other matters aside, and notwithstanding any excuse, that you personally be and appear before our said Circuit Court at the Rules, to be holden at the Office of the Clerk of our said Court, in Boston, in said District, on the first Monday, being the Fifth day of November next, to answer to a Bill of Complaint exhibited against you in our said Court, wherein

William H. Kennedy of Brooklyn in the County of Kings and State of New York, and the Automatic Music Paper Company, a corporation duly organized and established by law under the laws of the State of Massachusetts and located in the City of Boston in said District are Complainants and you are Defendant; and to do further and receive that which our said Circuit Court shall consider in this behalf. And this you are in no wise to omit, under the pains and penalties of what may befall thereon.

Witness, the Honorable MORRISON R. WAITE, at Boston, this twenty ninth *day of* September *A. D. 188*3 *in the one hundred* and eighth *year of the Independence of the United States of America.*

Alex H. Crowbridge
Deputy Clerk.

MEMORANDUM. The defendant is to enter his appearance in the suit in the Clerk's Office on or before the day at which the writ is returnable, otherwise the bill may be taken *pro confesso.*

United States of America, } Boston Septem 29 1883
MASSACHUSETTS DISTRICT, SS.

I hereby certify that I have served the within Subpœna by leaving a duly attested copy of this precept at the last and usual place of abode of John McTammany Jr at North Worcester in hand to his wife Fanny

Ser 2.00
Cop 1.00
Exp 4.70
7.70

Wm D Rose Dep } United States Marshal.

In Equity.

William H. Kennedy et al
v.
John McTammany Jr.

SUBPŒNA,

RETURNABLE, Nov. RULES,
To wit, Nov. 5th 1883

Attorney.

Circuit Court of the United States.
District of Massachusetts.
In Equity.
No. 1933.-William H. Kennedy et al.
vs.
John McTammany, Jr.

Motion for leave to amend the Bill of Complaint.

The Complainants, after the order of the Court sustaining the Demurrer of the defendant, pray for leave to amend their Bill of Complaint, by substituting therefor the following:

Circuit Court of the United States.
To the Judges of the Circuit Court of the United States, for the District of Massachusetts,-
William H. Kennedy, of Brooklyn, in the County of Kings and State of New York, a citizen of said State of New York and of the United States, and the Automatic Music Paper Company, a corporation duly organized and established by law under the laws of the State of Massachusetts and located in the city of Boston in said District, bring this their bill of complaint against John McTammany Jr., a resident and citizen of

2 Worcester in the County of Worcester in said District, and thereupon your orators complain and say:

I. That your orator said Kennedy, who is known in musical and dramatic circles as Harry Kennedy, being then and at all times herein and hereafter set forth a citizen of and resident in these United States of America, was and is the author and proprietor of the words and music of a certain song, musical composition, score and book entitled "Cradle's Empty, Baby's Gone."

II. That on or about the 23rd, day of August, A.D. 1880, and before the publication thereof, your orator, said Kennedy, did deliver at the office of the Librarian of Congress at Washington, in the District of Columbia, a printed copy of the title or description of the said song, musical composition, score and book in these words

"Cradle's Empty, Baby's Gone
Song and Chorus.
Words and music by Harry Kennedy."

and that on the same twenty-third day of August, A.D. 1880, your orator, said Kennedy, did deliver at the office of said Librarian of Congress two complete printed copies of such copyrighted book, musical composition and score of the best edition issued, as the

3/ statute requires, and, thereupon, the said Librarian of Congress at said Washington did forthwith record the name description and title of said book, song, musical composition and score, in a book kept for that purpose and in conformity with the laws of the United States respecting copyrights, all of which appears from the certificate of said Librarian of which a true copy is hereto annexed marked A.-

III. That thereupon and on said 23rd day of August A.D. 1880, and thereafter due notice was given by your orator, said Kennedy, of the said copyright by inserting in each and every of the copies and of every edition thereof published, on the title page and on the page immediately following the title, the words —

"Copyright 1880, by Wm. H. Kennedy."

IV. That your orator, said Kennedy, before and since the publication of said book, musical composition, song, words and music, has fully complied with and duly fulfilled all the requirements and provisions of the law and rules in and for such cases made and provided and became and is entitled to and acquired the sole right and liberty to print, reprint,

VI

publish, vend and copy, the said book, musical composition, score, song, words and music, for the period of twenty-eight years from the 23rd day of August A. D. 1880, the time of recording such title, and that said time has not yet expired, nor had it expired at the time of the infringement and piracies hereinafter set forth.

V. That the said musical composition, score, song, words and music, has been printed, published and supplied to the public at great cost of valuable time in the preparation of the manuscript, and at great expense to your orator, - said Kennedy, in its publication, and your orator, said Kennedy, has been in receipt of large sums of money from the proceeds of the sales of said book, song, musical composition, score, words and music, to reimburse his expenses, and remunerate his labor and care bestowed upon the same.

VI. That within a few years last past a large market has been created for a new style of sheet music differing in certain important respects from any sheet music theretofore known; that the ordinary sheet music consists of a

V

5/ sheet of paper or the like with lines across it from side to side, each group of lines being called a staff; that each of these lines and each space between them represents a certain note of the musical scale; that the lines constituting each staff are crossed by short lines at right angles called bars and the space between these bars is called a measure, these spaces or measures representing equal portions of time; that certain characters are used in connection with the staff and the bars across the staff which show by their arrangement with respect to the lines or spaces what note each character represents, and by their form the duration of that note; that in the new style of sheet music the notes are represented by perforations, instead of characters, and these perforations are arranged in parallel lines extending lengthwise of the paper sheet or strip instead of crosswise as in the ordinary sheet music; that a certain length of perforation is used for a note, half that length for half of that note, and so on; that the measures are indicated by a certain portion of the length of strip, instead of by bars; but that while

6/ this new style of sheet music differs in many respects from ordinary sheet music it yet has a line of perforations lengthwise of the strip for each note, and a perforation for each note, and that the perforations constituting each measure are arranged in a certain space, and that the perforations vary in length as the duration of the notes vary, so that any person skilled in the manufacture of sheet music of the ordinary kind and also skilled in the manufacture of the new style of sheet music can produce either from the other; and also that any person skilled in the use of ordinary sheet music can readily learn to use the new style of sheet music without the aid of the special musical instrument for which the new style of sheet music is adapted; and that any person familiar with both styles of sheet music can translate either style into the other, and can use the new style just as he could the old style; although the new style is adapted and intended for a use wholly different from any use possible to be made of the old style.

VII. That this new style of sheet music

7 has been largely used for seven or eight years, although it was known as early as 1849, and that it is well shown in Sheet 4 of Letters Patent of the United States, No. 6006 dated January 9th 1849, granted to Hunt and Bradish, a copy of which is now produced and shown to your Honors.

VIII. That your orator said Automatic Music Paper Company has been and is largely engaged in the manufacture, publication and sale of the new style of sheet music, that that is their sole business, and that all such sheet music published and sold by them has been copied from the old style of sheet music with such alterations as are necessary to suit the compass of the instrument with which the new style of sheet music is to be used; and in the course of their said business your orator said Automatic Music Paper Company have obtained many exclusive licenses from the proprietors of copyrighted musical compositions to copy their copyrighted musical compositions in the new style of sheet music, and to publish and vend such copies; and that in consideration of certain

royalties paid by said Company to your orator Kennedy, said Company on or about the first day of June A.D. 1882, received from said Kennedy the exclusive license to copy the musical composition copyrighted by said Kennedy as above mentioned, in the new style of sheet music and to publish and vend such copies, all which by the instrument in writing duly executed and delivered by said Kennedy and duly recorded in the Office of the Librarian of Congress, now in Court produced and shown to Your Honors will more fully appear; and due notice has been given by your orator, said Automatic Music Paper Company, upon each and every copy of said musical composition published and sold by them by printing upon each and every copy the words — "Cradle's Empty, Baby's Gone: Copyright 1880. by Will. H. Kennedy; used by permission of Will. H. Kennedy, Brooklyn."

IX. That the defendant well knowing the premises and that your orator, said Kennedy, was the author of said musical composition, score and music

9 and the proprietor of said copyright and that your orator, said Automatic Music Paper Company, was the sole and exclusive licensee of the right to copy publish, and vend said musical composition and score in the new style of sheet music, a sample of which and a copy of said copyrighted musical composition is filed with this bill and marked Exhibit B, and well knowing that both your orators are largely interested in the sale of said perforated copies of said musical composition and score and wrongfully intending to infringe and pirate said copyright and the said copyrighted musical composition and score of which your orator, said Kennedy, is author and proprietor and said company his exclusive licensee as aforesaid, as said defendant well knew, deliberately and after due notice did on or about the eighteenth day of May 1883, and at divers times both before and since said eighteenth day of May AD 1883, without the allowance or consent of either of your orators and in open violation of their rights copy, publish and vend said musical composition, by making publishing and vending exact copies of

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10 the sheet music made, published and vended by your orator said Automatic Music Paper Company under said Exclusive License; and still continues so to do; that said defendant has sold large numbers of said copies of said copyrighted musical compositions under the name and title "Cradle's Empty, Baby's Gone" in violation of the Acts of Congress of the United States relating to copyrights and has made great profit thereby; all of which actings, doings and pretences are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators in the premises.

X. To the end, therefore, that the said defendant may, if he can, show cause why your orators should not have the relief hereby prayed for, and may, upon his corporal oath and according to the best and utmost of his knowledge remembrance, information and belief, full, true, direct and perfect answer make to the several interrogatories hereinafter numbered and set forth, — that is to say;

1. Whether it is not a fact that this complainant, said Kennedy, is the author, composer and writer of the words and

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11 music of the book, musical composition and song entitled, "Cradle's Empty, Baby's Gone."

2. Whether it is not a fact that this complainant, said Kennedy, did, before the publication thereof, and on the 23rd day of August 1880, deliver at the office of the Librarian of Congress, at Washington in the District of Columbia, a printed copy of the title or description of said song, musical composition and book in these words:

"Cradle's Empty, Baby's Gone.
"Song and Chorus.
"Words and Music
"By Harry Kennedy."

3. Whether it is not a fact that this complainant, said Kennedy, did thereafter, and on the 23d, day of August 1880, and within ten (10) days from the publication thereof, deliver at the office of the Librarian of Congress, at Washington, in the District of Columbia, two complete printed copies of such copyrighted book, song and musical composition of the best edition issued, as the statute requires.

4. Whether it is not a fact that thereupon and on said 23d, day of August,

1880, the said Librarian of Congress, at Washington, in the District of Columbia, did forthwith record the name, description and title of said song, musical composition, words and music, in a book kept for that purpose, in conformity with the laws of the United States respecting copyrights.

5. Whether it is not a fact that thereupon and on said 23d day of August, 1880, and thereafter, notice was duly given by your complainant, said Kennedy, of the said copyright by inserting in each and every of the copies and of every edition thereof published, on the title page, and on the page immediately following the title, the words, "Copyright, 1880, by William H. Kennedy."-

6. Whether or not it is a fact, that this complainant, said Automatic Music Paper Company, has since said first day of June 1882, and always since receiving from said Kennedy said license to copy, publish and vend said copyrighted musical composition in the new style of sheet music above described given due notice of said copyright, by printing upon each and every of said copies the words Cradle's Empty, Baby's Gone." Copyright 1880, by Will. H. Kennedy used

13/ by permission of Will H. Kennedy, Brooklyn."

7. Whether or not it is a fact that there is a large market for the new style of sheet music, made by perforating sheets or strips of paper so that they are substantially copies of and correspond to the scale of such musical compositions as are desired to be performed.

Your orators pray that the defendant be compelled by a decree of this Honorable Court to account for and pay over to your orators all such gains and profits as have accrued or arisen to or have been earned or received by the defendant, or to which they may be entitled by reason of such unlawful copying publishing and selling of the piratical infringement of the copyrighted book, song and musical composition of your orator, said Kennedy, entitled "Cradle's Empty Baby's Gone," by means of said perforated strips or sheets of paper, and all such gains and profits as your orators would have received but for said unlawful acts and doings of the said defendant, and such damage as by said unlawful and wrongful acts they have sustained.

And may it please your Honors that

14 and decree that the defendant discover and disclose how many copies of the piratical infringement published and sold by defendant of the said copyrighted song, book and musical composition of your orator, said Kennedy, called "Cradle's Empty, Baby's Gone", by means of said perforated strips or sheets of paper, the said defendant has on hand or had on hand unsold at the time of the filing of this bill.

And may it please Your Honors to decree that such copies on hand be delivered up to be cancelled and destroyed.

And may it please Your Honors, the premises being considered, to grant unto your orators the writ of injunction issuing out of and under the seal of this Honorable Court, or issued by one of your Honors according to the form of the statute in and for such cases made and provided, perpetually enjoining and restraining the said defendant his clerks, attorneys, agents, servants, workmen, and each and every other person and persons by his leave or with or by his consent or authority from, directly or indirectly, manufacturing, publishing,

15/ selling, exposing for sale, giving away or distributing any copies of the book, song and musical composition called "Cradle's Empty, Baby's Gone," written, composed, owned and copyrighted by your orator, said Kennedy.

And that your orators may have such other or further order, judgment or relief in the premises as the nature of the circumstances of this case may require, and to this Honorable Court shall seem meet, just and equitable.

And may it please Your Honors to grant unto Your Orators a provisional or preliminary injunction issuing out of and under the seal of this Honorable Court, or issued by one of Your Honors according to the form of the statute in and for such cases made and provided, enjoining and restraining the said defendant his clerks, attorneys, agents, servants, workmen, and each and every other person and persons by his leave or with or by his consent to the same purport, tenor and effect hereinbefore prayed for in regard to said perpetual injunction.

And may it please Your Honors to grant unto your orators a writ of

16 subpoena of the United States of America issued out of and under the seal of this Honorable Court, directed to the said John McTammany Jr. commanding him on a day certain, therein to be named, and under a certain penalty, to be and appear in this Honorable Court, then and there to answer to all and singular the premises, and to stand to and to perform and abide such further order, direction and decree as may be against them.

By their solicitor
J. E. Maynadier
Augustus Rugg
of Counsel.

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