

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*

Record Vol. 2
Plaintiff's Evidence at Enquête
Pages 199 - 404

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UNIVERSITY OF LONDON

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29 OCT 1956

INSTITUTE FOR ADVANCED

STUDIES

11942

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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,**

20

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

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),

40

RESPONDENT.

JOINT CASE

VOL. II — PLAINTIFF'S EVIDENCE AT ENQUETE.

Pages 199 to 404.

ALPHONSE BOUCHER (for Plain. at Enq.) Exam. in chief.

DEPOSITION DE ALPHONSE BOUCHER

L'an mil neuf cent quarante-cinq, le vingt-cinq octobre, a comparu: Alphonse Boucher, âgé de vingt-neuf ans, domicilié au 1222 d'Argenson, témoin produit de la part de la demanderesse; lequel, après serment prêté sur les saints Evangiles, dépose et dit:—

Interrogé par Me Gadbois, avocat de la demanderesse:—

D.—Monsieur Boucher, est-ce que vous êtes à l'emploi de la Compagnie Sherwin Williams? R.—Oui, monsieur.

D.—Etiez-vous à l'emploi de cette compagnie le 2 août 1942? R.—Oui.

D.—Avez-vous travaillé cette journée-là? R.—Oui, mon

20 sieur. D.—A quelle heure vous êtes-vous rendu à l'ouvrage ce matin-là? R.—J'étais à l'ouvrage depuis onze heures, le samedi soir.

D.—Voulez-vous nous expliquer à quel endroit vous travailliez?

Le Témoin:—Le matin même?

L'Avocat:—Oui.

R.—J'étais employé pour monter les "drums" dans l'élévateur, pour fournir en haut.

D.—Qu'est-ce que vous entendez par "en haut"? R.—Monter les "drums" pleins dans l'élévateur et je les montais au troisième étage.

D.—Au troisième étage? R.—Oui.

D.—Qu'est-ce que contenaient les barils? R.—De la térébentine.

D.—Vous rappelez-vous combien vous en avez monté? R.—C'était le deuxième voyage que je montais depuis le matin.

D.—Combien de barils aviez-vous dans chaque voyage?

R.—Le premier voyage, huit (8) "drum".

D.—Le deuxième? R.—Le deuxième, seulement sept (7).

D.—Sept "drums"? R.—Oui.

D.—Voulez-vous me montrer sur le plan produit comme exhibit P-7, à quel endroit se trouvait l'élévateur en question? Pour votre information, vous avez ici la chambre des "tanks", qu'on a nommé la chambre est, et là, la chambre des "filter press"

ALPHONSE BOUCHER (for Plain. at Enq.) Exam. in chief.

qu'on a nommé la chambre ouest, et voulez-vous indiquer à quel endroit se trouvait cet ascenseur? R.—Ici.

D.—Une fois que vous êtes descendu de l'ascenseur, pouvez-vous dire où vous êtes allé? R.—En débarquant de l'ascenseur pour aller, le premier voyage, j'allais porter les "drums" ici, la
10 chambre où était le "tank".

D.—Vous alliez porter des "drums" au "tank"? R.—C'est cela.

D.—Ensuite? R.—Sur le deuxième voyage, le deuxième voyage n'était pas déchargé, je suis parti ici et je suis allé à la presse No 6.

D.—Vous êtes parti par l'ascenseur? R.—Oui.

D.—Vous êtes passé par la porte? R.—Oui.

D.—Quelle porte? R.—La porte ici.

D.—La porte du côté sud? R.—Oui, à côté de l'élévateur.
20

D.—Et ensuite? R.—J'ai été au "filter" No 6.

D.—Étiez-vous seul au "filter" No 6? R.—Non, monsieur.

D.—Qui était avec vous? R.—Ah, je ne peux pas tous vous les nommer.

D.—Nommez-en quelques uns? R.—M. Frazier était avec moi, M. Gosselin, Marier, M. Durocher. Il y en avait plusieurs autres. Je vous dis bien franchement je ne peux pas dire.

D.—Que faisiez-vous au "filter press" No. 6? R.—J'allais
30 seulement voir comment cela marchait.

D.—Comment quoi marchait? R.—Ils étaient supposés filtrer de la térébentine. Elle était supposée passer par là, c'était pour voir.

D.—Si les travaux que l'on faisait de la térébentine procédaient selon les données? R.—Oui.

D.—Pouvez-vous dire à la Cour, avec vos propres mots, ce qui est arrivé une fois que vous êtes arrivé au "filter press" No 6?

40 Par la Cour:—

D.—Vous avez commencé à travailler, dites-vous, à onze heures, la veille? R.—Oui.

D.—Onze heures du soir? R.—Oui.

D.—A quelle heure devait se terminer votre ouvrage? R.—Seulement à trois heures dimanche après-midi. En rentrant dans l'élévateur, j'ai descendu, je me suis rendu au "filter press" No 6.

ALPHONSE BOUCHER (for Plain. at Eng.) Exam. in chief.

Par la Cour:—

D.—C'était votre deuxième voyage? R.—Oui. A peu près quelques secondes après être rendu à la presse, j'ai entendu un bruit sourd, vous savez et je me suis viré vers la porte sud.

10

Par la Cour:—

D.—Par laquelle vous étiez entré? R.—Non, l'autre. Là, j'ai vu comme une manière, comme un nuage bleuâtre, et en virant sur l'autre porte j'ai aperçu à peu près le même nuage. Je me suis sauvé.

D.—Cela vous a inquiété un peu? R.—Ah oui.

20

Par Me Gadbois:—

D.—En vous sauvant, avez-vous remarqué autre chose? R.—Je vous dis bien franchement, je n'ai pas remarqué autre chose que cela. Je pensais seulement à me sauver.

D.—Lorsque vous êtes parti de l'ascenseur pour vous rendre au "filter press" No. 6, est-ce que vous avez regardé dans la chambre des "tanks"? R.—Non, monsieur.

D.—Vous n'avez pas regardé? R.—Non.

30

Par la Cour:—

D.—Par où vous êtes-vous sauvé? R.—Par les sauvetages.

D.—A l'extérieur de la bâtisse? R.—Oui.

Par Me Gadbois:—

D.—Vous étiez le premier à descendre l'escalier de sauvetage? R.—Je ne peux pas dire. Je n'étais pas le premier, mais je n'étais pas le dernier.

40

D.—En d'autres termes, vous alliez assez vite? R.—Ah oui.

D.—Lorsque vous vous êtes rendu en bas de l'escalier de sauvetage, avez-vous remarqué quelque chose? R.—Je vous dis bien franchement je n'ai pas remarqué grand'chose, rendu en bas.

D.—Avez-vous regardé l'édifice? R.—Après, rendu dans la cour.

D.—Lorsque vous avez été rendu dans la cour, avez-vous regardé l'édifice? R.—J'ai remarqué seulement les débris à terre.

ALPHONSE BOUCHER (for Plain. at Enq.) Exam. in chief.

Par la Cour:—

D.—D'où venaient les débris? R.—De la bâtisse, des châssis, des briques.

10 Par Me Gadbois:—

D.—Dans quel état étaient les murs? R.—Ils étaient bien endommagés.

D.—Est-ce que vous vous êtes blessé dans cet accident-là. R.—J'ai eu seulement une petite blessure en descendant dans les sauvetages, j'ai été projeté par un choc. J'ai été projeté sur la rampe, j'ai porté deux marques à la cuisse droite.

D.—Est-ce que vous avez été projeté par? R.—Par un choc dans le sauvetage.

20 D.—Où dans l'escalier de sauvetage étiez-vous rendu lorsque vous avez été projeté de cette façon-là? R.—Je n'étais pas encore rendu au deuxième plancher.

D.—Vous n'étiez pas encore rendu au deuxième plancher? R.—Non, pas pour moi, pas à ma connaissance.

D.—A quelle heure avez-vous monté les barils au troisième étage? R.—Je ne peux pas dire au juste.

Par la Cour:—

30 D.—Vers quelle heure? R.—Cela devait être dans les alentours de neuf heures, neuf heures et quart, entre neuf heures et quart et neuf heures et demie.

Par Me Gadbois:—

D.—Vous dites que vous avez fait un premier chargement? R.—Oui, monsieur.

40 D.—Le premier chargement, est-ce qu'il a été à votre connaissance versé dans le "tank"? Est-ce que le contenu des barils que vous avez montés la première fois a été versé dans le "tank" No 1? R.—Cela, à ma connaissance, je n'ai pas vu personne parce que je n'étais pas sur le plancher.

D.—Est-ce que vous avez descendu des barils vides, ce jour-là? R.—Oui, monsieur.

D.—Combien? R.—Entre le premier et le deuxième voyage.

D.—Combien de barils avez-vous descendus? R.—Ah, cela, par exemple, je ne peux pas dire au juste.

ALPHONSE BOUCHER (for Plain. at Enq.) Cross-examin.

D.—Pouvez-vous nous donner une idée approximative?
R.—Mettons un voyage, huit (8).

D.—Une fois que vous avez descendu ces barils-là, où les avez-vous placés? R.—Dans la cour.

10 Par la Cour:—

D.—Où avez-vous pris les “drums” pleins que vous avez montés? Dans la cour également? R.—Dans le moment ils étaient dans la bâtisse.

D.—Dans la cave? R.—Non, sur le premier plancher.

D.—Ils étaient sur le premier plancher? R.—Oui.

Contre-interrogé par Me Hackett:, Avocat de la défense:

20 D.—Qui travaillait avec vous sur l’ascenseur? R.—M. Adrien Durocher.

D.—Qu’est-ce que vous avez fait ce matin-là, le 2 août 1942, avant de monter les “drums” dans l’ascenseur?

Le Témoin:—Le matin?

L’Avocat:—Oui. R.—J’ai commencé sur cela à sept heures le matin, ç’a été ma première ouvrage.

30 D.—Vous avez dit que vous aviez commencé à travailler la veille à onze heures? R.—Oui.

D.—Et vous avez continué à travailler jusqu’à trois heures? R.—Oui.

D.—Qu’est-ce que vous voulez dire quand vous dites que c’était votre premier ouvrage? R.—Sur mon “shift” de nuit j’ai entré des “drums” sur le premier plancher.

D.—Vous aviez fini votre “shift” de nuit, à sept heures le matin? R.—Oui.

40 D.—Et vous avez commencé votre “shift” de jour à quelle heure? R.—A sept heures.

Par la Cour:—

D.—Sans arrêt? R.—Oui, sans arrêt.

Par Me. Hackett:—

D.—Votre premier ouvrage c’était de monter ces “drums” là? R.—Oui.

ALPHONSE BOUCHER (for Plain. at Enq.) Cross-examin.

D.—Lorsque vous êtes arrivé au troisième avec huit “drums” qui était là au troisième?

Le Témoin:—Sur le premier voyage?

10 L'Avocat:—Oui. R.—Il y avait M. Asselin et M. Gosselin.

D.—Il n'y avait que ces deux-là? R.—Oui.

D.—Et vous avez déchargé les huit barils? R.—Oui.

D.—Comment avez-vous fait pour les transporter jusqu'au “tank”? R.—Je les roulais.

D.—Comment les rouliez-vous? R.—A part.

D.—A part? R.—Oui.

D.—Vous les avez laissés à quelle distance du “tank”?

R.—En avant.

20 D.—A quelle distance? R.—Mettons six ou sept pieds.

D.—Est-ce que vous portiez des gants? R.—Oui, monsieur.

D.—Est-ce qu'il sortait un peu de térébentine par les “drums” lorsque vous les rouliez comme cela? R.—Non, j'en suis sûr de cela.

D.—Il n'avait pas coutume d'en sortir? R.—Non. Ordinairement c'est toujours bien bouché.

D.—Ordinairement, c'est toujours bien bouché? R.—Oui,

30 D.—Est-ce qu'on avait mis de la térébentine dans le “tank” lorsque vous êtes arrivé? R.—Ah, je ne sais pas, je ne peux pas dire.

D.—Pouvez-vous dire ce que faisait M. Asselin lorsque vous arriviez? R.—Il était à surveiller ses machines, ni plus ni moins.

D.—Vous ne savez pas s'il était à remplir les “tanks”?

R.—Ah, cela, je ne peux pas dire, monsieur.

D.—En tout cas vous avez descendu des “drums” vides?

R.—Oui.

Q.—Combien? R.—Huit. (8).

40 D.—Les aviez-vous montés la veille? R.—Non, la veille je n'ai pas monté de “drums”.

D.—Combien de temps s'est-il écoulé entre votre premier voyage et le second voyage? R.—Vingt minutes, une demi-heure.

D.—Vous êtes monté la première fois vers sept heures et trente et vous êtes monté la deuxième fois vers huit heures? R.—Oui.

D.—Cela vous semble raisonnable? R.—Le deuxième voyage que j'ai monté j'ai monté quelques moments avant l'explosion.

ALPHONSE BOUCHER (for Plain. at Enq.) Cross-examin.

D.—Seulement quelques moments avant l'incident?

R.—Oui.

D.—Et on nous dit que c'était vers dix heures? R.—Oui.

D.—Je crois que cette heure-là est pas mal acceptée de
10 tout le monde. Alors, vous êtes descendu avec les huit (8) barils,
qu'est-ce que vous avez fait entre le premier voyage avec les huit
barils et le deuxième voyage que vous avez monté, les sept barils?

R.—Je travaillais dans la "press room", j'ai été faire un tour
dans la "press room", j'ai jasé un peu avec celui qui travaillait
avec moi.

D.—Sur quel plancher cela? R.—Sur le premier plancher.

D.—Lorsque vous êtes monté la deuxième fois, est-ce que
quelqu'un est monté avec vous? R.—Oui, monsieur.

D.—Qui? R.—M. Frazier.

D.—Avez-vous déchargé les sept barils que vous aviez
20 avant de vous rendre dans la "press room" ou si vous avez été
dans la "press room" immédiatement avec M. Frazier? R.—
Pas dans la "press room", dans la "filter press". Il y a seule-
ment un "drum" qui a été déchargé, mais il a resté juste à l'élé-
vateur.

D.—Si je comprends bien, vous avez monté vous et M.
Durocher, vous avez monté M. Frazier? R.—Oui.

D.—Et vous aviez quelques "drums"? R.—Oui.

D.—Et vous avez déchargé seulement un "drum"?

R.—Oui.

30 D.—Et vous avez suivi M. Frazier, dans le "filter press
room"? R.—Oui.

D.—Pourquoi? R.—Par curiosité, ni plus ni moins.

D.—Vous saviez que l'on essayait de clarifier de la téré-
bentine pour la première fois? R.—Oui, monsieur.

D.—Et vous vouliez voir comment cela se passait?

R.—Oui.

D.—Avez-vous parlé, en montant avec M. Frazier, de la
térébentine qui se clarifiait, ce matin-là? R.—Pas à ma connais-
40 sance, je ne pense pas toujours.

D.—Rendu dans le "filter press room" qui était là? R.—
Comme je vous disais tout à l'heure il y avait M. Desrochers.

D.—M. Desrocher votre compagnon de travail? R.—Oui,
M. Frazier et quelques autres, mais je vous dis bien franche-
ment. . .

D.—Est-ce que M. Rymann était là? R.—Je crois que oui,
monsieur.

D.—Vous n'êtes pas certain? R.—Non.

D.—Est-ce que M. Bizzell était là? R.—Je ne suis pas
certain non plus.

ALPHONSE BOUCHER (*for Plain. at Enq.*) *Cross-examin.*

D.—Est-ce que M. Dufault était là? R.—Je ne peux pas dire, je ne suis pas certain.

D.—En tout cas, quelle était la première chose que vous avez entendue? R.—Un bruit sourd.

10 D.—Qu'est-ce que vous entendez par cela? R.—Ah, comme on pourrait dire, comme un roulement, ni plus ni moins.

D.—Avez-vous entendu un sifflement? R.—Pas à ma connaissance.

D.—Avez-vous vu cette fumée, cette vapeur que vous avez vue, c'était dans quelle porte? R.—La première porte, c'était dans la porte pas du côté de l'élévateur, de l'autre bord.

La Cour:—Je crois qu'il a dit nuage.

Par Me Hackett:—

20

D.—Est-ce que ce nuage-là, cette vapeur remplissait la porte entièrement? R.—Oui, entièrement, monsieur.

D.—Ce serait peut-être la porte près de la cour? R.—Non, sur l'autre côté, près de la rue Saint-Patrick, la première fois.

D.—C'est la porte du nord, cela. Avez-vous vu de la fumée dans la porte du sud?

Me Mann s'oppose à la demande comme illégale.

30

R.—Oui, en me virant de bord.

D.—Est-ce que cette porte-là était pleine, elle aussi?

R.—Oui, bien pleine.

D.—Vous dites que la première chose que vous avez entendue c'était un bruit sourd? R.—Oui.

D.—Est-ce que c'était un bruit comme si un tuyau avait été défoncé? R.—Je vous dis bien franchement, c'est bien dur à dire cela. Ça s'est fait si vite.

D.—Avez-vous vu s'élever une flamme quelconque?

40

R.—Aucune flamme.

D.—Avez-vous vu quelque chose qui ressemblait à de la lumière? R.—Non, monsieur.

D.—Vous dites qu'aussitôt que vous avez vu le nuage vous avez fiché le camp? R.—Oui.

D.—Sans perdre de temps? R.—Oui, sans perdre de temps.

D.—Étiez-vous de ceux qui étaient portés à descendre vers l'élévateur ou vers l'escalier de sauvetage? R.—Immédiatement vers l'escalier de sauvetage.

D.—Vous vous êtes dirigé vers l'escalier de sauvetage avant que M. Frazier ne vous le dise? R.—Lorsque M. Frazier a dit aux autres "le sauvetage", je crois que j'étais à la porte.

ALPHONSE BOUCHER (for Plain. at Enq.) Cross-examin.

D.—La porte de l'escalier de sauvetage? R.—Oui.

D.—Vous n'aviez pas besoin de directives de M. Frazier pour prendre cet escalier de sauvetage? R.—Non, je ne crois pas.

D.—Qu'est-ce qui vous a inspiré une telle peur? R.—C'est ce nuage et cela venait vers nous autres, c'est ça qui m'a forcé à
10 me sauver.

D.—Vous avez déjà vu de la vapeur se répandre dans un établissement quelconque? R.—Non.

D.—Ce que je comprends pas, c'est la raison pour laquelle vous avez mis tant d'énergie et tant de zèle à vous éloigner de ce nuage-là? R.—Je vous dis bien franchement, j'avais peur au danger, ni plus ni moins, que je voyais venir.

D.—Vous veniez venir cela et vous êtes parti? R.—Oui, je suis parti.

D.—Vous avez laissé entendre à la Cour que vous aviez
20 subi une certaine blessure à la cuisse droite? R.—Oui, monsieur.

D.—L'énergie que vous avez mise à vous déplacer me fait penser que vous avez pu peut-être vous blesser à raison même de la vitesse avec laquelle vous descendiez? R.—Cela se peut "itou". Mais je vas dire franchement, la mémoire, rendu dans le sauvetage, elle est pas mal partie.

D.—Je crois que le 17 août vous êtes allé chez Moffat faire une déclaration de ce que vous aviez vu, n'est-ce pas?

30 Le Témoin:—Au bureau?

L'Avocat:—Oui. R.—Oui.

D.—Vous connaissez M. Moffat? R.—Oui.

D.—Et vous avez signé un document dans lequel vous avez dit ce que vous avez vu, n'est-ce pas? R.—Oui, monsieur.

D.—Voulez-vous prendre connaissance de ce document et dire si c'est la signature "Alphonse Boucher" est bien écrite par vous? R.—Oui, monsieur.

40 D.—Je constate que par ce document qui est en date du 17 août 1942, il y a sur la même page une déclaration en anglais et une autre en français. "Compte-rendu de M. Alphonse Boucher concernant l'accident survenu au Moulin d'Huile de Lin, "le 2 août 1942."

"Commençant à neuf heures et demie, je montais et descendais des "drums" par l'ascenseur avec Durocher. Comme j'étais à remonter le deuxième chargement, M. "Frazier est arrivé. Lorsque nous avons atteint le plan-

ALPHONSE BOUCHER (for Plain. at Enq.) Cross-examin.

10 “cher du haut, j’ai entendu M. Frazier dire qu’il allait à
“la presse, No 6, et au lieu d’enlever les “drums” j’ai
“marché jusqu’à la presse No 6. Durocher a retiré un
“drum”, et tous deux, nous nous sommes rendus à la
“presse. J’étais debout au milieu entre les presses Nos 4
“et 6, faisant face à la machine à moudre et les réservoirs
“à grain.

“J’ai entendu un bruit, et je me suis tourné vers la
“porte nord. Lorsque je me suis retourné, j’ai vu une
“fumée d’un blanc bleu. Avant de voir cela, j’ai entendu
“comme une soupape de sûreté qui marche rapidement.
“De la presse je suis allé au sud.

20 “Lorsque j’ai vu la fumée, j’ai eu peur. Lorsque
“j’ai entendu M. Frazier dire aux garçons de sortir, j’étais
“à la porte. Sur l’escalier de sauvetage je n’ai rien enten-
“du ni rien remarqué jusqu’à ce que j’aie atteint le deuxiè-
“me plancher, alors que j’ai entendu ce que je crois être le
“deuxième choc. J’ai été projeté contre la rampe et j’ai
“frappé ma jambe. Lorsque je suis arrivé en bas j’ai sauté
“sur la plateforme, j’ai descendu à peu près six marches,
“j’ai couru le long du chemin de fer et au travers des
“élévateurs à grain.

“Alphonse Boucher”,

30 “Témoin J. A. Moffat”.

Voulez-vous produire ce document comme pièce D-5? R.—Oui.

C’est le compte rendu signé que monsieur l’avocat de la
compagnie demanderesse me passe.

Me Mann:—C’est la copie que je vous ai donnée en échan-
ge de l’original que vous aviez en votre possession.

40 La Cour:—Que ce soit l’original ou la copie, c’est signé
par le témoin et on le lui a lu.

Est-ce que c’est bien cela que vous avez signé le 17 août
1942? R.—Oui.

D.—C’est cela? R.—Oui.

Me Mann:—Je veux que ce soit dans le dossier que le docu-
ment produit comme pièce D-5 est une copie originaire ou une

ALPHONSE BOUCHER (for Plain. at Enq.) Cross-examin.

copie signée d'un document que M. Hackett a en sa possession
lui-même.

Et le témoin ne dit rien de plus.

10'

Jean McKay,
Sténographe.

10.15 a.m. November 19th, 1945

Mr. Mann:—During the adjournment from the last sitting
I was to have prepared and added to Ex. D-3 a list of the dates
of the letters sent by the respective companies with the cheques
enclosed.

20

The Court:—Yes, I recall that.

Mr. Mann:—I have now prepared that list and have added
it to and to form part of D-3 and have given copy to Mr. Hackett.

Secondly, during the last sitting your lordship requested
if it were possible that we should get a photograph of this tank
or container in place. I have had a photograph made by the same
photographer, of the tank repaired and put back into condition,
and I have spoken to my friend Mr. Hackett. I haven't got the
photographer here, but I can prove it by Mr. Moffat. I think it
may be instructive and useful.

30

The Court:—It may be of help.

Mr. Hackett:—I told Mr. Mann I was quite willing that
the photograph be produced by Mr. Hazen. However, I am not
sure that a photograph of the tank in its present condition is
relevant to the issues any more than it may give a general idea
of what the tank looks like.

40

The Court:—I think in the deposition we can make it
quite clear what the situation is: that it is a photograph of a
reconstituted situation.

C. R. HAZEN (for Plaintiff at Eng.) Examination in chief.

DEPOSITION OF C. R. HAZEN

A witness for Plaintiff.

On this 19th day of November, in the year of Our Lord
10 nineteen hundred and forty-five, personally came and appeared,
Charles R. Hazen, aged 70, consulting chemist, residing at 49
Arlington Ave., in the City of Westmount, District of Montreal,
who having been duly sworn in this case doth depose and say as
follows:—

Mr. Mann:—This witness is now examined only on one
point, namely, for the production of a photograph of the re-
conditioned and repaired tank, made on the 16th November, 1945, for
20 instruction and help of the Court and Counsel in appreciating
the nature of the vessel in respect of which the accident is
alleged to have taken place.

Examined by Mr. J. A. Mann:—

Q.—Mr. Hazen, will you look at a photograph which I
now show you, — I will ask permission to produce this as Ex.
P-11, — and say as to what, to your own personal knowledge,
that photograph represents? A.—It represents, my lord, the
30 tank which burst, and unfired pressure vessel with a steam
jacket on the lower half.

Q.—Does it not represent more than that? A.—Well, it
represents the reconditioned tank which burst.

By The Court:—

Q.—Taken in the place where it was prior to the accident?
A.—Exactly the same place. The tank is just as it was originally
40 except there is a new door on it and there are new glass windows
on either end.

By Mr. Mann, K.C.:—

Q.—And new whatever was destroyed? A.—Yes.

Q.—Now, what is the dimension of that, and how is it
made? A.—It is made of half-inch sheet steel. . . .

Mr. Hackett:—I don't want to be too meticulous, but I
think all Mr. Hazen can say is that this. . . .

C. R. HAZEN (for Plaintiff at Enq.) Cross-examination.

Mr. Mann:—I will withdraw the question.

The Court:—May I see the picture? (P-11 handed to Court).

10 Mr. Mann:—Examination of this witness is made without prejudice to his being recalled if and when required en temps et lieux.

By The Court:—

Q.—On examining this photograph I do not see what you refer to and what other witnesses have referred to as the steam jacket. I presume that that is because the whole thing, — the cylinder and the steam jacket, — is covered by an asbestos coating. Is that correct? A.—Yes. The steam jacket extends from
20 midway on the tank, around the bottom, to midway on the other side, and you can see the ridge along the tank.

Q.—The ridge in the asbestos covering? A.—Yes.

Q.—Which indicates where the steam jacket stops?

A.—Yes.

Q.—And that whitish covering which we see there is the asbestos cover? A.—Yes, a good thick asbestos covering.

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

Q.—Mr. Hazen, did you ever see the number 1 jacketted bleacher tank before the 2nd of August, 1942? A.—No, I never did.

Q.—You did not see it before the accident? A.—No.

Q.—Did you ever see it before it was in its present condition? A.—Oh, yes, I saw both it and its mate, which is exactly like it, on, I think, August 2nd.

40 Q.—You didn't see it on August 2nd, did you? That was Sunday, the day of the incident. A.—I mean, August 3rd.

By Mr. Mann, K.C.:—

Q.—Monday? A.—Yes.

By The Court:—

Q.—That is, the day following the accident? A.—Yes.

C. R. HAZEN (for Plaintiff at Eng.) Cross-examination.

The Court:—I suggest that in questioning witnesses and in discussion if we call it simply “tank” it will be sufficient, and if we are referring to any other piece of machinery that can be also described as a tank it can be specified.

10 And further for the present deponent saith not.

H. Livingstone,
Official Court Stenographer.

(Eldred Hollett is called as a witness for Plaintiff).

20 Mr. Hackett:—I assume that all of the witnesses who were to be excluded have been excluded and are not in the court-room.

Mr. Mann:—Your assumption is correct. This witness Hollett came in for the first time this morning. He is a fire chief. He never was summoned before.

The Court:—I obviously cannot tell who is going to be a factual witness and who is not. I shall leave the execution of the order for exclusion in charge of Counsel and my own Clerk.

30 Mr. Mann:—So far as I know, there has been no factual witness in this room during the examination of any other. It could happen by accident, of course.

The Court:—I put the charge of looking after that matter on Counsel. If they draw to my attention the presence of any witness who should not be in here, I will take the appropriate measures.

40

H. Livingstone,
Official Court Stenographer.

E. HOLLETT (for Plaintiff at Enq.) Examination in chief.

DEPOSITION OF ELDRED HOLLETT

A witness on the part of Plaintiff.

10 On this 19th day of November, in the year of Our Lord
nineteen hundred and forty-five, personally came and appeared,
Eldred Hollett, aged 53, district chief, Montreal Fire Department,
and residing at 5956 Clanranald Avenue, 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.—Mr. Hollett, what was your occupation on the 2nd of August, 1942? A.—District chief on the fire department.

20 Q.—District chief of the Montreal Fire Department?

A.—Yes.

Q.—Did you take part in responding to a call to a fire at the linseed oil mill of the Sherwin-Williams Company on St. Patrick, Centre, D'Argenson Streets and Atwater Ave? A.—Yes.

Q.—On that date? A.—Yes.

Q.—Were you actively engaged, yourself, in the fighting of the fire? A.—Yes.

Q.—And the direction of the fighting of the fire? A.—Yes.

30 Q.—Were you in the building bordering on St. Patrick Street where it is alleged an explosion and fire took place that day? A.—I was.

Q.—Were you on the third floor of that building on the east side? A.—I was.

Q.—Was there anybody killed in that building? A.—There was, yes.

Q.—Would you just describe what you did in respect of the removal of the body? I'm putting the question in as plain English as can be used. A.—We found the body on the third floor, of a Mr. Lemay, I believe the man's name was.

40 Q.—Marier, I think, was his name? A.—Marier? Maybe I have the name wrong.

When the body was found it was covered in tin cans or by tin cans. All that was protruding was just the bare nape of the head or top of the head.

Q.—I show you a sketch, Mr. Hollett, which has been produced as Exhibit P-7. This is the third floor, for your information, of the mill, and that was the floor, without any question about it, in which the fire and explosion or explosion and fire

E. HOLLETT (for Plaintiff at Enq.) Examination in chief.

happened. This is said to be the wall dividing the floor from north to south, that wall down the centre, in which wall there are said to be two doors about 8 feet wide, one to the north and one to the south: you follow that? A.—Yes.

10 Q.—The room marked East Room is the room in which the supposed cause of the accident happened, the bleacher tank. The room marked West Room is where the filter presses were.

To the end and bordering the east room is D'Argenson Street. To the north is St. Patrick Street.

Do you recognize that as approximately the premises in which you assisted in the quelling of this fire and explosion, or, fire? A.—Yes.

20 Q.—Now, it has been said that Marier had been operating a machine, — this man that was killed, whatever his name was, — operating a machine at a spot marked with an “O”, where the word “Marier” appears? A.—I see.

Q.—There is no scale to that distance, though approximate distances have been given.

30 Can you tell us exactly where you found the body of Marier? A.—I would say I passed through this door I see here (Indicating).

Q.—That is the north door? A.—Yes. And I would say somewhere around here is where the body was, somewhere away from this door (Indicating).

Q.—That is the south door? A.—Yes, though I could not say exactly the number of feet. There appeared to be a passage probably running through here from the door.

Q.—Towards the east side? A.—Yes, towards D'Argenson Street.

40 Q.—And you found Marier at approximately the spot you are indicating? A.—I could not judge exactly the distance, but I would say approximately around there.

Mr. Hackett:—Take a pencil and make a cross.

Mr. Mann:—I will make a cross. Rather, I will make a star, as we have several crosses, a six-sided star.

Q.—(Continuing): Now, the place where there has been a star marked on P-7 is about the place where you found Marier, you say? A.—Roughly.

E. HOLLETT (for Plaintiff at Enq.) Examination in chief.

Q.—In what condition was he and in what state were the surroundings? A.—Oh, very bad.

Q.—Would you mind saying what you mean by “very bad”? A.—The state of the body.

10 Q.—I am asking you about the state of the body and the state of the surroundings and the place where you found the body? A.—The state of the body was, it was burned, in very bad shape; absolutely everything was gone; there was just the burned body, the bare body. It was all burned.

Q.—There was just the burnt frame? A.—No, not just the frame. The whole body was there, but terribly badly burned. The flesh was burned. It was all burned off the head.

By The Court:—

20 Q.—The flesh was all charred? A.—Yes. And, as far as the condition of the place, it isn't easy to describe it. It was just rubble, where these tins caused from the explosion just spread over everything, and the man was practically buried right there. When I was walking in with some of the men all I could see was the nape of the head of the man.

By Mr. Mann, K.C.:—

30 Q.—The nape? A.—The top of the head, — and I stopped the men and I said, “Wait a minute.” I saw the top of the head of the man protruding through the top of the cans.

Q.—In what position was the body? Was it standing? A.—No; I would say it was in a kind of a position where the man fell. That is what it appeared to me: he was in a kind of a bent position, but the hands were at the sides.

Q.—He was in a bent position, you say, and you made a motion indicating backwards? A.—Yes. Probably he might have fallen at the time.

40 Q.—Was he upright in this pile of debris, comparatively, upright? A.—No, he was in a kind of a half-sitting position, if you want to put it that way. That is the way it appeared to be to me.

Then we just went through the usual proceedings and had the body removed.

Q.—You brought him down? A.—Took him down on a salvage cover, removed him to the morgue, called a morgue wagon.

E. HOLLETT (for Plaintiff at Enq.) Cross-examination.

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

Q.—Mr. Hollett, do you know what time the alarm was rung that day? A.—Could I look at notes?

10 Q.—Yes? A.—I could give you our fire alarm time. I have it right here in the notes: 10.04 a.m., and the alarm was sounded on the corner of St. Ambrose and Berard.

Q.—At what time did you go to the third storey, the third floor? A.—That is a pretty hard thing to answer, sir. I could not tell you the exact time I did go up to the third floor. It was after the fire was under control, and that took some time. I could not give you a definite time on that.

Q.—Do you remember what time you returned to the station? A.—Yes; I have it here in my notes: at 6 p.m.

Q.—6 p.m.? A.—Yes.

20 Q.—And would your visit to the third floor be one of the last things you did before going back to the station? A.—Well, maybe, but not on finding the body. That was one of the first things on going to the third floor after the fire was under control.

Q.—I understand finding the body was one of the first things you did on going to the third floor? A.—Yes.

30 Q.—But going to the third floor was one of the last things you did before returning to the station? A.—Now, I don't want to get confused on this, — because, I was left in charge of the fire, and we checked up things, and naturally I would go from one floor to the other to make sure everything was O.K. before I left there; but as we beat the fire and got it under control we worked up to the third floor, and it was on the first arrival on the third floor that this body was found. We were more or less looking for it. They said there was a body in there, and we were always on the lookout for it.

Q.—I understand that, Chief, but what I want to find out is what time you got to the third floor? A.—I understand what you mean.

40 Q.—Was it between 5 and 6 o'clock? A.—No; it was earlier than that.

Q.—What time would you think it would be? A.—That is an awful hard thing to answer.

Q.—If you don't remember, just tell me so? A.—I don't remember. I couldn't give you anywhere near the time at all. It was during the afternoon. Just what time it was, I couldn't say.

Q.—And the third floor was the last floor that you visited? A.—Yes. It was a three-storey building, anyway.

E. HOLLETT (for Plaintiff at Enq.) Cross-examination.

Q.—Is it fair to say it was one of the last things you did before leaving the scene of the fire? A.—Finding the body? No, I wouldn't say that. I was left in charge of the fire and I was there several hours afterwards.

10 By Mr. Mann, K.C.:—

Q.—After what? A.—After the majority of the apparatus was packed up and sent home. Once the fire is under control we pack up all the surplus apparatus and send it back to the station.

By Mr. Hackett, K.C.:—

Q.—What did you do after you finished your visit to the third floor? A.—Just the usual procedure, looking for fire and
20 putting out any fire that might be around. That is the only thing we can do. There was considerable fire in spots on the floor.

Q.—I don't think you have understood me. After you finished your visit to the third floor, the floor on which you found the body of Marier, what did you do? A.—After the visit?

Q.—After you had finished your visit to the third floor? A.—I did just the usual routine as far as fire is concerned. They left me in charge, and I had to go and check through the building to see that everything was in good order. That is our routine; we have to do these things.

30 Q.—I understand, but you told the Court, — this is what I understood you to say, — that when you got the fire under control and after the equipment had gone home you visited the different floors of the building? A.—Yes.

Q.—And the first floor you visited was the ground floor, was it? A.—Not necessarily.

Q.—Well, which floor did you visit first? A.—Now, I couldn't exactly swear to that, because, when things like that happen, it just depends on where you are located at the time.
40 You understand what I mean, sir? It is this way: — Our assistant director or director may come along and say, "Chief, I am packing up so-and-so; I'll send them all home", or "You can go and send them all home, and I will leave you in charge of the fire", — which is quite logical, because it was in my district, though it wasn't my fire. So I may be down in the street at a time like that. Naturally, I would have to go through the building. Or I may be on the top floor at a time like that.

Q.—You don't remember the sequence in which you visited the different floors? A.—No, only just through the regular routine.

E. HOLLETT (for Plaintiff at Enq.) Cross-examination.

Q.—The routine would be to begin at the bottom and work up? A.—Yes, and when we got to the top and found this body I can't say that was my last visit.

Q.—You don't know what you did after you had finished your visit to the third floor? A.—Just my regular routine on
10 fire duty.

Q.—What was that routine? A.—To go through all the rooms and see everything was under control.

Q.—But after you have finished visiting all the rooms in the building. . . . A.—When I found everything was under control, I would appoint an officer in charge and I would return to my station.

Q.—Can you say how many streams of water you had on the fire? A.—No.

Q.—Who would know that? A.—Headquarters. You would
20 have to refer to headquarters for that.

Q.—When you arrived, had the east wall fallen out?
A.—Yes.

Q.—Do you know what pressure you have there, what pressure the water is under at that point? A.—I would not swear to it, but we have different hydrants. We have 60 and 80 to 120 pounds pressure. That is the hydrants; that is not our pumps; but in a case like that the pumps are connected immediately.

Q.—Which adds to the pressure? A.—Yes.
30

Q.—How much? A.—It depends on the men, the location, and how much pressure the men can take. If you are in a position up on a ladder or something like that, you can't take as much pressure as you can from the ground.

Q.—You were using the pressure from the ground on this fire? A.—Yes, some pressure from the ground and some we pumped from some of our pumps.

Q.—Thee building wasn't a high building? A.—A three-storey building. They were high stories, but it was only a three-storey building.
40

Q.—And the pressure, when it hit an object, let us say, on the third floor, would be enough to tip a man over, if it hit him? A.—Well, I don't know. Probably if it caught a person by surprise or something like that it would certainly make him double up; that's a sure thing.

Q.—Now, I have put a circle in ink around a star that Mr. Mann made in lead pencil as indicating the place where you found Marier.

Mr. Mann:—Instead of saying "lead pencil", say with ink, because I am covering the star with ink.

E. HOLLETT (for Plaintiff at Enq.) Cross-examination.

By Mr. Hackett, K.C.:—

Q.—Do you think that you were probably the first person to go into the room where the fire was, after the accident?

10 A.—No, I won't swear to that. Of course, we worked our way in with a stream, because there was a door here some place (on P-7) and we came in through this door.

Q.—When you say there is a door here, I think Mr. Mann asked you to say that was the north door? A.—Yes; that is on the St. Patrick Street side.

Q.—You worked your way in through the north door? A.—Yes, because the fire was burning quite fiercely around about here, this side of the building.

20 Q.—Just take this fountain pen and make roughly a circle where the fire was burning fiercely? A.—Right here is where we entered this north door.

Q.—Just make a circle where you say it was burning fiercely? A.—Right here, as we entered this north door, it was all flames coming out through here. We had to beat it back as we worked our way through.

By The Court:—

Q.—As you worked your way from the west room? A.—Yes.

30 Q.—Into the east room? A.—Yes, because the flames were actually coming through the north door.

By Mr. Hackett, K.C.:—

Q.—They were coming through the north door into the west room? A.—Yes, and we beat it back with our stream as we worked through.

By Mr. Mann, K.C.:—

40 Q.—You beat the flames back? A.—Yes.

By Mr. Hackett, K.C.:—

Q.—I asked you to put a circle. Will you identify it by marking the letter "F" inside it? A.—Yes.

Q.—Now, how many were there of you? How many men were with you? A.—After I was left alone, left in charge?

Q.—How many men were with you as you went through the north door with a hose and beat the fire back? A.—That is

E. HOLLETT (for Plaintiff at Enq.) Cross-examination.

a pretty hard question, because there was a bunch of C.P.C. men with me. They were very popular at that time, very active, and they responded more or less to all fires. Now, I couldn't give an exact answer on that.

10 Q.—How big a stream of water was coming from the hose? A.—A 2½-inch hose reduced to an inch nozzle.

Q.—And was that stream fortified from a pump? A.—Yes, at the time.

Q.—So it may have had a pressure of 180 pounds? A.—No, probably 120.

Q.—120? A.—Possibly, approximate pressure.

Q.—And where were the cans when you got in? A.—Well, all that section of the floor was all cans that I could see.

Q.—All that section? A.—Yes. That is on the D'Argenson Street side.

20 Q.—Some were behind the tank? A.—They were all over the place. Everything was cans that I could see. There was other machinery that I could see as well, but cans were all over the floor. The fire was coming out between those cans. They were protecting the fire to a certain extent. That's why we had to clear them. We had to clear them because there was a certain amount of liquid burning on the floor, in between the cans, liquid of some kind. I don't know what it was; it was in among the containers.

30 Q.—How long were you, Chief, in fighting your way into the east room? A.—Well, now, I couldn't say exactly how long, the number of hours; I couldn't say exactly how long. We were there at 10.05. We answered an alarm at the corner of Charlevoix and Centre, — of course, it was for the same thing, — and I returned to the station at 6 o'clock.

40 Q.—You see, I am just asking you to say, if you can, — and if you can't, we will understand, — how long it was from the time you got to the north door, through which the flames were coming into the west room, until you quenched the fire in the east room? A.—It wouldn't be very long. It would be a matter of a few minutes probably, 10 minutes or something like that, to beat the fire that was coming out to the west room.

Q.—And it was after that that you found the body of Marier? A.—Yes.

Q.—Did you get up to the third floor on ladders or by the fire escape? A.—We went up the stairs through the building? We had ladders as well, but we went up through the building, with the stream.

Q.—That is, into the east room? A.—Yes.

H. GOSSELIN (pour Défenderesse à l'Enq.) Examen en chef.

By The Court:—

Q.—I gather from what you said, the fire was more or less concentrated towards the north end of the building? A.—Yes; and I suppose it is the east side. We would call it the
10 D'Argenson Street side.

Q.—The east side, yes. So you had no difficulty in getting up the stairs, which are on the south side of the building? A.—No difficulty; we worked our way up from the south side to protect that side of the building.

And further deponent saith not.

H. Livingstone,
Official Court Stenographer.

20

DEPOSITION DE HALSEY GOSSELIN

Le dix-neuf novembre mil neuf cent quarante-cinq, a comparu: Halsey Gosselin, âgé de vingt-cinq ans, journalier, domicilié au 2673 rue Centre, à Montréal, témoin produit de la part de la demanderesse; lequel, après serment prêté sur les saints
30 Evangiles, dépose et dit:—

Interrogé par Me Gadbois, avocat de la demanderesse:—

D.—Monsieur Gosselin, êtes-vous à l'emploi de la Sherwin William Company? R.—Oui, monsieur.

D.—Étiez-vous à l'emploi de cette compagnie le 2 août 1942? R.—Oui, monsieur.

D.—Avez-vous travaillé cette journée-là? A.—Oui, monsieur.

40 D.—En quoi consistaient vos fonctions, ce jour-là? R.—Je vidais les "drums" dans le "tank".

D.—Où ce trouvait ce "tank"? R.—Au troisième plancher.

D.—Au troisième plancher? R.—Oui.

D.—Je vous montre un plan qui a été produit en cette cause comme pièce P-7, voulez-vous en prendre connaissance? R.—Oui.

D.—Ici, vous voyez un mur et cette partie du plancher que vous voyez à gauche du mur a été appelée la chambre ouest,

H. GOSSELIN (pour Défenderesse à l'Enq.) Examen en chef.

alors que l'autre partie a été appelée la chambre est. Pourriez-vous me dire dans quelle chambre se trouvait ce "tank"? R.— Dans la chambre est.

D.—Dans la chambre est? R.—Oui.

10 D.—A partir de quelle heure vidiez-vous des "drums" ce matin-là dans le "tank"? R.—Environ sept heures.

D.—Depuis sept heures? R.—Environ sept heures, on commençait à sept heures le matin. D.—Combien de "drums" avez-vous versés dans ce "tank"? R.—Cela contenait 725, un "drum" contenait 45 gallons chacun, et la "tank", c'était 725, je crois.

D.—725 gallons? R.—Oui.

D.—Avez-vous rempli le "tank"? R.—Oui, on en a rempli un et on a commencé à remplir le deuxième.

20 D.—Qu'est-ce que vous entendez par le deuxième? R.— Il y en avait deux ensemble.

D.—Le deuxième "tank", où était-il situé exactement? Pouvez-vous le désigner sur le plan?

Le Témoin:—C'est un "tank" cela?

L'Avocat:—Oui.

30 R.—Il y en avait un ici et un un peu plus loin. Nous avons rempli celle-là et quand on a fini celle-là on a commencé celle-ci.

D.—Vous indiquez le "tank" numéro 1? R.—Oui.

D.—Est-ce que vous l'avez rempli complètement ce "tank" là? R.—Oui. Et aussitôt qu'ils m'ont dit qu'il y en avait assez dedans, j'ai commencé l'autre.

D.—L'autre, c'est le "tank" numéro 2? R.—Oui.

D.—Avez-vous terminé de remplir ce "tank" là? R.—Oui.

D.—Vous les avez remplis tous les deux complètement? R.—Oui.

40 D.—Que contenaient les "drums" dont vous avez parlé? R.—C'était supposé être de la térébentine.

D.—A quel endroit preniez-vous ces "drums" là, monsieur Gosselin? R.—Il y avait deux gars, un élévateur qui les montaient de la cour et ils montaient sur le plancher du troisième, moi, je les vidais dans le "tank".

D.—Savez-vous les noms de ceux qui montaient les "drums"? R.—Je sais qu'il y a un nommé Boucher, et l'autre, je ne sais pas quel est son nom.

D.—Savez-vous combien de "drums". ils ont montés exactement? R.—C'est pas mal difficile à dire. Je ne peux pas

H. GOSSELIN (pour Défenderesse à l'Enq.) Examen en chef.

dire au juste combien il en a monté. D.—Vous rappelez-vous combien vous en avez versés dans les “tanks”? R.—Non.

D.—Lorsque vous avez versé le contenu de ces “drums” dans les “tanks”, en avez-vous renversé sur le plancher? R.—Non.

10 D.—Etes-vous certain de cela? R.—Oui.

Me Hackett s'oppose aux demandes comme suggestives.

La Cour:—La Cour ordonne que la dernière question et la dernière réponse soient rayées du dossier parce qu'elles sont suggestives.

Par Me Gadbois:—

20 D.—Avez-vous eu connaissance qu'il se soit produit un accident à la Sherwin Williams, le 2 août 1942? R.—Oui, monsieur.

D.—Est-ce que, à une date ultérieure au deux août 1942, vous avez signé un compte rendu de ce que vous aviez vu de l'accident? R.—Oui, je pense que oui.

D.—Je vous montre un document où il apparaît deux signatures, une Halsey Gosselin et une autre signature J. Moffat. Voulez-vous en prendre connaissance et dire si la signature de Halsey Gosselin c'est votre signature? R.—Oui.

30 D.—Connaissez-vous M. Moffat? R.—Oui.

D.—Est-ce que vous reconnaissez cette signature comme étant la signature de M. Moffat? R.—Oui.

D.—Voulez-vous dire à quel endroit vous avez fait cette déclaration-là? R.—Je crois que c'est dans l'“office” de la Sherwin William.

D.—Qui était là à ce moment-là, monsieur Gosselin? R.—Il y en avait plusieurs, c'est dur à dire combien il y en avait, il y en avait plusieurs.

40 D.—Est-ce que vous en connaissiez de ceux qui étaient là? R.—Non.

D.—M. Moffat était-il là? R.—Oui, M. Moffat était là.

D.—Combien d'autres personnes y avait-il, là? R.—Il y avait tous les témoins qui étaient présents à l'accident.

D.—Les employés de la compagnie? R.—Oui. Ils ont passé un par un, on étaient témoins.

D.—Y avait-il des étrangers? R.—Non, je ne crois pas.

D.—Je vais vous donner lecture de ce document qui est écrit en français et en anglais et qui est daté du 17 août 1942:—

H. GOSSELIN (pour Défenderesse à l'Enq.) Contre-interrogé.

“Compte rendu de M. Halsey Gosselin concernant l'accident survenu aux moulins d'huile de lin, dimanche, le 2 août, 1942.”

10 “A neuf heures et quarante-cinq je vidais des “drums” par vacuum dans le réservoir à térébentine.”

R.—C'est cela.

D.—“L'autre réservoir était fini. Les contenants vides furent enlevés des lieux. Je surveillais la vapeur et le thermomètre. Le thermomètre marquait 165, et la vapeur était fermée.”

Je remarque qu'on avait écrit au dactylographe le mot “sorti” et qu'on a ôté cela et qu'on a mis à la place le mot “fermée” à la plume; est-ce que le mot “fermée” est de votre écriture?

20 R.—Non.

D.—“Durant que M. Frazier s'est rendu à la porte du côté nord pour aller au filtre, je suis allé à la porte du côté sud, au filtre. J'étais au côté de la presse à filtrer avec chantepleurs faisant face au nord, rue Saint-Patrick, lorsque j'entendis un bruit et j'ai vu de la fumée. Je n'ai pas vu de feu. J'ai sorti par l'escalier de sauvetage. Je ne me rappelle pas avoir entendu aucun bruit pendant que j'étais sur l'escalier de sauvetage, mais quand je suis arrivé là, en bas, tout s'était effondré. Je me suis rendu (ici on a barré des mots) sur le rail de chemin de fer.”

30

R.—Oui.

D.—Est-ce que c'est la description véritable de ce que vous avez vu, monsieur Gosselin? R.—Oui, monsieur.

D.—Voulez-vous produire ce document comme pièce P-12?

R.—Oui.

40 Contre-interrogé par Me Hackett, C.R., avocat de la défenderesse:—

D.—Vous êtes Canadien, vous? R.—Oui, monsieur.

D.—Où avez-vous pris ce nom-là Halsey? R.—C'est mon parrain et la marraine qui me l'ont donné.

D.—Qui est votre parrain? R.—M. Frazier.

D.—Celui qui a comparu comme témoin dans la cause, ici? R.—Oui.

D.—Vous dites que le mot “fermé” écrit à la main à la place du mot “sortie”, n'est pas de votre écriture? R.—Non.

H. GOSSELIN (pour Défenderesse à l'Enq.) Contre-interrogé.

D.—Pourquoi dites-vous cela? R.—Je n'écris pas de même, ce n'est pas mon écriture cela.

D.—C'est l'écriture de qui? R.—Ah, cela, je ne peux pas dire, je ne sais pas.

10 D.—Votre travail se faisait dans la chambre où étaient les “tanks”, n'est-ce pas? R.—Oui, monsieur.

D.—Combien de “drums” avez-vous mis dans le “tank” No. 1? R.—Une dizaine, peut-être douze, alentour de cela.

D.—Alentour de dix, douze? R.—Oui. Il y a 45 gallons par “drum” et 725, 750 dans le “tank”.

D.—Combien en avez-vous mis dans le “tank” No. 2? R.—A peu près la même chose.

D.—Vous êtes certain que vous en avez mis dans les deux “tanks”? R.—Oui.

20 D.—Qui travaillait avec vous? R.—Il y avait Henri Asselin et Rymann.

D.—Pourquoi vous êtes-vous rendu dans l'autre chambre? R.—J'attendais un peu et j'ai été voir les autres pour voir comment cela marchait pour les “filters”.

D.—Combien de temps avez-vous été dans la chambre où étaient les “filters”? R.—Quatre ou cinq minutes, peut-être, à peu près.

D.—Est-ce que Asselin était là lorsque vous êtes arrivé? R.—Il y avait Asselin, il y avait M. Frazier, il y avait Rymann.

30 D.—Asselin est resté là tout le temps que vous étiez là? R.—Oui.

D.—Vous êtes certain de cela? R.—Je crois que oui.

D.—Ils parlaient de quoi? R.—Ils parlaient à propos du filtrage, ils se sont arrangés avec le “foreman”, moi, je n'étais pas bien, bien contre eux autres, j'étais un peu plus loin et je regardais le “stuff” passer.

D.—Le “stuff”, la térébentine, vous voulez dire? R.—Oui, la térébentine.

40 D.—Cela a coulé pendant combien de temps, pendant que vous étiez là? R.—Pas bien longtemps, cela a pris à peu près autant de temps, trois ou quatre minutes, à peu près.

D.—Trois ou quatre minutes à peu près? R.—Oui.

D.—A un moment donné, vous avez quitté la chambre où étaient les “filters”, n'est-ce pas? R.—Quand on a quitté la chambre des “filters”, c'est quand cela a donné le bruit et qu'on a vu la boucane, c'est le seul temps.

D.—De quoi avez-vous eu connaissance, en premier? Est-ce que c'est le bruit ou la boucane? R.—Le bruit.

D.—Quelle sorte de bruit était-ce? R.—Comme un “boum”, c'était un coup, vous savez.

H. GOSSELIN (pour Défenderesse à l'Enq.) Contre-interrogé.

D.—C'est cela que vous avez entendu? R.—Oui.

D.—Et ensuite vous avez vu? R.—Là, on a regardé et on a vu de la boucane par la porte.

D.—Dans quelle porte? R.—Dans la porte sur le côté nord de la rue Saint-Patrick.

10 D.—Qui a été le premier à parler? R.—Ça, c'est pas mal dur à dire. Quand le coup a donné, on a été regarder, et là on a vu de la boucane et là, M. Frazier a dit: "Sauvez-vous."

D.—Vous êtes parti de cette chambre seulement lorsque M. Frazier vous a dit de partir? R.—Non, on était tout proche des sauvetages quand le coup a donné et on a regardé pour se sauver tout de suite.

D.—Vous étiez à regarder le filtrage? R.—Oui.

20 D.—A un moment donné, M. Frazier vous a dit de vous en aller? R.—C'est seulement quand on a entendu le coup et qu'on a vu la boucane. Il a dit cela après, de se sauver:

D.—Après que vous ayez entendu un bruit et après que vous ayez vu de la fumée, M. Frazier a dit aux hommes de s'en aller? R.—Oui.

D.—Et vous vous êtes parti avec les autres hommes?

R.—Oui.

D.—En même temps que les autres hommes? R.—Oui.

D.—Et à raison de l'avertissement que vous a donné M. Frazier? R.—Oui.

30 D.—C'est votre parrain, M. Frazier? R.—Oui.

D.—C'est un ami? R.—Oui.

D.—C'est à raison de lui que vous êtes entré à la Sherwin William? R.—Oui.

D.—Est-il parent avec vous? R.—Oui.

D.—Comment est-il parent avec vous? R.—Il est marié avec ma soeur.

D.—C'est votre beau-frère? R.—Oui.

40 D.—Rendu sur l'escalier de sauvetage, avez-vous entendu d'autres bruits? R.—Pour dire franchement, je ne me rappelle pas, cela s'est fait assez vite.

D.—Lorsque vous dites que cela s'est fait assez vite, voulez-vous dire que vous descendiez assez vite? R.—Oui.

D.—Vous regardiez tout le temps le filtrage? R.—Oui.

D.—Vous avez regardé ce qui se passait dans le "filter press" jusqu'au moment où M. Frazier vous aurait dit de vous en aller? R.—Oui.

D.—Vous n'avez pas regardé ailleurs? R.—Non.

D.—Vous regardiez dans le "filter press" et lorsque M. Frazier a dit: "Partons par l'escalier de sauvetage", vous avez suivi son avis et vous êtes descendu? R.—Oui.

H. GOSSELIN (pour Défenderesse à l'Enq.) Contre-interrogé.

Me Mann s'oppose à la forme de la demande, parce que ce n'est pas ce que le témoin a dit. Le témoin a dit que Frazier a dit: "Sauvez-vous". Et le témoin n'a pas dit: "Partons par l'escalier "de sauvetage", c'est tout à fait différent.

10 La Cour:—L'avocat de la défense, vu l'objection de l'avocat de la demande, change sa demande.

Par Me Hackett, C.R.:—

D.—Avez-vous eu connaissance que quelqu'un des employés avait manifesté l'intention de descendre en passant par la chambre où était le "tank"? R.—Non.

D.—Vous n'avez pas su cela? R.—Non.

20 D.—Avez-vous su que votre beau-frère, M. Frazier, aurait dit à quelqu'un qui avait manifesté l'intention de descendre par la chambre où étaient les "tanks" de ne pas passer par là, de prendre l'escalier de sauvetage? R.—Non, je n'ai pas eu connaissance de cela.

D.—Vous n'avez pas eu connaissance de cela du tout?

R.—Non.

D.—Est-ce qu'il vous a indiqué ainsi qu'aux autres hommes qui vous entouraient, de descendre par l'escalier de sauvetage? R.—Il a dit: "Sauvez-vous par l'escalier de sauvetage, c'est la place la plus proche.

30 D.—Il a dit: "Sauvez-vous par le sauvetage"? R.—Oui.

D.—Vous l'avez entendu dire cela? R.—Oui.

D.—Et vous avez accepté son avis? R.—Oui.

D.—Vous avez dit que vous travailliez avec Asselin?

R.—Oui.

D.—Vous avez su que lui avait fait sa déclaration par écrit une semaine avant vous, n'est-ce pas? R.—Je crois que oui.

40 D.—Vous n'avez pas demandé à votre beau-frère pour quelle raison on ne vous avait pas demandé à vous une déclaration par écrit en même temps qu'on l'avait demandée à Asselin? R.—Non, il n'a pas été question de cela.

D.—Est-ce que c'est la première et la seule déclaration que vous avez faite? R.—Je crois que oui.

D.—Vous n'en avez pas faite une antérieurement? R.—Non, je ne me rappelle pas.

D.—Vous êtes bien certain de cela? R.—Il me semble que non. Pour dire franchement, je ne m'en rappelle pas.

D.—Est-ce que vous ne vous souvenez pas d'avoir signé deux déclarations? R.—Pour dire franchement, je ne me rappelle pas du tout, je ne peux pas dire ni oui, ni non.

F. DUQUETTE (pour la Demand. à l'Enq.) Examen en chef.

D.—N'avez-vous pas signé une déclaration la même journée que Asselin et Frazier ont signé leur déclaration? R.—Ça fait une escousse, c'est dur de se rappeler de tout cela.

D.—Pour vous aider, est-ce que vous ne vous souvenez pas de vous être rendu en présence de M. Moffat à deux reprises
10 pour faire une déclaration? R.—Je sais qu'on a été une fois, mais l'autre fois, je ne peux pas dire certain, certain.

D.—Est-ce que vous ne vous souvenez pas d'y être allé avec Asselin une fois? R.—Je ne crois pas.

D.—Est-ce que vous ne vous souvenez pas d'y avoir été avec Rymann et Asselin? R.—Non, je ne crois pas.

D.—Vous ne pouvez pas vous rappeler de cela? R.—Non, je ne me rappelle pas du tout, cela fait trop longtemps, c'est dur de tout se rappeler de cela.

20 Et le témoin ne dit rien de plus.

Jean Mackay,
Sténographe.

DEPOSITION DE FELIX DUQUETTE

30 Le dix-neuf novembre mil neuf cent quarante-cinq, a comparu: Félix Duquette, âgé de trente-quatre ans, journalier, domicilié au 2618 rue Centre, à Montréal, témoin produit de la part de la demanderesse; lequel, après serment prêté sur les saints Evangiles, dépose et dit:—

Interrogé par Me Gadbois, avocat de la demanderesse:—

D.—Monsieur Duquette, le 2 août 1942, vous étiez à l'emploi de la Compagnie Sherwin Williams? R.—Oui, monsieur.

D.—Etes-vous encore à l'emploi de cette compagnie?

40 R.—Oui, monsieur.

D.—Le 2 août 1942, avez-vous travaillé? R.—Oui, monsieur.

D.—Avez-vous eu connaissance qu'il y ait eu un accident cette journée-là? R.—Oui, monsieur.

D.—Dans quelle partie de l'usine de Sherwin William travailliez-vous? R.—Sur le deuxième plancher, au "packter".

D.—Voulez-vous dire à la Cour, avec vos propres termes, ce que vous savez de l'accident? R.—Ce que j'ai su c'est l'explosion qu'il y a eu.

F. DUQUETTE (pour la Demand. à l'Enq.) Examen en chef.

Par la Cour:—

D.—Où étiez-vous, d'abord? R.—Au deuxième plancher.

D.—Dans quelle partie? R.—En face de la porte.

10 Par Me Gadbois:—

D.—Vous étiez près de quelle rue? R.—Sur la cour.

Par la Cour:—

D.—Cela se trouve du côté sud? R.—Oui.

Par Me Gadbois:—

20 D.—Qu'est-ce que vous faisiez là? R.—Je travaillais sur le "packter".

D.—Depuis quelle heure travailliez-vous là? R.—Depuis sept heures le matin.

D.—Qu'est-ce que vous entendez par "packteur"? R.—C'est une machine pour remplir les poches de graine de lin.

D.—Est-ce que ce "packteur" se trouvait en dessous de la chambre des "tanks" au troisième étage? R.—Pas directement en dessous, c'était sur le côté sud et le "tanks" se trouvait plus près de la rue Saint-Patrick.

30 D.—Pourriez-vous dire à la Cour s'il s'est produit quelque chose à l'usine de la Sherwin William qui a attiré votre attention particulièrement ce matin-là? R.—Au moment même, un peu avant l'explosion, cela a fait comme un bruit sourd.

Par la Cour:—

40 D.—Comme un...? R.—Comme un bruit sourd. C'est là que nous sommes descendus l'escalier, et au moment qu'on est descendu l'escalier, comme on arrivait à la porte en bas, l'explosion s'est produite.

D.—Vous avez commencé à descendre quand vous avez entendu un bruit sourd? R.—Oui.

D.—D'où venait-il ce bruit sourd? R.—Il se trouvait en dessous du "tank".

Par Me Gadbois:—

D.—Après avoir entendu le bruit sourd, avez-vous remarqué autre chose? R.—J'ai remarqué... On n'a pas pu rien remarquer, on s'est sauvé tout de suite.

F. DUQUETTE (pour la Demand. à l'Enq.) Contre-interrogé.

D.—Par où vous êtes-vous sauvé, monsieur Duquette?

R.—J'ai descendu par la cour.

D.—Comment vous êtes-vous rendu dans la cour? R.—
Par l'escalier.

10 a là. D.—Par quel escalier? R.—C'est la seule escalier qu'il y

D.—L'escalier à l'intérieur ou à l'extérieur? R.—A l'in-
térieur.

Contre-interrogé par Me Hackett, Avocat de la défense:—

D.—Dites-moi très brièvement qu'est-ce que c'est qu'un
“packteur”? R.—Un “packteur”, il y a différentes sortes de
“packteur”, mais nous autres au moulin, c'est un “packteur”
pour remplir les poches.

20 D.—Qu'est-ce que vous mettez dans les poches? R.—Le
mil.

D.—Linseed oil, la graine de lin? R.—Oui.

D.—Quel nom donne-t-on à cet appareil, le “packteur” en
anglais? R.—“Bag filler”.

D.—“Bag filler”? R.—Oui.

D.—Combien de compagnons de travail aviez-vous avec
vous au deuxième plancher? R.—En tout, nous étions trois.

D.—Vous étiez trois? R.—Oui, ce matin-là.

30 D.—Est-ce que les deux autres sont descendus avec vous?
R.—Oui.

D.—A quelle distance était le “packteur”, à quelle dis-
tance de l'escalier? R.—Une quinzaine de pieds.

D.—Et rendu en bas, est-ce que vous étiez dans la cour
lorsque l'explosion a eu lieu? R.—Lorsque l'explosion a eu lieu,
nous étions contre la porte. Alors, quand l'explosion a eu lieu
nous sommes sortis.

D.—Dans la cour? R.—Oui.

40 D.—Vous étiez au bas de l'escalier? R.—Bien, au bas
de l'escalier, en virant contre l’“office”.

D.—Si je comprends bien, cette porte se trouvait du côté
sud de la bâtisse? R.—Du côté de la cour.

D.—Du côté de la cour? R.—Oui.

D.—Si vous aviez continué tout droit où auriez-vous été?
R.—Sur la rue Centre.

D.—Sur la rue Centre? R.—Oui.

D.—La rue D'Argenson était à gauche? R.—Oui, à gau-
che.

D.—Est-ce que vous étiez le contremaître? R.—Ah non.

F. DUQUETTE (pour la Demand. à l'Enq.) Contre-interrogé.

D.—Qui était le premier des trois hommes qui travaillaient ensemble? R.—On n'avait pas de contremaître, nous étions tous les trois ensemble, le contremaître c'était M. Rymann.

D.—Est-ce qu'il y en avait un qui dirigeait le travail? R.—Non.

10 D.—Est-ce qu'il y a quelqu'un qui a dit: "Nous allons sortir"? R.—Non, c'est l'intuition qu'on a eue, quand ce train-là est arrivé.

D.—Quand vous avez entendu le bruit, vous êtes partis?

R.—Oui.

D.—Est-ce que vous vous êtes arrêtés à la porte, en bas?

R.—Ah, cela, je ne me rappelle pas.

D.—Peut-être que je vous ai mal compris. J'avais compris par une réponse antérieure que vous et vos deux compagnons de travail vous vous étiez rendus jusqu'à la porte? R.—Moi, je me suis rendu contre la porte.

20 D.—Et quand vous vous êtes arrêtés là et que au moment de l'explosion vous êtes sortis? R.—Oui, nous sommes sortis.

D.—Est-ce que les autres étaient arrêtés contre la porte aussi? R.—Ah, je ne peux pas dire parce qu'il y en a un qui n'a pas pu sortir par là.

D.—Par où est-il sorti? R.—Il a sorti par l'autre porte, et quand l'explosion s'est produite, le mur est tombé.

D.—Le mur du côté de la rue D'Argenson? R.—Non, du côté de la rue Centre, du côté sud.

30 D.—C'est-à-dire le mur au troisième. Voulez-vous indiquer à peu près où était la porte par laquelle vous êtes sorti? Je dois vous prévenir que le plan que je vous montre est un plan du troisième étage, mais le deuxième et le premier sont en dessous et je voudrais que vous indiquiez, si vous pouvez le faire, où était la porte par laquelle vous êtes sorti? R.—Dans les plans, je ne connais pas cela beaucoup.

D.—Nous allons vous donner un coup de main. Je crois que l'escalier de sauvetage se trouve à l'endroit marqué "Fire escape"? R.—Oui, c'est ça.

40 D.—Le mur, dont vous venez de parler était le mur contre lequel l'escalier de sauvetage se trouve? R.—Oui.

D.—C'est le mur au troisième qui est tombé en partie? Où était la porte dans ce mur par laquelle vous êtes sorti? R.—J'ai sorti par ici. Cela, c'est le vieil édifice et moi j'ai sorti par le neuf.

D.—Vous vous trouviez sous. . . R.—Sous le mur qui est tombé.

D.—Sous le mur qui est tombé? R.—Oui.

F. DUQUETTE (pour la Demand. à l'Enq.) Contre-interrogé.

D.—Il y avait, au troisième, deux chambres, une que l'on appelle la chambre est où étaient les "tanks" et la chambre ouest où étaient les "filter press"? R.—Oui.

D.—Et si je comprends bien, vous travailliez en dessous de la chambre est? R.—De la chambre où le "tank" a fait explosion. D.—La porte était à quel endroit? R.—La porte se trouvait sur la cour. Où est la cour sur le plan?

L'Avocat:—La cour serait au fond du plan, si on prend l'indication P-7 comme étant la partie supérieure ou la partie nord. La porte se trouvait au sud, n'est-ce pas? R.—Oui, au sud, c'est cela.

D.—A quel endroit? R.—Droit dans le coin, à peu près ici.

20 D.—Voulez-vous indiquer par la lettre P la porte par laquelle vous êtes sorti? R.—Oui.

D.—Nous allons marquer "Duquette left by door P"? R.—Oui.

D.—Êtes-vous sorti avant ou après que le mur soit tombé? A.—Je suis sorti un peu avant.

D.—Un peu avant? R.—Oui, parce que celui qui était en arrière de moi s'est fait tuer par le mur. Alors, je dois être sorti avant.

30 Par la Cour:—

D.—Par le mur du côté sud? R.—Oui, dans la cour.

Par Me Hackett, C.R.:—

D.—Le mur est tombé comme il sortait de la porte? R.—
Oui.

40 D.—Vous avez dû le devancer de quelques pas? R.—De quelques pieds, à peu près.

Et le témoin ne dit rien de plus.

Jean McKay,
Sténographe.

C. E. KEENE (for Plaintiff at Enq.) Examination in chief.

DEPOSITION OF C. E. KEENE

A witness on the part of Plaintiff.

On this 19th day of November, in the year of Our Lord
10 nineteen hundred and forty-five, personally came and appeared,
Charles E. Keene, aged 64, working in the office, oil mill, Sherwin-Williams, and residing at 1655 Champigny 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.:—

Q.—Where are you now employed? A.—In the office of the linseed oil mill.

20 Q.—Of the Sherwin-Williams Company of Canada Limited? A.—Yes.

Q.—And were you employed by that company on the 2nd of August, 1942? A.—I was.

Q.—In what capacity were you working? A.—I had charge of the office in the mill.

Q.—And where was the office of the oil mill that you refer to? A.—On the ground floor.

Q.—Would that be the ground floor of the building in which the oil mill is? A.—Yes.

30 Q.—Do you remember any untoward incident which took place on the 2nd of August, 1942, in the vicinity of 10 o'clock in the morning? A.—Well, I was in the office there at that time writing out the report, and all of a sudden the air seemed to be condensed. I thought there was something wrong then. It was as if something was drawing the air.

Q.—That is, the air in the place in which you were? A.—Yes.

40 Q.—Now, just go a little farther than that. What happened after you experienced this sensation of the air being drawn? A.—Well, as soon as I found that I ran out over to the Canada Point to call for the ambulance.

Q.—Is that all that happened, — just this drawing of the air? A.—I could not see anything, being on the ground floor.

Q.—Could you hear anything? A.—There was a rumbling.

Q.—From where? From which direction? A.—I couldn't say where it was from.

Q.—You heard a rumbling, but you could not say where it was from? A.—No, not to be sure.

C. E. KEENE (for Plaintiff at Enq.) Examination in chief.

Q.—Can you precise that rumbling as being either inside or outside the building? A.—It was inside the building.

Q.—Can you precise whether it was on the side of you or above you? A.—It would be above me; I know that.

10 Mr. Hackett:—He knew it couldn't be below, unless it was an earthquake.

Mr. Mann:—I'm not sure about that. Wasn't there a cellar?

The Court:—Anyway, he thought it was above him.

By Mr. Mann:—Yes.

20 Q.—And was there anything happened beyond the rumbling and the drawing of the air? There was the drawing of the air and there was the rumbling. What else was there, if anything? A.—As soon as that happened, I ran out in the yard and I got hit with splinters across the eye, splinters from some of the beams that were falling.

Q.—If I have understood your evidence, you have said there was a drawing of the air? A.—Yes.

30 Q.—Concurrently with the rumbling? Were they together? A.—I got the air first and then there was the rumbling after that.

Q.—In the meantime what were you doing? You got the air first and then you started to run? A.—Yes.

Q.—How far did you have to run to get to the yard? A.—Oh, it is about 13 feet, I would say.

Q.—13 feet. You got out in the yard, and what happened to you? A.—I got hit over the eye and on the lip and on the chin with the splinters of a beam that was falling.

Q.—A beam that was falling? A.—Yes.

40 Q.—Is that after you were out in the yard? A.—Yes.

Q.—After you ran the 13 feet and got into the yard you got struck with some splinters. From what direction were those splinters coming or this beam? A.—It was coming over that way (indicating).

Q.—The stenographer can't put that down. What do you mean by the gesture you made? A.—It was coming from the building into the yard.

Q.—Now, was there anything else that was coming from the building, anything other than what hit you or the beam that you refer to? A.—I don't notice that.

C. E. KEENE (for Plaintiff at Enq.) Examination in chief.

Q.—You didn't notice that? A.—No.

Q.—Did you see this beam from which the splinters came?

A.—No. I could feel the air of it, though.

Q.—It was going fast? A.—Yes, and I was going fast too.

Q.—We have got you into the yard now; you are in the
10 yard now. You were bleeding, I take it? A.—Yes.

Q.—I hope that isn't a leading question. Were you bleed-
ing? A.—Just a slight bruise.

By The Court:—

Q.—I understand that the office is on the ground floor?

A.—Yes.

Q.—And faces the courtyard? A.—Yes.

Q.—And the courtyard is to the south side of the build-
20 ing? A.—Yes.

Q.—So you ran out into the yard on the south side of the
building, and it was about 13 feet from where you were working?

A.—From the desk to the door going into the yard.

By Mr. Mann, K.C.:—

Q.—Then, having gone into the yard, did you look any-
where? Did you look at the building, for example? A.—No, I
30 didn't.

Q.—Did you keep on running? A.—I ran over and called
for the ambulance, in the Canada Paint office.

Q.—Why did you do that? A.—I knew there was some-
thing wrong.

Q.—So you kept right on to the office. In what direction
is the office? Is that still going south? A.—Yes.

By The Court:—

Q.—What office do you mean? A.—The Canada Paint
40 office.

Q.—The Canada Paint office? A.—Yes.

By Mr. Mann, K.C.:—

Q.—Is the Canada Paint office within the same lot of
buildings? Is that part of the Sherwin-Williams building or is
it another? A.—It is on the ground floor.

Q.—Towards Centre Street? A.—Yes.

C. E. KEENE (for Plaintiff at Enq.) Cross-examination.

Q.—Then you went and called for the ambulance, because you knew there was something wrong? A.—Yes.

Q.—And, beyond that, you cannot enlighten us upon what you saw to create the impression that there was something wrong? You don't remember what you saw? You didn't look? A.—Naturally, after I came back, I did.

Q.—I haven't got you back yet. I have got you calling the ambulance. You called the ambulance? A.—Yes.

Q.—Then what did you do? You came back, you said? A.—Yes.

Q.—Came back, where to? A.—Came back in the yard.

Q.—Into the yard, — the same yard you have just described? A.—Yes

Q.—The yard that you first ran into? A.—Yes.

Q.—Did you look at the building then? A.—Yes.

Q.—What was the state of affairs with respect to the building, then? A.—It looked a wreck.

Q.—It looked a wreck? Well, in what way did it look a wreck? A.—Beams and bricks all in the yard.

Q.—Beams and bricks all in the yard? A.—Yes.

Q.—That is the south side you are talking about now? A.—Yes.

Q.—We will come to the east side in a minute. South side, beams and bricks all in the yard. Did you look up at the walls?

A.—I didn't notice the walls very much.

Q.—But the beams and bricks were in the yard? A.—Yes.

Q.—Did you go to the east side of the building to look? A.—No.

Q.—You didn't go to the D'Argenson Sreet side? A.—No.

Q.—That is about all you can tell us about what happened that day? A.—Yes.

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

Q.—Mr. Keene, you called the ambulance, and it came, I assume? A.—After a considerable time it came.

Q.—Did you leave in the ambulance? A.—I left in one of the ambulances, to St. Luke. They fixed my eye and lip.

Q.—Did you stay in the yard until the ambulance came? A.—Yes.

Q.—Had the firemen arrived when you left? A.—Oh, the firemen were there, yes.

Q.—And the fire was in progress when you went away? A.—Yes.

C. E. KEENE (for Plaintiff at Enq.) Cross-examination.

Q.—I think you explained to Mr. Mann that the Canada Paint office is in the yard of the Sherwin-Williams plant?

A.—It is in an alleyway, like a gateway, at Centre Street.

Q.—It is in one of the buildings of the plant? A.—Yes.

10 Q.—Now, on this Sunday morning were you the only person in the linseed oil mill office? A.—That is all.

Q.—Was the door locked? A.—No, the door was open.

Q.—The door was open? A.—Yes.

Q.—When you say it was open, what do you mean exactly?
A.—Wide open.

Q.—It was wide open? A.—Yes.

Q.—You don't just mean that it wasn't locked? A.—No.

20 Q.—And you had no obstacle to go around, when you had this sensation and heard this noise, to get out? You were just 13 feet, you say, from the door, and there was no obstacle between you and the door? A.—I would say 13 feet from the yard door.

By The Court:—

Q.—The outside door? A.—Yes.

By Mr. Hackett, K.C.:—

30 Q.—There was nothing between you and the door in the way of an obstacle? There was no obstacle? A.—There were two doors. There was a door from the office. If I could sketch it for you. . . .

Q.—There was a door from the office where?

The Court:—The door from the office, as I gather, did not lead right outside.

By Mr. Hackett, K.C.:—

40 Q.—You were 13 feet from the door which led into another part of the building: is that right? A.—13 feet from the door that lead into the yard.

By The Court:—

Q.—But in order to get there you had to go through the office door first: is that right? A.—Yes.

C. H. HAZEN (for Plaintiff at Enq. Recalled) Exam. in chief.

By Mr. Hackett, K.C.:—

Q.—How far was it from where you were to the office door? A.—I would say around 6 feet.

Q.—6 feet? A.—Yes.

10 Q.—And there was no obstacle between you and that door?
A.—No.

Q.—And that door was open? A.—Yes.

Q.—And then it was 7 ft. from the office door to the main door of the building? A.—Approximately, yes.

Q.—And that door was open? A.—Yes.

Q.—So there was nothing to impede your progress toward the yard? A.—No.

Q.—I suppose you had gone back on that Sunday morning to do something that you had not had time to do on Saturday?

20 A.—That is right. I was going on a vacation on Friday and trying to get the July report finished up before I got away at the end of the week.

Q.—And you were occupied and concentrated on that work? A.—Yes.

And further deponent saith not.

H. Livingstone,
Official Court Stenographer.

30

DEPOSITION OF C. H. HAZEN (recalled)

On this 19th day of November, A.D. 1945, personally came and reappeared: Charles R. Hazen, a witness already sworn and examined for Plaintiff in this case and who being now recalled and further examined under his oath already taken doth depose
40 and say as follows:—

Examined by Mr. J. A. Mamm, K.C.:—

Q.—Dr. Hazen, what is your present occupation? A.—I am a consulting chemist.

Q.—And are you connected with any corporation? A.—I am the manager of the Milton Hersey Company.

Q.—And its business is what, generally? A.—Industrial chemistry.

C. H. HAZEN (for Plaintiff at Enq. Recalled) Exam. in chief.

Q.—How long have you been a consulting chemist? Remember I am not asking you how long it is since you graduated from a university. How long have you been a consulting chemist?

A.—I have been in Montreal as a consulting chemist since 1906.

Q.—39 years? A.—Yes.

10 Q.—Have you university degrees? A.—I have my master's degree, as well as my B.Sc.

Q.—Have you acted or did you act as consulting chemist to the Sherwin-Williams Company relative to certain incidents or examinations following an explosion or fire or fire and explosion which took place on the 2nd of August, 1942? A.—Yes.

Q.—Did you go to the plant of the Sherwin-Williams Company in the vicinity of that date? I think you said you went on the 3rd. A.—Yes, the next day.

Q.—The day following the occurrence? A.—Yes.

20 Q.—Did you visit the room in which are the bleacher tanks? A.—Yes.

Q.—Did you become or have you become familiar with the construction of bleacher tank No. 1 in which it is said the incident originated? A.—Yes.

Q.—You produced this morning a photograph, P-11, which indicates the tank in its reconditioned and repaired shape; is that correct? A.—Yes.

30 Q.—And I would like you to look at the photographs P-6-a, P-6-b and P-6-c, and, looking at P-6-a first, do you recognize that as a faithful representation of the condition of the tank on the 3rd of August, 1942? A.—Yes.

Q.—You will observe in the photograph the top of the tank seems to be covered with dirt or something. What is it covered with, or what was it covered with? A.—Asbestos insulation.

Q.—Yes, — but it is a little bit ruffled and dirty. Do you know what that is? A.—That is dirt.

40 Q.—Perhaps you can see it better in P-6-c? A.—There is a certain amount of loose dirt that had fallen on the top, and it comes partly from char of wood above it and refuse thrown about it.

Q.—Do you know what these things are at the top at the left? A.—The things at the top, to which you refer, are covers of paint cans that happened to have been thrown up there.

Q.—What is the rest of the stuff to the left in front of it? A.—Cans, cans and rubbish.

Q.—You mean "cans" twice, cans, cans and rubbish?

A.—Yes, "cans" a good many times, if you please. The place was littered with cans. It had been in part a storage place for cans.

C. H. HAZEN (for Plaintiff at Enq. Recalled) Exam. in chief.

Q.—Now take P-6-b, which is stated to show the back of the tank with a round circle in it? A.—The window. . . .

Q.—First of all, is that the back of the tank? A.—Yes, that is the back of the tank. The lower part you can see clearly opposite the shovel handle.

10 Q.—What is the shovel handle? There is a shovel on top of the tank apparently? A.—The shovel is standing at the end of the tank. You can see the shaft which actuated the stirring arms.

By The Court:—

Q.—That is what has been referred to as the shaft? A.—Yes. Then above it is the frame, in which was a half-inch plate-glass window. This window was blown outward. It is white, because I stuffed a handkerchief in it in order to make it clear. 20 The glass, we picked up some of it on the floor.

By Mr. Mann, K.C.:—

Q.—In what condition? A.—In a broken, shattered condition, fine. Then, in one place in the frame, with fractures that indicated the glass window had been burst out, were fragments of glass around the periphery of the frame, a diameter of six inches. The frame was riveted to the rear of the tank with heavy 30 rivets.

Q.—Would you mind following me now with the Exhibit P-6-a. That shows the front of the tank? A.—That shows the front of the tank.

Q.—And what is to the left of the picture, extending across? A.—The saddle or curved bar through which a screw passed to clamp the door tightly in place upon the gasket shown in the picture.

Q.—The gasket is the interior circle? A.—Yes.

40 Q.—Or, the concentric circle of the opening: is that it? A.—The frame of the doorway, or door. — because it is a man-hole door, — has a groove in it, in which is inserted an asbestos gasket, and this is put in to make a sure seal, to prevent leakage of vapors or steam under pressure.

Q.—Now, the arm that you have referred to as being to the left, — you will observe that there was a standpipe which seems to have been broken right at the place where the arm is? A.—That is true.

Q.—Was that pipe in fact broken on the morning when you went there? A.—It was smashed back; smashed out, in fact.

C. H. HAZEN (for Plaintiff at Enq. Recalled) Exam. in chief.

Q.—And that arm, looking at the Exhibit P-11, — would that be the arm that is shown across the door or the manhole?

A.—Yes.

Q.—And to the right and left of the manhole you see lugs?

A.—Yes.

10 Q.—I see in Ex. P-11, the photograph of the reconstructed machine, there appear to be five things that look to me like lugs on the right of the door? A.—Yes.

Q.—There are only two in the picture P-6-a?

Mr. Hackett:—I object to any evidence. . . .

Mr. Mann:—I haven't asked the question yet.

20 Mr. Hackett:—I think it has been answered so far as I am interested in it. I object to the further discussion of this Ex. P-11. It represents a condition that did not exist at the time that is under investigation, and any variation between it and the situation as it existed at the time of the incident is irrelevant.

Mr. Mann:—Quite so.

30 Mr. Hackett:—The Exhibit P-11 was put in solely for the purpose of giving a general and rough idea of the appearance of the tank, and I submit that it is not competent to Counsel to use the exhibit for purposes of comparison or for any purpose other than that for which it was put in.

The Court:—I think perhaps Mr. Mann could obtain the information he is seeking, without referring to Exhibit P-11 at all.

40 Mr. Mann:—Yes, I think so. We are examining, of course, a professional witness; we are examining on a technical subject; and I think that perhaps the rules of cross-examination might be relaxed a little bit, as they sometimes are in circumstances such as the present. I assure your lordship I won't attempt to put any answers in the mouth of this witness.

The Court:—Even if you did try, I don't think he would give an answer other than the one he wanted to give, anyway, but we might as well stick to the rules. You will have until 2.15 to frame your question.

(It now being 12.30 p.m. Court adjourns to 2.15 p.m.)

And further for the present deponent saith not.

H. Livingstone,
Official Court Stenographer.

C. H. HAZEN (for Plaintiff at Enq. Recalled) Exam. in chief.

(At 2.15 p.m., Nov. 19, 1945, Court reassembles):

10 Mr. Hackett:—Before the examination of Mr. Hazen is resumed, I would like to make an application. I told my friend Mr. Mann this morning that I was going to ask that the insurance policies which are enumerated in the sheet that was attached to D-3 be filed to become part of this record. I forgot to do that. Your lordship will recall that in the Plea there is a contention that the fire insurers should contribute to any amount which the Defendant might be condemned to pay and, furthermore, we called upon the Plaintiff at that time to produce these policies, and it has not been done.

20 I may say that Mr. Mann gave me communication of the policies, but I would like them put into the record.

30 Mr. Mann:—Mr. Hackett has had these policies for two weeks. If in examining them he has used the diligence which is characteristic of him, no doubt he will have discovered that the word “explosion” is mentioned in only one policy with the exception to the reference in the statutory conditions to the obligation on the fire companies to pay loss caused by fire following explosion. The only policy in which there is the slightest suggestion of contribution to explosion loss is the policy of the reciprocal underwriters. My friend has examined the fire policies. I will exhibit them to the Court. My friend has had them for two weeks. I will let him have them for two more weeks if he wants them. I do not think, though, I should be asked to produce them. I am perfectly willing to put them before the Court and Mr. Hackett, and he can examine them again if he wants to, but, as I have said, he has had them for a period of two weeks already, and I do not think I ought to be asked to produce as part of a Court record documents which may represent substantial sums of money to the Plaintiff, — that is my difficulty, — but anything else I will do willingly. Let my friend copy the reciprocal policy if he wishes. I will furnish him with the wording of one of the other policies and he can check to see if it is the wording of the rest.

40 Mr. Hackett:—There are provisions in the contract on which this action is brought which apply to other insurance and...

The Court:—There is no doubt that strictly you would be entitled to have the policies produced. The only problem is, are they really necessary in the record? Is there not some way in

C. H. HAZEN (for Plaintiff at Enq. Recalled) Exam. in chief.

10 which you can get into the record those parts of the policies in which you are interested, instead of burdening it with documents which I certainly do not want to read unless they are relevant? I do not want to read these twenty policies unless it is absolutely essential for the solution of the problem that is presented to me.

Mr. Hackett:—It is part of the Plaintiff's case, and I am not asking for them for reasons other than serious reasons.

20 Mr. Mann:—Let us get right down to common sense. Would you limit that to the insurance wording of the policies? Surely you cannot ask any more than the insuring agreements. I can get you copies of those and I will do so with pleasure. You know the statutory conditions are paramount.

30 Mr. Hackett:—My friend has said, my lord, that I have had the policies for two weeks. They have been in my possession for some days. Mr. Mann also knows that I was absent from the City during that time, and I did not have the opportunity of going over them with the people who are advising me and who are familiar with that aspect of the case, and, inasmuch as I had alleged them, under instructions, and had called for their production, in the pleadings, I would prefer that they be where they may be examined, under the guidance and direction and control of the Court, but where they may be examined other than as an act of grace. Of course, I do not wish to have Mr. Mann understand me to suggest that he has been anything but very kind and gracious in the matter, but. . . .

The Court:—If you ask for the production of the policies, I must grant your request.

40 Mr. Hackett:—All right. If your lordship will just let it stand at that, I will see if I cannot get out of it, because I do not want to embarrass Mr. Mann or anybody else.

The Court:—I anticipate a further adjournment of this case. We are not, I think, going to finish within the three days presently allotted. I have made provision for a future session, which will probably be necessary.

Mr. Mann:—And my friend can have them during that whole period, if he gives them back to me a day or two before the argument.

C. H. HAZEN (for Plaintiff at Enq. Recalled) Exam. in chief.

The Court:—It is quite clear, Mr. Hackett, that in strict law, if you want those policies in the record, you are entitled to have them.

Mr. Hackett:—I don't want to burden the record with
10 them if I can avoid it.

The Court:—We will leave it your ingenuity to find some way out, if possible.

(The deposition of the witness Charles R. Hazen now continues under the same oath as follows):—

Witness:—I think I made an improper answer to a question a little way back, in reference to the gasket, and I would
20 like to correct it if I might.

The Court:—Certainly. The stenographer will note that the witness requests the opportunity to clarify or correct a statement he made this morning concerning the gasket and now proceeds to do so with the permission of the Court.

(The answer at the bottom of Page 303 is read:

30 “A.—The frame of the doorway, or door, — because it “is a manhole door, — has a groove in it, in which is inserted an asbestos gasket, and this is put in to make a “sure seal, to prevent leakage of vapors or steam under “pressure.”):

Witness:—The device was used as a vacuum tank, and the leakage referred to was possible leakage in the tank which would break the vacuum, leakage of air or whatever might possibly enter.

40 By Mr. Mann, K.C.:—

Q.—That is all you have to say on that? A.—Yes.

Q.—Looking now at the Exhibits P-6-a and P-6-c, and to the right of the manhole in these exhibits, in the first picture mentioned, P-6-a, the door is swung back as you have said? A.—Yes, the saddle.

Q.—I mean, the arm is swung back? A.—Yes.

Q.—And it is lying almost at right angles, if you can make right angles to a door? A.—It is.

C. H. HAZEN (for Plaintiff at Enq. Recalled) Exam. in chief.

Q.—And in the place where the pipe seems to have been broken and knocked away: that is correct? A.—Yes.

Q.—And it is still hanging, in the picture, on some type of hinge, isn't it? A.—Yes.

10 Q.—To the left of the manhole, looking at the picture?
A.—Yes.

Q.—And to the right of the manhole, looking at the picture, there does not appear to be anything but two projections. My question is this:—What was the state of these projections, or what may or may not have been there at the time you examined that door on the 3rd of August? Keep one picture at a time before you. A.—The projections or lugs were a part of the door frame, the steel casting. They were intact and uninjured.

20 Q.—Was this bar held in place by anything on that right-hand side? A.—The bar was held in place at the centre of the space between the two lugs, and the two lugs on the door were inserted between the bar and the outer lugs, and the whole held in place by a three-quarter-inch bolt.

Q.—I am having a little difficulty. Was there anything on the end of the arm which would as you have described fit in between the lugs on the right-hand side of the picture? A.—The end of the arm will fit in between the lugs on the right-hand side of the picture.

30 Q.—What I am troubled with is, Mr. Hazen, that the arm was very much narrower than the space between the two projections on the right-hand side of the door? A.—It had to be, to admit the lugs on the door itself.

Q.—I understand. So, then there was something between the two lugs that you see on the right-hand side of the picture? A.—Yes, there were two lugs that were attached to the door, part of the door.

Q.—And the arm fitted in between? A.—Yes, between those.

40 Q.—And a pin of some kind held it? A.—A three-quarter-inch bolt.

Q.—It went right down through there to hold the arm, the door and the two lugs, all together? A.—Yes.

The Court:—Really four lugs.

Witness:—Yes.

Mr. Mann:—Four or more.

The Court:—Four.

C. H. HAZEN (for Plaintiff at Enq. Recalled) Exam. in chief.

Q.—Two on the door and two on the frame of the cylinder?
A.—Yes.

By Mr. Mann, K.C.:—

10 Q.—And the arm fitted in between, and the pin held it all together? A.—Yes.

Q.—Did you look for the pin? A.—Yes, we looked very studiously but couldn't find it.

By The Court:—

Q.—I suppose you would expect it to be a metal pin?
A.—Yes; the pins on the other tank, No. 2, and the pin on the other side of the door, were all three-quarter-inch steel bolts.

20

By Mr. Mann, K.C.:—

Q.—You mentioned in your previous evidence the round handle in the form of a screw that fitted in, in the centre of the bar. Did you find that or do you know where that is, or did you look for it? A.—We found the screw in the bar, but the round handle or ring that actuated the screw when one wanted to turn it was smashed.

30

Q.—Looking at the centre of the bar in the pictures P-6-a and P-6-b, right at the centre, there is an object. What is that?
A.—That is the end of the bolt.

Q.—You are looking at P-6-a? A.—Yes.

Q.—Look at P-6-c and tell us what it is? A.—It is the other face of the bar, showing the centre of what was the wheel.

By The Court:—

40 Q.—Which was used to turn the screw? A.—Yes, to tighten the screw against the door.

By Mr. Mann, K.C.:—

Q.—Now, Dr. Hazen, did you examine this tank at the time, namely, the 3rd of August? A.—Yes.

Q.—Are you able to give us any information as to its construction, from the engineering point of view? A.—Yes.

Q.—Will you do so, please? A.—It was, of course, better revealed then than it is at present with the insulation on it. The end was entirely exposed.

C. H. HAZEN (for Plaintiff at Enq. Recalled) Exam. in chief.

Q.—Had some of the insulation come off? A.—Yes, the insulation had been badly broken off.

By The Court:—

10 Q.—That is, the asbestos insulation? A.—Yes.

I made a little sketch. Maybe I might see it? You have it, Mr. Mann.

By Mr. Mann, K.C.:—

Q.—The one I now show you? A.—Yes. It is just a rough sketch, but it exhibits the form perhaps better.

20 Q.—Perhaps we had better produce that? A.—A circular, or, cylindrical tank with dished ends, convex ends: it is just of that form. The point is that it has these rounded or dished ends to withstand pressure.

By The Court:—

Q.—From inside? A.—Yes, or from the outside.

Q.—Or from the outside? A.—Yes, if such a thing arose.

30 By Mr. Mann, K.C.:—

Q.—Of what was it constructed? A.—Half-inch steel boiler plate, so far as I could see; half-inch steel plate certainly; with riveted joints.

Q.—Would you enlarge upon “riveted joints”? A.—The ends had to be fastened to the cylindrical barrel of the machine, and instead of being continuous or all of one piece or instead of being a welded joint, the joint was riveted. The rivets, as near as I could determine, were 5/8th-inch rivets, — they might have been 3/4, — and 2 1/2 inches between centres, a thoroughly substantial construction.

40 Q.—You explained to the Court this morning, looking at P-11, — and I would ask you to continue to look at P-6-a and P-6-c, — that the lower half consisted of a steam compartment. I think you said. . . .

The Court:—Not exactly consisted of, “was enveloped in”.

H

Questioner's note: Filed
later - in evidence.

H
C. H. HAZEN (for Plaintiff at Enq. Recalled) Exam. in chief.

By Mr. Mann, K.C.:—

Q.— . . . was enveloped in a steam compartment, and that the whole was bound together by an asbestos covering? A.—That is right.

10 Q.—And how was the asbestos covering held on? A.—It was wired in place until it dried, and then covered by canvas.

Q.—And was that just glued? A.—It was put on with a cement to hold it tight, just as wallpaper is.

Q.—What I am getting at is this:—The asbestos and the canvas were not designed to resist pressure? A.—No.

Q.—That was merely a covering-in of the whole tank? A.—Yes, purely for insulation.

By The Court:—

20

Q.—To keep heat from escaping? A.—Yes.

Q.—Just as one puts asbestos on a furnace in a home, to save heat? A.—Yes.

By Mr. Mann, K.C.:—

30 Q.—Now, it has been stated that the inside wall of the steam compartment constituted the outside wall, to the extent that it was a steam compartment. . . . A.—Of the steam jacket?

The Court:—Would it not be perhaps more accurate to say that the steam jacket had no inside wall proper but that the wall of the cylinder, as such, served as the inside wall of the steam jacket?

Witness:—That is quite right.

40 Mr. Hackett:—I was wondering if your lordship had intended to say the outside wall of the cylinder?

The Court:—I just said the wall of the cylinder.

Mr. Hackett:—There are two walls.

By The Court:—

Q.—If I understand it correctly, — and the rest of you will please listen and correct me if I am wrong, — there is the cylinder, which is the tank proper, made of metal. To the lower

C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

half of the cylinder is applied something which we call a steam jacket. If that steam jacket is separate from the cylinder there is no inside wall to it at all, but, when you put it on to the cylinder, then the outer wall of the cylinder becomes the inner wall of the steam jacket?

10

Mr. Mann:—That is correct.

Witness:—Yes.

By Mr. Mann, K.C.:—

Q.—His Lordship has described his understanding of it. Is that correct? A.—Yes.

20 Q.—With regard to the steam jacket, I keep calling it “compartment”. Is that a proper mechanical term, or am I wrong? A.—It is a common phrase used to designate such an arrangement of applying steam heat to an unfired pressure vessel.

Q.—I’m afraid I will have to ask you a leading question, but I don’t think my friend will object. Did you cut into, or was the outer wall of the steam jacket destroyed in any way? A.—No.

Q.—You are not able, then, to give us the thickness of that steel, are you? A.—No.

30

Mr. Mann:—I think that is all I have to ask this witness at the moment.

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

Q.—Are you quite sure, Mr. Hazen, that it was on the 3rd of August, 1942, that you first went to the premises? A.—May I refer back to my original report? I think it was. The explosion occurred on a Sunday.

40

The Court:—Sunday, the 2nd of August, 1942. That is agreed by all.

Witness:—I was there the next day.

Mr. Mann:—That sounds like the 3rd.

By Mr. Hackett, K.C.:—

Q.—That was the 3rd. At what time were you there, Mr.

C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

Hazen? A.—I have no memorandum of the hour. My memory is, it was in the morning, but I have no memorandum.

Q.—Who asked you to go? A.—Mr. Debbage.

Q.—Mr. Debbage, the adjuster for the fire insurance companies? A.—Yes.

10 Q.—And, this information that you have given as to sizes and dimensions, did you get that on the 3rd of August? A.—I measured those on the 3rd and I measured them twice, I think, subsequently, — that is, three times, — and I measured them last week for the last time.

Q.—What were the dimensions of the cylinder itself? A.—The cylinder itself was 5 feet in diameter and approximately 8 feet long. Mind you, I had to measure a machine that had two inches of insulation over it and I couldn't be more accurate than I have tried to be.

20 Q.—And you say that the cylinder was made of sheet steel of what thickness? A.—Half-inch.

Q.—And what were the dished ends, as you have described them? What were they made of? A.—Steel.

Q.—Of the same thickness? A.—I can't tell you.

Q.—You didn't measure them? A.—I couldn't measure them.

Q.—Why? A.—Because they were covered with asbestos insulation and I could not see them. I would have to tear off the insulation to measure it.

30 Q.—Didn't the manhole afford any opportunity for that? A.—No.

Q.—And when you looked at the tank when the insulation was off, you did not take those measurements? A.—No, I didn't.

Q.—How were the ends, the dished ends, attached to what I believe you have called the barrel of the cylinder? A.—With rivets.

Q.—With rivets? A.—Yes.

40 By The Court:—

Q.—I would like to have this made clear:—When you say "dished" ends, you mean nothing more than convex ends, I understand? A.—That is right. A dished end may be convex, or it may be concave, either.

Q.—In this instance it is convex? A.—Yes.

Q.—And that is on the outside? A.—Here they call the convex end a "bumped" end. It is the same thing, of course.

H
C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

By Mr. Hackett, K.C.:—

Q.—To make our meaning quite clear, the ends, to a person inside the cylinder, bulge outward? A.—Yes.

10 Q.—How did you find out that the shell of the cylinder was made of half-inch steel? A.—I examined it.

Q.—I know that you examined it, but you gave, as a reason for not telling us of the thickness of the ends, one which I thought would have precluded you from learning the thickness of the cylinder itself? A.—No. The reason that I could only measure the cylinder was that the end slid by the end of the cylinder, and the end of the cylinder was visible, but the end of the flange of the dished end was not visible.

Q.—But you have stated that the joints were riveted by rivets of what dimension? A.—I said $\frac{5}{8}$ th, possibly $\frac{3}{4}$ -inch.

20 Q.—Can you say which? A.—No.

Q.—You did examine them? A.—I did; but I couldn't measure the rivets, because the heads were flanged over and the base was flanged over to cover the thickness of the rivets, so that I could not see them.

Q.—Could you find out what was the space between the centres of the rivets along the barrel of the cylinder? A.—Yes.

The Court:—He gave that.

30 Witness:—Yes, I gave that: $2\frac{1}{2}$ inches.

By Mr. Hackett, K.C.:—

Q.—You are sure of $2\frac{1}{2}$? A.—(Examining Notes): I am trying to be sure of it, — $2\frac{1}{2}$ inches, yes.

Q.—Was that in the head seam or the longitudinal seam? A.—Head seam.

40 Q.—What were they in the longitudinal seam? A.—I don't know.

Q.—What was the tensile strength of the sheet steel used to make the barrel? A.—I can't tell you. Probably that would be about normal for ordinary plain carbon boiler steel.

Q.—What is that? A.—About 60,000 pounds.

Q.—To the square inch? A.—Yes.

Q.—What was the size of the opening in the lugs on the steel frame of the manhole? A.—A little larger than $\frac{3}{4}$ -inch. We would call it a loose $\frac{3}{4}$ -inch fit.

Q.—I understood you to say, in answer to a question I think his lordship put to you, that the pin would go through

H
C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

four lugs. I thought it was through five. I will ask you to count them up again? A.—The fifth lug referred to is the end of the saddle or bar. There are two on the frame of the door opening, two on the door, — that is 4; and the end of the bar is 5.

10 By The Court:—

Q.—But the bar is not a lug? There is a hole in the bar through which the pin would go? A.—Yes, of exactly the same form and conformation as the lugs.

By Mr. Hackett, K.C.:—

20 Q.—In referring to the cylinder, was there anything in its structure which indicated what its use might be? A.—No, except that it is of cylindrical form, which suggests being designed to withstand pressure.

Q.—Well, pressure from within or pressure from without? A.—Either.

Q.—You spoke of a gasket. Did that indicate anything to you as to the use or the source of the pressure to which the vessel might be subjected? A.—The gasket is merely a seal, and there was nothing in the use of the gasket that would suggest anything other than a seal where the door was clamped against it.

30 Q.—There was nothing in the way the gasket was applied and nothing in the way the door was constructed which indicated whether or not the cylinder was to be used as regards pressure from within or pressure from without? A.—The arrangement and construction of the door and its frame indicated that it was designed to be used with vacuum on the tank.

Q.—That means with pressure from without, does it not, — or from within? A.—That means the absence of pressure within.

40 Q.—The absence of pressure within? A.—Yes.

Q.—So the structure of the door was such that it indicated that the pressure was a sucking-in pressure rather than a pushing-out pressure? A.—That is quite correct.

Q.—Now, just tell the Court, will you, Mr. Hazen, what there was in the structure that made that apparent? A.—The fact that the door was applied on the outside definitely indicated that it was to resist pressure from without, air pressure. Had it been designed to resist pressure from within, then the structure would have been different.

C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

Q.—In what way? A.—The door would have been applied from inside.

Q.—And the gasket in a different place? A.—Yes.

Q.—Coming back to the rivets, can you tell us what the diameter of the rivet holes was? A.—No more than I could say
10 what was the diameter of the rivet. You see, the end of the rivet is flanged out and is about an inch and a half across, both the upper end and the lower end, and they completely hide the whole of the rivet in the hole.

By The Court:—

Q.—You are not speaking of damage now. That is the normal thing for rivets, the normal way that rivets are placed? A.—Yes; and that was the condition here. Of course, I could
20 have taken a cold chisel and hammered those rivets out and got them up, if I had thought it was of any great importance.

By Mr. Hackett, K.C.:—

Q.—You have said, I believe, that the head of the cylinder was attached to the cylinder itself by rivets? A.—Yes. They are shown in the photograph showing the end of the cylinder.

Q.—Now, coming to the door that appears to be missing from P-6-a, what was its composition? A.—I don't know. It
30 was missing.

Q.—Did you not see it? A.—No.

Q.—At no time? A.—No.

Q.—At no time did you see the door which covered the manhole shown in Exhibit P-6-a? A.—No. That was thrown off and broken, but I couldn't find it when I was digging in the refuse.

Q.—You didn't have any conversation with Mr. Moffat about it? A.—No.

Q.—You say it was broken? A.—Yes, the lugs were
40 broken off, I believe. I am speaking without personal knowledge. I didn't see the door. I haven't seen it yet.

By The Court:—

Q.—The door wasn't on the tank when you were there, and you have not seen the door elsewhere: is that correct? A.—Yes, that is correct.

P.H.
C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

By Mr. Hackett, K.C.:—

Q.—I think you have said you could not ascertain what was the thickness of the dished heads of the cylinder? A.—No. It would be very simple, if one wanted to tear off the insulation.
10 I didn't realize a point would be made of it or I would have done so.

Q.—What are the dimensions of the crossarm about which you have spoken and which is before you in the photograph P-6-a? A.—From centre to centre of the bolt holes in the ends it is two feet.

Q.—And just describe it, if you please, as accurately as you can? A.—Well, it is a bar which tapers slightly from the centre to the ends. It is thickened at the centre in both directions. It has an enlargement at the centre to permit of a fairly
20 strong bolt hole or for the screw, and it is bowed over the door. You can quite understand if we had a straight bar it would spring easily, but where you have a bar in the form of a bow it is more rigid. For that reason I should say there was about one inch of bow in this bar from end to end.

By Mr. Mann, K.C.:—

Q.—In which direction? A.—Outward.

30 By Mr. Hackett, K.C.:—

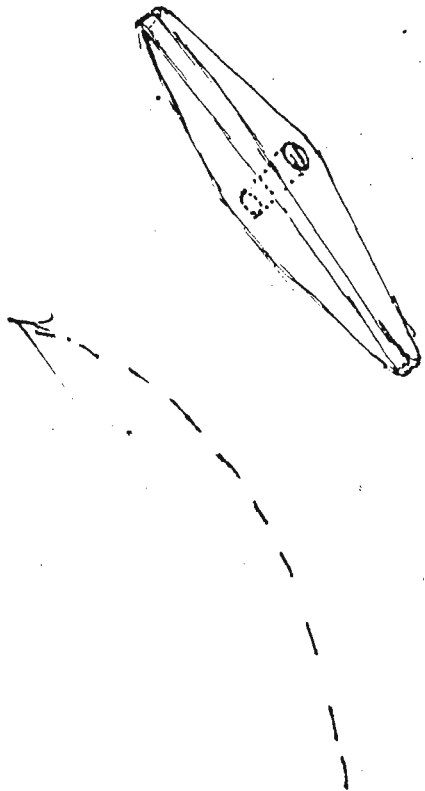
Q.—To a person inside? A.—Outward to a person inside, in the plane of the centre line of the tank.

Q.—I don't quite understand your answer. You say "in the plane of the centre line of the tank." I thought that the axis which agitated, or, the bar which agitated the contents of the tank, and which ran through the tank, was in the plane of its
40 centre? A.—Yes. Now, my remark was again a bad description, for the door is not vertical to the axis of the tank but is at an angle, so that when it blew off, the door blew upwards with a trajectory flight.

Q.—That is interesting. Will you just give us the details of that statement so we can work out the trajectory of the door?

A.—I can't tell you that. I should say that the face of that door was at an angle of about 8 degrees.

Q.—And that shows, I suppose, the tilt of the door itself? A.—Yes.



RH

C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

By The Court:—

Q.—Obviously, 8 degrees leading inside from the perpendicular? A.—Yes, my lord.

10 Q.—When I say inside, I mean to a person inside the tank it would lean towards that person, 8 degrees from the perpendicular. That is what I understand. That is right, you say? A.—Yes.

By Mr. Hackett, K.C.:—

Q.—That would mean that, to a person inside the tank, the top of the door would be nearer to him, or nearer to an upright, than the bottom? A.—Yes.

20 Q.—Can you tell us the diameter of the bolt or bolts holding the door and crossarm? A.—Yes, they were $\frac{3}{4}$ -inch, both of them.

Q.— $\frac{3}{4}$ -inch? A.—Yes.

Q.—And I believe you said you did not find those pins? A.—I didn't find one; I did not find the one that was sheared off.

By The Court:—

30 Q.—You mean, there was one you did not find? A.—I didn't find one, — to make it clear, the one at the right side of the door in the picture.

By Mr. Hackett, K.C.:—

Q.—To a person looking in? A.—Yes.

40 Q.—I don't wish to be funny or even to attempt to be funny, but you don't, as a matter of fact, know whether that pin was shorn off or not? A.—Inasmuch as I could not find it, there was surely something happened to it in the nature of shearing. It had to.

By Mr. Mann, K.C.:—

Q.—It, what? A.—It had to.

By Mr. Hackett, K.C.:—

Q.—It disappeared, anyway? A.—It certainly disappeared.

RA

C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

Q.—Now, what was the length of the threads on the bolt?
A.—Ordinary machine-screw thread.

Q.—What was the length of them, can you say? A.—No, I couldn't say.

10 Q.—You said something about the glass in the peephole?
A.—Yes.

Q.—You said that the aperture there had a diameter of how many inches, — six, I think you said? A.—I think I said 6.

Q.—Is that right? A.—(Consulting Notes): Yes, 6.

Q.—How thick was it? A.—Half-inch.

Q.—What kind of glass was it? A.—I can't tell you that.

Q.—I thought you said you found it? A.—It was plate glass, but I didn't analyse it.

20 Q.—I thought you said you found it just at the back of the tank? A.—I found pieces of it. It was shattered, small bits thrown all over the floor. I only got a few of them.

Q.—Shattered? A.—Yes.

Q.—Now, you told us that the manhole was constructed in such a way as to show that the pressure anticipated was pressure from without? A.—Yes.

Q.—Now I want to know if the same answer would apply to the glass in the peephole, — or possibly you didn't notice?
A.—The frame of the window in the peephole in the back, from its construction, would answer for pressures from within or from without.

30 Q.—Now, Mr. Hazen, I want you to tell me frankly whether you had that in mind when you made your investigation or whether you noticed if it was suited to pressure both ways or not? A.—I wasn't considering pressures both ways at the time, at all. I have never heard the question raised until this minute.

Q.—I thought, — and you can tell me if I am wrong, — that you gave an answer, as regards the glass, which might be interpreted to mean that it was blown out or blown off. Did you intend that? A.—I certainly did. That glass was blown out.

40 Q.—Now, would you just tell me, in the first place, what you mean by saying that the glass was blown out, and then tell me why? A.—In the first place, the broken glass from that window was found outside, on the floor. In the second place, . . .

Q.—Just let me stop you there. You said that you did not see the manhole door? A.—That is right.

Q.—But you know that it was not inside. Is that what you want to say? You are sure of that: it wasn't inside the cylinder?
A.—The door?

Q.—Yes? A.—No; it couldn't be; it is larger than the frame.

RA
C. H. HAZEN (*for Plaintiff at Enq. Recalled*) *Cross-exam.*

Mr. Mann:—Are you talking about the peephole or the manhole, Mr. Hackett?

Mr. Hackett:—I think it is quite clear.

10 Mr. Mann:—You stopped the witness in the middle of his answer. I wonder if it is clear.

Witness:—May I finish my reply?

Mr. Hackett:—Yes, — what is it you wish to say?

Witness:—What I want to say in the second place is this:—
The fragments of glass left in the frame of the peephole indicated very definitely, from the manner in which they cracked
20 off, that they had been blown outward and not inward.

By The Court:—

Q.—May I ask this to make sure that I have understood correctly: — You have said that the construction of the manhole door was such as to indicate that the apparatus was constructed to withstand pressure from without? A.—Yes.

30 Q.—Am I to conclude from what you said as to your examination after the accident that the pressure which actually resulted was pressure from within? A.—Very much so, my lord.

Q.—And you say that because of the nature of the break in the glass in the back of the tank and because of the fact that the door of the manhole in the front of the tank did not go inside but went out somewhere. It could not possibly go inside, anyway, could it? A.—No, it was too large, and it went out with violence.

40 By Mr. Hackett, K.C.:—

Q.—With violence? A.—Yes.

By The Court:—

Q.—So the pressure, you say, from those phenomena, must have been from within the tank? A.—Yes, my lord.

By Mr. Hackett, K.C.:—

R:H
C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

10 Q.—I want you to tell his lordship exactly what you observed, — and we are always speaking of the 3rd of August, 1942, — as regards the particles of glass in the socket or frame, which led you to your conclusion, the conclusion which you have just mentioned to the Court? A.—When a thick piece of glass or sheet of glass is broken by pressure, the direction of the pressure is indicated very definitely by the angular breaks. If one takes a pencil and bends it, as I am doing now, it breaks outward and leaves angular fragments attached, and the points of those angles will be on the side remote from where the pressure was applied.

Q.—Does the consistency of glass and do the rules or laws of its breakage follow those of the soft wood in a pencil? A.—No; we are dealing with entirely different substances.

See p 640
20 Q.—You have referred to pressure and to the effect of the pressure within the cylinder upon the glass peephole? A.—Yes.

Q.—What pressure could a glass peephole of the type that you have described resist? A.—I have searched America for that information, but I can't tell you. I don't think there is anybody in America that knows.

Q.—Isn't glass which is put into tanks, like tank No. 1, given a rating of resistance? A.—Probably.

Q.—What pressure would the steel cylinder itself resist? A.—The steel cylinder?

30 Q.—The tank No. 1 we are talking about?

Mr. Mann:—The cylinder of the tank.

Mr. Hackett:—The cylinder of the tank No. 1.

By The Court:—

40 Q.—That was not the figure which you gave earlier in your testimony, of 60,000? A.—No; that is the strength of the steel.

Q.—The tensile strength? A.—Yes. Mr. Hackett is asking what pressure the cylinder would withstand.

To answer your question, Mr. Hackett, we are getting now into a field which might be classified by the adverse lawyer as guesswork. It would seem that the tank was designed to withstand a possible working pressure of 75 pounds, and that it would withstand about six times that, or 450 pounds working pressure.

R.H. C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

By Mr. Hackett, K.C.:—

Q.—We are now talking of. . . . A.—Of the cylinder.

Q.—And we are talking of a force which would. . . . A.—

Force it up

10 Q.— push itself outward as distinct from the type of pressure for which you said the tank was obviously constructed: that is right, isn't it? A.—Yes. I will just add this, to clear that thing:—calculating on the rivet that was broken off, it would seem that that broke, — this is as nearly as we can calculate it, not knowing the exact tensile strength of the steel, — that that broke around 55 pounds pressure: that is, there were 55 pounds exerted on the interior of that front manhole door to break off the rivet.

20 Q.—Now, is there any pressure on a container before the boiling point of the contents is reached? A.—Why, no, provided it is a single liquid and that it is not a mixture.

Q.—All right, then, tell me what the proviso means?

Mr. Mann:—I think we are getting entirely beyond the field of the examination-in-chief. I may be wrong, but I think we are getting away beyond the examination-in-chief.

30 The Court:—If I recollect correctly and if I understood correctly the examination-in-chief, it was on purely mechanical questions. I don't think chemistry entered into it.

Mr. Mann:—No, I didn't ask one word on chemistry.

The Court:—As I recall it, you didn't.

40 Mr. Hackett:—What I have in mind is this: — Mr. Mann asked a question to which Mr. Hazen replied, in effect, as I understood it, that the glass of the peephole was blown out. I have asked Mr. Hazen what pressure the glass would resist. I now ask him what the pressure is.

Mr. Mann:—All I asked was on the fact: did the glass blow out? I did not deal with the chemistry of how the pressure could be built. I took no part of that scientific problem, at all, with this witness, but merely the fact did the glass blow out. I didn't ask him why the glass blew out.

The Court:—You having asked the witness whether it blew out and he having said it did blow out, — he based that

RH
C. H. HAZEN (*for Plaintiff at Enq. Recalled*) *Cross-exam.*

assertion on the condition of the glass splinters still adhering to the frame of the peephole and the fact that he found splinters outside the tank on the ground, — that, I think, opens the door to further questions as to what pressure may have occurred in that tank to cause the blowing-out of the glass.

10

Mr. Mann:—But as to how the pressure got there, the physical or chemical operation as to how the pressure got there, the scientific explanation as to how that pressure was built, that is another story altogether. My friend is on the question as to how the pressure got there, not the fact that it was there. That is something we will deal with by other witnesses. I respectfully suggest that questions as to how the pressure got there should not be part of the cross-examination, since there was nothing of that in the examination-in-chief, or the boiling point or anything else about the contents.

20

Mr. Hackett:—My friend was careful to qualify Mr. Hazen as a chemist, as a man who had practised that profession for some time, and it is because of his qualifications that he has been brought here to enlighten the Court. Now, Mr. Hazen, in my submission, has made a statement of fact, and I am bringing it to the test of his own metier, and I submit with some deference I am entitled to do that.

30

Mr. Mann:—I am afraid I will still have to object. The reason for the temperature or the pressure being in that tank was not touched on in examination-in-chief and therefore I say, with the greatest respect, should not be touched on in cross-examination. The fact is there that he said it was blown out by pressure. As to how the pressure was built up, this witness has not made a single suggestion. He said it was there, but he said nothing as to how it got there. We are not proving that by this witness; we will prove that otherwise.

40

The Court:—Suppose the only purpose of the cross-examination, — and I say this without any personal reference, — was to show that the witness did not know what he was talking about, which would be a perfectly legitimate basis for cross-examination, in theory, I would have to allow the cross-examination. I know our rule governing cross-examination is very much stricter than under English law, but even with the strictness of the rule I think you have opened the door.

C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

Mr. Mann:—I will accept your lordship's ruling, with the greatest respect.

The Court:—I think it is wiser to err on the side of generosity than otherwise in respect of cross-examination, because
10 I think our rule is unreasonably strict.

Mr. Mann:—So long as the cross-examination does not go too far, I have no objection.

The Court:—I think anything that relates to explosive force or any kind of pressure force that may have caused the glass in the peephole to break would be sufficiently connected with the examination-in-chief to be allowed in cross-examination.

20 (The question on Page 333 is read: "Q.—All right, then, "tell me what the proviso means?"):

A.—Well, we can understand very well a mixture of a light-boiling and a heavy-boiling product, and then the light-boiling in such proportion that even if it all boiled out of the mixture it still would not exert any great pressure.

The Court:—Could we not bring it down to what was actually in the tank on the morning of the 2nd of August?

30 By Mr. Hackett, K.C.:—

Q.—Knowing what was in the tank on the 2nd of August, could there be any pressure exerted on that tank before the boiling point was reached? A.—No.

The Court:—You mean internal pressures?

By Mr. Hackett:—Yes?

40 Witness:—No, there could not be.

Q.—What is the boiling point of turpentine? A.—I don't carry all these things in my head. I have a handbook.

Mr. Mann:—I object to any further examination on the chemical aspects or the scientific or material aspects of the chemicals that were in that tank. I say that as strongly as I can, because I take serious objection to this. I endeavored to keep

C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

away from that subject, because I had never discussed it with the witness. I don't know what he knows about it. If the witness wants to answer it, if your lordship orders, necessarily he can, but if your lordship overrules that objection I'm afraid I must except.

10

The Court:—If that objection is very important, I am willing to hear you at some length about it. My present view is that inasmuch as the witness in examination-in-chief has spoken about something in the nature of an explosion from within, which broke the glass of the peephole, — and I think it is quite clear that he has, isn't it?

Mr. Mann:—No. Your lordship said “an explosion from within”. The witness said pressure from within.

20

The Court:—I will change the word “explosion” to “pressure”. I appreciate the distinction and the importance of the distinction.

The witness having spoken of pressure from within, which broke the glass of the peephole, and having based his statement on his own examination of the glass and the frame in which the glass had been, the day following the incident, in my opinion the door is thus opened to cross-examination in such pressure as might conceivably have been caused in the tank on the morning of the 2nd of August.

30

Mr. Hackett:—Will your lordship let me add: in view of the fact that the witness was qualified as a chemist, one capable of dealing with this particular type of problem.

The Court:—Yes.

Mr. Mann:—Your lordship overrules my objection?

40

The Court:—That is my view at the moment. If you wish me to consider it more carefully I am willing to hear you and take the matter under advisement if you think it is important enough for that procedure.

Mr. Mann:—No, my lord; I want to get on with the case and I don't want to do anything that will slow up the proceedings. I merely want to take the most respectful exception to your lordship's ruling on the objection.

C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

The Court:—The exception is noted and the witness will answer.

(The question on Page 336 is read: “Q.—What is the “boiling point of turpentine?””):

10

Witness:—The boiling point of turpentine is not a fixed figure, but, depending upon the source and the quality, it will run from 154 to 201 degrees Centigrade. 154 degrees Centigrade is the equivalent of 309 degrees Fahrenheit.

By Mr. Hackett, K.C.:—

Q.—What is the other Fahrenheit figure? You gave two Centigrade figures. A.—201 degrees Centigrade is the other 20 figure. Would you mind letting one of the boys give you the information?

Q.—I don't want to embarrass you at all. Give me the two Centigrades? A.—154 to 201.

Q.—How much is 154 Centigrade in Fahrenheit? A.—309.

Q.—And how much is the other? A.—I haven't the figure. I will have to calculate it.

The Court:—That is a matter of calculation which any 30 chemist can give you by referring to some table, Mr. Hackett.

Mr. Hackett:—I am told 394.

The Court:—Mr. Hazen will tell us if that sounds right.

Witness:—Yes, my lord.

The Court:—In order that we may not go into hypothe- 40 tical questions too much, Mr. Hazen is, I hope, bearing in mind that the turpentine in this case has in it two powdery materials which have been described by witnesses he has heard testify.

Witness:—Yes.

By Mr. Hackett, K.C.:—

Q.—We were told, while you were sitting in Court, that a certain quantity of turpentine was put into the tank? A.—Yes.

Q.—And that 200 pounds of Filtrol and 50 pounds of Filter Cel were put in and agitated by the central shaft or something

C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

attached to it. Now, has this mixture any bearing upon the temperature or pressure within? A.—The mixture with the heat applied, yes.

Q.—What would be the result? A.—I don't need to say what it would be, but what it was. It blew the tank out.

10 Q.—I beg your pardon? A.—It blew out the ends of the tank.

Q.—It blew out the ends of the tank? A.—That is, it blew out the window at the back and the door in the front.

Q.—Well, I wish you would tell us what happened from the mixture of the turpentine and the Filtrol and the Filter Cel? A.—Now, I wasn't there till the next day, and I don't know that I can properly answer that question in the terms in which it has been put. I might tell you what my guess is.

20 Mr. Mann:—I don't know that we want a guess.

Mr. Hackett:—Your guess probably is not helpful, Mr. Hazen, but I understood that you were here as a chemist and for that reason went into the box. If you declare that you are incompetent to answer, of course, I shall bow to your statement.

The Court:—When you say “incompetent”, you don't mean it in any prejorative sense, — you mean owing to the insufficiency of data before the witness?

30 Mr. Hackett:—No, the witness knows the exact quantity of turpentine that was in the tank. He knows the exact quantity of Fuller's Earth or Filtrol, 200 pounds of that, and 50 pounds of Filter Cel, and I am asking him if that liquid and those two powders, subjected to a temperature of 165 degrees, and agitated by the shaft, would create a pressure within the tank.

40 The Court:—That is a perfectly legitimate question. Perhaps the question in that form is clearer than it was before.

Q.—You understood the question? A.—Yes. I can answer the question now, but I couldn't before, my lord.

With those quantities and with heat applied to raise the temperature to 165, which is what they said they generally raised it to. . . .

Q.—One man said 145 Fahrenheit and somebody else 165? A.—I understood 165.

C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

Q.—You have a range of 20 degrees? A.—165 is what I understood. That is the figure I have in mind. If that is true and correct, it is not only possible but it is the undoubted cause of the tremendous pressure that developed in that tank. A reaction was set up that produced a very high temperature, a tremendous pressure.

Q.—What was the reaction?

Mr. Mann:—I object to any further cross-examination on the scientific aspect, the scientific problem. Here we have got everything cross-examined upon that was possibly mentioned: the pressure in the tank, the cause for the pressure in the tank, the reactionary effect upon material which caused the pressure and did raise the pressure in the tank. Now my friend is going further, and all this because in my pristine innocence I happened to ask the witness if he was a chemist. I didn't ask him if he came here to testify on chemistry or chemical problems.

The Court:—I understand your position, but nevertheless I consider the question perfectly legal, and the objection is dismissed.

Mr. Mann:—Counsel for Plaintiff excepts to the ruling dismissing the objection.

By Mr. Hackett, K.C.:—

Q.—What was the reaction? A.—What the actual reaction was is a little obscure as to the terminology, but it is not obscure at all as to what happened.

Q.—Mr. Hazen, I want you to tell the Court what is the result of bringing turpentine in the quantity mentioned. Filtrol and Filter Cel in the quantities mentioned, together, mixing them and subjecting them to a heat ranging from 145 degrees as stated by one witness to 165 degrees Fahrenheit as stated by another witness? A.—The result is a reaction, and a very vigorous one, between the turpentine and the Filtrol. I made a series of experiments to find out what the result would be and what reaction took place, starting with an excess of Filtrol. We mixed, to start, two parts of Filtrol with five parts of turpentine. That is an excess of Filtrol. A vigorous reaction took place in a few seconds. The reaction consisted of the development of a lot of heat. It immediately rose to 325 degrees Fahrenheit and, of course, the turpentine boiled, boiled out vigorously.

C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

By The Court:—

Q.—Where did you make this experiment? A.—In the laboratory.

Q.—Not in the tank in question or anything like that?
10 A.—No. Once is enough.

Q.—Did you apply heat to this mixture when you made that experiment? A.—On the first one, no.

Q.—And it generated heat without the application of heat externally: is that what you mean? A.—Yes. Now, the second....

By Mr. Hackett, K.C.:—

Q.—How much. . . .

20 Mr. Mann:—Let the witness finish. The Court asked a question. Let the witness finish his answer.

Witness:—On the second one the temperature at the start was 75 degrees, — that is, room temperature. It rose, without external heat, 47 degrees, to 122. Then we warmed it to 165 degrees Fahrenheit. The reaction developed, at first slowly, then faster, then with a rush to final temperature of 338 degrees Fahrenheit.

30 Now, on the third experiment, with a smaller proportion of Filtrol, — 2, to 10 parts of turpentine, — the temperature at the start was 75. With a little stirring with a thermometer the rise without external heat was up to 111. Then, when warmed up to 165 degrees Fahrenheit, the temperature rose rapidly. It was quickly at 210, and then in 18 seconds it had reached 352, and the final temperature was 347, a rise of about 182 degrees Fahrenheit.

40 By Mr. Hackett, K.C.:—

Q.—In 18 seconds? A.—Yes. That reaction develops tremendously rapidly after it reaches a certain point.

Now, the next experiment was with one part of Filtrol. Filtrol is activated earth, something like Fuller's Earth, used for this purpose, especially in oils, and the Filter Cel is silica, pure powdered silica, and is celite.

C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

By The Court:—

Q.—A kind of rocky substance? A.—No, it is composed of the fossil skeletons of tiny marine creatures, but it is a silica.

10 By Mr. Hackett, K.C.:—

Q.—May I ask if the Filter Cel played any part in the phenomenon which you described? A.—No.

Q.—It was put in to take the color out and it played no part in the chemical reaction which you have described? A.—It was put in for facilitating good, clear and rapid filtration.

20 With this fourth experiment we had one part of Filtrol to 10 parts of turpentine. Again the temperature at the start was 75 Fahrenheit, room temperature. It rose without external heat to 108.

Q.—Does that happen instantaneously? A.—No; that is decidedly slow.

Then it was warmed to 165 and it reacted to 221 degrees Fahrenheit. Then in 12 seconds it rose to 369, a total rise of 204 degrees.

30 Q.—Mr. Hazen, is it correct to say that with a lower proportion of Filtrol you got a more rapid rise in temperature. . . . A.—Than with the high proportion?

Q.—Yes, — I think you said 358 before? A.—Here is one, 2 parts Filtrol to 10. The rise occurred in 18 seconds. Here is one, 1 part to 10, and the rise occurred in 12 seconds.

Q.—But what was the spread in temperature? A.—The first one was to 347, a spread of 182 degrees.

Q.—And the second? A.—A spread of 204.

40 Q.—Yet the proportion of Filtrol was less? A.—Yes, smaller.

Q.—Can you explain why you get greater activity with a smaller proportion of Filtrol? A.—Reaction occurs in the turpentine. Now, pardon me, you have asked me a question that requires some careful unravelling. With the larger proportion you have got a smaller proportion of turpentine, and the heat is effective on both, — that is the reason for the difference, — and as your proportion of turpentine increases and the proportion of Filtrol decreases, only to a certain point we get this effect.

C. H. HAZEN (for Plaintiff at Eng. Recalled) Cross-exam.

Q.—So, then, as the quantity of turpentine increases and the quantity of Filtrol decreases, until you reach a certain point, the reaction is more violent? A.—Yes.

By The Court:—

10

Q.—And faster? A.—Yes.

Mr. Hackett:—I suppose that implies violence.

20

Witness:—Now the next one: we are getting down more nearly to the proportions used in this tank: we took a half part of Filtrol to 10 parts of turpentine. Starting again at 75 degrees, the temperature rose without external heat to 102. The rise without external heat is smaller as we proceed. Then it was warmed to 165. The heat increased very slowly to 194; then rapidly, but slower than in the previous case, and then in 12 seconds to 365. That is practically the same as with 1 part of Filtrol to 10 parts of turps.

Q.—(By Mr. Hackett): May I interrupt you here, Mr. Hazen, to ask you if you made any experiments at an applied temperature of less than 165. . . . A.—No.

Q.— . . . above room temperature? A.—No.

30

I want to finish my answer to the other question.

The 6th test was with .25 parts of Filtrol to 10 parts of turpentine. The temperature at the start again was 75 degrees. It was warmed to 169. . . .

40

Q.—169 this time instead of 165? A.— . . . and the final temperature was 190 degrees Fahrenheit with no boiling. The heat was dissipated as the temperature went up and it was going up slowly because there was so little Filtrol added.

Now, the next test was similar.

Then another test was made. We insulated the container, and the outside temperature was raised along with the temperature of the turpentine. It was again warmed to 165 and then it went right up to 320.

You see, we were working on small quantities, my lord, and heat was dissipated; so we had to protect it to keep the re-

C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

action. In a large quantity like 850 gallons, the mass protects it from heat dissipation.

Then, the 9th experiment, — 10 parts Filtrol to 200 parts of turpentine, with 2.5 parts celite in the mixture. . . .

10

Q.—That is, Filter Cel? A.—Yes. . . . and 2.5 parts of linseed oil, starting at a temperature of 75, — you will notice the proportion of turps in this experiment was very much greater than in the previous ones, — it was warmed to 165, and this same proportion shot the temperature to 388. It boiled very violently and 41 per cent of the weight of the turpentine was boiled off. That, my lord, is the probable cause of the pressure in this tank.

Q.—What turpentine did you use for your experiments?

A.—Gum turpentine.

20

Q.—But, was it turpentine you had in your laboratory, or was it part of the turpentine that was. . . . A.—Some was obtained from Sherwin-Williams and some we had in the laboratory.

Q.—But can you say if any of it was discolored turpentine? A.—No, it wasn't.

Q.—What do you call an agent like Filtrol that seems to arouse. . . .

30

Mr. Mann:—Energy among its friends.

Witness:—I would call it a treacherous companion.

By Mr. Hackett, K.C.:—

Q.—A treacherous companion? But is it what you call a catalyst? A.—Some call it a catalyst.

40

Q.—There is a known category. . . . A.—I know exactly what you mean. And some call the character of this reaction the reaction of a catalyst and they call Filtrol a catalyst. There is a reaction takes place there and the catalyst does not seem to be wasted away or lost.

Q.—It is like mother's love: it can expand forever to a great many without being diminished? A.—And some of us need it.

Q.—I just want to get a name for this. Are you satisfied to call Filtrol a catalyst? A.—Yes. I'm not quite sure that it is.

Q.—And what is the outstanding characteristic of a catalyst? A.—A catalyst is a reagent which brings about a reaction between two chemical substances. . . .

C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

Q.—The reaction is called what? A.—. . . without being itself affected.

Q.—And the reaction is called polymerization? A.—Call it polymerization if you wish.

10 Q.—And the characteristic of a body that has been polymerized is that its boiling point is raised considerably? A.—Not necessarily, no; maybe so; but here is the practical answer: the boiling point was perhaps raised but the turps at the temperature produced boiled off violently and after they were cooled they were liquid as they were before the reaction.

Q.—But not as they were, — they become viscous and thicker, did they not? A.—I didn't notice it.

Q.—Perhaps you were not looking for it? A.—That is possible.

20 Q.—Now, on the 3rd of August, when you got to the premises of the Sherwin-Williams Co., did you notice if there was a sprinkler system in the building? A.—I don't recall.

Q.—You don't recall? A.—No.

Q.—If this peephole or glass in the rear of the tank encountered the temperatures which you have just mentioned as the result of your experiments, would it take on the temperature of the contents? A.—Would the glass take on the temperature?

Q.—Yes? A.—Yes, surely.

30 Q.—Now, what is the effect on glass, when heated, of putting water on it? A.—It would shatter it.

Q.—On how many days did you make the experiments which you have just read to us? A.—I think three different days.

Q.—Did you make them in conjunction with other chemists? A.—I made some of them in conjunction with Dr. Lipsett and some of them alone.

Q.—And I suppose you told Dr. Lipsett, or showed Dr. Lipsett from your charts or however you recorded the tests, what had been the result of the work you had done? A.—We made the experiments together.

40 Q.—In your laboratory? A.—No, in his.

Q.—Here in Montreal? A.—Yes.

Q.—Now, do you not think, Mr. Hazen, that the falling of water on this hot glass would be an explanation for its shattering? A.—No, I don't think so.

Q.—Why? A.—Well, because the glass was thrown out against the wall, while if it was merely shattered by water it would drop into the tank.

Q.—Let us bring that to this test: let us assume that you have the glass in the peephole and resisting. . . . A.—Yes.

C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

Q.— . . . and somebody took a dipper of water and threw it against the glass, — the glass would shatter? A.—Yes.

Q.—And there being a pressure in the tank, the pieces would naturally come out instead of going in? A.—If that pressure was there, you were very close to the explosion.

10 Q.—Just a minute, Mr. Hazen, — I am going to put it to you again, because I think in justice to yourself you will want to give another answer. You have got the glass of the peephole heated to a high temperature? A.—Yes.

Q.—Let us say something like 400 degrees Fahrenheit? A.—Yes.

Q.—And you have outside a person who throws a dipperful or a glassful of water on the glass of the peephole? A.—Yes.

Q.—It will shatter? A.—Yes.

20 Q.—The pressure within would be what? A.—The pressure within?

Q.—Yes, — what would be the pressure inside the tank?

A.—I don't know unless I know the temperature and whether the valves were all shut off or otherwise.

Q.—We have been told that the one-inch vent was open, and you have told us how rapidly the temperature rose? A.—Yes.

Q.—And that the contents were probably boiling? A.—Yes.

30 Q.—Now I ask you, with those conditions obtaining, when the water strikes the outside of the glass and the glass shatters, wouldn't of necessity the glass fall outward instead of inward? A.—Yes.

Q.—I knew you would say that. Now. . . . A.—But, my lord, I am confronted there with a situation: that he (indicating Mr. Hackett) stopped when the turpentine in the tank got to 400 degrees. That was at the point where this reaction was violent, and I said that he was very close to the moment when the tank exploded, when he had 400 degrees there. So he was. When I say this, I am referring to Mr. Hackett's question where he stipulated a temperature of 400 degrees, and at that temperature he was at the point where the tank, if not already exploding, was all ready to do so, — not "exploding" but "bursting".

40 Q.—You have told us, Mr. Hazen, that the tank had a resistance of, what? It would accommodate what amount of pressure, outward pressure? A.—I have forgotten. I gave you the figure.

Q.—Yes, I know you did, and then you said that the safety margin was what? A.—About six times, — I said about 450 pounds, I think, — 6 times 75.

C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

10 Q.—Now, Mr. Hazen, what would be the effect of the vent which was open, on a pressure which rose as rapidly as the pressure rose in tank No. 1? A.—At first, the vent would relieve the pressure entirely. As the reaction proceeded more violently, it would only partially relieve it. When the reaction got up to a temperature around 400, it wouldn't begin to relieve it; it would only let out a very small proportion of the rapidly-forming vapor.

Q.—I put it to you, Mr. Hazen, that what has been called the sizzling noise, the noise which was likened to the breaking of a steam main. . . . A.—I didn't think that was referred to as a sizzling noise, a sizzling noise. What I think you mean is that a steam valve broken, would permit the vapors to escape through it with a sizzling noise: isn't that it?

20 Q.—I am asking if the sizzling noise would be accounted for by the escape of the vapor or whatever was thrown off by the combination in the cylinder, through the vent? A.—It would account for some of it, surely, not necessarily all of it.

Q.—Where else could it come from? A.—From around the sides of the door. As the pressure built up, those doors would lift, or, that door would lift, and allow vapors to escape all around the edge of it, between the door and the gasket, and that certainly would produce some sizzle.

Q.—Some sizzle?

30 The Court:—And the word “some” is obviously underlined by the witness and used in the colloquial sense, meaning a high degree of sizzling.

Q.—Am I right in that statement? A.—Yes.

The Court:—The learned Judges of the Court of Appeal, if they have the advantage of reading this, might overlook that. That is why I put it in the deposition.

40 By Mr. Hackett, K.C.:—

Q.—What I am going to ask you now, Mr. Hazen, is this:—whether the sizzling noise that was heard by the witnesses Frazier, Rymann and Asselin, came from the door or from the vent? A.—I cannot say. I can only infer from their testimony, and I do infer that the sizzling noise was the result of escaping vapors which immediately afterwards were seen coming through the doorway, and that those sizzling vapors escaped from that pressure tank, and that in all probability they came from both.

C. H. HAZEN (for Plaintiff at Enq. Recalled) Cross-exam.

By The Court:—

Q.—That is, from both the vent and the door? A.—Yes.

By Mr. Hackett, K.C.:—

10

Q.—You have already said that, — but what I was trying to determine is whether the noise that was heard was produced by the vapors that escaped, as I understood you to say to the Court, around the complete periphery of the door, or from the vent? A.—From both, I think.

20

Q.—Well, do you think that the sizzling would be the same from the apertures around the door as from the vent? A.—I don't think anybody could distinguish at any distance. The vapors coming from the vent had to pass through the openings in a twisting direction inside a brass valve. That would produce a hissing sound. If you should ever open a valve a little way on any steamline you will hear it sizzle. Now, in the same way, when that cover lifted, — and that cover lifted, — it later lifted up so suddenly that it went up against the ceiling, — I say that, before that occurred, the side or all sides of the door would spring up and allow vapors to escape, and I have no doubt, — and it is an inference again, because I did not see it, — that that sizzling noise was produced by both.

30

Q.—Now, I have a vague recollection that I heard you say in a case once that a one-inch pipe is not necessarily the size of the bore? A.—Well, it is true, whether I said it or not.

Q.—That at one time it took more metal than is in a pipe at the present time, to make a pipe, and that the outside dimensions are still the same, although possibly the metal itself is not as thick, and consequently the bore is greater than it was at one time? A.—Pipes are gauged by their internal diameter, not their external diameter. I don't recall saying such a thing.

40

Q.—I thought their external diameter had something to do with the fittings, the couplings and all that? A.—So it does. A cast-iron fitting is quite a different thing from a wrought-iron fitting. They are heavier.

(It now being 4.30 p.m., November 19th, the case is adjourned to 10.30 a.m. November 20th, 1945).

And further for the present the deponent saith not.

H. Livingstone,
Official Court Stenographer.

C. H. HAZEN (for Plaintiff at Enq. Recalled) Re-examined.
J. K. ROSS (for Plaintiff at Enquete) Examination in chief.

November 20th, 1945, 10.30 A.M.

At 10.30 a.m. on the 20th of November, A.D. 1945, Court
reassembles, and the examination of the witness above-named,
10 Charles R. Hazen, is continued under the same oath as follows:—

Re-examined by Mr. J. A. Mann, K.C.:—

Q.—Mr. Hazen, these experiments that you referred to
yesterday in your evidence, in cross-examination, were made
when in relation to the 2nd of August, 1942? A.—They were
made within the past month.

Q.—They were made within the past month? A.—Yes.

Q.—You had not prior to August, 1942, made similar ex-
20 periments with a similar purpose? A.—That is true.

Q.—And were these experiments, or the revelation re-
sulting from these experiments, something old in the history of
chemistry, or were they new, so far as your experience goes?
A.—Not only as far as my experience goes, but a little farther.
They are quite new.

And further deponent saith not.

30

H. Livingstone,
Official Court Stenographer.

DEPOSITION OF J. K. ROSS

A witness on the part of Plaintiff.

On this 20th day of November, in the year of Our Lord
40 nineteen hundred and forty-five, personally came and appeared,
John K. Ross, aged 29, architect, residing at 1710 Dorchester
Street West, 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.—Mr. Ross, what is your firm name? A.—Ross & Mac-
donald Incorporated.

Q.—Architects? A.—Yes.

J. K. ROSS (for Plaintiff at Enquete) Examination in chief.

Q.—And you, yourself, are an architect? A.—Yes.

Q.—You are a member of the firm of Ross & Macdonald, are you, which appears to have had a representative present at a meeting in August, 1942, at the Sherwin-Williams premises?

A.—Yes.

10 Q.—Were you there, yourself? A.—There were several meetings. I was at two of them.

Q.—Would you say at which meetings you were present?

A.—I was at one on Monday morning, August 10th, I believe.

Q.—Monday, August 10th, 1942? A.—Yes; I think it was the 10th.

Q.—Were you employed by the Sherwin-Williams Co. as architects for any purpose, following the fire and explosion at the plant on the 2nd of August, 1942? A.—We were employed to supervise the rebuilding of the damaged property.

20 Q.—Well, what did you do immediately following your employment to supervise the rebuilding of the damaged property?

A.—Well, immediately following the damage, the Foundation Co. and ourselves determined which areas or parts of the building were hazardous, and that was cleared away, and the remainder was left until such time as a further examination of the premises was made safe.

30 Q.—Well, what I mean is, — you say you determined, — did you determine verbally or in writing? A.—At that time, between the Foundation Company and ourselves, it was purely verbal. It was just to make the property safe for further investigation.

Q.—Did you at any time make a written report? A.—Later, about four or five days.

Q.—And to whom did you make that report? A.—We made that report to the owners, the Sherwin-Williams Company.

Q.—Have you the report which you made? A.—I have a copy of it, yes, here.

40 Mr. Mann:—Now, my lord, I find I am in this peculiar position: — The original report cannot be found, nor can the three-line letter accompanying it; and I make that professional statement. I can prove it if necessary, if my friends insist upon it. This case was in the hands of some other Counsel for some time and apparently this letter got mislaid. There does not seem to be any great difficulty. Ross & Macdonald made a report and delivered it to the Sherwin-Williams Company. I do not think my friend will object to the copy.

J. K. ROSS (for Plaintiff at Enquete) Examination in chief.

Mr. Hackett:—I am not going to object to the form in which the document is. I would like some opportunity of seeing what the substance of it is, because I have a little doubt as to whether or not this is admissible as evidence.

10 By Mr. Mann, K.C.:—

Q.—Well, then, you made a report dated, what? A.—The report was dated August 12th, 1942, and it was made on the morning of August 11th.

Q.—And was that delivered to the Sherwin-Williams Company? A.—I believe it was sent by mail. There is a covering letter covering the report being sent to them.

Q.—That is my difficulty; that letter cannot be found. Have you a copy? A.—Yes.

20 Q.—My next question would be:—Will you put in as Exhibit P-13 a copy of the report you made, with the covering letter with which it was delivered to the Sherwin-Williams Company? Don't answer the question until Mr. Hackett objects, if he wants to object.

Mr. Hackett:—In the first place, I think that somebody from the company should say that a letter like that was received. — I think that is where we begin, — and in the meantime I will
30 look at the letter and see if I am obliged to raise any objection to it.

Mr. Mann:—I stated my readiness to do that; I will put Mr. Moffat in.

Mr. Hackett:—Do you say it was received?

Mr. Mann:—Yes.

40 Mr. Hackett:—I waive any further question as to that.

The Court:—Then the stenographer will enter in the deposition that Defendant accepts the copy of the report presently in the hands of the witness as being in conformity with the original and accepts the statement of Counsel for Plaintiff that the original was in fact received by plaintiff company.

Mr. Hackett:—I object to the production of the document dated August 12th: first, because it is a departure from the terms of the letter of August 14th; secondly, because it was never com-

J. K. ROSS (for Plaintiff at Enquete) Examination in chief.

pleted and because it purports to imply that damages “caused by explosion” as set forth in the document constituted damage for which Defendant was liable, though there never was any such undertaking or admission that Defendant would be liable for damage caused by explosion.

10

The Court:—That letter of August 14th is an exhibit, I take it?

Mr. Hackett:—Yes, P-4.

The Court:—What have you to say to those three points, Mr. Mann?

20 Mr. Mann:—First, I have to say, in regard to the second one, that I don’t quite understand the meaning of it, — that it was not completed. I don’t understand what Mr. Hackett means by that; so I can’t answer it.

Secondly, the report is the report of a professional organization hired or retained for the purpose of making a survey, as it were, of the necessity for repairs, in order that repairs might be proceeded with identically to and in conformity with the letter of the 14th of August.

30

Thirdly, I say, as to the reason for the production of the report, Mr. Ross is stated, acknowledged, in the letter P-4, to be one of the parties who were present at the meeting and accepted by the Company as being present at the meeting and as being a professional representative of the plaintiff company.

40 Fourthly, I have asked no question relative to what the letter may say as creating liability on the part of the Defendant, and, whatever the letter might say as creating liability on the part of the defendant company, it would not bind this Court and it would not be evidence, because whatever Mr. Ross might happen to say with regard to liability would be a question of law and he is neither a Judge nor a lawyer. I think under the circumstances, the report having been accepted, it should be admitted as evidence but evidence to the extent only, — I limit it to that, — to the extent only that Mr. Ross was an architect, was engaged as such by Plaintiff, was accepted by the Defendant as being the architect of the plaintiff company, and did his duty. Having stated that there were discussions and a report made, necessarily I have

J. K. ROSS (for Plaintiff at Enquete) Examination in chief.

to produce the report in writing, and I ask that the report be admitted merely as evidence that he made the report; and any questions I may ask in the future may be subject to objection, but if they are my friend will object to them.

10 Mr. Hackett:—To clear up the second point, that Mr. Mann said was not comprehensible to him, I am advised that the document which is shown to me was not the result of any finding in which the representative of the Defendant concurred, and in fact they never had knowledge of it, and when at a later date the question of implementing the letter of the 14th of August, P-4, came up, the Defendant was told by Mr. Irving, representing the Plaintiff, that he had received instructions to give no information in the matter, and for that reason I say that the undertaking, whatever may have been its purport, was never implemented.

20 Mr. Mann:—If your lordship will permit me to reply: my friend is somewhat uncharacteristically vague. He says “later”. I can quite understand that would be after the litigation started. What does he mean by “later”?

The Court:—The document is admitted provisionally as Ex. P-13, subject to Defendant’s objection. It will make such proof as subsequent evidence indicates.

30 Mr. Mann:—That consists of the report of the 12th of August and the letter transmitting it of the 14th of August.

Mr. Hackett:—You haven’t got an extra copy?

The Court:—A copy has been handed to me. You can have this.

Witness:—There are notes on that one.

40 Mr. Mann:—I will give Mr. Hackett the exhibit.

Q.—(Continuing): Your firm by its report generally appears to have indicated what was necessary, — whether or not the damage was by explosion or fire is not material at the moment, — what was necessary to be done to put the buildings back where they were prior to the incident: that is correct, isn’t it? A.—That is true, yes.

Q.—Now, do the terms of that report faithfully represent your firm’s professional views of the necessities occasioned by

J. K. ROSS (for Plaintiff at Enquete) Cross-examination.

the incident of the 2nd of August, 1942? A.—Yes; any work which was called for to be done, in this report, was actually carried out by the contractors.

10 Q.—It was stated by my friend Mr. Hackett that this report was denied to the defendant company. Have you anything to say with respect to that? A.—We sent the report to the owners. That's all I know of it.

Q.—That's all you know? A.—Yes. That's what we were requested to do.

Q.—In any event, so far as you know, did your firm ever deny any access to that report?

Mr. Hackett:—He said he never sent it.

Mr. Mann:—Excuse me.

20

Q.—(Continuing): Insofar as you know, did your firm ever deny to the defendant company copy of that report, — I say insofar as you personally know, — upon request by it? A.—I never remember having a request from them to send them the report.

Q.—You don't remember ever having any? A.—No.

By Mr. Hackett, K.C.:—

30

Q.—You never sent them a report? A.—No.

By Mr. Mann, K.C.:—

Q.—Now, you have mentioned that what you found necessary to be done was in fact carried out by the contractors.

That was the Foundation Company of Canada? A.—Yes.

40 Q.—I take it that the Foundation Company must have got a copy of the report? A.—I believe we gave them a copy, yes.

Q.—And did you supervise the work? A.—We supervised the construction.

Q.—As supervising architects? A.—Yes.

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

Q.—The copy I have here is not the one that has the notes on it? A.—No.

J. K. ROSS (for Plaintiff at Enquete) Cross-examination.

Q.—Mr. Ross, who did the actual field work that I assume was the basis of the report P-13? A.—On the morning of the 10th Mr. Fish, who was then our chief draftsman, and myself, made preliminary survey of the buildings. On the morning of the 11th Mr. Patterson, who is more or less our general superintendent, and myself, made further survey of the buildings in
10 conjunction with the men mentioned in this report.

Q.—I haven't had a chance to read the report. Probably you will tell me who the men mentioned in it are? A.—As I remember it, they were the representatives of the Boiler Insurance people, the fire people, the Foundation Company and ourselves.

Q.—I understand that you were on the premises, yourself?

A.—Yes.

Q.—And will you just tell us how you, personally, proceeded with the work quoad hoc the representative of the Defendant the Boiler Inspection & Insurance Company? A.—You don't want, I take it by that, a detailed history of where we went and what we looked at and so forth?
20

Q.—What I am trying to get at, Mr. Ross, is this: just how far you and the gentlemen representing the Defendant worked in collaboration to produce this report? A.—May I put it this way:—At that time we had instructions to replace the damaged premises as quickly as possible on account of the war work involved, and, in order to have some record of what damage
30 had taken place, we suggested that these representatives could together meet on the job and make a survey of the damage, trying to allot the damage to its various causes, purely from the building point of view. That was carried out with the gentlemen representing their various companies, and it was a preliminary report disclosing the causes for the various damages to the best of our ability.

Q.—Now, Mr. Ross, you, of course, understand that that is not an answer to my question, don't you? A.—Well, I wasn't quite clear as to just what your question was.
40

Q.—That is my fault and not yours, and I will try again:—

What I wanted you to tell me was to what extent you, Mr. Ross, who took part in making the measurements and gathering the information which is embodied in P-13, were in communication on the morning of the 11th August, 1942, with the representatives of the company defendant in the preparation of your report? A.—We all went around the building together and as we came to a damaged portion of the building we all looked at it,

J. K. ROSS (for Plaintiff at Enquete) Cross-examination.

looked it over together, and decided what was the probable cause of that damage. There were discussions amongst us; opinions were not all alike; but to the best of our ability as professional men, if there was a discussion, we tried to settle the issue and say one way or the other as to whether that damage had been caused by
10 fire or by explosive force.

Q.—Now, Mr. Ross, — and I want to draw your attention to the fact that I am talking about you and I want you to make your answer apply to yourself, — to what extent does the document P-13 represent a composition of opinions as between yourself and the representatives of the Defendant? A.—Myself, personally?

Q.—Yes? You are speaking for yourself, personally.
A.—That is a very difficult question to answer, your lordship. There were numerous discussions, and I could not say as to what
20 percentage I myself personally took part in and suggested the cause or as to what percentage Mr. Patterson suggested the cause or Mr. McKeon or Mr. Irving suggested the cause. It was a combined effort. We, or, I should say I in this case, to the best of my ability noted down the causes to which we agreed. To anyone else's determination of the cause of the damage, if we did not agree, why, then, we put up an argument.

Q.—Now, I am going to talk to you about agreement in a moment, but, so that there may be no doubt as to who were parties to the agreement, Messrs. Ross & Macdonald were represented
30 by yourself, Mr. Ross Junior, and by Mr. Patterson? A.—Yes.

Q.—The Foundation Company was represented by whom? A.—Mr. Thomson and Mr. Benjafield.

Q.—And Mr. Irving represented the fire insurance companies? A.—Mr. Irving, and there was another gentleman.

Q.—Mr. Debbage?

By Mr. Mann, K.C.:—

40 Q.—Mr. Newill? A.—Yes.

By Mr. Hackett, K.C.:—

Q.—Mr. Debbage represented the fire insurance companies? A.—Yes.

Q.—And who else was present? A.—Mr. McKeon and Mr. Fitzgerald.

J. K. ROSS (for Plaintiff at Enquete) Re-examined.

The Court:—And they represented the defendant company?

Mr. Hackett:—Yes.

(Q.—(Continuing): Now, do you wish it understood that
10 each item of the document P-13 represents definite agreement
between all the gentlemen whose name you have just mentioned?
A.—Agreement in the legal sense of the word or agreement verbally
that they thought our opinions were possibly correct?

Q.—I don't want to be drawn into a debate. Do you say. . . .

A.—If I might digress for a moment,—this was purely a friendly
conference amongst all of us, to get ahead with the work as quickly
as possible, and it was simply an effort to allocate damages as we
all saw fit. Now, if somebody took an objection to the allocation,
that was their right.

20 Q.—I understand that, Mr. Ross, but what I am trying to
bring to your attention is: you don't wish the Court, or do you
wish the Court to understand, that the document P-13 represented
complete unanimity of opinion concerning all of the men
whose names you have just given to the Court? A.—They never
accepted that report in writing as far as I know.

Q.—Now, let us not have any misunderstanding about
writing. I asked you, Mr. Ross, if you can say in the witness box
this morning that the document P-13 represents the unanimous
opinion of all the men who were present at that conference?

30 A.—Not the unanimous opinion, no, it doesn't.

Re-examined by Mr. J. A. Mann, K.C.:—

Q.—I didn't understand, Mr. Ross, that you had said
anything of the kind, as to unanimous opinion of all the men who
were at the meeting. You didn't say that? A.—I don't believe so.

Q.—Did you intend to say anything of that kind? A.—No,
not "unanimous".

40 Q.—The report, you will observe, says nothing about an
opinion of those who were present. It merely refers to a meetings
to discuss and survey: that is correct, isn't it? A.—That is
correct.

Q.—All I directed my questioning to was that that was
the opinion of Ross & Macdonald, notwithstanding what the other
opinions may have been in respect of the damage to the property,
— and is that so? A.—That is so.

And further the deponent saith not.

H. Livingstone,
Official Court Stenographer.

G. E. NEWILL (for Plaintiff at Enq., Recalled) Exam. in chief.

DEPOSITION OF G. E. NEWILL

Recalled for further examination on the part of Plaintiff.

On this 20th day of November, 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 Oliver Ave., in the City of Westmount, District of Montreal,
a witness already sworn and examined herein and who being
now recalled for further examination, and again duly sworn,
doth depose and say as follows:—

Examined by Mr. J. A. Mann, K.C.:—

Q.—You are a consulting engineer in Montreal, Mr. New-
20 ill? A.—Yes.

Q.—And have been for how many years? A.—23 or 24
years.

Q.—I am limiting that to Montreal? A.—Yes.

Q.—Were you practising the engineering profession else-
where prior to that? A.—Yes.

Q.—Where? A.—Sterling from the time I came to Can-
ada, during the last war I was chief engineer in charge of the
marine engine and turbine department of the Dominion Bridge
Company. After the war they appointed me as general manager
and chief engineer of the Robb Engineering Co. at Amherst,
30 Nova Scotia, a subsidiary. After that I was general sales man-
ager of the Dominion Engineering Co.; and then I was engaged
in private practice.

Q.—You have been, then, practising the engineering pro-
fession for how many years? A.—45 years.

Q.—45 years? A.—Yes.

Q.—In the practise of your profession what particular line
of objects, — in saynig objects I don't refer to this tank at all. —
40 what line of articles or objects have you been most familiar with?
A.—Basically, my experience has been in steam engineering, and
for the last 15 or 20 years I have been giving a large proportion
of my time to the fire insurance companies, investigating fire
losses, their causes, appraising their losses and generally assist-
ing them.

Q.—Are you the Mr. Newill who was mentioned as having
been present, representing Cheese & Debbage, insurance ad-
justers, at the meeting on the 10th of August, 1942, at the Sher-
win-Williams plant, referred to in P-4? A.—Yes, I was there.

Q.—You were there? A.—Yes.

G. E. NEWILL (for Plaintiff at Enq., Recalled) Exam. in chief.

Mr. Hackett:—The name is wrongly spelled there.

Mr. Mann:—Yes. It should be i-l-l, not e-l-l.

10 Q.—The experience of 45 years which you have referred to brought you into touch with the value of mechanical apparatus and machinery and material? A.—Yes.

Q.—To what extent? A.—Well, at the Dominion Bridge Company a large proportion of my work was making detailed estimates on mechanical equipment for contracts.

Q.—You were employed by Cheese & Debbage, now Debbage & Hewitson, Inc., the insurance adjusters? A.—Yes.

20 Q.—For the purpose of doing what? A.—To appraise the value and the loss on machinery and equipment of the Sherwin-Williams Co., and to proportion what I considered was fair and reasonable as between damage caused by explosion and the damage caused by fire.

Q.—Did you take upon yourself those duties and commence them? A.—I did.

Q.—Did you have collaboration with anybody else in arriving at values and so forth? A.—Well, I was first instructed by Debbage & Hewitson to meet a Mr. Fitzgerald of the Boiler Insurance Company.

Q.—Pardon me? A.—Of the Boiler Insurance Company.

30 Q.—The defendant company? A.—Yes. And I was to meet him at the Sherwin-Williams plant, and I was to go over with him and appraise the loss and damage to the equipment and to agree, if possible, on what proportion was due to explosion and what proportion was due to fire.

Q.—Did you follow those instructions? A.—Yes; I met Mr. Fitzgerald down there and I repeated to him what my instructions were.

40 Q.—And with what result? A.—Mr. Fitzgerald said that it was quite impossible for him to discuss values, losses, because it was beyond his range of experience.

Q.—Then did you proceed to an appraisal, at the plant of the Sherwin-Williams Co., of the machinery and equipment to which you have referred? A.—Mr. Fitzgerald and I agreed to go round the third floor, where the damage occurred, and to make a series of notes, notes on what equipment was damaged, and, whilst I estimated the proportion of fire and explosion, all that Mr. Fitzgerald was to do, or was willing to do, was to comment on whether the damage was caused by fire or water.

Q.—You see, I am not trying to tie Mr. Fitzgerald into any agreement at all at the minute. I am trying to bring you to

G. E. NEWILL (for Plaintiff at Enq., Recalled) Exam. in chief.

the place where you did appraise and did apportion, — and I am speaking only of the machinery and equipment now, — the losses between those occasioned by fire, water and explosion? A.—I would just add one thing to clarify that. When you said “appraise”, — I appraised approximately on a percentage basis and not in dollars and cents. I made notes of what I considered was the full loss and how it might be divided.

Q.—You see, you had to start somewhere? A.—Yes.

Q.—You had to start really at the original values, had you not? A.—No, at no time have I made any entirely independent appraisals on individual machines. At that time, whilst the evidence was still green, I acquainted myself with what I considered was the state of the machinery at the time and what I considered was a reasonable proportion of those two, explosion and fire.

20 Q.—Then I am under a misapprehension. The amounts of the losses from explosion and fire, respectively, as indicated to us, are not your figures? A.—Yes, they are my figures.

Q.—They are your figures? A.—Yes, definitely.

Q.—But the figures I have are in dollars and cents and you have just said you didn't put anything into dollars and cents? A.—Not at the time. I am discussing the time I was there.

Q.—You did, later? A.—Yes.

30 Q.—You put values later. I don't want to put the words into your mouth; I just want to find out what you did? A.—Can I describe what I did?

Q.—Yes, I would prefer you to do that? A.—Following my inspection, — I think a few days afterwards, — it may have been a week, — I sat in with Mr. Moffat, and I think Mr. Debbage was present, and I outlined roughly. . . .

40 Q.—Mr. Moffat, the manager of the Sherwin-Williams l'nsed oil mill? A.—Yes. . . . roughly what we would want as far as records on the cost of reconstructing, repairing the damage. I asked him then, — we always do, — to keep a careful accounting of the expenditures, to spread them out in detail as much as reasonably possible, so that when the repairs were complete I could sit in with him and the company's accountant and we could check them and later on we could try and obtain an agreement on the relation of the cost as between fire and explosion; and that was done. Now, then, at a later date, when all the repairs were completed and finished, I went down to the Sherwin-Williams Company with Mr. Debbage and first of all sat in with Mr. Moffat and one of his accountants. They pro-

G. E. NEWILL (for Plaintiff at Enq., Recalled) Exam. in chief.

duced a statement of expenditures incurred and they produced a more or less complete assortment of substantiating invoices. A number of these I checked over with their statement and I satisfied myself that the Sherwin-Williams statement was a correct statement of the actual expenditures incurred. Then the
10 question arose as to what proportion of each of these many items that were listed should be credited or charged to fire and what to explosion, and that question was discussed over a very considerable time.

Q.—Discussed with whom? A.—Discussed with Mr. Moffat, Mr. Debbage and myself, and we agreed and disagreed as the case might be, and later on, as to some of the items we could not agree on, we went, Mr. Moffat and I and Mr. Debbage, to Mr. de Merrall's office.

20 Q.—Who is Mr. de Merrall? A.—I think Mr. Moffat can tell you that.

Q.—I am told Mr. de Merrall's vice-president in charge of production in the Sherwin-Williams plant? A.—Yes. We went to see him, and the question of proportion was then thrown open, and finally we agreed, on these various items that were listed, as to what was a fair value, a fair proportion (due to fire and due to explosion. I was, frankly, somewhat overruled, because I have great respect for Mr. Debbage, who has had so much experience, but I really felt that there was really a greater
30 damage due to explosion than there was to fire.

Q.—When you say a greater damage, do you mean a greater damage than the final figure? A.—No. — that the damage by explosion was somewhat greater than the damage by fire, but it was a question of compromise, a question of agreement, and I am generally of the opinion that the statement was very fair. I have had many explosions and I have had to decide that question of what is fire and what is explosion many times. But that is an art and not a science. I mean, the determination of the ratio is an art and not a science.

40 Q.—That is very elucidating, Mr. Newill.

Would you mind telling the Court the result of all this very able and exhaustive work? That is to say, at what did you appraise the total loss? Remember, we are always talking about machinery and equipment. Then, what is the proportion of that figure which you will give us as having been determined by you as caused by explosion and, secondly, by fire? A.—The statement Machinery and Equipment, the total loss is appraised at \$42,296,37.

G. E. NEWILL (for Plaintiff at Enq., Recalled) Exam. in chief.

Q.—Is it .37 or .27? A.—I think .37. I will just check it up again.

Q.—I have it .27? A.—Yes, I have .27 here. I think there was a correction.

10 Q.—We won't quarrel over 10 cents, of course, but it would put my figures out. You say it is \$42,296.27? A.—Yes.

Mr. Hackett:—That is what?

By Mr. Mann:—That is the total amount of machinery and equipment loss.

20 Q.—Now, Mr. Newll, of the total figure of \$42,296.27, would you say what the result of the efforts or decisions of you three gentlemen was in respect of the loss caused by explosion or concussive damage? I will put it that way if my friend doesn't mind. I'm sure he doesn't. A.—The amount credited to explosion was \$4,508.68.

Q.—And the fire loss would be the balance? A.—Yes, \$37,787.59.

Q.—If you add the two together you get \$42,296.27? A.—Yes.

By The Court:—

30 Q.—That represents what might be called an ultimate view after the discussions of the three persons concerned, yourself, Mr. Debbage and Mr. Moffat? A.—Yes.

Mr. Mann:—Plus Mr. de Merrall, to whom they submitted the matter, the vice-president in charge of production.

Witness:—We discussed it with him on an even basis.

40 By The Court:—

Q.—Your view would have been to give a higher figure to the explosion? A.—Yes, definitely, for a definite reason.

By Mr. Mann, K.C.:—

Q.—But you bowed to the opinions of the others? A.—Yes.

Q.—With regard to the stock in trade which Mr. Moffat spoke about early in the proceedings, did you value that? A.—Yes.

G. E. NEWILL (for Plaintiff at Enq., Recalled) Exam. in chief.

Q.—With these gentlemen too? A.—Yes.

Q.—What would you say with regard to the discussions and the interviews of which you have spoken relative to the determination of the loss in respect to machinery and equipment, insofar as stock in trade is concerned? A.—It followed
10 along precisely the same lines as the discussion about the machinery.

Q.—For the same purpose and with the same people?

A.—Yes, and at the same time.

Q.—And what was the result under the three headings with regard to stock in trade: first of all, the total loss? A.—
Total loss, \$46,258.01.

Q.—Secondly, loss attributable to explosive or concussive damage? A.—\$4,593.08.

Q.—Therefore leaving fire loss of \$41,664.93? A.—Yes.

20 Q.—Now, with regard to machinery and stock in trade, — which I am now combining for the purpose of my present examination, — when did you first go to begin your examinations or investigations or begin to procure the information leading to the end which you have given us? A.—I think it was on the Tuesday following the explosion on Sunday.

By The Court:—

30 Q.—Then it would be the 4th of August? A.—Yes.

By Mr. Mann, K.C.:—

Q.—Now, what was the condition of the premises when you went there, — and when I say the premises I mean the stock in trade and the machinery, because I understand you had nothing to do with the building valuation? A.—No, I hadn't.

40 When I got up to the third floor it was just a scene of chaos. There were piles and piles of empty cans that had been flung around, and the general impression would be: it looked as if a hurricane had struck that floor. The walls on the east side and on the south side had been blown out. Wreckage was lying around everywhere. The roof apparently had been lifted up and by the grace of God had come down again, and pipes surrounding the tank in question were broken, insulation was off the tank, and the door apparently, the manhole door, had been flung open. That is generally the story.

G. E. NEWILL (for Plaintiff at Enq., Recalled) Exam. in chief.

Q.—There was other machinery there than the tank?

A.—Yes.

Q.—Which you were appraising with reference to loss?

A.—Yes. They were, — well, they were dented; they were damaged by what appeared to have been flying materials, and, of course, they were all soaked with water.

10 Q.—Now, in making your appraisal with respect to explosive or concussive loss, Mr. Newill, could you describe to us what method you adopted in order to arrive at the conclusions you reached? A.—Well, the only way we have of trying to proportion explosion against fire is to put the whole thing into what I would call slow-motion picture, — I mean to say, try and reconstitute it as you would in a slow-moving picture film, — and imagine the actual results. That s the only way that it can be done, — as I say, it is largely a question of experience and
20 general knowledge, — and that is what I did in this case. Where you see dents on a machine with a plate casing, well, one naturally assumes they were caused by a flying object as contrasted to a dropping object. Now, one of the reasons why I thought the loss might have been due to explosion rather than fire was the sprinkler pipe. My own feeling was, in slow motion, that the explosion ruptured the sprinkler pipes.

Q.—Where? A.—Above the machinery.

Q.—Were they ruptured in fact? A.—Yes. The question is, the period of time, which may have been seconds or partial
30 seconds. If the explosion ruptured the pipe, then I would be inclined to put the water damage to explosion. If the fire caused it, — the reverse.

Q.—But what did you do finally with respect to water damage, in assessing the explosion loss? A.—Well, I think the only way I can aswer that quickly would be to go over my details and show you the only items we finally charged to explosion, which were relatively few. I have, for example, 15 principal items in the machinery, of which in 9 there was no damage due to the
40 explosion.

Q.—9 out of how many? A.—15.

Mr. Mann:—I wonder if it would not be useful and helpful to the Court if we could have a copy of that?

Witness:—I have here my statement of these items, showing the total loss. It gives you a clearer indication than anything I could explain to you.

G. E. NEWILL (for Plaintiff at Enq., Recalled) Exam. in chief.

Q.—This first sheet that I am looking at, — and I will give it to Mr. Hackett in a moment, — is Machinery and Equipment, and the second sheet appears to be Stosk? A.—Yes.

Q.—That is, stock in trade? A.—Yes.

10 Q.—Now, I observe that the following items are not charged with explosive or concussive loss at all: seed scale, grinder, platform scale, seed cleaner, sheet metal work, plumbing and steam-fitting, conveyors and elevators, belting, cylinder oils; but the following items are charged to explosion: namely: iron cover for vessel, manhole doors, repair pressure gauges, repair seams of vessel, — that would be the tank in question? A.—Yes.

Q.—Then you have: repairs dust collectors.

20 There is no application of loss in those five items to fire, but only explosion? A.—That is right.

Mr. Hackett:—Does that mean that the five items just read by you, Mr. Mann, are the only items charged in their entirety to the Defendant?

Mr. Mann:—The only items in which explosion is applied, concussive loss, — five items only, on machinery and equipment.

30 Q.—(Continuing): And I observe that there is a total charge, in your words, “Labor dismantling and reconditioning”, \$3,813.24, of which you have charged \$1,000 to concussive damage and \$2,813.24 to fire? A.—Yes.

Q.—Then you mention repairs to electrical installations, motors, etc., a total of \$15,000, of which you have charged only \$2,500 to concussive loss and \$12,750 to fire? A.—Yes.

Q.—The next item is No. 4. . . .

40 Mr. Hackett:— I was going to ask Mr. Mann if the information that is coming from Mr. Newill at the present time is shown in the proof of loss.

Mr. Mann:—Certainly it is included.

The Court:—Not in the same detail, however, I suppose?

Mr. Mann:—No.

By The Court:—

Q.—Would it be very much trouble to have your sheets

G. E. NEWILL (for Plaintiff at Enq., Recalled) Exam. in chief.

typed out for us and produce it? A.—No; and it gives the whole story.

Mr. Mann:—We will ask you to produce as P-14 a type-written copy of that?

10

Witness:—Yes.

The Court:—I suggest we designate it Detailed Statement of Apportionment.

Mr. Mann:—Yes, that would be proper; (a) in respect of machinery and equipment; (b) n respect of stock in trade.

20 I was proceeding to refer to item No. 4, which is for \$182.12. That is the item which was the subject of a retraxit, so that the page with respect to machinery and equipment would have to be reduced by virtue of my retraxit and the deletion of Paragraph 7 of the Declaration.

Mr. Hackett:—That is item 4?

30 Mr. Mann:—Yes. You don't need to bother about that. It is indicated as "employees' losses", and we withdraw it from the claim, \$182.12. We withdraw it by the retraxit. You don't have to bother with it.

Mr. Hackett:—Where did the item appear?

Mr. Mann:—Paragraphs 5, 6 and 7 of the Declaration, but we cut it out.

Mr. Hackett:—But where is this item 4?

40 Mr. Mann:—On Exhibit P-14 to be produced, Detailed Statement of Apportionment.

Q.—Now, Mr. Newill, I want to turn to this statement, P-14, and just for a moment to the page with reference to stock?

The Court:—May I suggest that the witness sign the statement to be produced as the exhibit proper. That will be for the Court record.

G. E. NEWILL (for Plaintiff at Enq., Recalled) Exam. in chief.

Mr. Mann:—Yes; the sheets will be bound together and the witness will sign both pages.

Witness:—Yes.

10 Mr. Hackett:—He can sign the pencilled one we have here and the copies can be made at the adjournment..

The Court:—The trouble is that is in pencil.

Mr. Mann:—Yes; it is out of his own file.

Q.—I want to turn for a moment, I think I said, to the stock in trade, and I see the first item is “Flax Seed Destroyed”. Is that bushels or bags? A.—That is bushels.

20 Q.—It was in bags, though? A.—Yes, that was in bags.

Q.—The amount is \$7,262.80? A.—Yes.

Q.—But there is none of that loss charged to explosion? A.—No.

Q.—Why? A.—Because we felt it was a fire loss. I think probably it was water, that the damage was due to water, and it is charged to fire.

Q.—The same thing applies to the item “Oil Meal”, for which the amount is \$3,074.57, being for 768 tons destroyed?

30 A.—Yes.

Q.—And you have: Linseed oil, 3,933 gallons destroyed, \$3,019.05; Bags, \$10,865.12; Filter bleaching earth, \$1,301.14. The same thing applies there: you have charged no part of that to explosion? A.—That is right. This happened three years ago, and it is hard to remember the details, but I think the solution of that is: a lot of that stuff was stored on the second floor and possibly the first floor. Some of it was in machines and it was damaged by water.

40 Q.—You charged no part of the water damage to concussive loss or explosive loss? A.—No, either rightly or wrongly.

Q.—Mr. Hackett wants to use this in cross-examination. You will be kind enough to have copies made and sign the original? A.—Yes.

Q.—My friend suggests, Mr. Newill, that you perform the mathematical calculation of adding together the items Machinery & Equipment, \$4,508.68. and Stock, \$4,593.08, and tell us what they amount to? A.—You mean, in other words, the explosion loss on the machinery and stock in trade?

Q.—Yes: (a) Machinery & Equipment and (b) Stock? A.—I make it \$9,101.76.

G. E. NEWILL (for Plaintiff at Enq., Recalled) Cross-examin.

Q.—Therefore, Mr. Newill, by the method that you have described, that is the result of the appraisal of the loss by you in concurrence with the other gentlemen you mentioned, of the concussive or explosive or shatteration loss with regard to stock in trade on the one hand and machinery and equipment on the
10 other? A.—Yes.

By Mr. Hackett, K.C.:—

Q.—And the other gentlemen are . . .? A.—Mr. Moffat and Mr. de Merrall, and there was Mr. Debbage and there was an accountant of the Sherwin Williams Company who produced records.

By Mr. Mann, K.C.:—

20

Q.—What records? A.—The invoices.

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

Q.—Now, before we go any further, can you turn to the Exhibit P-5, the proof of loss, and point out these two items which aggregate \$9,101.76? A.—I don't think I have ever seen the proof of loss.

30

Mr. Mann:—Perhaps my friend might help him to find this.

Mr. Hackett:—I am going to show him P-5 and ask him to point out the two items.

(P-5 is handed to witness):

40 The Court:—Counsel wants to know where in the document, proof of loss, Ex. P-5, you find the figures you have just given us for the two items mentioned.

Witness:—I have never seen this document at all before and I have no idea what it is all about.

The Court:—It purports to be the statement of claim by the plaintiff company.

Mr. Mann:—The statement of the total claim, \$159,724.62. I think it would be impossible for the witness to pick this out.

G. E. NEWILL (for Plaintiff at Enq., Recalled) Cross-examin.

Witness:—I have no knowledge of this document (P-5), and my work began and ended when I reported the amount of the loss. Frankly, I know nothing about this (P-5).

10 Mr. Hackett:—Of course, I can have no quarrel with the witness on the statement he has just made, — but the action has been brought on the proof of loss.

The Court:—Possibly Mr. Mann will elucidate that point later in his proof; he may connect the evidence of Mr. Newill with the proof of loss, in some manner.

20 Mr. Mann:—I hope my friend is not starting on a tour of attacking the proof of loss, because there is no such suggestion in the Plea, no suggestion of any violation of the statutory conditions or conditions of the policy.

The Court:—The question is a perfectly natural one, but the witness has said he never saw that proof of loss; he did his job. I take it there were other elements and they have perhaps been brought together in a lump sum?

Mr. Mann:—No. All things are included in that amount of \$159,724.62.

30 Mr. Hackett:—The action has been brought to recover the amount set forth in the proof of loss.

Mr. Mann:—No; the action has been brought to recover part of it.

The Court:—The witness told us he cannot identify in the document P-5 the figures he has just given. How much further do you want to go on that, Mr. Hackett?

40 Mr. Hackett:—I don't want to delay the Court, of course.

The Court:—I don't want to restrict you in any way in your cross-examination, but Mr. Newill says he cannot identify these things in P-5. If you want to push the matter further, all right. I don't see the relevance of it at the moment, but you may go on.

Mr. Hackett:—The relevancy of it is this: a claim has been made based upon the proof of loss.

G. E. NEWILL (for Plaintiff at Enq., Recalled) Cross-examin.

The Court:—But isn't that a matter of argument? The witness said, "I can't identify the items in the proof of loss." How much further can you go with the witness?

10 Mr. Hackett:—I don't know, but I think the relevancy of his testimony must be brought to this test, and my ability to cross-examine him depends to some extent upon the knowledge as to whether he is speaking about something that is not related to this claim or something that is related to it. Now, the claim as set forth before the Court is embodied in the proof of loss and if Mr. Newill is unable to bring his proof into the claim so I can deal with it, not only am I helpless but his testimony, in my submission, is irrelevant.

20 The Court:—It would be entirely irrelevant if it were not connected in some way with the proof of loss, but it does not have to be connected by this witness with the proof of loss. Mr. Mann may do it in some other way.

30 Mr. Hackett:—Except that my right to cross-examine the witness as to the claim that has been made depends upon some association, and with your lordship's permission I will ask that Mr. Newill be asked to return for cross-examination when some connection has been established between his testimony and the claim before the Court.

The Court:—Unles, to make it more convenient for the witness, Counsel for Plaintiff will tell us what figures are included in the proof of loss.

40 Mr. Mann:—If your lordship will remember the evidence of Mr. Moffat, the total was \$159,724.62, the total loss. The items of which Mr. Newill has spoken are within the \$159,724.62. The only item remaining to be proved is the loss on the building. The amount of the proof of loss is \$159,724.62. I do not see how I can ask the witness that question, if his figures are not there in that form. I might point out that my friend has an allegation to the effect that the proofs of loss speak for themselves:—"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." There is his judicial admission.

The Court:—I tried to shorten the matter. Apparently I have succeeded only in lengthening it. Have you something to say, Mr. Hackett?

G. E. NEWILL (for Plaintiff at Enq., Recalled) Cross-examin.

Mr. Hackett:—I will ask that the cross-examination of Mr. Newill be postponed.

The Court:—Why?

10 Mr. Hackett:—Until some relation between his statement and the claim as made be established, I would just ask your lordship to look at P-5. Your lordship will notice that the claim opens with Buildings, and there is an aggregate amount of \$37,358.62. Then the next heading is Further Loss or Damage, and it says: “Merchandise; turpentine, returnable drums, cans, “one-way drums.” Then there is “Salvage: Labor cleaning building and equipment” and so forth. Now, I have asked the witness where any of the items of which he has spoken comes
20 know. I am now merely asking that his cross-examination be postponed until some relationship be established between what Mr. Newill has said and the claim as made before the Court, and I submit, my lord, — and I am not making this application for the purpose of embarrassing anybody, — that the postponement will really prove to be a time-saving device.

Mr. Mann:—May I suggest that you go on with any other cross-examination you may have, Mr. Hackett, and leave that.

30 Mr. Hackett:—I am willing to do that.

The Court:—The witness tell us he has never seen this document P-5. Why not adjourn that untill after lunch and let him look at P-5 in the interval?

Mr. Mann:—Very well.

By Mr. Hackett, K.C.:—

40 Q.—Mr. Newill, on what date did you first visit the scene of the incident which is under discussion, be it fire or explosion?
A.—I have testified previously that it was on Tuesday following the explosion on Sunday.

Q.—You said, if my memory is correct, that on that day you proceeded to make certain estimates, but I am asking you if that was the first occasion that you went to the site or whether you had been there on the Sunday or the Monday preceding?
A.—First of all, I want to correct you. I didn't go there on

G. E. NEWILL (for Plaintiff at Enq., Recalled) Cross-examin.

Tuesday to make estimates. I went there to acquaint myself with the nature of the fire and explosion, and Tuesday was the first day of my inspection of Sherwin-Williams. I think it was Tuesday. It might have been Wednesday, but I am practically certain it was Tuesday.

10

Mr. Hackett:—That is all I can ask now.

The Court:—You understand, Mr. Newill, you will peruse the document P-5 during the lunch adjournment and be available for cross-examination afterwards.

(It now being 12.15 p.m., Court adjourns to 2 p.m.)

20

And further for the present deponent saith not.

H. Livingstone,
Official Court Stenographer.

(At 2 p.m., Nov. 20, 1945, Court reassembles, and the deposition of the witness above-named, George Ernest Newill, continues under the same oath as follows):—

30

By Mr. Mann, K.C.:—

Q.—I put before you now the proof of loss, Ex. P-5, and you have before you the sheets Ex. P-14, and I ask you if during the adjournment you have been able to assimilate the figures on P-14 into the figures on P-5, proof of loss, and, if so, will you say so and explain to the Court what you have done? A.—I found all the items, the explosion loss items, which appear in Machinery & Equipment and Stock, — I have located them in the proof of loss, with one exception, and that exception is that the item “Salvage: labor cleaning building equipment” shows in the proof of loss at \$941.80. In my figure for explosion loss it is \$470.90, and the explanation of that is that I took half of this figure as applying to the building and half on the equipment.

40

Q.—The balance would probably appear somewhere else? A.—Yes.

Q.—Can you tell me the damage by explosive or concussive loss to the actual No. 1 bleacher tank itself? A.—The actual damage due to explosion approximates \$500. That is an approximation.

G. E. NEWILL (for Plaintiff at Enq., Recalled) Cross-examin.

Q.—That is as close as you can calculate it? A.—Yes.

By Mr. Hackett, K.C.:—

10 Q.—Will you say when the Exhibit P-14, which consists of two sheets of paper written in lead pencil, on which. . . .

Mr. Mann:—These sheets are going to be put in as a typewritten document. I dealt with them as if the typewritten document had been put in.

The Court:—You will see that a typewritten copy is substituted for these sheets?

Mr. Mann:—Yes.

20

By Mr. Hackett, K.C.:—

Q.— appears a loss purporting to be attributable to explosion, of \$9,101.76, was prepared? I may say that it bears date August 14th, 1943.

Mr. Mann:—1943.

30

Mr. Hackett:—He has got 1943.

Witness:—I have a double check on that. (Examining File): I received a letter from Messrs. Debbage & Hewitson, the adjusters, dated January 13th, 1943, asking me to arrange to meet Mr. Moffat at Sherwin-Williams' on January 14th, 1943.

By Mr. Hackett, K.C.:—

40 Q.—So Exhibit P-14, — and I see you have written “four copies” at the top, — was prepared on the 14th of August, 1943? A.—Was based on the conversation we had on the 14th of January.

Q.—But prepared on the 14th of August, 1943? A.—In a preliminary state, yes. That paper you have there was made on the 14th. That was made from notes taken and agreed on on the 14th.

Q.—The agreement took place between yourself, Mr. Moffat, Mr. de Merrill and Mr. Debbage? A.—Yes.

Q.—There was nobody else in the agreement, nobody other than those four? A.—No.

G. E. NEWILL (for Plaintiff at Enq., Recalled) Cross-examin.

Q.—I am going to ask you now to look at this entry here, “Explosion loss on stock, \$4,508.68”, and ask you if that should not be in your intention loss arising from damage to machinery and equipment? A.—This is the Stock sheet, and I was asked this morning to add the loss on the machinery and equipment
10 to the stock loss in order to give the total amount on machinery and equipment and stock; and that \$4,508 is what I added in Court this morning. My figure of loss by explosion was \$4,593.08.

By Mr. Mann, K.C.:—

Q.—On what? A.—On stock, — to which I added explosion loss on machinery and equipment, which I was requested to do, of \$4,508.

20 By Mr. Hackett, K.C.:—

Q.—Now, what I am trying to draw to your attention, Mr. Newill, is that you have told the Court that you had traced two items of loss aggregating \$9,101.76 and that one of these items was on stock and it amounted to \$4,593.08 and the other was on machinery and equipment and amounted to \$4,508.68. Now I point out to you that the last item is entered opposite the words “Explosion loss on stock”, and I ask you if that is not a mistake?
30 A.—It is a mistake. I will correct that.

Q.—You wish to correct it by writing in “Machinery” and possibly the word “Equipment”? You spoke of that this morning.

Mr. Mann:—The figures are reversed?

Mr. Hackett:—No. He wanted to write in “Machinery and equipment” and he wrote in “Stock”.

By Mr. Mann, K.C.:—

40 Q.—That was just a mistake? A.—That is all.

By Mr. Hackett, K.C.:—

Q.—Now, will you take the first item of loss on stock, amounting in all to \$46,258.01, whereof you have allotted \$4,593.08 to loss resulting from explosion, and show me where that aggregate figure is found in P-5? A.—Page 2, heading Further Loss or Damage, and then: “Merchandise: turpentine, \$957.78”, — that checks with my details; then, in the proof of loss, “Return-

G. E. NEWILL (for Plaintiff at Enq., Recalled) Cross-examin.

able Drums, \$1,314", — that checks with the figures in my details; "Cans, \$1,018.65", — that checks; "One-way drums, \$1,095.85." — that checks; "Labor cleaning, handling merchandise, "bags, soap, etc., \$206.80", — that checks.

10 Q.—Then you took one half, I think you said, of the item "Labor cleaning building and equipment"? A.—There is an item here (P-5) of "Labor cleaning building and equipment". 50 per cent of that went to the labor of cleaning the building and 50 per cent of it went to the machinery and equipment. In other words, on my list you will find an item here, the last item under my Machinery & Equipment, showing \$470.90.

By Mr. Mann, K.C.:—

20 Q.—Have you answered on all those items? A.—On these items on stock. Now I am on machinery.

By Mr. Hackett, K.C.:—

Q.—Would you just show me where the item of \$470.90 appears on the first page of P-14 under the heading Stock? A.—It is shown as the last item of my appraisal in respect of machinery and equipment.

30 Q.—But did I misunderstand you? Did you charge the item of \$941.80 entirely to explosion and divide it between machinery and equipment and stock, or did you divide the item between explosion and fire? A.—The whole of the \$470 was applied to machinery and equipment and there was no similar charge for stock. I can tell you, if you want to go farther, what the total charge for cleaning up was and how it was proportioned.

40 Q.—But in the proof of loss, under the heading of Salvage, and in the item of "Labor cleaning building and equipment" I see a figure of \$941.80. That has been eliminated entirely. You have pointed out to me, however, that in dealing with machinery and equipment on the 2nd page of P-14 you have inserted an item the equivalent of one-half of \$941.80, — that is, \$470.90. — and I want to know if the other half of the \$941.80 has been eliminated from the claim as it now stands? A.—Well, all I can speak for is machinery and equipment, and in my Machinery & Equipment I applied half of \$941.80 to machinery and equipment on the understanding that the other half would be applicable to buildings, of which I have no knowledge.

Q.—I inferred from your testimony this morning that P-14 had never been communicated to Mr. Fitzgerald or to anybody representing the Defendant? A.—No.

G. E. NEWILL (for Plaintiff at Enq., Recalled) Cross-examin.

Q.—And in the discussions, when the allocation of the loss was being made part to the fire insurance companies, the fire insurance companies were represented by Mr. Debbage?

A.—Yes.

Q.—And the Defendant was not represented? A.—No.

10 Q.—And the company plaintiff was represented by Mr. Moffat, the manager. . . . A.—The assured was represented by Mr. Moffat.

Q.—. . . . the manager of the linseed oil mill of the plaintiff company, and by Mr. de Merrall, the production manager of the plaintiff company? A.—Yes.

Q.—I understood you to say this morning that when you entered the east room you found the covering of No. 1 tank removed in whole or in part? A.—In part.

20 Q.—To what extent was it removed? A.—Well, I wouldn't like to say, — that is three years ago and I was there a relatively short time, — but, from memory, it was severely damaged. If I remember correctly, my recollection is there were parts hanging down.

By The Court:—

Q.—You are referring to the asbestos? A.—Yes.

By Mr. Hackett, K.C.:—

30

Q.—Do you remember how the tank was fixed to the floor? A.—Yes; it was resting on two sheets of steel, the upper surface holding the tank, and half of the circumference of the bottom surface consisted of two angles, one on either side, riveted to the vertical support of the tank, and then there were, I think, eight holding-down bolts to the floor. — that is, four, I think, on each side, holding the angle to the floor.

40 Q.—The tank or vessel had not been removed from its moorings? A.—I would say it had been shaken.

Q.—I am asking you? A.—You say, removed? Do you mean bodily removed or disturbed?

Q.—Had it been disturbed? A.—I cannot swear that it was but I couldn't imagine how it wouldn't be.

Q.—I was just going to ask you whether you could point out in your details whether there is any charge for that item? A.—You mean, putting back the tank on its foundation?

Q.—Yes, — possibly you could say there was no such charge? A.—There would be an incidental charge, because I

G. E. NEWILL (for Plaintiff at Enq., Recalled) Cross-examin.

think you will find there an item of Miscellaneous. I imagine it would have to be tightened up, but I can't tell you.

Q.—Would you produce your details? A.—You have them.

Q.—Your working sheets? A.—I have no more working sheets than the sheets you have seen.

10 Q.—I want to see if there is an item which shows the tank was removed from its moorings? I ask you that question because Mr. Moffat said it wasn't. A.—I don't think it was, either. I think there must have been some expenditure to tighten it down on the floor, even if only a matter of \$10.00 or \$15. It was probably shaken.

Q.—We are not dealing in probabilities. I want to know whether you know that it was?

Mr. Mann:—I object to Mr. Hackett putting words in
20 the mouth of the witness.

Mr. Hackett:—I asked Mr. Moffat if it was disturbed, and he said it was not, and now I am asking this witness if there is an item anywhere.

Mr. Mann:—But you are putting words into the witness's mouth that are not in the evidence.

30 The Court:—Mr. Moffat told us, according to Mr. Hackett's recollection, that the tank was not disturbed in its moorings, that is, it was not disturbed in its cradle. Another witness used the word "cradle" for that support.

Witness:—Yes, "cradle".

By Mr. Hackett, K.C.:—

40 Q.—Or from the floor on which it rested, — and I understand you have no specific item to contradict that statement of Mr. Moffat? A.—Unless it came under an item of Miscellaneous Labor. I think it must have been small, very small, — the charge must have been small, — but I am not going to say there was no disturbing of the foundation.

Q.—But you cannot put your finger on any item in your account? A.—If you give me those papers I will look them over. I mean my figures. (P-14).

Q.—Yes, look at them and see. I am speaking of an item which shows that the tank was disturbed and that a charge was made to replace it? A.—There is an item here "Labor dismant-

G. E. NEWILL (for Plaintiff at Enq., Recalled) Cross-examin.

ling and reconditioning". I am not going to say that that did not include some small expense for that, relatively small.

Q.—You have no detail on that? A.—No, I have no detail on that.

10 Q.—When you reached the electrical equipment, there is some charge, I assume, for loss there? A.—You have the papers now.

Q.—Look at the papers which I hand you, your pencilled sheets, and see if that is there? A.—Yes, the total estimate on the electrical equipment, or the total loss was \$15,000, of which \$2,250 was applicable to the explosion.

20 Q.—I notice, Mr. Newill that the first nine items on the second page of your memorandum, under the heading Machinery & Equipment, are the following:—"Seed scale, grinder, platform "scale, seed cleaner, sheetmetal work, plumbing and steamfitting, "conveyors and elevators, belting, cylinder oils": and they are all charged as fire losses? A.—Yes.

Q.—Then the next five items: "Iron cover for vessel, man-hole doors, repair pressure gauges, repair seams of vessel, "repair dust collectors": are all charged as explosion losses? A.—Partly.

Q.—The whole of them? A.—Yes, that is right.

30 Q.—And these five items aggregate, if my addition is good, \$605.66. That is a matter we can all verify, because if I have done it incorrectly we can correct it.

Then we come to the next item, Sundry Equipment, amounting to \$4,744.75, and you charge that in its entirety to the fire companies? A.—Yes.

Q.—Then we have the total of all the above items, which you appear to itemize as one. Then you have (2) Labor Dismantling & Reconditioning, a total charge of \$3,813.24, a thousand dollars of which is charged to explosion.

40 Then you have the third item: Repairs Electrical Installation, Motors, etc., \$15,000, of which \$2,250 is charges to explosion.

Then the fourth item: Employees' Losses, etc., \$607.68, 30 per. cent of which appears to have been charged to explosion, \$182.12.

Then the next item is No. 5? A.—"Proportion of \$4,709.90 "for cleaning up", half of which was to be applied to building and half to machinery.

G. E. NEWILL (for Plaintiff at Enq., Recalled) Cross-examin.

Q.—\$470.90: that is the item we talked about a little while ago? A.—Yes. \$470.90 to explosion.

Q.—Then on the first page of P-14 you appear to have charged the first three items of stock, — the first page deals with stock, — entirely to the fire companies? A.—Yes.

10 Q.—Then, the item of turpentine, amounting to \$1,915.56, you have divided equally between the fire companies and the Defendant.

The next two items are charged entirely to the fire companies.

Then we come to Returnable Drums, 219 drums destroyed. The loss was \$1,752, and you charge to explosion \$1,314 and to fire \$438.

20

Cans, 112,486 cans, total amount \$10,186.48. You charge to explosion \$1,018.65 and to fire \$9,167.83.

One-way drums, 205, total loss \$1,461.14, being \$1,095.85 to explosion and \$365.29 to fire.

Then Labor & Material Salvaging Merchandise, total loss \$1,034. You charge to explosion \$207.80 and to fire \$827.20?

30 A.—Yes.

Q.—Making a total stock loss chargeable to explosion of \$4,503.08.

I want you now to take your Exhibit P-14 and tell me where these items can be found on P-5? A.—Haven't I just done that?

40 Q.—Yes, you are quite right; I beg your pardon. That is not the question I wanted to ask. I want to ask you if you will turn to the items that I spoke of a moment ago, beginning with Iron Cover for Tank, and tell me where that can be found in the proof of loss? A.—Iron cover? Page 3, first item, Iron Cover for Vessel, \$124.57.

The second item is Manhole Doors, \$120. That follows my check.

Next, Repair Pressure Gauges, \$45.55. That follows my figure also.

G. E. NEWILL (for Plaintiff at Enq., Recalled) Cross-examin.

The next thing is, Repair Seams of Vessel, \$28. That checks.

•Repair Dust Collectors, \$287.54. That checks.

Labor Dismantling & Reconditioning Equipment, \$1,000.
10 That checks.

Electrical Installation, drying, etc., \$2,250. And that checks.

Q.—Will you tell me whether there was any repair to the seams of the vessel made necessary by explosion? A.—I was advised so.

Q.—And who advised you so? A.—It was brought up as an item when discussing the question of loss with Mr. Moffat in his office, and the accountant also.

20 Q.—I take it, as far as you are concerned, you don't know?
A.—No, I don't know. I assumed it was correct.

Q.—Taking now Iron Cover for Vessel, did you see that?
A.—Nobody did, as far as I know. I didn't, certainly.

By The Court:—

Q.—That is the manhole door? A.—Yes, that was blown off.

30 By Mr. Hackett, K.C.:—

Q.—But what is Iron Cover for Vessel? A.—I understood it to be the manhole cover that was blown off.

Q.—The next item is Manhole Doors, \$120? A.—I can't understand that. Possibly Mr. Moffat can tell you that.

Q.—You mean you cannot explain either of the first two items? A.—One of them I can.

40 Q.—Which one? A.—I would say the manhole door definitely. That is the item that I believe was the one, the door that was blown off, and it is properly described as a manhole door.

Q.—Repair Pressure Gauges: what have you to say there?
A.—I saw that myself.

Q.—Repair Seams of Vessel: you spoke of that.

Now, Repair Dust Collectors? A.—Well, there was a light-plate dust collector on the top floor, that was damaged by. . . . What did I say about that? That was a light cylindrical structure for separating dust from the grain and that was damaged by the explosion. Something was thrown. . . .

G. E. NEWILL (for Plaintiff at Enq., Recalled) Cross-examin.

Q.—Where was it located? A.—It would be, from memory, on the east wall.

Q.—How was it damaged by explosion? A.—You are asking me to go back three years, but my impression was that it was very badly dented by flying material. It is of very light structure and extremely susceptible to damage. For that reason I put
10 that loss to explosion.

Q.—What hit it, do you know? A.—I would say first of all, cans. There was a mountain of cans there. It created a regular shower of considerable weight.

Q.—Then the labor of dismantling and reconditioning equipment: what is that? That is \$1,000. A.—Miscellaneous.

Q.—An approximation? A.—Yes, made up of many items.

Q.—And when you get to the electrical equipment, drying, rewinding motors, how do you arrive at the division there
20 between the liability of the Defendant and that of the fire companies? A.—Well, that is a case where I think I suggested this morning I leaned over backwards. Frankly, my own idea was that an explosion caused a rupture of the sprinkler pipes, and the large proportion of the damage to the motors and the electrical equipment was due to water, necessitating removal of motors, taking them out, drying and rewinding, replacing power lines in conduit; and, putting the whole thing into slow motion, as I said this morning, my own feeling was that the explosion caused the
30 rupture of the sprinkler piping and the escaping water caused the damage and subsequent fire damage was relatively small.

Q.—Now, let us begin, following your term, on slow motion, and follow that through. I am anxious to see how you arrive at your occlusion. What is the sequence of events on which you based yourself to make this allocation of loss as between the fire companies and the Defendant? A.—My basis was this:—There was an explosion. The door, — whether I was right or wrong that was definitely my opinion and I worked along that line, — there was an explosion and that door was blown out with great force,
40 and there were signs of explosion everywhere, in connection with the cans, and the place was in chaos when I went there. Assuming that, I would naturally expect sprinkler pipes to break. The roof was raised, — there were signs of that, — and it frequently happens in buildings where an explosion does take place that we can definitely see that sprinkler pipes do break. They are susceptible to explosion. That was my basis, right or wrong.

Q.—What I am trying to get at is this: — This explosion you are talking about now took place where? A.—As far as I am concerned, from what I know, and from my casual experience there, it originated within the tank.

G. E. NEWILL (for Plaintiff at Enq., Recalled) Cross-examin.

Q.—So it is your idea that explosion within the tank ruptured the sprinkler system? A.—Ruptured the door and with the result that the sprinkler system broke before fire ensued.

Q.—Now, I want to follow that through. There was an explosion, according to your hypothesis, within the vessel?

10 A.—Yes.

Q.—And what happened then? A.—The door was blown out.

Q.—And where did it go? A.—Nobody knows. I am told marks were found that it struck the roof somewhere, but I know nothing about that.

Q.—What I am trying to get at is the ground for your assumption that the blowing out of that door set off the sprinkler system. You say you assumed? A.—Yes.

20 Q.—I want you now to tell us the ground for your assumption, because you say that it is on that basis that you have made these charges? A.—Exactly. There was a bursting of the door and there was a tremendous release of gas of some sort or another that caused the breaking of that sprinkler pipe.

30 Q.—Now, is it your opinion that the gases that were released through the aperture shown in P-6-c set off the sprinkler system? A.—Of course, I haven't studied this; I am not an expert on explosions, and I am not speaking with any authority there; but I do feel definitely that when a door is thrown out like that, and where cans are distributed in such chaos as in this instance, the sprinkler system would be susceptible to fracture and I think in this case actually was fractured.

Q.—Then am I to understand that your reason for attributing to the Defendant a certain part of this loss resulted from your belief that when the door was blown out the sprinkler system was ruptured and water fell? A.—Yes.

Q.—Now, would you tell me what would set off the sprinkler system? A.—The shock of air, any sudden rush of air, would break the pipes, and moving objects. You have two items there.

40 Q.—A rush of air? A.—Yes.

Q.—And a moving object? A.—Yes.

Q.—What object was moving? A.—I think the air was full of moving objects.

Q.—And they were set in motion by what? A.—A rush of air or by an explosion, in my opinion.

Q.—And where did the explosion take place? A.—I have already told you that I would assume, without any careful investigation, that it originated within the tank.

Q.—But don't you think this is a ground for careful in-

G. E. NEWILL (for Plaintiff at Enq., Recalled) Cross-examin.

investigation? A.—Within my own competency, — I am not a chemist, but I am a mechanical engineer, — and to that point I am perfectly willing to testify.

10 Q.—But you see, Mr. Newill, upon you has been placed the responsibility of sayng what proportion of this loss should be charged to the fire companies and what proportion of the loss should be charged to the defendant company? A.—Quite right.

Q.—And I am endeavoring to find out the basis of your allotment of \$9,101.76 of that to the defendant company, and if I have understood you correctly you say there was an explosion within the vessel? A.—That is what my idea is, definitely.

Q.—That is the only explosion that took place? A.—So far as I am concerned. That is what I was basing it on.

Q.—You were basing it on that? A.—Yes.

20 Q.—You don't know where the door of the vessel went? A.—No.

Q.—So you have no reason for attributing rupture of the sprinkler system to it? A.—Well, I have no evidence that it did or that it did not.

Q.—You don't know? A.—I just don't know.

Q.—So, then, you have based your opinion on what you call a rush of air as being the cause of the fracture. . . . A.—Or flying material.

Q.—Or flying material? A.—Yes.

30 Q.—Sprinkler systems are pipes, I suppose, which contain water that is released when there is a rise in temperature? A.—Yes.

Q.—What temperature is required to release water in a sprinkler system? A.—There are various temperatures; 165 Fahrenheit; something in that vicinity.

By The Court:—

Q.—165? A.—Yes.

40 By Mr. Hackett, K.C.:—

Q.—You could light a match under a head, I suppose, and... A.—And get wet.

Q.—And get wet? A.—Yes.

Q.—You know, of course, that there was a fire in that building? A.—Yes.

Q.—You know there was a fire. Yo uknow that the sprinkler system was inevitably set off by a fire in that building? A.—No, I don't.

G. E. NEWILL (for Plaintiff at Enq., Recalled) Cross-examin.

Q.—Well, you know that there was enough fire there to set it off? A.—Yes, — which is a different thing.

Q.—Which is a different thing? A.—Yes.

10 Q.—Dd you know of a rush of air ever having set off a sprinkler system? Has that ever come within the ambit of your experience? A.—Yes. When I speak of setting off a sprinkler system I am not talking necessarily of the release of the heads of the sprinkler system but the rupture of the pipes. Now, I have had experience of explosions, several of them. If I had time I could recall and tell you of them.

Q.—You have all the time in the world?

Mr. Mann:—Not quite.

20 Witness:—I am aware of instances where an explosion has ruptured sprinkler pipes. I could give you cases right now.

By Mr. Hackett, K.C.:—

30 Q.—No doubt about that, but that wasn't my question. I asked you on what you based yourself to say that the sprinkler system in the east room on the third floor of the linseed oil mill, on the 2nd of August, 1942, was set off by a rush of air? A.—I have already explained that: through the breaking of the man-hole cover in the tank, either followed by a rush of air or with a rush of air and flying material striking the sprinkler pipe or setting up a surge in the air, as very often happens, that fractured the pipe, not of necessity releasing the sprinkler through temperature. That is another story that I have no knowledge of, and possibly somebody has proof whether sprinklers were released by fire or whether the pipe was ruptured before the sprinkler heads were released.

40 Q.—Hav you any knowledge tending to show that the pipe was ruptured before? A.—No, it is hearsay evidence, and I have no specific knowledge about that.

Q.—You know there was nobody in the room at the time who survived? A.—I am told that.

Q.—Do you know how many explosions took place in that room? A.—No, except through hearsay and evidence.

Q.—Have you any reason to think that any more than one took place? A.—I have no knowledge of that except through just listening in Court.

Q.—I know, — but you have assumed, for the purposes of your finding. . . . A.—Exactly, — I have assumed one ex-

G. E. NEWILL (for Plaintiff at Enq., Recalled) Cross-examin.

plosion, as far as I am concerned, which was sufficient to allow me to proportion the loss.

Q.—Were you shown the written statements made to Mr. Moffat, — one by Mr. Frazier? A.—No.

K.—By Mr. Asselin? A.—No.

10 Q.—By Mr. Rymann? A.—No.

Q.—Did you inquire if they had any evidence as to what had occurred on the morning of the incident? A.—I didn't make any inquiry. I have heard people talk about it, but. . . .

Q.—But don't you think, Mr. Newill, that it was important that you know all the facts before apportioning the loss between these two parties? A.—In my opinion and my judgment and my experience I had sufficient evidence in front of me to entirely satisfy myself that that proportion was fair and reasonable.

20 Q.—Would you just state the criterion which you followed in charging some losses to fire and some losses to the Defendant? A.—My basis for determining the amount of explosive loss was established on the assumption that there was an explosion within the tank. That the manhole cover was blown out was sufficient evidence to me that enough pressure had been generated within that tank and that therefore there would be, obviously, a very heavy rush of air which would carry moving objects and would thereby, doubtless, — in fact, almost certainly, in my opinion, — damage the sprinkler system and release water. Now, that was
30 my first basis, and I am still of opinion that that actually constituted the greater part of the loss. In addition to that, there were certain things that were obviously damaged by fire, that we applied to fire, and there was a certain amount of damage that was caused by water on the second floor and first floor. There were large quantities of grain in the machines, and that was damaged by water. We have called that fire loss. In fact, I leaned over backwards to try and put the onus for the loss on to the fire and to reduce the explosion end to a reasonable limit, because I
40 am always looking forward to a final Court action and I always try to put myself on firm ground and not take advantage of any condition which sometimes I could take advantage of if I so desired. I try to be as fair as possible. That is the attitude of the fire companies. We will assume anything we reasonably can, but there does come a limit that we cannot go beyond and we have got to put that into explosion. That was my attitude in this and it would be my attitude in the future.

Q.—But you had no definite information which warranted you in assuming that the explosion within the vessel caused a

G. E. NEWILL (for Plaintiff at Enq., Recalled) Re-examined.

rupture of the sprnkler system? A.—I had. I have had 24 years of experience in investigating explosions, or rather the loss caused by or resulting from explosions, amounting to probably ver a million dollars, and I have acquired some knowledge that very few people have on the results of explosions, and this is one of
10 many cases, and, directly I saw what had happened, in my own way I realized there had been an explosion, and I still believe there was, and a violent exploson, in that tank. I am speaking as an engineer and not as a chemist, of course, and I believe the explosion in that tank was sufficient to cause a rupture in the sprinkler pipe. Now, that is my opinion.

Re-examined by Mr. J. A. Mann, K.C.:—

Q.—I have just one or two very short questions: — There
20 were some drums destroyed, or, damaged were there not?
A.—Yes.

Q.—The loss n respect of which was chargeable to explosion? A.—Yes.

Q.—Where were those drums? A.—Those drums, I think, were on the third floor; and some were down below, on which the flying brick fell.

Q.—Now, when flying brick fell on those that were down below, to what did you charge that loss in respect of the drums?
A.—Explosion.

30 Q.—From the flying bricks? A.—Yes.

Q.—Now, what about the dust collector? I would just like you to search your memory a little bit and tell me where the dust collector was, the dust collector that had been on the third floor? A.—The dust collectors? All I can tell you, very generally, is that they were in front of the tank, and I would say roughly opposite.

Q.—That is not my question. I know the dust collector was opposite the tank, but I want to know where the dust collector wound up? If you remember, say so; and if you don't remember, say you don't. A.—I have an idea one was blown
40 through the building, and in any event I have a recollection of one being very severaly dented.

Q.—When you say blown through the building, what do you mean? A.—Blown through the floors, the hole in the building that the explosion had caused, and fallen below.

Q.—Fallen into the yard below? A.—Yes.

By Mr. Hackett, K.C.:—

Q.—You are positive about that? A.—No, I am not ab-

ALAN THOMSON (for Plaintiff at Enquete) Exam. in chief.

solutely positive. I am positive that one was at least very badly dented by flying material.

Q.—You have made some reference in your statement Exhibit P-14 to the number of cans and drums in respect of which the claim is made. Did you count them? A.—I didn't. There
10 were 419,000 cans, I think, — no, 112,486 cans, according to my figures. I didn't count them, no.

Q.—Who did? A.—I got the figure from the records of Sherwin-Williams and I hadn't the slightest doubt, and I haven't, that Mr. Moffat, or, Mr. Moffat's men, counted them, I know there was a tremendous amount of them. I accepted that figure as reasonable.

Q.—Could you say where the sprinkler heads were located in that mill? A.—The sprinkler heads?

Q.—Yes? A.—Overhead is all I could tell you on that.
20 I have no knowledge of the lines, how they run, except that they were overhead. I know there was a vertical pipe somewhere near the tank.

Q.—You don't know where the sprinkler heads were?
A.—No. I think the main came up opposite one of the tanks. I think that was ruptured.

Q.—They all ruptured, didn't they? A.—I can't tell you.

And further deponent saith not.

30

H. Livingstone,
Official Court Stenographer.

DEPOSITION OF ALAN THOMSON

A witness on the part of Plaintiff.

40 On this 20th day of November, in the year of Our Lord nineteen hundred and forty-five, personally came and appeared, Alan Thompson, aged 39, district manager of the Foundation Company of Canada Ltd., and residing at 19 Sunnyside Avenue, Lakeside, 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.—Where were you employed, Mr. Thomson, on the 2nd of August, 1942? A.—I was with the Foundation Company.

ALAN THOMSON (for Plaintiff at Enquete) Exam. in chief.

Q.—In what capacity? A.—As district manager.

Q.—Were you present at a meeting at the premises of the Sherwin-Williams Co. of Canada Ltd., following the 2nd of August, 1942, at which there were present a number of representatives that have been referred to, of the different interests?

10 A.—Yes.

Q.—In what capacity? You were there in what capacity?

A.—As the contractor or possible contractor for the job.

Q.—For the repairs or the reconstruction of these premises did you operate under instructions or advice of any architects? A.—Yes.

Q.—Which architects? A.—Ross, Macdonald.

Q.—Did you make the repairs or the reconstruction under any written authority or any written instructions? Did you have any written directions? A.—Yes, there was a specification made
20 of the different work to be done.

Q.—Would you look at the document I show you, dated the 12th of August, 1942, P-13, and say if you recognize the terminology of that document? A.—Yes.

Q.—Did you receive that document from Ross & Macdonald? A.—We received a copy, I think.

Q.—I didn't mean that particular document, — but you received a copy of that document? A.—Yes.

Q.—And, upon the instructions contained in that document or the information directed to you within that document,
30 what did you do? A.—We rebuilt the factory or put it back in its original state.

Q.—Were you in charge of the work? A.—Not on the job. We had a superintendent on the job.

Q.—Yes, — but were you in general charge of the work? A.—Yes.

Q.—When you saw the premises following the incidents of the 2nd of August, 1942, in what condition were they, in respect to the walls and the general condition of the building itself, and I am only talking about the building? A.—It was in
40 pretty much of a shambles, I would say, just. . . .

Q.—Would you continue? A.—Parts of the walls were blown out; the roof was raised; some of the roof was burned away; and some of the standing brick walls were out of plumb.

Q.—I think you said you proceeded immediately to reconstruct the building. Is that correct? A.—Well, we started right away by cleaning up the debris and protecting some of the walls that were not blown down but were out of plumb, by shoring, to see if it would save them, and just getting the place cleaned up so that the work could start.

ALAN THOMSON (for Plaintiff at Enquete) Exam. in chief.

Q.—Was there anybody else associated with you, — in the building trade, for example, — in the reconstruction of those premises, or collaborating with you in regard to the reconstruction of the building? A.—Another contractor, you mean?

Q.—Yes. A.—No other contractor.

10 Q.—Did you have any part in determining, — and when I say you I mean you in your capacity of district manager of the Foundation Company, — in determining the loss, the proportion of the loss applicable to shatteration or concussive damage and that applicable to fire? A.—Yes, I had. That was at the completion of the work.

20 Q.—Now, did you prepare a report for the adjusters or for anybody connected with the adjustment office of Cheese and Debbage then and which is now Debbage & Hewitson, in respect of the cost of the work which was in fact physically done to put the building back as it was, and showing what part of the expenditure was necessary to repair loss caused by explosion as compared with loss caused by fire? A.—Yes, I did.

Mr. Hackett:—I don't know whether my friend intends to produce this document or not, but if he does, I say. . . .

The Court:—So far there is nothing illegal. Mr. Hackett is just entering a caveat.

30 By Mr. Mann, K.C.:—

40 Q.—I want you to look at a letter, — I will put the question, but please don't answer it, because there will be an objection, — letter dated January 18th, 1943, addressed to W. M. Irving, c/o Cheese & Debbage, and captioned "Re Sherwin-Williams", to which are attached two sheets with a quantity of figures in several columns, entitled Detail of Costs, Sherwin-Williams Linseed Oil Mill, St. Patrick Street, and say if that is the report you made to Cheese & Debbage or Mr. Irving, c/o Cheese & Debbage, and if the letter is signed by you for the Foundation Co. of Canada Ltd., "A. R. Thomson, district manager", and if so will you be kind enough to produce the letter as Ex. P-15?

Mr. Hackett:—In the first place, I have no objection to Mr. Thomson saying he signed the letter. In the second place, I have an objection to the production of the letter, because it is irrelevant; and I have an objection to the detailed cost set forth

ALAN THOMSON (for Plaintiff at Enquete) Exam. in chief.

10 in the two pages which are attached to the letter, in which it is purported to show that the damage amounting to \$37,358.62 is attributable to explosion and damage amounting to \$31,457.22 is attributable to fire. The reconstruction of this building and the relationship between the company that was rebuilding it and the company plaintiff are not the best proof, and we were not a party to the letter; we were not a party to the document which is attached to the letter, and we were in no way bound or affected by it, and I submit it is an illegal document and should not go in the record.

Mr. Mann:—I am about to prove now the actual damage to the building.

20 The Court:—I will admit the report provisionally, on the same basis as I admitted the report made in the document P-13; it will be accepted as proof only insofar as it is substantiated.

Mr. Mann:—I would like to draw my friend's attention to the ink on here by which it is marked received the 19th of January, 1943, which was not, of course, on the original letter. It was received at 10 a.m. the 19th of January, 1943, according to this ink writing. That is Mr. Debbage's handwriting.

30 Q.—(Continuing): Now, Mr. Thomson, looking at the document Exhibit P-15, dated January 18th, 1943, — I want you to disregard for the moment the letter, — the two pages that are attached are the parts of the document to which I am referring, — would you say what those columns of figures represent?

Mr. Hackett:—I object to the interpretation of the document by Mr. Thomson. He has written a letter and there is a document attached to it the validity of which is under discussion. We can all read, and I object to its interpretation.

40 The Court:—(Examining P-15): The only thing in the columns which I do not understand is "Subs." — S-u-b-s.

Q.—What would that be? A.—The sub-trades.

The Court:—For the rest it appears to me that the document, read with the letter, is self-explanatory.

Mr. Mann:—I don't want it interpreted. I was only trying to help the Court by getting it down to a final figure.

ALAN THOMSON (for Plaintiff at Enquete) Exam. in chief.

The Court:—I think I can understand it with the explanation of the word "Subs.", which I did not understand at first. The letter is filed as part of the exhibit, is it not?

Mr. Mann:—Yes.

10

Q.—(Continuing): The last page of the exhibit, the total figure under "Fire" is \$31,457.22? A.—Yes.

Q.—On the same page the last figure under the word "Explosion" is \$37,358.62? A.—Yes.

Q.—How were those figures, appearing to evidence loss by explosion on the one hand and by fire on the other hand, arrived at? A.—You mean the sub-division of the final cost?

Q.—The sub-division into Fire on the one hand and Explosion on the other? A.—Well, it was arrived at by. . . .

20

Mr. Hackett:—If it was arrived at by agreement, let the agreement be produced.

Mr. Mann:—Did I hear anything about agreement?

By The Court:—

Q.—Did you say agreement? A.—No.

30

Mr. Hackett:—I know the witness didn't say that, but I am just advising the Court that if there is any attempt to prove an agreement. . . .

The Court:—Don't let us be premature. The witness said nothing about an agreement. If he does, then the time will come perhaps when you may object.

40

Mr. Hackett:—Yes, — but what I am trying to point out is that this is an *exparte* document and I do not wish to have any evidence admitted which would seem to make it appear that the Defendant is liable for the amounts mentioned in this document or took part in its preparation.

The Court:—There has been nothing in the evidence so far to indicate that to me.

Mr. Mann:—The agreement was filed long, long ago. The agreement is an exhibit and admitted.

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The Court:—The question as put is perfectly legal. The objection may have some ground later, in later evidence, but it has no foundation at the moment. You asked him how the figures were arrived at, Mr. Mann?

10 Mr. Mann:—Yes, I asked him how the figures were arrived at.

The Court:—Within his personal knowledge, he can tell us what he knows about it.

Witness:—They were arrived at after the completion of the job, or, the completion of the work, by a percentage basis, allocation of cost on a percentage basis, so much to explosion and so much to fire.

20

The Court:—That is not quite enough for my purpose, of course.

Q.—How did you arrive at the respective percentages?

A.—From the condition of the job before the work was started and the things that had to be done or the work that had to be done to put the building back in its original state.

Q.—For my own enlightenment: did you take part, yourself, in the examination of the building? A.—Yes.

30

Q.—To form a basis of this allocation? A.—Yes.

Q.—On what basis would you attribute any repair that was made, to fire or explosion, as the case might be? How would you determine it? How would you determine which it was? Obviously, if you saw a piece of wood charred, you would assume that was done by fire? A.—Yes.

Q.—But the evidence was not always as clear as that, I take it. How would you determine what should be attributed to fire and what to explosion?

40

Mr. Mann:—I am grateful to your lordship for putting the question so clearly.

The Court:— I think that is the problem I will have to solve.

Mr. Mann:—Yes.

Witness:—If a brick wall was out of plumb due to explosion, the cost of repairing or rebuilding that wall would be

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allocated one hundred per cent to explosion under the title here (in P-15), under the detail of cost.

By The Court:—

10 Q.—Well, you say if a brick wall was out of plumb due to explosion you attributed the cost to explosion. I suppose you mean if you found a brick wall out of plumb you assumed that was explosion rather than fire? A.—Yes.

The Court:—That seems a reasonable assumption.

Witness:—That would mean 100 per cent of the cost of the repair or the rebuilding would go to explosion.

20 By Mr. Mann, K.C.:—

Q.—Sections of wall, I think you said, were blown out entirely and were in the yard. What would you do about that? Where the walls were out what would you do? A.—That would be 100 per cent under the heading of explosion too.

30 Q.—I am not going to spend the balance of the afternoon going into details. I just want to know if those allocations: \$31,457.22 to fire and \$37,358.62 to explosion: are, within your belief, proper and correct? A.—Yes, they are.

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

Q.—Mr. Thomson, you told the Court that you did not superintend this work but it came under your general control as a representative of the Foundation Company.

We have got some photographs here, filed as P-6-a to P-6-f. You are familiar with the location of the building? A.—Yes.

40 Q.—You know that, roughly speaking. St. Patrick Street is on the north side? A.—Yes.

Q.—And Centre Street, or the yard, on the south side? A.—Yes.

Q.—D'Argenson Street to the east? A.—Yes.

Q.—And Atwater to the west? A.—Yes.

Q.—That is correct, isn't it? A.—Yes.

Q.—Now, in repairing the building, you found some gaps in the walls? A.—Yes, I did.

ALAN THOMSON (for Plaintiff at Enquete) Cross-examined.

Q.—Well, where did you find them, taking those four streets as indicating the four sides of the building? A.—I think the greatest gap in the wall would be on the east elevation of the linseed oil mill proper, with quite a lot of wall down on the south elevation.

10 Q.—On the south elevation? A.—Yes. There wasn't much damage on the front elevation or the north elevation.

Q.—The north is on St. Patrick Street? A.—Yes.

Q.—There was some of that wall out? A.—I just can't remember that. I think there was some of it out; not very much of it.

Q.—Was the wall damaged all the way along St. Patrick St.? A.—Just what do you mean by "damaged"?

20 Q.—I mean, did parts of it fall out? A.—I would say Yes, because we put up a scaffold or put up a protection to keep the pedestrians off the sidewalk on that side.

Q.—The whole length of the building insofar as it faces on St. Patrick Street? A.—Yes.

Q.—Then, on the southern side. . . . The southern side faces the yard, I believe? A.—Yes.

Q.—. . . . were there parts of the wall there, on the third floor, which were down? A.—Yes, the majority of the wall was down.

30 Q.—All the way across? A.—Yes, in that new portion of the building, the linseed oil mill. There are two buildings sitting side by side.

The Court:—We have nothing to do with any other building than the linseed oil mill, have we?

By Mr. Hackett:—No.

40 Q.—Would you look, Mr. Thomson, at the plan which has been filed as P-7, being a plan of the third floor of the linseed oil mill, but which for the purpose of my question we can use for the other parts? I am looking for the arrow. A.—Here (Indicating) is the arrow, the north.

Q.—You see the arrow just below the bold writing "P-7"? A.—Yes.

Q.—And "P-7" is written in what is St. Patrick St.? A.—Yes.

Q.—And I understood you to say that the wall, all the way along St. Patrick Street, was pushed out: is that correct? A.—Oh, no, I didn't say that; I said there was some damage to

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this piece of the wall which is the front elevation or the St. Patrick Street elevation of the linseed oil mill. This is the oil mill. There is a fire wall which runs between the two buildings (Indicating on P-7). There are two distinct buildings, with the fire wall running between.

10 Q.—Then am I to understand from you that the portion that is called the east room is a separate building from the part that is called the west room on the plan? A.—It is separated by a fire wall.

Q.—There is a wall that runs through the building, — but it is the same building, is it not? A.—Well, I don't know just what to say there, to tell you the truth.

Q.—We will take that up a little later. Was there any part of the wall damaged and down elsewhere than within the east room? A.—Yes, there was.

20 Q.—Was there any part of the wall in the west room down? A.—It wasn't down, but it was well out of plumb.

Q.—Will you write along the line of the west room, along the wall of the west room, and indicate where that wall was out of plumb? A.—This is very general, but it was the whole. . . . Do you want me to put an arrow on it? What do you want me to write on here?

Q.—Just say "Whole Wall Out of Plumb"?

30 Mr. Mann:—Just say what you think you ought to say, Mr. Thomson.

Witness:—The whole wall wasn't out of plumb.

By Mr. Hackett:—Just say what you want to say which will indicate what you found.

Witness:—"Portion of This Wall Out of Plumb".

40 Q.—And you considered the repair of that wall chargeable to explosion? A.—Yes.

Q.—Was any part of the wall along which you have written the words "Portion of This Wall Out of Plumb" down? Did any part of it fall down? A.—No major part of it fell down; a very, very small portion, maybe at the wall head; but generally the wall was standing up.

Q.—Will you now look at the wall which fronts on St. Patrick Street and state what part of it fell down or what part of it was out of plumb? A.—Well, with regard to that wall,

ALAN THOMSON (for Plaintiff at Enquete) Cross-examined.

from my memory, the St. Patrick Street elevation of the west room, there was no part of that wall down at all.

Q.—Was any part of it out of plumb? A.—Yes, it was out of plumb, — this is just from memory, but it could be checked very easily, — but there was no major repair on the front elevation.

10 Q.—Of the west room? A.—Of the west room only.

Q.—Now, what have you got to say with regard to the St. Patrick Street front of the east room? A.—Well, there was quite a bit more damage on the St. Patrick Street elevation of the east room.

Q.—Was the wall down? A.—No, not any major portion of it.

Q.—Then we can say that no portion of the wall facing St. Patrick Street was down? A.—That is correct.

20 Q.—No portion of it, — I may be wrong, but did you say that no portion of the wall facing St. Patrick Street in the west room was out of plumb? A.—No, I didn't say that. It may have been out of plumb.

Q.—Did you say that no portion of the wall facing St. Patrick Street in the east room was out of plumb? A.—I didn't say that either.

Q.—Well, what is the case? Was the wall on St. Patrick Street in the west room out of plumb? A.—I would say Yes.

30 Q.—And in the east room it was out of plumb? A.—No; it was more a blowing effect, I think, or an outward thrust on the wall, and I think the windows had gone; the windows had been blown out on the top storey. . . .

Q.—We are only speaking of the top storey, the third floor? A.— . . . but I could not say that the wall was out of plumb, or in plumb for that matter; I can't remember.

Q.—In any event, you did not do any shoring on St. Patrick Street? A.—No, no shoring of the walls.

40 By The Court:—

Q.—The shoring was done on the Atwater side? A.—Yes.

By Mr. Hackett, K.C.:—

Q.—The Atwater side is the side on which you have written "Portion of This Wall Out of Plumb"? A.—Yes.

Q.—Coming now to the south side, the side which faces the yard, — and for the purpose of this question I am dealing

ALAN THOMSON (*for Plaintiff at Enquete*) *Cross-examined.*

only with the west room, — I will come back to the east room afterwards, — was the wall there down? A.—No, the wall itself stayed up, but the windows were out; some of the windows were out.

10 Q.—Was the wall out of plumb? A.—I could not vouch for that, not now.

By The Court:—

Q.—You mean, you don't remember? A.—It isn't fresh in my memory.

By Mr. Hackett, K.C.:—

20 Q.—Then, coming to the wall that faced into the yard off the east room, I think that is where you said. . . . The major portion of that wall was down.

Q.—There had been a very serious fire, had there not, when you got to the premises? A.—I think there had been a more serious explosion than fire.

Q.—That is possibly your side of the case? A.—That is my opinion.

Q.—But what I am trying to get is, there had been a very serious fire? A.—No, I wouldn't count it a very serious fire.

30 Q.—Well, you saw, did you not, the steel girders which had bent and buckled under heat? A.—Yes.

Q.—And we may not agree, of course, but when that occurs I think the fire in my language would be considered a very serious fire.

40 Now, I am asking you, Mr. Thomson, if the result of a fire which would be sufficient to bring about the buckling and bending of girders and the collapse of a roof might not have some bearing on the displacement of a wall? A.—No, none in the least.

Q.—None in the least? A.—No.

Q.—So, then, the fire which bent these girders and shifted the burdens which they supported would have no bearing upon the walls which supported the girders? A.—Not to the extent as it was the day that I saw it after the fire.

Q.—You have seen walls disturbed and displaced by girders which were laid in them being dropped to a lower level or being thrown out of angle, have you not? A.—Yes, I have.

ALAN THOMSON (for Plaintiff at Enquete) Cross-examined.

Q.—I do not want to attempt to take you further than you want to go, but is it not a possibility that the collapse of the roof due to fire may have had a tendency to move those walls? A.—Not a chance, not a chance at all.

10 Q.—Why? A.—Because that west wall, facing on At-water, hadn't even been near the fire. In fact, it was protected by a fire wall between where the fire took place and where this wall was out of plumb, a great distance away. There was no chance at all of it being affected by fire.

Q.—Was the fire wall damaged? A.—One face of it was damaged. The other face was all right.

20 Q.—Will you indicate, please, the area where the fire wall was damaged? A.—Well, it was damaged between the two fire doors, the jambs of the two fire doors, in here (on P-7). There was some shattering effect on the remaining part of the wall, like cracks running up the wall.

Q.—Now, will you just write, if it be your testimony, under the lines that you have drawn, something that indicates the condition of the fire wall as you found it?

Mr. Mann:—The witness can state it, rather than write it on the plan. We have the wall defined. I'm afraid we are going to get that plan into terrible shape.

30 The Court:—It has a great deal of marking on it already.

Mr. Mann:—A great deal, and I don't want it completely emasculated.

The Court:—The witness has already marked what looks like a long bracket across more than half of that fire wall, as I gather.

Witness:—Yes.

40 Q.—And within that area, if I understood you correctly, you said the wall was damaged? A.—Yes.

Q.—Could you describe in words the nature of that damage? A.—It was generally burned, and the pointing of the mortar that held the bricks together was pretty well burned out.

Q.—Damaged by fire, in other words? A.—Yes, and fissures or cracks in the wall that may have been made with a shove or a push of some kind.

ALAN THOMSON (for Plaintiff at Enquete) Cross-examined.

By Mr. Hackett, K.C.:—

Q.—You are not certain about that? A.—About what?

Q.—About whether the fissures were caused by fire or a push? A.—No, not in that particular wall.

10 Q.—Will you indicate by “X-1” and “X-2” at the ends of a line the area about which you have just spoken? A.—Yes.

Q.—Will you now tell us what was the condition of the fire wall between “X-2” and the end at the point “X-3”? Was it damaged at all?

Mr. Mann:—Why don't you say north and south of the bracket?

20 Witness:—Everything was damaged. It is just the extent of the damage that is not quite clear in my mind. There was nothing that was not damaged, in this east room. It is just what was the extent of the damage that I can't remember.

By Mr. Hackett, K.C.:—

Q.—And with regard to the wall from the point “X-1” to the St. Patrick Street wall, what was the condition of that sector? A.—Well, it wasn't as badly damaged as here (Indicating between “X-1” and “X-2”).

30 Q.—Which is the centre portion of the wall.

And what was the nature of the damage, Mr. Thomson? Could you attribute it to anything in particular? A.—In the east room?

Q.—Yes? A.—No, I wouldn't like to say just what caused the damage in that particular spot.

40 Mr. Mann:—So we are only talking about a spot, are we?

Witness:—Yes.

Mr. Mann:—That had better be made clear.

Mr. Hackett:—We are talking about the fire wall.

Mr. Mann:—A spot.

ALAN THOMSON (for Plaintiff at Enquete) Cross-examined.

By Mr. Hackett:—No, we are talking about a sector of it, not a spot, the sector between “X-1” and the St. Patrick Street wall.

10 Q.—Now, Mr. Thomson, reverting to your letter, Exhibit P-15, you never had any communication with anybody representing the Defendant? A.—No.

Q.—Concerning it? A.—No.

And further for the present deponent saith not.

(The case is now adjourned to 10.00 a.m., November 21st, 1945).

20

H. Livingstone,
Official Court Stenographer.

10.30 a.m., Nov. 21, 1945

30 Mr. Mann:—I understand from Mr. Hackett he is not quite through with the cross-examination of Mr. Thomson, the last witness examined yesterday, but by some inadvertence Mr. Thomson is not here this morning.

The Court:—He may not have understood that he should come back.

Mr. Mann:—That is so. I am going to ask Mr. Gadbois to telephone to Mr. Thomson and ask him to come here.

40

W. B. DEBBAGE (for Plaintiff at Enquete) Exam. in chief.

DEPOSITION OF W. B. DEBBAGE

On this 21st day of November, in the year of Our Lord, nineteen hundred and forty-five, personally came and appeared:
10 Walter Balfour Debbage, aged 72, adjuster, residing at 5 Park-side Place, Montreal West, in the 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. Debbage, will you tell the Court what is the nature of your occupation? A.—Adjusting fire loss for the insurance companies.

Q.—And you are president of the corporation Debbage &
20 Hewitson, Incorporated? A.—Yes.

Q.—Which succeeded to Cheese & Debbage? A.—Yes.

Q.—Of which company you were a member prior to the formation of the new company? A.—Yes.

Q.—How long have you been adjusting losses for the fire insurance companies? A.—About 40 years.

Q.—That takes us back to 1905? A.—1904 to be exact.

Q.—Would you please explain to the Court what you mean by adjusting? I ask the question not because the Court does not know but because another Court may not know. A.—
30 Well, it means that the insurance companies turn these claims over to us and we establish the amounts of the losses.

Q.—Could I ask you to remove your veil of modesty a little bit and tell us if you have adjusted any large explosion losses, — never mind the small ones, — and large fire losses for different insurance companies in Montreal? A.—I think the two principal explosion losses were Curtis & Harvey and Shawinigan Chemicals.

Q.—Curtis & Harvey, that is the case that went to the
40 Judicial Committee of the Privy Council in 1920? A.—Yes, and Shawinigan Chemicals was, if I recollect right, somewhere around 1917 or 1918, or about that.

Q.—If I might correct you, — I was in both cases, — it was just before the judgment of the Privy Council in the Curtis & Harvey case, which, was in 1920? A.—But the loss had occurred some little time before that.

Q.—It had occurred before that, yes.

In the adjustment of these cases you have mentioned was

W. B. DEBBAGE (for Plaintiff at Enquete) Exam. in chief.

there included the question of determining what was fire loss and what was concussive or shattering loss?

I admit that is a bit leading, but I don't think it will do any harm. A.—Yes, that question was included.

10

The Court:—I think all present in Court know that Mr. Debbage has been concerned in many important adjustment cases in the past 35 or 40 years in this district.

Mr. Mann:—I think you are probably quite correct.

The Court:—It may be fair to say his firm has had as much business as any other firm in the same line.

20

Mr. Mann:—I will accept that, if that is on the record, and I am perfectly satisfied.

The Court:—Anyone who has practised law in this district will have known the old firm of Cheese & Debbage and will know the present one, I have no doubt.

By Mr. Mann, K.C.:—

30 Q.—In 1942, following the 2nd of August, or on the 2nd of August, 1942, were you engaged by the fire insurance companies for the purpose of adjusting the loss at the Sherwin-Williams plant? A.—Yes.

Q.—Would you be kind enough to look at the policies I am now showing you? You will find there 22 policies issued by 21 different companies. Those are the companies you represented? A.—Yes.

Q.—Aggregating some \$6,125,000 total insurance? 9.—I have forgotten the figure.

40 Q.—Generally throughout Canada, I mean? A.—Yes.

Q.—Now, Mr. Debbage, in the letter which has been produced, of August 14th, 1942, Exhibit P-4, addressed by the Defendant Company to the Plaintiff, it is stated in substance that Messrs, Cregg, Fitzgerald, Parker, McKeon, and representatives of Ross & Macdonald, of the Foundation Company and the fire insurers, were at a meeting which was held on the 10th of August, 1942. Who was the representative of the fire insurers? A.—The representatives were Mr. Cheese and myself and Mr. Jennings.

Q.—Mr. Jennings is an insurance broker, is he not? A.—Yes, — whose companies were very much interested in this loss.

W. B. DEBBAGE (for Plaintiff at Enquete) Exam. in chief.

Q.—The companies to whom the insurance had been brok-
eraged were very much interested in the loss? A.—Yes.

Q.—Now, will you just tell us in your own language, Mr.
Debbage, following that fire and explosion or explosion and fire,
as the case may be, what you did in furtherance of the perform-
10 ance of your duties as representing the fire companies, with a
view to determining the respective losses by concussion and fire
and burning or water losses? A.—Well, I first got word of the
loss on Sunday afternoon the day that it had occurred. My late
partner had been telephoned to and he had gone down, but when
he telephoned to me he said that the firemen were still there, that
the place was roped off and he could not get near it. The follow-
ing morning, — the fire was on August 2nd?

Q.—Yes? A.—The following morning, August 3rd, I went
20 down to the Sherwin-Williams plant with Mr. Cheese, and repre-
sentatives of the company took us out and showed us the building
in which the explosion and fire had occurred.

Q.—Do you remember who was there at the time? A.—I
think it was Mr. Moffat who took us out.

Q.—And who else? A.—That I don't remember, — there
were so many.

Q.—And what did you do? A.—Anyway, we went out,
and I saw that the upper part, — I may say one-half of the upper
part of the building, — had been blown out. The stairway to the
second floor where the explosion had occurred was blocked.

30 Q.—The explosion was on the top floor? A.—The second
floor, — the basement, the first and the second. It was on the
second.

Q.—Well, it was the top floor, in any event? A.—Yes.

Q.—You call it the second? A.—Yes.

Q.—It has been called the third? A.—Yes. I will call it
the third. I will correct that to say that the stairway to the third
floor was blocked with debris and the only way of getting up
was to go up the fire escape. I went up there on. . . . Now, I don't
40 know just how you have described this building so far. Is this
side the west side or the east side?

Q.—Let us get the sketch P-7.

The Court:—The fire escape leads into what has been
called the west room, as you go up.

Witness:—I went into the west room.

Mr. Mann:—You may have P-7 in front of you. The fire
escape is here, on the southwest corner of the building.

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Witness:—It is on the south corner, the southwest corner, yes.

Q.—And it leads out of the west room. You are now pointing to the west room? A.—Yes.

10

By Mr. Hackett, K.C.:—

Q.—You call that the southwest corner? A.—The southwest corner.

I went into the west room. That room was flooded with water. There were partitions in it, dividing the little rooms off, partitions that were broken down; and the door to the east section was broken, and I went as far as I could into the east section.

20

Q.—When you say you went into the east section you mean the east room? A.—Yes. There was so much debris and everything around that it was impossible to get very far. I saw thousands of cans scattered all around and covered with broken pieces of pipe and fallen debris.

After we returned to the offices arrangements were made for Sherwin-Williams to go ahead and clear up as much of the debris as was possible. We then arranged to have Mr. W. M. Irving, contractor, Mr. G. E. Newill, engineer, and Mr. C. R. Hazen of Milton, Hersey, go down and make as close an examination as was possible, to aid us in arriving at what had happened. For the next four or five days these men were occupied on this work, and about a week later. — I think it was on August 10th,— a meeting was held in the offices of Sherwin-Williams, at which were present a number of parties. Do you want the names of them?

30

40 By Mr. Mann, K.C.:—

Q.—I don't think that is necessary. You were at the meeting, yourself? A.—Yes.

Q.—It is stated in the letter from the defendant company pretty well. You were there? A.—Yes. I have a record of the meeting.

Q.—Perhaps you had better tell the Court? There may have been something left out of the letter. A.—(Consulting File): After I returned to the office from that meeting I made the

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following record of it. Is it necessary to take it all down? It isn't very long.

The Court:—Well, it would be accurate, I assume, if you made the record after returning to your own office. It may be
10 useful to have.

Witness:—My record states:—“A meeting was held at “10 a.m. on August 10th, 1942, in the office of Sherwin-Williams “Company, and there were present: Messrs. Hollingsworth, Moffat, Jennings. . . .

By Mr. Mann, K.C.:—

Q.—Hollingsworth and Moffat are from the Sherwin-
20 Williams Company? A.—Yes.

Q.—Jennings is the broker you have referred to? A.—Yes. And, “Rutledge, of the Foundation Company; McKeon, of “Boiler Insurance; Thomson, of the Foundation Company.”

Q.—Is that Mr. Alan Thomson, who was examined yesterday? A.—I haven't got his initial here; I would have to go back farther to get that.

Q.—It is Thomson of the Foundation Company? A.—Yes. Also present were Mr. Gregg, of the Boiler Insurance; Mr.
30 Ross, Junior.

Q.—The architect? A.—Yes. And Mr. Douglas, I think it was, — that is the name I have here; and Mr. Ross, Senior; and Mr. Fitzgerald, and myself.

Q.—Fitzgerald is of what? A.—Of the Boiler Insurance.

“A discussion took place as to what had to be done and “it was quickly decided by all present that the work of establishing the loss should be proceeded with at once. A difference of “opinion. . . .

40 Mr. Hackett:—I just wish to make a provisional objection: that if there is any attempt to prove a contract or an admission which affects the Defendant I object to the evidence as not being properly made.

The Court:—I will take that objection under reserve. I don't know whether it will apply or not. If so, I will give it my attention.

Mr. Mann:—In respect to the objection, I might add that practically the whole contract, certainly a commencement of proof in writing, is in the letter P-4.

W. B. DEBBAGE (for Plaintiff at Enquete) Exam. in chief.

Witness:—“ arose between the representatives of the
“Boiler Insurance Company and the adjusters for the fire com-
“panies over what figures should be established by the repre-
“sentatives of the three parties (Sherwin-Williams, Boiler In-
“surance and fire companies) but it was eventually unanimously
10 “agreed that working under a gentleman’s agreement these re-
“presentatives would have to establish the total amount of the
“loss, showing how much of this was caused by the fire. . . .

Mr. Hackett:—I wish here to put my objection to the testi-
mony that is being made and the proof that is being offered as to
an agreement between the parties as to any liability which might
have resulted from the contract of the Defendant with the Plain-
tiff.

20 The Court:—I will take the objection under reserve. What
we are getting now is the recollection of the witness as to what
took place at this meeting as recorded by him immediately on
his return to his own office from the meeting. Whether testi-
mony of that nature can constitute a basis for a contract is a
matter I will have to decide later.

Witness:—“ that resulted.”

30 By Mr. Hackett, K.C.:—

Q.—Would you read the last two lines over again? A.—
“ agreed that working under a gentleman’s agreement these
“representatives would have to establish the total amount of
“the loss, showing how much of this was caused by the fire that
“resulted.”

By The Court:—

40 Q.—Is that the end of your memorandum? A.—No, not
quite. I have got something here that will probably please Mr.
Hackett:—“In the preliminary discussion it was stated by rep-
“resentatives of the Boiler Insurance that they had come to the
“conclusion (temporarily) that a fire occurred prior to any ex-
“plosion. They stated that consequently they could not and would
“not admit any liability for any loss until such time as they had
“been able to make further investigations and examine further
“witnesses.

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“It was agreed that Messrs. Ross & Macdonald, in conjunction with the Foundation Company, would act for Sherwin-Williams, Mr. Fitzgerald would represent the Boiler Insurance, and the meeting was informed that Mr. W. M. Irving, with an assistant to be named, would represent the fire companies. A meeting of these representatives was made for 2 p.m. on August 10th, 1942.”

By Mr. Mann, K.C.:—

Q.—Was there a meeting at 2 p.m. on the 10th or was there not? A.—No; for some reason or other that meeting was postponed until the following morning.

The Court:—Now, the reading of that memorandum was interrupted, not improperly, but was interrupted on several occasions. Would Mr. Debbage mind reading it from beginning to end? And I think it might be useful for the record if it were taken down without interruption.

Witness:—Do you want me to file my record?

The Court:—If you file a copy of that, perhaps that would be all right.

Witness:—All right.

The Court:—I am asking, for the purpose of convenience only, if Mr. Debbage will file as Exhibit P-16 copy of the memorandum he has just read. This exhibit will, of course, be admitted subject to the objections of the Defendant, which objections have been taken under reserve.

Witness:—Will I read it over?

The Court:—Yes, but it will not be necessary for the stenographer to take it down, since you are filing a copy.

By Mr. Mann, K.C.:—

Q.—You stated, Mr. Debbage, that a meeting was arranged for 2 p.m. on August 10th, and I think you interjected that that meeting was not held? A.—I think that meeting was not held. My recollection is that for some reason or other they were unable all to meet at that time and it was postponed until the following morning.

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Q.—And was there a meeting held the following morning?

A.—I think so.

Q.—And what was the result of the meeting?

Mr. Hackett:—Was he present?

10

Witness:—No.

By Mr. Mann, K.C.:—

Q.—You were not present? A.—No.

Q.—Were there any meetings subsequently held of the whole or some of the parties that you have just mentioned, at which you were present? A.—No.

Q.—Then we will proceed, if you don't mind, Mr. Debbage, 20 to the matter of the examination of the building and the distribution of the loss. Your evidence just states that you appointed George E. Newill, engineer, and Mr. W. M. Irving, building contractor. For what purpose were they appointed? They were appointed by you, you said. A.—At the time, as I spoke of it a minute ago, when I first called them in, they were appointed to go down there and attempt, if possible, to ascertain what had happened. After the meeting of August 10th Mr. Newill and Mr. Irving were appointed to establish the amounts of the two losses, fire and explosion.

Q.—Can you tell us the condition in which you found the 30 premises when you went to the building on, I think you said, Monday, the 3rd of August, and any subsequent times you may have gone to the building? A.—Well, I have already stated that it was impossible to get up by the stairway to the third floor and I had to go up the fire escape.

Q.—But you got up? A.—Yes.

Q.—Now having got up. I am asking you what was the state? A.—I think I described that a minute ago. I found that 40 the west section was flooded, that partitions dividing some rooms there were broken down from the explosion, that the doors between the west section and the east section were broken, and that it was almost impossible to get into the east section for the debris that was around.

Q.—Am I to take it, then, that you did not get into the east section? A.—I did.

Q.—Having got into the east section, would you describe the state of the east section! When I say east section I mean east room, of course. A.—I got well into the east room. As I said a few minutes ago, there were several thousands of cans

W. B. DEBBAGE (for Plaintiff at Enquete) Exam. in chief.

thrown around; there were broken pipes; there was broken debris all scattered all over the place.

Q.—Was there anything more than cans on the floor, including both east and west rooms? A.—At that time I couldn't see anything more than cans.

10

By The Court:—

Q.—I take it that it is fair to say that the condition was such that day that you could not make a detailed examination? A.—I think there is a photograph here that shows exactly what I am talking about.

Q.—Is that correct: there was so much confusion and so much debris that you could not make a detailed examination of the loss? A.—No, I couldn't. As a matter of fact, my late partner, Mr. Cheese, refused to go up. He thought it was dangerous.

20

By Mr. Mann, K.C.:—

Q.—I went up myself and ruined a suit of clothes by falling into turpentine. A.—That probably was after all the rest of us had been up there.

Q.—My question had a little more to it than that, though. I asked you about any subsequent times you went to the building, also? A.—I was there, of course, a number of times, and, each time I went to the place, there was an improvement, because debris was being cleared away and all that sort of thing, naturally.

30

Q.—It has been stated that there was some loss by shattering and some loss by fire. I want to know now what method you and those collaborating with you, to your personal knowledge, adopted for the purpose of segregating the two types of loss or the causes of the different types of loss? A.—First, the location; second, the condition.

40

Q.—Would you just enlarge upon that for us: location and condition? A.—Well, the location was the section, the east section, on the top floor. That is where the explosion occurred.

Q.—It has been called the east room. That is what you mean by east section? A.—Yes, the east room. That room had suffered more from explosion than any other part. Now, the contents of that room also had suffered more from explosion than anywhere else.

Q.—What about the walls of it? A.—The walls were blown out. The roof had been raised. Pipes had been broken off and thrown around, parts. There was a mass of debris.

W. B. DEBBAGE (for Plaintiff at Enquete) Exam. in chief.

Q.—My question was directed to what method you used, what calculations you made, what observations you made, for the purpose of segregating explosion loss from fire loss? A.—By examination of the thing that was damaged.

10 Q.—I'm afraid I will have to ask you to go to a little further than that, — examination of the thing that was damaged, yes, — but let me put it to you this way: — What did you find among the things, on the things surrounding, or in the things that were damaged which indicated, first, explosive or concussive destruction or damage; in the second place, which indicated partly explosive or concussive destruction or damage and partly fire destruction or damage; in the third place, which indicated total fire damage; and, in the fourth place, which indicated total water loss. If you don't understand my question, Mr. Debbage, say so. Do you understand it? A.—It is a long one.

20 Q.—Would you like to have it read over?

By The Court:—

30 Q.—I might make it perhaps a little clearer, at least to me:—It will be one of my tasks in this case, I think, Mr. Debbage, to decide on the evidence before me how much of the loss is to be attributed to explosion and how much to fire. Suppose I were to ask you to tell me how physically I could determine those two causes if I were on the scene myself, what would you say? You have done a great deal of that. You have told me location and condition. Location is clear in itself, but I don't know how you would determine by location whether the damage was done by fire or explosion. Would you tell me? A.—Yes. The brick walls of the building were blown out; consequently, that was explosion. The roof had been raised; that was explosion. Pipes had been broken; that was explosion.

40 Q.—Pipes are sometimes broken in a fire, I presume, without any explosion? A.—Not very often in a building of that kind. That was a very well built building.

By Mr. Mann, K.C.:—

Q.—Now, you have got that far. Let us get to the cans and linseed meal and other things that were there and drums? A.—Well, on the cans I have always felt, — there were two items there, — I have always felt on those two items there should have been a larger explosion loss allowed than there was. Those are the cans and the electrical equipment. The cans had been blown

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about, but not only had they been blown about but they had had, as I have already said, pieces of heavy pipe, pieces of building debris, thrown down on them.

10 Q.—From where? A.—Well, I could not tell you where they came from, but they were all down covered up with this stuff. The drums. . . .

Q.—Might I just stop you there. You said they were all down. You see, “down” is a relative term. Were they down on the third floor somewhere? A.—Yes.

Q.—You said they were “down”? A.—Yes, down on the third floor. It was impossible for them to get through. They were down in a heap.

Q.—On the third floor? A.—Yes.

20 Q.—What were you going to say about drums? A.—There were drums, — I think there were some drums in that same section, but there was a large number of drums that were piled up against the south wall of that building, outside.

Q.—In the yard? A.—Yes. Now, when the walls blew out, those drums were all bent up and smashed up by the bricks that came down on them. Now, there was no fire around them at all.

By Mr. Hackett, K.C.:—

30 Q.—What wall was that? A.—That would be the south wall, Mr. Hackett.

Q.—I think it is the east wall?

Mr. Mann:—The D’Argenson Street side.

Mr. Hackett:—I don’t want to take you into a long cross-examination if you have made an inadvertent error, Mr. Debbage.

Witness:—Here (on P-7) is the fire escape, and weren’t the drums in here?

40 Mr. Mann:—Don’t ask me; I don’t know where they were. Here is the east room where the tank was.

Witness:—The drums were here (Indicating).

By Mr. Mann, K.C.:—

Q.—Then, the drums were in the yard, on the south?
A.—Yes. I have a photograph that will tell you exactly.

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Mr. Hackett:—As far as I am concerned, the question was whether it was east or south. I thought it was the east wall. If he says south I am satisfied.

By Mr. Mann, K.C.:—

10

Q.—In any event, it was in the yard? A.—Yes; and the bricks had come down on the drums. There was no fire anywhere near them, and the little water on them wouldn't have hurt them, but they were smashed up, banged up.

Q.—Was there other stock except drums and containers and cans? A.—In that particular room?

Q.—Stock that had been subjected to damage? A.—Yes, there were stocks of linseed, and there were bags and a number of different articles, but if I remember right those were not particularly in that room.

20

Q.—I am not interested in where they were. I am interested in whether they were damaged or destroyed in any way? A.—Yes. The linseed, I think, was in metal bins or tanks on the second floor, and the water had come down and gone through that and soaked them, rendering them useless for their purpose.

Q.—Any part of that loss ascribed to explosion? A.—No, I don't think so, I think all of that loss was put down to fire, against my better judgment, because I believe that when the sprinkler pipes broke a certain amount of water came down through there before the fire hose came there, and there would have been the damage from that. However, that was just one of the points that we disagreed on and eventually passed it as a fire loss.

30

Q.—Now, would you tell me the general result insofar as allocation of damage or loss to fire or explosion is concerned, in respect, if you know it personally, of the stock in trade? You can refer to your records, if you want to look at your records. A.—There were so many items and it is so far back it is difficult.

Q.—I don't want each item. I just want the total amounts. Would you give me those? A.—You want the total we came to?

40

Mr. Mann:—Yes.

By The Court:—

Q.—You worked in conjunction with Mr. Newill, or it would be more correct to say Mr. Newill worked in conjunction with you? A.—Yes, on the machinery and stock. On the building Mr. Irving worked for me.

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Q.—Both under your direction? A.—I kept in close touch with both of them all the way through, so as to know what was happening.

Mr. Mann:—My first question was relative to the stock.

10

Witness:—My stock loss: the total was \$46,258.01, and that was divided into explosion, \$4,593.08, and fire, \$41,664.93.

Q.—Would you in the same manner give me the answer with respect to machinery and equipment?

The Court:—Those figures are the same as given by Mr. Newill as I noted them.

20

Mr. Mann:—Exactly.

Witness:—You say you want the total now for machinery and equipment?

By Mr. Mann:—Yes.

Witness:—Machinery and equipment: explosion. . . .

30 Q.—What was the total loss? A.—Well, I will give them singly, — I haven't got them added here, — explosion, \$4,508.68; fire, \$37,787.59.

Q.—Added together, that makes \$42,296.27? A.—Yes, \$42,296.27.

The Court:—Again, those are the same figures as given by Mr. Newill.

40 Mr. Mann:—Yes; I am just confirming them by this witness.

Q.—Now the building, Mr. Debbage? A.—The explosion loss was \$37,829.52. Is that right?

Mr. Mann:—I will deal with that in a moment.

Witness:—And, fire, \$33,340.82.

Q.—I want to draw your attention to the fact, as to the figures you have just given, the Foundation Company reports a

W. B. DEBBAGE (for Plaintiff at Enquete) Exam. in chief.

figure of \$37,358.62 for explosion, which leaves a discrepancy of \$470.90 between that and the \$37,829.62? Can you explain that?

10 A.—I can tell you where that comes in, I think. After their figures were made out, there was an item of labor charges which were applicable to building and equipment, — in other words, salvage operations, — and that was divided half to the building and half to machinery and equipment.

Q.—It appears, all right, in the total figure for machinery and equipment, but it does not appear in the Foundation Company's calculations. So the figure of \$470.90 added to the Foundation Company's figure of \$37,358.62 brings your figure of total explosion loss in regard to building to \$37,829.52?

A.—That is correct, yes.

20 Q.—A similar condition applies in regard to the matter of fire. The Foundation Co. reports a figure of \$31,457.22. There is a discrepancy between that figure and yours, of \$1,883.60?

A.—Yes.

Q.—Your figure is \$33,340.82. If you add the \$1,883.60 to the \$31,457.22 you get your figure of \$33,340.82? A.—Yes.

Q.—Now, what have you to say with regard to that? A.—That was the division of those labor charges. The total of them was \$470.90 plus \$1,883.60.

Q.—The total was \$2,354.50? A.—Yes. I think that works out 25 per cent to explosion and 75 per cent to fire.

Q.—Then it just works out exactly? A.—Yes.

30 Q.—25 per cent represents \$470.90 and 75 per cent represents \$1,883.60? A.—Yes.

Q.—Being the respective fire and explosion percentages of the total figure of \$2,354.50? A.—Yes.

Mr. Hackett:—I don't know whether this is an opportune time, Mr. Mann, but would you care to show where these figures come in in the proof of loss?

40 Mr. Mann:—I don't think it is an opportune time.

Mr. Hackett:—That is your bill and that is why I want to know.

Mr. Mann:—I don't want to be any obstacle and I will try to help you:

Q.—Mr. Hackett has requested me to find out if you can determine from the proofs of loss where those figures are to be found or where they are included. Can you do that? A.—No.

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Mr. Hackett:—I understood Mr. Debbage to refer to the proof of loss when he spoke of a deduction of \$470.90.

Witness:—No.

10 Mr. Hackett:—There certainly was a deduction of \$470.90.

The Court:—He was referring to the figures of the Foundation Company. His are not the same as the figures of the Foundation Company, — the totals are not the same, — and he explained why.

Mr. Hackett:—His figures as given now are not the same as those in the proof of loss. I was trying to fit them in now. I thought probably Mr. Mann could do it now with less waste of
20 time than I could in cross-examination.

Mr. Mann:—The figures he has given now for the three items, stock in trade, machinery and equipment and building, when added together, reach the total figure in the proof of loss.

Witness:—Yes.

30 Q.—So that perforce the figures you have given us must be included in the proof of loss? A.—There's no doubt about it.

Q.—But you can't just tell us exactly where? A.—No, because they have this divided up in sub-trades and things like that, whereas I am dealing with totals that Mr. Newill and Mr. Irving brought in to me.

The Court:—There is no doubt in due course Counsel for Plaintiff will make it clear to the Court how these figures jibe with the proof of loss?

40 Mr. Mann:—Yes. The total works out identically. The only thing is, they have such things as demolition, masonry, carpentry and so on. It is difficult to get them in. I don't know who can do it. Perhaps Mr. Irving can.

The Court:—I just point out that somebody will have to do it, to help me.

By Mr. Mann, K.C.:—

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Q.—Have you any recollection of fixing an explosive or concussive loss on the dust collector? A.—No.

Q.—You don't remember that machine in detail? A.—No.

10 Mr. Hackett:—My lord, I am not going to ask Mr. Mann to surrender physical possession of his insurance policies just now, but I do want to give them a number, so that, should I have to ask for them, they will have a status in the record.

Will you produce the 23 policies to which reference was made, as Defendant's Exhibit D-6?

Mr. Mann:—I would prefer, Mr. Hackett, and I'm sure you don't mind, if you would say "Would you exhibit the 22 policies? I would like to put a tentative number on them, Ex-
20 "hibit D-6?" If you put your question that way I don't mind.

Mr. Hackett:—As I told the Court, I am quite willing that Mr. Mann retain possession of the policies. I would like to give them a number and be in a position to have them form part of the record should I deem it my duty to have them in.

The Court:—We will give them the number D-6.

30 Mr. Hackett:—I think it will have to be D-6-A and so on.

The Court:—D-6 will be the generic name and each individual policy will be called D-6-A, B, and so on; and I don't want you to dictate to the stenographer the title of each policy. You can make up a list.

Mr. Hackett:—I was going to say we could take as the list of the policies the list which Mr. Mann has added to the sample letter which each insurance company sent to the Plaintiff.

40 Mr. Mann:—Yes, I think that is quite fair. That would be simpler. It would show all the policies.

Mr. Hackett:—And that letter is in as D-3.

Mr. Mann:—You are not asking Mr. Debbage to produce these? You are asking me to produce them? You were not questioning Mr. Debbage?

Mr. Hackett:—I don't care who produces them.

W. B. DEBBAGE (for Plaintiff at Enquete) Cross-examin.

The Court:—The request is made by Counsel for Defendant and is not addressed to anybody.

Mr. Mann:—Then I will produce them I am putting into Court, as it were, under the number D-6, 22 insurance policies,
10 a list of which can be added later.

The Court:—And those policies will be individually designated by letters of the alphabet from “A” on.

Mr. Mann:—I can do better than that. I have then all numbered now. We could put D-6-1 to 22, instead of letters of the alphabet.

20 The Court:—Very well; we will call them D-6-1 and so on.

Mr. Hackett:—In the order recited in the letter, the letter affixed to the circular.

Mr. Mann:—It is D-6-1 to D-6-22. I don't know what the order in the circular letter is.

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

30 Q.—Mr. Debbage, I wish you to turn to P-16 and let me see it for a moment? A.—Yes.

Mr. Mann:—Witness exhibits his entire file to Counsel.

Mr. Hackett:—Mr. Debbage doesn't exhibit his entire file.

Mr. Mann:—Hands his entire file.

40 Mr. Hackett:—Mr. Debbage has opened the file at a page and I am examining that one page, that one memorandum only, and that has been filed as Exhibit P-16 over my objection.

The Court:—Not over your objection, — subject to your objection. The objection will be decided later.

Mr. Hackett:—Subject to my objection, — thank you, my lord.

Q.—(Continuing): Mr. Debbage, in the second paragraph of your memorandum, you intimated that there was subject mat-

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

ter which might be pleasant to Counsel for the Defendant. That paragraph reads:—"In the preliminary discussion it was stated "by representatives of the Boiler Insurance that they had come "to the conclusion (temporarily) that a fire occurred prior to "any explosion."

10

You do not wish the Court to understand, do you, that the representatives of the Boiler Inspection Co. ever departed from that position? A.—Not to my knowledge. That is the only time I met them.

Q.—And, so far as you know, they have always adhered to that point of view? A.—I don't know.

Q.—I beg your pardon? A.—I don't know.

20 Q.—Well, insofar as your work has gone, you have always proceeded on the assumption that the point of view of the Defendant continued to be that expressed in the paragraph that I have just read to you? A.—I don't know.

Q.—You see, what I am trying to get at. . . . A.—I don't know whether the Boiler Insurance came to any other decision than the one expressed to me, in front of me that day.

Q.—And the one that was expressed to you, or expressed in your presence that day, was that the Boiler Insurance Co. had come to the conclusion that a fire occurred before an explosion? A.—Yes; that was what they claimed.

30

(At this point the examination of the witness is suspended to permit of the attendance of Mr. Hackett, K.C., in the Appeal Court, and the Court adjourns the case to December 17, 1945).

And further deponent saith not.

H. Livingstone,
Official Court Stenographer.

40

10.15 a.m., January 7th, 1946

(The witness W. B. Debbage is recalled).

Mr. Hackett:—Before taking up the cross-examination of Mr. Debbage, who was in the witness box on November 21st, 1945, when we adjourned, I would like the Court to take note of the fact that Mr. Thomson's cross-examination has not been finished.

Mr. Mann:—That appears by the deposition. I will see that Mr. Thomson is here,

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

DEPOSITION OF W. B. DEBBAGE (Recalled)

And on this 7th day of January, in the year of Our Lord nineteen hundred and forty-six, personally came and reappeared, Walter Balfour Debbage, a witness already sworn and examined
10 herein and whose examination now continues under his oath already taken, as follows:—

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

Q.—Mr. Debbage, in the course of your examination-in-chief you told the Court that you had gone to the third storey of the linseed oil mill building and had gone from the west room into the east room, and you described to the Court a condition of affairs which you said was shown by a photograph? A.—Yes.

20 Q.—There are a number of photographs filed, Exhibits P-6-a to P-6-f; and then there is another one, P-11, which does not interest you. Will you look at the photographs P-6-a to P-6-f and say which one you referred to when making that statement? You say, at Page 455, “I think there is a photograph here “that shows exactly what I am talking about.” A.—Well, there are three here, Mr. Hackett: P-6-a, P-6-c and P-6-d.

Q.—Will you look at P-6-d and tell the Court what the solid piece of material is, that rests or appears to rest in part on the piled cans and in part on a certain amount of debris at
30 the left centre of the photograph? A.—I’m not sure, but it looks to me like a piece of the roof.

Q.—Would you just write on that “Piece of Roof” or something that will indicate that it is from the roof? A.—Well, I’m not sure of that.

Q.—You’re not sure of what? A.—Whether that is a piece of the roof.

Q.—I see. Will you look at the picture again and tell the Court if the area which is shown is open to the skies? A.—Yes; the roof is off there.

40 Q.—The roof is off? A.—Yes.

Q.—So, if the roof has not fallen down on the floor, it has gone somewhere else, because it has gone from the place where it should be? A.—Yes.

Q.—You haven’t any real doubt but what the piece you are looking at is a part of the roof? A.—I don’t know.

Q.—Will you look at the girders which are in the upper and lighter part of the photograph? Do you see them? A.—Yes.

Q.—They are steel, I assume? A.—Yes.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Q.—They appear to be twisted and gnarled to some extent, do they not? A.—Yes.

Q.—What would cause that? A.—It might be caused by the explosion; it might be caused by heat.

10 Q.—They all sag, do they not? None appears to be bent upward? A.—This one (on P-6-d) has the appearance of being bent upward.

Q.—It hasn't to me, but if you would just indicate with your pen where you think it is bent upward I would be grateful? Put a big "X" so we can see where it is bent upward. A.—It has that appearance to me, from the photograph. I don't remember it otherwise.

Q.—Well, my reaction may be of no interest to the Court, but that doesn't appear upward to me.

20 I ask you, Mr. Debbage, if the general appearance of these steel girders and beams is not that of sagging that is created, quite ostensibly, knowing as you do what happened, by heat? A.—No, I don't think so Mr. Hackett. If I remember well, that roof was raised by the force of the explosion and then it came down, and when it came down it might quite probably cause these beams to sag.

Q.—So, then, it is your testimony that the beams or girders shown in P-6-d were bent downward by the falling of the roof?

30 A.—They might be.

Q.—And in all seriousness and in the light of your great experience, that is your testimony? A.—That is all I can say. I say the roof was forced up. . . .

Q.—But, let us get the thing quite clearly. It is your testimony, in the light of your experience, that the girders which are shown in P-6-d were bent downward by the falling roof? A.—I didn't say that.

40 Q.—That was the impression you created on me. What did you say? A.—I said it was quite possible that when the roof came down that it might have caused that sagging.

Q.—And you do not think that the intense heat of the fire caused those girders to sag, to heat, bend and sag? A.—I am not sufficiently technical to answer that question.

Q.—You undoubtedly put into your file some of the clippings from the Press concerning this fire? A.—I think I did, Mr. Hackett, yes.

Q.—Would you look at your file and see if you have some of the photographs that were taken by the newspapers, — or probably you will look at the one I am going to show you. . . .

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Mr. Mann:—So far, the evidence is not objectionable, because he is merely asked to look, but I trust my friend is not going to go into clippings and newspaper photographs. I am merely lodging a caveat.

10 The Court:—Yes.

Mr. Hackett:—I have some photographs that were taken by the newspapers.

The Court:—Mr. Hackett realizes he is under close surveillance and will no doubt conduct himself accordingly.

20 Witness (Searching File):—I don't think I have them, Mr. Hackett.

By Mr. Hackett, K.C.:—

Q.—Well, that is all right. Will you look at a photograph which I now show you and say if, having visited the fire or the place of the accident, on the 3rd of August, 1942, you recognize that? A.—I don't recognize that.

Q.—You cannot recognize that? A.—No, not that.

30 Q.—Just look at the photographs which were filed; let us look at them together. I want you to look, if you will, at photograph P-6-d already filed, — in fact, at all of the photographs P-6-a to P-6-f, — and then look at the photograph which I show you and tell the Court if you have any serious difficulty in identifying the one I show you as being of the east room of the linseed oil mill which was the scene of an accident on the 2nd of August, 1942? A.—There is nothing in the photograph which you have just shown me and the photograph P-6-d which fit together.

40 Q.—Will you look at P-6-a, P-6-c and P-6-d, and say if you can find in the other photograph you are looking at anything which enables you to identify it as a photograph of the top floor of the linseed oil building, and for the purpose of assisting you I may tell you that the photograph you are looking at here shows the two tanks, the one which failed and its mate which didn't? A.—That in your photograph looks like the tank that failed.

Q.—You are quite correct. The second tank in the photograph I am showing you is the one which failed.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

The Court:—What do you mean by the “second” one? Is that obvious from the picture?

Mr. Hackett:—Yes. We will put “1” and “2”.

10 The Court:—Is the nearer one to the person looking at the photograph the first one and the other one what you call the second tank?

By Mr. Hackett:—No, my lord; it is the other way.

20 Q.—Now, conceding for the moment that the first tank in the photograph is the one which didn’t fail and the second one in the photograph is the one which did fail, are you able to identify now certain aspects of that tank which show up in P-6-d?

Mr. Mann:—I am not going to force you, Mr. Hackett, to make all that proof. I think it is obvious that is a photograph of what you say. If you make a professional statement as to when it was taken and it was taken immediately after the accident, I might be prepared to admit that that picture represents that part of the premises. What were the dates?

30 Mr. Hackett:—Of the photographs I have here, the first two, according to my instructions, were taken on the day of the fire, while the fire was going on; and the others were taken on the day the Defendant got to the scene of the fire for the first time, that is. . . .

Mr. Mann:—On the 3rd?

Mr. Hackett:—No; we weren’t notified until the late afternoon of the 3rd and our people didn’t get there until the morning of the 4th of August, when some of these photographs were taken.

40 Witness:—You are talking about my firm, Mr. Hackett?

Mr. Mann:—No.

Witness:—I thought Mr. Hackett spoke as though we hadn’t been there. . . .

Mr. Hackett:—No. Mr. Debbage said that Mr. Cheese went to the scene of the fire on Sunday while it was burning and that he himself went with Mr. Cheese the following morning, the 3rd.

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Witness:—Yes. Excuse me for interrupting.

Mr. Hackett:—The Defendant in this case was not notified until well on into the afternoon of the 3rd and didn't get to the premises until the morning of the 4th.

10

As to the photographs, my declaration is restricted to what will be Exhibits D-7-A and B taken on the day of the fire by the Montreal "Star" and which appeared in the Press, and then D-7-C.

Mr. Mann:—D-7-C was taken when? All the debris is cleared up in that one, as far as I can see by it.

Mr. Hackett:—No. D-7-C, D-7-D, D-7-E, D-7-F and D-7-G were taken on the 4th of August; D-7-H, D-7-I and D-7-J were taken during the week of the 10th of August, 1942.

20

Mr. Mann:—I will make this admission:—On the declaration of Counsel for Defendant, the Plaintiff does not object to the production of the photographs D-7-A D-7-J inclusive, subject necessarily to enlightenment in respect of those of the exhibits in that series which appear to have been taken after the debris was partially removed or cleared up.

30

Mr. Hackett:—That refers to the last three.

Mr. Mann:—It refers to some of them. We haven't checked them; I will see later.

Mr. Hackett:—Actually it refers to the last three.

40

The Court:—Your admission, Mr. Mann, is simply, in effect, that these photographs were taken of the places and things which they appear to represent on the dates which Counsel for Defendant has declared they were taken.

Mr. Mann:—Yes.

The Court:—That is sufficient, no doubt, for Mr. Hackett's purpose. Am I to understand they were all taken by the Press?

Mr. Hackett:—The first two were taken by the "Star"; we had nothing to do with them; they were just taken for the

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

purposes of the newspaper. The others were taken by the Associated Screen News at our request.

Q.—(Continuing): Just to make certain what these are, Mr. Debbage: D-7-A and D-7-B show the building when a fire in it is being fought by the Montreal Fire Brigade, 2nd of August, 10 1942; there is no difficulty about that? A.—No.

Q.—You saw the reproduction of these two in the “Star”, did you not? A.—I think I did, yes.

Q.—Then, will you look at D-7-C, and can we agree that it is the eastern front of the building, looking on D’Argenson Street? A.—Yes.

Q.—And that D-7-D is south end of building, new building to right, old building to left?

Mr. Mann:—Divided by the angle, the hypotenuse of 20 the angle.

Witness:—Yes. that is right.

Q.—(By Mr. Hackett): Then, D-7-E is northern elevation of the building, facing St. Patrick Street? A.—Yes, that would be correct.

Q.—And then D-7-F is the third floor. . . . A.—The second floor.

30 Q.—Well, we have agreed to call it the third floor?

Mr. Mann:—The top floor.

Witness:—Yes.

By Mr. Hackett, K.C.:—

Q.—The floor in which the tank that failed was located? A.—Yes.

40 Q.—And D-7-G is the tank itself? A.—Yes.

Q.—With the door off? A.—Yes.

Q.—And then D-7-H and D-7-I and D-7-J are photographs that were taken in the week of the 10th of August, 1942, when the work of cleaning up had been commenced and had progressed to some extent? A.—Yes, — because the pipe has gone from there.

Mr. Mann:—And you can see there are no cans around or anything.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

By Mr. Hackett, K.C.:—

Q.—Now, Mr. Debbage, you made several references, in your examination-in-chief, to the broken pipes that were scattered about in many places. Will you look at all of the photographs and indicate to the Court where these broken pipes are?
10 A.—There is evidently a piece shown here (D-7-G).

Q.—Will you just indicate where? A.—Yes.

Q.—You point out a piece of pipe which you will please indicate by a capital letter “P” on Exhibit D-7-G? A.—Yes.

Q.—And that is the only broken piece of pipe that you have been able to find. . . . A.—In those photographs.

Q.—. . . . in the photographs D-7-A to D-7-J? A.—Yes.

Q.—Will you now look at the photographs which you produced as P-6-a to P-6-f and show any pipes which you see scattered around there?
20 A.—Well, in P-6-a, there are broken pieces of pipe.

Q.—Will you just mark on P-6-a the broken pieces of pipe which you find? A.—Yes.

Q.—I point out that the second thing you have marked is merely a connection? A.—Yes.

Q.—From which a portion is missing? A.—Yes, part is gone.

Q.—I think that we can agree that what is shown in P-6-a is identical to what you have found in D-7-G? A.—That is right.
30

Q.—Will you pursue further the scrutiny of the pictures P-6-a to P-6-f and show any other broken pieces of pipe, to which you referred so frequently in your examination-in-chief? A.—There’s no use adding to the other one when it is the same thing?

Q.—No, — unless you find something different from that already marked? A.—It is almost impossible to pick them out in this picture (P-6-d) in that debris.

Q.—On P-6-d you have made a cross indicating broken pipe at how many places, Mr. Debbage? A.—As I say, it is impossible to pick them out altogether in that picture.
40

By Mr. Mann, K.C.:—

Q.—You can only pick out six? A.—Well, they are all covered up.

By Mr. Hackett, K.C.:—

Q.—Just put numbers on them, so we can follow them?
A.—I am numbering them up to “6”.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Q.—Now, what were these pipes? A.—I could not tell you that; I don't know. Mr. Newill or Mr. Irving could tell you that.

Q.—But you see, Mr. Debbage, you are speaking of your own personal knowledge here? A.—I am speaking of metal pipes that were down.

10 Q.—No, — you are speaking of your own personal knowledge. Mr. Mann was very careful to ask you that, and, if you wish us to take your testimony as qualified to that extent, well, we will have to do it; but Mr. Mann said to you, — I will read you his question. . . .

The Court:—It appears to me that what the witness said was that to his personal knowledge, from his personal observation, there were broken pipes, and those pipes which are apparent on the photographs he has indicated, and there may be others
20 which are not shown on the photographs.

Witness:—Yes.

The Court:—He says he personally saw broken pipes. He says now he cannot tell what those pipes were except that they were metal. That is the gist of it. He is not suggesting that when he said the pipes were broken he was taking that from anybody else; he says that was to his personal knowledge. That is how I understand it.
30

Q.—That is correct, isn't it? A.—That is quite correct. I don't know what those pipes were from.

Q.—But you did see broken pipes? A.—Yes; I saw pipes mixed up with the debris.

By Mr. Hackett, K.C.:—

40 Q.—At Page 456 Mr. Mann said to you, “It has been stated “that there was some loss by shatteration and some loss by fire. “I want to know now what method you and those collaborating “with you, to your personal knowledge, adopted for the purpose “of segregating the two types of loss or the causes of the different types of loss.”

Now, I have understood that we were dealing with you on the basis of your own personal knowledge and its bearing upon this claim? A.—Yes.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Q.—Then I ask you, can you tell me what was the purpose of these pipes which you have indicated in Exhibit P-6-D? A.—I don't know, Mr. Hackett. They may have been steam pipes, or they may have been cold-water pipes, or they may have been hot-water pipes; they may have been for heating purposes and they
10 may have been for something else.

Q.—There was a sprinkler system there? A.—Yes.

Q.—They may have been pipes from the sprinkler system?
A.—Yes. That would come in the class of water pipes.

Q.—What would you consider was the pipe you have marked with the figure "2"? A.—I don't know.

Mr. Mann:—"2" on what?

20 Mr. Hackett:—We have been speaking of P-6-D.

Q.—(Continuing): And what makes you say, Mr. Debbage, that these pipes were damaged by explosion? A.—Because they were broken.

Q.—Is that the only reason? A.—And out of their place.

Q.—Do you think that that is a conclusive reason? A.—Yes,
I do.

Q.—You told us a few moments ago that these steel girders were bent, in your opinion, because the roof had fallen upon them? A.—I didn't say that, Mr. Hackett.

30 Q.—Well, what did you say? A.—I said that the roof had raised and come down and it was quite possible that they had been bent by that. That is what I said.

Q.—Now, the roof having come down, it might have broken the pipes to which we are referring, as well? A.—No, I don't think so; not if these girders did not break.

Q.—I beg your pardon? A.—Not if these girders didn't break. These pipes are below. You are talking of sprinkler pipes.

40 Q.—I am talking of pipes that were broken and I am suggesting to you that any pipes that were broken may have been broken by something falling upon them as well as by what you call an explosion. You will agree to that, won't you? A.—I think possibly some might, but not much.

Q.—Now, Mr. Debbage, can't we cut this short? His lordship asked you, at the last hearing, how these pipes might have been broken, and you said by explosion? A.—Yes, I did.

Q.—And then it was suggested by yourself this morning that it might have been the falling roof? A.—That it might have been the falling roof? I didn't say that at all, Mr. Hackett.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Q.—Very well. Is it your testimony, then, that the girders sagged and twisted by the heat of the fire? A.—I didn't say that, either.

10 Q.—Well, we are confronted with sagging girders and broken pipes, and you have suggested that the girders sagged because of the falling roof. You have suggested that the pipes were broken because of an explosion? A.—Yes.

Q.—And I ask you now if the girders might not have been affected by the explosion and if the pipes might not have been broken by the falling roof? A.—No, I don't think so, because the pipes are below the girders. Consequently, the roof would not come down on them.

Q.—Well, I will ask you to look at the pipe which you have marked "X-1" and "X-2" and see if they don't run over the girders, or, on top of the girders? A.—I can't tell you that.

20 Q.—I beg your pardon? A.—I can't tell you that, whether those were upright pipes or whether they were pipes. . . .

Q.—Then. . . .

Mr. Mann:—Finish your answer, Mr. Debbage.

Witness:—I don't remember whether there was any roof space there.

30 By Mr. Hackett, K.C.:—

Q.—That is not my question. I am asking you if it is not clear to you from the photograph that the pipes which you have marked "X-1" and "X-2" are on top of the girders? A.—I don't know.

Q.—I beg your pardon? A.—I don't know. I can't tell you from that picture whether that was an upright that fell over the girder there or whether it was running over the girder. I don't know and I can't tell you.

40 Q.—I ask you now to look again at P-6-d and at D-7-f and tell the Court if you cannot see that the roof is gone from that part of the top floor? A.—Yes.

Q.—And have you any doubt that the big slab of material shown in the mid-left portion of the photograph D-7-f is a portion of the roof that has fallen down? A.—I don't know.

Q.—You don't know? A.—No.

Q.—And I ask you if you have any doubt that it is a portion of the roof? A.—I don't know. You can ask Mr. Irving that.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Q.—But, you see, Mr. Debbage, while I haven't any doubt about what Mr. Irving will tell me, it is a fact you told the Court you got into this room on the morning of the Monday immediately following the fire? A.—Yes.

10 Q.—And you made a careful examination of the premises insofar as examination could be carried out at that time, you said. I am asking you now if you have any doubt that the photograph D-7-f shows a portion of the roof that had fallen? A.—I don't know, Mr. Hackett. All I know is, there was a great big piece of debris on top of the cans there.

Q.—And you don't know where it came from? A.—I don't know.

Q.—Is there any other place it could come from but the roof? A.—You can ask Mr. Irving that. That place was all blown around.

20 Q.—Can you suggest to us after all your forty-odd years of experience, any other place that could come from but the roof? A.—It may have been a partition thrown up there.

Q.—I ask you to look at the same piece of material, shown in P-6-d, and ask you to state if in your own exhibit that does not show? Isn't a portion of the roof shown there? A.—I have just said that I don't know whether that is a portion of the roof or a partition or some structural thing inside knocked down there.

30 Q.—There is nothing in the constituency, nothing in the formation of that body of material, which indicates clearly to you that it was a piece of roof that fell there? A.—No, there is not.

Q.—I ask you to look again at the picture P-6-d and say if, in the light of your 40-odd years' experience you can find anything in the photograph that to you is a part of the roof? A.—No, I can't Mr. Hackett. As I say, I don't know whether they were partitions or parts of partitions or whether that is part of the roof.

40 Q.—Can you say what proportion of the roof was removed, when you got there on the Monday? A.—No; I didn't measure it.

Q.—I am aware you didn't measure it, but you were there for the purpose of scrutinizing the loss and I wish you would describe to his lordship the condition in which you found that upper storey? A.—I have already told you that.

Q.—You have, but apparently I didn't understand what you said, because. . . .

The Court:—You are particularly interested, are you not, at the moment, in the roof?

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Mr. Hackett:—I am particularly interested in the roof. I had understood from Mr. Debbage that a portion of the roof had fallen in and was on top of debris, but he seems to be uncertain about it this morning.

10 Mr. Mann:—He is not uncertain. He is uncertain of the picture.

By The Court:—

Q.—Perhaps, Mr. Debbage, without going into all the details of what you saw, you would review again for us what you saw in respect of the roof only? A.—There was a great big opening in the roof, and part of it had collapsed, and the whole interior of that east side was in a mess with debris and everything all
20 jammed up.

Q.—Are you prepared to state the extent of that great big opening in the roof, as you describe it, in relation to the total area of the roof? A.—No, I couldn't do that, because I had no measurements that day at all.

By Mr. Hackett, K.C.:—

Q.—You told us that a portion of the roof had been lifted?
30 A.—Yes.

Q.—What portion was lifted? A.—The portion over the cans shown in P-6-d.

Q.—I will have to ask you to be a little more precise, Mr. Debbage, because you have stated that there were cans, cans and then some cans, and I'm not quite certain where there is an area in which there aren't cans? A.—There is an area, Mr. Hackett, that is open over the cans.

Q.—There is an area that is open over the cans? A.—Yes.

Q.—I don't just at the moment see any area in this P-6-d,
40 insofar as I may be permitted to interpret the photograph, in which there is any roof at all, and if you see any I wish you would point it out? A.—There is no roof left.

By Mr. Mann, K.C.:—

Q.—There wasn't any roof left? A.—That is right.

By Mr. Hackett, K.C.:—

Q.—I am asking you where the roof was that was lifted, to which you referred in your examination-in-chief?

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

The Court:—I do not like to interrupt, — but, as I understand the question, what you want to know is, what is the exact portion of the roof that was lifted by what the witness attributes to an explosion?

10 Mr. Hackett:—That is right.

The Court:—You are not asking him where that material is, for the moment?

Witness:—That is the section shown over these cans shown in P-6-d.

By Mr. Hackett, K.C.:—

20 Q.—Are we not talking at cross purposes? The area shown in P-6-d is roofless, by common consent? A.—Yes.

Q.—I would ask you now where the roof remained that had lifted as you described it at Page 456? I refer to that part of your examination-in-chief where you said, “The walls were “blown out. The roof had been raised.” I want to know in what area the roof had been raised and still rested?

Mr. Mann:—Where it came to rest?

30 By Mr. Hackett:—He said the roof had been raised, and I want to know over what portion of the building the roof had been raised.

Witness:—This portion shown in P-6-d.

Q.—Mr. Debbage, I think that we are agreed that in P-6-d the roof is gone? A.—Yes.

40 Q.—And I suggest to you that the roof is visible as being down and that there is no roof on the area shown in P-6-d. I am not speaking of that area.

The Court:—Perhaps I could put it this way:—

Q.—I understand part of the roof, when you got there, was entirely gone? A.—Yes.

Q.—And that part is shown on the exhibit about which you have just been talking, P-6-d? A.—Yes.

Q.—The upper part of the building in that photograph is really open to the sky? A.—Yes.

W. B. DEBBAGE (for Plaintiff at Eng., Recalled) Cross-exam.

Q.—The roof had gone, when you got there? A.—Yes.

QY.—I understand also on part of the building the roof was still there. It had, according to your interpretation, been raised by the explosion and come down again more or less in place. Is that a correct understanding of what you have said?

10 A.—The whole of the roof in that section, I understand, had raised and had come down.

Q.—What section is that? That is what Mr. Hackett wants to know. A.—That is the section shown in P-6-d.

Q.—Then there was no part of the roof which had been raised and come down and remained in place? A.—Yes, I think it did.

Q.—On what part of the building was that? A.—That was over this section here, P-6-d.

20 Q.—But there is no roof there, at all? A.—It was burned off afterwards.

By Mr. Hackett, K.C.:—!

Q.—Then you are telling us something you don't know?

A.—I am telling you what was told to me.

Q.—But, you see, that is not what you told the Court. You said you were telling the Court what you knew personally, and that was Mr. Mann's question to you? A.—Yes, that is what I understood.

30 Q.—But, you see, Mr. Debbage, I want to ask you if all your testimony is based on what you understood from others or on what somebody told you, or whether it is something that you know, — because you left the Court and me under the impression that you were telling that which was of your own personal knowledge? A.—Mr. Hackett, you know just as well as I do that I was not in the place when the accident occurred. I didn't see the roof go up and I didn't see it come down.

40 Q.—Mr. Debbage, I am not going to debate that point with you. I am interested in finding out whether of your own personal knowledge you know that the roof was lifted by an explosion, as you said? A.—I have just told you that. I wasn't there.

Q.—Then am I to take it that your answer is that you don't know that the roof was lifted by an explosion? A.—I was told that it was, by people that knew.

Q.—Now, Mr. Debbage, you have been in Court frequently, over a great many years? A.—Not very often.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Q.—You have been in the witness box often enough to know that testimony on what somebody has told you is not of much help to the Court as evidence: you know that? A.—Yes.

Q.—Then, will you agree with me that you don't know whether the roof of this building was lifted by an explosion or not? A.—I wasn't there.

Q.—Now, let us not fence, Mr. Debbage? A.—I am not fencing.

Q.—Do you know of your own knowledge whether that roof was lifted by an explosion or not? A.—I just answered that a minute ago. I told you I wasn't there. I didn't see the roof go up; I didn't see the roof come down.

Q.—So you don't know? A.—No.

By Mr. Mann, K.C.:—

Q.—You didn't see the roof come down, — or you didn't hear it come down? A.—No.

By Mr. Hackett, K.C.:—

Q.—You also said, at Page 456, speaking of the east room, “Now, the contents of that room also had suffered more from “explosion than anywhere else”. Was that a matter of your personal observation? A.—Yes.

Q.—Will you tell us what you observed that made you say that the east room had suffered more from explosion than any other part? A.—Because that is where the explosion occurred. The full force of the explosion was in that section, in that room there, and everything in that room was pretty well blown about.

Q.—But, just what did you observe that enabled you to say that the damage was attributable to explosion and not to fire? A.—Cans were blown all over the place; pipes were broken. . . .

Q.—Now, just a moment. . . .

Mr. Mann:—You have asked a question, Mr. Hackett, and I want to hear the answer.

Mr. Hackett:—That is right.

Mr. Mann:—Complete your answer, Mr. Debbage.

Witness: and there was debris all over everything.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

By Mr. Hackett, K.C.:—

Q.—I just want to take one thing at a time; so let us start with the cans. What did you observe in the condition, the position or the location of the cans which indicated to you that the loss
10 should be attributed to explosion rather than fire? A.—Because they were bent and broken.

Q.—I beg your pardon? A.—They were bent, broken, and had debris fall on them.

Q.—Now, let us stop there for a moment. You suggested to the Court this morning that the girders might have been bent by the falling of the roof, did you not? A.—Yes.

Q.—I ask you if the falling of the roof might not have damaged the cans? A.—I don't think so.

Q.—Is it your suggestion that these light, empty con-
20 tainers could resist more effectively a falling weight than the steel girders which supported the framework of the building? A.—I'm not quite certain of what you are trying to ask me. Are you trying to ask me that the roof fell down on these cans? — because, it didn't.

Q.—You told the Court this morning or suggested to the Court this morning that the twisted and bent condition of the girders, as shown in P-6-d, might have resulted from the falling roof? A.—Yes.

Q.—I now ask you if the condition of the cans, which you
30 described as bent and jammed, might not have resulted from the same cause, — that is, from the falling roof? A.—No, because the roof did not fall through.

Q.—I will ask you again to look at Exhibit P-6-d and tell the Court if the thing that is there, which I believe to be the roof, in the centre of the picture, and concerning which you have some doubts, would not have damaged cans when it fell upon them? A.—Yes, it would, surely.

Q.—Q.—That being the case, then, why do you say that
40 the damage to the cans is attributable to explosion? A.—Only a part of it.

Q.—I beg your pardon? A.—Only a small part of it. I didn't put the whole loss on those cans to explosion.

Q.—But why did you put any part of it? A.—Because they were knocked around by the explosion and by pieces of pipes, and that, falling on them.

Q.—But the pieces of pipe are pretty well out, — I think you will admit that. You have shown a picture there and placed on it marks indicating six pieces of small pipe. Any pipe that is

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

at all high up is of small dimension, apparently an inch. Will you look at the pipe that straddles the girder here (P-6-d) and just tell me what dimension that pipe is?

10 Mr. Mann:—Which one is that?

Mr. Hackett:—I am referring to “1” and “2”.

Mr. Mann:—I object to the form of the question. I’m not sure that the picture does show that the pipe straddles the girder.

The Court:—You might just identify it, Mr. Hackett, by calling it “X-1” and “X-2”.

20 By Mr. Hackett:—Yes.

Q.—What is the dimension? A.—I don’t know.

Q.—Now, I put it to you, with all your experience in adjusting losses. . . . How many years, — 50 years? A.—Can’t you cut that out?

Mr. Hackett:—No, because you are in my opinion as experienced a man in this calling as anyone I know of.

30 Witness:—Well, thanks for that.

Q.—And I ask you if you cannot give us an approximation of the dimension of the pipe that you have marked “X-1” and “X-2”, and I suggest to you that at the utmost it is inch or inch-and-a-quarter pipe? A.—Yes, I would agree that it is something like that.

40 Q.—And a whole lot of that might fall and not damage many cans? A.—No; if it fell on a tin can it would be very apt to damage it. I think there was a very small loss put down on the cans for explosion, was there not?

Q.—I’m not so much interested in the amount of the item as I am in the principle. I am more interested in the principle that you followed in charging up certain amounts to what you have been pleased to call an explosion. You have said there was a mass of debris. What did you mean by that? A.—Burnt woodwork and charred pieces.

Q.—Where would the burnt woodwork come from? A.—Partitions.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Q.—It wouldn't come from the floor, to begin with?

A.—Pardon?

Q.—It wouldn't come from the floor? A.—No.

Q.—Well, you say partitions. As a matter of fact, were there any partitions in the east room? A.—I don't remember, 10 Mr. Hackett. I know there were partitions between the east room and the west room.

Q.—You know there was a wall between the east room and the west room, do you not? A.—And there were wooden partitions too in there.

Q.—Just a moment; we will come to that. You know there was a wall between the east room and the west room? A.—Yes.

Q.—And you know that at one time that wall was an outside wall of what we have called the old building? A.—Yes, I believe so.

Q.—You know that the east room was a new building? 20 A.—Yes.

Q.—Now I ask you if in the new building, — and we are talking now only of the top floor, whether it be called the second or third, — there were any partitions? A.—I don't think there were.

Q.—I don't think there were, either. Then we have got the partitions out of the way. Now, where else could the debris have come from? Could it have come from the roof? A.—You mean the debris of wood? 30

Q.—Or anything else? A.—There was a lot of other debris besides.

Q.—What other debris could there be? A.—There would be debris of all kinds of things that were in that place.

Q.—Not of all kinds, surely? Tell me what kinds? A.—If I remember right, there were motors and machines and things like that in that room, that must have been blown around and thrown down.

Q.—“Must have been”. Were they blown around and 40 thrown down? A.—I think some were.

Q.—You “think”? That's not good enough, Mr. Debbage. Were they? A.—I would say Yes. some of them were.

Q.—Now, be careful. If you say they were, I will want to find out where. If you don't know they were, and if you say this is testimony that has got to come from Mr. Irving or Mr. Newill or somebody else, I am quite willing to let it go at that, but, if you are coming here to testify of your personal knowledge, I have got to put it to the test. Do you know? A.—No. I only know there was debris of some sort or other over the cans and all around that room.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Q.—Now tell me what the debris was? A.—It is shown in that photograph there. (D-7-f).

Q.—Very well; look at the photograph. I suggested to you it was the roof and you said it wasn't the roof; you said it might be a partition? A.—I didn't say that. That is the second or third
10 time you have said I said something that I didn't say.

Q.—What did you say? A.—I said I couldn't say that was the roof.

Q.—Because it might be a partition? A.—Yes.

Q.—And now you have just said there was no partition in that room? A.—All right, but it might be blown in. . . .

Q.—Blown in from where, Mr. Debbage? A.—The adjoining sections, the woodwork of a window or something of that kind. I can't tell you offhand. As I say, ask Mr. Irving or Mr.
20 Newill.

Q.—I am going to ask Mr. Irving. I won't have much trouble with him.

Mr. Mann:—You're not sure.

By Mr. Hackett:—I don't think Mr. Irving will have any doubt that is part of the roof.

Witness:—It would save time if you asked him.

30 Q.—But the difficulty, Mr. Debbage, is that you have said these things and you have said them as being of your own personal knowledge, and that is what is making my task a little difficult.

You admit now that the substance which I suggest is the roof, and which at one time you said might be a partition, is not a partition? A.—No, I didn't say that.

40 Q.—But you have admitted there were no partitions in the east room? A.—I don't think there were any partitions in the east room.

Q.—That being so, doesn't it seem likely that the slab of material which rests on top of the cans is a part of the roof? We can agree on that, can't we? A.—I don't know what that is.

Q.—You made some suggestion about windows or window frames. What kind of window frame were there in the building? A.—They were all metal frames.

Q.—You don't suggest for a moment that this slab of material is a metal window frame, do you? A.—No.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Q.—We can agree it isn't a metal window frame; and we can agree it isn't a partition, — can we? A.—I think we can, yes.

Q.—Just give a little push. Couldn't we agree that that was a roof that had fallen down? A.—I don't know, Mr. Hackett; I can't tell.

By The Court:—

Q.—Couldn't we agree, perhaps, Mr. Debbage, that it is probably part of the roof? A.—I think that is right, but, to say that that is a piece of the roof, I don't know.

By Mr. Hackett, K.C.:—

20 Q.—And when a roof falls on cans it batters them, and it crushes them up and spoils them, does it not? A.—Yes.

Q.—Now, the walls were blown down? A.—Parts of them were blown down.

Q.—I beg your pardon? A.—Parts of them were blown down.

Q.—It is common ground that parts of the walls were down? A.—Yes.

30 Q.—You see, Mr. Debbage, where you and I have a little difficulty in coming together is just who did the huffing and the puffing. You remember, "I will huff and I will puff and I "will blow your house down." How do you know what happened to these walls? A.—Because the brick walls were blown out and the bricks were scattered all over the outside. The windows were blown out.

40 Q.—Would you be good enough to look at the photographs which have been produced by the Plaintiff, P-6-a to f, and indicate, please, where the walls that were blown out are shown, and would you be good enough to refer to each? A.—Do you want me to mark them again?

Q.—Now, I just want you to refer to each photograph and say what front of the building is affected? A.—Which end is this of that building? (P-6-f).

Mr. Hackett:—I think that is on St. Patrick Street, but you had better ask Mr. Mann.

Mr. Mann:—That is St. Patrick Street.

Witness:—We would refer to that as being the north end.

W. B. DEBBAGE (for Plaintiff at Eng., Recalled) Cross-exam.

Q.—(By Mr. Hackett, contg.): Now, in the north end it shows that the windows are out in the east room and the west room, on the top floor, does it not? A.—Yes.

Q.—Then what else does it show? A.—It shows the windows on the next floor down.

10 Q.—On the middle floor? A.—Yes; it shows them all blown out.

Q.—Blown out? A.—Yes.

Q.—I don't want to contradict you, but I want you to be sure that you see in P-6-f any windows on the middle floor facing on St. Patrick Street which are gone? A.—There are none of them gone. They are all there. That one there. . . .

Q.—You indicate the second window? A.—The central window of the east section, — that has been blown out.

20 Q.—Now, just tell his lordship what you mean by its being blown out? A.—It has been forced out.

Q.—The glass apparently is not broken, but the window has been, what? A.—Forced.

Q.—(By the Court):—The frame? A.—Yes.

Q.—(By Mr. Hackett):—Now, what have you to say about the next window, going westward? A.—The only sign in the photograph of force there would be in that partly open section.

30 Q.—That is, in the second row of panes from the sill, in the most easterly section of that window? A.—Yes.

Q.—Is there anything else in the middle floor in the old building, or, the westerly section? A.—There are two windows there that are shown partly open, — which might have been caused by the explosion.

Q.—Now take the ground floor? A.—On the ground floor there is no sign of force there. There are a couple of broken windows or panes.

Q.—You don't know how that was done? A.—No.

40 Q.—But I suppose the building was maintained in good repair? A.—Oh, splendid.

Q.—It isn't likely that there would be broken panes, is it? Is that what you want to say? A.—I want to say that might be an open section. You can't tell.

Q.—And in the summer time, in a factory, would windows like that be normally open or shut? A.—Open? I doubt it; not on a Sunday.

Q.—But, up on the third floor where they were operating? A.—I don't know what their custom was.

Q.—Now turn again to the same photograph, P-6-f, and look at the eastern wall, which faces on D'Argenson Street?

W. B. DEBBAGE (for Plaintiff at Eng., Recalled) Cross-exam.

A.—Yes. Practically the whole of the upper storey has been blown out there. The force of the explosion has hit the second floor. It almost looks as if there had been some in the first floor, but you can't tell from this.

10 Q.—What do you see on the second floor? Is there anything there which you wish to include in the term in which you said the walls had been blown out?

The Court:—You are referring to the middle floor?

By Mr. Hackett:—Yes.

Witness:—Those three windows on the middle floor, on the eastern wall, were evidently blown out.

20 Q.—Do you see anything more, or anything on the ground floor? A.—I don't think there was any explosion on the ground floor.

Q.—Would you look at another photograph. We have dealt now with the northern and the eastern sides of the building. Have you got one of the southern side facing the yard? A.—This is P-6-e. This is the southern side, I think.

Q.—Would you mind showing P-6-e to Mr. Mann?

30 Mr. Mann:—The southern side would be to the left of this P-6-e. P-6-e is the eastern side.

Q.—(By Mr. Hackett): Will you look again at P-6-e, which Mr. Mann suggests is the eastern side of the building, facing D'Argenson Street? A.—That is right.

Q.—And which you have just described after looking at P-6-f. Do you agree with that? Do you agree with Mr. Mann? A.—Yes, P-6-e is the eastern side.

40 Mr. Mann:—You will get it in your own exhibit, Mr. Hackett, — D-7-B, where you see the southern side and also the eastern.

By Mr. Hackett:—But I want to get Mr. Debbage straight on this, because he is the gentleman I have got to question about it.

Q.—Are you satisfied, Mr. Debbage, that the Exhibit P-6-e is the eastern front of the linseed oil building? A.—Yes, I think it is, Mr. Hackett.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Q.—And that is the front which is shown to the left of Exhibit P-6-f to which you have already spoken? A.—Yes.

Q.—You are satisfied now, Mr. Debbage? A.—Yes.

Q.—It is taken from a different perspective, that's all?
A.—Yes.

10

Mr. Mann:—That is the reason why some of the things look a little bit distorted.

Mr. Hackett:—That is what I want to get at, because this exhibit which we all looked at this morning, P-6-d, shows the same site as D-7-F, but, to borrow the phrase of Mr. Mann, it has been a little bit distorted.

20

Mr. Mann:—D-7-F is of the inside of the building.

By Mr. Hackett:—Yes, but I am just opening a parenthesis to point out that, as there was some difficulty in identifying P-6-e as being the east side of the building as shown in P-6-f, there might be for the same reason a little difficulty possibly in identifying the scene shown by D-7-F as being that on P-6-d.

Q.—You are satisfied they are the same place and the same location, taken from a different angle?

30

Mr. Mann:—I'm afraid I must object to that question. Are you trying, Mr. Hackett, to make the inside of the building the same scene as the outside? If you would tell me what you are trying to do, I would be much obliged.

Mr. Hackett:—In the process of identifying the outer walls of the building I opened a parenthesis to indicate that Mr. Debbage's difficulty in identifying P-6-e as showing the eastern wall that is shown in P-6-f. . . .

40

Mr. Mann:—On the left side of P-6-f.

Mr. Hackett:— arose from the fact that it was taken from a different angle, and I point out that the interior of the building shown in P-6-d differs from what appears in the photograph D-7-F, although both are of the identical scene.

Mr. Mann:—I object to the question, because it is manifest that the last two photographs mentioned are not identically of the same scene.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

By The Court:—We might perhaps ask the witness to say whether he could identify what looks like the extreme end of a metal vessel of some sort, on the right-hand side of the photograph P-6-d, with the complete vessel second from the spectator as he looks at the photograph D-7-F.

10

Q.—Could you identify those two to that extent? A.—Yes.

By Mr. Hackett, K.C.:—

Q.—Now, Mr. Debbage, will you look at the P-6 photographs and see if you have a photograph of the southern wall, the one that faces the yard, as I think you described it.

20 A.—Yes. Would you say “not any farther than is shown by P-6-e?”

Q.—On the upper left? A.—That is right.

Q.—Now, would you look at D-7-B, on the back of which I have scribbled, “South Side, Looking Across Yard”, and say if that is an accurate description? A.—Yes, I think it is.

Q.—And just tell the Court, in the first place, what the picture shows? A.—D-7-B?

30 A.—Yes, — restricting your remarks to the building. There is at the right the eastern wall, which faces D’Argenson Street?
A.—Yes. We dealt with that a minute ago.

Q.—Then there is the southern wall which faces the yard. Then what do you see, off to the left? A.—The western section.

Q.—That is the western section or what we call the west room: is that right?

Mr. Mann:—The west building.

40 Witness:—The west room is up there on the top floor; but this is the western building. It isn’t all one room.

Q.—(By Mr. Hackett): Where is the wall of what we call the old building, the wall in which the two fire doors were constructed? Can you see that? A.—No, I can’t see that in that picture D-7-B.

Q.—Now let us talk of the walls that were blown out. Will you tell the Court, by looking at D-7-B, if there is anything there that was included in your answer to Mr. Mann in chief when he asked you what you found and you said you found walls

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

blown out? A.—The whole of the wall of the top storey was blown out, and the windows on the second storey were blown out.

Q.—And this photograph shows six streams of water playing on the third floor? A.—Yes.

10 Q.—And will you tell the Court what these cans or drums in the yard are? A.—They were empty drums, if I remember right.

Q.—And there are more of them at the right, facing the east wall? A.—Yes.

Q.—And some of them were damaged by the falling wall? A.—Yes.

Q.—And it is for them that you have made a claim for explosion, on the defendant company?

20 Mr. Mann:—It is included in part of the claim.

Witness:—For that part that is included in the explosion.

By The Court:—

Q.—The damage to those cans or drums is attributed in your estimate to explosion? A.—I have forgotten, but I think part of it. I don't remember whether all of it is.

30 Mr. Mann:—I think Mr. Debbage said the bricks had fallen down and damaged them.

Witness:—Yes.

The Court:—That was his conclusion?

Witness:—Yes.

By Mr. Hackett, K.C.:—

40 Q.—Where is the fire escape down which the men came?
A.—I think it's over here. (D-7-B).

The Court:—Witness indicates at the extreme left.

Q.—(By Mr. Hackett):—You mean, at the extreme left?
A.—Of the western section.

Q.—The extreme left of the photograph, of the old building, the top floor of which we have called the west room? A.—

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

The fire escape, if I remember well, was at the west end of the south wall of the western building.

Q.—Well, you remember it very well, because you went up it? A.—Yes.

10 Q.—Will you look now at the photograph D-7-D and say if you see anything, any walls there, which were disturbed by an explosion as you told Mr. Mann in chief? A.—That is the same wall we have just spoken of.

Q.—You have at the right of the photograph the wall in the east room. Now what about the left of the photograph? Does that convey anything to you? A.—There was no wall blown out there.

Q.—Was it disturbed? A.—I don't remember.

Q.—What was blown out? A.—I think those windows were blown out, if I remember.

20 Q.—On the top storey? A.—Mr. Irving would have precise details of this.

Q.—Do you mean you don't remember? A.—I don't remember just which of those windows were blown out.

Q.—Can you indicate the fire wall, as it has been called, — which had been the outer wall of the old building, — between the east and west rooms on the top floor? A.—It would be in here. (D-7-D).

Q.—Would you just take your pen and write "Fire Wall"?

30 Mr. Mann:—I think he had better indicate it by number or letter.

The Court:—Why not just put "W"? Perhaps he does not want to describe it as a fire wall.

Witness:—I am marking it with "W", where I think it was.

40 (It now being 12.30 p.m., Court adjourns to 2.15 p.m.)

And further for the present deponent saith not.

H. Livingstone,
Official Court Stenographer.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

(And at 2.15 p.m., Jan. 7, 1946, Court reassembles and the deposition of the witness above-named continues under the same oath as follows):—

By Mr. Hackett (Continuing):—

10

Q.—Mr. Debbage, we have looked at three sides of the building, the side facing St. Patrick St., the side facing D'Argenson St., and the side facing south, the yard, and we were looking at the southern exposure, which is at an angle to the new part of the building, and you had placed a "W" to indicate the wall which divided the east room from the west room. Now, was there any damage done to the walls or windows of the west room, which I think is on the left side of photograph D-7-B as you look at it? A.—My recollection is that these windows in this western section were damaged by the explosion.

20

Q.—When you say "these windows" you refer to the four windows. . . . A.—In the south wall.

Q.—. . . . in the south wall, on the top floor, at the extreme left of the picture. The picture is taken at such an angle that we cannot exactly see whether they are in or out: that is true? A.—Yes.

Q.—And it is your recollection that these windows. . . . A.—And on the other side.

Q.—. . . . were blown out? A.—I don't say blown out, but were broken by the force of the explosion.

30

Q.—And you also testify that other windows in the west room were also out? A.—I think so.

Q.—Which windows do you refer to? A.—I refer to the windows in the south wall, west wall and the north wall.

Q.—We have seen the north wall in the first photograph you looked at, on St. Patrick Street? A.—Yes.

Q.—And it is your recollection that all the windows were out? A.—Yes, . . . well, I don't know whether they were all out, — no, I wouldn't say that, — but I think they had all been broken. Now, mind you, I didn't check that back closely. Mr. Irving did that for us.

40

Q.—You told us in your examination-in-chief that when you got into the west room you got in by the fire escape? A.—Yes.

Q.—According to you, was there other evidence of damage done by explosion in the west room? A.—Yes, there were broken partitions.

Q.—What did you rely upon to reach the conclusion that these partitions had been damaged by explosion? A.—Because they were broken apart.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Q.—Can you tell us how many rooms there were in the western section of the building? A.—No, not offhand.

Q.—How many broken partitions did you see? A.—Well, there was a partition along, if I remember right, parallel with the south wall, a wooden partition, and that was broken.

10 Q.—How far in from the south wall? A.—I would say probably 10 or 15 feet.

Q.—And that was a wooden partition? A.—Yes.

Q.—Reaching to the ceiling? A.—I don't think so. It may have, but I don't think so.

Q.—Did you notice any sprinkler system in that building? I am speaking of the old building as distinct from the new. A.—Yes, I understand. No, I didn't.

Q.—In the west room as distinct from the east room? A.—No, I didn't.

20

Mr. Mann:—Your question is, “Did you notice it?”

Mr. Hackett:—Yes.

Q.—(By Mr. Mann):—Did you notice it? A.—I didn't pay any particular attention to that in there.

Q.—(By Mr. Hackett):—As a matter of fact, you know that that whole floor, both the east room and the west room, was equipped with a sprinkler system? A.—Yes.

30

Q.—Will you describe to the Court those indicia in the removal or destruction of the partition which led you to the conclusion that the damage had been done by explosion? A.—Because there was no fire there. They were broken by force. There was no fire there.

Q.—Will you look at the plan P-7 and tell the Court where this partition was to which you refer? A.—That is St. Patrick Street there?

Q.—Yes? A.—In this position along here.

40

Mr. Mann:—Mr. Debbage indicates along the westerly part of the south wall of the western room.

Witness:—Yes. I said it ran parallel with the south wall.

Q.—(By Mr. Hackett):—It ran parallel with the south wall and roughly. . . . A.—. . . 10 to 15 feet out.

Q.—Will you write in with a pen there “Partition”? A.—Yes.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Mr. Mann:—Better call it Wooden Partition.

By Mr. Hackett:—Yes.

10 Q.—Is it your memory that the partition ran all the way from the wall which divided the east room from the west, to the westerly wall of the building which faced on Atwater Avenue?

A.—No, I think it ran part of the way only, because we came in at that end, and I don't think. . . .

Q.—You mean you came in at the point indicated as “Fire Escape”? A.—Yes; and I don't think there was any partition there.

Q.—And did you notice any other partition in what is called the west room than the one to which you have referred?

A.—No, I don't remember any other.

20 Q.—Is there in the record to your knowledge any photograph of the westerly side of the building, that which fronted on Atwater Avenue? A.—I will look and see, but I don't think so. It will only take me a minute to see. (Looking in Own File): No, I haven't any, Mr. Hackett.

Q.—Other than the damage to the partition and to the windows, to which you have referred, was there any other damage which you noticed and which you attributed to explosion, in the west room, top floor? A.—I thought that a part of the roof had been damaged there by the explosion.

30 Q.—In what way? A.—By the lifting of the roof.

Q.—To make it as short as possible, will you just tell the Court what you noticed that led you to the conclusion that the roof had been damaged or lifted by an explosion? A.—Because there were evident signs of a heavy force having been exerted in that room.

Q.—What were the signs? What were the exact manifestations that you saw? A.—The manner that the wooden partition and doors of it were broken.

40 Q.—But, mind you, Mr. Debbage, we are speaking of the roof now and of the fact of its having been, as you thought, lifted by an explosion, and I am asking you if it was only because of the fact that a partition was broken that you came to that conclusion? A.—I think so, yes.

Q.—The fact that a door in a partition and the fact that the partition itself, — which I assume is the one you marked on P-7 as Wooden Partition, — was disturbed, was the only evidence you saw that the roof had been lifted or damaged? A.— Yes, I think so.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Q.—Now, will you just explain to the Court how the damage to the door and the partition was evidence of damage to the roof? A.—Just simply because of the force that was demonstrated by the condition of the partition afterwards.

10 Q.—Did you see anything in the roof itself which indicated that it had been lifted, pierced or in any way affected by these forces to which you refer? A.—No. I asked Mr. Irving to check that up and make sure whether that had occurred or not.

Q.—Then, on this phase of your testimony do you want the Court to understand that you are not in a position personally to give evidence and that you directed Mr. Irving, — a man of some experience, I assume, — to go into the matter for you? A.—Yes.

Q.—And that personally you are not in a position to testify? A.—No.

20 Q.—That is right? A.—Yes. I came to the conclusion that there had been a raising of that roof, but in order to make sure of it I asked Mr. Irving to check it up.

Q.—But, you see, you won't let me out? A.—Perhaps I don't want to.

30 The Court:—It is quite clear to me that what the witness has said is that he formed the opinion that the roof had been raised by explosion because he saw that the partition and the door in the partition were damaged. That, he said, was the only tangible or visible evidence he noticed personally which led to the conclusion formed by him that the roof had been raised. Having come to that conclusion, he asked Mr. Irving to check the matter, — to see if there were visible indications in the roof, I suppose.

Witness:—That is right.

By Mr. Hackett, K.C.:—

40 Q.—Then, can we take it this way: that what you saw may have created a suspicion in your mind but you did not verify it yourself? A.—That is right.

Q.—So, personally you cannot testify as to whether or not the roof was or was not damaged by explosion? A.—No.

Q.—When you say No, you mean you cannot testify as to that? A.—No; I wasn't sure.

Q.—And you are not now? A.—No; but I might probably be now if I went back into the records, because Mr. Irving probably reported to me that it had or had not.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Q.—You would then be relying on what somebody else had told you? A.—Yes, exactly, That is what he was there for.

Q.—Does that apply also with regard to what happened in respect of the equipment and the stock? Did you delegate someone to determine whether or not the equipment and the stock
10 had been damaged? A.—The equipment, yes. The stock. . . .

Q.—Now, let us stop here. . . .

Mr. Mann:—No, I want the question answered, Mr. Hackett.

The Court:—Both elements are in the question. Perhaps you had better let him complete the answer.

Witness:—As to the equipment, I delegated that part of
20 it to Mr. Newill, who is a practical engineer. On the stock, I went into those items with Mr. Newill.

By Mr. Hackett, K.C.:—

Q.—So then you want the Court to understand that insofar as equipment is concerned, you cannot testify personally?
A.—No.

Q.—When you say No, you mean what? A.—That I can't.

Q.—Now, when we come to the stock, you say you did
30 investigate personally and will talk as of personal knowledge?
A.—Yes.

Q.—The principal items of the stock which are claimed for come, I take it, under the item in P-5, the proof of loss, as merchandise? A.—That is only part of them.

Q.—What are the others, please? A.—These were the explosion losses. (P-5).

Mr. Mann:—That is all the proof of loss is.

40 Mr. Hackett:—For the moment I am only interested in the stock.

Witness:—I have checked \$957.78; \$1,314.

Q.—(By Mr. Hackett):—There is turpentine, \$957.78?
A.—Yes. Returnable drums, \$1,314.

Q.—Cans? A.—\$1,018.65.

Q.—And one-way drums? A.—One-way drums, \$1,095.85.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Q.—That makes a total of how much? A.—Well, with the \$206.80 it makes a total of \$4,593.08. That \$206.80 is explosion loss.

By Mr. Mann, K.C.:—

10

Q.—That is the total that is claimed for explosion loss?
A.—Yes, on the stock.

Q.—On the merchandise? A.—Yes.

By Mr. Hackett, K.C.:—

Q.—Now, the turpentine was, if I remember right, up on the top floor, part in one tank and part in another?

20

Mr. Mann:—If you are about to reduce the loss, Mr. Hackett, by 50% of the turpentine, or the turpentine that was in the tank that failed, I am prepared to file a retraxit in respect of that amount, because I realize I cannot claim under the terms of the policy for the turpentine that was actually in that tank. I don't think you need bother about that. I will file a statement later. It is approximately half of that amount.

Mr. Hackett:—I am satisfied with that.

30

Q.—(Continuing):—What does interest me a little bit, though, is how you came to put it into the claim? A.—It was listed as part of the merchandise that was lost or damaged.

Q.—Will you take your figures and see if I have got a correct understanding of the whole loss and that portion of it which is in litigation now. I understood that the whole loss amounted to \$159,724.62: is that correct?

40 Mr. Mann:—Those are the figures. You can say Yes to that, Mr. Debbage.

Witness:—Yes.

Q.—(By Mr. Hackett): And that the part of the loss paid by the fire insurance companies was \$112,793.34?

Mr. Mann:—That is also correct.

Q.—(By Mr. Hackett):—And that the part claimed from the Defendant is \$46,931.28?

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Mr. Mann:—That is also correct, subject of withdrawal of the small amount referred to.

By Mr. Hackett, K.C.:—

10 Q.—What I want to know, Mr. Debbage, is how it happens that that amount paid by the fire companies, which you represent, is the exact amount for which they claimed? A.—Well, I presume that is because that is the figure we agreed on.

Q.—That is the figure that the fire companies agreed on. . . . A.— . . . with the insured.

Mr. Mann:—It was an adjustment.

By Mr Hackett, K.C.:—

20

Q.—And you also agreed, — that is, the fire companies and the insured, — that a claim for \$46,931.28 would be made against the Defendant?

Mr. Mann:—I object to that question. This witness is in no position to discuss what the fire companies agreed with the Sherwin-Williams Company should be the claim against the explosion company. I think that is manifest. Also, this does not arise in cross-examination in the minutest degree.

30

Mr. Hackett:—It arises, I submit, in many degrees. We have the original claim which is discussed, which mentioned the figures. We are told that the fire companies and the insured agreed that a certain part of the loss would be paid by the fire companies.

Mr. Mann:—That is admitted.

40

Mr. Hackett:—And now I am masking Mr. Debbage as representing the fire companies if it was not a matter of agreement between the fire companies and the insured that the Defendant should be sued for this item of \$46,931.28.

Mr. Mann:—That question is manifestly illegal in cross-examination. First of all, there is no proof that Mr. Debbage represented the fire companies other than for the purpose of an adjustment or the determination of the loss.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Mr. Hackett:—He has just said they agreed.

10 Mr. Mann:—He said they agreed that the total loss was \$159,724.62, and he said that the fire companies paid, — he knows that, — it is of record, — \$112,793.34. Now he is asked by my friend if there was an agreement between the Sherwin-Williams Company and the fire insurance companies, without being qualified as their agent, special agent, manager or representative or anything else, — in writing or verbally we don't know, and if in writing it cannot be proved in this way, — if there was an agreement that the Sherwin-Williams Company should sue for \$46,931.28.

20 The Court:—As I understand it, the agreement between the assured and the fire insurance companies is set forth in a series of letters by the various companies, one of which is produced as an exhibit, with a list of the others.

30 Mr. Hackett:—I have alleged an agreement, and I am not satisfied that what has been established so far is all that can be established, and I shall bring witnesses here in an effort to establish the allegation of my Plea, and I am asking Mr. Debbage at the present time, — Mr. Debbage has told us that he arrived at the amount of the loss in agreement with the proprietor and that he paid the proprietor under agreement, as representing the fire companies, the amount which was agreed upon, — I am asking Mr. Debbage if it was not agreed between the fire companies which he represented and the proprietor, the insured, that a claim should be made against the Defendant for the balance, the \$46,931.28.

THE COURT:—If that question be relevant, would it not come in defence rather than in cross-examination?

40 Mr. Hackett:—That may well be, my lord, but I am endeavoring to make as much of my defence as I can in cross-examination, and inasmuch as we have gone into these facts, — we have the admission of the agreement, — I submit with great deference that my question is a legal one and a pertinent one and it should be answered at the present time.

Mr. Mann:—I have to add to my objection this: that the question is illegal, irrelevant and inadmissible, inasmuch as subject to correction, I can find no suggestion of it in my friend's Plea.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

The Court:—That point can be readily verified. Perhaps Mr. Hackett will indicate under what allegation he puts that.

Mr. Hackett:—I will find it.

10 Mr. Mann:—I don't believe you can find it, Mr. Hackett.

Moreover, I add to my objection, it is entirely irrelevant, inasmuch as it matters not whether there was an agreement or whether there was not an agreement. Supposing, for example, the fire insurance companies said to Sherwin-Williams, "We will pay you \$112,793.34", — I don't know that they did, and I don't think they did, because this action was in the hands of the attorneys representing the companies when it was brought and it wasn't in our hands. . . .

20

Mr. Hackett:—That is the very point.

Mr. Mann:—The action was instituted by Mr. Ralston's firm and was taken over by us at a later date, a long time afterwards, as we were substituted as attorneys.

30

The Court:—Of all the points raised on the objection to this question, the easiest one to decide is that it is not pleaded. If you can satisfy me on that, I don't have to bother with the others. There is no doubt it was agreed between the fire companies and the assured that so much was attributable to fire and the rest to explosion; that is clear. There was some proviso, I think, as well, reserving somebody's rights.

40

Mr. Hackett:—My lord, the paragraph to which I refer is Paragraph 16 of the Defence, "That in the premises it appears "that the alleged loss", — that is the loss claimed for, — "and "damage sustained by Plaintiff is a fire loss under the terms "and provisions of the contracts of other insurance herein above "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."

Mr. Mann:—How does that authorize the question my friend asked in cross-examination?

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Mr. Hackett:—It is an allegation that the fire companies have undertaken to pay or have paid the amount that is claimed from the Defendant here.

Mr. Mann:—They paid the fire loss: is that. . . .

10

Mr. Hackett:—No, it is an allegation that the companies have undertaken to pay the loss that is claimed from us in this action, — that is, the fire companies have undertaken.

Mr. Mann:—Well, it is not true, then.

Mr. Hackett:—That may be, but we are now discussing what the allegation is.

20

The Court:—Your question was directed to an agreement to sue the present Defendant.

Mr. Hackett:—Yes, — and your lordship will see if you turn to the letter Exhibit D-3. . . .

The Court:—I have the letter. I am reading the third paragraph of that letter, D-3, which is in the same terms, I understand, as those in the other letters.

30

Mr. Mann:—Yes.

The Court:—The paragraph says, “In order that you may negotiate and/or settle with or proceed against Boiler Inspection & Insurance Company of Canada”, — which is the Defendant, — under its policy number such and such in respect of the sum of forty-six thousand-odd dollars, “which we assert represents loss or damage caused by a peril other than that covered by our policy,” — and now I quote specifically, “we confirm
40 “our agreement that your rights are reserved to claim from us “such additional amount or amounts to which you believe you “are entitled, and we hereby waive any delays specified by law” and so on.

That means to say, as I read it, that the assured by accepting this arrangement does not bind itself finally and definitely to the figure of fire loss mentioned. That is what I understand it to mean.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Mr. Mann:—Yes, it means exactly what your lordship says, that if some more of the loss is discovered to be fire loss the company's rights are reserved and the fire companies waive the one-year delay.

10 The Court:—Supposing this Court found you had attributed too much to explosion and that part of that should be attributed to fire

Mr. Mann:—Then the fire companies are bound to pay the difference between the parties or the company's rights to claim are reserved.

20 The Court:—That does not indicate any agreement to sue the present Defendant, does it?

Mr. Hackett:—Well, it is a necessary result.

The Court:—If that is a necessary deduction from what I have just read, you don't need any further evidence.

30 Mr. Hackett:—I do not wish to be disagreeable to Mr. Mann, but he knows very well he has taken over this case from the Sherwin-Williams people and that he represents the fire companies.

Mr. Mann:—Admitted, naturally.

The Court:— I don't think it needs any great acumen to suppose that such a contingency is quite likely.

Mr. Mann:—My friend can get all the admissions he likes in the record on that.

40 The Court:—Often when I see before me a party represented by a well-known firm, I know that firm is acting for an insurance company, though that fact, and especially before a Jury, — is not mentioned.

(The question, Page 521, is read: “Q.—And you also “agreed, — that is, the fire companies and the insured, — “that a claim for \$46,931.28 would be made against the “Defendant?”

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Mr. Hackett:—And I will add this:—

Q.—And if it failed that the rights of the insured would be reserved as against the fire insurance companies?

10 The Court:—Does the addition to the question make it less objectionable?

Mr. Mann:—No, it is still objectionable. There is another perfectly good answer to it. The action dated in September, 1943. The agreements which your lordship has before you (D-3) were dated in May, 1943. There is the whole agreement there. The action was instituted by the Sherwin-Williams Company in September, 1943, under the terms of the agreement your lordship has before you, spread over ten or twelve days in May, four
20 months before the action was instituted. I don't think my friend is suggesting there are any other agreements than that, is he?

By The Court:—Perhaps I could put a question that might dispose of the difficulty:—

Q.—You are, Mr. Debbage, well aware of the arrangements set forth in Exhibit D-3, from which I have just read an extract? You know about the arrangements? A.—Yes.

30 Q.—To your knowledge, — and just answer Yes or No for the moment, — to your knowledge was there any other agreement between the fire insurance companies and the assured with regard to this loss?

Mr. Mann:—Would your lordship include “prior to the “bringing of the action” or “prior to the institution of the action”?

The Court:—What is the date of the letter?

40 Mr. Mann:—They are all dated at the end of April and in May, 1943, various dates.

The Court:—What was the date of the institution of the action? The Declaration is dated the 17th of September, 1943, but of course that does not necessarily mean the date of the service.

Mr. Mann:—No; I think it was probably served after that.

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The Clerk of the Court:—The service was September 17th, 1943.

The Court:—More promptly than happens usually. I will put it this way:—

10

Q.—To your knowledge was there any agreement between the fire companies and the assured, namely, the Plaintiff in this case, effected before the 17th of September, 1943, apart from those arrangements set forth in the letter D-3 and the other letters to which reference is made on that exhibit? A.—No.

Q.—There was not? A.—No.

The Court:—Now, Mr. Hackett, if you want any information as to what happened after the institution of the action, I think you will have to justify the grounds for asking for it.

20

Mr. Hackett:—I am not at the moment suggesting that anything happened after the institution of the action.

The Court:—Now, my question was a very blunt one, and there was a blunt answer. You can pursue the matter if you like, as far as I am concerned.

30

By Mr. Hackett:—I will put a very blunt question, too:—

Q.—As part of the settlement between the fire insurance companies and the insured, was it not agreed that the insured would accept \$112,793.34 and let the fire insurance companies, at their own risk and expense, take an action against the Defendant for the amount of this action?

40

Mr. Mann:—That question calls for exactly the same objection as that already made, and there is an additional reason for objecting to it. The additional reason is this: there is an agreement in writing before the Court, a document filed of record in the case, which speaks for itself, and verbal proof cannot be adduced either in examination-in-chief or in cross-examination to contradict the terms of that valid written agreement, which is proved to be the only agreement of record.

Mr. Hackett:—I am not seeking to contradict it. I am seeking to complement it.

Mr. Mann:—The evidence is that there is no other agreement than this.

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The Court:—The implication of the question which has been asked would appear to be a defence of champerty or maintenance. Is that not so, Mr. Hackett?

Mr. Mann:—The implication is that there was support of
10 an action.

The Court:—That, as far as I can see in the Plea, is not pleaded. It is a very serious question. If it is properly raised, I will have to consider it.

Mr. Mann:—The companies have nothing to hide, but when my friend asks a question like that, implying their support of an action and maintenance in support of an action, that is something I feel in duty bound to object to and seriously object to. The
20 implication may include champerty as well as maintenance. I think it does. I ask the Court to direct the witness not to answer the question.

The Court:—The Court has considered the objections made by Counsel for Plaintiff to this question, and, on the ground that it seems to the Court necessarily to imply a defence of champerty or maintenance, neither of which, as the Court reads the Plea, is alleged therein, the Court maintains the objection.

30 Mr. Hackett:—I will enter an exception to the decision, with great respect.

Q.—(Continuing): Now, Mr. Debbage, let us consider these claims for merchandise. Mr. Mann has said that a proper document will be entered in the record to withdraw half of the item of \$957.78.

40 Mr. Mann:—I said approximately, but I'm not sure of the number of gallons in the other tank. It is approximately half, and if it will shorten this thing I will say one-half right here and now, if that will suit you.

Mr. Hackett:—We can say “approximately”, and we can find out.

Mr. Mann:—I will say half now.

By Mr. Hackett, K.C.:—

Q.—Now, how did you come to include this item of \$957.78

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

in the proof of loss? A.—It was included in my figures of the loss when we were making it up. We were furnished with inventories of the destroyed merchandise. In that case there we decided how much of that would have been destroyed by explosion and how much by fire. Mr. Newill and I came to an agreement
10 on that first, and then we sat in with representatives of Sherwin-Williams and went over each item with them, and the final figure of the apportionment of the loss was arrived at that way.

Q.—Now, the only turpentine that was lost was, as I think you have said, that which was in the two tanks? A.—I think so, Mr. Hackett.

Q.—And the tank which failed was tank No. 1, was it not? We have called it that. A.—You have called it No. 1, yes.

Q.—As to the sister tank, No. 2, what damage occurred to it? A.—I imagine that turpentine was burned up.

20 Q.—I am not talking about the turpentine; I am talking about the tank. What happened to it? A.—I don't know.

Q.—Was the No. 2 tank harmed as a result of the episode of the 2nd of August, 1942? A.—Yes, I'm sure it was.

Q.—In what way? A.—By explosion and by fire.

Q.—In what way by explosion? A.—Well, it was right in the vicinity of where the explosion occurred, and there would naturally be damage caused to it by that explosion.

Q.—Now, I don't want to worry you unnecessarily. . . .
30 A.—You are not.

Q.—. . . and if you don't know what damage was caused to it by explosion I won't bother you any further? A.—I have told you that all the machinery and equipment loss was established by Mr. Newill.

Q.—It has got to be established by somebody else? A.—Yes.

Mr. Mann:—Newill has established it.

Mr. Hackett:—Well. . . .

40 The Court:—He has spoken of it.

By Mr. Hackett, K.C.:—

Q.—We agree that these two tanks stood side by side?
A.—Yes, a little distance apart.

Q.—It is not your suggestion that by any manner of curves the cover of tank No. 1 could hit tank No. 2? A.—I don't know that.

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Q.—Now, wait a minute. . . . A.—I don't think it could.

Q.—And you are willing to say it could not? A.—Well, I will say I don't think it could, because it was directly facing another way.

10 Q.—Now, just how did you and Mr. Newill get at the conclusion that the loss of the contents of tank No. 2, being a certain number of gallons of turpentine, could be attributed to the explosion? A.—I don't think we did. I think, if you will allow me, I think we understood there was approximately the same quantity of turpentine in each of those tanks. The turpentine in the one that failed was destroyed by the explosion; the other was destroyed by fire.

20 Q.—Well, what I am getting at is, the turpentine which you put down for \$957.78, — was that entirely contained in the tank that failed, tank No. 1? A.—That is my understanding, yes.

Q.—So, then, Mr. Mann should withdraw the whole charge and not half of it?

Mr. Mann:—If the policy says that, I will.

Mr. Hackett:—I just want to have that clear. I have a lot of things to talk to Mr. Debbage about and I don't want to talk about this turpentine if I don't have to.

30 Mr. Mann:—My recollection is that the policy indicates that material destroyed during the course of an accident is not claimable as part of the loss.

The Court:—We don't need Mr. Debbage to decide the point. All we need from him is his statement, I think, that the \$957.78 represents the turpentine which was in the tank which according to Plaintiff's contention exploded. Then we may take up the question of what the policy provides.

40 Mr. Mann:—The policy, under the schedule "Unfired Vessel, Contents of Object", — the object here being the No. 1 tank, — says, "The company shall not be liable for loss on contents of any object described in this schedule, resulting from an accident to said object, unless an amount is inserted for said object in the column headed 'Contents Limit', and then only for that part of that loss which is not in excess of the amount so expressed in said column" and so on. There is nothing inserted in that column. Therefore, since Mr. Debbage says the amount

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of \$957.78 was for turpentine in the tank that failed, I will withdraw that from the claim. I thought some was in another tank.

By Mr. Hackett, K.C.:—

10 Q.—Now we come to the next item, Returnable Drums, and the amount is \$1,314. Will you tell the Court where these drums were and what proportion they represent of the total loss for returnable drums? A.—Those returnable drums, I believe, were outside the building, and the wall fell down on them.

Q.—Will we say, then, that the returnable drums are the drums which are shown in the photographs D-7-A and D-7-B? A.—No, I don't think they are these.

Q.—I mean the ones I indicate to the right? A.—Yes, I think so. Those are they there. (P-6-f).

20 Q.—You have shown me the photograph P-6-f and you have pointed to drums which are to the left of the photograph, in front of the eastern wall of the building? A.—I think that is right.

Q.—And it was the drums that were damaged at that point which constitute the claim for \$1,314? A.—Yes. There was a total quantity of drums there of \$1,752.

Q.—And you allege \$1,314 of that \$1,752. . . . A.—Yes, as being smashed up by the wall.

30 Q.—And they lay under the eastern wall? A.—Under the debris of the wall there.

Q.—Of the eastern wall? A.—I think that was the location of it.

Q.—Then we come to Cans, \$1,018.65? A.—Yes.

Q.—What was the total can loss? A.—Well, there were 112,486 cans in the eastern room on that top floor, and the total value of them was \$10,186.48.

By Mr. Mann, K.C.:—

40 Q.—Is that invoice value? A.—Yes. Now, that was one of the cases where I felt that there was considerably more damage by explosion than we eventually agreed on. Finally, we agreed on. . . .

By Mr. Hackett:—You have told us that several times.

Witness:—I am repeating it.

Q.—I see it has bitten deep into your soul? A.—Yes, it did, Mr. Hackett.

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We finally agreed on a loss from explosion of 10%, and 90% by fire.

Q.—Now, will you just explain to the Court the basis of that division? A.—If there had been no fire at all, Mr. Hackett, 10 those cans would have had to be salvaged. They had been knocked around, and that sort of thing, and they would have had to be handled. A lot of them would not have been fit for further use.

Q.—Now, Mr. Debbage, I ask you if you want to say all that, because you remember this morning, when I got to the top floor, you were very reluctant to express any opinion as to what happened, because you were not there at the time of the fire?

A.—That was in regard to the roof.

Q.—And in regard to a few other items that I could think of if I were put to it, — but I want to ask you now if you can 20 really say to what extent any can was displaced by an explosion?

A.—No, I can't tell you exactly how many cans were knocked over.

Q.—Any can or cans or quantity of cans? A.—There was a large number of them.

Q.—How can you say, Mr. Debbage, that any can or any quantity of cans on the third floor of that building was displaced by an explosion? You told us this morning you could not say something else because you were not there. I ask you now how you can testify as to the cans. A.—By the condition 30 of the cans afterwards.

Q.—What was the condition of the cans afterwards? A.—They were all knocked around.

Q.—All knocked around? A.—Yes.

Q.—They may have been knocked around by the falling of the roof? A.—That was the argument that was put up to me, that the damage was not as great by explosion as it was by the fire that followed.

Q.—Just look at D-7-A and D-7-B. You will see there are 40 six streams of high-pressure water playing on the room in which those cans were? A.—Yes.

Q.—And you were here and heard the Fire Chief tell how he stood at the door in the fire wall and, to use his own expression, fought back the fire for a period of minutes with 120 pounds of water pressure or force at the hose nozzle? A.—Yes.

Q.—Don't you think that would knock cans around? A.—If there had been no explosion before, I would say Yes, but when your explosion occurred your cans were knocked down and debris was piled on top of them and it was much more difficult

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

to move them then with a stream of water which didn't hit them than it was before.

Q.—Now, Mr. Debbage, I just draw your attention to the fact that this morning you told the Court on many occasions you could not state what happened to the roof, you could not state
10 what happened to the pipes, because you were not on the premises. . . . A.—That is perfectly true.

Q.— . . . on the 2nd of August, 1942? A.—That is right.

Q.—Doesn't that reply, doesn't that answer, doesn't that argument apply with equal force to the cans? A.—No.

Q.—Why? A.—Because I was able to ascertain from what was left there what had happened.

Q.—You saw the girders. They were left? A.—Yes, but...

Q.—You saw the pipes. They were left. You saw something which I thought was a piece of roof that had fallen on the
20 cans. You saw many cans stacked and piled in orderly fashion. I would like you to tell me how you can at this time say that any can was damaged by an explosion? A.—I don't think there is any difficulty in saying that I believe they were.

Q.—Many people have faith which they cannot justify? A.—Yes.

Q.—And I am asking you to tell us how you can state positively that any can on that top floor was damaged by explosion? A.—I am perfectly sure they were.

Q.—Your assertion, Mr. Debbage, does not help us, because it does not give us the reason. You were not there when a
30 number of events which could explain the damage to the cans occurred, admittedly, and I do not see how, and I ask you to tell the Court how, you can segregate one event and say that the damage to the cans was attributable to it? A.—Well, Mr. Hackett, when you look at a thing after something has happened, you get a pretty good idea of what happened.

Q.—Now, let us take a thing, in this case a can. Will you tell the Court of any can that you looked at and state why you
40 attribute the condition in which it was to explosion, knowing that there had been a fire there, knowing that the roof had caved in, knowing that the whole inside of the premises had been knocked about by water under high pressure? A.—What is it you want me to say?

Q.—I don't want you to say anything. I want you to tell the Court how you can say that any can. . . . A.—If you will put your question clearly, so that I can understand it, I will answer you.

Q.—Probably the Court will help me if I cannot state my question, but I think the question is clear enough. I would

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

like to have it read. (The question is read): A.—I would say this. . . .

Mr. Mann:—Just a minute, Mr. Debbage, before you say anything. The question is subject to objection. “Knowing that
10 “the whole inside of the premises had been knocked about by
“high-pressure water”, my friend says. I do not see that there is any proof that the whole of the inside of the premises was knocked about. There is proof that the Fire Chief fought his way through one door.

The Court:—The question might perhaps be modified in that respect, by saying, “Knowing that high-pressure water had “been played on the premises during the fire:”

20 By Mr. Hackett, K.C.:—

Q.—Will you answer the question in that form? A.—Well, there were cans some distance away from where they had been originally. They were bent.

Q.—That is all? A.—That is all.

Q.—I submit, Mr. Debbage, that if a beam from the roof fell upon a can it might bend it and if it fell on a number of cans they might fly about the whole compartment: you will agree with that? A.—Yes.

30 Q.—That being so, how can you say that a bent can was bent by explosion rather than by something falling on it? A.—Because I think it had been moved before anything fell on it.

Q.—But what justifies that belief? Why do you say that? A.—Experience; that’s all. I have seen it over and over again.

Q.—Now we are getting to where it is interesting. I want you to tell me where you have seen anything that would enable you to say that a lot of cans which were dispersed by an object falling upon them, like a beam from a burning roof, are different
40 in their appearance from a lot of cans that had been knocked about by an explosion? A.—Yes; the cans would show the marks of heat.

Q.—So your answer is, because the cans would show the marks of heat? A.—If a burning beam fell on them.

Q.—You are aware, are you not, that the third floor there was a roaring inferno for many hours on the 2nd of August, 1942? A.—I know the fire lasted some time, yes.

Q.—And you know that it was a fire of intense heat? A.—No, I don’t know that.

W. B. DEBBAGE (*for Plaintiff at Enq., Recalled*) *Cross-exam.*

Q.—You don't know that? A.—No.

The Court:—If you are sticking very closely to personal knowledge, he doesn't even know there was a fire there on the 2nd of August, because he wasn't there. That is a deduction also.
10 The point is that these expert witnesses, Mr. Hackett, necessarily depend, I think, just as a doctor does, on what is told them, to some extent, and they also depend, just as the doctor does, on what they themselves observe, what the doctors call their clinical observations, I think. You are very properly trying to distinguish what this witness found with his own observation upon which he is basing his conclusions?

Mr. Hackett:—Quite.

20 The Court:—And it is important that that distinction should be made, because the opinion of an expert is only so good as the reasons which support it.

By Mr. Hackett, K.C.:—

Q.—I wish you would tell his lordship of any other reason which you know, than the one which you have given, which enables a person to distinguish a can which has been damaged by explosion from one which has been damaged by objects falling upon it or which has been battered about by the play of water under high pressure upon it? A.—I don't think you could.
30

Q.—Then I put it to you, Mr. Debbage, was it not entirely a matter of guessing when you and Mr. Newill determined that 10% of the can loss should be attributed to explosion? A.—No, I don't think so.

Q.—Well, if you say that it is impossible to determine, by looking at a can, whether it has been damaged by explosion, by something falling on it or by being knocked around by water under high pressure, what did you rely upon to determine that 10% of these cans had been damaged by explosion? Can you tell us that? A.—By the very fact that a serious explosion had occurred in that room there. It had broken away parts and thrown them around and they struck the cans with full force. Now, that couldn't possibly be done without causing damage to those cans.
40

Q.—Did you see any cans that had been struck by the cover from the tank? A.—No.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

By Mr. Mann, K.C.:—

Q.—You may have seen them but you did not recognize them? A.—That is right.

10 By Mr. Hackett, K.C.:—

Q.—In any event, you are not basing your adjustment. . . .
A.—There was such a small allowance made for explosion in that damage. . . .

Q.—But my question is, you are not basing any claim that was made for cans on cans that were damaged by the flying cover of the tank? A.—I don't think so. I don't know whether the flying tank cover hit them or whether it didn't.

20 Q.—Now we come to One-Way Drums, \$1,095.85. What was the total drum loss? A.—That is another lot of drums that were outside, and the wall fell on them.

By The Court:—

Q.—Those are distinct from the returnable drums about which you told us a little while ago? A.—Yes. There were two lots.

30 Mr. Hackett:—I think they were drums of a cheaper kind, which remained with the purchaser, whereas the returnable drums were susceptible to being used many times.

Witness:—There were 205 of those drums, the one-way. Their value was \$1,461.14. The wall fell on them. They were badly broken up. So the explosion loss was placed at \$1,095.85.

Q.—(By Mr. Hackett): So all of the one-way drums were outside of the building? A.—I think so, yes.

40 Q.—Were they on the east side or south side? A.—I can't remember that now, Mr. Hackett.

Mr. Mann:—The photograph shows it.

Q.—(By Mr. Hackett): What percentage is that of the total? A.—I think it is 1/3 and 2/3, is it not, 75% and 25%?

Q.—(By Mr. Mann): The 75% is for explosion? A.—Yes.

By Mr. Hackett, K.C.:—

Q.—Then we come to Salvage. You told me that as regards

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

the building and the equipment you had no personal opinion to express: is that correct? A.—Yes.

Q.—That you had knowledge of the merchandise, which you have just discussed? A.—Yes.

Q.—Now how about Salvage? A.—This was an item of
10 expense incurred. . . .

Q.—Before we go into that, I want to know whether you can speak to that personally or whether you delegated that to somebody else? A.—I dealt with this, myself, personally. As a matter of fact, Mr. Newill and I both dealt with it.

Q.—Coming to Salvage, I see “Labor Cleaning Equip-
“ment and Building.” What was the total of this item before
you divided it between fire and explosion? A.—You have two
items of labor here. The first one is an item of \$1,034, of which
\$206.80. . . .

20 Q.—I have two items: one, \$941.80; and the other is
\$206.80, but I think there was something added to it? A.—One
of those should go to the machinery and equipment. The \$206.80
was applicable to merchandise.

Q.—Let us take the \$206.80. What was the total item?
A.—\$1,034.

Q.—And how did you come to allocate \$206.80 to merchan-
dise, bags, and so forth? Was it just rule of thumb? A.—No, I
don't think it was, because it is an odd figure.

30 Q.—Most figures are odd to me. So, what is it? A.—It
is 20% and 80%.

Q.—Now, why did you fix it at 20% and 80%, Mr. Deb-
bage? A.—Because there was a certain amount of work that
had to be done cleaning up the merchandise that had been dam-
aged by explosion. There was more merchandise damaged by
fire than there was by explosion. So it was divided 20%, 1/5, to
explosion, and 4/5 to the other.

40 Q.—It isn't your statement, is it, that the merchandise
damaged by fire was 80% of the total? A.—No, I don't say
that.

Q.—I know you didn't, — but I am just trying to find
out why you. . . . A.—We had an item there which it was im-
possible to. . . . I mean, it is almost impossible to divide those
items, no matter how you try, because the work is done simul-
taneously on a thing like that and it is impossible to tell how much
time an employee has put to cleaning up the explosion-damaged
merchandise and how much he has put to the other. You have
always got to come to some agreement as to what was what. In
this case it was put 4/5 to the fire loss and 1/5, — I think that
is right, — to explosion.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Q.—You said the total was \$1,034? A.—Yes. 20% of that is \$206.80.

Q.—(By the Court): It is 1/5 as against 4/5? A.—Yes.

10 Q.—(By Mr. Hackett):—Is it fair to say you just did the best you could, because you couldn't figure that out? You didn't take the proportion as between the loss of merchandise attributable to fire and the loss of merchandise attributable to explosion in setting the proportion of 80% fire and 20% explosion there? A.—No, I don't think so. I don't think it was.

Mr. Mann:—It was nearly 10 to 1.

Witness:—Yes.

20 Mr. Mann:—9 to 1.

Witness:—Yes.

By The Court:—

Q.—In any event, that was not the basis upon which you decided the apportionment of the salvage? A.—No. We had to simply try and figure out how much time would be put to one and how much to the other.

30 Q.—You knew some work was done with respect to the goods damaged by explosion and you thought it was reasonable to conclude the proportion of cost attributable to explosion on that item was approximately 1/5? A.—Yes.

By Mr. Hackett, K.C.:—

Q.—Now take up “Labor cleaning equipment and building”, \$941.80.? A.—You will have to ask Mr. Irving or Mr. Newill about that.

40 Q.—You don't know? A.—No; that is one of their items. I think it is Mr. Irving's.

Q.—Now, Mr. Debbage, you told us of your own personal relationship, which is restricted to merchandise and one item of salvage? A.—In connection with the merchandise.

Q.—Now, the building and the equipment you delegated to someone else? A.—Yes.

Q.—And you won't speak to those items personally?
A.—No.

Q.—Will you tell us what instructions you gave to Mr. Newill and Mr. Irving? A.—They were both asked to take up

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

the matter of establishing the whole loss and divide it into a loss caused by explosion and a loss caused by fire.

Q.—And you acted on the findings which they brought to you showing a fire loss and an explosion loss? A.—Yes. You must remember, I had to tell them they had to establish those
10 figures with representatives of the Sherwin-Williams Company, — they weren't to go out just by themselves and bring me in their own tabulated statement; they had to bring me back a tabulated statement that had been agreed to by representatives of the Sherwin-Williams Company.

Q.—Was that restricted to the fire loss or did it include the explosion loss too? A.—They were to establish both.

Q.—Did you give them any special instructions as to how one was to be determined as against the other? A.—No, not at all. I never do that.

20 Q.—Mr. Mann has reminded you that you had a prominent part to play in at least two big explosions in which he was engaged, one being the Shawinigan Chemical Company and the other the Curtis & Harvey loss at Rigaud. In both of those cases the question at issue was, what part was a fire loss? A.—Yes.

Q.—You had to do with the combustion-explosion question? A.—Yes, exactly the same as here.

Q.—That is the way you understood it, anyway? A.—Yes.

Q.—And you acted in consequence? A.—Yes.

30 Q.—Now, did you in your apportionment of the loss read the policy on which this action was brought? A.—I don't think so. I don't think I ever had that.

Q.—I am going to ask you if you were acquainted with any of the conditions of the policy, and I refer now, for instance, to "Other Property Insurance, Condition 3", which says, "In the event of a property loss to which both this insurance and other nsurance carried by the insured apply, herein referred to as a joint loss. . .", — did you take any communication of that? A.—I don't think so.

40 Mr. Mann:—You have read about a sixth of it, Mr. Hackett. Would you like to read it all? It is hardly fair to ask the witness if he read a sixth of the paragraph.

Mr. Hackett:—I am just asking him if he read the paragraph. He says he didn't. I will read him the balance if you wish.

The Court:—It would be much shorter and would save time if you just let him look at it.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

Mr. Hackett:—Yes. (Hands P-1 to witness).

Witness:—Which one, Mr. Hackett?

Mr. Hackett:—Condition 3 is the one I was reading.

10

Witness:—No, I don't remember reading that.

Q.—(By Mr. Hackett, continuing): You don't remember reading the policy at all, do you? A.—Not that one, no. I don't think I ever had it, Mr. Hackett.

Q.—Do you think it would have been helpful to you in directing Mr. Irving and Mr. Newill had you read it first? A.—No, I don't think so.

20 Q.—Why? A.—Because our work is just simply to get at the amount of the losses and to get at the actual value. That is our work.

Q.—(By Mr. Mann): Nothing to do with the apportionment? A.—Nothing to do with the liability of the company. If there is any question of that I go to somebody else who knows more about it than I do.

Mr. Mann:—Mr. Hackett asked him if he looked at the policy at all. There are about five different parts of it.

30

By The Court:—He said he doesn't remember seeing the policy at all.

Q.—That is so, isn't it? A.—I don't think I ever saw the policy.

By Mr. Hackett, K.C.:—

40 Q.—Do you know the difference between a broker and an agent? A.—No.

Q.—Mr. Mann made you say, many times, that Messrs. Johnson-Jennings were brokers? A.—No, he never asked me that.

Q.—Do you want to say that?

Mr. Mann:—I really did not mean to ask if they were brokers. I meant to ask if they were the ones who brokeraged the insurance. That's all I meant. I wasn't attempting to have a layman say who were brokers and who were agents and who were special agents.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

By Mr. Hackett, K.C.:—

Q.—Mr. Mann said to you, at Page 446, “Mr. Jennings is
“an insurance broker, is he not?” and he refers to him as a broker
on two or three other occasions. He is also the agent of a number
10 of the fire insurance companies that you represent?

Mr. Mann:—I hate to interrupt, but we are getting to a stage where there is no resemblance between the examination-in-chief and this questioning. My friend is starting to discuss, as I see it, the legal position of Johnson-Jennings as brokers, agents, special agents, agents for the assured, agents for the company, and I don't think this witness is competent to answer the question. Furthermore, I asked nothing in relationship to it.

20 The Court:—Perhaps Mr. Hackett will tell us why he asked the question.

Mr. Hackett:—I asked it because Mr. Mann has put in for a purpose, — I don't think he ever puts anything into a record unless he has a purpose, — several times, that Johnson-Jennings are brokers, which creates an entirely different relationship between them and the fire insurance companies from that which would exist if Jennings were their special agent.

30 The Court:—Are either you or Mr. Mann relying on anything that the firm of Johnson-Jennings did?

Mr. Hackett:—Yes, it does make a little difference. Everybody admits to have been notified about this fire on the Sunday except the Defendant.

Mr. Mann:—Except the Defendant?

40 Mr. Hackett:—Yes. Jennings notified the fire companies, apparently, on Sunday, and everybody was in the premises before we were.

The Court:—I understood there was no question as to the preliminary notifications in this case, that, in effect, there was no dispute on these formalities.

Mr. Hackett:—No, but it just turns out the other people were notified in the morning of Sunday and we were not notified

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Cross-exam.

until the afternoon or evening of Monday. I don't know that it is a matter of great importance, but I do point out that Messrs. Johnson-Jennings are the special agents of the companies on policies 10, 11 and 17, which aggregate nearly two and a half millions of dollars.

10

Mr. Mann:—I'm sure you are familiar with the Ice Supply Case. I think if you make them special agents you take away a great deal of authority.

The Court:—The case before me presents sufficient difficulties to me now to make me certainly reluctant to add any unnecessary problems to it. If it is not really essential for me to determine whether the firm of Johnson-Jennings were brokers or agents, please don't ask me to do so.

20

Mr. Hackett:—I am asking the witness if as a matter of fact Johnson-Jennings were the agents of the Aetna, Canadian Fire and Pearl Insurance Companies.

30

Mr. Mann:—That is highly objectionable. If it soothes my friend at all, I will declare that when I used any descriptive word in respect of Johnson-Jennings, whether it might have been "broker", "agent", "special agent" or any other type of agent, "general agent" or anything else, I merely used it as a description of Johnson-Jennings and without any motive or intention to prove they had any particular powers for and on behalf of the assured. I am quite contented to withdraw out of the record any qualifications I made of Johnson-Jennings.

The Court:—So far as I can see, the exact status of Johnson-Jennings is not a matter that will be relevant to the case I have to decide. The question, therefore, is ruled out as irrelevant.

40

Mr. Hackett:—I will ask the Court not to rule it out as irrelevant.

The Court:—In view of Mr. Mann's statement, just made, it seems to me the question is irrelevant.

Mr. Hackett:—It seems to me, with great deference, I may permitted to withdraw the question, but I don't think it is irrelevant.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Re-examin.

The Court:—It doesn't matter much whether I rule it out or you withdraw it, but let us strike the question out. I don't want to have to decide any question or problem the solution of which is not necessary in deciding the case.

10 Re-examined by Mr. J. A. Mann, K.C.:—

Q.—I have only one or two questions, and I assure you I will be very short. Mr. Hackett asked you, necessarily, if you relied upon other experts such as builders and, I take it, machinery men and engineers. . . . None of which you are: is that right? A.—That is right.

Q.—. . . . for the purpose of collating the information and preparing the adjustment of the loss? A.—Yes.

20 Q.—You do that and have done that during the course of your professional life? A.—Yes.

Q.—And, as a matter of fact, in this case I believe you said you appointed Mr. W. M. Irving, a builder? A.—Yes.

Q.—Has he had much experience, so far as you know? A.—Yes.

Q.—You have employed him for some years? A.—Yes.

Q.—For how long, in building losses? A.—Over twenty years.

30 Q.—And he did, on the 3rd of December, 1942, make a report to you with respect to both fire and explosion losses as he had determined them after investigation, in writing: is that correct? A.—Yes.

Q.—And is the report I show you his report to you?

Mr. Hackett:—If my friend cares to put in this document I am not going to object very strenuously, but I want it understood that this letter from Mr. Irving to Mr. Debbage does not make proof against my client.

40 Mr. Mann:—It is in answer to your question to the witness.

Mr. Hackett:—No.

The Court:—Is it necessary to put it in? We all know, surely, that Mr. Debbage cannot do everything when he is engaged in connection with a loss: first, because he has not got the time, and, secondly, he hasn't got the qualifications to cover every phase of the loss. Therefore he employs collaborators.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Re-examin.

Mr. Mann:—I am putting in that report because there is a little difference in figures between it and the report of the Foundation Company, which difference I will have to explain later.

10 Q.—You will produce that as P-17? A.—Yes.

Mr. Hackett:—Subject to objection.

The Court:—That report, P-17, is admitted provisionally and will not be accepted as evidence unless proved in the proper manner. It does not make proof of anything as yet except that a report was made by Mr. Irving to Mr. Debbage.

20 Mr. Mann:—In answer to Mr. Hackett, the witness said there was a report, and I am showing the report he received.

The Court:—That document is admitted as evidence that a report was made and received, but the facts related in the report are not proved by the production of the letter, obviously.

By Mr. Mann, K.C.:—

Q.—That is in regard to the building? A.—Yes.

30 Q.—You also engaged Mr. Newill? A.—Yes.

Q.—Mr. Newill is an engineer? A.—Yes.

Q.—With regard to the equipment? A.—Yes.

Q.—To determine the loss, from his point of view, after investigation, on the one hand by fire and on the other by explosion? A.—Yes.

Q.—Did you receive a written report from Mr. Newill, dated 25th of January, 1943, and, if so, will you produce it as P-18? Now, don't say Yes till I show it to Mr. Hackett.

40 The Court:—That report will be admitted provisionally, subject to the restrictions mentioned with reference to P-17.

Mr. Hackett:—And subject to my right of cross-examining Mr. Newill on it.

The Court:—Indubitably.

Mr. Hackett:—What is the amount of that?

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Re-examin.

Mr. Mann:—The figures are: \$4,508.68, loss by explosion; \$37,787.59, loss by fire. Mr. Newill has been examined, and those are the figures he gave us.

By Mr. Mann, K.C.:—

10

Q.—We know there was turpentine in tank No. 1. In respect to tank No. 2, Mr. Debbage, I show you Exhibit D-7-F. The one closest to you on that picture is tank No. 2? A.—Yes.

Q.—And the one further away at the back is tank No. 1? A.—Yes.

Q.—We had evidence earlier in this case, in November, that there had been some turpentine put into tank No. 2. Do you happen to remember how much of that turpentine was in tank No. 2, if any, that you included in the loss of turpentine? A.—
20 No, I don't remember. As I say, my recollection of the division of that amount was that approximately half of the turpentine was in tank No. 1 and the other half was either in tank No. 2 or outside the tank.

Q.—In the building? A.—Yes.

Q.—The \$957.78 was for all of the turpentine that you felt had been destroyed by explosion? A.—Yes.

Q.—And included the turpentine that was in tank No. 1? A.—Yes.

Q.—Do you know of anybody who could tell us how much
30 turpentine was outside of tank No. 1? A.—I think possibly Mr. Moffat.

Q.—\$957.78 is merely the proportion of loss ascribable to explosion, isn't it, with regard to turpentine? A.—\$957.78 is the proportion of the turpentine that we counted as destroyed by explosion.

Q.—But you included what was in tank No. 1 in counting all of it? A.—That is right.

Q.—You don't remember the amount that was in tank No.
40 2? A.—No.

Q.—And you don't remember what was outside the tank? A.—No.

Q.—Do you remember if there was any? A.—I understood that approximately half of the turpentine was in the tank that blew up and the other half was outside or was destroyed by the fire.

Mr. Hackett:—I just want to point out that Mr. Mann has led the witness to say exactly the contrary of what he said in cross-examination.

W. B. DEBBAGE (for Plaintiff at Enq., Recalled) Re-examin.

Mr. Mann:—I didn't think I was trying to do that.

Mr. Hackett:—I am simply pointing that out. Mr. Debbage said in cross-examination that the whole claim of \$957.78 was for turpentine in the tank that blew up, and now he has
10 changed his mind.

Witness:—I haven't changed my mind at all.

By Mr. Mann, K.C.:—

Q.—Or were you mistaken? A.—I said I understood that one-half of the whole of the turpentine was in that tank and the total was double \$957.78. The other \$957.78 was in the other tank or outside the tank.

20 Q.—Well, the value of the turpentine in the No. 1 tank, subject to the value Mr. Moffat may give us in respect of this turpentine, was this amount of \$957.78: is that the situation?
A.—Yes.

The Court:—And if that is so, under the terms of the policy you have no claim against the explosion insurer for that amount?

30 Mr. Mann:—No; and that is all I am pursuing the matter for. I intended to ask Mr. Moffat what was the value of the 850 gallons of turpentine in tank No. 1 and then to make a retraxit.

The Court:—Is it now clear that according to Mr. Debbage the turpentine which he attributes to loss by explosion was what was contained in tank No. 1?

Witness:—Yes.

40 By Mr. Hackett, K.C.:—

Q.—And nothing more? A.—Nothing more.

By The Court:—

Q.—That is so? A.—Yes.

Mr. Mann:—I have spoken to Mr. Moffat and verified that \$957.78 was the value of the turpentine in tank No. 1, and I withdraw that amount from the claim.

I. FITZGERALD (for Plaintiff at Enq., Recalled) Exam. in chief

The Court:—Because of the terms of the policy?

Mr. Mann:—Yes.

The Court:—You will no doubt file a written retransit,
10 just to make it clear?

Mr. Mann:—Yes. I would ask my friend to remind me.

And further deponent saith not.

H. Livingstone,
Official Court Stenographer.

20

DEPOSITION OF IVOR P. FITZGERALD

Recalled and further examined on the part of Plaintiff.

On this 7th day of January, in the year of Our Lord nine-
teen hundred and forty-six, personally came and appeared, Ivor
P. Fitzgerald, a witness already sworn and examined on the part
of Plaintiff and who being now recalled for further examination,
30 on his oath already taken, doth depose and say as follows:—

Examined by Mr. J. A. Mann, K.C.:—

Q.—You have been sworn? A.—Yes.

Q.—I have just about one question to ask you, under the
same oath: — What did you say your position was with the
defendant company? A.—Chief inspector.

Q.—What does that imply? A.—The supervision and
charge of the inspection department.

40 Q.—What are you by profession? Are you an engineer?
A.—Engineer in training. I am considered an engineer but not
a professional engineer.

Q.—You have had a great deal of experience in engineer-
ing? A.—Yes.

Q.—Mechanical engineering, I take it? A.—Yes.

Q.—Now, with respect to these many declarations or writ-
ten statements of witnesses, the statements which have been
filed, all by Mr. Hackett except one which I filed, as to the facts
of what happened on the 2nd of August, 1942, were you present
when these statements were made, yourself? A.—Yes.

I. FITZGERALD (for Plaintiff, at Enquiry, Recalled) Exam. in chief

Q.—And who else, representing or having relationship with your company? A.—With our company?

Q.—Yes, with relationship to your company? A.—Mr. Parker.

10 Q.—Who is he? A.—The engineer of the Hartford Steam Boiler Inspection Company.

Q.—At Hartford? A.—Yes.

Q.—He came up here? A.—Yes.

Q.—And he was also present? A.—Yes.

Q.—Have you any recollection as to who requested the Sherwin-Williams Company to hold this examination of these witnesses? A.—We did.

Q.—You did. A.—Yes.

Q.—And you were furnished copies? A.—Yes.

20 Q.—I would like you to look at a letter signed by yourself, a duplicate original, dated August 27th, 1942, addressed to the Sherwin-Williams Company, of which a copy appears to have been sent to Mr. Jennings, according to its terms, and say if you signed and sent that letter to the Sherwin-Williams Company?

While Mr. Hackett is examining the letter, would you mind telling me who Mr. McKeon is? A.—He is chief adjuster with the Hartford Steam Boiler Inspection Company.

30 Q.—Here or in Hartford? A.—In Hartford.

Q.—Was he present at some of the interviews? A.—Yes.

Q.—So at the whole or at least some of them there was at least one of your representatives present and at some there were as many as three present? A.—Yes.

Q.—The Hartford Steam Boiler Inspection & Insurance Co., with which Mr. Parker and Mr. McKeon are connected, is not the Defendant. Has it any relationship with the Defendant?

40 Mr. Hackett:—I object to evidence of any relationship between Hartford Steam Boiler Inspection Company and somebody else.

Mr. Mann:—With the Defendant?

The Court:—If a representative of the Hartford Steam Boiler Inspection and Insurance Co. was present at some of these occasions when employees of Sherwin-Williams made statements which were taken down in writing and signed by the em-

I. FITZGERALD (for Plaintiff, at Enq., Recalled) Exam. in chief

ployees, it seems to me relevant to know whether or not there is a connection.

Mr. Hackett:—He was present, being there as a representative of the Defendant.

10

The Court:—Well, if that is admitted that is all that is needed.

By Mr. Mann, K.C.:—

Q.—Is that correct, what your Counsel says? A.—Yes.

Q.—That Mr. McKeon and Mr. Parker were present, with you and otherwise, by themselves, throughout the examinations of these witnesses when the statements were being taken, as
20 representatives of the defendant company? A.—That is correct.

Q.—Look at the letter you wrote and signed and sent to the plaintiff company. It bears your signature, doesn't it? It is a duplicate original? A.—That is right; that is a copy.

Q.—And that is your signature? A.—Yes.

Q.—Will you produce it as Exhibit P-19? A.—Yes.

Mr. John T. Hackett:—No questions.

30

And further deponent saith not.

(Court now adjourns to 10.45 a.m. Jan. 8, 1946).

H. Livingstone,
Official Court Stenographer.

40
