

7-1-51
5, 1951

In the Privy Council.

No. 12 of 1950.

ON APPEAL
FROM THE SUPREME COURT OF CANADA

BETWEEN
BOILER INSPECTION AND INSURANCE COMPANY
OF CANADA - - - - - *Appellant*
AND
THE SHERWIN WILLIAMS COMPANY OF CANADA
LIMITED - - - - - *Respondent*

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Pleading and Plaintiff's Evidence at Enquête
Pages 1 - 198

BLAKE & REDDEN,
17 Victoria Street,
London, S.W.1,
Appellant's Solicitors.

CHARLES RUSSELL & CO.,
37 Norfolk Street,
Strand, W.C.2,
Respondent's Solicitors.

UNIVERSITY OF LONDON

29 OCT 1955

INSTITUTE OF ADVANCED
LEGAL STUDIES

11941

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DOMINION OF CANADA

In the Supreme Court of Canada

OTTAWA

On Appeal from a Judgment of the Court of King's Bench for the Province
of Quebec (Appeal Side) District of Montreal.

10 BETWEEN:—

**THE SHERWIN WILLIAMS COMPANY OF CANADA
LIMITED,**

(Plaintiff in the Superior Court
and Respondent in the Court of
King's Bench (Appeal Side),

20

APPELLANT,

— and —

30

**BOILER INSPECTION AND INSURANCE COMPANY
OF CANADA,**

(Defendant in the Superior Court
and Appellant in the Court of
King's Bench (Appeal Side),

RESPONDENT.

40

JOINT CASE

VOL. I — PLEADING and PLAINTIFF'S EVIDENCE AT ENQUETE

Pages 1 to 198.

INSCRIPTION IN APPEAL

The above described Appellant inscribes this case for
hearing before the Court of King's Bench, Appeal Side, sitting

as a Court of Appeal from a final judgment of the Superior Court for the District of Montreal, rendered by Tyndale, J. on the 29th day of March, 1946, by the terms of which Defendant-Appellant was condemned to pay Plaintiff-Respondent \$45,791.38, with interest and costs; and Appellant gives notice of the said Inscription to Mtres. Mann, Lafleur & Brown, Attorneys for Respondent, that the present Inscription has this day been produced
10 at the office of the Superior Court for the District of Montreal, and that on the 29th day of April, 1946, at 10:30 of the clock in the forenoon, before the Prothonotary of the said District, in his office in the Court House, Montreal, the said Appellant will give good and sufficient security that it will effectually prosecute the said appeal and will satisfy the condemnation and pay all costs adjudged against it in the event of the said judgment appealed from being confirmed, and that it will then and there offer as security a bond of the Canadian Surety Company, a
20 body politic and corporate, duly incorporated, having its head office and principal place of business in the City of Toronto, Province of Ontario, and a place of business in the City of Montreal at No. 275 St. James Street West, duly authorized and licensed by competent authority to give the said bond, and furthermore, that the said Canadian Surety Company will, if so required, establish its solvency, in the manner prescribed by law.

Montreal, April 26th, 1946.

30 Hackett, Mulvena, Hackett & Mitchell,
Attorneys for Appellant.

INSCRIPTION IN CROSS-APPEAL

The above described Cross-Appellant inscribes this case for hearing before the Court of King's Bench, sitting as a Court of Appeal at Montreal, on a Cross Appeal from the final Judgment of the Superior Court for the District of Montreal, rendered by the Honorable Mr. Justice O. S. Tyndale on or about
40 the 29th day of March 1946, condemning the Defendant to pay to Plaintiff the sum of Forty-Five Thousand Seven Hundred and Ninety-One Dollars and thirty-eight Cents (\$45,791.38) with interest from date of judgment and costs, and gives notice to Messrs. Hackett, Mulvena, Hackett & Mitchell, attorneys for Defendant that this inscription for cross-appeal has this day been produced at the office of the Prothonotary of the Superior Court for the District of Montreal, and that on the 1st day of

May 1946 at 11.00 of the clock in the forenoon, before the Prothonotary of this District at his said office the Cross-Appellant will give good and sufficient security that it will effectually prosecute such appeal and will satisfy the condemnation and pay all the costs and damages adjudged in case its Cross-Appeal is dismissed, and that for the said security the Plaintiff-Cross-Appellant will then and there offer a bond of the Pearl Assurance Company Limited, a body politic and corporate having its Chief office for the Province of Quebec, in the City and District of Montreal, duly authorized to give such bond and further more that the said Company will, if so required, establish its solvency in the manner prescribed by law.

Montreal, April 27th, 1946.

(Sgd.) Mann, Lafleur & Brown,
Attorneys for Cross-Appellant.

20

DECLARATION

The Plaintiff declares:—

1. THAT by Insuring Agreement No. 60350-B countersigned by a duly authorized representative of the Defendant, at the City of Montreal in the Province of Quebec, Canada, on the 9th day of March, 1940, the defendant for and in consideration of the payment of the sum of One thousand, five hundred and eighty-nine dollars and fifty cents (\$1,589.50) by way of premium, agreed with the Plaintiff and others named in Endorsement No. 1 to the said Insuring Agreement respecting loss (excluding loss of the kind described in Section II of the said Insuring Agreement, and including loss of the kind described in Section IV of the said Insuring Agreement) from an accident as defined in the said Insuring Agreement to an object described in the said Insuring Agreement, occurring during the policy period which was from the 15th day of March, 1940, to the 15th day of March, 1943, at 12:00 o'clock noon, Standard Time, as to each of said dates, at the place where such accident occurs, subject to a limit per accident stipulated in the said Insuring Agreement, amongst other things, as follows, that is to say:—

40

SECTION I. To pay the Plaintiff for loss on the property of the Plaintiff directly damaged by such accident (or, if the Defendant so elects, to repair or replace such damaged property) excluding:—

- (a) loss from fire (or from the use of water or other means to extinguish fire);
- (b) loss from an accident caused by fire;
- (c) loss from delay or interruption of business or manufacturing or process;
- (d) loss from lack of power, light, heat, steam or refrigeration; and
- (e) loss from any indirect result of an accident;

10

20

30

SECTION III. To pay, to the extent of any indemnity remaining after payment of all loss as may be required under Sections I and II of the said Insuring Agreement, such amounts as the Plaintiff shall become obligated to pay by reason of the liability of the Plaintiff for loss on the property of others directly damaged by such accident, including liability for loss of use of such damaged property of others; and to defend the Plaintiff against any claim or suit alleging such damage unless or until the Defendant shall elect to effect settlement thereof; provided the accident happens while the object is in use, or connected ready for use, at the location specified for it in the Schedule to the said Insuring Agreement, the whole as more fully appears by the original of the said Insuring Agreement and the Schedules and Endorsements thereto attached and forming part thereof filed herewith as Exhibit P-1.

2. THAT the premium stipulated in the said Insuring Agreement has been paid to the Defendant by or on behalf of the Plaintiff.

40

3. THAT on or about the 2nd day of August, 1942, there occurred an accident as defined in the said Insuring Agreement to an object described therein consisting of a sudden and accidental tearing asunder of a steam jacketted bleacher tank or parts thereof, caused by pressure of steam, air, gas, water or other liquid therein, or a sudden and accidental cracking of cast-iron parts of the said steam jacketted bleacher tank which permitted the leakage of said steam, air, gas, water or other liquid, while the said steam jacketted bleacher tank was in use or connected ready for use at the location specified for it in the Schedule to the said Insuring Agreement where it is described and where it is indicated to be an "unfired vessel".

4. THAT the limit for the said accident stipulated in the said Insuring Agreement is Fifty thousand dollars (\$50,000) as appears by the said Exhibit P-1.

5. THAT the total loss on the property of the Plaintiff directly damaged by the said accident amounted to One hundred and fifty-nine thousand, seven hundred and twenty-four Dollars and sixty-two Cents (\$159,724.62) including damage to property of third parties to the amount of One hundred and eighty-two Dollars and twelve Cents (\$182.12) as hereinafter stated, with respect to part of which total loss the Defendant is liable towards the Plaintiff as herein stated.

6. THAT the Defendant is liable towards the Plaintiff to the amount of Forty-six thousand, nine hundred and thirty-one dollars and twenty-eight cents (\$46,931.28) respecting such loss from such accident to such object, being, to the extent of Forty-six thousand, seven hundred and forty-nine dollars and sixteen cents (\$46,749.16), loss on the property of the Plaintiff directly damaged by such accident to the actual cash value thereof as shown in detail in the Proof of Loss hereinafter mentioned and filed herewith as Exhibit P-5, and to the extent of One hundred and eighty-two dollars and twelve cents (\$182.12) damage to property of third parties which the Plaintiff became obligated to pay and did pay to such third parties by reason of the liability of the Plaintiff for loss on the property of such third parties directly damaged by such accident, the whole under, pursuant to and in accordance with the provisions of the said Insuring Agreement.

7. THAT the said third parties who have suffered such damage to their property to the amount of One hundred and eighty-two dollars and twelve cents (\$182.12) which has been paid by the Plaintiff and the nature of the damages which they have suffered are as follows:—

- 40
- (a) Atlas Asphalt Co., 1361 Wellington Street, Montreal, Quebec, — damage to materials and equipment . . . \$127.30.
 - (b) Dominion Bridge Company Limited, Lachine, Quebec, — Damage to automobile . . . \$45.50.
 - (c) Mary Krupa, address unknown — Damage to curtains . . . \$9.32.

8. THAT the details of the said loss were prepared and the determination and calculation thereof were made by Messrs. Ross & MacDonald, Architects, and The Foundation Company of Canada Limited, Contractors, and the Defendant has agreed to accept their costs incurred by the Plaintiff as the basis for adjustment of the loss in accordance with the provisions of the said Insuring Agreement, if in the final analysis the Defendant
10 is found liable, the whole as more fully appears by a signed copy of a letter addressed by the Defendant to the Plaintiff dated August 14th, 1942, hereinafter mentioned and filed herewith as Exhibit P-4.

9. THAT written notice of the said loss was given by or on behalf of the Plaintiff to the Defendant as soon as practicable after the occurrence of the said loss, i.e., on or about the 3rd day of August, 1942, the whole as more fully appears by a copy of a letter dated August 3rd, 1942, addressed to the Defendant by Johnson-Jennings, Inc. filed herewith as Exhibit P-2,
20 and on or about the 7th day of August, 1942, the whole as more fully appears by a copy of a letter dated August 7th, 1942, addressed by the Plaintiff to the Defendant, filed herewith as Exhibit P-3, the Plaintiff hereby calling upon the Defendant to produce the originals of the said letters and reserving its right to make secondary proof thereof in the event of the failure of the Defendant to produce such originals.

10. THAT the said written notice from the Plaintiff to
30 the Defendant dated August 7th, 1942, a copy of which is filed herewith as Exhibit P-3, was acknowledged by the Defendant as appears by a signed copy of a letter addressed by the Defendant to the Plaintiff dated August 14th, 1942, filed herewith as Exhibit P-4.

11. THAT the Defendant was afforded a reasonable time and every opportunity to examine the property and the premises of the Plaintiff before repairs were undertaken or physical
40 evidence of the accident was removed, except for protection or salvage, and the Defendant did in fact examine the property and the premises of the Plaintiff immediately following the accident.

12. THAT on or about the 31st day of May, 1943, formal Proof of Loss was made by the Plaintiff to the Defendant in such form and detail as the Defendant required, the whole as more fully appears by a duplicate original of the said Proof of Loss dated the 31st day of May, 1943, and addressed to the Defendant by the Plaintiff, filed herewith as Exhibit P-5.

13. THAT the Plaintiff has called upon the Defendant to pay the said amount of Forty-six thousand, nine hundred and thirty-one dollars and twenty-eight cents (\$46,931.28) but the Defendant has refused and neglected to do so.

10 WHEREFORE the Plaintiff concludes and asks that by judgment to be rendered herein the Defendant be condemned to pay to the Plaintiff the sum of Forty-six thousand, nine hundred and thirty-one dollars and twenty-eight cents (\$46,931.28) with interest from the date of service of the Writ of Summons issued in this action and costs in favour of the undersigned Attorneys.

Montreal, September 17th, 1943.

Kearney, Duquet & MacKay,
Attorneys for Plaintiff.

20

WRIT OF SUMMONS

Province of Quebec
District of Montreal
No. 221869

SUPERIOR COURT

30 GEORGE THE SIXTH, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

To any of the bailiffs of Our said Superior Court, duly appointed for the District of Montreal,

GREETING:

40 WE COMMAND YOU to summon
BOILER INSPECTION AND INSURANCE COMPANY OF CANADA, a body politic and corporate duly incorporated according to law and having its head office and principal place of business in the City of Toronto in the Province of Ontario Canada, and its principal place of business for the Province of Quebec at civic number 437 St. James Street West in the City and District of Montreal in the Province of Quebec, Canada.

Defendant

to be and appear before our said Superior Court in the Court House, in the City and district of Montreal, within a delay of

six days from the date of service upon it of the present writ when the distance from the place of service to the place where the Court is held does not exceed 50 miles (when the distance exceeds 50 miles the delay is increased one day for each additional 50 miles; provided always that the delay must never exceed 20 days, whatever the distance) to answer the demand of

10 THE SHERWIN-WILLIAMS COMPANY OF CANADA
LIMITED, a body politic and corporate duly incorporated
according to law and having its head office and principal
place of business at civic number 2875 Centre Street in the
City and District of Montreal in the Province of Quebec,
Canada

Plaintiff

contained in the declaration (or requête libellée) hereunto annexed.

20

IN default by the defendant (s) to appear within the said delay, judgment may be rendered against him (or them) by default.

And have, there and then or before this writ and your proceedings thereon.

30 In witness whereof, we have caused, the Seal of our said Superior Court to be hereunto affixed at Montreal, this Seventeen day of September, in the year of Our Lord one thousand nine hundred and forty-three.

A. GRIMARD,
Député-Prothonotary of the Superior Court.

40 I, the undersigned, residing in Montreal in the district of Montreal one of the sworn bailiffs of the Superior Court for the Province of Quebec, duly admitted for the said District, do hereby certify under my oath of office that on the 17th day of September one thousand nine hundred and Forty-three between the hours of 4 and 5 of the clock in the afternoon, I did serve the present writ and declaration thereto annexed on the defendant. . .

by leaving a duly certified copy thereof with defendant, by speaking to and leaving the same with a grown and reasonable person, employed and in charge at its principal place of business for the Province of Quebec, at No. 437 St. James W. in the City and District of Montreal.

Moreover, that the distance from my residence to the place of such service is one mile and from the Montreal Court House to the place of service on the said defendant one mile.

Dated at Montreal this September 17th 1943.

Service.....\$1.00
10 Mile35

\$1.35

M. Robillard,
D.P.C.S.

DEFENDANT'S PLEA

FOR PLEA, DEFENDANT SAYS THAT:—

20 1. Defendant admits that it issued to Plaintiff its Boiler and Machinery Policy No. 60350B for the consideration and the term alleged in Paragraph 1 of the Declaration of Plaintiff and avers that said contract referred to by Plaintiff as Exhibit P-1 speaks for itself and, insofar as the remaining allegations of said paragraph derogate therefrom, the truth of said allegations is denied;

2. Defendant admits the truth of the allegation of Paragraph 2 of said Declaration;

30 3. Defendant denies the truth of the allegations as drawn of Paragraphs 3 and 4 of said Declaration and avers that the said Insuring Agreement speaks for itself;

4. Defendant denies the truth of the allegations of Paragraphs 5, 6 and 7 of said Declaration and in answer particularly denies that notice of any claim or suit by any third party was given Defendant as required by the conditions of said Policy;

40 5. Defendant denies the truth of the allegations of Paragraph 8 of said Declaration as drawn and avers that the letter dated August 14th, 1942, referred to in said paragraph as Exhibit P-4 speaks for itself and Defendant particularly denies that it agreed that the costs or figures referred to should constitute the measure of any liability on its part;

6. Defendant admits that the letters dated August 3rd, 1942, August 7th, 1942, and August 14th, 1942, referred to respectively as Exhibits P-2, P-3 and P-4, in Paragraphs 9 and 10 of said Declaration, speak for themselves, and the truth of the remaining allegation of said paragraphs is denied;

7. Defendant admits the truth of the allegations of Paragraphs 11 and 13 of said Declaration;

8. Defendant admits that the Proof of Loss referred to in Paragraph 12 of said Declaration as Exhibit P-5 speaks for itself, and Defendant denies the truth of the remaining allegations of said paragraph;

10

AND UNDER RESERVE OF THE FOREGOING, DEFENDANT FURTHER SAYS:—

20

9. That by the terms and conditions of the said Policy, Exhibit P-1, it appears that it was not the intention of the parties to the said contract either that the Company Defendant should insure or that the said Company Plaintiff should be insured by said Policy against loss or damage caused by fire, upon the premises of the said insured or elsewhere, and the contract was entered into and the rate of premium or consideration therefor was established and agreed to upon such understanding and agreement, the whole as appears by said Exhibit P-1;

10. That it is one of the conditions of said Policy, Exhibit P-1, under the caption of "OTHER PROPERTY INSURANCE":—

30

"3. In the event of a property loss to which both this insurance and other insurance carried by the Assured apply, herein referred to as 'joint loss', (a) the Company shall be liable only for the proportion of the said joint loss that the amount which would have been payable under this policy on account of said loss had no other insurance existed, bears to the combined total of the said amount and the whole amount of such other valid and collectible insurance; or, (b) the Company shall be liable only for the proportion of the said joint loss that the amount which would have been payable under this policy on account of said loss had no other insurance existed, bears to the combined total of the said amount and the amount which would have been payable under all other insurance on account of said loss had there been no insurance under this policy; but this clause (b) shall apply only in case the policies affording such other insurance contain a similar clause",

40

and it is also another condition of the aforesaid Policy, under the caption of "LIMITATION OF PROPERTY LOSS":—

10 “4. The Company shall not be liable as respects the
“property of the Assured damaged or destroyed, for more
“than the actual cash value thereof at the time of the
“accident. If as respects the damaged property of the
“Assured the repair or replacement of any part or parts
“of an object is involved, the Company shall not be liable
“for the cost of such repair or replacement in excess of
“the actual cash value of said part or parts or in excess
“of the actual cash value of the object, whichever value is
“less. Actual cash value in all cases shall be ascertained
“with proper deductions for depreciation, however caused.”

20 In consequence, the entire property loss and other insurance,
including co-insurance carried by the Plaintiff, as well as
whether the whole amount of such other insurance hereinafter
referred to is or was valid and collectible under the terms and
conditions of the contracts evidencing same, by virtue of the
facts of that certain accident on August 2nd, 1942, mentioned in
Plaintiff's Declaration and hereinafter more specifically referred
to and alleged, becomes relevant and pertinent to the issues here-
in without there being any claim or conclusion urged on the part
of Defendant in its Plea against such other insurers; and it is
pertinent and relevant to these presents in the premises in order
that it may be also ascertained, for the reasons hereinafter al-
leged, whether the actual cash value at the time of the accident
has been exceeded or will be exceeded by payments made or to
be made under the terms and conditions of the contracts of
30 insurance hereinafter referred to, together with the terms and
conditions of Exhibit P-1, by virtue of the facts hereinafter
alleged pertaining to the accident in the plant of Plaintiff;

40 11. That on or about the 2nd day of August, 1942, there
were one or more occurrences at the plant premises of the Plain-
tiff Company located on a block of land situated on and cir-
cumscribed by Centre Street, St. Patrick Street and Atwater
Avenue, City of Montreal, the loss and damage whereof was
covered by a guaranteed amount of other insurance in excess
of \$2,000,000.00, to which accident Exhibit P-1 allegedly ap-
plies, as appears by the provisions of combination policy No.
CC3041 issued by Ernest W. Brown Inc., as attorney in fact,
dated 15th of November, 1939, on behalf of

INDIVIDUAL UNDERWRITERS and/or
NEW YORK RECIPROCAL UNDERWRITERS and/or
AFFILIATED UNDERWRITERS and/or
FIREPROOF-SPRINKLERED UNDERWRITERS
and/or

METROPOLITAN INTER-INSURERS and/or
AMERICAN EXCHANGE UNDERWRITERS

which, exclusive of the "Extended Coverage Endorsement" insured against, among other hazards, all loss caused by fire resulting from an explosion;

10 12. That there were other policies comprising said guaranteed amount of \$2,000,000.00 of other insurance with similar insuring clauses, notably:—

Policy No. 87263 of the Aetna Insurance Company,

Policy No. 80060 of the Home Insurance Company, and there may be additional other insurance carried by Plaintiff in other companies to make up said guaranteed amount exceeding \$2,000,000.00 but failing, Plaintiff is co-insurer, by the terms of said contracts, for any deficiency;

20

13. That Plaintiff is hereby called upon to produce said policies hereinabove enumerated and described, to the end that the Court may have cognizance thereof for the reasons hereinabove averred and, without limiting the generality of the foregoing, particularly for the reasons alleged in Paragraph 10 hereof, as well as for those hereinafter alleged, Defendant reserving its right to make secondary proof thereof at the proper time should Plaintiff fail to so produce;

30

14. That Plaintiff, through its Officials, conducted an investigation of its own as to what occurred in its plant on Atwater Avenue aforesaid, City of Montreal, on the said 2nd day of August, 1942, in the presence of representatives of Defendant, and witnesses were interrogated by Officials of Plaintiff, and their answers were reduced to writing and signed by the witnesses interrogated, and duplicates of such signed statements were transmitted to Defendant's representatives at the conclusion of said investigation;

40

15. That the statement obtained under such circumstance by Plaintiff from its Oil Mill Foreman, H. A. Frazier, reads as follows:—

"August 10th, 1942.

"STATEMENT OF MR. FRAZIER CONCERNING
ACCIDENT AT LINSEED OIL MILL WHICH
OCCURRED SUNDAY AUGUST 2nd.

"I arrived on the third floor of the mill about five minutes to ten.

10 “Walked around, glanced at machinery, was running O.K. Walked over to press, picked up a bottle, looked at the liquid. This was not O.K. to my knowledge, then decided to discuss colour with man in charge, Mr. Rymann. While discussing it I heard a sizzling noise in the bleaching room. Was going to walk over to investigate and just as I walked towards the place I glanced at the North side and saw fumes or vapours, then saw fire and called to the men to get out. Some were going to the staircase but I said, No, the fire escape. I went with them.

“As I put my foot on the fire escape, I heard a noise like a boom. When we got down to around the second story I heard a second noise which was louder. We stood paralyzed for about two seconds. Could not move.

20 “Went to bottom of ladder and crawled out under platform, to railway tracks.

“The whole thing happened in five to seven minutes at the most.

“(Signed) H. A. Frazier.

“Witness:

“(signed) J. S. Moffatt.”

30 16. That in the premises it appears that the alleged loss and damage sustained by Plaintiff is a fire loss under the terms and provisions of the contracts of other insurance hereinabove enumerated and described and Defendant is in no way liable therefor, and, as a matter of fact, said other Insurers have admitted liability and have paid or agreed to pay the said loss, which fact seriously affects this Honorable Court in giving effect to the conditions of the Policy Exhibit P-1 and is relevant and pertinent to the issues herein;

40 17. That Defendant's liability, if any, which is not admitted, but on the contrary denied, is limited to loss on the property of Plaintiff directly damaged by a sudden and accidental tearing asunder of the object or any part thereof, to wit, the lug forming a part of the hinge on the manhole door of an unfired vessel, being used at the time as a turpentine bleaching tank, and what actually occurred subsequently is covered by the terms and conditions of the aforesaid policies hereinabove enumerated and described and/or under their Supplemental contracts forming part of said contracts, which extended the coverage to any direct loss or damage caused by explosion originating within

the insured premises when such explosion results either from a hazard inherent to the business as conducted therein or otherwise; and if there be liability, which is denied, on the part of Defendant under Exhibit P-1, within the terms of the definition of Accident, such liability is limited to the actual cash value at the time of the accident of the part or parts involved of the object, as defined under Exhibit P-1, after proper deduction for depreciation however caused;

AND IN ANY EVENT

18. That it is a condition of the Policy of Defendant, Exhibit P-1, under the caption of "OTHER PROPERTY INSURANCE" that in the event of a loss to which the insurance carried by Defendant under said Policy, Exhibit P-1, and other insurance hereinabove referred to, policies whereof are enumerated and described, carried by Plaintiff, apply (any deficiency of the guaranteed amount being borne by Plaintiff as co-insurer), Defendant in such circumstance can be held liable only for the proportion of the loss that the amount which would have been payable by Defendant on account of such loss had no other insurance existed, bears to the combined total of the said amount and the whole amount of such other valid and collectible insurance; or bears to the combined total of the said amount and the amount which would have been payable under all other insurance on account of said loss had there been no other insurance under this policy, depending upon whether or not the other insurance contains a similar clause, in which event only the latter proportion is applicable to and in limitation of Defendant's liability; otherwise the former proportion is applicable;

19. That the right of action of Plaintiff against Defendant has prescribed by the terms and conditions of the Policy, Exhibit P-1;

20. That there is no lien de droit between Plaintiff and Defendant and the action of Plaintiff is unfounded in law and in fact;

Wherefore Defendant prays that its Plea be maintained and that the action of Plaintiff be dismissed with costs.

Montreal, October 23rd 1943.

Hackett, Mulvena, Foster, Hackett & Hannen,
Attorneys for Defendant.

PARTICULARS FURNISHED BY DEFENDANT
OF PARAGRAPHS 9, 11 AND 16
OF ITS PLEA

- 10 1. As to paragraph 9 of the Plea:—
The intention was made manifest by and the understanding and agreement in respect to the fixing of the rate of premium are found in Exhibit P-1, as alleged in said paragraph;
- 20 2. As to paragraph 11 of the Plea:—
On the third floor of the Mill in the Bleaching Room at about ten o'clock in the morning of the day alleged there were heard and seen in the following sequence:—
a sizzling noise,
fumes, or vapours,
fire,
and shortly after, a boom-like noise followed by a second and louder boom;
- 30 3. As to paragraph 16:—
All the Insurers on the risk other than Defendant, paid to Plaintiff, prior to the production of Defendant's Plea over one hundred thousand dollars (\$100,000.00) of the loss sustained by Plaintiff and since have paid or agreed to pay the balance of the loss in the event of Plaintiff's action failing and Defendant is unable to say whether the undertaking to make a further payment is in writing or was verbal.

40 The Whole Respectfully Submitted,

Montreal, March 28th, 1944.

Hackett, Mulvena & Hackett,
Attorneys for Defendant.

PLAINTIFF'S ANSWER TO DEFENDANT'S PLEA

Plaintiff for answer to Defendant's Plea and particulars in support thereof, made and filed in this cause, says:—

- 10 1. THAT it joins issue with the Defendant on the allegations contained in paragraphs 3, 4 and 5;
2. THAT it prays acte of the admissions contained in paragraphs 1, 2, 6, 7 and 8;
3. THAT it denies the allegations contained in paragraph 11 and the particulars in support thereof, paragraph 16 and the particulars in support thereof, paragraphs 19 and 20, except as respects the contracts of insurance referred to in said paragraphs 11 and 16 and the particulars in support thereof, that the said
20 contracts of insurance speak for themselves; and in addition Plaintiff admits that it received from the fire insuring companies, other than the Defendant, the sum of \$112,793.34, being the total loss caused by fire following the explosion the loss or damage in respect of which Plaintiff now claims from the Defendant;
4. THAT as to paragraph 9 and particulars in support thereof it denies the allegations of said paragraph and particulars
30 in support thereof, except that the contract of insurance therein referred to speaks for itself, of which admission Plaintiff prays acte;
5. THAT as to paragraph 10 it denies the allegations thereof except that the contracts of insurance therein referred to speak for themselves;
6. THAT as to paragraph 12 it denies the allegations thereof
40 except that the contracts of insurance therein referred to speak for themselves;
7. THAT as to paragraph 13 it denies the same as well as the procedural efficiency thereof;
8. THAT as to paragraphs 14 and 15, under reserve of its Motion to have the said paragraphs of Defendant's Plea rejected, Plaintiff alleges that the said paragraphs are illegal, insufficient and improperly pleaded and that said paragraphs are

inadmissible as a defence, Plaintiff as well denying the facts therein alleged;

9. THAT as to paragraph 17 Plaintiff prays acte of Defendant's admission that there was a sudden and accidental tearing asunder of the lug forming a part of the hinge of the manhole door of the unfired vessel in question, and that at the
10 time it was being used as a turpentine bleaching tank, denies the balance of the said paragraph and avers, that the contract of insurance therein referred to speaks for itself;

10. THAT as to paragraph 18 it denies the same and avers that the contract of insurance therein referred to speaks for itself;

WHEREFORE Plaintiff prays dismissal of Defendant's
20 Plea and particulars in support thereof, with costs.

Montreal, April 21st, 1944.

Mann, Lafleur & Brown,
Attorneys for Plaintiff.

RETRAXIT

30 Notice is hereby given to Messrs. Hackett, Mulvena and Hackett, Attorneys for Defendant that the Plaintiff withdraws from the Declaration the following portions thereof, namely,—

1. As to Paragraph Five (5) of the Declaration the words
"including damage to property of third parties to the amount of One Hundred and Eighty-two Dollars and Twelve Cents (\$182.12) as hereinafter stated;" which said words are found in the fifth, sixth, seventh and eighth
40 lines of said Paragraph five.
2. As to Paragraph six (6) the words "to the extent of Forty-six Thousand Seven Hundred and Forty-nine Dollars and Sixteen Cents (\$46,749.16);" which words are found in the fifth, sixth and seventh lines of the said Paragraph six, and the words "and to the extent of One Hundred and Eighty-two Dollars and Twelve Cents (\$182.12) damage to property of third parties which the Plaintiff became obligated to pay and did pay to such

third parties by reason of the liability of the Plaintiff for loss on the property of such third parties directly damaged by such accident;" which words are found in the eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth and seventeenth lines of the said paragraph six.

3. The whole of Paragraph seven of the Declaration.
10 And govern yourselves accordingly.

Montreal, October 16th, 1945.

(Signed) Mann, Lafleur & Brown,
Attorneys for Plaintiff.

20 RETRAXIT REDUCING CLAIM TO \$45,791.38
INSTEAD OF \$46,931.28

Plaintiff withdraws from and renounces to its claim and the conclusions of the action in this case to the extent of the following:—

30	Damage to other properties (details page 3, Proof of Loss, Ex. P. 5)	\$ 182.12	
	Merchandise — Turpentine, Page 2, details Proof of Loss	957.78	\$1139.90
			<hr/>

thus reducing its claim to \$45,791.38 and the condemnatory conclusions to such amount.

Dated at Montreal, January 21st, 1946.

Mann, Lafleur & Brown,
Attorneys for Plaintiff.

40 Received copy in avail in lieu of service only.

Hackett, Mulvena, Hackett & Mitchell,
Attorneys for Defendant.

January 21st, 1946.

PLAINTIFF'S LIST OF EXHIBITS

- P - 1—Insuring Agreement No. 60350-B of the Boiler Inspection and Insurance Company of Canada countersigned at Montreal, Quebec, on the 9th day of March, 1940.
- 10 P - 2—Copy of a letter addressed to the Defendant by Johnson-Jennings, Inc. dated the 3rd day of August, 1942.
- P - 3—Copy of a letter addressed to the Defendant by the Plaintiff dated the 7th day of August, 1942.
- P - 4—Signed copy of a letter addressed by the Defendant to the Plaintiff dated August 14th, 1942.
- 20 P - 5—Duplicate original of a form of Proof of Loss addressed by the Plaintiff to the Defendant and dated the 31st day of May, 1943.

Montreal, September 17th, 1943.

Kearney, Duquet & MacKay,
Attorneys for Plaintiff.

30

PROCES-VERBAL D'AUDIENCE
COUR SUPERIEURE

Enquêtes et Plaidoiries

Audience du 23 octobre 1945

Présidence de l'Honorable Juge Tyndale.

40

Procès-verbal des procédures faites à l'audience devant le tribunal.

Les parties comparaissent par leurs procureurs respectifs.

A la demande du procureur de la défenderesse, les témoins sont requis de se retirer dans le corridor sous les réserves suivantes:—Relating to the order for the exclusion of the witnesses, issued at the request of Counsel for Defence, under art. 313 C.P., an entry will be made in the proces-verbal that the parties by

their Counsel, notwithstanding the said order, agree that the following witnesses shall remain in court during the enquête, namely:—

For Plaintiff:—

Mr. Moffat, manager of the linseed oil mill of plaintiff
10 company;

Doctors Hazen, Lortie & Lipsett, chemists;

Mr. W. N. Irving, building contractor who later assessed the loss with others;

Mr. G. E. Newill, engineer, an independant engineer concerned with the pressures which may or may not have caused the damage, the presures inside the boilers which exploded;
20

Mr. Allan Thompson, of the Foundation Company, also concerned with the assessment of damages later, with no knowledge of the accident;

Mr. Jack Ross, of Ross & MacDonald, architects, original architects of the building concerned with the joint assessment of the damages only;

Mr. W. B. Debbage, insurance adjuster.
30

For Defendant:—

Mr. Parker, engineer of the defendant company;

Mr. Sherkoltz, who is a chemist;

Mr. Roux, chemist;

Mr. McKeon, adjuster of company defendant.
40

Mr. Fitzgerald;

Mr. Gregg, engineer of defendant company.

Preuve de la demanderesse.

Sténo: Livingstone.

2 jours \$4.00. Ivor P. Fitzgerald, 47 ans, inspecteur en

chef pour la cie. défenderesse, 5149, rue Earnscliff, N.D.G., ass. & interr. par la demanderesse.

Admission de la défenderesse.

10 La défenderesse par son procureur, admet que les copies de documents produits comme pièces P-2, P-3, P-4 et P-5 sont de vraies copies et servent, pour valoir lieu d'originaux.

Taux à vérifier.

Hackett, Mulvena,
Hackett & Mitchell,
Attys for Def. 7-6-46.

\$6.00. E. W. Bennett, 66 ans, photographe, 3595, ouest, rue St-Jacques, Montreal, ass. & interr. par la dem.

20 Pièce P-6a photo.
" P-6b autre photo.
" P-6c " "
" P-6d " "
" P-6e " "
" P-6f " "

5 jours \$30.00. George Ernest Newill, 63 ans, ingénieur consultant, 388, avenue Oliver, Westmount, ass. & interr. par la demanderesse.

30 Pièce P-7 croquis de l'étage supérieur du moulin de la cie. demanderesse.

Séance ajournée à 2¼ P.M.

J. R. Migneron,
D.P.C.S.

Advenant 2¼ P.M.

Preuve de la demanderesse (suite).

40 Sténo: Livingstone.

Admission de la demanderesse.
(voir les dépositions)

3 jours \$6.00. John S. Moffat, 47 ans, gérant du département de l'huile de lin de la cie. demanderesse, 2168, ouest, rue Sherbrooke, ass. & interr. par la demanderesse.

P.O. Cause continuée au 24 octobre 10¼ A.M.

J. R. Migneron,
D.P.C.S.

-Advenant le 24 octobre 10¹/₄ A.M.

Les parties comparaissent par leurs procureurs respectifs.

Preuve de la demanderesse (suite).

Sténo: Livingstone.

10

Avec la permission de la Cour, le témoin Moffatt déjà ass. est rappelé en contre-interrogatoire par le procureur de la demanderesse.

3 jours \$6.00. Halsey Frazier, 51 ans, surintendant du dept. de l'huile de lin de la cie dem., 2650, rue Centre, Montréal ass. & interr. par la demanderesse.

20

Pièce P-8 croquis de la bouilloire no 1 qui a fait explosion.

Pièce P-9 modèle rudimentaire de la bouilloire no 1.

Pièce P-10 mémorandum de mensurations, etc. en date 22 octobre 1945.

Séance ajournée à 2.45 hrs. P.M.

J. R. Migneron,
D.P.C.S.

30

Advenant 2.45 hrs P.M.

Preuve de la demanderesse (suite)

Sténo: Livingstone.

Halsey Frazier, 51 ans, déjà ass. continue son témoignage en contre-interrogatoire.

40

Admission de la demanderesse.
(voir les dépositions)

Pièce D-1 déclaration écrite signé par le témoin Frazier.

2 jours \$4.00. Arnold Rymann, 41 ans, contremaître pour la cie. demanderesse, 1315, ouest, rue Dorchester, Montréal, ass. & interr. par la demanderesse.

P.O. Cause continuée au 25 octobre 10¹/₂ A.M.

J. R. Migneron,
D.P.C.S.

Advenant le 25 octobre 10¹/₂ A.M.

Les parties comparaissent par leurs procureurs respectifs.

Preuve de la demanderesse (suite)

Sténo: Livingstone.

10

Arnold Rymann, 41 ans, contre-maître, déjà ass. & interr.
en contre-interrogatoire.

Pièce D-2 copie de déclaration écrite signée par le témoin
Rymann le 10 août 1942.

La Cour interroge le témoin Rymann.

20

Sténo: Jean Mackay.

3 jours \$6.00. Henri Asselin, 36 ans, machiniste, 259, rue
Lévis, Montréal, ass. & interr. par la demanderesse.

Séance ajournée à 2¹/₄ P.M.

J. R. Migneron,
D.P.C.S.

Advenant 2¹/₄ P.M.

30

Preuve de la demanderesse (suite)

Sténo: Jean Mackay.

Henri Asselin, 36 ans, déjà ass. continue son témoignage.

Le témoignage de M. Asselin est suspendu pour permettre
à la demanderesse de rappeler le témoin Moffatt et l'interroger
sur un certain point.

40

Sténo: Livingstone.

John S. Moffatt, 47 ans, déjà ass. & interr. par la deman-
deresse.

Pièce D-3 copie de lettre circulaire.

Sténo: Jean Mackay.

Henri Asselin, 36 ans, déjà ass., reprend son témoignage.

Pièce D-4. Copie de déclaration écrite signée par le témoin Asselin le 10 août 1942.

3 jours \$6.00. Alphonse Boucher, 29 ans, manoeuvre, 1222, rue d'Argençon, Montréal, ass. et interr. par la dem. .

10 Pièce D-5. Copie de déclaration écrite signée par Boucher.

P.O. Cause continuée sine die.

J. R. Migneron,
D.P.C.S.

Advenant le 19 novembre 10 $\frac{1}{2}$ A.M.

Les parties comparaissent par leurs procureurs respectifs.

20 Preuve de la demanderesse (suite)

Sténo: Livingstone.

5 jours \$30.00. Charles Hazen, 70 ans, chimiste consultant, 49 ans, avenue Arlington, Westmount, ass. & interr. par la demanderesse.

Pièce P-11 photo de la bouilloire telle que reconstituée.

30 \$2.00. Eldred Hollett, 53 ans, chef pompier de district pour la cité de Montréal, 5956, rue Clanranald, Montréal, ass. & interr. par la demanderesse.

Sténo: Jean Mackay.

4 jours \$8.00. Halsey Gosselin, 25 ans, manoeuvre, 2673, rue Centre, Montréal, ass. & interr. par la demanderesse.

40 Pièce P-12. Déclaration écrite signée par H. Gosselin, le 17 août 1942.

4 jours \$8.00. Félix Duquette, 34 ans, manoeuvre, 2618, rue Centre, Montréal, ass. & interr. par la demanderesse.

Sténo: Livingstone.

4 jours \$8.00. Charles E. Keene, 64 ans, employé de bureau de la cie. demanderesse, 1655, rue Champigny, Montréal, ass. & interr. par la demanderesse.

Charles R. Hazen, 70 ans, déjà ass. & interr. par la dem.

Séance ajournée à 2¼ P.M.

J. R. Migneron,
D.P.C.S.

Advenant 2¼ P.M.

10

Preuve de la demanderesse (suite)

Sténo: Livingstone.

Charles R. Hazen, 70 ans, déjà ass. et interr. par la dem.

P.O. Cause continuée au 20 novembre 10.45 A.M.

20

J. R. Migneron,
D.P.C.S.

Advenant le 20 novembre 10.45 A.M.

Les parties comparaissent par leurs procureurs respectifs.

Sténo: Livingstone.

Preuve de la Demanderesse (suite)

30

Me John Hackett, procureur, de la défenderesse, déclare avoir terminé le contre-interrogatoire du témoin Hazen.

\$6.00. Charles R. Hazen, 70 ans, déjà ass. est rappelé par la demanderesse avec la permission de la Cour.

5 jours \$30.00. John K. Ross, 29 ans, architecte, 1710 ouest, rue Dorchester, Montréal, ass. et interr. par la demanderesse.

40

Pièce P-13 copie de rapport et de lettre.

Cette pièce est admise par la Cour provisoirement et sous réserve des obligations de la défense.

George Ernest Newill, 63 ans, ingénieur consultant, 388, avenue Oliver, Westmount, déjà ass. et interr. par la dem.

Pièce P-14. Copie dactylographiée et signée d'un état détaillé des dommages etc., préparé par le témoin Newill.

Séance ajournée à 2 hrs P.M.

J. R. Migneron,
D.P.C.S.

Advenant 2 hrs P.M.

Preuve de la demanderesse (suite)

Sténo: Livingstone.

George Ernest Newill, 63 ans, déjà ass. & interr. par la
10 demanderesse.

8 jours \$48.00. Allan Thomson, 39 ans, gérant de district
de Foundation Co. of Ca., 19, rue Sunnyside, Lakeside, ass. &
interr. par la demanderesse.

Pièce P-15 estimé du coût des réparations à l'immeuble
de la demanderesse et lettre 18 jan. 1943.

Cette pièce est admise par la Cour provisoirement et sous
20 réserve des objections de la défense.

P.O. Cause continuée au 21 novembre 10¹/₂ A.M.

J. R. Migneron,
D.P.C.S.

Advenant le 21 novembre 10¹/₂ A.M.

Les parties comparaissent par leurs procureurs respectifs.
30

Preuve de la demanderesse (suite)

Sténo: Livingstone.

8 jours \$48.00. Balfour Debbage, 72 ans, ajusteur en assu-
rances, 5 Parkside Place, Westmount, ass. & interr. par la de-
manderesse.

Pièce P-16 copie de memorandum produite par le témoin
40 Debbage.

Pièce D-6 liasse de 22 polices d'assurance détaillée de 1
à 22 inclusivement.

P.O. Cause continuée au 17 décembre.

J. R. Migneron,
D.P.C.S.

Advenant le 7 janvier 10 $\frac{1}{2}$ A.M.

Les parties comparaissent par leurs procureurs respectifs.

Preuve de la demanderesse (suite)

Sténo: Livingstone.

10

W. Balfour Debbage, 72 ans, déjà ass. & interr. continue son témoignage en contre-interrogatoire.

Pièce D-7a photo.

“ D-7b autre photo.

“ D-7c “ “

“ D-7d “ “

“ D-7e “ “

“ D-7f “ “

20

“ D-7g “ “

“ D-7h “ “

“ D-7i “ “

“ D-7j “ “

Admission of the Plaintiff.

The Plaintiff through its attorney admits that photographs exhibits D-7a to D-7j were taken of the Sherwin-Williams Co. premises on the dates mentioned by Counsel for Defendant.

30

M., L. & B.

Séance ajournée à 2 $\frac{1}{4}$ P.M.

J. R. Migneron,

D.P.C.S.

Advenant 2 $\frac{1}{4}$ P.M.

Preuve de la demanderesse (Suite)

40

Sténo: Livingstone.

W. Balfour Debbage, 72 ans, déjà ass. & inter. continue son témoignage en contre-interrogatoire.

Pièce P-17 rapport de M. Irving à MM. Cheese & Debbage en date 3 décembre 1942 (sous réserve).

Pièce P-18 rapport de M. Newill à MM. Debbage & Hewitson Inc. en date 25 janv. 1943 (sous réserve).

— XXVIII —

Me Mann, procureur de la demanderesse, versera au dossier un retraxit écrit.

Ivor P. Fitzgerald, 47 ans, déjà ass. & interr. est rappelé par la demanderesse avec la permission de la Cour.

10 Pièce P-19 lettre de I. P. Fitzgerald à Sherwin-Williams Co. en date 27 août 1942.

P.O. Cause continuée au 8 janvier 10.45 hrs A.M.

J. R. Migneron,
D.P.C.S.

Advenant le 8 janvier 10.45 hrs A.M.

20 Les parties comparaissent par leurs procureurs respectifs.

Preuve de la demanderesse (suite)

Sténo: Livingstone.

Allan Thomson, 39 ans, déjà ass. & interr. reprend son témoignage en contre-interrogatoire.

Séance ajournée à 2¼ hrs P.M.

30

J. R. Migneron,
D.P.C.S.

Advenant 2¼ P.M.

Preuve de la demanderesse (suite)

Sténo: Livingstone.

40 7 jours \$42.00. William Irving, 74 ans, constructeur, 4643, ouest, rue Sherbrooke, Westmount, ass. & interr. par la demanderesse.

John S. Moffat, 47 ans, déjà ass. & interr. est rappelé par la demanderesse.

P.O. Cause continuée au 9 janvier 10½ hrs A.M.

J. R. Migneron,
D.P.C.S.

Advenant le 9 janvier 10 $\frac{1}{2}$ hrs A.M.

Preuve de la demanderesse (suite)

Sténo: Livingstone.

John S. Moffat, 47 ans, déjà ass. & interr. continue son
10 témoignage.

P.O. Cause continuée au 4 février 10 $\frac{1}{2}$ hrs A.M.

La Cour permet aux procureurs des parties d'examiner
certains témoins hors de Cour, dans l'intervalle, s'ils le désirent.

J. R. Migneron,
D.P.C.S.

20

Advenant le 4 février 10 $\frac{1}{2}$ hrs A.M.

Les parties comparaissent par leurs procureurs respectifs.

Preuve de la demanderesse (suite)

Sténo: Livingstone.

John S. Moffat, 47 ans, déjà ass. & interr. continue son
30 témoignage en contre-interrogatoire.

Allan Thomson, 39 ans, déjà ass. & interr. reprend son
témoignage en contre-interrogatoire.

Séance ajournée à 2 hrs P.M.

J. R. Migneron,
D.P.C.S.

Advenant 2 hrs P.M.

40

Preuve de la demanderesse (suite)

Sténo: Livingstone.

12 jours \$72.00. Solomon Lipsett, 45 ans, chimiste, 4970,
avenue Hingston, Montréal, ass. & interr. par la dem.

Le contre-interrogatoire du témoin Lipstt est suspendu.

12 jours \$72.00. Léon Lortie, 43 ans, professeur de chimie
à l'université de Montréal, 5585, rue Gatineau, Montréal, ass.
& interr. par la demanderesse.

Pièce P-20 boulon.

P.O. Cause continuée au 5 février 10¹/₄ hrs A.M.

J. R. Migneron,
D.P.C.S.

10 Advenant le 5 février 10¹/₄ hrs A.M.

Les parties comparaissent par leurs procureurs respectifs.

Preuve de la demanderesse (suite)

Sténo: Livingstone.

20 Le contre-interrogatoire du témoin Lortie est suspendu pour permettre à la défenderesse de terminer le contre-interrogatoire du témoin Lipsett.

Solomon Lipsett, 45 ans, déjà ass. & interr. reprend son témoignage en contre-interrogatoire.

Séance ajournée à 2¹/₄ hrs. P.M.

J. R. Migneron,
D.P.C.S.

30 Advenant 2¹/₄ hrs P.M.

Sténo: Livingstone.

Léon Lortie, 43 ans, déjà ass. & interr. reprend son témoignage en contre-interrogatoire.

Solomon Lipsett, 45 ans, déjà ass. & interr. est rappelé par la demanderesse avec la permission de la Cour.

40 La demanderesse déclare son enquête close.

Preuve de la défenderesse.

Sténo: Livingstone.

\$2.00. Frederick A. Jennings, 55 ans, agent et courtier en assurance, 780, Upper Belmont road, Westmount, ass. & interr. par la défenderesse.

Pièce D-8 document non signé intitulé "Linseed Oil Mill Fire".

A l'occasion d'une question posée au témoin par Me Hackett, Me Mann demande l'exclusion des témoins avant que le dit témoin réponde.

La Cour, trouvant cette demande inopportune, la refuse.

10 Pièce D-9 reçu, transport et subrogation par la demanderesse à Aetna Insurance Co. en date 3 mars 1944.

\$2.00. John S. Moffat, 47 ans, déjà ass. est interrogé par la défenderesse.

P.O. Cause continuée au 6 février 10¹/₄ hrs A.M.

J. R. Migneron,
D.P.C.S.

20 Advenant le 6 février 10¹/₄ A.M.

Les parties comparaissent par leurs procureurs respectifs.

Preuve de la défendersse (suite)

Sténo: Livingstone.

30 13 jours \$384.11. Phillip McKeon, 54 ans, chef évaluateur en dommages de "The Hartford Steam Boiler & Inspection Co., 577, avenue Prospect, West Hartford, Conn. E.U., ass. & interr. par la défenderesse.

Pièce D-10 plan de l'étage supérieur du moulin de l'huile de lin de la cie. demanderesse tracé après l'accident.

13 jours \$289.50. Linley T. Gregg, 68 ans, secrétaire et chef ingénieur de la cie défenderese, 143, avenue Eastbourne, Toronto, Ont., ass. & interr. par la défenderesse.

40 13 jours \$398.00. Walter Parker, 37 ans, ingénieur, 3, rue Durkin, Manchester, Conn. E.U., ass. & interr. par la défenderesse.

Sténo: Jean Mackay.

13 jours \$78.00. Paul Riou, 56 ans, professeur de sciences, 2810, chemin Ste-Catherine, Outremont, ass. & interr. par la défenderesse.

Pièce D-11 décalque au crayon d'une photographie illustrant la propagation de la flamme.

Pièce D-12. Schéma.

Séance ajournée à 2½ hrs. P.M.

10

J. R. Migneron,
D.P.C.S.

Advenant 2½ hrs P.M.

Preuve de la défenderesse (suite)

Sténo: Jean Mackay.

20

Paul Riou, 56 ans, déjà ass. & interrogé par la défenderesse avec la permission de la Cour.

Sténo: Livingstone.

12 jours \$333.30. Otto J. Schierholtz, 53 ans, chimiste, 89, avenue Braemar, Toronto, ass. & interr. par la défenderesse.

La demanderesse ne contre-interroge pas le témoin.

30

Walter Parker, 37 ans, déjà ass. & interr. est rappelé par la défenderesse avec la permission de la Cour.

La défenderesse déclare son enquête close.

Contre-preuve de la demanderesse.

Sténo: Livingstone.

Solomon Lipsett, 45 ans, déjà ass. & interr. par la demanderesse.

40

Léon Lortie, 43 ans, déjà ass. & interr. par la demanderesse.

Enquête close de part et d'autre.

P.O. Cause continuée au 7 février 1 hrs P.M. pour argumentation.

J. R. Migneron,
D.P.C.S.

Advenant le 7 février 1 hr P.M.

Les parties comparaissent par leurs procureurs respectifs.

Argumentation.

Séance ajournée à 3.20 hrs. P.M.

10

J. R. Mignerou,
D.P.C.S.

Advenant 3.20 hrs P.M.

Argumentation (suite).

La Cour ordonne aux procureurs des parties la production de factums d'ici au 28 février, par échange.

20

La Cour ordonne aussi la transcription des dépositions des témoins.

P.O. Cause continuée au 28 février pour production de factums.

Lorsque les dits factums seront produits, la cause sera alors prise en délibéré.

30

J. R. Mignerou,
D.P.C.S.

Advenant le 7 mars 1946

Les factums des avocats sont produits et la cause est prise en délibéré.

P.O.C.A.V.

40

J. R. Mignerou,
D.P.C.S.

I. P. FITZGERALD (for Plaintiff's at Enq.) Examin. in chief.

PART II — WITNESSES

Plaintiff's Evidence at Enquête

10

DEPOSITION OF I. P. FITZGERALD

A witness on the part of Plaintiff.

20 On this 23rd day of October, in the year of Our Lord nineteen hundred and forty-five, personally came and appeared, Ivor P. Fitzgerald, aged 47, chief inspector of the Boiler Inspection & Insurance Co. of Canada, and residing at 5149 Earnscliff Av., in the City and District of Montreal, who having been duly sworn in this case doth depose and say as follows:—

Examined by Mr. J. A. Mann, K.C.:—

Q.—The insurance policy Exhibit P-1 is a policy issued by your company, the company you represent? A.—Yes.

30 Q.—In favor of the Sherwin-Williams Company of Canada Limited? A.—Yes.

Q.—Who is the present head or manager for Canada of the defendant company? Mr. Mudge died, I believe. A.—The executive vice-president is Mr. J. P. Byrne of Toronto.

Q.—But, in Montreal? A.—Mr. L. J. Wilkinson.

Q.—Who succeeded Mr. Mudge, I understand? A.—Yes.

Q.—You are familiar with the circumstances of this loss, are you not, and the circumstances following it? A.—I have been collaborating with others with respect to an investigation.

40 Q.—Now, you have a letter of the 3rd of August, 1942, copy of which is filed as Exhibit P-2 . . . A.—Counsel has it.

Q.— . . . giving notice of the loss?

(Exhibit P-2 is admitted as a true copy of the original and will avail as such).

Q.—Have you a letter of the 7th of August, 1942, which is filed as Exhibit P-3? A.—Counsel has it.

(Exhibit P-3 is admitted as a true copy of the original and will avail as such).

I. P. FITZGERALD (for Plaintiff's at Enq.) Examin. in chief.

Q.—Have you a letter of the 14th of August, 1942, filed as Exhibit P-4? I suppose Mr. Hackett will make the same admission?

Mr. Hackett:—Yes. You have the original of that, Mr.
10 Mann.

By Mr. Mann:—Yes, that is right:

Q.—You sent the letter of the 14th of August, 1942, filed as Exhibit P-4, to the Sherwin-Williams Company? A.—Yes.

Q.—And have you the proofs of loss which are dated the 31st of May, 1943, copies of which are filed as Exhibit P-5?

Mr. Hackett:—Yes,
20

(The parties admit that the copies filed as Ex. P-5 are true copies of the proof of loss).

Mr. Hackett:—This is always subject to verification, of course.

By Mr. Mann:—Yes:

Q.—You having been notified the day following, according
30 to the letter of the 3rd of August, 1942, of the disaster at the Sherwin-Williams Company's plant, there was a meeting held within a few days, wasn't there, at which you were present?
A.—A meeting with whom?

Q.—I am just going to give you that, — a meeting with
Mr. Hollingsworth and Mr. Moffat of the Sherwin-Williams Company; Mr. Rutledge and Mr. Thompson, of the Foundation Company of Canada; and Mr. McKeon, Mr. Cregg, and Mr. Fitzgerald, — that is, yourself, — of the Boiler Inspection & Insurance Company; Mr. Ross, Senior, and Mr. Ross, Junior, of Ross
40 & Macdonald, the architects; Mr. Jennings, of the firm of Johnson-Jennings Incorporated; and Mr. Debbage, of the firm of Debbage & Hewitson, adjusters. Do you remember that meeting? A.—That is right.

The Court:—When?

By Mr. Mann:—The 10th of August.

Q.—You were at that meeting? A.—Yes.

I. P. FITZGERALD (for Plaintiff's at Enq.) Examin. in chief.

Q.—Are you able to say what was the result and what was the purpose of that meeting, insofar as you can appreciate it on behalf of the Defendant?

10 Mr. Hackett:—I don't think I am wrong in stating that the letter filed by Mr. Mann as P-4 states the result of that meeting?

Mr. Mann:—Well, if that statement is in the record I will accept that without asking any further questions on that subject. Isn't it rather, "states what was the object and the result of "the meeting", Mr. Hackett?

By The Court:—Perhaps I might ask the question:—

20 Q.—I understand you were at the meeting of the 10th of August, 1942. Will you look at the Exhibit P-4, a letter from your company to the Plaintiff, dated the 14th of August, 1942, and tell me whether that is the outcome of the discussions which took place at the meeting in question? A.—Yes, your lordship, that is the outcome of the meeting that took place with the gentlemen stipulated by Mr. Mann.

Mr. Hackett:—The gentlemen mentioned.

30 By Mr. Mann, K.C.:—

Q.—The gentlemen mentioned by me? A.—Yes.

The Court:—That is the situation?

Mr. Mann:—Yes.

(Q.—(Continuing): Mr. Fitzgerald, are you an engineer?
40 A.—I am a boiler and pressure-vessel inspector.

Q.—Does that involve a certain amount of knowledge of engineering? A.—Yes.

Q.—Did you, at a later date or at approximately that date or within the vicinity of that date, make a sketch or plan of the boiler in which the disaster appears to have started?

The Court:—"Boiler"?

Mr. Mann:—Well, the "vessel", I will put it. We may call it a boiler. I don't think there is going to be any objection.

I. P. FITZGERALD (for Plaintiff's at Eng.) Examin. in chief.

Mr. Hackett:—I would rather call it a vessel.

Mr. Mann:—I may get confused and call it a boiler. If I call it a boiler, I mean a vessel.

10 The Court:—"Vessel" is neutral. Perhaps we had better stick to that. The question will be amended by replacing the word "boiler" by "vessel".

Mr. Hackett:—I am not aware of the exact purport of Mr. Mann's question, but I am going to submit to the Court that, if the witness in the pursuit of his duty made a sketch or a plan for the purpose of his own company and for the advice of Counsel, it is privileged and may not be produced in Court.

20 Mr. Mann:—I think perhaps a question might be put in the form of a question on voir dire as to whether he did or not.

The Court:—The question as put is legal: did he make a sketch?

Mr. Hackett:—I agree to that.

By The Court:—That much is legal:—

30 Q.—Did you make a sketch? A.—A sketch of what?
Q.—A sketch of the vessel? A.—No.

By Mr. Mann, K.C.:—

Q.—Did you make a sketch of the surroundings of the vessel or the pertinent connections to or from it? A.—I did make a sketch of the pipe arrangements to and from the vessel.

Q.—Have you any objection to producing that sketch?

40 Mr. Hackett:—I object, my lord, to the production of this document, which I submit is privileged, having been prepared for the. . . .

The Court:—We don't know for whom it was prepared by the witness. It was prepared by an officer of the defendant company, certainly.

Mr. Hackett:—I am suggesting to your lordship that it was prepared for the purposes of defence to the suit, and I will

I. P. FITZGERALD (for Plaintiff's at Enq.) Examin. in chief.

go further and say this: that there is no particular reason to seek the information from this source, inasmuch as plans of the layout of the property exist and are in the possession of the Plaintiff.

10 Mr. Mann:—Of course, I am not going to insist, but I think Mr. Hackett's procedure would be to make application to your lordship to examine the witness as to the purposes for which he made the sketch.

By The Court:—I don't think all that is necessary. I will just ask the witness why he made the sketch:

20 Q.—Why did you make the sketch? A.—Your lordship, it was necessary to do that, from the point of view of learning what took place previous to the occurrence and to interpret statements made to me by the officials of the mill as to what had taken place and, in order to have an idea, it was necessary for me to have those pipelines on paper.

Q.—At that time did you contemplate you would be conferring with the company's solicitors as to possible defence to the claim? A.—No.

30 Mr. Mann:—I think that permits the opening of the door and the production of the sketch.

The Court:—What do you think, Mr. Hackett?

Mr. Hackett:—I don't think I can add very much to what I have already said.

The Court:—The law on the subject is pretty clear. If the sketch or the notes or anything of the sort were made with a possible view to litigation, they are privileged.

40 Mr. Hackett:—This investigation,—like all investigations,—was made with a possible view of litigation, whether the gentleman who made it was aware of that or not. He was following a routine which is that of his company and others, and the purpose of such an investigation is to find out what the situation is, for the purpose of determining the claim and resisting it if it seems an improper one. Now, if this were the only source of information possible, it might be a little different, but here is a mill or a plant, — a new mill, as a matter of fact, — of which the layout,

I. P. FITZGERALD (for Plaintiff's at Enq.) Examin. in chief.

the mechanical devices and their connections, are fully set forth in records within the company's possession, and I submit with some deference this is not the way to get that information. We have got here a man who went there for the purpose of attempting to investigate and, if necessary, to recommend the defence
10 of a claim. Are we going to drag from his record information which was prepared by him in pursuit of that purpose?

The Court:—The question is a doubtful one, Mr. Mann. Why not leave it and see if you have not got the necessary information elsewhere?

Mr. Mann:—I am afraid I would prefer not to, if your lordship would permit me.

The Court:—The only reason I suggest you defer the
20 question is that I am not prepared to rule on this immediately. It is a borderline situation. I will have to take some thought on the matter. The witness has stated he did not contemplate the necessity of consulting the solicitors of his company about it. At the same time, he was an important official of the defendant company and in the ordinary course the investigation he made would be submitted to the company solicitors if the need arose.

Mr. Mann:—The statement of my friend, Mr. Hackett, is that these connections and these something elses, whatever they are, on that sketch, are all available to us. They might have been
30 the day before the explosion, but this sketch is something that was made several days after the explosion and under an entirely different set of conditions, an entirely different situation, a different condition of the materials around; and, in addition to that, your lordship is going to have to make a very careful study of the different views, the different attitudes, the different complexions that will be put on what happened, and this may be one of them, and that is the purpose of the question, and I suggest it is a perfectly legitimate question once the witness admits
40 he was not doing it for the purpose of advising Counsel. This is just one aspect of what did happen.

The Court:—I will make this ruling for the moment:—The objection is temporarily maintained. I won't allow the production at the moment.

Mr. Mann:—That is quite all right. That is all for this witness, thank you.

And further deponent saith not.

H. Livingstone,
Official Court Stenographer.

E. W. BENNETT (for Plaintiff's at Enquete) Exam. in chief.

DEPOSITION OF E. W. BENNETT

A witness on the part of Plaintiff.

On this 23rd day of October, in the year of Our Lord
10 nineteen hundred and forty-five, personally came and appeared,
Edmund Walter Bennett, aged 66, photographer, of 359 St.
James Street, and residing at L'Acadie, P.Q., who having been
duly sworn in this case doth depose and say as follows:—

Examined by Mr. J. A. Mann, K.C.:—

Q.—You are a photographer by profession? A.—Yes.

Mr. Hackett:—Mr. Mann has been good enough to give
20 me a set of the photographs he is going to produce. Now, Mr.
Mann, with his characteristic thoroughness, has a legend at the
bottom of each photograph. Some of the information contained
in the legend is controversial, and I am going to ask him if he
would mind just producing the photographs, leaving the state-
ments to be edited on some later date.

Mr. Mann:—I appreciate the legends should not be in.
I intended to ask the witness to exclude them.

30 Q.—(Continuing): Were you called upon or requested by
anybody to go to the plant of the Sherwin-Williams Co., follow-
ing the 2nd of August, 1942, and make certain photographs?
A.—Yes.

Q.—Did you make certain photographs in a location stated
to be one in which an accident, an explosion and a fire, had hap-
pened? A.—Yes.

40 Q.—And did you make photographs of that section where
it was alleged that this accident by fire and explosion or ex-
plosion and fire had happened, including a vessel pointed out
to you as being the vessel in which it was stated the accident had
originated? A.—Yes.

Q.—Would you look at the six photographs which I show
you and state if those photographs faithfully represent, first
of all, the two sides of a building of the Sherwin-Williams Com-
pany. . . .

Mr. Hackett:—Mr. Bennett is an experienced man. Would
my friend mind letting him tell what the photographs represent?

The Court:—So far you have been very meticulous, Mr.
Mann. Just continue and let the witness say what they represent.

E. W. BENNETT (for Plaintiff's at Enquete) Exam. in chief.

By Mr. Mann:—I will withdraw that question.

Q.—Would you look at the six photographs which I now put in your hand and tell me what those photographs, by photography, represent? A.—It shows the damage to the vessel and
10 the building.

Q.—I am going to call these photographs Exhibit P-6-a, b, c, d, e, f. Now let us go at them one at a time.

Would you look at a photograph which I now show you, which will be P-6-a, and tell me what it is? A.—That is the vessel where the explosion apparently took place.

Q.—Now would you look at P-6-b? A.—Yes. That is the rear of the same vessel.

20 Q.—Will you now look at another one and tell me what it is, — being Exhibit P-6-c? A.—The same vessel, showing the arm over the door.

Q.—This piece across the opening is what you refer to as the arm? A.—Yes.

Q.—Which at one time held the door? A.—Apparently.

Q.—Apparently held the door? A.—Yes.

Q.—Would you look at P-6-d and tell me what that picture represents? A.—Standing beside the same vessel, looking in the opposite direction, showing a general view.

30 Q.—Looking eastward? A.—I don't know; I wouldn't say. . . .

Q.—Towards the City of Montreal? A.—Yes, — showing the wrecked building.

Q.—You will notice what apparently is a vessel in the lower right-hand corner of that photograph. What is that? Is that the vessel you refer to as standing beside? A.—Yes.

Q.—And is that the vessel represented in the other photographs? A.—Yes.

40 Mr. Hackett:—The right-hand lower corner?

By Mr. Mann:—The vessel in the right-hand lower corner is the vessel represented in the photographs and is the vessel beside which he stood when he took the photograph.

Q.—Look at P-6-e and tell me what that represents? A.—The side of the building where the explosion took place.

Q.—There are two sides? A.—Yes.

Q.—It shows part of another side? A.—Yes, slightly.

E. W. BENNETT (for Plaintiff's at Enquete) Cross-examin.

Q.—It shows one side and it shows part of another side?
A.—A part of the end.

Q.—Part of the end side of the building? A.—Yes, —
showing the top floor blown away.

Q.—That is P-6-e? A.—Yes.

10 Q.—Look at P-6-e again. Do you know from what street
that was taken? A.—I didn't pay any attention to the street.
It may be the laneway or the street.

The Court:—What is the main wall? Is it the north, east,
or south?

By Mr. Mann, K.C.:—

Q.—You are informed by Mr. Moffat, the manager of
the Plaintiff, that it is the east wall? A.—Yes.

20 Q.—So the other wall, on the upper left, would be the
south wall? A.—Yes.

Q.—The last picture is P-6-f. Look at P-6-f and say what
that represents? A.—The same building. That is apparently
the east side.

Q.—I am informed this photograph must have been taken
from St. Patrick Street, diagonally? A.—This would be St.
Patrick Street.

Q.—That would be the north wall? A.—Yes.

Q.—The first thing? A.—Yes.

30 Q.—And you would see the east wall on the left side of
the picture? A.—Yes.

Q.—You see the sky through to the south wall? A.—Yes,
where a piece of the roof has blown away.

Q.—In the Exhibit P-6-c, on which, as you have stated,
there is a bar that apparently was holding the front of the door,
do you observe that underneath the right-hand end there has
been something put in there? Do you notice that? A.—Yes.

40 Q.—Was that put in to hold the door up in order to take
the photograph? A.—I believe we put a piece of asbestos in
there to hold it up.

Q.—Really this arm on the right side of the opening would
have fallen down on the lugs? A.—Yes.

Q.—So you have put a piece of asbestos in to hold it in
place? A.—Yes.

Cross-examined by Mr. John T. Hackett, K.C.:—

Q.—Did you put it there yourself? A.—Yes.

And further deponent saith not.

H. Livingstone,
Official Court Stenographer.

G. E. NEWILL (for Plaintiff's at Enquete) Examin. in chief.

· DEPOSITION OF G. E. NEWILL

A witness on the part of Plaintiff.

On this 23rd day of October, in the year of Our Lord
10 nineteen hundred and forty-five, personally came and appeared,
George Ernest Newill, aged 63, consulting engineer, residing at
388 Olivier Avenue, in the City of Westmount, District of
Montreal, who having been duly sworn in this case doth depose
and say as follows:—

Examined by Mr. J. A. Mann, K.C.:—

Q.—Mr. Newill, you were requested by Mr. Debbage, of
20 Debbage & Hewitson, insurance adjusters, to make a sketch of
the premises of the new linseed oil mill of Sherwin-Williams
immediately following the explosion and fire which happened
on the 2nd of August, 1942? A.—Yes.

Q.—I think you have said you are an engineer? A.—Yes.

Q.—Did you make a scale sketch of that mill, showing
that floor? A.—The top floor, yes.

Q.—That is the new linseed oil mill? A.—Yes.

Q.—Did you plot on that sketch. . . .

30 Mr. Hackett:—Just ask him what he plotted.

By Mr. Mann:—There are lots of things he plotted that
I wasn't going to deal with. He plotted millions of things that
I wasn't going to deal with.

Q.—However, what did you plot on the sketch? A.—I
plotted in a neutralizer tank, a bleaching tank, an air wash
vacuum tank, an air pump, an elevator, a stairway, elevated
tank, and doorways.

40 Q.—An walls and partitions and other things? A.—Yes.

Q.—That plan is dated what? A.—August 13th, 1942.

Q.—August 13th? A.—Yes.

Q.—Not August 3rd? A.—No.

By The Court:—

Q.—What scale is marked on it? A.—It is one-eighth of
an inch to a foot.

G. E. NEWILL (for Plaintiff's at Enquete) Examin. in chief.

By Mr. Mann, K.C.:—

Q.—Now, were you at the time familiar with the premises, generally speaking, and the different apparatus that was on the premises? A.—Generally, yes.

10 Q.—You have plotted in St. Patrick Street, up here on the top? A.—Yes.

Q.—Atwater Avenue on the west? A.—Yes.

Q.—And I take it this would be D'Argenson Street on the east? A.—Yes.

Q.—Then, on the opposite side from the Atwater Street side were the large yard and other buildings of the Sherwin-Williams Company? A.—Yes.

Q.—And then, finally, below that was Atwater Avenue? A.—No.

20

Mr. Hackett:—Centre.

Witness: Centre.

By Mr. Mann, K.C.:—

Q.—There is an opening on what appears to be a central wall, an opening of about an inch long, not plotted in as a partition. What is that? A.—That is an 8-foot doorway. Here is the 8-foot shown on the plan.

30

Q.—Would you mark the 8-foot doorway and initial it? A.—Yes.

Q.—Going to the south now you see another similar doorway showing there? A.—That is another 8-foot doorway there.

Q.—Would you tell us the position of the fire escape on that plan, the fire escape to the ward? A.—The fire escape was on the southerly side, the south side.

Q.—On the southwest side? A.—Yes.

40

Q.—There is a diagonal, — there is an angular place there? A.—Yes.

Q.—Would you please mark "Fire Escape"? A.—Yes.

Q.—Don't pay any attention to what I wrote there. Would you mark "Fire Escape"? A.—That was an outside fire escape.

Q.—Would you make a sketch and show the fire escape? A.—Yes.

Q.—Now, was there a filter press in the premises anywhere? A.—Yes. I am a little hazy about that. I know there was a filter press in this building. I am very vague about it.

G. E. NEWILL (for Plaintiff's at Enquete) Cross-examination.

Q.—Nothing very much turns on it as to the position. Nothing turns on the position of the filter press, as far as I am concerned. You can't place it? A.—It is somewhere in this direction (Indicating on Sketch).

10 Q.—You indicate that it was somewhere in the middle of this room? A.—There was a bunch of filter presses near the southwest side.

Mr. Hackett:—I am willing for the manager of Plaintiff to say where it was.

The Court:—Very well.

20 (Mr. J. S. Moffat, manager, Sherwin-Williams, indicates positions of filter presses, etc., on sketch).

The Court:—Let the record show that the witness, with the permission of the Court and the consent of Counsel, has consulted the manager of the plaintiff company concerning the whereabouts of certain additional objects on the plan, and the location of these objects has been indicated on the plan.

By Mr. Mann, K.C.:—

30 Q.—Now, Mr. Newill, having located the filter presses, — I know they are not according to scale, — I would like to know, according to this plan, the distance from, let me say, the centre of the four filter presses to the fire escape? You don't seem to have that? Well, I can get those distances from another witness, and I won't bother you. That will be all on this point.

Cross-examined by Mr. John T. Hackett, K.C.:—

40 Q.—Mr. Newill, you have indicated two doorways in a wall? A.—Yes.

Q.—Will you say, first, what is the direction that that wall follows? Roughly north to south, isn't it? A.—I have given an indication of the north in the plan. Would that give you a sufficient answer?

Q.—Yes, — I think we can take it from what you now indicate that the wall runs roughly north and south? A.—Yes.

By Mr. Mann, K.C.:—

Q.—Is there a north magnetic arrow there? A.—It is just a rough thing.

G. E. NEWILL (for Plaintiff's at Enquete) Cross-examination.

Q.—But there is an indication, in any case? A.—Yes.

By Mr. Hackett, K.C.:—

10 Q.—Will you say how long that wall is? A.—Which one are you referring to?

Q.—I am referring to the wall in which you have indicated there are two doors eight feet high? A.—Well, the best thing for me to do is to scale it. You have got a number of dimensions.

Q.—I say this, Mr. Newill, if it isn't convenient for you to give that information or if you don't know, I am sure we can get it from the blueprints of the building? A.—I can say it is roughly 112 to 114 feet. That is what it scales. I have the individual measurements here and they may be added up.

20 Q.—112 to 114 feet? A.—Yes.

Q.—The two doors that you have put in on the sketch, — are they put in by measurement or by approximation as you remember the situation? A.—Well, all those dimensions were taken on the tape. I took a tape. I was alone at the time, working alone. They are approximately correct.

Q.—Then the doorways which appear on the plan, in the wall, — and I think Mr. Mann is going to put this plan in as P-7. . . .

30 Mr. Mann:—Yes, it should be P-7.

By Mr. Hackett, K.C.:—

Q.— . . . are shown on the plan at the places where they actually are? A.—Yes.

Q.—How far is the north door from the north wall?
A.—The beginning of it just shows at 19' 6" here.

40 Q.—Was the door itself 8 feet wide or 8 feet high? A.—
8 feet wide.

Q.—How high was it? A.—I can't tell you.

Q.—Then, the north wall, of course, is the wall that faces St. Patrick Street? A.—Yes.

Q.—How far was the south door in that (indicating central) wall from the southerly wall of the building? A.—22' 6" as shown by these dimensions.

Q.—22' 6", to the doorway, to the aperture? A.—Yes, from this dimension on here.

G. E. NEWILL (for Plaintiff's at Enquete) Cross-examination.

By Mr. Mann, K.C.:—

Q.—“This dimension on here”, — what is that? A.—It is already shown.

10 By The Court:—

Q.—“This dimension” as shown on the plan? A.—Yes.

By Mr. Hackett, K.C.:—

Q.—And that door was also 8 feet wide? A.—Yes.

Q.—And you don't know how high it was? A.—No.

Q.—And the intervening space between the two doors was what? A.—Well, I am going to scale this up again. It is probably right, — about 60 feet.

20 Q.—About 60 feet? A.—Somewhere around that.

Q.—Now, how far from the wall were these press filters? A.—You are talking about these ones in the other room, press filters?

Mr. Mann:—Or bleachers?

By Mr. Hackett, K.C.:—

30 Q.—I am talking about the filters which are in the room from which the fire escape led? A.—I can't tell you anything about those dimensions.

Q.—Then I understand that we can get that from somebody else? A.—Yes. (Indicating on Sketch): This part I know I measured. That part I didn't except the walls.

Q.—So, then, you would rather not speak as to the exact location of the filter presses? A.—No, I made no notes of this.

40 Q.—The information as to which was supplied by Mr. Moffat? A.—No; it was confined to the equipment here.

By The Court:—

Q.—At the right-hand side of the plan? A.—Yes.

By Mr. Mann, K.C.:—

Q.—At the east side of the plan? A.—Yes.

ADMISSION BY PLAINTIFF.

By Mr. Hackett, K.C.:—

Q.—Now, the bleacher tank with a cross in red lead pencil is the one in which the accident occurred? A.—Yes.

10 Q.—Will you tell me how far the rear of that tank was from the wall in which the doors were pierced? A.—There again I can only scale for you. I would say approximately 8 feet.

Q.—And what was the length of that tank?

Mr. Mann:—It is mentioned in the policy.

Witness:—I didn't measure the tank, and, as I say, I imagine this is pretty well close to scale, — I would say 12 feet, but I would say that should be checked.

20 By Mr. Hackett, K.C.:—

Q.—Was the tank drawn to scale or. . . . A.—It was roughly drawn to scale from notes. I put a tape on. It is scale actually, — 12 feet approximately.

Q.—Of course, you don't know which filter press was in operation at the time of the accident? A.—No, I can't tell you.

And further for the present deponent saith not.

30

H. Livingstone,
Official Court Stenographer.

ADMISSION BY PLAINTIFF .

40 Mr. Hackett:—There appears to be a little misunderstanding as to what Mr. Mann said this morning as to the agreement between the insurance companies and the Plaintiff, and probably Mr. Mann would not object to making the statement over again that we might have a record of it.

The Court:—Yes. The misunderstanding arose from the fact, I assume, that the clerk and the stenographer understood that Mr. Mann's proposition was tentative only and was to have been put in a more final form, but you accepted the tentative form, Mr. Hackett. If Mr. Mann could repeat his words, they may now be taken down as a formal admission.

ADMISSION BY PLAINTIFF.

Mr. Mann:—The admission of the plaintiff company is as follows:—The total loss, including loss by explosion, concussion or detonation and fire is alleged to be, and to have been adjusted at, insofar as the company's claim is concerned, the sum of \$159,724.62, of which the plaintiff company acknowledges to
10 have received from the fire insuring companies \$112,793.34, as being the alleged or claimed loss by fire only, leaving a balance of \$46,931.28 alleged to be a concussion, detonation or explosion loss exclusive of fire damages, and which is the amount claimed in the present action.

I think that is about as clearly as I can put it.

The Court:—You added, — did you not? — that the fire
20 companies had made some arrangement with the plaintiff company?

Mr. Mann:—Yes.

Mr. Hackett:—And, of course, I do not admit what Mr. Mann is saying as to that aspect of the case. The only part of the admission that I am interested in is the relationship between the Plaintiff and the insurance companies concerning the suspension of the Plaintiff's claim against the companies.

30 The Court:—What Mr. Mann has said may be used against his client, so to speak, but is not necessarily accepted in toto by you? That is clear.

Mr. Mann, will you just add the arrangement made with the fire companies insofar as the plaintiff company is concerned?

40 Mr. Mann:—Upon the payment by the fire insurance companies of a sum in the aggregate amounting to \$112,793.34, these companies entered into an agreement with the Plaintiff, whereby the companies waived the delay or the prescriptive period of one year under the fire statutory conditions and preserved unto Plaintiff the right, were it subsequently judicially or otherwise determined that the fire loss exceeded \$112,793.34, that they, subject to any other defences they might have, would not raise the question of prescription as provided in the fire statutory conditions.

Mr. Hackett:—I do not know that Mr. Mann said exactly what he intended to say when he said that, if it were later de-

J. S. MOFFAT (for Plaintiff's at Enquete) Examin. in chief.

terminated that the fire loss was greater than that paid, action might be brought for the balance. I merely draw this to his attention, because I have asked Mr. Mann to file the documents evidencing the understanding, and I believe that he will do that.

10 The Court:—I have understood Mr. Mann to say that he will file one of the many letters exchanged between the plaintiff company and the insurers and that he will give you the assurance, Mr. Hackett, that the terms of the other letters are the same.

Mr. Mann:—I am afraid I will have to qualify that a little. I will file a copy. You see, I have to go to the fire insurance companies and ask them for their original documents and I cannot guarantee they will give them to me. I think they will. I will at least file a copy, because I drafted the agreement myself. I have it somewhere, but this is a pretty voluminous record and since yesterday I haven't had time to get that out. Things get thrown around and it isn't always easy to lay hands on them.

Mr. Hackett:—If you really want it and ask Mr. Debbage to give it to us, I'm sure you will get it.

Mr. Mann:—I have asked Mr. Debbage and he is searching through a file three inches thick.

30 DEPOSITION OF J. S. MOFFAT

A witness on the part of Plaintiff.

On this 23rd day of October, in the year of Our Lord nineteen hundred and forty-five, personally came and appeared, John S. Moffat, aged 47, manager of linseed oil mills, residing at 2168 Sherbrooke Street West, in the City and District of Montreal, who having been duly sworn in this case doth depose and say as follows:

40 By Mr. Hackett, K.C.:—

Q.—You say you are manager of linseed oil mills. Is that a department of Plaintiff? A.—Yes. We have several departments.

Examined by Mr. J. A. Mann, K.C.:—

Q.—You have several linseed oil mills? A.—Well, two, one here and one in Winnipeg. I look after them all.

J. S. MOFFAT (for Plaintiff's at Enquete) Examin. in chief.

Q.—What was your position, Mr. Moffat, in relation to the Plaintiff company, the Sherwin-Williams Company of Canada Limited, on August 2nd, 1942? A.—That was my position: manager of linseed oil mills at that time.

10 Q.—And was there a linseed oil mill at the Sherwin-Williams plant, St. Patrick Street, Atwater Avenue, D'Argenson and Centre Streets? A.—There was.

Q.—And was there an accident in that linseed oil mill on the 2nd of August, 1942? A.—There was.

Q.—Now, your occupation included the management of that mill of which we are speaking as well as the other linseed oil mill belonging to the company in another city? A.—Yes.

Q.—Were you in the Montreal plant on the 2nd of August, 1942? A.—I was.

20 Q.—At the time when the accident happened? A.—No, sir.

Q.—You were not in the plant at the time the accident happened? A.—No.

Q.—So that, are you able to describe in any way the results of the accident, generally? A.—Well, just from observation after the accident, when I arrived.

Q.—I think we will leave that.

30 Have you prepared, or has any of your employees, — if so, you will tell me who, — prepared a plan of the machinery in place in the linseed oil mill? A.—Yes; Frazier has made a rough drawing.

Q.—You haven't got one? A.—No.

Q.—The accident took place on the top floor? A.—On the third floor, yes.

By The Court:—

40 Q.—Is that top floor what you call the linseed oil mill? A.—Yes. It is a three-storey plant, three stories and a basement.

Q.—Is all that building used for the linseed oil production? A.—Yes.

By Mr. Mann, K.C.:—

Q.—Mr. Newill has made a sketch of the top floor of that building, which is the linseed oil mill? A.—Yes.

Q.—There was a wall which he shows practically down the centre of that building? A.—Yes.

J. S. MOFFAT (for Plaintiff's at Enquete) Examin. in chief.

Q.—You are familiar with the premises, I take it? A.—Yes.

Q.—In the wall starting from the St. Patrick Street or north side of the building was a door of approximately eight feet? A.—Yes.

10 Q.—And there was another door towards the south side of the building? A.—Yes.

Q.—Also of approximately 8 feet? A.—Yes.

Q.—Do you remember how high these doors were? A.—I could not say offhand. I would say about 7 feet.

Q.—7 feet, approximately? A.—Yes, a regular standard fire door.

Q.—A regular standard fire door? A.—Yes.

Q.—And how did the closing mechanism operate? A.—They were sliding doors. One slid this way and one the other way.

20 Q.—As you indicate, the north door slid on pulleys to the north? A.—Yes.

Q.—To open? A.—Yes.

Q.—The south door slid to the south? A.—Yes.

Q.—It also slid to the north? A.—Yes.

Q.—To open? A.—Yes.

30 Q.—Now, you are familiar with the machinery that was in the building, — I ask you this until we get the rest from Frazier, because I think you said he had the rest of the details, — but are you familiar with the object, namely, a bleacher tank, in which the catastrophe appears to have originated? A.—Yes, I am.

Q.—There was in that mill the bleacher tank to which I have just referred? A.—Yes.

Q.—There was also another bleacher tank to the north of it? A.—That is right.

Q.—And there was an air-wash vacuum tank to the southwest of it? A.—Yes, that is right.

Q.—In the same department? A.—Yes.

Q.—And there was an air pump? A.—A vacuum pump.

40 Q.—An elevator? A.—Yes.

Q.—And a stairway? A.—That is right.

Q.—Now, in the other room, on the west side of the wall we have just discussed, there were what are known as filter presses? A.—Yes.

Q.—Can you give an approximation of the distance of those filter presses, first, from the northerly door, and, secondly, from the southerly door? A.—Mr. Frazier made that up.

Q.—I can get it from him? A.—Or I can read his memo.

J. S. MOFFAT (for Plaintiff's at Enquete) Examin. in chief.

Mr. Mann:—I don't know whether Mr. Hackett would object to that?

Mr. Hackett:—We had better take Mr. Frazier for that.

10 By Mr. Mann, K.C.:—

Q.—You just know from the memorandum he made? A.—Yes. I haven't measured it. Frazier has the measurements.

Q.—Frazier did that? A.—Yes, personally.

Q.—Now, Mr. Moffat, who did give the instructions for the use of this bleacher tank in the filtering or purifying of turpentine, which I understand was the process being carried out? Did you? A.—Yes.

20 Q.—You gave instructions to use what appears on the plan as No. 1 tank? A.—Yes.

By The Court:—

Q.—Is that the one in which the damage is supposed to have started? A.—Yes.

By Mr. Mann, K.C.:—

30 Q.—You gave the instructions? A.—Yes.

Q.—Now, what type of tank or container or vessel may that be described as? We know its size. Don't bother about the size. A.—Well, it is a jacketted steel tank for the purpose of heating and agitating the mixture, for the clarifying of oils or other materials that we may decide on.

Q.—I think I am not mistaken when I say it had been used for the purpose of clarifying linseed oil? A.—It had been.

Q.—But that day it was being used for the purpose of clarifying turpentine? A.—Yes.

40 Q.—Now, the turpentine would have to be drawn into it, would it not, in some manner or other? A.—Yes.

Q.—How would it be drawn in? A.—Under vacuum.

Q.—Under a vacuum? A.—Yes.

Q.—There would be a vacuum within the tank? A.—Yes.

Q.—I don't want to put the words in your mouth, — but a vacuum in this case would be pressure inwards? A.—A suction.

Mr. Hackett:—A sucking-in.

J. S. MOFFAT (for Plaintiff's at Enquete) Examin. in chief.

By Mr. Mann, K.C.:—

Q.—Doesn't the vacuum result from the absence of air inside and the weight of the atmosphere outside? Isn't that what makes the pressure? That is the scientific answer? A.—Well, 10 that is the function or the working of it.

Q.—So, in contradistinction to outward pressure, in this case the vacuum was an inward pressure? A.—That is really what it was.

Q.—Now, are you able to tell us just what was done in proceeding with the operation, or do you know? Perhaps you don't know? A.—Well, I know, but I think Mr. Frazier and the men operating would be the logical men to describe that part of it.

Q.—All you did was give the instructions? A.—I gave 20 the instructions and the formula on which they were to work.

Q.—You gave the instructions? A.—Yes.

Q.—What were the instructions you gave and what was the formula? A.—The formula? I haven't got it with me, but it was given to me by my chemist and in turn given to these workmen.

Q.—They can speak of that? A.—Yes; they would have the formula.

Q.—Frazier was what? What was his occupation? A.— 30 General superintendent of the oil mill.

Q.—And, Rymann? I think his name has been mentioned. A.—Rymann was the foreman in charge for that shift.

Q.—And they will be better able to speak of that operation than you? A.—Yes.

Q.—Now, are you able to tell us, regarding the No. 1 bleacher tank and No. 2 bleacher tank and the air-wash vacuum tank, the actual cost of these three pieces of machinery to the company? A.—The actual cost?

Q.—I will put it this way:—What was the cost of the No. 40 1 steam-jacketted bleacher tank, the No. 2 steam-jacketted bleacher and neutralizer tank, and the air-wash vacuum tank? A.—I have here a statement showing No. 1 and No. 2 to be of the same value, which includes the cost of the tank, the duties and freight and the installation.

No. 1 was \$1,821.86, and No. 2 was of the same value, for a total for the two of \$3,643.72.

By The Court:—

Q.—Installed, as they stood ready for operation? A.—Yes.

J. S. MOFFAT (for Plaintiff's at Enquete) Examin. in chief.

By Mr. Mann, K.C.:—

Q.—Now the air-wash vacuum tank? Is that what we call it? A.—The air-wash tank. It is a vacuum tank, yes. The installed value of that tank was \$652.28.

10 Q.—A total value for the three of . . . ? A.—No. 3 was the air-wash tank.

Q.—But, the total value was what? \$4,296 was the total value of the three? A.—Yes.

Q.—That is the total cash value on the day of the catastrophe? A.—Yes.

Q.—Or, incident? A.—Yes.

Mr. Hackett:—Well. . . .

20 The Court:—Just say “the total cost”. It might be relevant to know that.

Mr. Mann:—The total when they were purchased.

Mr. Hackett:—There would be depreciation, of course.

By Mr. Mann, K.C.:—

30 Q.—Well, we will deal with Mr. Hackett's suggestion as to depreciation. They were put in when? A.—They were installed in the spring of or early in the year 1938. They were purchased and brought in late in the fall of 1937, but actually went into operation in 1938.

Q.—And these figures you have given me are what they cost in 1938? A.—Yes.

40 Q.—Now, my friend, very properly, suggests, there would be some depreciation. I take it there was some depreciation? A.—Well, there would be a certain amount of depreciation, but, on the other hand, the costs of tanks in 1942 and the installation, I think, would be higher or sufficiently different to absorb any depreciation that may have been written off in the meantime. I do not think you would find a great deal of that, because they do not deteriorate at a quick rate.

Q.—I think that covers what Mr. Hackett had in mind. Now, the case being as you have stated, what would you say on the 2nd of August, 1942, was the actual cash value of those three tanks? You gave us a figure. A.—I doubt very much if there would be any difference from that figure I have already given.

J. S. MOFFAT (for Plaintiff's at Enquete) Examin. in chief.

Q.—\$4,296? A.—I would imagine that would be just about the right value.

Q.—Now, Mr. Moffat, there was, I understand, or I am informed, a meeting of a number of persons at the Sherwin-Williams plant on the 10th of August, 1942? Do you remember
10 that, — a meeting at which you were present? A.—Yes.

Q.—Do you remember who was there? A.—Well, I could not say offhand all that were there, but I know that Frazier and Rymann were there, and Mr. Fitzgerald.

Q.—Mr. Fitzgerald? A.—Yes.

Q.—The witness who was examined this morning? A.—Yes

Q.—And . . . ? A.—And I think Mr. McKeon, — is it? — and I think. . . .

Q.—Who is Mr. McKeon? A.—He is with the Boiler
20 Inspection Company.

Q.—And Mr. Fitzgerald of the Boiler Inspection & Insurance Company? A.—Yes.

Q.—Was there a Mr. Gregg? A.—I think Mr. Gregg was there, from Toronto.

Q.—Perhaps the Court and my friend will not object very strenuously if I suggest that Mr. Hollingsworth of your company was there. What was his position? A.—Mr. Hollingsworth is secretary-treasurer of the company.

Q.—Do you remember if he was at the meeting? A.—I
30 could not be sure of that.

Q.—You could not be sure of that? A.—No.

Q.—Were your architects there, Ross & Macdonald? Was there any representative of Ross & Macdonald? A.—On the 10th of August?

Q.—The first meeting of all parties? A.—Yes, I think Mr. Thompson was there that day.

Q.—Mr. Thompson is of the Foundation Company of Canada Limited? A.—Yes. And Mr. Ross, Senior, was there.

Q.—Senior or Junior? A.—I think both of them were
40 there, but I'm not sure whether Mr. Ross Jr. came into the picture or not.

Q.—At least one of them was there? A.—Yes.

Q.—And you say Mr. Allan Thompson of the Foundation Company was there? A.—Yes.

Q.—Do you remember if a Mr. Rutledge of the Foundation Company was there? A.—I couldn't be sure of that.

Q.—In any event, you are sure Mr. Thompson was there?
A.—Yes; Mr. Thompson was at all our meetings.

Q.—You couldn't be sure of that? A.—Not at the moment.

J. S. MOFFAT (for Plaintiff's at Enquete) Examin. in chief.

Q.—Do you remember anybody else that was there? A.—
I could not say offhand.

Q.—In any event, the farthest you can go is that Mr.
Hollingsworth and yourself of the Sherwin-Williams Company
were there? A.—Yes.

10 Q.—You think Mr. Frazier and Mr. Rymann were there?
A.—They came in after.

Q.—Sometime during the conference? A.—Yes

Q.—Mr. Allan R. Thompson of the Foundation Company of
Canada, you say, was there; and Mr. McKeon, Mr. Gregg and
Mr. Fitzgerald of the Boiler inspection & Insurance Company
were there? A.—That is right.

Q.—And one of the Rosses, father or son, of the firm of
Ross & Macdonald, the architects? A.—Yes.

20 Q.—I take it that you don't remember if the insurance
adjusters were there, or do you? Do you know Mr. Debbage?
A.—I have an idea he was there, but I wouldn't like to be sure
at the moment.

Q.—Well, he is quite a striking-looking fellow. Can't you
take a look in the courtroom and see? A.—He was there quite
frequently

Q.—He might have been there but you cannot say? A.—
He was there at practically all our meetings and discussions.

30 Q.—Are you able to discuss, other than you have so far
done, what other machinery was in place, ready to operate or
in operation, in that mill? I don't want you to place it; I just
want you to tell me. A.—Yes, there was quite a bit of machinery
operating that day. We have over in this section. . . .

Q.—That is, over in the southeast section? A.—Yes. . . .
a tank or a bin containing oil meal. Alongside that tank. . . .

Q.—Is that in operation by a piece of machinery? A.—
The conveyors go through it, loading and discharging.

40 Alongside that tank was a screen which screens the meal.
And on the east side of that top floor was a large motor and
grinder.

Q.—On the east side of the top floor? A.—Yes, — a large
motor and grinder which is grinding the cake going into that bin.

By Mr. Hackett, K.C.:—

Q.—That is the room on which the tank was? A.—Yes.

J. S. MOFFAT (for Plaintiff's at Enquete) Examin. in chief.

Mr. Mann:—The east side.

Witness:—Then, still on the east side, right near the grinder, was a seed-cleaning apparatus.

10 Q.—(By Mr. Mann, continuing): That was operated how?

A.—That is operated by motor.

Q.—Who operated that seed-cleaning apparatus? A.—
This fellow Marion.

Q.—Or, Mercier?

Mr. Gadbois:—Marier?

Witness:—Marier.

20 By Mr. Mann, K.C.:—

Q.—Was he one of the men that were killed? A.—Yes,
he was the man that was killed on the top floor.

Q.—Marier? A.—Yes.

By The Court:—

30 Q.—Was that apparatus operated by its own motor?
A.—Yes. It is an automatic seed-cleaning device for cleaning
the seed; and, of course, with the usual conveyors and elevators
operating the whole unit.

There was a long seed tank. . . .

By Mr. Mann, K.C.:—

40 Q.—Well, as to this machine Marier was operating, would
you say how far that would be from the No. 1 bleacher tank,
approximately? A.—That would be, I would say, 24 or 25 feet.

Q.—24 or 25 feet? A.—Roughly.

Q.—He was completely destroyed by the result of some-
thing? A.—Yes.

Q.—Were you there when they found him? A.—Yes.

Q.—In what position was he when he was found?

Mr. Hackett:—Do you mean to say that he was killed, or
completely destroyed? “Completely destroyed” is what you said,
Mr. Mann.

J. S. MOFFAT (for Plaintiff's at Enquete) Examin. in chief.

Mr. Mann: We will see. I perhaps might have to get a doctor to prove the destruction.

Q.—(By Mr. Mann, continuing): You were there when they found him? A.—Yes.

10 Q.—Was he dead? A.—Naturally.

Q.—Well, what position was he in? A.—I didn't see him up on the tank, but I saw him as soon as they brought him down to the ground floor.

Q.—You did not see him before they moved him from his place? A.—No.

Q.—Who did? Was it Frazier or Rymann? A.—No. We saw him after he was brought down. The firemen brought him down.

20 Q.—The firemen brought him down? A.—Yes, in a stretcher.

Mr. Hackett:—The only point in my observation was that the body was not destroyed by the fire.

Mr. Mann:—I don't know whether this witness is competent to say that or not.

30 Mr. Hackett:—But you made him say that. That is what I pointed out.

Mr. Mann:—I didn't make him say anything. At least, I hope I didn't.

The Court:—There has been no evidence to that effect, anyway. What the lawyer observes is not evidence.

40 Is there any witness, Mr. Mann, who will testify, who actually was present when the explosion or whatever it was took place?

Mr. Mann:—Yes, my lord.

By Mr. Mann, K.C.:—

Q.—Did I undrestand you to say, or am I mistaken, Mr. Moffat, that Mr. Frazier and/or Mr. Rymann would be able to say what content actually went into that vessel, or can you say? A.—Well, I would say that you should get that from Arnold.

J. S. MOFFAT (for Plaintiff's at Enquete) Examin. in chief.

Q.—Who is Arnold? A.—Arnold Rymann. He is the man that was loading and operating at the time. I know what their instructions were, but I wasn't there at the time. He was the foreman here.

10 Q.—So you don't know what actually went into the tank?
A.—No.

Q.—You know what their instructions were, but that's all? A.—That is right.

Q.—Now, how long after the operation of fire and explosion had been completed or been finished were you in this room when these bleacher tanks or vacuum-pressure vessels, or whatever you want to call them, were? How long was it afterwards? A.—The accident took place about 10 o'clock in the morning. I was up on that floor about three in the afternoon.

20 Q.—Now, apart from the machinery that you have described when you talked about these tanks, what was in that room? I am only talking about the room where these vacuum or pressure or bleacher tanks were. I don't care what you call them. A.—In addition to the machinery I have already mentioned, there were other tanks on the north side, in which we do other types of treating of oils; and all down the centre of this building were stacked empty containers.

Q.—The centre of that room? A.—Yes, right down here (on P-7).

30 Q.—You seem to describe them with your fingers as being a row of containers that would go down, would start north of the No. 2 bleacher tank and continue on down towards the south? A.—That is right.

Q.—In a pile? A.—Yes.

Q.—Containers? A.—Yes.

Q.—Oil containers? A.—Yes, — one-gallon cans, and quarts, and different things of that type, mostly gallons up on that floor, gallon-size containers.

40 Q.—Now, what was the condition of the premises? What was the condition of the containers and the other materials on the floor, in comparison to their condition prior to the accident? A.—Well, before the accident they were all new containers, had never been used and had been put into stock for emergency purposes and to keep our stockpile up. However, after the accident they were in pretty bad shape, I think something like forty-odd thousand of the gallon containers had to be sent to the dump, because they were unfit for use. Otherwise we put employees on and had them dried out and reconditioned, because they were very valuable, not as to the actual money value so much, but as

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to the scarcity of those things. So, we endeavored to save all we possibly could.

10 Q.—I am not so much directing my question as to what was the damage to the containers, — but after the accident what was the nature of the order in the room as compared to the order in that room before? A.—They were very neatly piled before the accident, — we have to have good housekeeping and naturally they were kept well, — but after the accident they were in pretty bad shape, as you will see from the photographs there. They were damaged, broken up.

Q.—Let us have something clearer than “pretty bad shape”. In what position were they?

By The Court:—

20 Q.—Were they still neatly piled? A.—No, they were blown all over and piled up just like a dump heap. That is the condition in which they were when we went in there.

By Mr. Mann, K.C.:—

Q.—I think that is quite a lurid description. The blown-all-over effect that you have described. . . .

30 Mr. Hackett:—I am going to ask Mr. Mann to let Mr. Moffat choose his own language. I know that the case is difficult. I know that he wants to get the facts before the Court as simply and as clearly as he can, but the “blown-all-over effect” is something we may hear a lot of afterwards.

The Court:—The witness did use the expression “they were blown all over”.

40 Mr. Mann:—That is the expression I thought I quoted in my last question.

Mr. Hackett:—I'm sorry. If the witness said that, then I retract what I said. I thought that that was from Mr. Mann's vocabulary and not from the witness.

The Court:—The witness did say “blown all over”.

Mr. Hackett:—Then I withdraw that.

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The Court:—The only addition made by Mr. Mann was “effect”.

Mr. Hackett:—I don't object to that. It was the “blown all over” which I thought was from Mr. Mann's vocabulary and
10 not from the witness. I'm sorry.

By Mr. Mann, K.C.:—

Q.—I will go on and repeat my question: — You referred to the piles of containers being blown all over? A.—Yes, I did.

Q.—Now, the blown-all-over condition, where did that manifest itself to the greatest extent? A.—Particularly in this section (in P-7), — we will say from west to east and from north-
west to southeast direction.

20 Q.—In relation to what? A.—In relation to the tank that had the accident in it.

Q.—That is the No. 1. . . . A.— bleaching tank.

Q.—That we have been discussing? A.—Yes.

You could see right down this centre section here towards this way (Indicating).

30 Q.—Let us get that into the deposition. You indicate towards the southeast? A.—Yes, — where they were all damaged and scattered in a really bad mess. Words cannot really describe the condition of them, — piled up and broken and everything else.

Q.—You looked at the No. 1 bleacher tank, I take it, when you were in that room, this tank you have already described to us? You looked at it? A.—Yes.

Q.—What was the condition of it? A.—The condition of this bleacher tank. . . .

40 Court:—No. 1.

A.—Yes. . . . was that after the accident this front door was completely gone.

By Mr. Mann, K.C.:—

Q.—How big was that door approximately? A.—It was a regular manhole. I haven't got the exact size. It is on the list there. I didn't measure it, but Mr. Frazier did, and his measurement of it is on the list there.

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Q.—It was completely gone? A.—Yes. right off the hinges; and the bolts holding it, both acting as a hinge and acting as a closing device, had both gone, — well, not both “gone”, but in one the hinge had gone, and the what-do-you-call-it had swung right over. I mean, the arm had swung over on this side.

10 Q.—You indicate to the south side? A.—Yes. The way I should describe it is this: — The hinge of the door and the hinge of the arm is on the north side of the tank. The closing connection with the tank is on the south side. The pin going through the lugs of the tank and the lugs of the door was gone. The arm had swung right around. The wheel that closes this arm was broken. And the door was gone too, — it had flown right off and up and hit a beam in the ceiling.

Q.—Was that door found afterwards? A.—Yes.

Q.—How far away? A.—I could not say.

20 Q.—Just approximately? A.—I would say at least, — well, I would take a guess about 20 feet away. It had gone up on an angle and then dropped. In addition to that, the glass on the back, which is treated as a peephole to watch the action. . . .

Q.—The Court doesn't know about that glass. There was a round glass in the back, about six inches in diameter, I understand? A.—Yes.

30 Q.—What happened to that? A.—I want to say this: — There was an opening in the front the same way, and we could look right through the tank. We keep a light on the other end and can look through. This is very thick glass, of about six inches in diameter, and it had blown outward. The glass was on the floor right close by.

By The Court:—

Q.—How thick was the glass? A.—Half-inch thick.

By Mr. Mann, K.C.:—

40 Q.—That glass was blown out at the back of the tank?
A.—Yes.

Q.—From what you have said, I take it you are fairly familiar with that tank. Prior to the accident was there a steam pressure gauge on that tank? A.—It is a steam-jacketted tank and there is a steam pressure gauge on the right-hand side of the tank.

Q.—Were there any other gauges on it, pressure gauges or vacuum gauges? A.—There was a vacuum gauge on it also at this point, — at the front of the tank.

Q.—At the front of the tank? A.—Yes.

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Q.—The purpose of the vacuum gauge is to do what?
A.—To control the vacuum.

There is a vacuum gauge on this air-wash tank as well. For ease in operating it is quite handy for the man to release
10 the vacuum when necessary or to watch his vacuum on that blank.

Q.—“Release the vacuum”, — the gauge would indicate, you say. We won't release any vacuum yet. We will leave the vacuum there for a minute.

The gauge was on the tank at the front, you say. It would indicate what in respect of the vacuum? A.—The cubic inches of vacuum in the tank.

20 Q.—The cubic inches of vacuum? A vacuum is absence of air? A.—Yes, it is.

Q.—It is pressure inwardly, or, from the outside? A.—Yes.

Q.—It would indicate that? A.—Yes.

Q.—That would be used, as you say, so that they could release that pressure by letting air in? A.—Yes.

30 Q.—I am trying not to be leading, but I am finding it very difficult in this technical examination. I hope Mr. Hackett doesn't object too much to it.

Now, the steam jacket you mention is in what position on the tank, for example? A.—It starts about. . . . Well, this tank is lying horizontally, and it would start one-third down the side of the tank and go around the bottom and up the other third on the other side of the tank.

Q.—That steam would come from where? A.—From our boiler room, through piping.

40 Q.—It would be forced up from the boiler room? A.—Yes; it is generated in the boiler room and comes up through piping.

By The Court:—

Q.—Is the tank cylindrical in shape? A.—Yes.

By Mr. Mann, K.C.:—

Q.—I suppose steam is bound to go under pressure? A.—Yes, steam would go under pressure, naturally.

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Q.—It would only go under pressure? A.—Yes.

Q.—But you cannot tell us what pressure of steam was there, — that would be for somebody else to say? A.—It would be for the operator. There was a gauge on there to tell him how much pressure.

10 Q.—Now tell us about this arm. I think you told us it was an iron arm or a steel arm? A.—Yes.

Q.—That was used to hold the door shut? A.—Yes.

Q.—You mentioned a wheel that was broken? A.—Yes.

Q.—What were the functions of that wheel and where was the wheel? A.—I think that Mr. Frazier would be the right one to answer that; he could answer that better than I could. Although I know, he has the details of that better than I have.

Q.—He has the details? A.—Yes.

Q.—You saw that arm swung back, didn't you? A.—Yes.

20 Q.—Was there anything vertical in the form of a pipe or a bar anywhere near that arm at the south side of the tank? A.—Well, there are the supply lines coming into the tank where the oils come in right at the side.

Q.—Right at the side? A.—Yes, at the south side.

Q.—What was the condition of that supply line? A.—I would leave that to Mr. Frazier.

Q.—You would prefer to leave it to Mr. Frazier? A.—Yes.

30 Q.—He can tell us that? A.—Yes. The valve on that was broken, I know. The pipes were broken. Down to exactly where, I'm not sure.

Q.—The supply line was broken, but you are not sure just where? A.—When this arm swung around it hit the pipe and broke the valve and the pipes. But Mr. Frazier has all those details.

Q.—Frazier has all those? A.—Yes.

40 Q.—Now, Mr. Moffat, when it came to a valuation of the loss insofar as stock is concerned, — I am not talking about the building now; I am just talking about the containers and linseed and that sort of thing, — with whom did you collaborate for the purpose of establishing that loss? A.—Mr. Debbage and Mr. Newill.

Q.—Mr. George E. Newill, who was here this morning? A.—Yes, and Mr. Debbage.

Q.—And what did you furnish to these gentlemen for the purpose of getting at a valuation? A.—We gave them, or showed them, our inventory sheets, with our costs and that on them, and that was the basis on which we arrived at our figures.

Q.—When you speak of Mr. Debbage, you mean Mr. Walter Debbage, the insurance adjuster? A.—Yes.

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Q.—With regard to Mr. Debbage, and with regard also to Mr. Newill, who was examined here this morning, may I put it this way: — Were they in collaboration with you during that process of arriving at the value of your loss? A.—Yes.

Q.—Arriving at the valuation? A.—Yes.

10 Q.—Remember, Mr. Moffat, I am not distinguishing what was the explosion and what was the fire, at the moment, at all? A.—We all sat down and discussed the whole thing and arrived at a proper basis of loss for the claim.

Q.—Now, you see, we have the position that there was a total loss of stock that was arrived at, which forms part of the compilation of the total loss, the stock being \$46,258.01. That had to be or was in fact divided as between the actual fire loss and actual. . . .

20 Mr. Hackett:—I hope you won't think me unduly disagreeable, Mr. Mann. . . .

Mr. Mann:—I never think you disagreeable.

Mr. Hackett:— . . . if I ask you, just before you finish your question, just to let the stenographer read it to you, and see if you can't do a little better. I would rather have Mr. Moffat tell us what his claim is.

30 Mr. Mann:— But I am having Mr. Moffat do that, and the figures are before the Court, these very figures that I have given. They are before the Court in the proofs of loss which were produced this morning.

The Court:— Why not meet the difficulty which bothers Mr. Hackett, — not unreasonably, I think, — by saying, “It appears from the proof of loss” that such and such is the case?

40 Mr. Mann:— I will do anything for him.

The Court:— The proof of loss, — which so far, of course is not proof before the Court. It is just a document.

Mr. Mann:—It was put in as a proof of loss.

The Court:—Yes, but you have still to prove the contents.

Mr. Mann:—In any event, my lord, I think I will withdraw

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that question, because I find Mr. Hackett is intensely accurate. That figure does not appear in the proof of loss. It appears from the proof of loss that the total amount of the loss was \$159,724.62.

Q.—That was for the total fire and explosion loss? A.—
Yes.

10 Q.—What proportion of that amount of \$159,724.62 applies to stock? A.—To stock?

Q.—Yes, what is the proportion that applies to stock, according to the details that made up, if any? A.—The amount that applied to merchandise or stock would come to \$46,250.01.

By The Court:—

Q.—Does that include the containers? A.—Yes.

20 Q.—You consider them as stock, I suppose? A.—Yes, they are stock.

By Mr. Mann, K.C.:—

Q.—Would you just tell us roughly what that stock was represented by? A.—That represents 4,199 bushels of flax seed; 76.8 tons of oil cake meal; 3,933 gallons of linseed oil; 1,700 gallons of turpentine; 41,900 bags, — empty bags; 38,600 pounds of bleaching clay; 219 empty returnable drums; 112,486 cans. . . .

30 By Mr. Hackett, K.C.:—

Q.—Are they quarts or gallons? A.—We had somewhere over half a million cans in the place at the time. They vary in size. we can give you that. . . . and 205 one-way drums. In addition to that, there was labor in salvaging, on the cans handled and covers, bags, etc.

By Mr. Mann, K.C.:—

40 Q.—That is generally what the stock-in-trade was, — or, in particular you have given us what the stock-in-trade was? A.—
Yes.

Q.—The value of that, as I understood you to say, was determined in collaboration with Mr. Walter Debbage and Mr. George Newill, the engineer? A.—Yes.

Q.—Now, did you collaborate and did you conclude as to what was concussive or explosive loss and what necessarily was actual burning, fire or burning loss, and with what result? A.—

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Yes, we did. We also have water damage in here. The total result on this was what we had through fire and water a loss of \$41,664.93.

Q.—That is for the fire? A.—Fire and water damage.

Q.—Did you apply any of the water loss to the explosion?
10 A.—No.

Q.—What was the amount of the explosion loss or concusive or shattering loss? A.—We figured that type of loss was \$4,593.08.

Q.—You said \$4,593.08? A.—Yes.

By The Court:—

Q.—That is, to make up the \$46,000—odd? A.—Yes.

20 By Mr. Mann, K.C.:—

Q.—\$46,258.01? A.—Yes.

Q.—Now, what method, — I appreciate the difficulty in making the distinction, — did you apply? Let me take the drums, for example. You said there was a number of drums destroyed. Where were they? A.—Some of the drums were up on the third floor; others were down in the yard; and took that item and we put 75 per cent to the explosion.

30 Q.—Some of them were down in the yard? A.—Yes, and the building falling on them destroyed them completely.

Q.—No fire at all? A.—No, fire did not damage them.

However, we took flax seed, for example, which was in the bin on the top storey, on the third floor, and it was totally destroyed by water and therefore it all went to fire and water damage.

Oil meal the same way.

40 Linseed oil the same way.

Proportions that we took to the explosive or accident damage, or whatever name you might call it, were half of the turpentine, because half of it was in the vessel in which the damage occurred and was lost and we took that as part of the vessel loss.

The Court:—If you use the word “fire” just for convenience, I will take it to include fire and water; and if you

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use the word "explosion" I will take it to mean explosion, concussion and shattering.

Mr. Mann:—That is what I will endeavor to use.

10 Witness:—On the turpentine we used 50-50; we applied 50-50 on the turpentine.

By Mr. Mann, K.C.:—

Q.—Half of it was in another tank? A.—Yes, and it was lost by burning and leaking out of the pipes.

Q.—With the fire? A.—Yes.

Q.—But you took what was in No. 1 tank as a total loss by explosion? A.—Yes, that portion.

20 Q.—You have given us those as examples. What else do you want to say? A.—The bleaching earth, we took it all as water damage. The Filtrol which was lost, — "Filtrol" is a trade name, — was bleaching earth.

By Mr. Hackett, K.C.:—

Q.—Is it Fuller's Earth? A.—No.

30 By Mr. Mann, K.C.:—

Q.—It is a type of silica? A.—Yes.

In the case of the cans destroyed, we only used ten per cent for explosion and ninety per cent for fire and water damage.

Q.—10 and 90? A.—Yes.

40 Q.—You considered that was a fair apportionment? A.—Well, we did, personally. Our own company thought that was a fair proportionate percentage.

Q.—Was there any basis on which you established the 10 per cent on one side and the 90 on the other? A.—We took those cans that were actually crushed and beyond use, and we took the others as going rusty on us before we had a chance to clean them or fix them, and, when they got burned, when there was actual fire, the tins had been burned off the cans, and we took that as a fire loss.

Q.—Would it be fair to say that if the tin appeared crushed without any indication of burning, you took it as part of the explosion loss? A.—Yes.

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The Court:—Mr. Mann, I am right, am I not, that the witness has not been asked about loss on the building? Are you concerned about the loss on the building?

By Mr. Mann:—Yes. That was an item that was not dealt
10 with.

Q.—With regard to the loss to the building, Mr. Moffat, did you have any collaboration with anybody relative to fixing that loss? A.—There was a statement made at an investigation on August 12th, 1942, at which the Foundation Company, Ross & Macdonald, the underwriters and the explosive insurance people were all present and made some tentative list.

Q.—You said August 12th. I think it was August 10th? A.—The report is dated August 12th.

20 Q.—The date doesn't matter, but the meeting was on the 10th? A.—It was decided at the meeting of August 10th they were to do that.

Q.—That the Foundation Company and Ross were to do that? A.—Well, they were all on that.

Q.—What I am asking you is, did you give any information to the Foundation Company and to the Ross & Macdonald Company or to any of the people who were engaged in appraising the loss on the building? Were you collaborating with them? A.—Yes, we worked very closely with them all.

30 Q.—To what extent? A.—Well, I don't get your question right.

Q.—To what extent did you collaborate? You have told us that really you and Mr. Debbage and Mr. Newill fixed the loss, the total loss, and then divided the loss as regards the stock-in-trade as you have said? A.—Yes.

40 Q.—How far did you see that same operation with regard to the building itself? A.—In the building itself we had in with us on that the Foundation Company, who originally constructed the building, and also Ross & Macdonald, who were the architects, the original architects, and they came in there with all the figures and the plans to rebuild it on the same basis.

Q.—And they did in fact rebuild it? A.—They put it back in condition as it was before the. . .

Q.—What I am asking you is this:—Did you deal with the Foundation Company or Ross & Macdonald or the Rosses, relative to the apportionment of fire and explosion in connection with the loss to the building, or did they do that themselves with the adjusters? A.—They did that themselves with the adjusters, more than we did.

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Q.—You could not speak specifically on that? A.—No; we were there and talked, but they actually took the action, the conclusion.

Q.—The conclusion that was arrived at was their conclusion? A.—Yes.

10 Q.—The Foundation Company and those that were engaged in that work? A.—Yes.

Q.—Now, how about the machinery? A.—We worked in conjunction with Mr. Newill, and replacement values and invoices were shown to him in respect of the cost of replacing the machinery.

By The Court:—

20 Q.—Mr. Newill, did you say? A.—Yes.

By Mr. Mann, K.C.:—

Q.—That is Mr. George E. Newill, who has been heard as a witness? A.—Yes.

Q.—Did you discuss with Mr. Newill or collaborate with him in respect of the distribution as between fire loss and concussive or explosive loss with regard to the machinery? A.—Yes.

30 Q.—And the results of your and Mr. Newill's conclusions were what figures? A.—I haven't got the figures. Mr. Newill has those figures himself.

Q.—The figures that Mr. Newill has are your figures as well as his own? A.—Yes, sir, they are.

Cross-examined by Mr. John T. Hackett, K.C.:—

Q.—Mr. Moffat, you have been in the service of the company plaintiff for how long? A.—Since December, 1912.

40 Q.—Are you an engineer? A.—Not a graduate engineer.

Q.—Have you spent your entire business life in the service of the Plaintiff? A.—I have, sir.

Q.—You went there as a boy? A.—Yes.

Q.—And “grew up” with the business? A.—Yes, I have grown up with it. In fact, I am vice-president and general manager of the Carter White Lead as well.

Q.—Which is a subsidiary? A.—Yes, of Sherwin-Williams.

Q.—When you say you are not a graduate engineer, that means, I suppose, you did not get a parchment from the university. — but has engineering work been your specialty all your life? A.—Well, I am considered a very good production man, and I designed the mill myself and planned it all, and I have

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worked closely with engineers all the time and therefore have quite a bit of knowledge of engineering.

Q.—You have a knowledge of production? A.—Yes.

Q.—And of the type of machinery which is best suited to economic production in a linseed oil mill? A.—Yes.

10 Q.—That has been your life's work? A.—Yes.

Q.—I want just to have a look at the plan P-7.

We talked this morning about this plan when Mr. Newill was in the witness box, and if I understand the plan it shows the entire third or top floor of what you call the new mill?
A.—Well, he shows the old and new mill.

Q.—Which part of the building is the old mill and which the new? A.—The old mill is the one on Atwater Avenue and
20 St. Patrick Street, this section here (on P-7).

Q.—So, when we look at P17, the westerly portion of the building is the old mill? A.—Right.

Q.—And the wall which was the easterly wall of the building in which the filter presses were located was at one time the outer wall of the old mill? A.—No, sir, — because the old mill did not go up that high. The old mill was a two-storey building and this was extended up. This is a continuation of the old wall brought up.

30 Q.—So, then, the third floor was entirely new? A.—It is an entirely new floor.

Q.—And the westerly portion of it covers the old building and the easterly portion was new from the basement up? A.—That is right.

Q.—And the room in which the filter presses were located was called what, — the filter room? A.—The filter press room.

Q.—They were situated in the filter press room? A.—Yes.

Q.—And the room in which the jacketed bleacher tank was situated was called what? A.—The refining department.

40 Q.—What was the floor area of the filter press room?
A.—I could not say that offhand. I would have to work it out, or possibly the Foundation Company would have that, or Ross, Macdonald.

Q.—Was it as large as the room in which the jacketed bleacher tank was situated? A.—I would say they were very close to the same area, not a great deal of difference.

Q.—And the fire escape went out of the filter press room? A.—That is right.

Q.—And the stairs went down through the refining room? A.—In the new building the stairs were, in the new section.

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Q.—In the new section? A.—That is right.

Q.—And the elevator was also in the new section? A.—
That is right.

Q.—So, the only way of getting from the filter press room
to the ground, unless one went down the fire escape, was through
10 the refining room? A.—That is right. There are only two exits.

The elevator and the staircase were in the new building
and the fire escape out of the old building.

Q.—How many filter presses were there in the filter press
room on the third floor? A.—There are four filter presses there.

Q.—What one was in use on the day of the accident? I
thought it was No. 6. Maybe I made a mistake. Could you tell
me that? A.—We have six in the building, but it does not mean
20 they run that way. No. 1 is on another floor, and Nos. 2, 3 and
4, — well, I'm not quite sure which one it is. I think that ques-
tion could be answered properly by either Frazier or Rymann.

Q.—I won't bother you any more about it, Mr. Moffat,
but I would point out to you that this morning, when Mr. Newill
was testifying, you pencilled in four filter presses in the filter
press room? A.—Yes.

Q.—You told us quite frankly that their location was not
drawn to scale? A.—That is right.

Q.—But you pencilled in four filter presses. Can you say
30 which one of these four was in use on the day of the accident?
A.—I could not say. It could be either one of these two (on P-7).

Q.—You indicate that it could be either one of the two that
are nearest to the wall? A.—Yes; it would be one or the other.
I imagine it was this one (Indicating) they were using. I will
say they could use either one.

By Mr. Mann, K.C.:—

Q.—Either one of the two closest to the interior wall?
40 A.—Yes.

By Mr. Hackett, K.C.:—

Q.—The wall where the fire doors were? A.—Yes. Fra-
zier or Rymann can tell you that exactly.

Q.—Would you rather that Frazier or Rymann speak to
the exact location of the machinery in the refining room? A.—I
would prefer Frazier to answer those questions. He took measure-
ments yesterday to make sure.

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Q.—You told Mr. Mann in chief that there was a steam gauge and that there was a vacuum gauge, did you not? A.—Yes, sir.

Q.—Now, the steam gauge was attached to the jacket, was it not? A.—That I would not like to be quite definite about.
10 Whether it came into the pipe coming in there or into the jacket I'm not sure at the moment.

Q.—The two tanks to which reference has been made, No. 1 and No. 2, you have said, were identical in construction? A.—That is right.

The Court:—Has anyone a picture or a sketch of an undamaged No. 1 tank?

20 Mr. Hackett:—I haven't.

Mr. Mann:—I haven't.

Witness:—Frazier has a sketch. Here is one.

Mr. Mann:—Here is another one. Hand it to the Court.

Witness:—Yes.

30 Q.—Who prepared that? A.—Frazier.

By Mr. Hackett, K.C.:—

Q.—No. 1 was called a jacketted bleacher tank? A.—Yes.

By Mr. Mann, K.C.:—

Q.—A steam-jacketted bleacher tank? A.—Yes, sir.

40 By Mr. Hackett, K.C.:—

Q.—And No. 2 was called a steam-jacketted neutralizer tank? A.—Yes.

Q.—Would you just in a word tell us what the distinction is between the bleacher and the neutralizer? A.—Both tanks are identical in construction. They can both be used for the same purposes, either for neutralizing or bleaching, but, in our continuous process of making the refined oils or varnish oils, it first goes through the neutralizer, and from that No. 2 tank, as

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you call it, — the neutralizer, — it drops through the floor and goes through a filter press there, which takes out the soap and fats, out of the oil, and then it comes up through the vacuum into your bleaching tank, where your bleaching earths are put in, and then to the filter press for the clarifying.

10 Q.—The bleaching press has to do with color? A.—Definitely, yes, to clear the color.

Q.—And the neutralizer has to do with the elimination of bodies. . . . A.—Foreign matter.

Q.—Now, each of these, the No. 1 and the No. 2, each of them is supported in cradles? A.—I will have to think that over, — yes, it is cradles that they are on, metal.

Q.—How are they attached, if at all, to the floor? A.—I prefer one of the boys to answer that; I'm not quite sure. I think they are bolted down, but I'm not quite sure.

• 20 Q.—I think it is angle irons that hold them in place? A.—Something like that.

By The Court:—

Q.—You mean, the cradle is bolted to the floor? A.—I imagine it is. I'm not quite sure.

By Mr. Hackett, K.C.:—

30 Q.—And the tank rests in the cradle? A.—Yes.

Q.—Now, these steam-jacketted tanks are tanks in which the temperature of the content is raised by the flow of steam through the jacket which lies under them? A.—Yes.

Q.—And the steam gauge indicates the pressure in the jacket and not in the container or vessel? A.—That is right, sir.

Q.—And the pressure gauge indicates the pressure in the vessel itself? A.—There is no pressure gauge on the vessel itself.

40 By The Court:—

Q.—There is a vacuum gauge? A.—Yes.

By Mr. Hackett, K.C.:—

Q.—I understood you to say that a vacuum was a pressure but one kind has a tendency to come out and the other to go in? A.—Yes.

J. S. MOFFATT (for Plaintiff's at Enquete) Cross-examin.

By The Court:—

Q.—Without going into the abstruse, scientific explanation, — there is a vacuum gauge, and that covers the cubic extent of the vacuum, if I may put it that way? A.—Yes, that is right,
10 — but we have some of the other men that can answer those questions.

By Mr. Hackett, K.C.:—

Q.—Very well, — but the point I want to make is that the steam gauge is attached to the jacket as distinct from the vessel, and the vacuum gauge is attached to the vessel as distinct from the jacket? A.—Yes, that would be approximately so.

Q.—Then you told us that the vessels were loaded by the
20 operation or the effect of the vacuum. The vacuum pump, I suppose, creates a complete void inside the vessel. . . . A.—Sucks in.

Q.—Sucks in the liquid that is to be treated in the vessel?
A.—Yes.

Q.—I think you have probably been a busy man at all times, Mr. Moffat, but particularly since the war. Did you have some war work? A.—In that department, indirectly, yes, not so much directly, but indirectly, yes.

Q.—I am going to ask my question very bluntly. I don't
30 know whether Mr. Mann will object to it or not. What I want to know is whether you had contracts which provided for the payment for your machinery and equipment out of the proceeds?

Mr. Mann:—I think that is entirely irrelevant, unless it is directed in some other form. A general question of that kind is irrelevant.

The Court:—I presume it is directed to the quantum of damages?

40 Mr. Hackett:—Yes.

Mr. Mann:—But, in that form?

The Court:—It may be relevant. There is no question of public policy, I think, involved at this stage of the proceedings. I will allow the question.

Mr. Mann:—Does the question mean paint or varnish or linseed oil, or what does it mean?

J. S. MOFFATT (for Plaintiff's at Enquete) Cross-examin.

Mr. Hackett:—There were many war contracts which were let on conditions which provided for the writing-off of the cost of the equipment within one, two or three years, and I was just asking Mr. Moffat if any of his equipment was in that category.

10

Mr. Mann:—You will have to answer that question, Mr. Moffat. There's no use looking at me; I can't answer.

Witness:—I will answer it this way: — There was no equipment in the oil mill that was under special depreciation either with the Government or otherwise, that the plant was built on our own and carried on on our own and no special depreciation has been applied to the plant at all.

20

By The Court:—

Q.—The Government made no arrangement with you in regard to writing-off? A.—No. It wasn't necessary in our line of business at that time.

By Mr. Hackett, K.C.:—

30

Q.—And you merely took your ordinary depreciation on the machinery? A.—Yes, just the natural depreciation which we would have taken in normal times.

Q.—Do you care to say what that depreciation is, if you know? A.—I'm not sure but I think under law we would be entitled to 20 per cent, working on a 24-hour day, but I don't think we have ever touched on that. We run on a natural of 10 per cent for machinery.

Q.—Per annum? A.—Yes.

By The Court:—

40

Q.—When you say "under law" you mean income tax? A.—Yes, income tax would permit us, on account of our 24-hour day, to take off 20 per cent.

Q.—You work on a 24-hour basis? A.—Yes.

By Mr. Hackett, K.C.:—

Q.—You still do? A.—Yes. That is the only way we can operate on a continuous process.

J. S. MOFFATT (for Plaintiff's at Enquete) Cross-examin.

By The Court:—

Q.—That is not a war measure? A.—No; our continuous process calls for that.

10 By Mr. Hackett, K.C.:—

Q.—You made some reference this morning to a formula, a formula which I think you said you had given to the superintendent for this particular operation? A.—A formula? Yes.

Q.—Do you have a formula for every operation? A.—Naturally. We have to.

Q.—This steam-jacketted bleacher tank is normally used as a vacuum container, is it not? It is filled by vacuum? A.—Yes, in the majority of cases it is. It could be filled otherwise, but it
20 has been used to fill by vacuum.

Q.—That was the ordinary way of filling it? A.—Yes.

Q.—It was the way that your equipment anticipated filling it and the way it was ordinarily filled, was it not? A.—We fill sometimes direct without that. We can. It is equipped for both ways.

Q.—You mean, then, that you have pumps. . . . A.—Not necessarily pumps.

Q.— . . . which enable you to pump the contents into the
30 tank? A.—Yes.

Q.—But the ordinary way of filling it is by use of the vacuum method? A.—We fill our neutralizer pretty nearly all the time by pump, and then we bring it from one tank to the other by vacuum, although we can fill both of them by pump.

Q.—And, in the normal use of this No. 1 tank, it was used to clarify linseed oil? A.—Yes, sir.

Q.—And to what temperature was that oil ordinarily heated for the purpose of clarifying it? A.—I would like to refer that question to the working people. I would say about 200,
40 as a rough guess.

Q.—I thought it was 165? A.—That was for the turpentine we went to 165, but for linseed oil we go to around 200.

By Mr. Mann, K.C.:—

Q.—Fahrenheit or Centigrade? A.—Fahrenheit.

By Mr. Hackett, K.C.:—

Q.—What is the boiling point of linseed oil? A.—I think I will leave that to the technical men to answer.

J. S. MOFFATT (for Plaintiff's at Enquete) Cross-examin.

Q.—If I were to volunteer information, you probably would think it was of doubtful value.

You went to the mill immediately you were informed that there was trouble there on the 2nd of August? A.—Yes,
10 sir, I did.

Q.—Your whole plant was busy, and the fact that this particular linseed oil mill had been put out of operation increased your burden, I suppose, and worries? A.—Naturally.

Q.—During the days which followed the accident, which was on the 2nd of August, 1942, did you keep a memorandum of your interviews and discussions with various people, the builders and the architects and the insurance representatives and the adjusters and so forth? A.—I personally did not keep any memo-
20 randa on that.

Q.—Did anybody else? A.—I received at different times copies of memoranda of different men, from different people, but I didn't keep any, myself.

Q.—Now, you told us a little while ago about a meeting on the 10th of August, 1942, at which there were present yourself and Mr. Hollingsworth representing your company, and there were also Mr. McKeon, Mr. Fitzgerald and Mr. Cregg representing the insurance company, and I think you said Mr. Debbage happened to be there too? A.—Yes.
30

Q.—And you also mentioned Mr. Ross, and you were not sure whether there were one or two Rosses there, and you also mentioned Mr. Rutledge of the Foundation Company? A.—Mr. Thompson.

Q.—How long did that meeting last? A.—Oh, I couldn't say now.

Q.—What time did it begin? A.—I could not tell you off-hand. I would have to look up the records on that.

Q.—Well, you can't look up, because you have got nothing to look to? A.—But I would have to look up some of the other
40 people's records to find that out.

Q.—Then I will have to take the other fellow and see how good his memory is.

How many meetings did you have that day? A.—To be frank, I was at one meeting after the other for about a week or so. There were so many, I could not segregate them very well.

Q.—Do you know whether you had one meeting or more on the 10th of August with any of the people you have referred

J. S. MOFFATT (for Plaintiff's at Enquete) Cross-examin.

to? A.—It would be only one meeting with that group at that time. Then I would have had another meeting afterwards.

Q.—Did you have any other meeting with these people whose names you have mentioned? A.—On that day? No, just the one meeting, I think.

10 Q.—I assume, — although you did not say so, — you arrived at the plant before the fire was extinguished? A.—Yes, I arrived very soon after the fire started.

Q.—And it was a big fire and there was a big attendance of firemen there? A.—There was.

Q.—A number of streams of water were playing on it? A.—Yes.

Q.—And I believe that the walls of this upper storey had fallen down? A.—Yes, sir.

20 Q.—And the water was playing directly into the third storey through the breaches in the wall? A.—That is right, sir.

Q.—You know something of water pressure. What pressure would you estimate was being applied to the water there? A.—The pressure?

Mr. Mann:—I should think that would be a question for the fire chief.

30 Mr. Hackett:—If you don't want me to ask Mr. Moffat I won't.

Mr. Mann:—I don't want it extended too long.

By Mr. Hackett:—I know it is getting a little bit troublesome. I will tell you what I am coming to:—

40 Q.—Some of those cans were pushed around quite a bit by the high pressure of that water, weren't they? A.—I doubt if the water pressure could hit the cans when the men were standing down on the coal pile and shooting the hose up in the air.

Q.—We will omit from consideration for the moment the cans that were on the ground or on the coal pile, — but I am asking you if tin cans stored on the third floors of the building when. . . . A.—That is what I mean.

Q.—. . . . the firemen were playing the water, would not be battered about by the water? A.—Taking the angle at which they were directing their hose, it is doubtful whether the water would catch the cans or not. I doubt if the pressure could hit them.

J. S. MOFFATT (for Plaintiff's at Enquete) Cross-examin.

Q.—What is the weight of a gallon can? A.—Oh, they are very light.

Q.—What is the weight, approximately? How many ounces would a gallon can weigh? A.—I wouldn't like to guess.

10 By The Court:—

Q.—Less than a pound of butter? A.—Oh, yes, it is less than that.

By Mr. Hackett, K.C.:—

Q.—I put it to you that a gallon can is something that, lying in a yard, would be buffeted about by a breeze? A.—I would say Yes to that.

20 Q.—And something that a garden hose would roll along at quite a merry speed, wouldn't it? A.—Yes.

Q.—Now, part of the wall or part of the walls did fall, and I may have misunderstood you, Mr. Moffat, but I understood you to intimate that some damage was done to containers or cans that were outside of the building. Did I misunderstand you? A.—Drums outside. It wasn't cans outside.

Q.—Drums outside? Were they damaged? A.—Yes, with the wall falling on them. With the walls falling down on top of them, the drums were all damaged.

30 Q.—So, the damage to the drums outside resulted from the falling of the walls? A.—Yes.

Q.—Or something of that kind? A.—Yes.

Q.—And the damage to the cans inside the building came from a number of sources, you have told us. I don't want to put anything into your mouth, but I understood you to say that you considered that part of the loss in respect of cans was a fire loss? A.—Yes.

40 Q.—And part was a loss attributable to another cause: that is correct, isn't it? A.—Yes, sir.

Q.—Now, you gave the proportion of the loss of the cans that was considered a fire loss? A.—Yes, we considered 90 per cent.

Q.—And only 10 per cent for something else? A.—For explosion or whatever you might call it.

Q.—Now, may I ask you how you arrived at the 90 per cent, why you made it 90 per cent instead of 80 or 85 per cent? I may be wrong, but I understood you to say you sat down with Mr. Debbage and Mr. Newill and came to the conclusion that 90 per cent was the proper figure to fix in that respect? A.—Yes.

J. S. MOFFATT (for Plaintiff's at Enquete) Cross-examin.

Q.—How did you do it? A.—We took the location of the cans. We took the number of cans. Some of those cans that were damaged by water and fire were not on the top floor, and that proportion that was so damaged on other floors was taken as fire and water damage. We eliminated the different sections of
10 the building. Any damage to cans that were around the west side of that central wall, where there was no explosive damage, we would call fire and water damage, and any on the floors beneath would be fire and water damage.

Mr. Mann:—I am wondering, if we are going on with this garden hose and garden can theory, if it would not be fair to put the document P-6-d into the hands of the witness?

Mr. Hackett:—Inasmuch as you did not put it to him in
20 chief, I thought in cross-examination we would get on without it.

Mr. Mann:—I think it would be quite fair if he had it in his hands. We may as well look at them if we are talking about cans that were spun around by the breezes.

Q.—(Continuing): Now, Mr. Moffat, I want you to look at the photograph which Mr. Mann has referred to, — it is called P-6-d, — and I would ask you to say if the end of what appears to be a bleacher tank that is in the right-hand lower corner of
30 the picture is bleacher tank No. 1? A.—I would say that that is that bleacher tank No. 1 in relation to the rest of the picture of the building.

Q.—And that is the tank the front of which appears in P16-c which I now show you? A.—Yes, I would say that they were both the same.

Q.—And that the front of the tank with the bar across the manhole faces east? A.—Yes, that faces east.

Q.—Now, then the bulk of the picture P-6-d is to the east
40 of the front of the bleacher tank No. 1? A.—Right you are.

Q.—Can you say what proportion of the cans on the third floor, in the refining room, were considered a fire loss? A.—There were counts made of all the cans on that floor and they were segregated as to what we considered fire damage and water damage as compared to those that were crushed or damaged otherwise.

Q.—What was the total number of cans lost? A.—The total, according to the claim, was something like 112,000, but those were not all for that floor.

J. S. MOFFAT (for Plaintiff's at Enquete) Re-examination.

Q.—That is what I am coming to. Of the 112,000 you say were lost how many were on the third floor? A.—I would have to look at my records for that. I don't recall. I would have to get the inventory sheets and check on that.

10 Q.—Can you say if any of the cans on the third floor were considered a fire loss? A.—Yes, there would be some, because they would be water-damaged and they would have to be dried out. There would be some there too, yes.

Re-examined by Mr. J. A. Mann; K.C. :—

Q.—I would like you to look at Exhibit P-6-d, Mr. Moffat, which Mr. Hackett showed you. It is manifest on the left side of the picture the cans are in their final state? A.—Yes.

20 Q.—Will you look at that picture carefully, having in your mind the relationship of the outside of the building to the place where you see this melange of cans, and say if you have any observation to make as to the water from the fire hoses, no matter under what pressure, having any effect on them? A.—I would say that the fire hoses as applied to that building did not reach these cans direct from the ground. The reason for that would be that between the cans and the east wall, along the east wall side, we have a very long tank, which contained the flax seed. Along the south wall we had the tanks or bins containing the oil cake meal. We only had a small opening between the end
30 of the seed tank and the side of this meal bin. Along the east wall there was a seed cleaner, and the motor and the grinder were in that section. Therefore, the hose played from the ground up there would not reach or play against the cans that are situated down the centre of this building.

Q.—I show you a sketch, which I think you said was made by Mr. Frazier and which I will put in by Mr. Frazier later as Exhibit P-8, the sketch at which the Court for the purpose of information was looking some few minutes ago, and I draw
40 your attention, Mr. Moffat, to a question that was asked by Mr. Hackett in cross-examination when he questioned you with regard to the steam-containing section of the tank or vessel being distinct from the vessel itself. Is there anything in that sketch showing any distinction between the steam section of the vessel and the other section of it, when you look at it? A.—This does not show the steam jacket.

Q.—But what is it covered with? A.—It is covered with asbestos covering, all over.

Q.—All over? A.—Yes.

J. S. MOFFATT (for Plaintiff's at Enquete) Re-cross-examin.

Q.—And the steam section. . . . A.—. . . is included.

Q.—The steam section of the boiler or vessel is covered with asbestos as well as the rest of it? A.—Yes; it is all covered to retain the heat.

Q.—It is all one vessel?

10

Mr. Hackett:—Objected to.

By Mr. Mann:—

Q.—Is it or is it not all one vessel?

20

The Court:—I may not know much in the way of mechanics, but surely the proof indicates that there are various parts to this tank; but I understand from the last answer of the witness that all the parts are encased in asbestos for the purpose of retaining the heat.

Witness:—Yes, definitely.

Q.—(By the Court): — Is that sketch made without the asbestos?

30

Mr. Mann:—No, it is made with the asbestos, and it shows all one thing. Mr. Hackett's question made it appear the steam section was separate from the vessel.

The Court:—I certainly got the impression the steam jacket was distinct from the tank as such. Was that an erroneous impression?

Mr. Mann:—The impression your lordship got was exactly the impression I got, from the question that was asked by Mr. Hackett.

40

Q.—(By Mr. Mann):—Is the steam jacket part of that vessel? A.—Definitely it is part of the vessel. The vessel would be of no use without the steam jacket.

Q.—But it is a part of the vessel? A.—Yes.

Re-Cross-examined by Mr. John T. Hackett, K.C.:—

Q.—Mr. Moffat, the vessel into which the turpentine was put on the morning of the accident was a vessel separate from

J. S. MOFFATT (for Plaintiff's at Enquete) Re-cross-examin.

the area through which the steam circulated for the purpose of raising the temperature of the contents of the vessel? A.—No, it could not be. It has to form part. It has one wall which forms part of two walls. Does that answer clear it?

10 Q.—Let me see if we can get this clear:—At no time does the steam come into direct contact with the turpentine? A.—That is right.

Q.—The vessel which contains the turpentine is heated by the steam which circulates through the steam jacket that is beneath the vessel? A.—The steam vessel and the other tank are together. You cannot separate them. You could not take the steam jacket off and have a tank. They are both together; there is only one wall.

20 Q.—I understand that, — but the steam jacket is completely walled off from, although fastened to, the vessel? A.—Well. . . .

By The Court:—

Q.—It is a different compartment? A.—Yes, it is a different compartment, but the outer shell of the vessel is the inner shell of your steam jacket; so they are both the same thing. You could not separate them.

30 Q.—But the steam does not get into the compartment into which the liquid goes? A.—No.

And further for the present deponent saith not.

(It now being 4.30 p.m., October 23rd, 1945, the case is adjourned until 10.15 a.m., October 24th, 1945).

H. Livingstone,
Official Court Stenographer.

J. S. MOFFAT (for Plaintiff's at Enquete) Re-examination.

OCTOBER 24th, 1945, 10.15 A.M.

At 10.15 a.m. on the 24th of October, A.D. 1945, Court re-assembles, and the examination of the witness above-named is continued under the same oath as follows:

10

Mr. Hackett:—I was going to ask your lordship if I could put two questions to Mr. Moffat that I forgot yesterday?

The Court:—Yes.

Cross-examination continued by Mr. John T. Hackett, K.C.:

20

Q.—Mr. Moffat, you told the Court, in speaking of the turpentine, if I understood you correctly, that you were claiming from Defendant in respect of loss of turpentine in jacketted bleacher tank No. 1 and turpentine stored in neutralizer tank No. 2? A.—We split that, sir. We went 50-50 on that. In other words, we just took the amount that was in that No. 1 bleacher tank as the proportion for the explosion loss or accident loss or whatever it is called.

Q.—Then your claim as regards turpentine is restricted to the content of No. 1 tank? A.—No. 1 bleacher tank, yes.

30

Q.—The one concerning which there is controversy? A.—Yes, that is right.

Q.—Now, the next question I want to ask you is this:—I understood you to say that the manhole or door of No. 1 bleacher tank had, I think you said, blown off? A.—Yes, it blew off or flew off and hit a crossbar or a steel girder in the roof of the building.

Q.—About 20 feet distant, you said? A.—I would say approximately that.

40

Q.—May I ask you how you know that? I recall you said you were not present. A.—I think that will come out in the investigation by Mr. Hazen.

Q.—As far as you are concerned, personally, you don't know? A.—No. I saw what happened, — I mean, we surmised what had happened, — but he has the details of that.

Q.—And, as far as that matter goes, you will leave it to Mr. Hazen? A.—Yes, I would rather leave it to him.

Re-examined by Mr. J. A. Mann, K.C.:—

Q.—I would just like to clear one question, Mr. Moffat:—This manhole cover or door, was it seen by you at a distance on the ground or on the floor or among the piles? A.—Yes.

HALSEY FRAZIER (for Plaintiff's at Enq.) Exam. in chief.

Q.—You saw it there? A.—Yes.

Q.—Below this beam and about 20 feet away from this vessel? A.—Yes.

And further for the present deponent saith not.

10

H. Livingstone,
Official Court Stenographer.

DEPOSITION OF HALSEY FRAZIER

A witness on the part of Plaintiff.

20 On this 24th day of October, in the year of Our Lord nineteen hundred and forty-five, personally came and appeared, Halsey Frazier, aged 51, superintendent, residing at 2568 Centre Street, in the City and District of Montreal, who having been duly sworn in this case doth depose and say as follows:—

Examined by Mr. J. A. Mann, K.C.:—

30 Q.—Mr. Frazier, you are employed presently with the Sherwin-Williams Company of Canada? A.—Yes.

Q.—And you were so employed on the 2nd of August, 1942? A.—Yes.

Q.—What was the position you occupied with the company on the 2nd of August, 1942? A.—The 2nd of August, 1942, I was foreman.

Q.—Would you mind talking a little louder and talk so the Court can hear you? A.—I was head foreman in 1942.

Q.—You were foreman of what? A.—The linseed oil department.

40 Q.—I am informed that you were present in the linseed oil mill at the time the accident happened to container or tank No. 2? A.—Yes.

Mr. Hackett:—No. 1.

By Mr. Mann, K.C.:—

Q.—I beg your pardon, — No. 1? A.—Yes.

Q.—Now, did you make a sketch for me? A.—Yes.

HALSEY FRAZIER (for Plaintiff's at Enq.) Exam. in chief.

Q.—You made a pencil sketch for me of the nature of that container, showing the different connections and its general position on the floor? A.—Yes.

Q.—I show you the paper and ask you if this is the sketch, — which I have already undertaken to produce as Exhibit P-8, 10 — and which I will now produce as Exhibit P-8? A.—Yes.

Mr. Hackett:—That is the one you showed yesterday to Mr. Moffat?

By Mr. Mann:—Yes, and which I undertook to produce.

Q.—I would like, Mr. Frazier, before going into the evidence of the facts, if you would describe to the Court, as succinctly and as closely as you can, just what is the meaning of 20 this drawing you have made? What does it represent? A.—That is the layout of the piping and connections to that tank.

Q.—Now you will notice that surrounding that tank is a sort of dark place. You darkened the surroundings? A.—Yes.

Q.—What is that? A.—That is the asbestos covering.

Q.—How is that fastened? A.—There are strips of asbestos and there is a wire holding them and there is a canvas over the top of all that.

Q.—Now, to the left is what we may call the front of the tank, where the door is? A.—Yes, that is the front you are 30 looking at.

Q.—And to the right is the rear of the tank? A.—Yes.

Q.—There was a door, was there, on the front of the tank, with a wheel for the purpose of closing it, and an arm? A.—Right.

Q.—That is shown right on the front of the tank, up here where I am pointing? A.—Yes.

Q.—That door closed on a hinge? A.—Yes.

Q.—And then, — I think my friend does not mind my leading to this extent, — and then there was an arm that came across?

A.—Yes, an arched arm came across. 40

Q.—And that was held tight against the door by a screw wheel? A.—Yes.

Q.—The end of the arm being held by a lug and a bolt? A.—Yes, a steel pin.

Q.—What was the size of that door? A.—Approximately 20 inches.

By The Court:—

Q.—In diameter? A.—Yes.

HALSEY FRAZIER (for Plaintiff's at Enq.) Exam. in chief.

By Mr. Mann, K.C.:—

Q.—It was round? A.—Yes.

Q.—Approximately what was its weight? A.—I don't know exactly.

10 Q.—A guess will do. What is the nearest you can give us about the weight? A.—I would say that it must have weighed close to fifty pounds.

Q.—After the series of incidents was over did you see that container? A.—Not until the next day.

Q.—That was after the accident? A.—Yes.

Q.—What did you see? Where was the door when you saw it and what was the position of the arm? A.—Well, the position of the arm was that it was blown over to the other side, but I didn't see where the door was.

20 Q.—You did not see where the door was? A.—No.

Q.—It wasn't there? A.—The door was gone.

Q.—But the arm was wheeled over to the left, as you have said? A.—Yes.

Q.—To the left as you look at the boiler, the vessel? A.—Yes.

Q.—Now, on this sketch P-8 there appears to be a stand-pipe? A.—Yes.

Q.—Right to the left side? A.—Yes.

30 Q.—That is, when you face the boiler, or face the front of the container? A.—Yes.

Q.—What was the condition of that pipe? A.—What do you mean?

Q.—Was that pipe broken or was it intact? A.—It disappeared from there. We could see some things of it hanging there; that's all.

Q.—This pipe, which I had better mark as "A". . . .

40 Mr. Hackett:—Would you mind further identifying it as to its function?

By Mr. Mann:—I will do that in a minute.

Q.—This pipe which I have marked with the letter "A" was blown away, I think you said, or was away, in any event? A.—Yes.

Q.—And there were some pieces of it hanging around? A.—Yes.

Q.—Now I will help my friend Mr. Hackett. What was the pipe "A"? What was its function? A.—(The Witness Indic-

HALSEY FRAZIER (for Plaintiff's at Enq.) Exam. in chief.

ates on P-8): This pipe, as you notice, goes right through. It is stopped with a valve here.

Q.—With a valve? A.—Yes. This pipe is the oil intake. It comes down in here through here.

Q.—It comes down to the crosspipe? A.—Yes, to the con-
10 tainer, which goes into the container.

Q.—And to the small little pipe below the crosspipe?
A.—Yes.

Q.—To go into the tank, into the container? A.—Yes.

The Court:—If you mean the tank, will you please use the word “tank”. You have sometimes said “container”. If we are agreed that the apparatus complete is called No. 1 tank, may we not refer to it consistently as that?

20 Mr. Mann:—I have no objection.

Mr. Hackett:—I have no objection; and I am merely making this observation because I think it is useful: — Mr. Mann, looking at the drawing with the witness, is talking in terms that are rather blind to me and I fear to the Court, and that is why I asked him if he would say what the function of “A” is, so we will know exactly what we are dealing with. I think it would be helpful.

30 Mr. Mann:—I think if my friend would remember my question he would know I said, “What was the function of the pipe?” I think that is the question my friend asked me to ask and I think that is what the witness is proceeding to tell us.

Q.—(By Mr. Mann, continuing): You have got the pipe “A” past the crosspipe there, the one further up, to a small pipe which goes into the front of the tank? A.—Yes.

Q.—Now, that little pipe that goes into the front of the
40 tank from the pipe “A” was for what purpose? A.—That was for either bringing in the oil, bringing in the bleaching earth, — I am referring to the small pipe, — or. . . .

Mr. Hackett:—Is that the pipe “A”?

Mr. Mann:—It is the little pipe leading from pipe “A” into the tank.

Witness:— or it is used for siphoning liquids from drums.

HALSEY FRAZIER (for Plaintiff's at Eng.) Exam. in chief.

By Mr. Mann:—

Q.—Whether it is for putting material into the tank or taking it out, the little pipe to which you refer, which leads into the face of the tank, comes from the pipe marked “A”? A.—
10 Yes.

Q.—Now let us continue the pipe “A” down. You have a valve immediately below the little crosspipe into the tank?

A.—Yes.

Q.—And you have marked it “Liquid Intake Valve”?

A.—Yes.

Q.—What is the function of that? A.—For the simple reason, when we siphon from the end of the pipe “A”, at which there is a funnel marked “Funnel”, we have to open that valve to let the liquid into the tank.

20 Q.—So that you siphon from the funnel? A.—Yes.

Q.—You get air by opening this valve marked “Liquid Intake Valve”, and then the operation of putting in the oil or turpentine, or whatever it is you want to put into the tank, goes on through the little crosspipe into the tank: is that it? A.—Yes; but at the same time we have to have this valve on pipe “A” and this crosspipe closed.

Q.—At the same time you have to have the upper valve on pipe “A” and the intake valve for bleaching earth on the large crosspipe on the top of the tank, closed? A.—Yes.

30 Q.—Now, I notice a pipe which I am going to mark “B”? A.—Yes.

Q.—This pipe “B”, — I have marked it “B” in two places, — you have called it “Air Release Line”? A.—Yes.

Q.—That pipe “B” seems to come from where? A.—Over the pipe, over the dome.

Q.—Over the dome of the tank? A.—Yes.

Q.—Immediately above it is a valve which is called “Vacuum Control Valve”? A.—Yes.

40 Q.—That pipe appears to be open in the dome, is it? A.—It isn't in the dome; it is in the pipe above the dome.

Q.—But is it open in the pipe above the dome? A.—Yes.

Q.—That pipe comes down and turns at a right angle and appears to go along again towards the front of the tank? A.—Yes.

Q.—And there is another valve immediately at the corner of the tank? A.—Yes.

Q.—What is that pipe? You have called it “Air Release”.

A.—That is to open that valve to release the air, the vacuum, in your tank.

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Q.—Could you go a little further and explain that to the Court? A.—Well, after you have your bleaching earth in, you don't need your vacuum; so you close your vacuum off. You have got to release the air out of that.

Q.—I see. You have taken air out of the tank? A.—Yes.

10 Q.—To create the vacuum? A.—No.

Q.—Well, you have got to take air out to make a vacuum, haven't you? A.—No. If I open this valve and fill this with vacuum to draw in the bleaching earth, once I am finished I have to close this valve and let that out. Outside of that my liquid will not run.

Q.—Now, that pipe "B" of which we have been speaking, — where does it end? Into the open air? A.—Yes, right out into space.

Q.—Right out into space? A.—Yes.

20 Q.—Now I am going on to pipe "C" and pipe "D". You will notice pipe "C" and pipe "D"? A.—Yes.

Q.—Both apparently connecting with a pipe which I have marked "E". You have marked on that pipe "E", to which pipes "C" and "D" connect, what? A.—"Dead Line".

Q.—"Dead Line"? A.—Yes.

Q.—That dead line seems to connect, by a line of arrows, with a valve? A.—Yes.

30 Q.—What is that valve? A.—That is only there in case of emergency. There is a plug in there, and that is what is called a dead line it isn't used.

Q.—Immediately above it is another valve? A.—Yes.

Q.—Now, this pipe "E" appears to go in through the floor? A.—Yes.

Q.—Pipe "C", leading to pipe "E", seems to come out of the tank? A.—Yes.

Q.—And pipe "D" seems to come out of the pipe "E" and to go through the floor? A.—Yes.

40 Q.—And it has a valve on it, and it is marked "No. 5 Filter Press"? A.—Yes. No. 5 filter press is on the second floor. When we have to use the press we open the valve on the pipe "D".

Mr. Hackett:—What is the name of the pipe that connects with No. 5 filter press?

By Mr. Mann:—"D".

Q.—Now, there is a valve on pipe "E" again, near the entrance of pipe "D" to pipe "E", marked "Transfer Line"? A.—Yes.

HALSEY FRAZIER (for Plaintiff's at Eng.) Exam. in chief.

Q.—What does that mean? A.—That means when we want to transfer liquid from one tank to the other we use that.

Q.—That would be from this tank that you are looking at the other tank nearby? A.—Yes.

10 By The Court:—

Q.—Called No. 2? A.—No. 2, yes.

By Mr. Mann, K.C.:—

Q.—Now, do any of these pipes “C”, “D” or “E” in any way connect with the open air? A.—No.

Q.—Now, then, I find below the tank another pipe, which I am going to mark “F”. You have marked that “Return Steam
20 Valve”? A.—Yes.

Q.—What does that mean? A.—The returned steam comes through here and that is the valve.

Q.—It goes through the pipe “F”? A.—Yes.

Q.—Where is the intake steam valve? Is it the next pipe?
A.—Right here.

Q.—This one I show you? A.—Yes.

Q.—I will mark it “G”, being the intake steam valve, pipe
“G”? A.—Yes.

30 By The Court:—

Q.—The intake steam pipe? A.—Yes.

By Mr. Mann, K.C.:—

Q.—And on that, just above the letter “G”, is a valve?
A.—Yes.

Q.—That valve is for what purpose? A.—For shutting
40 and opening the steam.

Q.—Just above that and around the angle is another valve which you have called “Reduction Valve”? A.—Yes.

Q.—What is that for? A.—That valve is set to 40.

Q.—Set to 40 what? A.—40 on the gauge, 40 pounds.

Q.—I haven't come to that. It is set to a given pressure?
A.—Yes.

Q.—So that you cannot raise the steam in the tank beyond that pressure? A.—Well, no, I don't know about raising the steam in the tank, but it won't register on the guage over 40.

HALSEY FRAZIER (for Plaintiff's at Enq.) Exam. in chief.

Q.—Follow me along past that reduction valve to the rear of the tank and you have what you call a steam gauge?

A.—Yes.

Q.—Just what is that steam gauge? A.—That is to see the pressure you have on the steam going in.

10 Q.—Going in where? A.—Into the tank.

Q.—Now, as a matter of fact, can steam operate in any way except it is under pressure? A.—Can it operate?

Q.—Yes? It must be under pressure, — steam? A.—It must be under pressure to get into a tank.

Q.—I must be under pressure to get into a tank? A.—Yes.

Q.—And what do you say this gauge registers? A.—40. It can't go over 40, but we never registered at 40.

20 Q.—What did you register at, let us say, at the day of the accident? A.—Possibly 20 or 25. I could not say the day of the accident; I wasn't there; I didn't notice the steam intake.

Q.—But, whatever it registered, it registered the same pressure that was entering the tank? A.—Yes.

By The Court:—

Q.—And it was necessarily something under 40? A.—I beg your pardon?

Q.—And it was necessarily something under 40? A.—Yes.

30 By Mr. Mann, K.C.:—

Q.—It could not be above 40? A.—No, it must be either 40 or something less.

Q.—40 pounds to the square inch? A.—I don't know whether it is 40 to the square inch or not.

Q.—Well, 40 pounds pressure? A.—Yes.

40 Q.—Now, I asked you if you would prepare, for the use of the Court and of Counsel, a rough model of the general shape of that tank. Have you prepared such a model? A.—Yes.

Mr. Mann:—If Mr. Hackett has no objection, I will produce it as Exhibit P-9.

Mr. Hackett:—I have no objection.

Mr. Mann:—All right. Of course, I must say, in fairness to everybody, it is not a scale model.

HALSEY FRAZIER (for Plaintiff's at Enq.) Exam. in chief.

The Court:—We will identify it as “Rough Model of No. 1 Tank”. Before you question the witness on it, just let me look at it in a general way.

By Mr. Mann:—Yes:

10

Q.—Now, looking at the rough model, P-9, which you have produced, Mr. Frazier, I notice a cylinder which you have built the model onto, in the form of some tomato can or something of that kind? A.—Yes.

Q.—That is the centre part of the tank? A.—Yes.

Q.—With a wall all around, naturally? A.—Yes.

Q.—Now, I notice that about half of the tank, or approximately half . . . Is it half the tank? A.—Yes.

Q.— . . . is surrounded by another chamber? A.—Yes.

20

Q.—What is that chamber? A.—That is the steam jacket.

Q.—Now, what do you mean by the “steam jacket”? A.—Well, it is an outer. . . .

Q.—This is where the steam comes in? A.—Yes.

Q.—Through the pipe “G” to which you have referred? A.—Yes.

Q.—That jacket or outer surface or outer chamber occupies about half of the entire cylinder of the tank? A.—Yes.

Q.—Now, there is an outside wall to the steam compartment, isn't there? A.—Yes.

30

Q.—But what about an inside wall? A.—The inside wall is the inside of your tank.

Q.—You mean, the inside wall is the same wall as the wall of the cylinder of the tank? A.—Yes.

Q.—There is only one wall? A.—Yes.

Q.—Now, you said, in looking at the sketch P-8, that it was covered by asbestos, and I think you said material of some kind and wired?

40

The Court:—He said the asbestos was wired and the whole thing was covered with canvas.

Witness:—Yes.

By Mr. Mann, K.C.:—

Q.—How was the canvas held on? A.—It was struck on with a paste.

Q.—Stuck over the asbestos? A.—Yes.

HALSEY FRAZIER (for Plaintiff's at Enq.) Exam. in chief.

Q.—Where on the whole machine did that cover go? A.—
What do you mean?

Q.—I am showing you the whole machine now. You are
looking in the front door. What was covered? A.—The whole
machine was covered.

10 Q.—The whole machine, including all parts of it? A.—All
except the legs.

Q.—Which included the steam chamber, the cylinder and
everything else that belonged to the machine? A.—Yes.

The Court:—But obviously not the front door?

Witness:—That is right.

By Mr. Mann, K.C.:—

20

Q.—That had to open and shut? A.—That is right. The
door and the shaft were not covered.

Q.—The shaft, looking at the sketch P-9, is shown at the
right hand of the sketch, held on a sort of a horse? A.—Yes.

Q.—And that is the end of the shaft, isn't it? A.—Yes.

Q.—It is sticking out of the rear of the cylinder? A.—Yes.

Q.—That went through the cylinder, didn't it? A.—Yes.

Q.—And on that was a type of wing, — or, what was it?

30 A.—A spiral.

Q.—And what were the functions of that? A.—To turn
the material, to keep the material in suspension in the tank.

Q.—To keep the material in suspension within the cylin-
drical department of the tank? A.—Yes.

By The Court:—

Q.—That shaft is what performed the necessary process?
A.—Yes.

40

Mr. Mann:—That was one of the things.

The Court:—One of the things.

By Mr. Mann, K.C.:—

Q.—Now, Mr. Frazier, coming to the day of the accident,
the 2nd of August, 1942, I want you to look at a sketch which
has been filed as Exhibit P-7, indicating the locations of the dif-

HALSEY FRAZIER (for Plaintiff's at Enq.) Exam. in chief.

ferent tanks or containers or air-wash vacuum tanks or air pumps, elevator and stairway, and the different items that were included, first, east of the main wall, running from north to south of the top floor of the mill?

10 Mr. Hackett:—If you think it well, we might agree upon a name for each of these two rooms?

Mr. Mann:—I don't mind calling them the east room and the west room.

Have you any objection, my lord, if we mark it?

The Court:—No.

20 Mr. Mann:—We will call them the east room and the west room.

Mr. Hackett:—I draw to your lordship's attention that yesterday Mr. Moffat called the east room, I think, the refining room, and the west room we called the filter press room.

Mr. Mann:—That is right.

30 The Court:—It is understood, therefore, when we say "east room" we mean what the company calls the refining department, and when we say "west room" we mean the filter press room.

By Mr. Mann, K.C.:—

Q.—You understand, Mr. Frazier, then, the east room is the refining room or the room in which the tanks were situated, including the one in which the accident happened? A.—Yes.

40 Q.—And the west room is the room in which the filter presses were? A.—Yes.

Q.—Now, on the day of the accident had you received any orders from Mr. Moffat as to what was to be refined or treated in No. 1 tank? A.—Well, we received orders from the chemist. The orders must have come from Mr. Moffat.

Q.—Did you in fact see to the putting in of material to No. 1 tank? A.—No, sir, I wasn't there.

Q.—Well, who did? A.—Mr. Rymann, and Mr. Asselin was operating that. Mr. Rymann was in charge.

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Q.—When the content was put into the No. 1 tank you physically were not there? A.—No.

Q.—But I understand you were there when the difficulty began and the trouble started? A.—Yes.

Q.—You were there then? A.—Yes.

10 Q.—You cannot say what went into the tank? A.—No.

Q.—But you can say what happened later on? A.—Yes.

Q.—Now, looking at this plan Exhibit P-7, can you tell me which filter press in the west room was being used? A.—No. 6.

Q.—And which is No. 6? A.—This one right here.

Q.—No. 6 is the one that I mark now No. 6 Filter Press? A.—Yes.

Q.—The others were not operating, the other filter presses? A.—Well, I could not say.

20 Q.—They were not operating so far as this operation was concerned? A.—No; they may have been on linseed oil.

Q.—They may have been doing something with linseed oil? A.—Yes.

Mr. Mann:—I may say, No. 6 is the one closest to the wall dividing the room.

30 Q.—(Continuing): What is the distance, — now, I don't bind you to inches, — from the south door in the wall to No. 6 filter press? Remember that this scale (on P-7) is one-eighth inch to one foot. I warn you also, Mr. Frazier, that these filter presses are just sketched in; they are not drawn in according to scale. That is why I am asking what the distance is. A.—I could figure it.

Mr. Hackett:—Those are the distances Mr. Moffat said yesterday Mr. Frazier could give?

Mr. Mann:—Yes.

40

Witness:—You want to know from the south door?

Q.—(By Mr. Mann, continuing): I will suspend that question for a moment and put this question to you: — Mr. Moffat said yesterday that you had physically taken, by actual measurement, the respective distances from certain sections of these rooms to other sections of the rooms: is that correct? You did that? A.—Yes.

Q.—Have you got a memorandum which you took of the distances from one section to another or certain sections to other

HALSEY FRAZIER (for Plaintiff's at Enq.) Exam. in chief.

sections? Have you a memorandum of the measurements? A.—I have quite a few of them. Here is one.

Mr. Mann:—I will show it to Mr. Hackett before going any further.

10

Witness:—I have some more here.

Mr. Mann:—We will deal with the first one first.

Mr. Hackett:—If you want to file this, I have no objection. However, I would suggest where you have the word "Press" you should put "No. 6", and where you refer to "Man" you should put in "Marier", because I suppose it means the man who was killed.

20

By Mr. Mann, K.C.:—

Q.—You hand me, Mr. Frazier, a memorandum of measurements which you say you made recently? A.—Yes.

Q.—As a matter of fact, on October 22nd, 1945? A.—Yes.

Q.—Of the different distances? A.—Yes.

Q.—I notice that you have references to "Pins and Lugs", "Door" and "Manhole"? A.—Yes, — "Door or Manhole".

30 Q.—You may call it "Door" in one place or you may call it "Manhole"? A.—Yes.

Q.—Or "Manhole, door"? A.—Yes.

Q.—I would like you to produce this document as Exhibit P-10, being a memorandum of measurements? A.—Yes.

Q.—And, taking the suggestion Mr. Hackett has made, this entry under the heading "Measurements", North Door to Press, 75 feet, — that means the No. 6 filter press? A.—Yes. Well, you ask me about "Press". That means where I was standing; the press is a certain distance.

40 Q.—When you say North Door to Press, 75 feet, you mean that the spot where you were standing at the time of the accident was 75 feet from the north door? A.—Yes.

Q.—Now, where were you in relationship to the press? A.—I was facing this way; I was standing right in there, — just beside the press.

Q.—To the west? A.—Yes.

Q.—Do you mean just beside the west side of the press? A.—No. The presses are facing south. I was standing on the west side of the press, more to the south.

HALSEY FRAZIER (for Plaintiff's at Enq.) Exam. in chief.

Q.—On the west side of the press, a little to the south?
A.—Yes.

Q.—How wide is the press? A.—The press itself?

Q.—Yes? A.—It is 4' 9".

10 Q.—So, if you add 4' 9" to 75 feet, provided you took your measurements to the east side. . . . A.—I took them in between.

Q.—Well, then, the 75 feet was the exact distance from the north door to where you were standing at the No. 6 press?
A.—Yes.

Q.—There was a man named Marier killed that day during that accident? A.—Yes.

Q.—Under the heading "Measurements" given in Exhibit P-10 you have got "From Where Man Was to Wall, 28 Feet"?
A.—Yes.

20 Q.—The man you refer to there is Marier? A.—Yes.

Q.—And the wall was which wall? A.—The east wall of the building.

Q.—It was the east wall of the building? A.—Yes.

Q.—Marier was 28 feet from the east wall? A.—Yes.

Q.—I will pass over "Pins and Lugs", your statement as to pins and lugs according to your personal knowledge, down to "Door or Manhole".

30 Now, I find in the second part of this "1¼-inch "Release Valve". Is that the release valve on line "B"? A.—Yes.

Q.—The vacuum release valve? A.—Yes.

By The Court:—

Q.—On line "B" in the sketch P-8? A.—Yes.

By Mr. Mann, K.C.:—

40 Looking back for a moment at the Exhibit P-8, was there any aperture or opening or glass or window on the back of that?
A.—Yes, there is a 6-inch peephole on the back of this.

Q.—On the back of the cylinder? A.—Yes, provided with a cleaner.

Q.—A cleaner inside? A.—Yes.

Q.—How thick was the glass? A.—It was pretty thick glass.

HALSEY FRAZIER (for Plaintiff's at Enq.) Exam. in chief.

Q.—Would you guess, approximately? A.—Approximately, I would say it was between half to five-eighths of an inch thick.

Q.—And of what diameter? A.—About six inches in diameter.

10 Q.—Did you see the premises shortly after the accident was over? A.—I didn't see them right away. I saw them the next day. I saw the premises in the yard, what I could see.

Q.—When you were in the yard? A.—Yes.

Q.—But, the premises inside? A.—Not till the next day.

Q.—Not till the next day? A.—No.

20 The Court:—Did I understand the witness to say or to imply that at the actual moment of the accident he was standing near No. 6 press?

Mr. Mann:—Yes, the filter press.

Q.—(Continuing): What was the condition of the glass in the back of the tank when you saw it? What was the condition of the aperture? A.—The glass was gone, broken.

Q.—Well, when you say "gone", was it all gone? A.—No; there were rough edges left in.

Q.—Rough edges around the circle? A.—Yes.

30 Q.—I think we will come to the accident now.

You were standing, you said, just beside the No. 6 filter press? A.—Yes.

Q.—Was there anybody else with you or near you at the filter press? A.—Yes.

Q.—Who? A.—Well, there was Rymann, Asselin, Gosselin, Boucher.

40 Q.—All around the filter press? A.—Well, practically around the filter press. There were a couple of others; I don't quite remember their names.

Q.—What was the interest that was being created so that all these men were around the filter press? A.—When I walked into the building and I went upstairs, they took me up on the elevator.

Q.—That is the elevator shown in the east room? (P-7). A.—Yes.

Q.—And . . . ? A.—And they went up on the elevator with a load and I went up with them.

Q.—A load of what? A.—A load of drums. And when I

HALSEY FRAZIER (for Plaintiff's at Enq.) Exam. in chief.

get off the elevator I walked around in front of the tank, but I didn't stop; I just glanced an eye and walked through, through the north door.

Q.—Why did you glance an eye in front of the tank? A.—Just a matter of habit. At a glance we can nearly tell how things
10 are running.

Q.—How were things running? A.—It seemed all normal to me.

Q.—Everything was normal? A.—Yes.

Q.—I put this to you:—Was there any sign of fire in that room, anywhere? A.—No, sir.

Q.—Any sign of anything being on fire? A.—Not at the time I went through.

Q.—Not at the time you went through? A.—No.

Q.—That was how long, approximately, before the acci-
20 dent happened, that you went through? A.—Oh, it was a matter of only about two or three minutes; it wasn't longer.

Mr. Hackett:—I am not objecting now to the blunt, leading and suggestive questions my friend has asked, but we are getting to a point where time is of the essence, and I am going to ask Mr. Mann, as we approach and get into that extremely delicate and difficult period, that he cease to lead. He has led his witness, and I have had no objection, — I think it is probably good practice
30 as a timesaver, — but we are approaching now the moment, as Mr. Mann knows as well as any of us, where we must be very careful.

Mr. Mann:—I am very anxious to be careful and I doubt if I deserve the chastisement that I got, but I will try and be still more careful.

Mr. Hackett:—There is no suggestion of chastisement.

40 The Court:—As I understand the evidence so far, we have the witness coming up in the elevator with a number of employees of the company, and, as he passed through the east room, in which the elevator was, he gave a glance, as a foreman naturally would, at the No. 1 tank as he passed it. Then he went into the west room. The glance which he gave at the tank indicated to him that there was nothing abnormal. This is the gist of it, I think.

Witness:—Yes.

Mr. Mann:—But I would be obliged to my friend Mr. Hac-

HALSEY FRAZIER (for Plaintiff's at Enq.) Exam. in chief.

kett if he would frame a question for me that would without any suggestion to the witness bring forth the answer that there was no fire. It is negative evidence and it is very, very difficult to frame such a question.

10 The Court:—The witness said there was nothing abnormal, and I think that indicates very clearly he meant there was no fire, except where fire ought to be, — possibly in some of the boilers or somewhere, — that there was no fire as we understand the word “fire”.

Mr. Mann:—He said there was nothing burning, nothing on fire, in the room. If that question is to stand, and if the answer is to stand, — and the question was not objected to, — then the situation. . . .

20

Mr. Hackett:—I said I had no criticism to offer of the fact my friend had led the witness up to now but that we were entering a zone of great difficulty, and I asked him, without any criticism as to the past, not to lead the witness from now on.

The Court:—I am going to ask a leading question, to bring us to the kernel of it:—

30 Q.—After you passed through the east room, having emerged from the elevator on your way to the west room, you cast a glance at the No. 1 tank? A.—Yes.

Q.—From what you saw, everything appeared to be normal? A.—Yes.

Q.—That is right? A.—Yes.

Mr. Mann:—And does the word “normal” apply to everything in that room?

40 The Court:—When I ask “Everything appeared to be normal?”, isn't that sufficient?

Mr. Mann:—I am afraid that may be limited to the tank only.

The Court:—Counsel may, of course, object to the question I am going to put now, but difficulty may be avoided if I ask it:—

HALSEY FRAZIER (for Plaintiff's at Enq.) Exam. in chief.

Q.—Did you see anything abnormal in any part of the premises as you passed through? A.—Well, where Mr. Marier was I could not see him.

By Mr. Mann, K.C.:—

10

Q.—He was behind some tins or something? A.—Yes. I could not see him.

By The Court:—

Q.—I am speaking only of what you saw as you passed through the east room:—Was there anything abnormal that you saw? A.—Everything seemed to be normal.

20

Mr. Mann:—Before answering any question I put to you, Mr. Frazier, just take your time. There may be an objection.

The Court:—There is one sure way to avoid a leading question, and that would be to ask the witness what occurred from then on and let him tell his story. That is a very useful method of avoiding a leading question.

By Mr. Mann:—It is exactly the question I was going to put and I am obliged to your lordship.

30

Q.—Having passed the tank and cast an eye upon it and made your observations in the east room, where did you go and what happened after that?

The Court (To Witness):—Would you please tell your story slowly and speaks as distinctly as you can. It is important that the stenographer get everything you say.

40

Witness:—After I passed through that room I passed through the north door. From the north door I went over to No. 6 filter press. As I got to the press it was just starting. They had just started; the filter press had just started. I picked up a sample bottle, took out some of the liquid, looked at it and found it was not O.K. So I discussed it with Mr. Rymann, who was in charge, and it is while we were discussing about this that we heard the noise, a sizzling noise, and I asked him if it was a steam valve that was "busted" and he said "I don't know"; so we were both going to go over and investigate, through the south

HALSEY FRAZIER (for Plaintiff's at Enq.) Exam. in chief.

door, and as we were going along Mr. Rymann was a few steps ahead of me. I happened to throw an eye at the north door. Then I saw like a fume or gas or something coming through it, that looked like a fume, and in that fume I just saw a flash, and every-
10 thing happened so fast from there on we were just thinking of clearing the building. So I called for the men to run, and some were going for the stair. . . .

By Mr. Mann, K.C.:—

Q.—The stairway is in the east room? A.—Yes.

Q.—And . . . ? A.—And there I let a “holler” to them; I said: “No, the fire escape”. So they all turned.

Q.—That is the fire escape over in the west room? A.—
20 Yes.

Q.—Marked “Outside Fire Escape”? A.—Yes. They all made for the fire escape. Who was first out I don't know.

Q.—You know you were not? A.—I know I wasn't. I was near the last. If I wasn't the last I was next to the last, anyway; and it is when we get on the fire escape that we heard, — just before we left. . . .

By The Court:—

Q.—Just before you left where? A.—Before we got out
30 on the fire escape, as we were leaving, we heard like a dull noise, like “Zump”, and I

By Mr. Mann, K.C.:—

Q.—How will that be put down in the notes: a dull boom?
A.—Yes, a dull sound.

Then, when we got on the fire escape, — I could not say
40 how far we were down, — I know we weren't very far down, — we heard a loud report. They all happened so fast I could not tell you the time it took; they seemed to be all one on top of the other.

Q.—Did you go down the fire escape to the foot of the fire escape? A.—Yes, I went away down to the foot and I had to crawl out.

Q.—Why did you have to crawl out? A.—I went down too far.

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Q.—What was the condition of the yard outside the building? A.—It was clear. The yard was clear where we had to go by. There is a loading platform that I went under.

Q.—When you got down into the yard, how far had the accident proceeded, or had it finished, or was it starting, or what?

10 A.—After I heard the other report, don't ask me anything. I didn't see anything until I had gone around and come back.

By The Court:—

Q.—Around where? A.—I had to go by the boiler room, — I went along the track, — to get out to the yard, where we could see the building.

By Mr. Mann, K.C.:—

20

Q.—What was the condition of the building then? A.—It was in a horrible condition. The walls were down.

By The Court:—

Q.—The walls were down? A.—Yes.

Q.—I don't understand where you went after you got to the bottom of the fire escape. Where did you go? A.—I went out under the platform.

30

Q.—Under the loading platform? A.—Yes, and followed our track to the boiler room.

Q.—Where is the boiler room? A.—The boiler room is. . .

Q.—In the basement of the building? A.—No; it is further south in the yard.

Q.—In the yard itself? A.—Yes.

Q.—A separate building? A.—Yes.

By Mr. Mann, K.C.:—

40

Q.—I understood you to say you came out of the boiler room? A.—No; I came out between the boiler room. There is a passageway.

Q.—If anywhere, did you

Mr. Hackett:—"Where did you go?"

Witness:—From the boiler room I walked back to where the building was, in the yard.

HALSEY FRAZIER (for Plaintiff's at Enq.) Exam. in chief.

By The Court:—

Q.—Why did you go to the boiler room? A.—That is the only way I could get through, get back in the yard.

10 The Court:—I don't know whether it matters, but I don't understand Mr. Frazier's itinerary at all.

Mr. Mann:—This is the yard here. There is a loading platform through here.

The Court:—You are referring to Exhibit P-7?

Mr. Mann:—Yes. There is a curtilage of buildings going through here, and they go right down to Centre Street.

20

Q.—(By Mr. Mann):—I understand the boiler room to be approximately south of the building? A.—Yes.

Mr. Mann:—He got under the loading platform, out through one of these other parts of the building, in between the boiler room, and then went over through the yard.

Mr. Hackett:—I don't understand that.

30 The Court:—I don't think anybody could understand it without knowing the situation of the various buildings.

By Mr. Mann:—Perhaps we had better clear that up:—

Q.—Mr. Frazier, I have got you at the foot of the fire escape? A.—Yes.

40 Q.—Just look at this plan P-7. Which direction did you go after you got to the foot of the fire escape? A.—Our railroad track follows Atwater Avenue. We have a fence that came along here.

Mr. Hackett:—That certainly is not clear. I suggest the witness take a red pencil and trace his course on the plan.

By Mr. Mann, K.C.:—

Q.—You indicate you came along the north on the Atwater side? A.—Yes.

HALSEY FRAZIER (for Plaintiff's at Enq.) Exam. in chief.

Q.—Then where did you go? A.—Then I kept on going till I came to the boiler room, — because there are some seed tanks here (Indicating on P-7).

Q.—But, you see, we are on St. Patrick Street? A.—Then I am on the wrong side.

10 Q.—We will cross that out, that you went north on the Atwater Street side. I knew you couldn't go that way.

This is the yard (on P-7). You are at the foot of the fire escape? A.—Yes.

Q.—Then where did you go? A.—I followed the railroad track, and the railroad track follows Atwater Avenue.

20 Mr. Mann:—Now, I will have to make this leading and I don't think it matters. . . .

Mr. Hackett:—Let the witness take a pencil and trace his course on the map.

Mr. Mann:—He can't, because the map is too small.

30 The Court:—Isn't there such a thing as a plan of the establishment of the Sherwin-Williams Company on which he could trace that, if the matter is important?

Mr. Mann:—It don't think it is really very important. It is just to clear up how he got back in the yard. I know you are not familiar with the premises, my lord, but I happen to be. I know how he got there, but I can't tell the Court.

By The Court:—

40 Q.—In any event, from the bottom of the fire escape, with which we are all familiar, you proceeded to the yard of the building by a certain course? A.—Yes.

Q.—And is the yard of the building shown on the sketch Exhibit P-7?

Mr. Mann:—Well, it isn't, as a matter of fact.

Q.—(By Mr. Mann):—I would ask you, Mr. Frazier, to look at the sketch P-7, — and let me point out to you that this is St. Patrick St. at the north. This is Atwater Avenue at the west. This is D'Argenson St. at the east? A.—Yes.

HALSEY FRAZIER (for Plaintiff's at Enq.) Exam. in chief.

Q.—Where is that yard? A.—The yard is over here.

Q.—At the south? A.—Yes.

Q.—Where is the boiler room? A.—The boiler room is going south too.

Q.—The boiler room is south too? A.—Yes.

10 Q.—The boiler room is in the yard, at the south of the building? A.—Yes.

By The Court:—

Q.—When you went by but not into the boiler room in order to get to the yard, is that the best way to get there? A.—Yes.

Q.—You did not go to the boiler room to make an investigation? A.—No, I didn't go in the boiler room at all.

20 Q.—You just went that way in order to get into the yard: in other words, outside? A.—Yes.

The Court:—And I suppose the yard is the yard shown on one of the photographs Mr. Mann produced yesterday, in which a mass of rubble appears?

By Mr. Mann:—Yes.

30 Q.—I show you photographs P-6-e and P-6-f, being photographs of certain sections of the building, the linseed oil mill? A.—Yes. This is St. Patrick Street.

Q.—On P-6-f you indicate the place where the constable is standing as St. Patrick Street? A.—Yes.

Q.—In relation to that where is the yard? A.—The yard is on the far side here, looking left, on the left side of the picture.

Q.—You can see the other buildings between which is the yard? A.—Yes.

Q.—The yard being between the buildings you see on the left and the mill? A.—Yes.

40 Mr. Mann:—The building on the left is one of the Centre Street buildings. Between that building on the left and the linseed oil mill is the yard.

The Court:—So the yard is between what I may call the main building as shown in the photograph and the building part of which one sees to the extreme left of the photograph?

By Mr. Mann:—Yes.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Q.—Then in P-6-e you see the same building, looking from D'Argenson Street? A.—Yes.

Q.—And the yard is at the left of the main building?
A.—Yes.

Q.—Shown in this photograph? A.—Yes.

10

By The Court:—The fire escape which the witness descended is on this building?

Witness:—Yes.

Q.—On the side which one cannot see in the photograph?
A.—That is right.

Q.—That is picture P-6-f. I take the fire escape to be on the side of the building which is opposite the side where the damage is apparent? A.—Just the opposite corner from this corner you are looking at.

20

Mr. Mann:—Which would be the corner which is plotted southwest on the plan P-7.

By The Court:—

Q.—Referring again to the Exhibit P-6-f, where would the boiler room, past which you walked, be situated? A.—Oh, it's away over on the south.

30

Q.—On the right side of the photograph, so to speak? A.—It is in the yard, yes, on the right side, on the other. . . .

Mr. Mann:—Your lordship sees the Centre Street buildings there. The yard is right there, and the boiler house is on the right-hand side of the yard.

By The Court:—

40

Q.—So you in fact walked behind the building which I am looking at in P-6-f, in order to get to the yard? A.—Yes.

Cross-examined by Mr. John T. Hackett, K.C.:—

Q.—Mr. Frazier, how long have you been working for the company plaintiff? A.—33 years and 5 months.

Q.—So, being 51 years of age, you have spent practically your whole life with the company plaintiff? A.—Yes.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Q.—And your experience, your whole life's experience, has been in the manufacture of paints? A.—Not paints; linseed oils.

Q.—Linseed oils? A.—Yes.

10 Q.—You are at present general superintendent of the linseed oil mill? A.—Superintendent, linseed oil mill department.

Q.—And on August 2nd, 1942, you said you were general foreman? A.—Yes.

Q.—In what way did your duties then differ from those of today? A.—Not very much only my title.

Q.—You have been, I assume, a good and faithful servant of the company, and you probably got a change in title and an increase in salary?

20 Mr. Mann:—Well, that is a leading question.

Mr. Hackett:—And I have the right to put leading questions, as you well know.

Mr. Mann:—I just wanted another lesson, that's all.

By The Court:—

Q.—That is so, is it not? A.—Yes.

30 By Mr. Hackett, K.C.:—

Q.—As superintendent your duties are no different from what they were as general foreman, — only you have a different title and possibly greater pay?

Q.—And I understood from the testimony of Mr. Moffat yesterday that he was and is your superior officer? A.—He is, sir.

40 Q.—And when I asked him a number of questions about the layout of the mill, and about the operation of it, he very courteously said, "Would you mind asking Mr. Frazier about "those matters, because they are matters about which he knows "more than I do", you work in close collaboration with Mr. Moffat? A.—I do Sir.

Q.—He is your immediate superior, is he not? A.—Yes.

Q.—He is the person through whom, when you get instructions, you receive them? A.—Yes.

Q.—Mr. Moffat referred to a formula which had been provided, I think he said, by the chemists, for this particular

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

operation on Sunday morning, August 2nd, 1942. Do you know of that formula? A.—I don't. I didn't have the formula. It is the man in operation and the charge hand had that.

Q.—Now, I understand that the charge hand was the foreman who was under you, Mr. Rymann? A.—Yes.

10 Q.—And the man in charge of the operation was Mr. . . ?
A.—Mr. Asselin.

Q.—Mr. Mann mentioned another man by the name of Gosselin. What does Gosselin do? A.—He was helping Mr. Asselin that day.

Q.—So the formula did not go to you at all? A.—No, sir.

Q.—Mr. Moffat said it did not come to him. The routine would be that the formula would go from the chemist to the charge hand? A.—To the charge hand and man in charge of the men.

20 Q.—That is Mr. Rymann. What is the name of the chemist?
A.—Mr. Hodgins.

Q.—Mr. Hodgins? A.—Yes.

Q.—Why should there be a formula coming from the chemist for this particular operation? A.—I could not answer you that question. I don't know.

Q.—The jacketted bleacher tank No. 1 was normally used to clarify linseed oil, I understand? A.—To clarify and bleach linseed oil.

30 Q.—To clarify and bleach linseed oil? A.—Yes.

Q.—And an identical tank, identical insofar as structure was concerned, was called the neutralizer? A.—Yes.

Q.—That is tank No. 2? A.—Yes, sir.

Q.—And that was used to remove certain foreign properties from linseed oil preparatory to. . . . A.—Bleaching.

Q.—Preparatory to bleaching? A.—Yes.

Q.—And the neutralizing and the bleaching of the oil are steps in the process of refining linseed oil? A.—Yes.

40 Q.—Is there a formula provided by the chemist to the charge hand each time that tank No. 1 and tank No. 2 are used?
A.—The chemist gives that man a formula as the oil changes her degrees.

Q.—Would you mind explaining that a little bit, because I don't quite seize the purport of that? A.—That is simply the acid value of the oil.

Q.—Can you explain a little further? A.—Well, I couldn't explain how it is done, or this and that. That is for the chemist.

Q.—I'm not trying to put you into the shoes of the chemist, but can you explain that somewhat? A.—That's all I know.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

When the oil has a high acid value we have to put in more ingredients.

Q.—That means that each sample of oil is tested and the quantities of ingredients which are used for the purpose of refining the oil vary according to the test made of the crude oil: is that it? A.—Sometimes, yes.

Q.—Now, if you don't understand my question, I would like you to say so? A.—You are asking me chemical questions and I can't answer chemical questions.

Q.—I don't want to ask you any questions in chemistry. I am merely trying to find out the purpose of the formula, and I understand from you that the crude oil is subject to an analysis? A.—Yes.

Q.—Which is made, I understand, before the refinement is started, — and that, dependent upon that analysis, is determined what quantities of other substances are to be used for the purpose of refining? A.—Yes.

Q.—That makes necessary, if I understand you correctly, that the charge hand be provided with a formula for each, we will say, batch, if "batch" is good word? A.—Not each batch, it isn't, but for each tank that we use. We have storage tanks, and if there is 100,000 gallons in the storage tank it will have the same value.

Q.—So, then, if you have a quantity of raw oil which is analyzed by the chemist, the same formula will serve for the number of batches that have to be treated, in dealing with the whole quantity in the storage tank? A.—Yes, in that tank.

Q.—Now, your work, and the work of the linseed oil mill, consists in taking raw linseed oil and refining it so that it is suitable for commercial purposes? A.—Yes.

Q.—And, incidentally, some of it is used, I suppose, in the manufacture of paint by the Sherwin-Williams Company and its subsidiaries? A.—Yes.

Q.—And some is sold as linseed oil? A.—Yes.

Q.—To the trade? A.—Yes.

Q.—In your experience of thirty-odd years had you ever before attempted to bleach turpentine? A.—Not to my knowledge.

Q.—Not to your knowledge? A.—No.

Q.—And to your knowledge it was the first time that tank No. 1 had been used for any purpose other than the bleaching of linseed oil? A.—Yes, sir, it had been used for bleaching linseed. It was the first time it was used for others.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Mr. Mann:—I'm not quite sure where this very lucid and revealing discussion of the bleaching of linseed oil is leading us.

The Court:—I thought I grasped the point quite readily.

10 Mr. Mann:—I'm not sure that I grasped the point. I'm not sure that the last question takes us any further unless it takes us into a defence that is not pleaded, maybe a realm of gross negligence or something of that kind, and I find no such allegation in the Defence. It could be leading to that kind of defence, but I'm afraid I cannot see anything in the question in relation to the pleadings in this case.

20 Mr. Hackett:—I pleaded there was no accident, and I am endeavoring to show that.

By Mr. Hackett, K.C.:—

Q.—You mean that it had never been used to your knowledge for any purpose other than bleaching linseed oil? A.—To my knowledge, no.

Q.—Now let us take the process of bleaching linseed oil. The tank is filled with the raw oil? A.—Yes.

30 Q.—By the use of a vacuum: is that correct? A.—No, it isn't. The oil doesn't come in by vacuum; it is put in by a pump.

Q.—And then what else is put in? A.—What do you mean, — for the bleaching?

Q.—Yes? A.—The bleaching earth.

Q.—Bleaching earth? A.—Yes.

Q.—That is the same commodity that was put into the turpentine on the morning of the incident? A.—What do you mean?

40 Q.—I am asking you if the commodity that you call bleaching earth is the commodity that was used in the turpentine on the. . . . A.—Yes.

Q.—. . . . morning of the 2nd of August? A.—Yes.

Q.—Then, after the raw oil and the bleaching earth are put together in the tank, what do you do? What is done? A.—Well, I am telling you that you would have to get the man that runs the machine. I know he does it and that's all I can tell you.

Q.—I know, Mr. Frazier, but I am talking now about the ordinary process of bleaching oil. I am not talking of the bleaching of the turpentine on the morning of the 2nd of August, 1942. Do you understand? A.—Yes.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Q.—I am just talking about the ordinary process of bleaching oil. After you have got the raw oil and the bleaching earth in the tank, what is the next operation? A.—The next operation is to put on the steam.

Q.—To put on the steam? A.—Yes.

10 Q.—Will you look at the Exhibit P-8 and tell the Court what valve you would turn on to permit the steam to enter the jacket which is shown on the rough model P-9? A.—Turn the valve on the line "G".

Q.—On the line "G"? A.—Yes.

Q.—And you have indicated the valve with the words "steam valve"? A.—Yes, sir.

Q.—I am going to ask you to put with a red pencil the indication "Valve 1". Will you write that there? A.—Yes.

20 Mr. Mann:—Is this the steam valve you are referring to?

Mr. Hackett:—Yes, which is on line "G".

Witness:—It is marked No. 1.

Mr. Hackett:—Write "Valve 1" and put a circle around the "1".

30 Witness:—Yes.

Q.—Now, when the steam has gone into the jacket which is on Exhibit P-9, under the tank, the temperature of the contents of the tank is raised, isn't it? A.—The contents under the tank?

Q.—(The question is read): A.—Yes.

Q.—Will you look for a moment at P-9, which gives us a rough idea of the tank, and the legs which run from the jacket to the floor? A.—Yes.

40 Q.—Are the legs bolted to the floor? A.—Yes.

Q.—In what way?

Mr. Mann:—They run from the cover of the tank to the floor, not from the jacket.

The Court:—Why not say "from the tank to the floor"?

Witness:—From these legs, it was bolted right through this lug to the floor.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

By Mr. Hackett, K.C.:—

Q.—Bolted to the floor? A.—Yes.

Q.—Do the bolts go through the floor? A.—I don't remember.

10 Q.—How many bolts were there? A.—There couldn't be less than four in each leg, but I don't remember exactly.

Q.—After the event, the tank remained in place? A.—Yes.

Q.—It wasn't knocked off its legs? A.—No, sir,

Q.—I want to get a word of explanation about the jacket. The jacket through which the steam circulates forms part of the tank, does it not? A.—What do you mean, forms part of the tank? That (Indicating on P-9) is an outer. . . .

Q.—Let me put it this way:—The Exhibit P-9 is a rough model of the jacketed bleacher tank? A.—Yes.

20 Q.—And the model shows that the tank is divided into two separate compartments, the compartment through which the steam circulates to heat the tank and the tank proper? A.—Yes.

Q.—And the tank proper. . . .

The Court:—Might we call it the cylindrical chamber?

By Mr. Hackett:—I thank your lordschip.

30 Q.—And the cylindrical chamber is separate from the area through which the steam circulates? A.—There is just simply this chamber here in between the oil and the steam.

Mr. Mann:—The witness indicates the cylindrical chamber.

By The Court:—

40 Q.—In other words, would it not be adequate to say that the cylindrical chamber forms, itself, the inner wall of the steam jacket? Is that right? A.—Yes.

By Mr. Hackett, K.C.:—

Q.—And the steam at no time comes into physical contact with the contents of the cylindrical chamber? A.—The steam does not come in contact with whatever is in the chamber.

Q.—And Mr. Moffat told us yesterday, and you told us today, that there was a glass peephole in the rear of the cylindrical chamber? A.—Yes.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Q.—And you said that you thought that that glass was about a half-inch or five-eighths of an inch thick? A.—Approximately.

Q.—And that the diameter of the peep-hole was about six inches? A.—Yes.

10 Q.—And you said that when you went into the west room some days after the accident, or possibly the next day. . . Which was it? A.—The next day.

Q.—. . . . you found that the glass peephole was broken? A.—Yes.

Q.—And, while there were some remnants of glass in the casing, the glass itself had fallen out? A.—Yes.

Q.—Could you say where the glass was? A.—Could I say?

Q.—Yes? A.—I don't know where it was.

Q.—You did not see any glass? A.—No.

20 Q.—Did you look for it? A.—No.

Q.—Do you know what happened to the glass? A.—I don't know if it melted or what. It disappeared, anyway. I never saw it.

Q.—It might have melted, so far as you are concerned? A.—Yes.

Q.—There was intense heat and a great deal of fire in the west room? A.—I cannot say. I didn't see it.

30 The Court:—You mean the east room?

Mr. Hackett:—Yes, the east room.

Q.—(Continuing):—After you had come out behind the boiler room, after your descent of the fire escape, you did go into the yard and you did see the fire, didn't you? A.—I didn't see any fire at any time. I saw a lot of smoke but no fire.

40 Q.—When the firemen were fighting the fire and when, as I understand it, a double or triple turnout of firemen had congregated, you saw no fire? A.—I saw no flame. I saw a lot of smoke, and according to what others said there was fire, but my eyes never saw any flame.

Q.—You never saw any fire? A.—No.

Q.—But, when you penetrated this room the next day, from your experience as a man of 30-odd years in an oil factory you knew there had been a fire in the east room? A.—Yes.

Q.—And that it had burned with great violence; that was apparent, wasn't it? A.—Yes.

HALSEY FRAZIER (for Plaintiff's at Enquête), Cross-exam.

Mr. Mann:—Is there any denial of that?

Mr. Hackett:—I don't think so.

Mr. Mann:—I don't think there is any denial of the fact
10 the fire followed. I think we have admitted we paid some \$112,-
000 for the fire that followed.

By Mr. Hackett, K.C.:—

Q.—I want to come back now to the ordinary operation
having to do with the refining of linseed oil. You have told us
that after the cylinder was charged you turned on the steam in
the jacket by opening the valve which you have written in (on
P-8) in red pencil as Valve No. 1? A.—Yes.

20 Q.—How long would you allow, ordinarily, the steam to
run through the jacket? A.—The steam is run through the
jacket till it registers anywhere from 190 to 195, as a general
run, but we can go to 200.

Q.—You can go to 200? A.—Yes.

Q.—Then what do you do? A.—Shut the steam off.

Q.—That is, you shut off the valve No.: 1? A.—Yes.

Q.—Then what is the next operation? A.—The next opera-
tion is to let the machine run for a half-hour.

30 Q.—And when you say to let the machine run I assume
you mean. . . . A.—The cylinder.

Q.—. . . . that the stirring device inside the tank, the de-
vice which tends to mix the oil with the earth, is kept in motion?
A.—Yes.

Q.—And that for about a half-hour? A.—Yes.

Q.—And then after the machine is shut off? A.—After
the machine is shut off.

Q.—Then what is done? A.—Then after that we open this
valve on "C" line.

40 Q.—Will you mark in red pencil as Valve No. 2 the valve
on "C" line to which you have just referred? A.—Yes.

Q.—What is "C" line? A.—"C" line is the outlet of the
tank or cylinder or whatever you want to call it.

Q.—Outlet for the contents of the tank? A.—For the
contents in that cylinder, linseed oil.

Q.—And the content is drained off where? A.—Goes down
to this line here.

Q.—That is, to a line which is marked on the Exhibit P-8
by what letter? A.—There is no letter there, — yes, letter "E".
It goes down to the pump.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Q.—To a pump on what floor? A.—In the basement.

Q.—There are the basement, the first floor, second floor and third floor in the building? A.—Yes.

Q.—In the mill? A.—Yes.

10 Q.—And, when the oil has gone to the pump in the basement, where does it go? A.—Comes back to No. 6 press.

Q.—Comes back to No. 6 press in what we call the west room? A.—Yes.

Q.—And there it is filtered? A.—Yes.

Q.—In your examination-in-chief you made some reference to a vent or to a pipe through which the vacuum in the cylinder was released. Should you have mentioned it in the process which I have asked you to describe? A.—Yes.

20 Q.—Just tell the Court where you should have mentioned it and at what time you would have opened, if that is the case, the vent? A.—I should have mentioned that when I was drawing in the bleaching earth.

Q.—I think you said in chief that, after the oil was in the tank and after the bleaching earth had been drawn in by vacuum, the vacuum was released by turning a valve, which allowed the atmosphere of the east room to permeate the cylinder? A.—I don't know. — to release the vacuum out of the cylinder.

30 Q.—Will you be good enough to indicate on P-8 by the word "Valve" and by the number "3" the valve which you would put in function to release the vacuum from the tank? A.—Well, now, before we release this, there is another valve ahead of that. This vacuum control valve has to be closed.

Q.—Very well, — just tell his lordship just what you would do after the tank was charged and indicate by the description "Valve No. 3" the first valve that you would turn after the tank was charged? A.—Well, after the tank is charged, you close this valve.

Q.—Make it Valve No. 3? A.—Yes.

40 Q.—And just tell his lordship on what line valve No. 3 is and the purpose of opening it? A.—Valve No. 3 is on the vacuum pump and the purpose of opening it is to fill the tank with vacuum to draw in this earth. Once the earth is in, we close the vacuum, which we don't need, and we release. . . .

Q.—So, when the tank had been filled with oil and earth, you opened valve No. 3 to release the vacuum: is that right? A.—No, — turn valve No. 3 to close the vacuum so I can open the valve to release the vacuum. I have to close this before I can release.

Q.—Then, valve No. 3 is on the pipe which comes from the vacuum pump. . . . A.—Yes.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Q.— that pumps the vacuum, — if you will, — into the cylinder? A.—Yes.

Q.—And, when you have finished using the vacuum, you turn it off at valve No. 3? A.—Yes.

10 Q.—And then at valve No. 4 you release the vacuum that is in the cylinder? A.—Yes.

Q.—Will you please indicate as valve No. 4 the valve through which the vacuum is released? A.—Yes.

Q.—That is, on line which you have previously described as line "B"? A.—Yes.

Q.—That is a pipe of what dimensions? A.—One inch and a quarter.

Q.—May I ask if you are quite sure of that dimension? I thought it was larger than that. Have you measured it? A.—I haven't measured it.

20 Q.—You haven't? A.—No; but it looks like inch-and-a-quarter pipe.

Q.—Now, is it after valve No. 4 has been opened to release the vacuum in the cylinder that the shaft inside the cylinder is set in motion? A.—No; it is in motion as we are pulling in the earth.

Q.—It is in motion from the time that you pull in the oil and the earth? A.—Not the oil the earth only.

30 Q.—Then, after the steam has been shut off, and the valves dealt with in the manner you describe, how long is the content subject to the agitation produced by the operation of the shaft? A.—Half an hour.

Q.—And then the content goes by gravity to the basement? A.—To the basement.

Q.—And is pumped up. . . . A.— to the press.

The Court:—No 6 in the west room.

40 Q.—(By Mr. Hackett):—And that is the normal operation that is carried on day after day and week after week? A.—Yes.

Q.—How did you come to fill this tank No. 1 with turpentine on Sunday the 2nd of August, 1942, instead of linseed oil? A.—How did we come to fill it?

Q.—Yes. Why did you do it? You said it was the first time to your knowledge it had ever been done. A.—To bleach the turpentine.

Q.—Is it unusual that turpentine needs bleaching? A.—I don't think so.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

By The Court:—

Q.—Our difficulty is this, or perhaps not our difficulty, but what we want explained is this: — You said a few moments ago that you had never known this tank No. 1 to be used to bleach
10 turpentine and that you, yourself, had never known turpentine to be bleached? A.—Well, to be bleached, not by us.

Q.—It was the first time that you had done it to your knowledge? A.—Yes.

Q.—Why did you start on the morning of August 2nd, 1942? A.—Because the stuff was off color.

By Mr. Hackett, K.C.:—

Q.—What quantity of it was off color? A.—I don't know.
20 It isn't my line.

Q.—Was there any discussion with you as to what treatment should be given to the turpentine which was off color? A.—No; that was the chemist with the charge hand to look after that. I just told him I had orders to bleach.

Q.—When did you first know that turpentine was to be bleached on the morning of the 2nd of August? A.—I knew it about a week before.

Q.—About a week before? A.—Yes.

Q.—Had there been some discussion between you and Mr.
30 Moffat or you and other officials as to what could be done with this turpentine which had apparently lost color? A.—Not with me.

Q.—Did you know that it presented a problem to the plant, the problem of removing this colored substance from the turpentine? A.—Well, we had to bleach it; we had to remove it. We knew we were going to remove it.

Q.—When did you first discover the turpentine was discolored? A.—I didn't discover it.

Q.—When did you first hear it was discolored? A.—
40 About a week before, that we were going to bleach it.

Q.—Did you ever bleach any more turpentine after this event? A.—No.

Q.—What did you do with the quantity that required bleaching? A.—What do you mean?

Q.—You had a certain quantity of turpentine on hand which was discolored and which could not be used for your purposes until it was bleached, and I ask you what you did with it? A.—I didn't have anything to do with that. It is the officials that attend to that.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Q.—I am aware of that, but. . . . A.—I don't know what they did with it.

Q.—Do you want the Court to understand, Mr. Frazier, that a person that held your position did not know what happened to a large quantity of turpentine that was off color? A.—Yes, 10 sir, — because I am not in the office. I am the superintendent in the linseed oil mill and I don't know what the officials did; I don't have anything to do with the sales or what is done in the office; I have nothing to do with that.

Q.—But as superintendent you have to see to the merchandise that comes in and goes out of your mill? A.—Yes, sir.

Q.—And I am asking you what happened to this quantity of turpentine which was discolored and which you say you did not bleach? A.—Well, it was in drums in the yard, and if it is not in the building I don't touch it.

20 Q.—I am not asking you that. I am asking you what happened to the drums of turpentine which was discolored? A.—I don't know.

Q.—So, then, we are to take it as your answer that you cannot tell the Court when these drums were removed from the premises? A.—When they were removed?

Q.—Yes? A.—No, I know they came after what I had and that's all I know.

30 Q.—How many drums did you have? A.—I don't know. I only had a few.

Q.—What is a few? A.—It depends, probably 15 or 20.

Q.—15 or 20. How many drums did it take to fill the tank on the morning of the 2nd of August? A.—I don't know. I didn't fill it.

Q.—How many gallons does a drum hold? A.—It all depends. You get them 42 to 45.

Q.—What is that? A.—42, 45 to 50.

By Mr. Mann, K.C.:—

40 Q.—Gallons per drum? A.—It all depends on the size of the drum.

By Mr. Hackett, K.C.:—

Q.—I am asking you how many drums of discolored turpentine were in the linseed oil mill on or about the 2nd of August, 1942? A.—To my knowledge there were about 15 drums on the first floor. There might have been more. I didn't count them.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Q.—Who discovered that this turpentine was discolored?
A.—Oh, I couldn't say, — the chemsts somewhere, either in the front or ours; I could not say.

Q.—What became of the 15 or more drums of discolored turpentine? A.—I don't know I can't answer where they went.

10 Q.—Is it not your duty to keep track of the goods that come into the linseed oil mill? A.—I keep track of goods that come in.

Q.—And that go out? A.—The orders come to me. I act according to the orders from the head office.

Q.—You get an order from the head office to send out drums? A.—Yes.

Q.—You get the order? A.—Yes, and all I do is load them.

20 Q.—So you did load and send out these drums of turpentine that were sent out? A.—You are asking me about sending out. I can't tell you if they went out of the plant. They went out of my building.

Q.—I am just asking you if they went out of your jurisdiction? A.—Yes.

Q.—When? A.—I don't remember now.

Q.—Is there any record to show when they went out? A.—If there is, the clerk has it.

30 Q.—I want to know if you have a system which shows what drums come in, what disposal is made of them, and what goes out? A.—Our receiving department attends to all goods coming in, returned.

Q.—You do know that drums containing discolored turpentine were shipped out of the linseed oil mill? A.—Yes.

Q.—You don't know where they went? A.—No.

Q.—You never inquired? A.—No.

Q.—You don't know how many there were? A.—No. To tell you the fact, when we ship I never inquire. It is not my business what goes out, so long as it goes.

40 Q.—You told me that the mixture of the raw oil and the earth was heated to a temperature of from 190 to 195 or possibly 200? A.—Yes.

Q.—What is the boiling point of linseed oil? A.—I don't know.

Mr. Mann:—I don't want to interrupt my friend, but. . . .

The Court:—The witness says he doesn't know.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Mr. Mann:—I am just wondering if this cross-examination is not getting to a pinnacle of futility. We were not boiling linseed oil and we were not boiling turpentine. I don't know what Mr. Hackett is driving at and I suggest the examination is futile. If my friend will confine himself to the operation on
10 the day of the accident and not talk about what the operation was 30 years before. . . .

The Court:—It is very difficult to decide what question in cross-examination is pertinent. It may be leading to something that is not apparent to the opposing Counsel or to the Court at the moment and yet may be important. It seems to me Mr. Hackett has remained within the reasonable limits of cross-examination.

20 Mr. Mann:—Your lordship may be perfectly correct and with the greatest respect I say you are, but I am just wondering if it is not futile to go on with questions about the boiling of linseed oil when we were not doing anything of that kind.

The Court:—We are not going any further, because the witness doesn't know anything about that, he says.

Mr. Mann:—Well, I suppose that stops it.

30 By Mr. Hackett, K.C.:—

Q.—What time did you go to the plant on the morning of the 2nd of August, 1942? A.—Well, I believe I got into the plant about, say, 20 minutes to a quarter to 10; I got into the time office on Centre Street.

Q.—Normally you did not work on Sunday morning?
A.—No, sir.

40 Q.—You came to the plant on that Sunday morning because of this particular operation. . . . A.—I don't know.

Q.—. . . . the bleaching of turpentine? A.—No; not on that particular Sunday, because I go very often on Sundays.

Q.—I am asking you, Mr. Frazier, if you didn't go on this particular Sunday morning because there was an unusual operation, one that had never taken place in all your experience?
A.—Yes, I went there that Sunday.

Q.—You went because they were bleaching turpentine, didn't you? A.—Not just because of that. I would have gone anyway. There would have been something else.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Q.—You just told us a moment ago you did not work on Sundays normally? You don't work on Sundays as a rule?
A.—I go there sometimes on Sundays, but I'm not there to work on Sundays.

10 Mr. Mann:—He said he went quite frequently.

By Mr. Hackett, K.C.:—

Q.—I am putting it to you that here was an operation which in the 30-odd years of your experience had never been carried out before? That is true, isn't it? A.—Yes.

Q.—And it was taking place in your mill? A.—Yes.

Q.—It had been talked about for a week before? A.—Yes.

20 Q.—And there was a special formula provided for the completion of the work? A.—So I believe.

Q.—Now, I am asking you if you don't consider that it was because of these unusual circumstances that you went to the mill on that Sunday morning? A.—I don't say it is, but it might be too, but I have a habit, — any of the men can tell you, — I have a habit to go there on Sunday morning.

30 Q.—I am thoroughly convinced, Mr. Frazier, that one of your great interests in life is doing your job faithfully and well and if it impinges a little bit on your leisure you don't begrudge it. I am willing to concede that. But I want you to try and help the Court by saying if the peculiarly unusual circumstances of the operation that was taking place that Sunday morning do not account for your attendance there on that Sunday morning?
A.—Well, I would say it might.

By The Court:—

Q.—You knew they were going to do this operation on the turpentine that morning? A.—Yes.

40 Q.—And you were there? A.—Yes.

Q.—You went there? A.—Yes.

By Mr. Hackett, K.C.:—

Q.—And you had allotted that operation to the charge hand, Mr. Rymann? A.—Yes.

Q.—And you knew what men were going to assist him?
A.—Yes.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Q.—And they were men who had considerable experience in the bleaching of oil? A.—Not all. He had Mr. Asselin and the man running the machine.

Q.—Asselin? A.—Gosselin was assisting Asselin.

10 By The Court:—

Q.—They were both experienced men? A.—Asselin was an experienced man. Gosselin was not as experienced as the other man.

By Mr. Hackett, K.C.:—

Q.—You went up on the elevator and you went into the east room and you went through into the west room. Can you
20 tell us how high the ceiling is above the floor in those two rooms?
A.—Approximately 17 feet.

Q.—17 feet? A.—Approximately that.

Q.—And can you say how high the two fire doors are. Mr. Moffat told us yesterday that they were 8 feet wide. That is correct? A.—8 feet square.

Q.—8 feet square? A.—Yes.

Q.—So they are 8 feet high? A.—8 feet wide.

Q.—8 feet high and 8 feet wide? A.—Yes.

Q.—I understood, from your examination-in-chief, that
30 you got off the elevator and just walked through the east room?
A.—Yes.

Q.—And I think you said you cast your eye about, but you just walked through? A.—Yes, and never stopped.

Q.—Never stopped? A.—No.

Q.—And you went directly to No. 6 filter press? A.—
Yes; I passed through the north door.

Q.—Through the north door? A.—Yes.

Q.—To the No. 6 filter press? A.—Yes.

Q.—And that was the only filter press that was in operation?
40 A.—Yes, sir.

Q.—Now, when you arrived at the filter press, who was with you? A.—I arrived alone and the men were there.

Q.—The men were at the filter press? A.—Yes.

Q.—That is, Rymann? A.—Yes, and Asselin, and I think Gosselin was there. I wouldn't say for sure about Gosselin.

Q.—And you immediately did something which enabled you to determine as to the success of the operation? A.—Yes.

Q.—Did you pour the turpentine into a bottle? Just tell

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

the Court what you did. A.—I just took a bottle under a tap and got a certain amount in it.

By The Court:—

10 Q.—Under a tap from the filter press? A.—Yes.

By Mr. Hackett, K.C.:—

Q.—I understand that the turpentine had gone from the bleacher tank to the basement? A.—Had not gone. There was some going on account of the pump running.

Q.—Some going? A.—Yes.

20 Q.—How many gallons of this mixture were let out of the tank, do you know? A.—It takes approximately 145 gallons to fill the press.

Q.—145 gallons to fill the press? A.—Yes.

Q.—How much does it take to fill the line and the pump? Would we say 250 altogether? A.—No, — 15 to 20 gallons.

Q.—In excess of the 145 gallons? A.—Yes.

Q.—And when the liquid runs from the tank to the pump That is in the basement? A.—Yes.

Q.— . . . it is then forced up? A.—Yes, to the filter press.

30 Q.—I am going to stop there just for a moment and ask you if you will look at P-8 and mark as valve No. 5 the valve which is opened to let the contents of the cylinder go to the basement? A.—Well, this one is already marked. That is the main valve from the cylinder. That is the main outlet for any liquids in that cylinder, — and then this one here (The Witness Indicates).

Mr. Hackett:—“This one here” means nothing.

The Court:—Is it indicated by some number or letter?

40 Mr. Mann:—The pipe “C”.

Witness:—Pipe “C”, valve 2.

By The Court:—

Q.—That is the valve you open in order to let the liquid from the tank go down to the basement? A.—That is the main valve. That is the control valve for whatever direction we want it to go.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

By Mr. Hackett, K.C.:—

Q.—Nothing can get in or out of the tank without being controlled by valve 2? A.—Without that being opened.

10 Q.—What other valve has to be opened to get the contents of the tank to the. . . . A.—Pump.

Q.—. . . . to the pump in the basement? A.—This one here.

Q.—Will you mark that valve 5? A.—Valve 5, yes.

Q.—And, when valve 5 is opened, what determines the quantity that can flow into it? You have said that the press would accommodate about 140 gallons and that the line and the pump would take up 15 or 20 more. A.—No liquid will run through the pump until you start it. The pump will hold the liquid.

20 Q.—Do you leave valve No. 5 open while you are pumping? A.—While we are pumping we have to.

Q.—Then, the pump having been put in operation and the content of the tank having drained to the pump in the basement and having been forced to filter press No. 6 in the west room, the content was filtered, — and just tell his lordship what filtering consists of? A.—Don't forget, all the contents of that tank were not down at the pump.

30 Q.—No. — you have told us quite clearly. . . . A.—You had practically 200 gallons. You had 145 for your press and 20 or 25 for the line. That is all was out of the tank.

By The Court:—

Q.—How much did the cylinder hold? A.—Roughly, I would say about 850.

By Mr. Hackett, K.C.:—

40 Q.—As a matter of fact, you in fact put in 19 50-gallon cans of turpentine that morning? A.—I could not say 19. I don't know how many went in.

By The Court:—

Q.—At any rate, you say it holds roughly 850 gallons? A.—Yes.

Mr. Mann:—It is common ground there were 850 gallons of turpentine put in that day.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Mr. Hackett:—Would you say 19 drums?

Mr. Mann:—No, but I will say 850 gallons went into that tank for the creation of that operation.

10 The Court:—And some went out, as the witness has explained, and he tested a small quantity which he drew off in a bottle.

Mr. Mann:—He had a quantity of other material in the tank as well as turpentine. That wasn't proved.

Mr. Hackett:—I proved there was some earth put in.

20 Mr. Mann:—But you didn't prove the Fuller's Earth. You proved Filtrol. There were 200 pounds of Fuller's Earth and 50 pounds of Filtrol, Silica Filtrol, or, the other way around.

The Court:—The witness was asked to explain the operation and he did not mention that.

Mr. Mann:—I say it wasn't proved.

By Mr. Hackett, K.C.:—

30 Q.—Would you just explain to the Court what the filtering operation is in filter press No. 6? A.—The pump is started, and it is forced by same to the press, which has a heavy duck, filter cloth.

By The Court:—

Q.—The pump you mention is the one in the basement?
A.—Yes.

40 And it is forced through that heavy cloth, and the cloth catches the filtering earth, or, the bleaching earth. Then the oil goes into a trough, into a tank.

By Mr. Hackett, K.C.:—

Q.—Could we just open a parenthesis there? Mr. Mann has suggested there were 200 pounds of. . . .

Mr. Mann:—I would rather let the witness describe it.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Mr. Hackett:—200 pounds of Fueller's Earth and 50 pounds of Filtrol.

Mr. Mann:—Or, vice versa.

10 Witness:—I know there was Filtrol and Filter Cel.

By Mr. Hackett, K.C.:—

Q.—And there were 200 pounds of Filtrol went in? A.—I don't know. I don't know what the process was.

Q.—In the ordinary operations there are 50 pounds of Filtrol?

20 Mr. Mann:—No.

Mr. Hackett:—200?

Witness:—It all depends on what you are bleaching.

Q.—(By Mr. Hackett):—When you are bleaching oil?
A.—It all depends on what kind of oil we are making, bleaching. Some takes more and some less.

30 Q.—Now we will go on to the filtering, the liquid having been forced through a cloth which you described as a duck, or a series of cloths? A.—It is a series of cloths.

Q.—And it was when the content of the tank had gone to the basement, been pumped to filter press No. 6, and filtered, that you examined some of the filtered commodity? A.—I examined it right off at the start.

Q.—After it had been filtered? A.—Very little of it was filtered.

Q.—It was after it was filtered that you examined some of it? A.—Yes.

40 Q.—And it was then you found, what? A.—That the color was not right.

Q.—What did you do then? A.—I discussed it with Rymann to open that press and change and put new cloths.

Q.—Did he do it? A.—He didn't have time.

Q.—Then what happened? A.—I was discussing with him and we heard that sizzling noise.

Q.—Did you, as an incident to your discussion with Rymann, send somebody to the basement to stop the pump? A.—Rymann sent a man down to stop the pump.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Q.—Sent whom? A.—Asselin.

Q.—And the pump was stopped? A.—It was supposed to be stopped.

Q.—And Asselin came back? A.—Yes.

10 Q.—And was standing beside you, — because you said he was there? A.—Yes.

Q.—So, Asselin having been sent to the basement by Rymann, had gone, shut off the pump and come back, and was standing beside you when you heard the sizzling noise? A.—I don't know if he was standing near me when I heard the sizzling noise; that I could not say for sure.

Q.—Anyway, you heard the sizzling noise and went with Rymann toward the south door? A.—We only took a couple of steps.

20 Q.—A couple of steps toward the south door? A.—Yes.

Q.—Will you say how far it was from press No. 6 to the south door? A.—Approximately 54 feet.

Q.—54 feet? A.—Yes.

Q.—And from the press to the north door was how far? A.—Approximately 75 feet.

Mr. Mann:—It is on the exhibit. (P-10).

30 Witness:—North door to press, 75 feet, approximately 75. Am I right by the exhibit?

By Mr. Hackett:—Yes:

Q.—And you took a few steps towards the south door to find out what was causing the sizzling? A.—We were going to see what. . . .

By The Court:—

40 Q.—Complete your answer, — to see what? A.—Going to see what happened in the other building.

By Mr. Hackett, K.C.:—

Q.—Going to see what had happened in the other room? A.—Yes.

Q.—In the east room? A.—Yes.

By The Court:—

Q.—What was happening? A.—Yes.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

By Mr. Hackett, K.C.:—

Q.—In which room the sizzling was going on? A.—That is what we thought, it was going on in that.

10 Q.—Then you noticed the fumes in the north door: is that right? A.—Yes.

Q.—Will you tell the Court what those fumes looked like? A.—Well, it looked like a haze to me coming around.

Q.—What color? A.—Some of it looked like a bluish color; some of it looked like a whitish color.

By The Court:—

Q.—Whitish and bluish? A.—Similar to that.

20 By Mr. Hackett, K.C.:—

A.—And then was it through the north door or the south door that you saw the fire? A.—Through the north door.

Mr. Mann:—I didn't hear the witness say he saw fire.

By Mr. Hackett, K.C.:—

30 Q.—What did you see? A.—A flash.

Q.—Will you tell me what is the difference between a flash and fire? A.—I don't know. I would say a flash is like a shot of lightning. A fire I would say would be a steady blaze.

Q.—But you saw something, and then what did you say when you saw that? A.—Then I "hollered" to the men to get out.

Q.—What men were there that you told to get out? A.—I know there was Rymann, Asselin, Gosselin, Boucher. There might have been a couple of others; I don't remember them.

40 Q.—Dufault? A.—Yes.

Q.—Buzzell, or, Bizzell? A.—Bizzell.

Q.—There were a couple more. Do you remember any more names? A.—I know there were a few others.

Q.—In any event, after you told them to get out, you saw that some of the men were going towards the north door? A.—No., they were going to the south door, to the stair. Q.—And you told them not to? A.—No to.

Q.—What did you say? A.—I "hollered" at them to go by the fire escape.

Q.—I know. You told Mr. Mann that. But I want you to remember what words you said? A.—I told them that in French.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Q.—What did you say? A.—“Sauve qui peut”.

Q.—But “sauve qui peut” is not very helpful to a fellow who is going downstairs and that you want to have go to the fire escape? A.—Yes, but listen, — In French when I said “sauve qui peut”, some of them started. . . .

10 Q.—Pardon me? A.—I told you I said, “Sauve qui peut”. Then there were some going to the stairs, and I said, “Non, le sauvetage”, and then they went to the “sauvetage”.

Q.—And the “sauvetage”, rightly or wrongly, to those men and to you, means the fire escape? A.—Yes.

Q.—As distinct from the elevator and the stairway?
A.—Yes.

Q.—Now, were you the first or the last man to go on to the fire escape? A.—I wasn't the first. I couldn't tell you if I was exactly the last, but I was very close to the last.

20 Q.—Does the fire escape open into the west room through a window or a door? A.—It is a door opening outwards.

Q.—Was the door open or closed? A.—I don't remember.

Q.—You know you didn't open it? A.—I know I didn't open it.

Q.—What was the next thing you noticed after you saw, — if you want me to use your word, — the flash? A.—It happened so fast, — it was like a series of things. We heard the flash and we heard that dull “Zoom” as I said before, and after we got on the fire escape, — I don't know how far it was, — then
30 we heard a blast.

Q.—A blast? A.—Yes. I don't know whether it was a blast or not, — a big noise.

By The Court:—

Q.—Sharper than the first noise? A.—Yes.

Q.—That is what you clearly indicated to me previously?
A.—Yes.

40 By Mr. Hackett, K.C.:—

Q.—Now, Mr. Frazier, after the flash you heard one noise. Where were you then? A.—I was on my way to the fire escape.

Q.—On your way to the fire escape? A.—Yes.

Q.—Are you sure you were not on the fire escape? A.—That I could not say for that.

Q.—Then, when you were part way down the fire escape, you heard a much bigger noise? A.—Yes; but they happened in such a short notice. . . .

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

By The Court:—

Q.—You mean, there wasn't much time between them?

A.—They were very fast, your honor.

10 Mr. Hackett:—It is now the time set for the adjournment. I know nobody will talk to the witness, but I am going to ask your lordship to tell the witness that he is under cross-examination and that he must not talk to anybody.

The Court (To Witness):—You must not talk to anyone between now and a quarter to 3, when you come back into the box. You are under oath and under examination and you must not communicate with anyone, except to order your dinner or something like that, but you must not say anything to anyone
20 about your evidence or anything in connection with the case in the meantime.

(It now being 12.50 p.m. on this 24th of October, A.D. 1945, Court adjourns to 2.50 p.m., and the examination of the witness is declared suspended).

And further for the present deponent saith not.

30

H. Livingstone,
Official Court Stenographer.

(At 2.45 p.m. Court reassembles, pursuant to adjournment, and the deposition of the witness above-named continues as follows, under the same oath):

Cross-examination continued by Mr. John T. Hackett, K.C.:

40

Q.—Now, with regard to this last noise or the atmospheric commotion of which it was a coincident, what effect did that have on you? A.—As I was going down the fire escape it was as if we were paralyzed for a second or so.

Q.—You could not move? A.—Could not move.

Q.—How did you describe the first noise you heard?

A.—Sizzling.

Q.—How long a time elapsed from the time the sizzling came to your ears? How long did it sizzle? A.—Not very long; I couldn't tell you; very few seconds.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Q.—Did you say anything to Rymann? A.—That is where I said to Rymann, “It must be a steam “valve or a pipe ‘busted’ on the other side.”

Q.—What did Rymann say to you? A.—He looked at me, and then I said we had better go and see what was wrong.

10 Q.—See what was happening? A.—Yes.

Q.—Then did you and Rymann alone or did the other men there go with you toward, I think you said, the south door? A.—The south door, yes. Rymann and I were alone. Rymann was a couple of steps ahead of me.

Q.—You said the south door was 54 feet, approximately, away? A.—Yes.

Q.—How far had you got toward the south door? A.—I should say approximately from the south door. . . .

20 Q.—No, — I am asking you how far you had gone toward the south door? A.—From the press I had left about 10 or 12 feet.

Q.—That wouldn't be half way? A.—No by far.

Q.—When you were going south toward the south door how did you happen to look back the other way, toward the north door? A.—I didn't look back. I looked sideways.

Mr. Mann:—He was going west.

30 Witness:—I was facing west and when I turned I happened to look again.

By Mr. Hackett, K.C.:—

Q.—Mr. Mann has pointed out you were going west toward the south door? A.—Yes.

Q.—And not south as I said? A.—That is right.

Q.—How far was press No. 6 from the wall in which the north and south doors were? A.—How far was the press. . . ?

40 Q.—How far was the press No. 6 away from the wall in which the north and south doors were? A.—The press to the north and south doors? This measurement was taken where I was standing at the head of the press, between the two.

Q.—Between the two what? A.—Between the two presses.

Q.—What two presses? A.—No. 5 and No. 6, — no, No. 4 and No. 6.

Q.—And how far was press No. 6 from the south door? A.—From the press to the south door, from where I was standing it was approximately 54 feet.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Q.—And how far was the north door? A.—The north door was approximately 75 feet.

Q.—Will you just indicate on the plan which has been produced as Exhibit P-7 the north door, and then I will ask you to indicate the south door with a red cross, making cross No. 1
10 for the north door, or write in "North Door" if you will?

The Court:—Why not write in "N" and "S"?

By Mr. Hackett:—Yes, with a red pencil.

Witness:—The north door is the St. Patrick Street side. That would be here (on P-7).

Q.—Will you put "N" on it? A.—Yes.
20 Q.—And will you also put "S" in red lead? A.—Yes. It is kind of weak.

Q.—Now, I had asked you what caused you to look backwards as you went toward the south door, and you told me you did not look backwards, that you looked to your left? A.—I looked sideways.

Q.—Sideways? A.—Yes.

Q.—And what did you see then? A.—The fumes.

Q.—The fumes? A.—The fumes or vapors.

Q.—Had they come from the doorway into the west room?
30 A.—Yes, through the north door.

Q.—Through the north door? A.—Yes.

Q.—Had they come completely in? Was there vapor in the west room? A.—Yes, in that end. They weren't all over the room.

Q.—Was the complete north door. . . . You said it was 8 feet square? A.—Yes.

Q.—. . . . filled with vapor? A.—I couldn't see the door by itself.

40 Q.—Well, my question was a little awkward. I mean, was the opening in the wall completely filled, at the point that you have marked as the north door, completely filled with vapor? A.—That is what I am telling you, that I could not see that opening from where I stood.

Q.—Why not? A.—Why not? By posts.

Q.—Will you just indicate on the plan P-7 where you stood when you first saw the vapor which was coming through the north door? A.—When I saw the vapors coming through the north door I was standing right about here.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Mr. Mann:—Mark an "X" there.

The Court:—The "X" marks the spot where the witness says he was standing when he saw the vapors coming through the north door.

10

By Mr. Hackett:—An "X" with a circle around it.

Q.—Now, I ask you, Mr. Frazier, how far, according to you, the "X" that you have placed is from No. 6 filter press?

A.—How far. . . ?

Q.—How far is the "X" which you have put on the plan from the No. 6 filter press? A.—Approximately 10 to 12 feet.

20 Q.—Do you wish the Court to understand that the "X" which you have put on the plan is in your opinion from 10 to 12 feet away from the square that represents on the plan the No. 6 filter press? A.—Yes.

Q.—You do? A.—Yes.

Q.—You know, do you not, Mr. Frazier, that this P-7 is drawn to scale and that one-eighth of an inch represents one foot? I suggest to you that this circled "X" is scarcely a quarter of an inch from the square representing the filter press No. 6? A.—Yes.

30 Q.—Don't you think, then, that you wish to modify the position in which you stated you were when you first saw the fumes coming through the north door? A.—Yes, I told you I was approximately 10 to 12 feet.

Q.—Now, I will ask you, having had that drawn to your attention, if you would be good enough to indicate by "X" where you were when you saw the fumes coming through the north door? A.—To get this right I would have to measure out 10 feet from the end of that press.

40 Mr. Mann:—I am going to object to this, because the admission is that the filter presses are not quite to scale on the plan.

The Court:—The witness was asked when he saw the fumes coming out of the north door. He said he was 10 or 12 feet from filter press No. 6. Filter press No. 6 is not drawn to scale and is not located in exact scale position on the plan P-7. It is futile, therefore, don't you think, to have the witness attempt to scale a position 10 or 12 feet from a filter press which is not scaled?

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Mr. Hackett:—Only, if we are going to take the scale which reflects the dimensions of the room, he must have been farther away from filter press No. 6 than the point indicated by the "X" he has written on P-7.

10 Mr. Mann:—And by that same token, if it is not to scale, he might be closer to the south door.

Mr. Hackett: He has said that he was 10 to 12 feet away from the filter press and I am merely pointing out that if he puts the cross 10 or 12 feet away from the filter press No. 6 it would have to be a considerable distance further than the one he has put.

20 The Court:—If the point is of any real importance, the only way to solve it satisfactorily would be to have a new plan drawn, with the filter presses drawn to scale and in their exact position.

Mr. Mann:—The only accurate evidence with regard to the position of the filter presses is that from No. 6 it was 54 feet to south door.

30 The Court:—In any event, the witness has said he was 10 or 12 feet from filter press No. 6.

By Mr. Hackett, K.C.:—

Q.—In any event, when you saw that the vapor was coming into the west room from the east room, through the north door, can you say if the vapor was coming in through the entire doorway? A.—I could not.

Q.—The vapor that you saw in the west room, at what level was it? A.—Do you mean from the floor to the ceiling?

40 Q.—From the floor, yes? A.—It seemed to be pretty close to the ceiling.

Q.—And did it extend all the way to the floor? A.—Well, I would say about a foot.

Q.—About a foot from the floor? A.—Yes.

Q.—And almost to the ceiling? A.—Yes.

Q.—When you saw that vapor, what did you say to Rymann? A.—When I saw the vapor, I said nothing to anybody. I just looked and, as I looked, the flash came. That is where I "hollered" to them all to run, and then it just started off, a series of things happening one right on top of the other.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Q.—Now, Mr. Frazier, when you say you saw a series of things right on top of each other, have you always said that they happened one right on top of the other? A.—Well, one close to the other.

10 Q.—As a matter of fact, you were at a meeting with Mr. Moffat and with Mr. Parker and Mr. McKeon, I think, in which you told and wrote down exactly what happened, didn't you? A.—I think so.

Q.—And you signed that document and Mr. Moffat signed it? A.—Yes.

Q.—And that was on the 10th day of August, 1942, and it was in these terms, was it not? I am reading:—

20 “August 10th, 1942. Statement of Mr. Frazier Concern-
“ing Accident at Linseed Oil Mill Which Occurred Sunday
“August 2nd. . . .

30 Mr. Mann:—If I am not mistaken, my friend referred to a written statement that the witness made. He is asking him now, three years later, if those were the terms of the written statement. If there is a written statement, I think the statement ought to be before the witness and my friend should ask him if it is the truth but should not read to him something and then ask him to swear, after a lapse of over three years, if he made such a statement, when there is such a written statement extant. There must be or my friend would not know about it. In fact, I think my friend has a copy of it.

Mr. Hackett:—I will ask Mr. Mann, then, if he will be good enough to produce the original statement signed by the witness, Mr. Frazier, in the presence of Mr. Moffat, in the terms of the 15th paragraph of the Plea.

40 Mr. Mann:—If Counsel will declare that he has not got a written statement, I will examine the files with a view to discovering if we have a copy or a duplicate written statement. If Counsel has it, he should not ask me for it.

Mr. Hackett:—My friend is quite wrong there. I submit I am entitled to the written statement which the Plaintiff has, and that is the best proof, and until it is established that that document does not exist I think we should direct our attention to it.

Mr. Mann:—Has my friend the written statement? I am only asking that first.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

By the Court:—Could we clarify that from the witness?

Q.—Mr. Frazier, did you sign one or two statements?

A.—I don't quite remember. I remember signing one.

Q.—Is it possible you signed a duplicate original at the
10 same time? A.—Well, it is possible.

Q.—You are not sure? A.—No.

Q.—But you are sure you did sign a statement? A.—Yes.

Mr. Mann:—I don't want to quibble, — but my friend has set out the whole statement in his Defence. I don't see how he could set out the whole statement in his Defence if he hasn't got it.

20 The Court:—As I understand the evidence so far, this meeting took place with many people present. If a statement of that prime importance were made, written and signed, no doubt more than one person had a copy after the meeting. That would seem the normal procedure. But there must be one original.

Mr. Hackett:—I am asking Mr. Mann if he has the original.

30 Mr. Mann:—I am making no objection to giving it to you. I am merely asking you, Mr. Hackett, to declare you have not got a signed original.

Mr. Hackett:—That is not the point. I am trying to get the document from Mr. Frazier, or from the Plaintiff, and I submit with great deference. . . .

The Court:—Try Frazier first. Ask him.

By Mr. Hackett, K.C.:—

40 Q.—Have you got the document? A.—No, sir, I haven't.

By The Court:—

Q.—Do you know where it is? A.—I couldn't say.

Mr. Hackett:—Then I will ask Mr. Mann if he has the document.

Mr. Mann:—I will say again, if your lordship will permit me, has my friend got the document?

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

The Court:—I presume if Mr. Hackett had the document he wouldn't ask you for it. The situation is this:—Counsel for Defendant has asked Counsel for Plaintiff to produce an important document, a statement signed by one of its officers. If Counsel for Plaintiff has the document, unless he has some objection to its production, I suggest he produce it.

Mr. Hackett:—I must be fair. I have got a signed copy of the document.

The Court:—Then what is the fuss all about?

Mr. Hackett:—The fuss about it is that this document is in the possession, or, the original of it is in the possession of the Plaintiff, and I want to prove it as coming from Plaintiff, to get the full benefit of the fact that it has been in their possession throughout this time. It isn't a matter of the one that I have. I must say quite candidly that I have a copy of it.

The Court:—Unless there was evidence to the contrary, I would assume that plaintiff company had possession of this document or a copy of it which it knew to be a true copy throughout the full period from the meeting to the trial.

Mr. Hackett:—I will ask Counsel for the Plaintiff to exhibit to the Court the original document, if he has it.

The Court:—Would it not suffice if Plaintiff admitted it had that document in its possession from the date of the meeting to the present date?

Mr. Hackett:—I will be quite content with that.

Mr. Mann:—The Plaintiff admits that the document, — subject to the correction of any error in that paragraph of the Defence, — which the Counsel for Defendant has referred to, has been in the possession of the Plaintiff since the date it was written.

Mr. Hackett:—Now, if there is any error in the document which has been copied into Para. 15 of the Plea, I would like to know it, because if I have made an error in a document of that importance I do not wish to benefit by it.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Mr. Mann:—I draw to your lordship's attention that there is before the Court a motion to strike that paragraph from the record, which motion has not been referred to so far. There is before the Court, in the record, a motion which was referred to this Court, to strike that paragraph as being improperly pleaded.
10 It does seem to me, with the greatest respect, that this is an extraordinary way to cross-examine a witness, to cross-examine him from something in the Defendant's Plea, when my friend admits he has a signed copy of the document in his possession.

Mr. Hackett:—That brings us back to where we started from, and again. . . .

The Court:—Surely we are losing time unnecessarily. There is a document made in duplicate originals, two. Both
20 parties to this case have one. Surely to goodness it is possible to compare them and see if they are exactly the same as the reproduction in Para. 15 of Defendant's Plea.

Mr. Hackett:—I have merely asked Mr. Mann to indicate wherein that paragraph errs, because if it is wrong in any way I wish to correct it.

The Court:—I don't understand why there should be a
30 squabble about it. If the witness is to be cross-examined on a statement, even if it were not in the Plea I would ask Counsel to ask the witness if he had made such a statement.

Mr. Mann:—The whole thing arises from the attitude taken by my friend, asking for mine when he has his own, but to save time I will give him mine. I am willing to do that to save time, if it will do my friend any good, but he has got an original in his possession.

40 By Mr. Hackett, K.C.:—

Q.—Will you look at the document which I now hand you, and state if the signature "H. A. Frazier" is yours? A.—Yes.

Q.—And that document was signed in the presence of Mr. Moffat? A.—Yes.

Q.—The manager of the company? A.—Yes.

Q.—The Sherwin-Williams Company? A.—Yes.

Q.—In Mr. Moffat's office? A.—I could not say in Mr. Moffat's office. It was signed in an office in the front.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

Q.—In the front? A.—In the general office.

Q.—In the front of the Sherwin-Williams Company building? A.—Yes.

Q.—And you agree that the statement bears your signature? A.—Yes.

10

The Court:—The document which Counsel for Defence has just shown the witness was handed to him by Counsel for Plaintiff, from Plaintiff's records.

By Mr. Hackett, K.C.:—

Q.—Will you please produce this letter, or, this document, dated August 10th, 1942, as Exhibit D-1? A.—Yes.

20

Mr. Mann:—Now my friend is taking mine away from me and keeping his own original. Will he please give me his original?

Mr. Hackett:—Yes. (Hands Document to Mr. Mann).

Mr. Mann:—I must say, this is roundabout way of cross-examining a witness.

30

The Court:—I trust the wording is the same in both?

Mr. Mann:—I am going to compare them after I have seen the original my friend has given me.

The Court:—It is purportedly the same as the document recited in Para. 15 of the Plea?

Mr. Hackett:—Yes.

40

Mr. Mann:—I presume my friend had it copied from his own original. He didn't have mine to copy it from. Now let us see if what he has given me is a carbon copy, — I find my friend has succeeded in getting my carbon copy and I have now got his original and I will hold on to it. I haven't compared it with the Defence yet.

Mr. Hackett:—If there is any disparity, I want to correct it.

Mr. Mann:—We will compare it later.

HALSEY FRAZIER (for Plaintiff's at Enquête) Cross-exam.

By Mr. Hackett, K.C.:—

Q.—Now, Mr. Frazier, I notice that the document filed as Exhibit D-1, of which I have read the first paragraph, contains this statement:—

10

“I arrived on the third floor of the mill about five minutes
“to 10.

20

“Walked around, glanced at machinery, was running O.K.
“Walked over to press, picked up a bottle, looked at the
“liquid. This was not O.K. to my knowledge, then decided
“to discuss color with man in charge, Mr. Rymann. While
“discussing it I heard a sizzling noise in the bleaching
“room. Was going to walk over to investigate and just as
“I walked towards the place I glanced at the north side
“and saw fumes or vapors, then saw fire and called to
“the men to get out.

“Some were going to the staircase but I said No, the fire
“escape. I went with them.”

That is your statement, Mr. Frazier? A.—Yes.

30

Q.—“As I put my foot on the fire escape, I heard a noise
“like a boom. When we got down to around the second
“storey I heard the second noise. . . .

The Court:—“A” second noise?

Mr. Hackett:—“The” second noise.

The Court:—I am reading from your plea.

40

Mr. Hackett:—That is what I want to correct. I continue:

“I heard the second noise which was louder.

“We stood paralyzed for about two seconds. Could not
“move.

“Went to bottom of ladder and crawled out under plat-
“form to railway tracks.

“The whole thing happened in five to seven minutes at
“the most.”

HALSEY FRAZIER (for Plaintiff's at Enquete) Re-examin.

The Court:—That is the end of the statement?

Mr. Hackett:—That is the end of the statement.

Q.—(Continuing): Was it Mr. Moffat's shorthand writer
10 or stenographer that wrote that out? A.—I could not say. I
think it was a shorthand writer.

Q.—You don't know who it was? A.—No.

The Court:—Was there anybody representing the defen-
dant company at that meeting?

Mr. Hackett:—Yes, Mr. Parker was there and Mr.
McKeon was there.

20 The Court:—Then it wasn't an ex parte meeting?

Mr. Hackett:—No.

Re-examined by Mr. J. A. Mann, K.C.:—

Q.—I only want to ask you one question, Mr. Frazier:—

30 You start your statement by saying, "I arrived on the
"third floor of the mill about five minutes to 10"? A.—Yes.

Q.—That is correct or approximately correct? A.—Yes.

Q.—You arrived at the mill about five minutes to 10. Then
you did this walking through the mill to see if everything was
O.K.? A.—Yes.

Q.—You did the taking of the sample out of the filter and
the examining of it and finding it was dull? A.—Yes.

Q.—With Mr. Rymann? A.—Yes.

40 Q.—You discussed, I think you said, the dullness of the
mixture in the bottle that you had drawn off? A.—Yes.

Q.—And then you wind up your statement by saying, "The
"whole thing happened in five to seven minutes at the most"?
A.—Yes.

Q.—What does that cover? A.—The time I was back down
in the yard.

Q.—From what time? A.—From the time I got off the
elevator.

Q.—From the time you got into the mill until the time you
hustled out of it to the yard? A.—Yes, I went in slow and came
out fast.

ARNOLD RYMANN (for Plaintiff at Enq.) Examin. in chief.

The Court:—5 to 7 minutes?

Mr. Mann:—Yes.

Q.—(Continuing): That is the total time you were in the
10 mill? A.—Yes, approximately that.

And further deponent saith not.

H. Livingstone,
Official Court Stenographer.

DEPOSITION OF ARNOLD RYMANN

20

A witness on the part of Plaintiff.

On this 24th day of October, in the year of Our Lord nineteen hundred and forty-five, personally came and appeared, Arnold Rymann, aged 41, foreman, residing at 1315 Dorchester Street West, in the City and District of Montreal, who having been duly sworn in this case doth depose and say as follows:—

30

Examined by Mr. J. A. Mann, K.C.:—

Q.—Mr. Rymann, you are employed by the Sherwin-Williams Company of Canada Limited? A.—Yes.

Q.—And were you employed by that company on the 2nd of August, 1942? A.—Yes.

Q.—What was your position or the job you held on the 2nd of August, 1942? A.—The same job, the same thing, foreman.

Q.—Foreman? A.—Yes.

40

Q.—Foreman of what? A.—Of the oil mill.

Q.—Foreman of the linseed oil mill? A.—Yes.

Q.—Did you get any instructions from the chemist or from any authority on the morning or prior to the morning of the 2nd of August to bleach or clarify a quantity of turpentine? A.—Yes.

Q.—Just what were the instructions you got and what did you do in conformity with those instructions? A.—Well, the instruction I got was practically the same as I have to make oil.

ARNOLD RYMANN (for Plaintiff at Enq.) Examin. in chief.

Q.—To bleach oil? A.—Yes; and I got it from the chemist, or not exactly from the chemist. I got it the next day from the foreman, from the night foreman. He passed it over to me in the morning.

10 Q.—Who was assisting you in preparing the mixture for the purpose of bleaching, if anybody? A.—I had Henry Asselin. He is the working man around there.

Q.—You were foreman? A.—Yes.

Q.—Do you know personally what went into that tank or container in which the bleaching process was to take place? A.—Yes, sir.

Q.—Well, what did go into it? A.—They put in, to bleach the oil, or, to bleach the turpentine, 200 pounds of Filtrol.

Q.—200 pounds of Filtrol? A.—Yes.

20 Q.—What is that? A.—A bleaching earth.

Q.—And what else? A.—50 pounds of Cel.

Q.—What is that? A.—That is a powder.

Q.—Is it a silica powder? A.—Something like that.

Q.—How do you spell it? A.—It is called Cel.

Q.—In any event, it was 50 pounds of some other kind of powder? A.—Yes.

Q.—You had 250 pounds of chemicals in the tank? A.—Yes, 250 pounds.

Q.—Then what did you put in, in addition to those earths? A.—That is all we put in.

30 Q.—But you put in something to be bleached? You had to put some turpentine in? A.—The turpentine was in. You have to put that in first.

Q.—How much turpentine was in? A.—850 gallons.

Q.—And that was all. — 850 gallons? A.—Yes.

Q.—50 pounds of this Cel you refer to and 200 pounds of bleaching earth? A.—Yes.

Q.—You were there and you know that is what went into it? A.—Yes.

40 By The Court:—

Q.—Can you tell me how to spell Cel?

Mr. Mann:—Mr. Moffat says it is C-e-l.

By The Court:—

Q.—It is a kind of powder, is it? A.—Yes.

ARNOLD RYMANN (for Plaintiff at Enq.) Examin. in chief.

Mr. Mann:—And Mr. Moffat says the name is Filter Cel, which is a trade name, in two words.

By The Court:—

- 10 Q.—50 pounds of Filter Cel? A.—Yes.
Q.—And 200 pounds of bleaching earth? A.—Yes.
Q.—That is also powdery stuff? A.—Yes.

By Mr. Mann, K.C.:—

- Q.—That 200 pounds of material that you put in is called Filtrol? A.—Yes.
Q.—That is a trade name for Fuller's Earth? A.—Yes.
20 Q.—So we have 200 pounds of Fuller's Earth, 50 pounds of Filter Cel and 850 gallons of turpentine in that tank? A.—Yes.
Q.—Then what did you do? A.—What I did?
Q.—Yes, just tell the Court what you did. We want you to tell us. The Court doesn't know and I don't know. Just tell us what you did? A.—We heated up to a certain temperature.
Q.—But you shut the door first? A.—That is put in by a pump.

By The Court:—

- 30 Q.—You don't open the front end of the tank and shovel it in! A.—No, it is put in by vacuum pump.

By Mr. Mann, K.C.:—

- Q.—All the material was put in by vacuum pump? A.—Yes.
Q.—And the door, I take it, on the front of the tank, or container, was shut? A.—Yes.
40 Q.—There is a door across it? A.—Yes.
Q.—And there is a screw wheel on the front of it? A.—Yes.
Q.—And what was done? Was that tightened up? A.—It is always tight. It is closed.
Q.—You don't have to open that? A.—No, you don't have to open that.
Q.—Then what was the next process? You have got the stuff in the tank. You have got the door shut. You have got the material all drawn in by vacuum and it is in there. What happens after that and what happened at that time? A.—This motor starts up; you have this motor going.

ARNOLD RYMANN (for Plaintiff at Enq.) Examined in chief.

Q.—You mean the motor at the back of the tank? A.—Yes. You have to mix up the turpentine and the bleaching earth. You put the steam on.

10 Q.—What is the type of thing that is inside, that does the mixing, — because, if there wasn't something inside, the material would just stay in the bottom? What is it that does the mixing? What does the stirring? A.—There is something like a worm, like an agitator.

Q.—To stir it around? A.—Yes.

By The Court:—

Q.—A shaft with a blade or two blades? A.—Yes, with a blade.

20 By Mr. Mann, K.C.:—

Q.—Then you do what? A.—You put on the steam.

Q.—The steam goes through the pipe "G", I take it?

By The Court:—I don't suppose there will be any discussion as to where the heat goes. As I understand it, he turns on the steam valve to get the jacket filled with steam and he turns on the motor to make the shaft work.

30 Witness:—Yes.

Q.—Which do you do first? A.—After you put in the stuff, you turn on the steam. The motor has to be running to keep mixing the material. That is the first thing you start, to mix up the turpentine and the stuff.

Q.—Is the motor going when you are putting the stuff in? A.—Yes.

40 By Mr. Mann, K.C.:—

Q.—While the stuff is being drawn in, the motor is going and the agitator inside is turning? A.—Yes.

Q.—And mixing everything up? A.—Yes.

Q.—Do you know, — if you don't know, I want you to say so, — do you know at what steam pressure that steam goes in or went in on that day or goes in usually? Give me both. A.—What do you mean by pressure?

Q.—There is a gauge on the steam pipe? A.—Yes.

ARNOLD RYMANN (for Plaintiff at Enq.) Examined in chief.

Q.—Is there any way of gauging the steam pressure that goes into that outside cylinder of the tank, or, that outside jacket of the tank? A.—It is set by this gauge, which I never touch. That was set when the tank was put in.

Q.—It is set at a given number of pounds per square inch?
10 A.—Yes.

Q.—And you don't touch that? A.—No.

Q.—And you did not touch that? A.—No.

Q.—And you didn't look at the gauge? A.—Well, when I looked at the gauge it was mostly between 20 and 25.

Q.—Pounds to the square inch of steam? A.—Well, I just saw 20 to 25.

Q.—Now, having started that operation, how long were you around there in the bleaching room itself? A.—Well, I must have been around there, from the time we started, about
20 half an hour, anyway.

Q.—In the bleaching room? A.—Yes, right at the tank.

Q.—And I think you said you got there at a certain time. About a quarter to 10, did you say, was the time you got there? Or, what time did you say you got there? A.—I am supposed to start work at 7 o'clock in the morning.

Q.—And that would be about what time, that the operation started? A.—The operation was to start around, oh, approximately around 8 o'clock or 8.30.

Q.—8 or half-past 8? A.—Between that time.

Q.—You stayed there about half an hour? A.—Yes. I
30 didn't go right up. I was downstairs to take instructions from the other foreman, the night foreman, what we had to do.

Q.—But you were in the bleacher room about half an hour, weren't you? A.—Yes, before.

Q.—Before the operation started? A.—Yes.

Q.—How long were you in after the operation started?
A.—I stayed right there until everything was ready to go down and turned the valve to let it down to the pump to be put through
40 the filter.

Q.—You stayed there right along? A.—Yes.

Q.—Now, did you go into the filter room, the western room? A.—Yes.

Q.—The filter press room? A.—Yes.

Q.—About what time was that, do you remember? You don't remember? A.—No. It was around half-past 9 or 10 o'clock.

Q.—Half-past 9 to 10 o'clock? A.—Yes, closer to 10 o'clock.

Q.—What did you do when you went into the filter room?
A.—We went in to see how the stuff came out of the filter.

ARNOLD RYMANN (for Plaintiff at Enq.) Examin. in chief.

Q.—Did you go right from the bleaching room where the tank is, into the filter room? A.—Yes.

Q.—Through which door? A.—The south door.

10 Q.—Now, when you left the bleaching room to go into the filter press room, was there anything abnormal going on inside the bleaching room? A.—No, everything was all right.

Q.—When you say everything was all right. . . . A.—Everything was perfect.

Q.—Everything in the room was perfect? A.—Yes.

By Mr. Hackett, K.C.:—

Q.—What door did you say you went through? A.—The south door.

20 By Mr. Mann, K.C.:—

Q.—Then you went over to the filter press? A.—Yes.

Q.—Your object in going there was what? A.—To see how the turpentine comes out of the filter.

Q.—To see how it came out? A.—Yes.

By Mr. Mann:—I take it I can lead the witness to the extent of saying it was No. 6 he went to? A.—Yes, No. 6, that is right.

30

Q.—Who was there at the filter press when you got there, or who went with you there, or who was around the filter press when you went over there? A.—I was there all by myself when I went there first.

Q.—What did you do? A.—I just stood around there and waited till the stuff came out.

40 Q.—Just explain that. What do you mean by waiting till the stuff came out? A.—I stood at the filter press. I sent Henry Asselin down to the cellar to start the filter pump, I went to the filter press and I waited until the stuff came out from the filter.

Q.—Then what did you do? A.—I stood there. I was only there about a few seconds when Mr. Frazier came.

Q.—You were only there a few seconds? A.—Yes.

Q.—Till Mr. Frazier came? A.—Yes.

Q.—Then what did you do with Mr. Frazier, or what did you alone do, or what did Mr. Frazier do in reference to the filter press? A.—Well, the turpentine started running out of there. Of course, it didn't look very nice yet.

ARNOLD RYMANN (for Plaintiff at Enq.) Examined in chief.

Q.—The turpentine didn't look very nice? A.—No.

Q.—What do you mean by that? A.—It didn't look very clear. Mr. Frazier decided to stop the filter and change new cloths, I think.

Q.—He decided to do that? A.—Yes.

10 Q.—Then what happened after that? A.—After that everything went so fast. We were talking there together and, the first thing you know, there was a quick sizzling noise just like some steam pipe or something opening up fast. Then, the first thing, we looked at each other, — we didn't know what it was, — and we saw in the north door a big cloud of steam or vapor, as you call it, coming through there. It was only a matter of two or three seconds. I was looking at Frazier. We were kind of wondering what was it. Then there was a big roar and a quick flash. To me it looked like, first, when I looked through the steam, as if somebody turned off the power, just like when there
20 is lightning, and on again. Mr. Frazier said, "Let's move out of here. Get the fire escape." Everybody moved to get out the fire escape, and when the big explosion happened I was just right on top of the fire escape then.

Q.—You were right on top of the fire escape then?

A.—Yes.

Q.—Where did you go from there? I suppose you went down the fire escape? A.—Sure. I didn't go up.

Q.—You didn't go back? A.—No.

30 Q.—You went down the fire escape? A.—Yes.

Q.—Then, when did you see the premises, — that is to say, the bleaching room, — after that big explosion that you talk about, which happened when you were on the top of the fire escape? A.—The next day.

Q.—Could you describe to the Court the condition of that room? A.—It was an awful room then it is pretty hard to describe the condition of that room then.

40 Q.—I would like you to try to describe it? A.—Nothing left. Well, the way it was, everything was upside down.

Q.—What about the walls? A.—Some of the walls were gone.

Q.—What about the tin cans? A.—They were all over the place.

Q.—What about the tank itself? A.—The tank was still there, but the door was missing.

Q.—Did you find the door? A.—No, I didn't find the door.

Q.—Did you see the door afterwards? A.—Yes.

ARNOLD RYMANN (for Plaintiff at Enq.) Examin. in chief.

Q.—But, when you saw the tank, you say, the door wasn't on? A.—The door wasn't on.

Q.—Was the arm of the door on? A.—I don't think so. I couldn't say for sure. I didn't look that close; I don't remember.

10 Q.—Was there anything broken in the vicinity of the tank?
A.—Do you mean, on the tank? On the tank or anything like that?

Q.—I can't put it to you leadingly. I want to ask you if there was anything broken or disturbed? A.—Some of the connections of the pipes were all broken off, some of the pipes.

By The Court:—

20 Q.—Do you mean the pipes on the tank? A.—Yes, the connections with the pipes.

Q.—Some of them were broken off? A.—Yes.

By Mr. Mann, K.C.:—

Q.—Does this photograph which I show you, which is P-6-a, resemble the condition in which you found the tank, or does it not? A.—Yes, that is right; it does.

Q.—You see where this arm is in that picture? A.—Yes. I remember now.

30 Q.—You see a standpipe behind that tank? A.—Yes; that is the raw oil pipe.

Q.—What is it you were referring to as pipes being broken? A.—This one here.

Q.—You put your thumb on something. You indicate the standpipe with a wheel on it to the left and below.

Did you see the back of the tank? A.—No, I didn't go back there.

40 Q.—You didn't look at the back? A.—No. It was all messed up and I didn't go in the back. I didn't go in the back at all.

Q.—Do you know if there was an aperture in the back of that tank before the trouble?

The Court:—A peephole?

Witness:—Yes.

ARNOLD RYMANN (for Plaintiff at Enq.) Examin. in chief.

By Mr. Mann, K.C.:—

Q.—With a glass? A.—Yes. There is one behind there.

Q.—But you did not look to see the condition of that glass afterwards? A.—No.

10 Q.—And you don't know personally what the condition was afterwards, of that glass? A.—No.

Q.—Are you able to say who in the company, or in the premises, or in connection with this job of purifying turpentine, would be the man who would close that door or see that it was tight or would do whatever would have to be done about it? A.—It is always tight; it is never open.

Q.—Do you know the general construction of that door? Do you know how it is made? A.—No.

20 Q.—I want to show you on the photograph P-6-c the seat of the door. This is the seat of the door. Do you see something there in the seat? A.—Yes.

Q.—What is that? A.—An asbestos packing.

Q.—An asbestos packing: you know that personally? A.—Yes.

Q.—An asbestos gasket? My friend gives me the word. A.—Yes.

Q.—Do you happen to know what was the purpose of that asbestos gasket? A.—My idea, so that no leakage would come out of there, no vacuum leakage.

30 Q.—That is, rather, so that no air would get in? A.—That is right.

Q.—That tank was known as what? What type of tank was that? A.—We called it a bleaching tank.

Q.—But you have already explained to me that there was a vacuum used in it for the purpose of drawing material into the tank, by vacuum? A.—Yes.

Q.—It never was shovelled or poured in through the door? A.—No.

40 Q.—Always drawn in by vacuum? A.—Yes.

By The Court:—

Q.—What was the door for? A.—It is a manhole to let a man clean it out or repair it or anything like that.

By Mr. Mann, K.C.:—

Q.—The manhole, — or door, as we have been calling it, — you say, was never opened to put anything in but was used to

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

let a man go in? A.—Yes, to repair some parts in there or to clean it out, dry it with rags.

Q.—Rags? A.—Yes.

Q.—But, did you use anything on the rags? A.—No.

Q.—Just dry rags? A.—Yes.

10 Q.—I understand that this was the first time that turpentine had ever been bleached in that tank? A.—Yes.

Q.—What was bleached in it before? A.—Raw linseed oil.

Q.—What you would do would be to dry the linseed oil out with rags? A.—Yes.

Q.—Was that done before the turpentine was put in on this occasion? A.—Yes, that was done before.

Q.—That would be done, — without leading too much, — by the man going inside through the door? A.—Pardon?

20 Q.—The man would have to get in through that door and do it? A.—Yes.

By The Court:—

Q.—Was that done the previous day? A.—Pardon?

Q.—The day before? A.—That was done the day before, yes.

Cross-examined by Mr. John T. Hackett, K.C.:—

30 Q.—How long have you worked for the company plaintiff? A.—Nine years.

Q.—Were you working in a linseed oil mill before that? A.—No, sir.

Q.—But your experience in the manufacture of linseed oil and the operation of equipment suited to the manufacture of linseed oil began with your employment with the company plaintiff? A.—No, sir; that is the first time I worked in the place.

40 The Court:—I suggest that you be less polysyllabic, perhaps, Mr. Hackett, and it will be clearer to the witness.

Mr. Hackett:—His lordship means I made a mess of the question, and he is right.

Mr. Mann:—He simply means the words are too big; that's all.

Witness:—That's right.

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

By Mr. Hackett:—I will begin again:—

Q.—You never worked for a linseed oil company before?

A.—No, never before.

10 Q.—You didn't know anything about the machinery used to make linseed oil, before? A.—No.

Q.—So at the time of the accident you had had about 5 years' experience? A.—Yes, I suppose, about 5 years.

Q.—Or, rather, 6 years? A.—Yes, about 6 years.

Q.—And have you been a foreman all that time or have you been advanced? A.—No, I was advanced.

Q.—When did you become a foreman? A.—About two years before that.

Q.—You told the Court that this was the first time that this bleaching tank had ever been used to bleach turpentine?

20 A.—Yes, sir.

Q.—When did you learn first that turpentine was going to be bleached in that tank? A.—Well, it is bleached the same way as the oil is bleached.

Q.—I'm not asking you that, Mr. Rymann? A.—So I never learned before.

Q.—You don't understand the question?

By The Court:—

30 Q.—When did you hear that they were going to bleach turpentine? A.—Well, I heard that a couple of days before that.

By Mr. Hackett, K.C.:—

Q.—A couple of days' before? A.—Yes.

Q.—When did you learn that there was turpentine that needed to be bleached? A.—The morning I came in, Sunday morning.

40 Q.—I haven't made myself understood. You had never seen any turpentine before, that had to be bleached? A.—No.

Q.—When did you find out that the company had turpentine that had to be bleached? A.—That is what I said, two days before.

Q.—I understood you to say that, two days before; you knew you were going to bleach it, — but did you know, before that, that there was turpentine that had to be treated? A.—No, sir.

Q.—So, the first you heard of the company having turpentine that was off color was when you were told there was some to be bleached? A.—Yes.

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

Q.—What was the reason for bleaching it on Sunday?
A.—Because we always work right through on Sunday. What the reason was I don't know, the reason of bleaching it on Sunday.

10 By The Court:—

Q.—Does the plant operate 7 days a week, day and night?
A.—Not always; sometimes.

Q.—Was it unusual for that part of the plant to work on Sunday at that time? A.—No, sir.

Q.—It wasn't unusual? A.—No, sir, we used to bleach on Sundays.

20 By Mr. Hackett, K.C.:—

Q.—Bleach oil? A.—Yes.

Q.—The bleaching operation, — I speak now of the bleaching of the turpentine, — had started before you got to the room in which the tank is? A.—In which the tank is? No, sir, it hadn't started. I was right with the boys when they started.

Q.—Then, the turpentine had not been put into the tank when you got there? A.—Yes; the turpentine was put in the night before by the night foreman.

30 Q.—And the Fuller's Earth, 200 pounds of it, — which is also called Filtrol, — and the Filter Cel, were put in after you arrived? A.—Yes.

Q.—And they were both put in. . . . A.—While I was there.

Q.—By means of the vacuum? A.—Yes.

Q.—When you bleached oil, Mr. Frazier has told us that you turned on the steam after the oil and the earth and the Filter Cel were in the tank? A.—Yes.

Q.—The shaft, the mixing shaft operated by a motor, was set in motion as soon as the oil was in? A.—Yes.

40 Q.—And was in motion when you put in the Filtrol and the Filter Cel? A.—Yes.

Q.—And then, when that was in, you turned on the steam? A.—Yes.

Q.—And the steam went through the steam jacket? A.—Yes.

Q.—And heated the oil and the Filtrol and the Filter Cel? A.—Yes.

Q.—Up to what temperature? A.—Up to 165.

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

Q.—The 165, I think you said, applies to the turpentine. I am talking about the oil now? I am not talking now about the Sunday morning. A.—Linseed oil?

Q.—Yes? A.—That was heated up to 190.

Q.—190. And then you turned off the steam? A.—Yes.

10 Q.—And the agitator, the shaft inside, kept turning for about half an hour? A.—Yes.

Q.—Then you turned it off, and then you immediately let it run into the basement for the purpose of pumping it up into the filter? A.—Yes.

Mr. Mann:—Are you still on linseed oil?

By Mr. Hackett:—Yes:

20 Q.—Do you know if the temperature of the linseed oil became higher than that of 190 or 195 in ordinary course of purifying it? A.—Well, I have seen it up to 200.

Q.—You had a thermometer there? A.—Yes.

Q.—You have seen it up to 200? A.—Yes.

Q.—You have never seen the linseed oil boil? A.—No.

Q.—Do you know what the boiling point of linseed oil is? A.—No, I don't think I do.

Q.—You have never seen it boil? A.—No.

30 Q.—You never saw anything else in tank No. 1 but linseed oil and the other two ingredients, did you? A.—Yes.

Q.—I don't think you understood the question. (Question read): A.—I never saw anything else.

Q.—Except the day the turpentine was put in? A.—That is right.

Q.—Did you ever have any occasion to cool off the oil that was in the tank? A.—No, I never have to.

Q.—How would you do it if you had to do it? A.—Well, to me there is no way to cool it off.

40 Q.—There is no way to cool it off? A.—Just to close off the steam, I guess.

Q.—And you have told us that in the oil operation, the steam was turned off when the temperature of the oil had reached 190 or 195? A.—Yes.

Q.—And that you had seen it as high as 200? A.—That is right.

Q.—But never more than that? A.—That is right.

Q.—On Sunday the 2nd of August, 1942, you received instructions to raise the turpentine to what point of temperature? A.—To 165.

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

Q.—Why was it to be raised to a lower point than the oil, do you know? A.—I don't know why.

Q.—You don't know why? A.—No.

Q.—Were you present when the turpentine and the Filtrol and the Filter Cel reached the temperature of 165? A.—Yes.

10 Q.—Did you look. . . A.—I looked at the gauge, myself.

Q.—And it was then that you shut off the steam? A.—Yes.

Q.—What time was that? A.—That must have been around 20 to 10, or before that, I think; maybe about half-past 9.

Q.—Then the motor was working and the agitator on the shaft was turning? A.—Yes.

Q.—And at what time did you start to draw off the content of the vessel or tank? A.—Well, exactly the time I don't know, myself.

Q.—How long was it before Mr. Frazier came through?

20 A.—What do you mean, how long was it? The first time I saw Mr. Frazier, do you mean?

Q.—Where was he when you saw him first? A.—Over at the filter.

Q.—You had been in what we call the east room, — that is, the room where the tank was, — all the morning from the time that you had started the operation? A.—No, sir. I came in and I was downstairs first and then I went up afterwards.

30 Q.—But, after you came upstairs and after you were present when the Filtrol and Filter Cel were put into the vessel, did you remain in the east room continuously until you went into the west room to see what the filtered turpentine looked like? A.—That is right.

Q.—Well, where did you see Mr. Frazier first that day? A.—Over at the filters.

Q.—Over at the filters? A.—Yes.

Q.—You never saw him in what I am going to call the east room? A.—No.

40 Q.—That is, the room where the tank was? A.—No, I never saw him in it.

Q.—How long before you went into the room where the filterpress was did you start the turpentine running into the basement toward the pump? A.—From the start until it went through the pump?

Q.—You have told us, Mr. Rymann, that you went into the room where the filter press was? A.—Yes.

Q.—And how long before you went into that room did you start the contents of the jacketed bleacher tank running into the basement that they might be pumped up to the filter press?

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

A.—Well, I was about an hour and a half in the tank room, what you call the east room.

Q.—Now, how long before you went into the west room did you start running the turpentine into the basement? A.—I was an hour and a half in the east room and I went right over
10 there afterwards.

By The Court:—

Q.—You have told us that before you went to the filter press you turned the valve to let the liquid go from the bleaching tank to the pump in the basement? A.—Yes.

Q.—After you turned the valve to let the liquid go from the tank to the basement, how long did you stay in that same room? A.—Oh, next to the tank I stayed about three or four
20 minutes, and then I went over to the other side.

Q.—You stayed there three or four minutes to let it go down to the pump and come up to the press? A.—Yes. I sent Henry Asselin down to the pump first.

By Mr. Hackett, K.C.:—

Q.—Did you send Henry Asselin to the basement before you turned the valve to let the turpentine run into the basement or after you turned it? A.—No, I turned it before.
30

Q.—You turned it before? A.—Yes.

Q.—Then you sent Henry Asselin to the basement?
A.—Yes.

Q.—To start the pump? A.—Yes.

Q.—Had Henry Asselin come back to the top floor before you went into the west room? A.—No, I was in there all by myself before he came back up.

Q.—And the first person to join you in the west room was Henry Asselin or Mr. Frazier? A.—The whole bunch were together. Mr. Asselin and Mr. Frazier and some of the boys came
40 up in the elevator.

Q.—They came up in the elevator and went through the east room where the tank was? A.—Yes.

Q.—So you were alone at the No. 6 filter press when Mr. Frazier, Mr. Asselin and some others came too together: is that what you want to say? A.—Yes.

Q.—Mr. Frazier, Asselin, Gosselin, Dufault, Bizzell, Durocher, and I understand someone else, all came in together: is that right? A.—No Dufault was over at the No. 2 filter.

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

Q.—That is, in the west room? A.—Yes; and Aimé Hotte.

Q.—What were they doing at No. 2 filter? A.—They were working their filters or cleaning them.

Q.—Cleaning them? A.—Yes.

10 Q.—I understand you were at no time alone in the west room. You were alone at filter No. 6, but there were two other men in the room? A.—Yes.

By Mr. Mann, K.C.:—

Q.—They were cleaning the second filter, you say? A.—
No. 2.

By Mr. Hackett, K.C.:—

20 Q.—Do you remember anybody else who was there?

A.—No.

Q.—So then Asselin, Gosselin, Durocher and Bizzell all came up with Mr. Frazier? A.—Yes.

Q.—Why did they do that? A.—I never asked them why they did that. It is because they were supposed to.

Q.—Was it because it was something in the nature of an experiment? Was it something that everybody was interested in because it was the first time turpentine had been bleached there?

30 A.—No; they were working. They were bringing up turpentine in drums in the elevator.

Q.—They hadn't any business in at the filter? A.—No.

Q.—Why did they go in there? A.—Henry Asselin runs the filter. They were with him.

Q.—Asselin runs the filter, — but why did Gosselin go along and why did Bizzell go along? A.—I guess that is their habit when they meet him. I never asked them why they came over there.

40 Q.—You don't have men running around the plant just for the fun of it? A.—No.

Q.—You cannot give any reason for their presence at the filter, where they had no work to do? Do you shake your head, Mr. Rymann. Do you mean No? A.—No, I have no reason why they came over there.

Q.—Now, you had looked at the turpentine which had been through the filter, had you not, when Mr. Frazier arrived? A.—The stuff started to drop out when Mr. Frazier came up.

Q.—That means that the pump had been started and the commodity was being forced through the filter? A.—Yes.

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

Q.—And did you have a chance to look at any of it, yourself, before Mr. Frazier looked at it? A.—No, sir.

Q.—Mr. Frazier was the first to look at it? A.—While we were all there, yes.

Q.—And you could all see that the color was not right?
10 A.—Yes.

Q.—And it was then Mr. Frazier sent Henry Asselin to the cellar to turn off the pump? A.—Yes.

Q.—Now, when did you hear the sizzling? A.—Henry Asselin was back up again. We all stood at the filter.

Q.—Who heard the sizzling first? A.—I wouldn't know that; I didn't ask them.

Q.—You heard it? A.—Yes. I suppose everybody heard it at the same time.

Q.—How long did it sizzle? A.—Not very long.

20 Q.—What did you say when you heard it? A.—We were looking at Mr. Frazier. I said to Mr. Frazier I thought it was only a steam pipe or a valve cracked open or something.

Q.—You said? A.—Yes.

Q.—What did Mr. Frazier say? A.—He said he wouldn't know.

Q.—Then what did you do? A.—We just looked; we were looking at each other. and the first thing you know, there was like a roar, a big crash and a quick flash, and Mr. Frazier said, "Get out".

30 Q.—You did not attempt to go toward the south door? A.—For a minute I told Mr. Frazier, "I think I will go and see "what it is"; but I got no chance to go.

Q.—Did you start to go toward the south door? A.—About a step or two.

Q.—Well, do you want to limit it to a step or two, or did you make some appreciable advance toward the south door? A.—You mean, how far?

40 Y.—How far did you get toward the south door? A.—Well, about from here to the window.

By The Court:—

Q.—A matter of six feet or so? A.—That's about all, two steps, just a couple of steps.

By Mr. Hackett, K.C.:—

Q.—What did you see that caused you to stop your progress toward the south door? A.—The door was full of steam.

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

Q.—Which door? A.—The south door.

Q.—The south door was full of steam, — and it was because the south door was full of steam that you turned about?
A.—No, I think it was Mr. Frazier said.

10 Q.—To turn about? A.—No, he said to get out, at the time of the roar and the flash.

Q.—When you say the south door was full of steam, I am told that the south doorway, the hole in the wall, was 8 feet square? A.—Yes.

Q.—It was 8 feet wide and 8 feet tall? A.—Yes.

Q.—Do you know what the distance is from the floor to the ceiling in that room? A.—No, I could not tell you.

Q.—I think somebody here said it was 17 feet? A.—17 feet? I could not tell you how high it is. It is fairly high.

Q.—It is pretty high? A.—Yes.

20 Q.—What I want to know, Mr. Rymann, is whether the steam or the vapor which came through the south door went above the level of the top of the door? A.—No.

Q.—It didn't? A.—No.

Q.—Did it come through on the level of the floor? A.—Half ways from the floor and down. There was more down.

Q.—Well, was the top part of the opening filled? A.—Yes, but it was still clear.

Q.—You could see, but it was there? A.—Yes, sir.

30 Q.—Then, if I have understood you correctly, the whole doorway was filled with vapor, but it was thicker. . . . A.—in the lower end.

Q.— . . . towards the bottom? A.—Yes.

Q.—Did you look at the north door? A.—No, not then.

Q.—When did you look at the north door? A.—The first time the sizzling noise happened.

Q.—And it was after you had looked at the north door and had started toward the south door that you saw the south doorway was filled with vapors or steam? A.—Yes.

40 Y.—Did you look again to the north door to see if it was filled with vapor or steam? A.—No. Mr. Frazier said we had better get out so I went out and I never looked back again.

Q.—When you noticed the vapor, — or, steam, as you call it. — did you hear a noise before you got to the fire escape? A.—Yes.

Q.—Were you ahead of or behind Mr. Frazier? A.—I was behind Mr. Frazier.

Q.—You were behind him? A.—Yes.

Q.—You were the last man out? A.—Yes.

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

Q.—Had the smoke, or, the vapor, got to the point where it was in contact with you as you went toward the fire escape?
A.—No, sir, it wasn't I didn't see it, no.

Q.—Who was the first man to go down the fire escape?
A.—I wouldn't know. I never even looked.

10 Q.—Was the door to the fire escape open? A.—Yes.

Q.—And the fire escape is outside the building, in the open? A.—Yes.

Q.—It is unprotected by any roof? A.—Yes.

Q.—You mean, there is no roof? A.—That is right.

Q.—Then did you hear a second boom or noise after you got to the fire escape? A.—Yes, when I got to the top of the fire escape just outside, there was a big explosion then.

Q.—That was the biggest noise? A.—Yes.

20 Q.—First there was the sizzling, and after that you saw the vapor? A.—Yes.

Q.—And you turned around and went toward the fire escape. . . .

Mr. Mann:—No, — went toward the south door.

Witness:—Went towards the south door.

By Mr. Hackett, K.C.:—

30 Q.—You went toward the south door? A.—Yes.

Q.—And then you saw vapor in the south door? A.—Yes.

Q.—And then you went toward the fire escape? A.—Yes.

Q.—When did you hear the first noise after the sizzling?
A.—After the sizzling, yes.

Q.—But, how near the fire escape were you when you heard the first noise after the sizzling? A.—About 20 or 25 feet away from it.

40 Q.—Away from the fire escape? A.—Yes, in the room yet.

Q.—And then, when you heard the big noise, where were you on the fire escape? A.—Right on top, had just come outside the door.

(It now being 4.30 p.m. on this 24th day of October A.D. 1945, Court is adjourned until 10.30 a.m. October 25th, 1945).

And further for the present deponent saith not.

H. Livingstone,
Official Court Stenographer.

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

OCTOBER 25th, 1945, 10.30 A.M.

At 10.30 on the 25th day of October, A.D. 1945, Court reassembles, and the examination of the witness above-named is continued under the same oath as follows:—

10

Cross-examined continued by Mr. John T. Hackett, K.C.:

Q.—Mr. Rymann, at the risk of repetition, will you say at what time you first went into the east room where the tank was, on the Sunday morning? A.—About 7.30.

Q.—And did you remain there constantly until you left to go into the west room when the pumping was started? A.—Yes, I was around there I was around the top floor, the east room and the west room, back and forth.

20

Q.—You spoke of the cleaning of the tank after it had been used for oil and before it was used for turpentine. When did that cleaning take place? A.—I don't know for sure. That wasn't done on my shift. It was done on the shift the night before.

Q.—You don't know anything about it? A.—They told me it was cleaned before.

Q.—But you don't know when? A.—No, I don't.

Q.—And you don't know if it was cleaned? A.—Yes, I know, because they told me it was cleaned before.

30

Q.—Who told you? A.—The night foreman.

Q.—What was his name? A.—Mr. Piché.

Q.—What does he do? A.—He does the same as I do. He is the night foreman there.

Q.—You were present in the east room when the turpentine and the Filtrol and the Filter Cel were put in? A.—When the Filtrol and the Filter Cel were put in.

Q.—The turpentine was put in the night before, I believe? A.—Yes.

40

Q.—Were you present when the steam was turned on? A.—Yes.

Q.—Were you present when the steam was turned off? A.—Yes, I was there too.

Q.—Were you present when the valve No. 3 on Exhibit P-8 was closed, which was the connection from the vacuum pump to the vessel? A.—Yes, I was there.

Q.—And were you there when the vent called Air Release Line was opened? A.—Yes, I was there too.

Q.—Will you point out, please, where that valve is on the plan P-8? A.—Which one?

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

Q.—The valve which was on the Air Release Line? A.—
This one here.

Q.—Will you indicate where the valve was on the air
release line and mark it with red pencil? A.—The air release
valve?

10 Q.—Yes, — that is the valve which opened the pipe which
would let air into the tank, or, as somebody has said, let out the
vacuum? A.—O.K. (Marks Air Release Valve).

Q.—You have indicated that valve by a red mark, and
we are going to call it, if you are willing, Valve No. 5? A.—Yes.

Mr. Hackett:—Now I want to ask Mr. Frazier if he made
a mistake, or let Mr. Mann ask him.

20 Mr. Mann:—It is clear there was a mistake. It has been
explained by this witness.

(The previous witness, Halsey Frazier, being present in
Court, says that valve No. 4 should have been indicated where
the witness Arnold Rymann indicates it as valve No. 5, it being
the valve on the air release line).

The Court:—So that valve No. 4 should be eliminated?

30 Mr. Hackett:—Yes.

The Court:—As far as Frazier's evidence is concerned?

Mr. Hackett:—Yes.

Mr. Mann:—It was simply a mistake: he put it at a joint
instead of a valve.

By Mr. Hackett, K.C.:—

40 Q.—You were present when this valve No. 5 was opened?
A.—Yes.

Q.—And did anybody shut it while you were present?
A.—No, nobody shut it.

The Court:—I suppose it would be technically correct to
say it allows air to go into the vacuum?

Mr. Hackett:—Yes, and does away with the vacuum which
is in the tank.

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

The Court:—It is hard to describe just what you do with a vacuum, but the opening of the valve lets the air into what was previously a vacuum.

Mr. Hackett:—That is right.

10

Q.—(Continuing): Did you say that you were present, Mr. Rymann, when the turpentine was put into the tank the night before? A.—No, sir.

Q.—Do you know who did put in that turpentine the night before? A.—Well, the night foreman put it in with his men, you see, the night before.

Q.—That is, Piché, and who else? A.—I have just forgotten the names. I think the boys are gone from there. Armand Fugere, it was.

20

Q.—Now, can you say whether that turpentine was put in from drums on the floor, on the third floor? A.—I wasn't there I can't say, but it is supposed to be put in by drums.

Q.—Which were brought to the third floor? A.—Yes.

Q.—On the elevator? A.—Yes.

Q.—And that differed a little bit from the way of loading the oil, in the case of filling the tank with oil, — because that was brought up by pump from the basement? A.—Yes.

Q.—So, when the turpentine was put in, it came up in drums and was loaded into the tank from the third floor?

30

A.—Yes.

Q.—When oil was put in, — and the tank had always been used for oil previously, — it came up through a pipeline from the basement or a lower floor? A.—That is right.

By Mr. Mann, K.C.:—

Q.—But you were not there when it was done? I mean the turpentine. A.—No; it was done the night before.

40

By Mr. Hackett, K.C.:—

Q.—You saw the empty drums about when you did get there on Sunday morning? A.—No, there were no empty drums around there; they were downstairs yet.

By Mr. Mann, K.C.:—

Q.—They were downstairs “yet”? A.—They were taken down during the night, right away, I think.

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

By Mr. Hackett, K.C.:—

Q.—Now, knowing the machinery and knowing the way the operations are carried out, would you say how the turpentine was got into the tank? Was it poured in? A.—No, it
10 was pulled in.

Q.—Pulled in how? A.—By vacuum.

Q.—Through a hose? A.—No, through the pipe.

Q.—How would you get the drum under the pipe? A.—
You connect it. You connect the pipeline there with an elbow
on; you stick it into the drum.

Q.—Was it a metal pipe that was stuck into the drum?
A.—Yes.

Q.—Into the drum of turpentine? A.—Yes.

Q.—There was no rubber hose used? A.—No.

20 Q.—During the morning, Sunday morning, the second of
August, was there any leakage around the head of the tank,
around the manhole? A.—I would n't know. I didn't check that.

Q.—You didn't check that? A.—No.

Q.—You wouldn't know? A.—No.

Q.—Who would know? A.—Well, Mr. Asselin would
know. Maybe he would know.

Q.—I understood you to say that on that morning Asselin
was performing the operation? A.—Yes.

30 Q.—And he was helped by Gosselin? A.—Yes; Gosselin
was his helper, rolling the drums and stuff around there.

Q.—Was there anybody else in the east room helping As-
selin? A.—Not that I know, no.

Q.—Not that you know? A.—No.

Q.—And then, when you went into the west room, you were
alone, with the exception of the two men who were working at
press No. 2? A.—Yes.

40 Q.—So, then, when Asselin and Gosselin joined you at
the filter press No. 6, there was no one left in the east room but
Marier? A.—That is right.

Q.—What was Mr. Marier's duty? A.—He was running
a flax cleaner, what they call a "shaker".

Q.—A flax cleaner known as a "shaker"? A.—Yes.

Q.—And he had nothing to do with the bleaching of this
turpentine? A.—No, sir.

Q.—He had nothing to do with the tank No. 1? A.—No.

Q.—So, everybody who had anything to do with the tank
No. 1 in which the turpentine was being bleached was in the west
room with you? A.—Yes.

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

Q.—You said, yesterday, that the steam was turned off in the jacket, if my memory serves me well, about 9 o'clock: is that right? A.—Approximately, around there. I didn't check the time exactly. It might have been maybe a little bit before 9 o'clock.

10 Q.—And then the agitator went on for about how long?
A.—Oh, about half an hour.

Q.—Half an hour, — and then that was stopped? A.—
Yes.

Q.—It was. . . .

Mr. Mann (To Witness):—You look as if you want to say something.

20 Witness:—That wasn't stopped. That keeps on turning till the tank is empty. I made a mistake there.

Mr. Mann:—I thought so.

By Mr. Hackett, K.C.:—

Q.—So the agitator was going, so far as you know, when you left the room? A.—Yes, it was.

Q.—What were you doing from the time the steam was turned off until you went into the west room? A.—I stayed around in front of the tank.

30 Q.—Stayed around in front of the tank? A.—Yes.

Q.—What was in front of the tank? A.—A few drums there.

Q.—What had been in the drums? A.—There was turpentine in the drums.

Q.—Were they open? A.—No, they were not open.

Q.—How many drums of turpentine were there? A.—Exactly I could not tell you how many, but to my knowledge I guess about 20 maybe.

40 Q.—About 20. And did you intend to load them in a second batch later on? A.—Well, after this batch went off, yes.

Q.—I suppose there is a certain amount of turpentine on the outside of a drum of turpentine? A.—What do you mean, outside?

Q.—Well, when you have an oil barrel there is generally something in the nature of a film of oil or something like that on the outside of it? A.—Outside the barrel?

Q.—Yes? A.—I wouldn't know. I didn't touch the barrels or drums at all. I didn't look at it that close to check.

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

Q.—I am asking you if that is not so, generally? A.—There might have been.

Q.—When you take hold of a drum to handle it, there is something on your hands afterwards, isn't there? A.—Sure.

10 Q.—Now, what is it that is on your hands after you handle a drum? A.—It all depends. There is dirt sometimes.

Q.—But there is something moist on the outside, isn't there? A.—I will tell you, we keep the drums pretty clean over there. It is mostly wiped off. You can lift a good many drums over there and you don't even get your hands messy.

Q.—I am just putting it to you as to whether or not on the outside of an oil drum. . . .

Mr. Mann:—Don't let us have an oil drum.

20 Mr. Hackett:—Have you an objection?

Mr. Mann:—I object to any discussions about films on oil drums, as there was no evidence of oil drums here.

The Court:—I think Mann's point is right, Mr. Hackett. If it is true that when oil drums are filled with oil it is customary to find some oil on the outside, that would not help us with regard to turpentine. There might be oil on the outside of an oil drum and not turpentine on the outside of a turpentine drum.

30

By The Court:—

Q.—Did you handle any of those turpentine drums yourself? A.—No.

Q.—You didn't have occasion to lift them or touch them at all? A.—No.

40 Q.—How long would the operation of refining 850 gallons of linseed oil take? You don't know about turpentine, because you never had it before. But one load of linseed oil in the tank would take how long? A.—I reckon, — it all depends on what kind of oil you make, — I guess I could say about four hours.

Q.—You do 850 gallons in about four hours? A.—Yes.

Q.—I am not tying you down to a definite period, — but that is about it? A.—Yes.

Q.—Did you expect to take about the same time with the turpentine? A.—Yes.

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

By Mr. Hackett, K.C.:—

Q.—When you became a foreman you got an increase in salary, I suppose? A.—Do I have to answer that? Has that anything to do with this?

10 Q.—Well, I hope you did? A.—Yes, sir.

Mr. Mann:—I enter a formal objection to the question.

The Court:—If he didn't say anything about it I would assume he got an increase in salary. When you are made foreman, I suppose in 999 cases out of a thousand you get an increase in salary.

By Mr. Hackett, K.C.:—

20

Q.—How many increases in wages have you had since the 2nd of August, 1942?

Mr. Mann:—I am wondering if we are not going too far.

The Court:—The objection is maintained. What the witness did or what happened since the second of August is obviously irrelevant.

30

Mr. Hackett:—I suppose, my lord, that, your lordship having ruled upon the objection, I should not discuss it, but I am going to ask if I could draw the Court's attention to Paragraph 16 of the Plea, in which it is alleged that there is an agreement between the Plaintiff and the fire insurance companies.

Mr. Mann:—Yes.

Mr. Hackett:—The agreement is not in yet.

40

Mr. Mann:—Didn't I give it to you?

Mr. Hackett:—Yes, but there is no date on it. I want to get the date.

Mr. Mann:—I can't give you the date.

Mr. Hackett:—I will get it from Plaintiff.

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

Mr. Mann:—My lord, there was a series of twenty-two or twenty-three letters which the companies wrote to the plaintiff company. My friends asked for a copy of them. I can't ask for a copy of them from all these companies. The letters were written and the cheques sent at different dates. I am prepared to
10 admit the letters were all sent with the remittances in an ambit or an approximate ambit of time. That's all I can do, unless my friend insists I collect twenty-two letters. I think he would have to subpoena the companies.

Mr. Hackett:—No, I will subpoena the company that got the letters.

Mr. Mann:—They are contracts, you know.

20 The Court:—Would it perhaps not suit your convenience, Mr. Hackett, and meet your requirements, if Mr. Mann gave you a statement of the dates upon which a letter similar to the copy which is here was received from the various companies?

Mr. Mann:—I will do that with pleasure.

The Court:—The dates on which letters similar in terms to this letter were received from the various companies, and the
30 amounts.

Mr. Hackett:—With regard to the point of my question to Mr. Rymann, I want to say that there is an agreement between the plaintiff company and the insurance companies and there is a point which I think justifies the question which I have asked Mr. Rymann.

The Court:—About what?

40 Mr. Hackett:—The question I asked him about an increase in his salary.

The Court:—Let me see that letter.

Mr. Mann:—Before your lordship looks at the letter, I would like to ask Mr. Hackett this question:—Would it be satisfactory to you, Mr. Hackett, if I had Mr. Moffat write on to this document and sign it, — I take it you would like it signed, — the dates and the names of each of the companies from whom

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

the remittances were received and the date of the accompanying letter? Is that what you want?

Mr. Hackett:—Yes.

10 The Court:—I have now looked at this letter and I do not quite see how it would justify the question to the witness. Would you expatiate on that, Mr. Hackett?

Mr. Hackett:—It has been stipulated here that the testimony shall not avail against the plaintiff company in another case, and the fact that the witness has received an increase in wages is a matter which may have a bearing upon his testimony in its appraisal.

20 Mr. Mann:—I am content to leave the objection with the Court.

By The Court:—In view of the representations made by Counsel for the Defendant with regard to the Court's previous ruling on objection to a question as to the increase in wages witness may have received after the incident in question, the Court puts the following questions to the witness:—

30 Q.—On the 2nd of August, 1942, how long had you been working for the company? A.—1942? I was there since 1936, — six years.

Q.—You joined the company in 1936? A.—Yes.

Q.—As what? A.—As a laborer.

A.—As a laborer? A.—Yes.

Q.—When did your status change? That is, when did you get your first promotion? A.—A couple of years after.

Q.—That would be about 1938? A.—Yes.

40 Q.—What was your title then? A.—Well, say foreman then.

Q.—That involved an increase in pay, of course? A.—Yes.

Q.—When was your next promotion after 1938? A.—I am the same ever since.

Q.—You are the same ever since? A.—Yes.

Q.—Did you get an increase in pay between 1938 and 1942? A.—No, sir.

Q.—Between 1938 and August 2nd, 1942? A.—No, sir.

Q.—Did you get an increase in pay from August 2nd, 1942, until the present date, now? A.—Yes.

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

Q.—How many 'increases? A.—I don't know for sure how many. I think it is about a couple.

Q.—What is the difference in your pay as it was on August 2nd, 1942, and what it is now? A.—About ten cents an hour difference.

10 Q.—10 cents an hour more than it was? A.—Yes.

Q.—Do you happen to know if in other plants there has been an increase in pay corresponding to yours, or is yours a special case? A.—No, I don't know.

Q.—The gist of it, then, is that you have received an increase or perhaps two increases amounting in all to 10 cents an hour more than you had on August 2nd, 1942? A.—Yes.

Mr. Mann:—Perhaps your lordship might ask him when did he get the last one.

20

By The Court:—

Q.—When was your last increase, Mr. Rymann? A.—Well, that was when. . . The last one was when the Government put the 10 cents on it.

Q.—Put the 10 cents on it? A.—Yes.

Q.—What do you mean by that? A.—What you call this living bonus, you know.

30

The Court:—As you know, Mr. Mann, you are entitled to object to the questions the Court put, if you wish.

Mr. Mann:—I have no objections to any questions the Court has put to date, not the slightest.

By Mr. Hackett, K.C.:—

40 Q.—Mr. Rymann, you made a written record of what happened at the plant on the morning of the 2nd of August, did you not? A.—I think I did. I don't know.

Q.—Yes, you did. I am informed that on the 10th of August, 1942, you made a written statement and signed it in the presence of the manager of the company, Mr. J. S. Moffat? Do you recall that? A.—Yes.

Mr. Hackett:—Will Mr. Mann be good enough to let me see the statement?

Mr. Mann:—Yes, with pleasure, Mr. Hackett, in exchange

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

for your original. Here is the carbon copy, Mr. Hackett. We will keep the original. (Hands Document to Mr. Hackett).

By Mr. Hackett, K.C.:—

10 Q.—Will you look at the document which I now show you, and will you say if the signature “A. Rymann” is your own?

A.—Yes, sir.

Q.—And you recognize the signature of Mr. Moffat as a witness to it? A.—Yes.

The Court:—Might I see a copy of that before you continue? (Document is handed to the Court).

By Mr. Hackett, K.C.:—

20

Q.—Will you please file this statement dated August 10th, 1942, signed “A. Rymann”, “Witness, J. Moffat”, as D-2? A.—Yes, sir.

By The Court:—

Q.—On looking at this statement I find a person referred to as “Henry”. That is Asselin, I suppose, Mr. Rymann? A.—Yes.

30

By Mr. Hackett, K.C.:—

Q.—Do you remember in whose office this document was signed? A.—No, I don't think it was one of the offices up there. I never get up there much. I know it was on Centre St.

Q.—At the place of business of the plaintiff company, Sherwin-Williams? A.—Yes.

40 Q.—And this document is dated August 10th, 1942, and is called “Statement by Mr. A. Rymann Concerning Accident At “Linseed Oil Mill, Which Occurred Sunday August 2nd “Came in 15 minutes before explosion, approximately “9.45.”

Q.—I am asking you about that statement, Mr. Rymann, because it seems to conflict with the statement that you have made in this Court as to the time you came in? It isn't a matter probably of great importance. But which is more apt to be correct, — the statement that you made ten days after the event, or, at least, a week after the event or eight days after the event, or your memory of today?

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

By Mr. Mann, K.C.:—

Q.—Do you understand the question?

Mr. Hackett:—Just a minute.

10

Witness:—Not exactly.

Mr. Mann:—I knew he didn't understand it. I did understand.

The Court:—I think the question should be put a little more simply.

By Mr. Hackett:—Possibly I can do that:—

20

Q.—I read from the document:—"Came in 15 minutes "before explosion, approximately 9.45".

You came in where at 9.45?

A.—Well, that must have been because I was the last couple of hours on the top floor, the third floor, anyway, back and forth.

30 Q.—You have stated in the memorandum that you came in at 9.45? A.—That is so.

Q.—I asked you, where did you come in at 9.45? A.—Into the tank room again, the east room.

Q.—You came into the tank room at 9.45? A.—Yes.

Q.—Where did you come from? A.—Well, I came from the west end, the west room.

Q.—The west room? A.—Yes.

Q.—And the only way you could get into the west room was from the tank room or east room? A.—Yes.

40 Q.—I read again to you your statement: "Came in 15 "minutes before explosion, approximately 9.45." Now, I ask you what room you came into at 9.45? A.—Well, to me, I must still say I came into that room.

Q.—Into what room? A.—The east room.

Q.—That is, the room where the tank was? A.—Yes.

Q.—At 9.45? A.—Yes.

Q.—And where did you come from? From what room did you come, into the tank room? A.—I said from the west room.

Q.—You came from the west room? A.—Yes.

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

Q.—But the only way you could get into the west room was from the tank room or east room? A.—The only way I could get into. . . . ?

Q.—The only way you could get into the west room was from the east room where the tank was? A.—Yes, or else come
10 up on the fire escape and get in that way too.

Q.—Did you come up on the fire escape? A.—No, sir.

Q.—So you want the Court to understand that when you said in your statement that you “came in 15 minutes before “explosion, approximately 9.45” you meant that you came into the tank room, or, the east room, from the west room? A.—Yes.

Q.—You don’t think that you really came into the tank room from below at 9.45, do you? A.—Well, I don’t think so, because I was up there.

Q.—But the refining operation was being carried on in
20 the east room and the west room, was it not? A.—Yes.

Q.—The turpentine was being heated and mixed with Filtrol and Filter Cel in the east room and being filtered in the west room? A.—Yes.

Q.—And you were in charge of both operations? A.—That is right.

Q.—And you were making a report on the “accident at “linseed oil mill, which occurred Sunday August 2nd”, were you not? A.—Yes.

Q.—And the opening paragraph is, “Came in 15 minutes
30 “before explosion, approximately 9.45”? A.—Yes.

Q.—And you want the Court to understand that that refers to your entrance into the tank room from the fliter room? A.—That is right.

Q.—You say that under oath? A.—Yes.

Q.—What was the first time that you went into the filter room on the morning of the 2nd of August, 1942? A.—Well, I wouldn’t know exactly that. I went back and forth. I am all over the place, anyway.

Q.—But you have explained to us, Mr. Rymann, that this
40 particular operation had reached the point of filtering and that, after you had sent Henry Asselin to the basement to start the pump, you went into the west room to take a sample of the turpentine? A.—Yes.

Q.—And you said that you got there just as the turpentine began to flow through the filter? A.—Yes.

Q.—Now, what reason had you to go into the west room before the turpentine got to the filter? A.—Well, I had lots of reasons to go around there, because I am foreman there.

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

Q.—Then your statement proceeds, “Was over at tank, “looked at it, temperature was up to 165. Sent Henry “down to the pump to start it. Stopped close to filter while “he went down to pump. Stayed at filter until explosion “happened.”

10

And in the face of that statement, Mr. Rymann, do you wish the Court to understand that you had been in the west room before the events that you have told about in this paragraph happened? A.—What do you mean, before?

Q.—Well, you have told in your written statement exactly what you did on that Sunday morning. You said that you came in at 9.45, and you proceeded, as I understand your statement, to stay exactly what you did? A.—Yes.

20 Q.—And that at a certain point you went into the filter press room? A.—Yes.

Q.—Or, the west room? A.—Yes.

Q.—You now say that you had gone into the press room previously that morning? A.—Well, I had been back and forth before, sure.

Q.—Then you want the Court to understand that you had been on the third floor before 9.45 that morning? A.—Yes.

30 Q.—“I stayed at the filter and watched it come up, looked “at it and stayed five minutes or so. All at once Mr. Frazier walked in. He was telling me the stuff did not look “very good and decided to stop the pump and change “cloths. Henry stopped the pump”, — that is, he went to the cellar or to the basement? A.—Yes.

Q.—Under whose instructions? A.—Mr. Frazier told him to go down and stop it.

Q.—“We waited until everything stopped and then figured “would change the cloths in the filter.”? A.—Yes, sir.

40 Q.—Now, when you decided to change the cloths, who was present about filter press No. 6? A.—Mr. Frazier was there and the rest of the boys.

Q.—And all the boys mentioned before: Durocher, Dufault, Bizzell, — and there was one Boucher too? A.—Yes.

Q.—I couldn't remember his name yesterday.

“All of a sudden we heard a sizzling noise like a steam “valve breaking. Saw steam coming around the north “door. . . .

You said, yesterday, you saw it coming around the south door? A.—It came around the north door first.

ARNOLD RYMANN (for Plaintiff at Enq.) Cross-examination

Q.—Do you recall that you told us yesterday that you saw it coming around the south door? A.—I told you, yesterday, it came around the north door first and around the south door afterwards.

Q.—That is your recollection of what you said yesterday?
10 A.—Yes.

Mr. Mann:—That is mine.

By Mr. Hackett, K.C.:—

Q.—The statement goes on: “. . . coming around the north door and figured would walk to the south door to see what was the matter. The doorway was full of vapors.”

20 Now, I understand that both doorways were full of vapors: is that correct? A.—Yes.

Q.—“Saw a big flash like fire.” That is what you saw?
A.—Well, a quick flash like lightning.

Q.—I am asking you if you saw “a big flash like fire”?
A.—I can't say like a fire, just like lightning.

Q.—Why didn't you put “lightning” in your statement?
A.—Well, it's my saying, maybe that's what it is.

30 Q.—“We had to get out by fire escape.
“While out on the fire escape heard an explosion.
“Did not wait but went downstairs and saw that walls had fallen.
“I left building last. Henry was in front of me.
“Explosion took place while I was at filter press.
“Was just starting down fire escape when second explosion occurred.”

40 So, then, you had left the filter press and gone toward the south door after the first explosion took place: is that what you want to say? A.—No I just took a couple of steps when it happened, and Mr. Frazier told us to get out of fire escape, and we moved out.

Q.—That was after you had heard the sizzling? A.—That was after we heard the first roar.

Q.—After you had heard the sizzling? A.—Yes, it was after the sizzling too.

Q.—First you heard the sizzling? A.—Yes.

ARNOLD RYMANN (for Plaintiff at Enq.) Re-examined.

Q.—Then you saw something? A.—I saw a roar and a flash quick both in the same time, — I mean, I heard a roar and saw a flash right in the same time, — and Mr. Frazier said to us to move out of there.

10 Q.—You see, as you put it in the written statement you made in presence of your manager 8 days after the event, you said, “Saw steam coming around the north door
“and figured would walk to the south door to see what was
“the matter. The doorway was full of vapors. Saw a big
“flash like fire.”?

You see, that is what you said on that occasion? A.—Yes.

Re-examined by Mr. J. A. Mann, K.C.:—

20 Q.—I have very few questions. I would just like you to read to yourself the last paragraph of your statement? A.—Yes.

Q.—You notice what the typewritten words of the last paragraph say, just over your signature: you understand that? A.—Yes.

Q.—“... starting down fire escape when second explosion “occurred”: do you see that? A.—Oh, “second”? Yes.

30 Q.—What do you mean there by a second explosion, because, if there was a second explosion, there must have been a first? I take it that is what is suggested?

Mr. Hackett:—I think that I must object to that. This is a written statement and I don't think it is open to the witness to interpret or explain it.

Mr. Mann:—That rule of evidence is very clear. I can clear it by my next question.

40 The Court:—I don't think you can ask the witness to explain what he means by a statement expressed in perfectly plain English.

Mr. Mann:—With the greatest respect, the words may be plain English but the meaning may not be clear.

The Court:—With experts talking about explosions we will have all sorts of distinctions, but to an ordinary layman the word “explosion” is reasonably comprehensible.

ARNOLD RYMANN (for Plaintiff at Enq.) Re-examined.

By Mr. Mann:—I don't think I will take much time to discuss this. I will put a question that will make my evidence correct:—

Q.—Did you write out any statement with your own hand?
10 A.—No, sir.

Q.—Then, how does this statement come to be made in typewriting? A.—Well, that is the way it says here; it was in Mr. Moffat's office on the typewriter.

Q.—But you wrote nothing with your own hand? A.—No.

Q.—This is one written in typewriting? A.—Yes.

Q.—As a result of a conversation, I take it, perhaps?
A.—Yes.

Q.—Now, you see, you have mentioned a "loud roar" in your evidence, but you say nothing about a loud roar in the
20 statement? A.—No.

Q.—Why didn't you put something about a loud roar in the statement?

Mr. Hackett:—Just a moment.

Mr. Mann:—That was my friend's question.

The Court:—But your friend is in a different position
30 from you.

Mr. Hackett:—I object to the question as illegal.

The Court:—What you may do, Mr. Mann, is explain the circumstances under which that document was prepared.

By Mr. Mann, K.C.:—

Q.—You made no other statement than this, in writing, by
40 yourself? A.—No.

The Court:—Why not ask him, how did it come about that that statement was typewritten?

By Mr. Mann, K.C.:—

Q.—How did that statement come to be in typewriting as it is?

ARNOLD RYMANN (for Plaintiff at Enq.) Re-examined.

By The Court:—

Q.—You did not type that yourself? A.—No. I don't know who put it there. I was in the office and Mr. Moffat. I don't know who typed it.

10 Q.—The typist didn't imagine the story and write it down, did she, or he? A.—No, I don't think so.

By Mr. Mann, K.C.:—

Q.—Did you dictate the story to a typist? A.—No.

Q.—And you didn't write anything, yourself, to be copied?
A.—No, sir.

Q.—And was it written in your presence on the type-writing machine? A.—No, sir.
20

By The Court:—

Q.—Before you signed that statement did you make a verbal statement? That is, did you tell somebody what you had seen and done that morning? A.—I wouldn't remember now.

Q.—There was a meeting on the 10th of August, 1942, in the plant? A.—Yes.

Q.—About the accident? A.—Yes.

Q.—You must have talked to somebody about what happened? Didn't somebody ask you what you saw on the 2nd?
30 A.—There were quite a few of them around.

Q.—Quite a few of them? A.—Yes.

Q.—Mr. Moffat signed the statement as a witness?
A.—Yes.

Q.—Did you tell him what had happened? A.—There were in the office there quite a few. I don't remember who else was there, but there were quite a few.

Q.—Somebody asked you what had happened and to tell
40 what you saw? A.—Yes.

Q.—And you told? A.—Yes.

Q.—And then somebody typed out this statement which you signed afterwards? A.—Yes.

Q.—Did you read it before you signed it? A.—Yes.

Q.—And you were satisfied? A.—Yes.

By Mr. Mann, K.C.:—

Q.—I want you to repeat to the Court the sequence of

ARNOLD RYMANN (for Plaintiff at Enq.) Re-examined.

events leading up to the explosion which I believe you told Mr. Hackett happened while you were just getting on the fire escape. Would you just repeat them? A.—You mean, from the start?

Q.—From the start of trouble? A.—When the first sizzling noise was heard?

10 Q.—Yes, — right from the start of the sizzling noise?

A.—Well, like I said before, there was a sizzling noise and we didn't know what it was. It was a matter of a few seconds. We figured we would go and see, and in the matter of a few seconds there was a big roar and flash, and Mr. Frazier said to get out of the building. We moved out on the fire escape and I just got on the top of the fire escape when the explosion took place.

Q.—What did you do after that? I suppose you went down? A.—Yes.

20 Q.—Where did you go when you went down? A.—I went down the fire escape and got to the loading platform we have there and went in through the building into the office.

Q.—You didn't go into the yard? A.—Not right away.

Q.—Well, did you go in the yard? A.—Yes, afterwards.

Q.—How long afterwards? A.—It was within a few seconds afterwards. I just went in the office to get the clothes out of there and went right back into the yard.

Q.—What was the state of the building? A.—Pardon?

Q.—Did you look at the building? A.—Yes.

30 Q.—What was the state of the building?

The Court:—Is this re-examination?

Mr. Mann:—My friend has taken a very considerable time in cross-examination. I may be wrong, but I will undertake I won't take one-twentieth of the time my friend took.

The Court:—I have heard this witness's story. . . .

40 Mr. Mann:—I am just coming to one question. I don't know if we have heard about Mr. Rymann's examination of the building. If we have, I am wrong.

The Court:—If we haven't heard it, it isn't a matter of re-examination. If we have, why repeat it?

Mr. Mann:—I don't think I asked this question in examination-in-chief and I ask permission to put it now.

The Court:—Granted.

ARNOLD RYMANN (for Plaintiff at Eng.) Re-examined.

By Mr. Mann, K.C.:—

Q.—Just tell me what the condition of the building was when you looked at it from the yard? A.—It was in an awful mess; some of the wall was missing.

10 Q.—What else? A.—That's all I saw. The yard was full of bricks.

Q.—Full of bricks? A.—Yes.

Q.—The last question I think I will ask you is this:—

You have been cross-examined by Mr. Hackett as to the meaning of "Came in 15 minutes before explosion". I take it that the cross-examination was directed to see if you were not in error when you said you came into the building at 7.30. Do you still say you came into the building at 7.30?

20

Mr. Hackett:—I object to the question. The statement is there, and its interpretation is something that the Court will, in my submission, have to give us. It is not open to the witness to tell us what he meant by his writing.

Mr. Mann:—I didn't ask him what he meant. I say, does he still persist in his statement that he came into the building at 7.30, as he told Mr. Hackett and on which Mr. Hackett tried to shake him.

30

Mr. Hackett:—He said what he did, in the statement.

Mr. Mann:—No, he didn't. He said "Came in". Does that mean to come into the City of Montreal or come into a house or the building?

40 The Court:—I think, if any intelligent man, not knowing the circumstances of that accident, were to take that document and read it, he would understand that the witness came into the plant at 9.45, and that is the way I read it. "Came in at 9.45": without any explanation I would understand he came into the plant at 9.45.

Mr. Mann:—Without any explanation.

The Court:—And I think most men would read it so.

Mr. Mann:—I'm not so sure most men would read it so, when it is remembered we are dealing with a curtilage with a

ARNOLD RYMANN (for Plaintiff at Enq.) Re-examined.

number of buildings, probably 10 or 15 of them. He might have come into the yard or any of those buildings in it. In cross-examination he said he came into the plant at 7.30 and went to that mill, and I am merely asking him if that is correct, on that Sunday morning, the 2nd of August.

10

Mr. Hackett:—My friend has asked him in chief when he came and all about it, and he has answered. Then he has been confronted with this writing, and I again advance to your lordship that the witness should not be asked to explain or interpret or vary his writing.

The Court:—Will you ask him if he has anything to change in his evidence in chief as a result of the cross-examination?

20

By Mr. Mann:—Very well:

Q.—Have you anything to change in respect of the evidence you have already given in chief, — that is, in answer to me, — as to what hour you came into the mill that morning? Have you anything to change? A.—I always come in that time when I work on Sunday morning. I always come in at 6.30 on Sunday morning, because I have got to relieve the night foreman at 7 o'clock.

30

Q.—You say you always do. That isn't what I asked you. Did you do on that Sunday morning what you always do? A.—Yes, every Sunday morning.

Q.—Well, we will leave it at that. Now, you told Mr. Hackett, after a very exhaustive and skilful cross-examination, that you went out and in of the two rooms? A.—Yes.

Q.—And at a time when you were standing near the filter press trouble started in the form of a sizzling noise. That was the first of the trouble? A.—Yes.

Q.—Is that correct? A.—Yes.

40

Q.—Up to the time the trouble began, and the sizzling noise, did you observe anything abnormal in either of the two rooms, the bleacher room or the filter room? Do you know what the question means? A.—Yes, I know.

Q.—Don't answer it for a moment. Mr. Hackett is going to object. You know what it means?

Mr. Hackett:—I object to the question. The witness has been taken over this in chief. He has been cross-examined on it.

The Court:—Objection maintained.

ARNOLD RYMANN (for Plaintiff at Enq.) Re-examined.

Mr. Mann:—My lord, I respectfully except to the ruling, because the question as to abnormality was directed entirely to the bleacher room, in chief, and not to the filter room.

The Court:—Then restrict your question now to the filter
10 room.

Mr. Mann:—The objection is reduced to forcing me to qualify my question?

The Court:—Yes. I believe you have already covered the matter for the whole premises, but you say not I will allow you to question on that.

By Mr. Mann:—His meanderings through the whole plant
20 are what bring about the right to discuss the filter room:

Q.—Having been in the filter press room from time to time, prior to the first notice of a sizzling noise or the hearing of a sizzling noise, will you say whether there was anything wrong or abnormal in that room? A.—No, sir, there wasn't.

Q.—Now, what was the material. . . .

Mr. Hackett:—In the first place, the question is leading; and, in the second place, it is irrelevant; and, in the third place,
30 this ground has been covered already. The question has been asked and answered. I object to the question and the answer and I ask my friend not to lead his witness further.

The Court:—The question is permitted insofar as the situation in the filter press room is concerned. The objection as to the leading character of his questions will no doubt be borne in mind by Mr. Mann.

By Mr. Mann, K.C.:—
40

Q.—We are sticking to the filter press room, and don't let us get anywhere beyond the wall that separates the filter press room from the bleacher room. Having been out and in that room continually from the early part of the day. . . .

Mr. Hackett:—He did not say he was in the filter room continually from the early part of the day.

Mr. Mann:—I said "out and in".

ARNOLD RYMANN (for Plaintiff at Enq.) Re-examined.

The Court:—Suppose you don't bother saying what he said, but just put a question.

By Mr. Mann, K.C.:—

10 Q.—You mentioned in cross-examination, — I have to do it this way to remind the witness, and may I respectfully suggest I am right in doing it, — you mentioned in cross-examination that there were quite a lot of people in the filter press room, around the filter press. Do you remember mentioning that?

A.—Yes.

Q.—And some names you could not recall? Some you could not remember? A.—That is right.

Q.—What time were the shifts changed in that plant?
A.—7 o'clock; 7 to 3, and 3 to 11.

20 Q.—I beg your pardon? A.—7 in the morning, 3 in the afternoon, and 11 at night.

Q.—They were not changed at 10? A.—No.

Q.—The bleacher tank No. 1, where the operation was going on, Mr. Rymann, that you have referred to, was necessarily, of course, in the bleacher room, — but on the whole floor was there any other bleaching operation going on? A.—No, sir.

Q.—On the whole floor, including that room in the mill, was there any other machine to which steam was being added, on the floor? A.—Not that day, no.

30 Q.—Not that day? A.—No.

By The Court:—

Q.—Mr. Rymann, as a foreman you don't punch the clock when you come in? A.—Yes, sir.

Q.—You do? A.—Yes.

Q.—Did you punch it on that Sunday morning? A.—Yes.

Q.—You did? A.—Yes.

40 Q.—Was your tour of duty on that Sunday morning the usual tour? A.—Yes.

Q.—Except that you were doing a different operation?
A.—Yes.

Q.—But the time was supposed to be the same? A.—Yes.

Q.—You were supposed to work from 7 to 3? A.—On a Sunday I work from 7 to 7.

Q.—From 7 a.m. to 7 p.m.? A.—Yes.

Q.—And do you swear positively that on the Sunday morning, August 2nd, 1942, you arrived at 7 a.m. or within a few minutes of that hour? A.—Yes, I do.

ARNOLD RYMANN (for Plaintiff at Enq.) Re-examined.

Q.—You are quite sure of that? A.—Yes, I am quite sure of that.

Q.—Did you do anything in the plant on that Sunday morning, except the fact that there was turpentine instead of linseed oil being treated in tank No. 1? A.—No.

10 Q.—You followed your usual duties that morning?
A.—Yes.

Q.—And nothing extraordinary happened until you heard this sizzling noise: is that a fair statement? A.—Yes, it is.

By Mr. Hackett, K.C.:—

Q.—Mr. Rymann, what duties had you to perform on this Sunday morning, the 2nd of August, 1942? A.—The same as usual.

20 Q.—And they embraced the whole mill? A.—Yes.

Q.—Had you any duties on the first floor of the building?
A.—Well, I always go around there too; I check up everything.

Q.—Well, what time did you come to the third floor first?
A.—Exactly, to tell you the truth, I never look at the time. The time goes so fast there that I just go around all over the place and I don't look at the time. I can't exactly put the time down at all, the exact time.

30 Q.—I understand that. — but can't you tell us what time you came to the third floor the first time that morning? A.—It might be about 7.30 or so.

Q.—7.30? A.—Yes, or maybe closer to 8.

Q.—You told us that you were there when the Filtrol and the Filter Cel were put in? A.—Yes.

Q.—Are you sure of that? A.—Yes.

Q.—Are you sure you did not go away to some other part of the building after that? A.—Of course, I move around so much I don't check up everything for time.

40 Q.—I put it to you that you may have been there when the Filtrol and the Filter Cel were put into the turpentine and then you went away to another part of the building and that you came back at 9.45? Don't you think that is what happened? A.—Well, because I have to move around. . . . I was there when the Filter Cel was put in; I was there when they closed off the steam; I was there when I sent Mr. Asselin down to the pump; but I didn't check any time. I don't check like that; I am not going to check time for everything every five minutes.

Q.—Don't you think you went away from the third floor?
A.—No; when I moved up to the top floor I stayed up there till the accident happened.

ARNOLD RYMANN (for Plaintiff at Enq.) Re-examined.

Q.—You didn't go away at all? A.—Not that I know of.

Q.—Are you positive you did not go away? You told us your duties lie all over the plant? A.—Yes.

Q.—I am asking if from 7.30 that morning you did not leave that third floor? A.—I would not remember right now
10 exactly the time. That is three years ago.

Q.—But what I am trying to bring to your attention is that it seems to me reasonable that in fulfilling your ordinary duties of foreman, after you had seen the tank loaded and the operation started. . . . A.—I didn't see the tank loaded. It was loaded the night before.

Q.—I mean, after you saw the Filtrol and the Filter Cel put in it is reasonable that you went away, and you may have come back once or twice, but that you didn't stay there all the time? A.—Not exactly, not right there.

20 Q.—You didn't stay on the third floor all the time? A.—Yes, on the third floor.

Q.—You don't think it is possible you went to another part of the plant from the time that you first visited the top floor, the third floor, that morning, until the incident happened? A.—I don't think so.

Q.—Maybe you don't think so, — but are you sure? You see, I am trying to find an explanation for what you have written in D-2: A.—I think I was always on the top floor.

30 Q.—Well, was there something so unusual happening there that you were pinned down to the top floor for that whole period of time? A.—No, there wasn't.

Q.—Then why weren't you circulating about the plant as your duties of foreman were calling upon you to do? A.—I knew my men were working downstairs. Why should I push them all the time? Why should I have to go down every five minutes?

Q.—Then why did you stay up on the third floor for the whole morning? You knew your men were working there too. A.—Because I wanted to stay around there.

40 Q.—Why? A.—I can't tell you why.

Q.—Is it fair to say that you are not sure you stayed on the third floor all of the morning from approximately 7.30. . . .

Mr. Mann:—He never said he stayed all of the morning.

By Mr. Hackett:—I haven't finished my question.

Q.— . . . until the time that the episode happened?

The Court:—“Until the incident occurred”.

ARNOLD RYMANN (for Plaintiff at Enq.) Re-examined.

Mr. Hackett:—I know it is three years ago.

Witness:—Sure, it is three years ago.

By The Court:—

10

Q.—You have waited a long time to answer. Do you not understand the lawyer's question? A.—Yes, I do, but I told him already, before.

By Mr. Hackett, K.C.:—

20 Q.—What is your answer to my question? (Question read: "Is it fair to say that you are not sure you stayed on the third floor all of the morning from approximately 7.30 until the incident occurred?"): A.—That is what I say; I was up on the top floor.

Q.—You were on the top floor, but you had duties elsewhere in the plant, and is it not reasonable that you should have left the top floor during the 2½ hours which elapsed from 7.30 until the time this incident occurred? A.—Sure, I got duties all over the place.

30 Q.—And you don't think it reasonable that you went and performed some of those duties from time to time? A.—I checked the men downstairs on my way up.

Q.—And you would have no reason to go back during the morning? A.—Well, I might sometimes. Sometimes maybe somebody would come and get me for something and I might go down.

Q.—But was the work that was going on on the third floor that morning so much more important than the work anywhere else that you had to stay up there? A.—Well, I wanted to see how it turns out.

40 Q.—How that turned out? A.—The turpentine.

Q.—Because it was an unusual experiment? A.—I don't know if it was unusual.

Q.—You had never seen it done before? A.—No, not that.

Q.—And can you swear definitely, Mr. Rymann, that you did not go off the third floor between 7.30 and 10 o'clock on the morning of the 2nd of August, 1942? A.—Go off the third floor?

Q.—Yes? A.—No, sir; I was up there.

Q.—You may not have said what you wanted to say. You said, "No, sir". and I asked you if you could swear. That would

ARNOLD RYMANN (for Plaintiff at Enq.) Re-examined.

mean you cannot swear. I don't think you want to say that, do you? A.—You mean, I was off the top floor?

By The Court:—

10 Q.—Do you swear, Mr. Rymann, that you did not leave the top floor of the plant that morning after you first got up there about 7.30? A.—That is right; I stayed up there; I will swear to that.

Q.—You are quite certain of that? You are on your oath and you are asked to say definitely. If you don't remember, say so, but if you say Yes to that question, that you swear you did not move, it means you remember perfectly well you were there all the time. A.—All the time.

20 Q.—Do you answer Yes? A.—Well, I wouldn't say I could swear to that, but I was up there. It is three years ago, which I wouldn't know exactly where I moved to all over.

Q.—How many men did you have under you in the plant that morning? A.—There must have been around ten men there.

Q.—And where were they in their ordinary duties? A.—They were all in their places at which they had duties.

Q.—How many were in the basement, under you? A.—In the basement there was none at that time.

Q.—On the first floor how many were there? A.—There were two of them.

30 Q.—What were they doing? A.—Running expellers.

Q.—Running expellers? A.—Yes.

Q.—And, on the second floor? A.—There were two men there.

Q.—What were they doing? A.—They have a filter there too and some different machinery to run.

Q.—And on the third or top floor how many were under you? A.—There must have been about, I think, at least, around I can't say exactly. All the rest were up there, except Marier

40 was in the other room on a different machine too.

By Mr. Mann, K.C.:—

Q.—He was in the east room? A.—Yes.

By The Court:—

Q.—I am talking about the top floor, east and west rooms. How many were working there under you? A.—I didn't count them.

J. S. MOFFAT (for Plain. at Enq. Recalled) Examin. in chief.

Q.—You must know how many men you have under you or had that day? A.—Some days I have more and next day less.

Q.—How many did you have that Sunday? A.—About ten that day.

Q.—On the top floor? A.—No, in the whole building.

10 Q.—You mentioned two and two on the first floor. Would that leave six on the top floor? A.—Something like that.

Q.—Something like that? A.—Yes.

Q.—Why do you think you would have stayed only half an hour on the lower floors, altogether, and about 2½ hours on the top floor that morning? A.—Well, because on the other floors the machines were all continually running and everything seems to be in order.

Q.—Was there anything out of order on the top floor?
20 A.—No, nothing was out of order. I just stayed with the boys.

And further deponent saith not.

H. Livingstone,
Official Court Stenographer.

DEPOSITION OF J. S. MOFFAT (Recalled)

30 On this 25th day of October, A.D. 1945, personally came and appeared, John S. Moffat, a witness already sworn and examined on behalf of Plaintiff in this case and who being now recalled and further examined, under his oath already taken, doth depose and say as follows:—

Examined by Mr. J. A. Mann, K.C.:—

Q.—Do you understand French? A.—I can follow it a bit.

40 Q.—Did you understand what the witness (Asselin) said with respect to the instructions which he had relative to the carrying-out of the bleaching of the 850 gallons of turpentine on the morning of August 2nd, 1942? A.—I followed him when he said he had the instructions hanging on the post.

Q.—Subject to correction, — he said he had the instructions in writing, handwriting. I don't recall that he said from whom.

The Court:—He said from Hodgins.

J. S. MOFFAT (for Plain. at Enq. Recalled) Examin. in chief.

By Mr. Mann, K.C.:—

Q.—Who is Mr. Hodgins? A.—He was the linseed oil mill chemist.

10 Q.—Is he in the employ of the company now? A.—He is in the Air Force at the present time and has not returned as yet.

Q.—And is not in Canada? A.—No.

Q.—Now, Mr. Hodgins having been established as the man who gave the instructions to Henry Asselin for the carrying-out of this process of the bleaching of the turpentine, Mr. Asselin has stated that they were thus given to him in handwriting? A.—They would be.

20 Q.—Would there be in the office of the company or anywhere of record a copy of those handwritten instructions? A.—That is very doubtful. There isn't as a rule made any duplicate of those instructions.

Q.—There isn't any duplicate of those instructions made as a rule? A.—No.

Q.—How would Hodgins get his instructions as to what was necessary to be done? A.—First of all, he would have taken a sample of the material that he was going to treat and in the "lab" make a test case, in his breakers and with his other instruments, to find out what was necessary to clarify that material, — turpentine in this particular case.

30 Q.—But what I am driving at is this:—He would have to get instructions from some executive that it was necessary to clarify that? A.—He receives his instructions from me.

Q.—Then he would, as you have said, make his tests in his laboratory? A.—Yes.

Q.—To find out what was necessary to be done? A.—Yes.

Q.—And he would give the instructions to Asselin? A.—Yes. There is a regular form on which they would put the treatment.

40 Q.—And as a rule copies of that are not kept? A.—No; they are made in single copy only and they are put there for the boys to check the figures on them and so on as they go along.

Q.—Put up in the actual place where the bleaching takes place? A.—Yes.

By The Court:—

Q.—Is there a printed form? A.—There is a mimeographed form, on which would be marked the "Rex" number, — because we don't call it by its name, "turpentine", for example,

J. S. MOFFAT (for Plain. at Enq. Recalled) Cross-examination.

but by the number. Then they put on it the material, which in this case would be 14 in a circle, and the instructions as to how many pounds of Filtrol and how many pounds of Filter Cel should go in, and then the heat to which it has got to go. In other words, all the working instructions would be put on that and it
10 would be put up on the wall there and the man picks it off as he goes along.

Q.—You don't happen to have such a mimeographed form with you? A.—Unfortunately, I haven't, sir.

Cross-examined by Mr. John T. Hackett, K.C.:—

Q.—Mr. Moffat, when did you, as manager of the linseed oil mill, learn that you had on hand a certain amount of discolored turpentine? A.—I would say in the early spring of the
20 year, around, possibly, March or April, around that time.

Q.—Could your records show from whom you bought that turpentine? A.—Could I ask my Counsel if I have permission to explain the whole thing and maybe in that way save a whole lot of time?

The Court:—You could ask me.

Mr. Mann:—Ask the Court.

30 Witness:—Well, possibly it would save a great deal of time, my lord, and haggling back and forth, if I could explain roughly what happened with regard to this turpentine.

We purchase tank cars of turpentine regularly. They come in, and, particularly at that time, in that year, our tankage was used to the extreme limit on other materials, so that we did not have sufficient tankage for turpentine. The receiving department would be unloading some of these cars at night. Some-
40 times they would use some of my men and sometimes men from the paint works. Instead of putting that into tanks, it was all put into drums; and then, when we started to ship it out in the early spring, we got complaints from our customers that it wasn't right. Complaints started to come in about it: some of it was red, some was green, and all colors. Therefore, the drums were put aside and left there until the time came when we would have an opportunity to clarify it, and August happened to be the time when we felt we were in a better position to do a job like that.

J. S. MOFFAT (for Plain. at Enq. Recalled) Cross-examination.

By Mr. Hackett, K.C.:—

Q.—Did you have any correspondence in the company concerning this discolored turpentine? A.—The only thing we had in the way of correspondence was when we ran into this
10 trouble in April, when I instructed my assistant, the assistant manager of the oil mills. . . .

Q.—What is his name? A.—Kerr. . . to write a letter to the general superintendent, that we had run into this trouble, and that was the first correspondence.

By Mr. Mann, K.C.:—

Q.—You mean the general superintendent of the com-
20 pany? A.—Yes.

By Mr. Hackett, K.C.:—

Q.—Who is the general superintendent? A.—Mr. S. P. Newton.

Q.—Where does he live? A.—Montreal.

Q.—And then you got instructions from Mr. Newton to do something? A.—Well, we discussed it, he and I, and came to the conclusion that the best thing we could do was to try and
30 clarify it, because in the meantime there were dozens of tank cars came in. We did not know which supplier had supplied this turpentine, and we had no recourse, because it had been put into drums and we could not tell which car it came from, and we couldn't go back on that; so it was our responsibility to see that we cleaned it up as best we could.

Q.—What quantity did you have? A.—Approximately, when we looked over our figures, a little over 400 drums were laying around the yard at that time.

Q.—And the drums held 50 gallons each? A.—50 Amer-
40 ican; or 46 Canadian, imperial gallons. But I would not say they were filled up right full. I would say between 40 and 45 gallons, roughly.

Q.—Then you decided to clarify the turpentine? A.—Yes.

Q.—You had never clarified turpentine before? A.—No.

Q.—Then it became a problem for the chemist? A.—Yes.

Q.—Who is your chief chemist? A.—Well, Mr. Newton is really in charge of our chemical "lab".

Q.—And he is the man to whom you had written? A.—When I say he is in charge of our chemical "lab", he is in charge of all the chemists in the paint division, but the chemist in the

J. S. MOFFAT (for Plain. at Eng. Recalled) Cross-examination.

linseed oil mill reports direct to me, and I put my chemist on to the clarifying of this turpentine.

Q.—Did Mr. Newton tell you or tell the chemist what was to be done to clarify this turpentine? A.—No, he didn't.

10 Q.—He didn't? A.—We discussed it, and I told him I would put my chemist on to the job, to find out what we could do.

Q.—Who was your chemist? A.—Emerson Hodgins.

Q.—Did you write Mr. Hodgins? A.—No, there was nothing in writing.

Q.—What did you tell him? A.—I asked him if he would get samples of the turpentine and take them to the "lab" and see what was necessary for the bleaching of that turpentine so that it would get that discoloration out of it.

20 Q.—When did you say that to him, — in April? A.—No, it would be later than that. It would possibly be, we will say, — well, he may have taken some in May, and his last test was made possibly in June or July.

Q.—Did he make reports to you of his tests? A.—Verbally, I think. I'm not sure if he made any in writing.

Q.—I am speaking of writing? A.—I wouldn't like to state whether there was any in writing, but I could find out. I'm not sure and I would not like to state.

Q.—You could find out? A.—Yes.

30 Q.—Then he made an analysis of the turpentine, did he not? A.—Not an analysis of the turpentine, not an "analysis" as we call it. He made a test to find out if he could determine what the matter was. When you speak of an analysis of the turpentine, that is one thing. An analysis to determine what the coloring matter was, he did that.

Q.—He made an analysis to find out what the foreign matter was in the turpentine? A.—Yes.

Q.—And what was it? A.—He wasn't successful in finding out what it was.

40 Q.—Did he keep any record of these experiments or tests or attempts to ascertain what the foreign substance was? A.—I presume he would.

Q.—How big a laboratory do you have? A.—In the oil mill we only have the one chemist.

Q.—It is a full-time job, is it? A.—Yes.

Q.—And your chemist is a graduate chemist? A.—Yes.

Q.—Mr. Hodgins is a graduate from where? A.—A. B.Sc.

Q.—From where? A.—Queen's University, Kingston.

Q.—He had what experience? A.—Before he came to us, you mean?

J. S. MOFFAT (for Plain. at Enq. Recalled) Cross-examination.

Q.—Yes? A.—I couldn't definitely say, but I don't think he had any permanent job. He had summer jobs and places like that, but I think ours was the first permanent job he had.

Q.—Do you know, Mr. Moffat, if Mr. Hodgins kept any record of the attempts that he made to ascertain what was the
10 foreign substance in the turpentine? A.—I couldn't say anything about that. I don't know what his records were or how many tests he had made. I wouldn't like to vouch for that.

Q.—But you would think, would you not, that in a matter of that importance record would be kept? A.—Not any more record than of the usual performance you would do in a "lab's" ordinary day's work, because at that time we did not think turpentine of any more consequence than. . . .

Q.—Do you wish the Court to understand that there is no record kept of the formula that is issued for each batch? A.—
20 I didn't say that.

Q.—Well, I am just asking you? A.—I said I didn't say it.

Mr. Mann:—It seems to me we are wandering quite far afield.

The Court:—We had been, but I think we are returning now.

30 By Mr. Hackett, K.C.:—

Q.—Will you tell the Court if there is a record kept of the formula issued by the chemist for each batch of oil? A.—When you ask that question, are you referring to oil?

Q.—I am referring to oil now, Mr. Moffat? A.—I have an idea that they have a card for each "Rex" number, on which they would show the amount of material used for each bleaching
40 process.

Q.—To show the formula which would indicate the quantity of bleaching material to go into each batch of raw oil? A.—Yes, I think we have a card system indicating that.

Q.—And that formula is determined after an analysis of the oil has been made? A.—Definitely.

Q.—Now, coming to the turpentine, an analysis of the turpentine had been made, you told us? A.—Yes.

Q.—Now, is there any reason to think that in this rather extraordinary case there would not be a record kept of the formula which was prescribed for the clarification of the turpentine?

J. S. MOFFAT (for Plain. at Enq. Recalled) Cross-examination.

Mr. Mann:—I think I will have to object to the question. My friend volunteers that this was rather an extraordinary case.

Mr. Hackett:—It was.

10 Mr. Mann:—I think the witness indicates it was a routine matter of bleaching.

The Court:—It was extraordinary in the sense, — whether the operation was or was not similar to the previous operations, — that the material operated upon was definitely different, and it was the first time that that material, namely, turpentine, had been put into that tank for clarification.

20 Mr. Mann:—I think your lordship clarifies exactly what I was driving at. My friend volunteers “extraordinary case”. The operation was simply routine.

The Court:—I will allow the question.

Witness:—Is your lordship leaving the word “extraordinary” in there?

30 The Court:—With the clarification resulting from the remarks of Counsel and the Court, if any. “In this case”, we might say, without any qualification at all.

Witness:—I am under the impression we would have a card similar to the regular one.

By The Court:—

40 Q.—You see, my difficulty in this, Mr. Moffat:—I cannot allow anyone to speak about something which is written down unless it is proved to me that that writing has disappeared, so that it cannot be produced before me. The best way to prove what was in those instructions is to produce the written instructions. That is obvious even to a layman, isn't it? A.—Yes.

Q.—I cannot allow any other kind of evidence as to what was in those instructions unless you satisfy me not only that the document is not here but that we cannot get it.

Mr. Mann:—The instructions to Asselin?

J. S. MOFFAT (for Plain. at Enq. Recalled) Cross-examination.

By The Court:—Yes, or some other document containing the same material.

Q.—Is there, do you think, anything in your premises or anywhere reasonably accessible where we could find either a copy of those instructions or a card from which those instructions were taken? A.—I would answer that this way, sir: that I am not quite sure whether that document that he had pasted up on the board was lost in the fire or not. I would have to find that out. With the fire, our place was just flooded out, and I'm not sure whether those records are available or not. I would have to go back on that to see. That hasn't been broached to me before. However, I have an idea that we would have a card indicating what work had been carried on. I'm not sure whether I can find any such record, though. I have an idea we would have a card.

By Mr. Mann, K.C.:—

Q.—But, at this time? A.—At this time, as I say, I'm not sure. I would have to go back and find out.

The Court:—If in the consideration of either Counsel it is a really important matter, I think we ought to postpone the questioning of Asselin until a search has been made in the premises of the Sherwin-Williams Company to ascertain whether or not the instructions, a copy of the instructions or a card containing the source of the instructions, or any other document or record of that sort, are available.

By Mr. Hackett, K.C.:—

Q.—Where is Mr. Hodgins at the present time? A.—He is in the Air Force at the present time, but I don't know where.

Q.—Did he ever go overseas? A.—He went overseas, yes.

Mr. Mann:—Mr. Moffat said so at the beginning.

Mr. Hackett:—You said it, Mr. Mann.

The Court:—The witness said Hodgins was out of Canada.

By Mr. Hackett, K.C.:—

Q.—Is he back on this continent? A.—Not that I know of. The last I heard of him, he was still overseas.

J. S. MOFFAT (for Plain. at Enq. Recalled) Cross-examination.

Q.—Do you know anything about the way chemists carry on? Do you know that a chemist usually has a book in which he generally keeps all such data? A.—Yes.

Q.—Did Mr. Hodgins leave his book with you when he went away? A.—He would leave it in the “lab”, but, you see, 10 the “lab” was destroyed with everything else, and that’s the reason I’m not quite sure whether we can locate anything.

Q.—What floor was the “lab” on? A.—On the third floor also, in the west building, south part, in the south part of the west building.

The Court:—This case is going to be adjourned at the end of the day, Mr. Moffat, and as President of the Court I am going to charge you with the responsibility of making a diligent 20 search to ascertain whether you can find anything in writing, printing or typewriting, or any record which would contain a copy of or the source of the instructions given in writing to Asselin for the operation on the 2nd of August, 1942.

Witness:—I will be glad to do that, sir.

The Court:—When we resume our sessions at a later date you will report to me the result of your search.

Witness:—I will do the best I can. 30

The Court:—You can have your assistants help you, of course, but I am putting the responsibility on you.

Witness:—Yes.

Mr. Hackett:—I am going to ask to put in an exhibit at the present time, being the copy of a letter that the 22 fire insurance companies sent to Sherwin-Williams Company. Mr. Mann 40 has kindly given me this copy of letter. He has stated, I believe, that the letter was sent by each of these companies and the different figures were put in according to the amount of the cheque that was enclosed with each letter.

Mr. Mann:—And the date as of which it was sent.

Mr. Hackett:—And I am going to ask Mr. Moffat if he will produce this copy of letter as Exhibit D-3 and if, — as I think my understanding is with Mr. Mann, — he will put on a

J. S. MOFFAT (for Plain. at Enq. Recalled) Cross-examination.

memorandum the date of each of the 22 letters and the names of the companies.

The Court:—And the amount, I suppose?

10 Mr. Mann:—The amount is the amount that I have given. If my friend needs the apportionment to every one I can give that.

The Court:—Does the amount matter to you, Mr. Hackett?

Mr. Hackett:—I would be glad of the amount.

20 The Court:—Why not have it all on the exhibit? We have the standard letter form. We could have all the information on it.

Mr. Mann:—I have admitted that as the letter.

The Court:—All we want is the date of the letter each company wrote and the amount of the cheque.

30 Mr. Mann:—Mr. Jennings, the broker, is procuring all that this afternoon. He will have all the dates and the names of the different companies. Rather than charge Mr. Moffat with that I think we should charge Mr. Jennings.

The Court:—I will charge you, Mr. Mann.

Mr. Mann:—I would rather you didn't.

40 Mr. Hackett:—I want to put in, if I may, the 22 policies. I called on Mr. Mann to get them and I thought inasmuch as Mr. Moffat, the manager of plaintiff company, was here, this would be the proper time to put in these policies. If Mr. Mann has any objection to their going in now, or, rather, if the Court does not think they should go in now, well. . . .

Mr. Mann:—It is not a case of the policies going in now or any other time. My friend has an exhibit in the record, D-3, which indicates there is or may be a contractual obligation to the plaintiff company under every one of these policies. I have them here now, all together, and my friend can examine them, but as to putting in the policies I do not think we should.

J. S. MOFFAT (for Plain. at Enq. Recalled) Cross-examination.

The Court:—If Mr. Mann will undertake to hand the policies to Mr. Hackett for examination, perhaps we can defer until later the question of filing them.

Mr. Mann:—All right.

10

The Court:—My suggestion is that Mr. Mann place the policies at your disposal, Mr. Hackett, during the adjournment, and you can decide whether or not you will want them in. Then, when the enquête continues later, if you want them in and Mr. Mann doesn't, I will have to solve the problem between you; but in the meantime have a look at them and see if you want them in. I am anxious to get in this afternoon, if I can, all the evidence as to the incident itself, and not to go into all these other matters if I can avoid them. I am sure Mr. Moffat will be attending this enquête right to the end. We can call upon him again. I would like to see Mr. Asselin back in the box to continue his story, while he is here.

20

Q.—(By the Court):—Is he still in your employ?
A.—No.

The Court:—It may not be possible or it may be difficult to get Asselin another time and I would like him to finish.

30

Mr. Mann:—I am prepared to hand to Mr. Hackett all of the fire policies, for his examination, subject to a memorandum being prepared of them and their numbers, etc., inasmuch as there may be a contractual obligation in favor of the plaintiff company, and I declare that I have all the policies in my hand at the moment.

The Court:—You undertake to hand to Mr. Hackett within the next two or three days all the policies in question for his examination?
40

Mr. Mann:—Absolutely.

The Court:—And the problem as to whether or not they should be produced will be solved at a later date.

And further for the present deponent saith not.

H. Livingstone,
Official Court Stenographer.

HENRI ASSELIN (for Plaintiff at Enq.) Examination in chief

DEPOSITION DE HENRI ASSELIN

L'an mil neuf cent quarante-cinq, le vingt-cinq octobre, a comparu: Henri Asselin, âgé de trente ans, machiniste, domicilié au 259 rue Lévis, à Montréal, témoin produit de la part de
10 la demanderesse; lequel, après serment prêté sur les saints Evangiles, dépose et dit:—

Interrogé par Me Gadbois, avocat de la demanderesse:—

D.—Monsieur Asselin, êtes-vous à l'emploi de la Sherwin Williams Company? R.—Non.

D.—Vous n'êtes plus à l'emploi de la compagnie? R.—Non.

D.—Est-ce que le 2 août 1942, vous étiez à l'emploi de cette compagnie? R.—Oui, monsieur.

20 D.—Avez-vous travaillé cette journée-là? A.—Oui.

D.—Pouvez-vous dire à quelle heure vous vous êtes rendu à l'ouvrage, cette journée-là, monsieur Asselin? R.—Je crois, à sept heures.

D.—A sept heures? R.—Oui.

D.—Est-ce qu'il y a d'autres employés de cette compagnie qui ont commencé en même temps que vous, le matin? R.—Oui, il y avait M. Gosselin, M. Rymann. Ensuite, les autres ne m'intéressaient pas.

30 D.—Vous ne les connaissiez pas? R.—Oui, je les connaissais, mais je n'avais aucune raison de savoir s'ils travaillaient, oui ou non.

D.—Quelles étaient vos fonctions alors que vous étiez à l'emploi de la Sherwin Williams? R.—“Oil refiner”.

D.—Qu'est-ce que vous faisiez? R.—Je blanchissais l'huile sur les “tanks”.

D.—Vous rappelez-vous à quelle endroit se trouvait ce “oil refiner”? R.—Au troisième étage.

40 D.—Je vous montre un plan qui a été produit dans cette cause comme exhibit P-7. Ce plan est censé représenter le troisième et le dernier étage à l'édifice de la Sherwin Williams; voulez-vous dire si vous reconnaissez ce plan comme étant le plan de l'endroit où vous travailliez? R.—Oui, certainement. Je travaillais ici.

D.—Je dois vous dire aussi que pour les fins d'identification on a désigné cette chambre qui se trouve à l'ouest de ce mur, comme la chambre ouest, et l'autre où se trouvent les “tanks”, comme étant la chambre est. Voulez-vous dire dans quelle chambre vous travailliez? R.—Dans la chambre est.

HENRI ASSELIN (for Plaintiff at Enq.) Examination in chief

D.—Le matin du 2 août 1942, avez-vous travaillé tout l'avant-midi dans la chambre est? R.—Oui, c'est-à-dire à venir jusqu'à l'explosion.

D.—A quelle heure êtes-vous entré dans cette chambre?

R.—Aux alentours de sept heures et cinq, peut-être sept heures.

10 D.—Sept heures, sept heures et cinq? R.—Oui.

D.—En êtes-vous sorti? R.—Oui.

D.—A plusieurs reprises? R.—Peut-être deux ou trois fois.

D.—Peut-être deux ou trois fois? R.—Oui.

D.—Voulez-vous dire à la Cour combien de temps vous avez été sorti comme cela? R.—Ah, le temps d'aller chercher les barils et de les amener au ras la machine.

20 Par la Cour:—

D.—Les barils qui contenaient? R.—La térébentine, je crois.

Par Me Gadbois:—

D.—A quel endroit alliez-vous chercher ces barils-là, monsieur Asselin? R.—Près de l'élévateur.

D.—Voulez-vous indiquer sur le plan où se trouve cet élévateur? R.—Alentour d'ici.

30 D.—Est-ce qu'il était dans la même chambre? Dans la chambre est? R.—Oui, il se trouvait dans la même chambre.

D.—Il se trouvait dans la même chambre? R.—Oui.

Par la Cour:—

D.—A une certaine distance de votre machine? R.—Oui.

Par Me Gadbois:—

40 D.—A part cela, vous n'avez pas quitté la chambre de l'avant-midi, n'est-ce pas? R.—Oui, pour aller partir les pompes.

D.—Quelles pompes? R.—Il faut aller dans la cave pour cela.

D.—Voulez-vous dire ce que l'on faisait d'habitude dans ce "tank"? R.—On blanchissait l'huile de lin.

D.—On blanchissait l'huile de lin? R.—Oui, et une autre sorte d'huile aussi, mais je ne me rappelle pas du nom.

D.—Combien y avait-il de sortes d'huiles que vous blanchissiez? R.—Il pouvait y en avoir peut-être trois ou quatre.

HENRI ASSELIN (for Plaintiff at Enq.) Examination in chief

D.—Et la seule huile dont vous vous rappelez le nom, c'est. . . R.—L'huile de lin.

D.—Le jour de l'accident, est-ce que vous blanchissiez de l'huile de lin? R.—Non.

D.—Qu'est-ce que vous faisiez? R.—De la térébentine.

10

La Cour:—Monsieur Asselin, nous allons ajourner la Cour à deux heures et quart. Vous serez obligé de revenir ici à deux heures et quart, et dans l'intervalle, vous ne parlerez à personne de la cause, à personne, comprenez-vous? R.—Oui.

(Et le témoin ne dit rien de plus pour le moment).

Jean McKay,
Sténographe.

20

DEPOSITION DE HENRI ASSELIN

L'an mil neuf cent quarante-cinq, le vingt-cinq octobre, a comparu: Henri Asselin, âgé de trente ans, machiniste, domicilié au 259 rue Lévis, à Montréal, témoin produit de la part de la demanderesse; lequel, après serment prêté sur les saints Evangeliles dépose et dit:—

30

Interrogé par Me Gadbois, avocat de la demanderesse:—

D.—Si j'ai bien compris, monsieur Asselin, vous avez dit ce matin que vous étiez en charge du "tank" désigné par le numéro un sur le plan que je vous ai montré, le jour de l'accident? R.—Oui, c'est bien cela.

40

D.—Je vous montré un dessin qui a été produit dans cette cause comme pièce P-8, et qui est censé représenter le "tank" en question; pourriez-vous me dire si vous reconnaissez ce "tank" sur ce dessin-là? R.—Certainement.

D.—Le matin de l'accident, vous avez dit que vous étiez arrivé à sept heures, n'est-ce pas? R.—Oui.

D.—Voulez-vous dire ce que vous avez fait? R.—Il a fallu rentrer les "drums" de dans la "tank".

D.—Pouvez-vous m'expliquer en vous servant de ce dessin, de quelle façon vous avez entré les "drums" dans la "tank", et avant de faire la démonstration, voulez-vous dire à la Cour ce que contenaient les "drums" en question? R.—C'était de la térébentine.

HENRI ASSELIN (for Plaintiff at Enq.) Examination in chief

D.—Voulez-vous maintenant nous expliquer de quelle façon vous avez placé le contenu de ces “drums” dans le “tank”?

R.—Premièrement il faut mettre le “vacuum” dessus.

D.—De quelle façon vous prenez-vous pour mettre le vacuum? R.—Il faut fermer la valve de sûreté.

10 D.—La valve indiquée sur le plan comme étant la valve No 5? R.—Oui, c’est bien cela. Et après cela, il faut partir la pompe.

D.—Quelle pompe? R.—La pompe de . . .

D.—La valve dont vous avez parlé est à l’extrémité du tuyau, la lettre “B” sur le plan? R.—Oui.

D.—Vous fermez cette valve? R.—Oui.

D.—Ensuite, qu’est-ce que vous avez fait? Je vous demande ce que vous avez fait ce matin-là après avoir fermé la valve No 5? R.—Il faut partir le “vacuum pump”.

20 D.—Où se trouve le “vacuum pump”? R.—En arrière de cela.

Par la Cour:—

D.—En arrière du “tank”? R.—C’est connecté avec la “tank”.

Par Me Gadbois:—

30 D.—Cela n’apparaît pas sur le dessin? R.—Non.

D.—Ensuite? R.—Ici, c’est l’entonnoir et il faut y mettre un tuyau pour que le tuyau rentre dans le “drum”, pour pouvoir tirer l’huile qu’il y avait dans les “drums”, la térébentine. C’est de la manière qu’il fallait que cela rentre dans la “tank”.

D.—Vous mettez un tuyau dans l’entonnoir et à quel endroit placez-vous le “drum”? R.—A terre en avant.

D.—Ce tuyau-là se rend jusque dans le “drum”? R.—Oui.

D.—Et ensuite? R.—Pour entrer les “drums” dedans.

40 D.—Combien de “drums” avez-vous versés dans le “tank”? R.—Pour dire exactement, je ne me rappelle pas. Cela doit être alentour de 16 à 18, quelque chose de même.

D.—De 16 à 18? R.—Oui.

D.—Vous rappelez-vous, monsieur Asselin, combien il y avait de “drums” autour du “tank”, ce matin-là? R.—Non, monsieur.

D.—Vous ne savez pas? R.—Non.

D.—Lorsque le contenu des “drums” a été versé dans le “tank”, qu’est-ce qu’il arrivait? R.—Là, il faut ouvrir la “release valve”.

HENRI ASSELIN (for Plaintiff at Enq.) Examination in chief

D.—La “release valve” qui est la même valve que vous avez désignée comme étant celle que vous ouvriez? R.—Oui.
D.—La valve no 5? R.—Oui.

Par la Cour:—

10

D.—Qui contrôle le vacuum? R.—Oui, monsieur.

Par Me Gadbois:—

D.—Vous la fermez? R.—Non, on l’ouvre. Je n’en ai plus besoin. Et, après, il a fallu le laisser brasser un certain temps, pas avec la vapeur dessus, et après que cela a été rentrer, il a fallu mettre la vapeur.

20 D.—Comment vous y êtes-vous pris pour mettre la vapeur?
R.—Par une valve, ici.

D.—“Réduction valve” sur le plan? R.—Non, la valve
No 1.

D.—“Steam valve”? R.—Oui.

D.—Vous avez ouvert cette valve? R.—Oui.

D.—Vous avez laissé pénétrer la pression? R.—Oui.

D.—Combien de pression avez-vous mis? R.—150 ou 145
degrés, si je me rappelle bien.

30 D.—Savez-vous si ce sont des degrés Fahrenheit ou centi-
grade? R.—Je crois que c’est Fahrenheit.

D.—Lorsque vous avez atteint vos 145 degrés ou 150 degrés
Fahrenheit, qu’est-ce que vous avez fait? R.—On fermait la valve
et après cela il a fallu remettre le vacuum sur la “tank”.

D.—Ouvrir de nouveau la valve No 3? R.—Oui, ouvrir
la valve No 3, fermer la valve No 5 le vacuum entre.

D.—Combien de temps environ? R.—Laissez à sa capacité
pour pouvoir entrer le “Filtrol” dedans.

40 D.—Une fois que le “Filtrol” était entré, qu’est-ce que
vous faisiez? R.—On ôtait le vacuum, on laissait brasser peut-
être une demi-heure ou trois-quarts d’heure, cela dépend.

D.—Une fois que le vacuum était sorti, est-ce que vous
fermez la valve No 5? R.—Non, elle était ouverte.

D.—Elle était ouverte? R.—Oui.

D.—Ce matin-là, au lieu de mettre de l’huile de lin ou une
autre huile que vous aviez l’habitude de blanchir, vous avez em-
ployé de la térébentine? R.—Oui.

Par la Cour:—

D.—Que vous avez prise dans les “drums” qui étaient
autour du “tank” ou près du “tank”? R.—Oui, c’est bien cela.

HENRI ASSELIN (for Plaintiff at Enq.) Examination in chief

D.—Et cela, vous l'avez fait quelque temps après sept heures du matin? R.—Oui, c'est bien cela.

D.—Le "Filtrol" que vous avez mentionné tout à l'heure, c'était une espèce de poudre? R.—Oui.

10 Par Me Gadbois:—

D.—Monsieur Asselin, je vous montre ce qu'on a désigné comme pièce No 9, qui est censé représenter la forme du "tank"; pourriez-vous nous dire si le "tank" était de cette forme-là? R.—Oui.

D.—Voulez-vous dire ce que contenait cette partie supplémentaire que nous voyons ici? R.—Je crois que la vapeur se ramassait là.

20 D.—Les "drums" dont vous avez parlé, une fois que leur contenu a été versé, dans le "tank", qu'est-ce que vous en avez fait? R.—Ils étaient supposés être descendus en bas.

D.—Ils étaient supposés être descendus en bas? R.—Oui.

D.—Savez-vous s'ils ont été, de fait, descendus en bas? R.—Je crois que oui.

D.—Par qui? R.—Par M. Gosselin.

D.—Est-ce que vous en avez descendu vous-même?

R.—Non.

D.—Vous êtes certain de cela? R.—Oui.

30 D.—Vous croyez, par contre, que M. Gosselin les a descendus? R.—Oui.

D.—Les avez-vous revus, ces "drums" là, après vous en être servi? R.—Je ne crois pas.

D.—Vous ne croyez pas? R.—Non.

D.—Est-ce que vous étiez seul dans la chambre est, est-ce que vous étiez seul dans cette chambre là? R.—Pas ce matin-là.

D.—Qui était avec vous? R.—Il y avait M. Gosselin.

D.—Qui est-il M. Gosselin? R.—Cela se trouvait comme l'aide qu'ils m'avaient donné pour ce matin-là.

40 D.—Y avait-il d'autres personnes à part M. Gosselin et vous? R.—Oui, il y avait le contremaître qui venait faire son tour de temps en temps.

D.—Est-ce qu'il n'y avait pas un M. Marier avec vous? R.—Il ne travaillait pas avec moi.

D.—Est-ce qu'il était dans la même chambre que vous? R.—Oui, il était dans la même chambre que moi.

D.—Est-ce qu'il y avait d'autres personnes dans cette chambre-là? R.—Je ne crois pas.

D.—Jusqu'ici, vous avez dit qu'il y avait vous, M. Marier, M. Gosselin et le contremaître qui venait quelque fois? R.—Oui.

HENRI ASSELIN (for Plaintiff at Enq.) Examination in chief

D.—Est-ce qu'il y avait d'autres personnes? R.—Pas que je me rappelle.

D.—Pas que vous vous souveniez? R.—Non.

D.—Lorsque vous parlez du contremaître, qui voulez-vous dire? R.—M. Rymann.

10 D.—Pouvez-vous m'indiquer sur cette carte l'endroit où M. Marier travaillait? Sur le plan P-7? R.—Oui.

D.—Voulez-vous me l'indiquer en faisant la marque "A" à l'endroit où M. Marier travaillait? R.—Cela se trouvait à peu près comme ici.

Par la Cour:—

D.—Voulez-vous mettre la lettre "M" plutôt? R.—Oui.

20 (Le témoin indique par la lettre "M" l'endroit où Marier travaillait).

Par Me Gadbois:—

D.—Cela se trouve à combien de pieds environ du "tank"? R.—A peut-être alentour de 15 pieds.

D.—Environ 15 pieds? R.—Oui.

30 D.—A gauche ou à droite du "tank"? R.—Il se trouvait droit en face.

D.—Face au "tank"? R.—Oui.

D.—Que faisait-il là M. Marier? R.—Il "runnait" ce qu'on appelle le "shaker" comme pour séparer la graine.

Par la Cour:—

D.—La graine de lin? R.—Oui, la graine de lin, ôter les impuretés, ni plus ni moins.

40 Par Me Gadbois:—

D.—Après avoir accompli les différentes opérations dont vous venez de nous parler, pouvez-vous dire ce que vous avez fait ce matin-là? R.—Bien, en attendant que tout soit prêt, il a fallu que je reste en haut, près de la "tank".

D.—Près du "tank"? R.—Oui.

D.—Combien de gallons de térébentine aviez-vous mis? R.—Ah, environ huit cent cinquante 850.

D.—Savez-vous combien ce "tank" là contenait? R.—Je n'ai jamais mis plus que 850.

HENRI ASSELIN (for Plaintiff at Enq.) Examination in chief

D.—Avez-vous reçu des formules pour vous indiquer de quelle façon vous deviez traiter la térébentine? R.—Oui, certainement.

D.—Avez-vous ces instructions avec vous? R.—Non. Voulez-vous dire dans le temps que je travaillais?

10 D.—Le matin où vous vous êtes rendu pour travailler, le matin en question, est-ce qu'on vous a donné des instructions pour vous dire comment traiter cette térébentine? R.—Oui, certainement.

D.—Est-ce que c'était des instructions écrites ou verbales? R.—Écrites.

D.—Les avez-vous avec vous? R.—Non.

D.—Vous ne les avez pas? R.—Non.

D.—Est-ce que vous vous rappelez ce que c'était? R.—Bien, pour à peu près, oui.

20 D.—Pourriez-vous dire cela à la Cour?

Me Hackett, avocat de la défense, s'oppose à cette preuve à moins que l'on établisse que ces instructions écrites n'existent pas chez la compagnie demanderesse.

Par Me Gadbois:—

30 D.—Savez-vous où elles sont ces instructions-là? R.—Dans le moment je crois qu'elles ont péri avec le feu.

Par la Cour:—

D.—Où les aviez-vous, ce matin-là? R.—Elles étaient pendues avec mes autres papiers, le record que je faisais.

D.—Où se trouvaient ces papiers? R.—A peu près à dix pieds du "tank".

D.—Sur une table ou quoi? R.—Non, pendues sur le mur.

40 D.—Est-ce que c'était des instructions écrites à la main ou imprimées ou écrites à la machine à écrire? R.—C'était écrit à la main.

D.—C'était écrit à la main? R.—Oui.

D.—Savez-vous par qui? R.—Oui, par M. Hodgins.

D.—Un chimiste de la compagnie? R.—Oui.

D.—Vous les avez laissées attachées au mur de la salle où vous travailliez? R.—Oui, c'est bien cela.

Par Me Mann:—

D.—Sur une espèce de crochet? je suppose? R.—Une espèce de "clip".

HENRI ASSELIN (for Plain. at Enq. Recalled) Exam. in chief

La Cour:—Vu l'objection du Conseil pour la défense le témoignage de M. Asselin est interrompu pour permettre à l'avocat de la demande d'établir la base nécessaire pour permettre l'introduction d'une preuve secondaire de ses instructions.

10 Et le témoin ne dit rien de plus pour le moment.

Jean McKay,
Sténographe.

DEPOSITION DE HENRI ASSELIN

20 L'an mil neuf cent quarante-cinq, le vingt-cinq octobre, a comparu: Henri Asselin, âgé de trente ans, machiniste, domicilié au 259 rue Lévis, à Montréal, témoin déjà entendu de la part de la demanderesse et rappelé; lequel, sous le serment qu'il a déjà prêté dépose et dit:—

30 Interrogé par la Cour:—ATTENDU que la preuve concernant la disparition de l'original du document en question est insuffisante et qu'elle pourrait être complétée plus tard, il est permis à l'avocat de la demande d'interroger le témoin sur le contenu du document en question, sous réserve de l'objection de la défense. Cette réserve devant être adjugée quand la preuve aura été complétée.

Par Me Gadbois:—

D.—Voulez-vous dire à la Cour ce que contenaient ces instructions que vous aviez reçues? R.—Je sais qu'il y avait du "Filtrol" et aussi du "Filter Cel".

D.—Si je comprends bien, monsieur Asselin, les instructions étaient à l'effet de vous servir de ces deux substances.

40 R.—Oui.

D.—Est-ce qu'on vous a donné instructions de vous servir de d'autres substances? R.—Non.

D.—C'était là les deux seules substances dont on vous demandait de vous servir? R.—Oui.

D.—A part, bien entendu, de la térébentine? R.—Oui, c'est bien cela.

D.—Est-ce qu'on vous avait donné des instructions relativement à la proportion? R.—Oui, certainement.

D.—Pouvez-vous dire quelles étaient ces instructions?

HENRI ASSELIN (for Plain. at Enq. Recalled) Exam. in chief

R.—Je crois qu'il pouvait y avoir alentour de 200 livres de Filtrol et quelque chose comme cinquante livres de Filter Cel.

D.—Y avait-il des instructions pour savoir jusqu'à quel degré vous deviez faire chauffer le tout? R.—Oui, certainement.

D.—Jusqu'à quel degré? R.—Je crois que c'est alentour
10 de 150.

D.—Aux alentours de 150 degrés Fahrenheit? R.—Oui.

D.—Avez-vous observé ces instructions? R.—Oui, monsieur.

D.—Vous avez placé dans le "tank" les deux substances dont vous avez parlé tout à l'heure? R.—Oui, monsieur.

D.—Vous avez aussi placé de la térébentine? R.—Oui, monsieur.

D.—Vous avez chauffé le tout jusqu'à 150 degrés Fahrenheit? R.—Oui, monsieur.

D.—De quelle façon avez-vous placé le Filter Cel et le
20 Filtrol? R.—C'est entré par la force du vacuum.

D.—De la façon que vous avez expliquée au commencement de votre témoignage? R.—Oui.

Par la Cour:—

D.—La térébentine a été entrée d'abord, je suppose?
R.—Oui.

D.—Avant les deux autres substances? R.—Oui.
30

Par Me Mann:—

D.—Par la même force? R.—Oui.

Par Me Gadbois:—

D.—Les deux autres substances ont été entrées dans le
"tank" de la même façon que la térébentine? R.—Oui.

40 Par la Cour:—

D.—Dans quoi se trouvaient ces poudres que vous deviez
entrer dans le "tank"? R.—C'est fait en tuyau.

D.—Un tuyau de quoi, de métal? R.—Oui, de métal.

Par Me Gadbois:—

D.—Où étaient ces tuyaux? R.—Ils se trouvaient à passer
un peu à côté du "tank".

HENRI ASSELIN (for Plain. at Enq. Recalled) Exam. in chief

D.—Est-ce qu'ils pénétraient dans le "tank"? R.—Oui.

D.—A quel endroit du "tank". Pouvez-vous indiquer sur le plan P-8? R.—Je crois que c'est celui-ci.

D.—Voulez-vous indiquer par la lettre "H" le tuyau par lequel ces poudres seraient entrées? R.—Oui.

10 D.—La lettre "H" écrite au crayon bleu? R.—Oui.

Par la Cour:—

D.—En quoi vos instructions concernant les opérations de ce matin-là différaient-elles des instructions normales que vous receviez pour l'huile de lin? R.—Il y avait seulement la température qui était un peu plus basse.

D.—C'est le seul détail de différence, cela? R.—Oui, je crois.

20

Par Me Gadbois:—

D.—Vous avez dit au début de votre témoignage, monsieur Asselin, que vous aviez quitté la salle à quelle heure pour la dernière fois? R.—C'est pas mal dur. Je crois que cela devait être alentour de neuf heures et demie à dix heures, pour être juste. . .

D.—Où êtes-vous allé? R.—J'ai été dans la cave.

30 D.—Et ensuite? R.—J'ai parti la pompe et je suis remonté en haut.

D.—A quel endroit en haut? A.—Dans la partie ouest.

D.—Dans ce que vous appelez le "Filter room", je crois? R.—Oui, c'est bien cela.

D.—Qu'est-ce que vous avez fait dans la partie ouest?

R.—J'ai été voir pour voir si l'huile sortait du "filter".

D.—Est-ce que l'huile sortait du "filter"? R.—Oui, certainement.

40 D.—Voulez-vous dire ce que vous avez fait après avoir constaté que l'huile sortait du "filter"? R.—Après avoir monté et regardé — il faut regarder pour voir si elle sort assez claire — et elle ne sortait pas bien, bien claire, et il a fallu que je descende pour aller fermer la pompe.

D.—Dans la cave? R.—Oui, dans la cave.

D.—Ensuite? R.—J'ai remonté en haut.

D.—A quel endroit? R.—Dans le même appartement.

D.—Au "filter room"? R.—Non, j'ai passé par les "tanks" avant.

D.—Et vous avez passé par les "tanks" avant? R.—Oui.

HENRI ASSELIN (for Plain. at Enq. Recalled) Exam. in chief

Par la Cour:—

D.—Étes-vous monté par l'ascenseur? R.—Non, par l'escalier, Votre Honneur. J'ai passé par les "tanks". J'ai passé par la partie nord de la porte, autrement dit, j'ai fait le tour devant
10 les "tanks".

D.—Vous avez passé par la porte du nord? R.—Oui.

Par Me Gadbois:—

D.—Vous avez passé par la porte du nord? R.—Oui, je suis passé en face des "tanks" et j'ai pris la porte du nord et j'ai descendu au ras la presse.

D.—Est-ce la dernière fois où vous avez pénétré dans la chambre est? R.—Oui.

20 D.—Pouvez-vous nous dire, lorsque vous avez traversé la chambre est, si vous avez examiné le "tank"? R.—Oui.

D.—Est-ce que tout était normal?

Me Hackett s'oppose à la demande comme suggestive.

Par Me Gadbois:—

D.—Avez-vous remarqué quelque chose d'anormal?

30 R.—Non.

D.—Est-ce qu'il y avait quelque chose d'anormal?

Me Hackett s'oppose à la demande comme illégale.

Par la Cour: —

D.—Vous avez monté l'escalier pour vous rendre au troisième étage? R.—C'est bien cela, Votre Honneur.

40 D.—Vous avez passé par la chambre où se trouvait le "tank"? R.—Oui.

D.—En passant, y avez-vous jeté un coup d'oeil? R.—Oui, certainement.

D.—Avez-vous remarqué quelque chose de spécial? R.—Non, tout était normal.

D.—Alors, vous êtes entré dans l'autre salle par la porte nord? R.—Oui, c'est bien cela.

D.—Là, qu'est-ce que vous avez vu? R.—Là, le "stuff" sortait pareil, le liquide sortait de la même manière.

HENRI ASSELIN (for Plain. at Enq. Recalled) Cross-examin.

Par Me Gadbois:—

D.—Le liquide sortait de quel endroit? R.—Du “filter”.
J’ai cru que la pompe avait quelque chose et j’étais certain que
je venais de la fermer. Partir de là j’ai été pour aller fermer la
10 valve.

D.—Quelle valve? R.—La valve de la “tank”.

D.—Quelle valve? R.—Celle qui menait à la pompe.

Par la Cour:—

D.—Pour arrêter la machine? R.—Pour arrêter le liquide
de descendre. Et c’est là que. . .

D.—Que quoi? Dites-nous cela en détail et pas trop vite.
R.—Il y a eu un sifflement, et je ne peux pas dire si j’ai vu la
20 fumée avant le tremblement ou le tremblement avant la fumée.
Et, après cela, nous sommes partis, et durant le laps de temps
qu’on a mis pour descendre, c’est là qu’a eu lieu l’explosion.

Par Me Gadbois:—

D.—Depuis combien de temps avez-vous quitté l’emploi de
la Sherwin Williams? R.—Depuis trois ans.

30 Contre-interrogé par Me Hackett, Avocat de la défense:—

D.—Où travaillez-vous maintenant? R.—Steel Company
of Canada.

D.—Je comprends que vous êtes arrivé au troisième étage
dans la chambre est, là où était le “tank” à sept heures du matin?
R.—Oui, c’est bien cela.

D.—Et M. Gosselin est monté avec vous? R.—C’est bien
cela.

40 D.—Y avait-il d’autres personnes qui sont montées avec
vous en même temps? R.—Je ne crois pas.

D.—Alors, vous étiez pendant un certain temps seulement
deux dans cet appartement là qu’on appelle la chambre de l’est,
c’est-à-dire la chambre où était le “tank”? R.—C’est bien cela.

D.—Nous parlons toujours du “tank” numéro 1? R.—Oui.

D.—Qui a été la première personne à venir vous voir ce
matin-là? R.—Vous voulez dire?

D.—Vous étiez là avec M. Gosselin? R.—Oui.

D.—Plus tard il est venu quelqu’un qui était la première
personne à venir? R.—Oui, Rymann.

HENRI ASSELIN (fôr Plain. at Enq. Recalled) Cross-examin.

D.—A quelle heure est-il venu? R.—Ah, je ne pourrais pas dire.

D.—A quel point était rendu votre travail, lorsqu'il est venu? R.—Je ne me rappelle pas.

10 D.—Quelle est la première chose que vous avez faite ce matin-là? R.—C'a été de mettre l'huile dans le "tank", le fluide dans la "tank".

D.—La térébentine? R.—Oui.

D.—Avez-vous monté les "drums" vous-même? R.—Non, je crois qu'ils étaient montés de la veille.

D.—Vous croyez qu'ils étaient montés de la veille?

R.—Oui.

D.—Est-ce qu'ils étaient près de l'ascenseur? Est-ce qu'il a fallu les transporter près du "tank"? R.—Il y en avait dans l'ascenseur et il y en avait près du "tank", prêts à servir.

20 D.—Comment avez-vous pu les ouvrir? R.—Là-dessus il y a une "plug". Il a fallu les ouvrir avec une clef.

D.—Avec une clef? R.—Oui.

D.—Est-ce qu'il a fallu les rouler le long du plancher? R.—Un peu, il faut toujours que ce soit roulé un peu.

D.—Est-ce qu'il y a une certaine odeur qui provient de la térébentine? R.—Bien, il en vient toujours un peu, oui.

D.—Vous êtes capable de vous apercevoir qu'un "drum" contient de la térébentine et qu'un autre contient de l'huile, n'est-ce pas? R.—Oui, certainement.

30 D.—Est-ce qu'il y a de la térébentine un peu à l'extérieur des "drums"? R.—Non, ils étaient bien propres.

D.—Ils étaient bien propres, mais est-ce qu'il y avait un peu d'huile, de térébentine, à l'extérieur? R.—Pas que je puisse me rappeler.

D.—Est-ce que vous portiez des gants? R.—Non.

D.—En manipulant ces "drums" là est-ce que vos mains sont devenues imprégnées de térébentine? R.—Non, pas plus que d'ordinaire.

40 D.—Pas plus que d'ordinaire, mais est-ce que en mettant vos mains sous votre nez, après avoir manipulé ces "drums" là, vous vous aperceviez que c'était de la térébentine qu'il y avait dans le "drum"? R.—Je ne crois pas.

D.—Quelle est la grosseur, quel est le diamètre du trou qui se trouve dans chaque "drum"? R.—Je crois que cela peut être comme un pouce et demi ou un pouce et trois-quarts, peut-être deux pouces, il y a différentes grosseurs.

D.—Pour en sortir le contenu, est-ce qu'il vous a fallu enfoncer un tuyau dans chaque "drum"? R.—C'est bien cela.

HENRI ASSELIN (for Plain. at Enq. Recalled) Cross-examin.

D.—Comment vous êtes-vous pris pour enfoncer ce tuyau dans le “drum”? Est-ce que le tuyau pouvait se plier? R.—Non, il était droit, seulement on le rentrait dans le “drum” avant de le visser après le tuyau qui connectait après le “tank”, parce que c’était plus facile.

10 D.—Est-ce qu’il en laissait dégoutter un peu sur le plancher? R.—Cela c’est possible.

D.—C’est normal? R.—Oui; c’est normal.

D.—A tous les jours vous preniez de l’huile pour la mettre dans le “tank”? R.—Pas toujours de la même manière.

Me Gadbois:—Je crois que l’on devrait demander au témoin s’il s’est aperçu qu’il était tombé de la térébentine sur le plancher.

20 La Cour:—Ce sera peut-être à vous à poser la question.

Par Me Hackett:—

D.—Vous dites que l’on ne mettait pas toujours l’huile de la même manière? R.—Non.

D.—Lorsqu’on la mettait au moyen du vacuum, on mettait le “drum” de côté, n’est-ce pas? R.—Oui.

30 D.—Il ne restait pas toujours debout, il venait parfois à rouler sur le côté, n’est-ce pas? R.—Bien, ils étaient roulés d’avance.

D.—Et on échappait un peu d’huile sur le plancher de temps en temps? R.—Oui, dans l’huile peut-être, mais ce n’était pas supposé parce que ces “drums” là sont supposés être très bien fermés pour pas qu’ils coulent.

D.—Mais cela se faisait? R.—Cela peut s’être fait, certain.

D.—Lorsqu’il s’est agi de térébentine, il en est tombé par terre? R.—Je ne peux pas dire.

40 D.—Mais vous ne voulez pas nous faire croire que vous auriez pu vider — vous avez dit que vous croyiez avoir mis 850 gallons dans le “tank” — vous ne croyez pas avoir vidé 19 gallons dans le “tank” sans en échapper un peu sur le plancher? R.—C’est possible.

D.—C’est plus que possible? Vous savez que c’est le cas? R.—C’est pratique.

D.—C’est pratique? R.—Oui.

D.—C’est ce qui a dû arriver? R.—Cela se peut bien.

HENRI ASSELIN (for Plain. at Enq. Recalled) Cross-examin.

D.—Cela vous a pris combien de temps à vous et à M. Gosselin pour mettre le contenu de ces 19 “drums” dans le “tank”? R.—Peut-être autour d’une heure.

D.—Et savez-vous si cela vous a pris jusqu’à 8 heures, comme cela? R.—Oui, à peu près.

10 D.—Est-ce que la machine ne marchait pas à l’intérieur, pendant que vous étiez à y jeter la térébentine? R.—Cela, je ne me rappelle pas. Elle pouvait aussi bien marcher comme être arrêtée.

D.—Mais vous ne vous en rappelez pas? R.—Non.

D.—Vous rappelez-vous si M. Rymann, était monté au troisième étage avant que vous eussiez fini de vider la térébentine? R.—Je ne me rappelle pas.

D.—Vous ne vous en rappelez pas? R.—Non.

20 D.—Ça vous a pris combien de temps pour mettre le *Filtrol* 200 livres de *filtrol* et 50 livres de *filter cel*? R.—Cela peut prendre à peu près 20, 25 minutes, quelque chose comme cela.

D.—20 à 25 minutes? R.—Oui, à peu près.

D.—Vous étiez toujours seuls, vous et M. Gosselin? R.—Oui, c’est bien ça.

D.—Voulez-vous dire si M. Rymann est arrivé au troisième avant que vous eussiez fini de mettre le *filtrol* et le *filter cel* dans le “tank”? R.—Je crois qu’il est venu plusieurs fois dans l’entre-temps.

30 D.—Lorsque vous dites qu’il est venu plusieurs fois, qu’est-ce que vous voulez dire? R.—Peut-être deux ou trois fois, peut-être quatre fois.

D.—Est-ce qu’il montait et descendait? R.—Oui, certainement.

D.—Est-ce qu’il a fait cela pendant toute la matinée? R.—Bien, s’il est venu quelques fois, je ne peux dire combien d’espace il y avait entre les fois, je sais qu’il est venu, c’est tout.

D.—Est-ce que vous savez qu’il est parti? R.—Oui, certainement.

40 D.—Il y avait des intervalles où il était parti? R.—Oui.

D.—Il est descendu en bas? R.—Oui, certainement.

D.—Comment appelez-vous la machine en dedans qui sert à mélanger le contenu? R.—On appelait cela le . . .

D.—Le “mixer”? R.—Oui, le “mixer”.

D.—Quand l’avez-vous mis en mouvement? R.—Après que l’huile a été rentrée.

D.—Et avant que la poudre, le *filtrol* et le *filter cel* a été mis? R.—Oui, avant cela.

D.—Vous l’avez mis en mouvement au moyen du moteur, n’est-ce pas? R.—Oui.

HENRI ASSELIN (for Plain. at Enq. Recalled) Cross-examin.

D.—Une fois l'huile, le *filtrol* et le *filter cel* dans le "tank", vous avez commencé à chauffer? R.—C'est bien cela. Non, je crois que c'était chauffé avant.

D.—C'était chauffé avant? R.—Oui, c'était chauffé avant.

10 D.—Croyez-vous avoir commencé à chauffer avant que le liquide y fût en entier ou seulement après que les 850 gallons y fussent jetés? R.—Je ne comprends pas.

D.—Lorsque vous avez commencé à chauffer, est-ce que tout le liquide était dans le "tank"? R.—Le liquide, oui.

D.—Et vous croyez après que le liquide eut été mis dans le "tank", et avant que vous ayez commencé à mettre les deux espèces de poudres, vous croyez que vous avez commencé à chauffer, est-ce que c'est cela? R.—Oui, certainement.

20 D.—Alors, vous avez commencé à chauffer en même temps que vous avez commencé à agiter le "mixer" à l'intérieur du "tank"? R.—Cela peut être en même temps ou un peu avant ou un peu après.

D.—Alors, d'après vous, quelle heure était-il lorsque vous aviez fini de remplir le "tank" avec le liquide et les deux poudres?

Le Témoin:—Avec les deux poudres?

L'Avocat:—Oui.

R.—C'est pas mal difficile à dire.

Par la Cour:—

30 D.—C'est tout ce que vous aviez fait ce matin-là? R.—Oui.

D.—Vous avez commencé par remplir le "tank" de térébentine? R.—Oui.

D.—Vous avez probablement tourné la valve pour la vapeur et ensuite vous avez mis les deux poudres? R.—Oui.

D.—Avant de mettre les poudres, en même temps, vous avez commencé à faire agiter la machine en dedans? R.—Oui.

40 D.—Combien de temps en tout cela vous a-t-il pris? R.—Cela peut avoir pris jusque vers les 9 heures, peut être 9 heures moins quart, 9 heures, quelques chose comme cela.

Par Me Hackett:—

D.—Je ne sais pas si vous avez bien compris. Nous parlons seulement du moment où la térébentine, le *filtrol* et le *filter cel* seraient dans le "tank", on ne parle pas de ce qui est arrivé après. Vous avez mis 200 livres de *filtrol* d'abord? R.—J'ai mis cela ensemble.

HENRI ASSELIN (for Plain. at Enq. Recalled) Cross-examin.

D.—Quelle heure était-il lorsque la dernière de ces deux poudres est entrée dans le “tank”? R.—Peut-être huit heures et trente.

D.—Huit heures et trente? R.—Oui, peut-être.

10 D.—Et vous dites que vous croyez que vous avez commencé à chauffer avant cela? R.—Oui.

D.—Est-ce que M. Rymann était allé vous voir avant huit heures et trente? R.—Je crois bien.

D.—Est-ce qu’il est venu, il est reparti et il est revenu après? R.—Oui.

D.—A quelle heure, d’après vous, le contenu du “tank” a-t-il atteint la température indiquée? R.—Je crois que c’était vers les neuf heures.

D.—Vers les neuf heures? R.—Oui.

20 D.—Vous avez dit qu’au meilleur de votre connaissance la température indiquée était de? R.—145 à 150.

D.—145 à 150? R.—Oui.

D.—Et pour l’huile c’était combien? R.—C’était à peu près alentour de 190.

D.—C’était une température moindre pour la térébentine? R.—Oui.

D.—Et vous avez vu le thermomètre? R.—Certainement.

D.—Vous le suiviez? Pourquoi regardiez-vous le thermomètre? R.—Pour pas qu’il dépasse la température donnée.

30 D.—Au moment où vous avez fermé la vapeur, avez-vous eu l’occasion de regarder le thermomètre après cela? R.—Je le regardais toujours, toutes les cinq ou dix minutes.

D.—Pourquoi? R.—Parce que des fois, il pouvait arrêter le thermomètre comme entre 135 et 150; et par habitude on l’arrêtait toujours trois ou quatre degrés plus bas parce qu’il se rendait à 150.

40 D.—Une fois la vapeur fermée, une fois que la chaleur cessait de venir en contact avec le contenu, du “tank”, avez-vous eu occasion de regarder le thermomètre? R.—Ah, oui, très souvent.

D.—Pourquoi? R.—L’idée pour savoir s’il se tenait, ou l’habitude.

D.—Quelle était la température du contenu du “tank” le dimanche, la dernière fois que vous avez regardé? R.—Je crois qu’elle était un petit brin plus bas que 150, deux degrés, trois degrés ou quatre degrés.

D.—Vous ne vous en rappelez pas exactement? R.—Non.

D.—Quelle heure est-il quand vous avez regardé pour la dernière fois? R.—Peut-être dans les 9 h. 30, dix heures moins vingt-cinq; quelque chose comme ça.

HENRI ASSELIN (for Plain. at Enq. Recalled) Cross-examin.

D.—Qui a ouvert la valve pour permettre à la térébentine de descendre dans la cave? R.—Je crois bien que c'est moi.

D.—C'est vous? R.—Oui.

D.—Avant de faire cela vous aviez fermé la valve qui faisait le vacuum dans le "tank" et vous aviez ouvert la "air line"?

10 R.—Cela c'était ouvert.

D.—C'était ouvert? R.—Oui.

D.—Quand avez-vous ouvert cette valve-là? R.—Tout de suite après avoir mis le *filter cel*.

D.—La poudre? R.—Oui.

D.—Et vous avez fermé la valve qui contrôlait l'effet de la pompe à vacuum? R.—La pompe était fermée elle-même.

D.—Et la valve était fermée aussi? R.—Oui.

D.—Depuis le moment où vous avez mis le *filtrol* et le *filter cel* dans le "tank", n'est-ce pas? R.—Oui.

20 D.—Pouvez-vous dire à peu près à quelle heure vous avez ouvert la valve qui permettait au contenu du "tank" de descendre dans la cave? R.—Bien, cela pouvait être alentour de dix heures moins vingt-cinq ou dix heures moins vingt.

D.—Qui était dans la chambre avec vous, dans ce temps-là? R.—Il y avait M. Gosselin, et je crois que M. Rymann y était.

D.—Est-ce que ça faisait longtemps qu'il était arrivé? R.—Ah, cela, je ne peux pas dire.

30 D.—Est-ce que quelqu'un vous a dit de descendre à la cave ou si vous y êtes allé de votre propre chef? R.—Pour dire, je ne me rappelle pas. Ordinairement j'y vais de mon propre gré.

D.—Vous connaissez ce que vous avez à faire, et, le temps voulu s'était écoulé? R.—Oui, c'est bien cela.

D.—Vous aviez coutume de laisser travailler le "mixer" pendant combien de temps après que vous fermiez la vapeur? R.—Ordinairement c'est dans les environs d'une demi-heure.

D.—Aviez-vous reçu des instructions qui variaient de cette pratique-là pour la térébentine? R.—Je ne crois pas.

40 D.—D'après vous, la seule différence qu'il y avait entre les instructions que vous avez reçues pour ce dimanche matin-là, était, comme vous avez dit à la Cour tout à l'heure, une différence dans la température? R.—C'est bien cela.

D.—Pour l'huile vous chauffiez jusqu'à 190, 195 degrés Fahrenheit, et vous dites que le dimanche matin on vous avait dit de chauffer jusqu'à 150 degrés peut-être? R.—C'est bien cela.

D.—Pour la térébentine? R.—Oui.

D.—Et c'était la seule variante qu'il y avait à peu près dans vos instructions, pour ce matin-là? R.—Je crois que oui.

D.—Si vous aviez eu à travailler avec une égale quantité d'huile, vous auriez mis 200 *filtrol* et 50 livres de *filter cel*? R.—

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Je ne suis pas certain. Je crois que dans l'huile de lin on ne se servait pas de *filter cel*. Je ne suis pas certain.

D.—Vous croyez qu'on avait ajouté cela, le *filter cel*?

R.—Oui.

10 Par la Cour:—

D.—Pour la térébentine? R.—Oui.

D.—Alors, ce serait une autre différence? R.—Oui.

Par Me Hackett:—

D.—A venir jusqu'au matin du 2 août, vous n'avez jamais mis dans ce "tank" autre chose que de l'huile de lin? R.—Il y avait une couple de sortes d'autres huiles.

20 D.—J'ai bien compris ce que vous avez dit lorsque M. Gadbois vous a questionné, et j'ai bien remarqué que vous avez dit qu'il y avait deux ou trois espèces d'huile, mais est-ce que ce n'était pas de l'huile de lin de qualité différente? R.—Je crois que l'huile était différente complètement, ce n'était pas de la même sorte d'huile, ce n'était pas de l'huile de lin que l'on appelait cela.

30 D.—Tout ce que je veux vous dire, — vous me paraissez bien honnête — on nous avait dit que jamais avant ce matin-là on s'était servi du "tank" pour des fins autres que pour raffiner de l'huile de lin? R.—Je sais que j'ai passé trois ou quatre sortes d'huile là-dedans.

Par la Cour:—

D.—Mais jamais de la térébentine? R.—Non, jamais de la térébentine.

D.—Quand avez-vous su pour la première fois que vous deviez passer de la térébentine?

40 Le Témoin:—Personnellement?

L'Avocat:—Oui.

R.—Je crois que c'était la veille ou une journée avant.

D.—Est-ce que cela vous avait surpris? R.—Non, pas du tout.

D.—Est-ce que cela avait piqué votre curiosité un peu?

R.—Toujours un peu, quelque chose de nouveau.

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D.—Est-ce qu'on avait parlé de cela dans le chantier?

R.—Certainement qu'on en parlait.

D.—Vous saviez qu'on avait une certaine quantité de térébentine qui était décolorée et qu'on allait faire une espèce d'expérience pour tâcher d'ôter ce qui l'avait décolorée? R.—C'est bien cela, je crois.

D.—Savez-vous si les autres savaient que ce traitement extraordinaire devait être donné ce matin-là?

Le Témoin:—Les autres employés, vous voulez dire?

L'Avocat:—Oui.

R.—Oui, ils étaient au courant.

D.—Est-ce que c'était pour cette raison qu'il y avait plusieurs employés dans le "filter room", dans le "filter press", lorsque la térébentine est passée par le "filter press", pour la première fois? R.—Ordinairement, dans le "filter press", il y a deux ou trois hommes avant que je puisse rentrer.

D.—Ce matin-là, qui manoeuvrait le "filter press"? R.—C'est moi.

D.—Vous étiez capable de le faire seul? R.—Oui, certainement.

D.—Il y avait là vous-même et M. Gosselin? R.—Oui.

D.—M. Frazier qui était le surintendant et qui est aujourd'hui le surintendant, il y avait M. Ryman qui était le "charging man" dans ce temps-là? R.—Oui.

D.—Et il y avait M. Desrochers? R.—Je ne me rappelle pas de l'avoir vu.

D.—Il y avait M. Boucher? R.—Oui.

D.—M. Héneault? R.—Oui.

D.—M. Default? R.—Oui.

D.—Pourquoi toutes ces personnes étaient-elles là? R.—Il y en avait deux ou trois d'avance sur "filter press" parce qu'ils travaillaient là, et il y en a toujours deux ou trois. Pour M. Frazier et M. Ryman. . . .

L'Avocat:—Leur raison est bien expliquée. On comprend pourquoi ils étaient là. R.—M. Gosselin était mon aide, il avait le droit d'être là et moi-même. Je crois que les autres pouvaient être là par curiosité.

D.—Lorsque vous êtes descendu à la cave pour mettre la pompe en marche, savez-vous qui était dans la chambre où était le "tank"? R.—M. Gosselin, je crois, y était.

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D.—Vous êtes allé dans la cave et lorsque vous êtes remonté vous avez passé tout droit dans le “filter press room”?

R.—Oui, c’est bien ça.

D.—Et vous avez vu près de la “filter press”, M. Ryman?

R.—C’est bien ça.

10 D.—Et, peu de temps après M. Frazier est venu? R.—Je crois que oui. C’est comme je dis, peut-être après ou avant.

D.—Ce que je veux savoir, c’est lorsque vous êtes remonté au troisième étage, est-ce que vous êtes monté par l’ascenseur ou l’escalier? R.—L’escalier.

D.—Lorsque vous êtes arrivé dans la chambre est où il y avait le “tank”, est-ce que vous êtes passé tout droit dans la chambre ouest ou était la “filter press”?

20 Le Témoin:—La première fois, oui.

L’Avocat:—La première fois, oui? R.—Oui.

D.—Qu’est-ce que vous voulez dire par la première fois? R.—La première fois que j’ai descendu pour partir la pompe.

D.—Et rendu dans la chambre ouest, lorsque vous êtes arrivé, est-ce que M. Ryman était là seul? R.—Je ne peux pas dire.

30 D.—En tout cas, s’il était seul, M. Frazier est venu le rejoindre presque immédiatement? R.—Je ne peux pas dire si c’est à ce moment-là que M. Frazier est arrivé.

D.—En tout cas quelqu’un vous a envoyé de nouveau à la cave? R.—C’est bien cela.

D.—Qui vous a envoyé à la cave? R.—Je ne pourrais pas dire.

D.—C’était une de ces deux personnes-là? R.—J’aurais pu y aller par moi-même.

D.—Est-ce que vous y êtes allé de vous-même? R.—Je ne peux pas dire.

40 D.—Avez-vous vu de vous-même que la couleur de la térébentine n’était pas satisfaisante? R.—Elle n’était pas satisfaisante.

D.—Vous l’avez vu par vous-même? R.—Oui.

D.—Et vous êtes redescendu à la cave? R.—Oui.

D.—Et vous ne vous rappelez pas si M. Frazier ou M. Ryman vous ont dit d’y aller ou si vous y êtes allé de votre propre chef? R.—Cela, je ne me rappelle pas.

D.—Vous ne vous en rappelez pas? R.—Non.

D.—En tout cas, vous êtes descendu dans la cave et vous

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êtes remonté et vous êtes allé dans le "filter press"? R.—La deuxième fois j'ai passé par les "tanks", en remontant j'ai passé en avant des "tanks".

D.—Qu'est-ce que vous avez fait? R.—J'ai jeté un coup d'oeil pour voir s'il y avait quelque chose qui ne marchait pas.

10 D.—Sur quoi avez-vous jeté un coup d'oeil? R.—Sur le "tank", la température.

D.—Quelle température y avait-il? R.—Elle n'avait pas changé.

D.—Je vous demande quelle température était marquée? R.—Un peu plus bas que 150.

D.—Êtes-vous bien bien certain de cela? R.—Pratiquement, oui.

20 D.—Je vous ai demandé si vous vous souveniez si M. Rymann était seul à la chambre ouest, et vous avez dit que vous ne vous en rappeliez pas. Et je vous ai demandé si M. Frazier était avec lui et vous avez dit que vous ne vous en rappeliez pas, et je vous ai demandé si vous êtes descendu la première fois de votre propre chef ou si on vous avait dit d'y aller et vous ne vous en rappelez pas; je vous ai demandé si on vous avait envoyé une deuxième fois et si vous y avez été de votre propre chef et vous dites que vous ne vous en rappelez pas, et maintenant, vous dites que vous vous souvenez que vous avez regardé le thermomètre en passant par la chambre est, et je vous demande, en homme sérieux, et en homme consciencieux, si vous êtes bien certain de cela, si vous êtes absolument certain de cela? R.—Oui, certainement je suis certain.

D.—Vous êtes certain de quoi? R.—Qu'il n'y avait rien qui ne marchait pas, tout était normal.

D.—Ce n'est pas là ma question. Je vous demande si vous êtes prêt à jurer que vous avez regardé le thermomètre? R.—Je suis sous serment, là.

40 D.—Je vous demande si vous êtes prêt à jurer que vous avez regardé le thermomètre et que vous pouvez dire quelle température il indiquait? R.—Pas la température exacte, mais je peux dire que j'ai regardé, je peux faire serment.

D.—Vous avez bien regardé la "filter press" et vous ne pouvez pas dire si M. Frazier était là, seul ou si M. Rymann était là seul. Je ne veux pas vous causer de misère, mais je vous demande de dire quelle était la température? R.—Pas exactement, mais en bas de 150.

D.—Pourquoi pouvez-vous dire cela? R.—Parce que c'était dans mon intérêt, c'était ma "job". Je passais par là exprès pour cela.

HENRI ASSELIN (*for Plain. at Enq. Recalled*) *Cross-examin.*

D.—Vous saviez n'est-ce pas que la vapeur avait été fermée? R.—Oui, certainement.

D.—Ça faisait au-delà d'une demi-heure depuis que la vapeur était fermée? R.—Oui.

10 D.—Vous saviez que la température ne pouvait pas augmenter? R.—Non, ordinairement non.

D.—Vous n'avez jamais vu la température de l'huile augmenter plus de quelques degrés après que la vapeur est fermée? R.—Non.

D.—Lorsque vous regardez le thermomètre, après que la valve à vapeur est fermée, vous savez que c'est là la température maximum, n'est-ce pas? R.—C'est bien cela.

D.—Pourquoi regarder de nouveau si vous savez que la température maximum est atteinte? R.—Peut-être une question d'habitude.

20 D.—Si on fait une chose d'habitude peut-être qu'on n'y porte pas beaucoup attention? R.—A force de la faire souvent, on le fait combien de fois par jour, je ne le sais pas.

D.—Voulez-vous nous faire comprendre que la deuxième fois que vous êtes monté vous êtes allé regarder le thermomètre? R.—Oui, c'est bien cela.

D.—Et la première fois que vous êtes monté vous n'y êtes pas allé? R.—Non.

D.—Pourquoi n'y êtes-vous pas allé la première fois? R.—Parce que M. Gosselin venait de là.

30 D.—Où était-il M. Gosselin? R.—Quand je suis monté en haut, je crois qu'il était alentour de la "filter press".

D.—Comment pouvez-vous dire qu'il était là si vous ne pouvez pas dire que M. Frazier était là? R.—C'était mon aide.

D.—Mais M. Frazier était votre chef? R.—Oui, mais mon aide, je lui avais dit de se rendre là.

D.—De se rendre à quelle place? R.—Au "filter press".

D.—Lorsque vous êtes descendu la première fois? R.—Oui, une couple minute pour lui laisser le temps de descendre.

40 D.—Il n'y avait personne autour du "tank" à partir du moment où vous êtes descendu la première fois jusqu'à l'incident? R.—Je n'étais pas là pour le savoir.

D.—Il y avait seulement un homme avec vous et vous l'aviez envoyé dans une autre chambre? R.—Oui.

D.—Vous avez signé une déclaration par écrit, n'est-ce pas? R.—Je crois que oui.

D.—Vous rappelez-vous où vous êtes allé pour faire la déclaration qui a été mise par écrit? R.—Je crois que c'est dans les offices de la Sherwin Williams.

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D.—Dans le bureau de qui? R.—Ah, je ne sais pas.

D.—Vous connaissez M. Moffat? R.—Oui.

D.—Il était là? R.—Oui, il était là.

D.—Il vous parlait? R.—Je ne crois pas.

10 D.—A qui avez-vous donné les renseignements qui ont été mis par écrit? R.—Cela m'a été dit que c'était des inspecteurs.

D.—Qui vous a parlé? R.—Cela. . .

D.—Est-ce que ce n'était pas M. Moffat qui vous a parlé?

R.—Pas du tout.

D.—Jurez-vous que ce n'est pas M. Moffat qui vous a parlé ce matin-là? R.—Oui, certainement.

D.—Vous jurez que vous n'avez pas parlé avec M. Moffat, le matin, du 10 août 1942? R.—Je ne crois pas lui avoir parlé.

D.—Vous jurez que vous n'avez pas parlé à M. Moffat le 10 août 1942, lorsqu'une enquête a été faite ausujet du feu?

20

Le Témoin:—Qu'est-ce que vous voulez dire par "parlé"?

O.—Est-ce que vous lui avez dit ce que vous aviez fait ce matin-là, ce que vous aviez vu? R.—Non.

D.—Voulez-vous regarder le document que je vous exhibe et dire si vous reconnaissez votre signature qui se trouve au bas du document? R.—C'est bien la mienne.

D.—C'est votre signature? R.—Oui.

30 D.—Vous voyez à côté de votre signature, celle de M. Moffat, n'est-ce pas? R.—Oui.

D.—Voulez-vous produire ce document comme pièce D-4? R.—Oui.

D.—Vous parlez anglais, n'est-ce pas? R.—Un peu.

D.—Je constate que le document que vous avez signé se lit comme suit:—

40

"August 10, 1942. Statement by Mr. H. Asselin concerning accident at Linseed Oil Mill, which occurred Sunday, August 2. Came in at 7 o'clock. First thing I started to "pump turpentine into the tank".

Vous comprenez cela? R.—Oui.

D.—"I bleached it, put the bleaching earth in, put the "steam on to heat it up to 165".

C'est marqué là 165 et vous avez dit 150 ou 145.

"Then I arrested it for 30 minutes".

HENRI ASSELIN (for Plain. at Enq. Recalled) Cross-examin.

Qu'est-ce que vous voulez dire par cela? R.—Cela veut dire qu'il n'y a pas eu de "steam" dessus.

D.—Le 30 minutes, s'est écoulé après que vous avez fermé la vapeur? R.—C'est bien cela.

10 D.—Et pendant ce temps-là, l'agitateur fonctionnait?

R.—Oui, c'est bien cela.

D.—"Agitator was going but no heat". R.—C'est bien cela.

D.—"I went downstairs, everything was O.K. to start filtering. Went downstairs and came up to 3 floor to start filtering. Mr. Frazier came in and I had to go down to shut off the pump. I stayed at the filter, then went back to the pump downstairs and stopped it, came back again and was discussing with Mr. Frazier about changing clothes.

20

"I heard hissing, not sure if I saw flames or fumes. Was looking toward the south door: I went toward it 2 or 3 steps. It must have been flames, so I turned around".

Pourquoi dites-vous que cela a dû être des flammes parce que vous vous êtes tourné de côté? A.—Parce que j'ai eu peur, il faut croire.

30

Par Me Mann:—

D.—Parce que vous avez eu peur? R.—Oui.

Par Me Hackett:—

D.—Voulez-vous dire que vous n'aviez pas eu peur des vapeurs? R.—Peut-être aussi.

40 D.—Voyez-vous, vous avez marqué ici: "It must have been flames, so I turned around". Cela a dû être des flammes et je me suis tourné? R.—Donc, je n'étais pas certain cette journée là.

D.—Vous avez dit que "cela a dû être des flammes parce que vous vous êtes tourné?" R.—Peut-être aussi que la vapeur aurait été assez, ce n'était pas normal.

D.—"Frazier caught me and told me to use the fire escape". R.—Cela se peut.

D.—Vous dites que "M. Frazier caught me and told me to use the fire escape". M. Frazier vous a parlé? R.—Ça doit.

D.—Qu'est qu'il vous a dit? R.—Il ne doit pas avoir dit

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grand'chose pour me faire revirer parce que dans le moment j'avais trois ou quatre pas de faits pour m'en aller de l'appartement des "tanks".

D.—Pour aller à l'escalier, il fallait passer par l'appartement où étaient les "tanks", n'est-ce pas? R.—Oui.

10 D.—Il vous en a détourné? R.—Oui.

D.—Est-ce qu'il vous a pris par le bras? R.—Ah bien. . .

D.—Comment? R.—Je ne sais pas.

D.—Vous ne savez pas? R.—Non.

D.—Je vous demande cela parce qu'il est dit ici: "Frazier caught me". "I went down. I hear a noise but could not tell where. The first noise was not an explosion like a roar. I came down by the fire escape and went toward the yard". C'est vous qui avez signé cela? R.—Oui.

20 D.—Ce premier sifflement que vous avez entendu, où étiez-vous quand vous l'avez entendu? R.—Près de la "filter press".

D.—Qui était à votre droite?

Le Témoin:—Qui était à ma droite?

L'Avocat:—Oui, qui était à côté de vous? R.—Il peut bien y avoir personne que je ne me rappelle pas.

30 D.—Saviez-vous ce que c'était que ce bruit-là? R.—Non, je ne pouvais pas dire exactement. C'est un sifflement. Définir, je ne peux pas.

D.—Est-ce que cela vous a suggéré quelque chose? Est-ce que vous avez cru que c'était quelque chose, lorsque vous avez entendu ce sifflement-là? R.—Non, c'était la première fois que j'ai entendu cela et la dernière.

D.—Savez-vous si le "tank" avait été nettoyé dernièrement? Je parle du "tank" No 2, dont il est question en cette cause? R.—Bien non, je ne crois pas parce que elle se vidait complètement.

40 D.—Elle se vidait complètement? R.—Oui.

D.—Quand vous êtes-vous servi du "tank" vous-même, personnellement, avant le 2 août? R.—Je m'en étais servi la veille.

D.—La veille? R.—Oui.

D.—Et vous vous en êtes servi tous les jours de la semaine qui précédait? R.—Oui, certainement.

D.—Et le "tank" n'a pas été nettoyé pendant cette semaine-là? R.—Non, je ne crois pas.

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D.—Et l'huile que vous avez fait passer par ce "tank" là, est-ce que vous l'avez toujours fait bouillir?

Le Témoin:—De quelle manière voulez-vous dire?

10 L'Avocat:—Vous avez dit que l'huile que l'on mettait dans le "tank", je ne parle pas du dimanche, mais que l'huile que l'on clarifiait était montée à une température d'environ 190 degrés Fahrenheit? R.—Oui.

D.—Je vous demande si vous avez toujours eu à bouillir de l'huile dans ce "tank" là? R.—Je n'ai jamais eu d'huile de lin à bouillir.

20 D.—Est-ce que vous vous êtes aperçu qu'il s'échappait de l'huile autour du trou d'homme? Vous savez qu'il y avait un trou d'homme en face du "tank"? R.—Oui.

Par la Cour:—

D.—C'est-à-dire dans le "tank" même? R.—Oui.

Par Me Hackett:—

30 D.—Avez-vous déjà vu de l'huile sortir par cette ouverture-là lorsqu'elle était fermée? R.—Cela m'est arrivé une fois ou deux, mais c'est parce que la porte était mal fermée.

D.—Est-ce qu'on avait l'occasion d'ouvrir cette porte-là souvent? R.—Non, pas bien, bien souvent. Le plus que je me rappelle je l'ai ouverte trois ou quatre fois le temps que j'ai été là.

D.—Et vous avez été là combien de temps? R.—J'ai été là peut-être trois ans sur cette machine-là.

D.—Savez-vous comment la porte était ajustée au "tank"? R.—Oui.

40 D.—Qu'est-ce qu'il y avait? R.—Il y avait comme deux oeils, un de chaque côté avec des morceaux, une barre qui poignait dans le centre du couvert et il y avait une "pin" avec la barre qui entraît entre les deux, il y avait une "pin" qui barrait et il y avait une roue avec une "screw" pour la serrer en place.

D.—Y avait-il quelque chose entre les deux plaques de métal? R.—Oui, il y avait un "gasket".

D.—En quoi? En asbestos? R.—Oui, je crois, en asbestos.

D.—Est-ce que ça faisait longtemps que vous l'aviez regardé? R.—Je crois qu'il avait été changé ça ne faisait pas beaucoup, beaucoup longtemps.

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D.—Je vous ai parlé de la valve que l'on a ouverte après que l'on a mis le *filtrol* et la *filter cel* pour laisser entrer l'air, je crois que c'est la valve No 5, sur le plan P-8, savez-vous si cette valve-là est restée ouverte jusqu'au feu? R.—Ah oui.

D.—En tout cas, vous ne l'avez pas fermée? R.—Non.

10 D.—Pouvez-vous dire si l'appareil, dont je ne peux pas vous donner le nom et que faisait fonctionner M. Marier, fonctionnait ce matin-là? R.—Je crois que oui.

D.—Quel est le nom de cet appareil? R.—Le "shaker".

D.—Marier était à l'endroit que vous avez marqué par la lettre "M"? R.—Oui.

D.—Est-ce que la lettre "M" indique aussi l'endroit où était le "shaker"? R.—Oui, approximativement.

D.—Approximativement? R.—Oui.

20 D.—Et, d'après vous, le "shaker" fonctionnait normalement ce matin-là? R.—Oui, il devait, oui.

D.—Est-ce que vous vous en rappelez? R.—Bien, ce n'était pas ma "job".

Par la Cour:—

D.—Vous avez vu Marier près du "shaker"? R.—Je ne crois pas, je ne suis pas certain.

D.—Vous n'êtes pas certain de l'avoir vu? R.—Non.

30 D.—Est-ce que vous avez entendu fonctionner l'appareil? R.—Oui. Cela faisait toujours un peu assez de train.

D.—Et M. Marier devait être là? R.—Oui.

D.—Vous supposez qu'il était là? R.—Oui.

Et le témoin ne dit rien de plus.

Jean McKay,
Sténographe.