Edison, in a patent which I have already alluded to, where he put his electrodes in water or glycerine or other liquid. So that we have here the specifications as prepared and taken by George Brown, speaking of a production of or causing electrical undulations, which, by the terms of the specification is necessarily confined to the magneto method, because the specification says that there is no other method; and then when we have by some means, whatever they may be, whether fair or unfair, fraudulent or honest, new thoughts from Gray or from himself, or whatever may be the reason, the idea suggested to him and put into his patent that electrical undulations can be caused by the variations of the resistance of the circuit, we find a claim put in to correspond to that; but we do not find any change or any variation whatever of the fifth claim.

Your Honors will see that there is not in that patent to be found anywhere from the beginning to the end any suggestion that there is any other method, or any other way of causing electrical undulations by sound waves than the one which is pointed out and illustrated by Fig. 7. All these prior methods of producing electrical undulations have reference to and are involved in the production of multiple telegraphy, or the production of telegraphy in some way, whether multiple or single. Some of them are ways that it is absolutely impossible to use in connection with the production of sound waves; as, for instance, the vibration of a wheel with magnets on the periphery before the poles of a magnet; that cannot possibly be used as a means of producing the undulations of the sound waves.

Mr. Charles P. Crosby for the Overland Company.

An action was brought by the Bell Telephone Company, in the month of November, 1884, against the Overland Telephone Company, a company incorporated under the laws of the State of New York; and very soon thereafter, or about that time, an action was brought in the Circuit Court of the United States, for the District of New Jersey, and one also in

the Eastern District of Pennsylvania; the three actions being brought for the purpose of obtaining permanent injunctions, and a motion being made in each of the three actions for a preliminary injunction. By stipulation, the motion for injunction was argued in the three actions before the Circuit Court of the United States for the Eastern District of Pennsylvania, at Philadelphia, before a tribunal composed of Justices Butler, Nixon, and the presiding justice of the Pennsylvania Circuit. In the bill of complaint in that action, which was one of the papers upon which the motion for injunction was based, there were set forth some seventeen or eighteen instances where, as the Company claimed, there had been a prior adjudication in their favor at Circuit. Two days of the argument there was devoted to an endeavor upon the part of the Overland Company to show that there had been no real adjudications; and the history of those litigations, so far as we were able to give them in the limited time which was allowed to us to resist that motion, was shown upon that argument. At about that time, for the first time, what is called the Drawbaugh defence was called to the attention of the counsel of the Overland Telephone Company; and by the politeness and courtesy of counsel for the Drawbaugh, that defence so far as it existed at that time, and so far as the testimony had been taken in it up to 1884 (and which was necessarily but a partial defence at that time) was submitted to that tribunal. The element sought to be introduced here, and which is the basis, as I understand it, of the molecular defence, to wit, the Reis invention, was also partially before that tribunal, a portion of the Reis testimony having been taken. On the argument, Mr. Justice McKennon, without passing as I understand it, upon any of the defences — it appearing before him that the Drawbaugh case (what was called the Drawbaugh case) was in a position to be heard before Mr. Justice Wallace in the Circuit Court of the United States for the Southern District of New York — decided to refuse, at that point, the complainant's motion for a preliminary injunction, and to retain it until the decision of the Drawbaugh case in New York; holding as I believe, the Drawbaugh defence at that time to be a

very serious and important defence to those who were engaged in contest with the Bell Telephone Company. At the close of that argument, Mr. Storrow, one of the counsel for the Bell Telephone Company, made an application to that tribunal for a restraining order pending the argument of the case before Mr. Justice Wallace which was refused; the judge holding that they might be entitled possibly thereafter to a final decree, but that they were not entitled to a restraining order in the meantime. I think that the question of former adjudications, which were made so salient and so prominent in that case up to that time, were successfully disposed of upon that argument. The Drawbaugh case was decided by Mr. Justice Wallace; and the Overland record which contained the record in the Drawbaugh case, and in the Spencer, the Dowd, and the Molecular, and all of the other defences, which, so far as counsel for the Overland Company were acquainted, were in existence up to the 15th of October, 1885, were incorporated in the Overland record; and when the Overland case came on for hearing, after the decision in the Drawbaugh case, it was not considered necessary upon the record then existing, and in the tribunal which had just decided the Drawbaugh case, to make any further argument; and so a decree *pro forma* substantially was entered, and the case came into this court.

I only call the attention of the court to that for a moment, so that it may understand (for I do not propose to go into the detail of any of the arguments that are made here) the position of the Overland Telephone Company in this tribunal. And with a single reference to the brief which was made in the Drawbaugh case I shall close what I have to say with reference to this case, all of the defences which are peculiar to the Overland, and out of which I suppose they may take any advantage, having been very ably presented by the various gentlemen who represent the various defendants here. Very much of the argument of Mr. Storrow and of Mr. Dickerson has been to the proposition that Daniel Drawbaugh, if he at any time prior to 1878 or 1879, had any invention of any sort or kind which had any value, that he would have communi-

cated it to the outside world. I pass by the discussion as to Drawbaugh's poverty, I pass by the piteous story of his life which is detailed upon the record; I pass by the insinuations, the sneers, the gasconade, the buffoonery with which this man has been treated in this tribunal, as not germane to this discussion. They are not here, I will not notice them. One great central fact exists. At the least, Drawbaugh had some mechanical genius, at the least he had some inventive genius. It appears from their own record that he did invent something; that he knew something of electricity; and it appears incontrovertibly that some time prior to 1876 or 1877 by the testimony of over two hundred witnesses, that he had made, or was trying to make an instrument *that would talk* and that would *talk out loud.* The ingenuity of two of the subtlest brains of modern times, I believe, has not satisfied this tribunal of the falsity of that proposition. Every appliance known to great wealth, the use of detectives, the employment of the ablest counsel in America upon this question, have been brought substantially to dispose of Drawbaugh in this manner, and I submit to this tribunal that it has failed. The great central fact exists, and stands here like a column of light, that Daniel Drawbaugh was trying in the years 1875 and 1876 to make a machine that talked. The cardinal, the perhaps incomplete idea which has been worked out, existed in the mind of this poor mechanic at Milltown.

One word as to this portion of Mr. Dickinson's brief. It appears by the record in this case, and to that portion of the record which he cites, and which I beg to submit to the court, he in every instance cites correctly — this statement, which I beg leave to call to the attention of the court:

"Aside from the fact already shown, that he was at work on the magneto and carbon instruments at different times, there is a very simple answer which appears incidentally and naturally throughout the record. No effort was made to bring it out, and it appears in the testimony of witnesses, as in that of Drawbaugh, without consciousness on their part or his, that it was of any special importance. It is this: That the instrument in his view was not loud enough for practical

purposes unless it would talk, without holding it to the ear, and convey the sound as far as ordinary speech. He wanted it to talk out as a man talks."

This testimony by Free is referred to in this connection: "He told me that he wanted to accomplish, and could do it, to make a machine that you could stay in one corner of the room, and putting the machine in the other corner, and hear as distinctly as putting it to the ear" — and that Drawbaugh told him that he had not done it yet, but "I am working at it and I am going to get it accomplished."

Now, in 1876, at the time of the Centennial, when it is claimed that Mr. Alexander Graham Bell laid the superstructure of his great reputation — at that time, this man supposed that a telephone had no commercial value unless it talked out loud. At that very time that he has detailed he was doing this, the *New York Tribune* thought that the only use of the telephone would be for "diplomats and lovers"; and the *Scientific American* summed up the public opinion of it as "a beautiful scientific toy"; and Gardner G. Hubbard, the partner and father-in-law of Mr. Bell — a telegraph manager and Mr. Bell's financial backer, "did not then believe the transmission of speech could be made commercially valuable." At the time that they had that estimation of it, Drawbaugh's idea of it was that it was of no value unless it talked out loud. And that was the solution of that branch of this question, which in my judgment these gentlemen have very quietly, carefully and scientifically avoided.

We rely, for the Overland Telegraph Company, upon all the defences that appear upon this record. We appreciate most heartily and thoroughly the presentation of what is called the Reis defence by my brethren Mr. Lowrey and Mr. Peckham; but we think the Drawbaugh defence is a very serious one here; and so far as the Overland Company is concerned, we rely upon the whole record.

Mr. Hill for the People's Company, and The Overland Company, in reply: