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NOTICE OF APPEAL.

Filed June 3, 1927.

In Chancery of New Jersey

Between	
MAAS & WALDSTEIN COMPANY, *Complainant,*	*On Bill, &c.*
and	*Notice of Appeal.*
HENRY V. WALKER, *et als., Defendants.*	

The defendants hereby appeal from the final decree made in this Court by the Chancellor on the advice of Vice-Chancellor Berry in the above-stated cause on May 28, 1927, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated June 2, 1927.

McCARTER & ENGLISH,
Solicitors for and of Counsel with Defendants.

I conceive there is good cause for appeal in the above-stated cause.

CONOVER ENGLISH,
Of Counsel with Defendants.

PETITION OF APPEAL

Filed June 23, 1927.

New Jersey Court of Errors and Appeals

Between	
MAAS & WALDSTEIN COMPANY, *Complainant-Respondent,*	*On Bill, &c.*
and	*On Appeal.*
HENRY V. WALKER and MINER EDGAR COMPANY, *Defendants-Appellants.*	*Petition of Appeal.*

To the Honorable Court of Errors and Appeals in the last resort in all causes:

The petition of Henry V. Walker and Miner Edgar Company, the appellants in the above-stated cause, respectfully shows that your petitioners find themselves aggrieved by a final order made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, on the advice of Honorable Maja Leon Berry, one of the Vice-Chancellors of New Jersey, bearing date May 26, 1927, wherein the said Maas & Waldstein Company was complainant, and the said Henry V. Walker and Miner Edgar Company were defendants, in this respect, to wit: that the said decree, after reciting that the Court was of the opinion that the formulae or processes of the complainant company used in connection with its manufacture of lacquers, enamels, thinners and nitro-cellulose solutions, were and are secret formulae or processes, and that

the information as to the same obtained by the defendant, Henry V. Walker, was obtained in confidence and upon trust, that no part of it should be disclosed or imparted to others without the consent of the complainant, and that the defendant, Miner Edgar Company, is a competitor of the complainant and intends to enlarge its field of activities in connection with the manufacture of lacquers, enamels, etc., and employed the defendant, Henry V. Walker, and others, who were also employees of the complainant company, with the intention and design of acquiring the complainant's trade secrets for use in competition with the complainant, and that the defendants should be restrained from using or disclosing to any person the secret formulae, processes and other trade secrets of the complainant and from representing to the trade that they can manufacture or sell, or are manufacturing or selling according to these formulae, and especially from using or disclosing to any person any of the secret formulae, processes or other trade secrets of the complainant, and after further reciting that it appears that the defendant, Henry V. Walker, upon leaving the employ of the complainant company, removed from its office a number of books, papers, invoices and records containing confidential information, and that the defendants should be ordered to return all such books, papers and documents, and that the said defendants should be enjoined from using or disclosing to any person any confidential information contained therein, orders, adjudges and decrees that the information obtained by the defendant, Henry V. Walker, as to the formulae or processes used by Maas & Waldstein Company in connection with the manufacture by it of

lacquers, enamels, thinners and nitro-cellulose solutions was obtained in confidence and upon the trust that it should not be disclosed or imparted to others without the consent of complainant, and further orders, adjudges and decrees that the said defendants be enjoined and restrained from using or disclosing to any person any confidential information received or obtained by said Henry V. Walker while in the employ of the Maas & Waldstein Company as to the formulae or processes of said company for the manufacture by it of lacquers, enamels, thinners and nitro-cellulose solutions, the cost of production of said lacquers, enamels, thinners and nitro-cellulose solutions, the prices at which the same were sold or other trade secrets of the complainant, and from representing to anyone that the defendants or either of them, or the employees, agents or assigns of either of them can manufacture or sell or are manufacturing or selling lacquers, enamels, thinners, or nitro-cellulose solutions by the same formulae or processes as those used by the Maas & Waldstein Company, and further orders that copies of secret formulae and processes and other trade secrets enclosed in an envelope properly sealed and marked on the outside thereof be filed in the office of the Clerk of this Court and that no one shall be allowed inspection thereof except by order of this Court, and further orders, adjudges and decrees that the defendants return to complainant company all books, papers, invoices, records and documents taken by them or either of them, and that the defendants be enjoined from using or disclosing to any person or persons any confidential information contained therein, and further orders, adjudges and decrees that the defendants pay to the complainant Henry V. Walker, agreed to conserve for the complainant company the said statements, invoices, codes and formulas for the complainant and agreed not to exhibit or divulge the secret and confidential information contained therein to persons not connected with the complainant company, and particularly to persons engaged in competition with the complainant company.

9. The defendant Miner Edgar Company is engaged in the manufacture and sale of, and deals in pyroxolin solutions, lacquers and lacquer enamels, acetates and other chemicals. The said Miner Edgar Company is in competition in this business with the complainant company.

10. On September 28, 1925, defendant Henry V. Walker appeared for the last time at his former office in the complainant's factory and on that date he removed and took away his desk and chair. On or about October 1, 1925, he took office and employment with the defendant Miner Edgar Company as president and general manager of the said Miner Edgar Company.

11. Sometime after February 2, 1925, the defendant Henry V. Walker caused the factory copies of the invoices of shipments made by the complainant company to be sorted over and separated, and all of said invoices for the year 1924 to be removed from the filing cabinet in which they were kept, and he took the said 1924 invoices away from the factory and they have not been returned. These invoices show the names of complainants' customers and the quantity, price per unit and total price for each shipment.

12. At about the time when the said invoices were removed from the complainant's factory

as aforesaid, there also disappeared from the factory certain tabulated cost sheets and a certain book containing secret and confidential information relating to the complainant's business. The said tabulated cost sheets and the said book have not since been returned to the complainant. The complainant believes and alleges that they were removed from the complainant's factory by the defendant Henry V. Walker.

13. The said tabulated cost sheets contained records of the complainant's business for several years prior to and including the year 1924. On these sheets the amounts charged monthly to the different expense accounts of the complainant's business appeared, and also the total of the monthly costs and the total sales for each month. Those sheets contained a monthly calculation of the factory operating profit of the complainant.

14. The said book which was removed from the complainant's factory contained various secret and confidential information belonging to the complainant. It was a loose leaf book in which pages containing such secret and confidential data had been inserted from time to time during a period of several years prior to the year 1924. The data contained in said book was collected and the book was kept at the order of the president of the complainant company and was kept in a safe in the office of the president. The said book contained a secret and confidential code to the chemical formulas owned by the complainant; separate pages covering each raw material used by complainant for each year showing the amounts purchased, the amounts used and the balance on hand at the end of each year; separate pages for each of the intermediate products prepared and used by the complainant showing the

costs of preparing such intermediates; tables showing the cost per gallon and the selling price of the principal lacquers and other finished products made and sold by the complainant; annual balance sheets of the business of the complainant; tables showing the preparation of hydrocarbons, high and low boiling esters and other ingredients of certain standard lacquers made and sold by the complainant.

15. The more than twelve hundred chemical formulas owned by the complainant have been, during the times herein mentioned, and still are, kept in a cabinet in the office occupied by the defendant until September 28, 1925. The formulas are on cards, and the confidential numbers used by complainant for reference to the formulas appear on the cards. The defendant Henry V. Walker always had access to these cards.

16. On October 1, 1925, the defendant Henry V. Walker accepted office and employment with the defendant Miner Edgar Company, becoming on that date president and general manager of the said defendant Miner Edgar Company.

17. The possession and use by the defendants or either of them of the said invoices, tabulated cost sheets, and of the said book and of copies of said formulae or of any of said formulae and of the code numbers used by complainant for reference to the formulae will cause irreparable injury to the complainant in its business and will afford the defendants an unfair weapon for use in competition with the complainant.

The complainant has no adequate remedy at law and therefore prays:

1. That Henry V. Walker and Miner Edgar Company, a corporation, who are the defendants

to this suit, may answer this Bill of Complaint and each statement therein made.

2. That a decree be made by this Honorable Court ordering and directing the defendants or one of them, to return and deliver over to complainant the factory copies of 1924 invoices of sales made by the complainant, the tabulated yearly cost sheets of the complainant's business and the loose leaf book containing the secret code to complainant's chemical formulas and other confidential and secret data and information concerning complainant's business, and also any and all other documents, formulas, lists of customers, and papers containing secret and confidential information concerning complainant's business which may be in the possession or custody of the defendants or either of them; and ordering and directing the defendants and each of them to return and deliver over to the complainant any and all copies made from the said invoices, tabulated yearly cost sheets, the said book, and any other documents, formulas, lists of customers and papers, which may be or may have been in the possession of the defendants or either of them; and enjoining the defendants and each of them from using or divulging to any other person or to each other any or any part of the secret and confidential code abbreviations and code numbers, and formulas relating to the complainant's business.

3. That a writ of subpoena may issue, commanding said defendants to answer this Bill of Complaint and to abide by such decree as this Court may make in the premises.

PITNEY, HARDIN & SKINNER,
Solicitors for and of
Counsel with Complainant.

ant its costs in said suit to be taxed together with a counsel fee of $2,500.00 to be included in said costs.

And your petitioners humbly appeal from the whole and every part of the said decree of the Chancellor which decrees, as aforesaid, on the ground that the same is erroneous for that the decree of the Chancellor should have adjudged that the complainant was not entitled to the relief sought and prayed for in its bill of complaint, and that the said bill should be dismissed.

Your petitioners, therefore, pray that the said decree of the said Chancellor may be reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

McCARTER & ENGLISH,
Solicitors of Appellants.

CONOVER ENGLISH,
Of Counsel with Appellants.

ANSWER TO PETITION OF APPEAL.

Filed July 2, 1927.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

MAAS & WALDSTEIN COMPANY,
Complainant-Respondent,

and

HENRY V. WALKER and MINER EDGAR COMPANY,
Defendants-Appellants.

On Bill, etc.

Answer to Petition of Appeal.

The answer of the above-named respondent to the petition of appeal of the above-named appellant.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless says and admits that a decree was on the 26th day of May last past made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity and it prays that the same may be affirmed with costs to be adjudged to this respondent.

PITNEY, HARDIN & SKINNER,
Solicitors for and of Counsel
with the Respondent.

BILL OF COMPLAINT.

Filed October 7, 1925.

IN CHANCERY OF NEW JERSEY.

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey:

The Complainant, Maas and Waldstein Company, of Newark, New Jersey, respectfully shows that:

1. The complainant is a corporation organized and existing under the laws of the State of New Jersey.

2. The defendant Miner Edgar Company is a corporation organized and existing under the laws of the State of New Jersey.

3. The complainant was incorporated on December 30, 1904, ever since which time the complainant has been, and it still is dealing in, and engaged in the manufacture and sale of pyroxolin solutions, lacquers and lacquer enamels, acetates and other chemicals.

4. Prior to February 2, 1925, and ever since December 7, 1915, the defendant Henry V. Walker was president of the complainant company and was in active management of the factory of the complainant company in Newark, New Jersey, and in almost daily attendance at his office in the said factory.

5. On February 2, 1925, at a special meeting of the Board of Directors of the complainant company, a resolution was adopted removing the defendant Henry V. Walker as president of the complainant company, to take effect immediately.

6. Thereafter quo warranto proceedings were instituted in the New Jersey Supreme Court by the defendant Henry V. Walker as relator, against Milton A. Maas, who was elected by the Board of Directors of the complainant company to succeed the said Henry V. Walker as president of the complainant company. The petition of the relator in the said quo warranto proceedings was filed on March 9, 1925. The proceedings are still pending. The purpose of said proceedings is to determine the title of the said Milton A. Maas, and also of the said Henry V. Walker, to the office of president of the complainant company.

7. Subsequent to February 2, 1925, and until September 28, 1925, the defendant Henry V. Walker continued to attend at his office in the complainant's factory, but he was not considered by the complainant or by its employees as the president of complainant company. For some weeks subsequent to February 2, 1925, he spent the better part of each day in his office at the complainant's factory, but during the remainder of the period up to September 28, 1925, it was the practice of the defendant Henry V. Walker to appear at the said office each morning and to remain only a few minutes.

8. As president of the complainant company, the defendant Henry V. Walker was paid an annual salary. As president and factory manager of the complainant company, the said defendant Henry V. Walker was entrusted with certain secret and confidential statements, invoices, codes, formulas and tables relating to the business of complainant company. In consideration of his employment and of the salary paid to him by the complainant company, the defend-

ANSWER.

Filed November 20, 1925.

IN CHANCERY OF NEW JERSEY.

Between

MAAS & WALDSTEIN COMPANY, *Complainant,*

and

HENRY V. WALKER, *et al., Defendants.*

On Bill.

Answer.

The Answer of the defendants Henry V. Walker and Miner Edgar Company says that:

1. They admit paragraphs 1, 2, 3, 4, 10 and 16 of the Bill of Complaint.

2. Answering paragraph 5 of the Bill, they admit said paragraph except that they deny that the resolution attempting to remove Henry V. Walker as president of the complainant was legal or effective or that he was legally removed as such president.

3. Answering paragraph 6 of the Bill, they admit said paragraph except that they deny that Milton A. Maas was legally elected president of the complainant company.

4. Answering paragraph 7 of the Bill, they deny that defendant Henry V. Walker was not considered by the complainant or its employees as president of complainant company subsequent to February 2, 1925, and, except as herein denied, they admit the balance of said paragraph.

Answer.

5. Answering paragraph 8 of the Bill, they admit that Henry V. Walker was paid an annual salary as president of the complainant company and was president and manager of the complainant company, and, except as herein admitted, they deny the said 8th paragraph.

6. Answering paragraph 9 of the Bill, they deny said paragraph.

7. Answering paragraph 11 of the Bill, defendants say that in March of 1925 the complainant company was about to remove from its files and destroy the said invoices, and that defendant Henry V. Walker, for the purpose of preserving certain of them as evidence in an accounting suit upon Bill of Complaint filed in this Court, wherein Henry V. Walker is complainant and Maas & Waldstein Company, Frederick S. Magnus, Milton A. Maas and Otto P. Seher are defendants, caused certain of said invoices to be removed to his own home with the full knowledge of the complainant, its officers and agents, and, except as herein admitted, defendants deny said 11th paragraph, and defendants say that said invoices are not secret, that from their very nature they are sent out to the whole world, and that copies thereof are, and have been, distributed to many salesmen in the complainant company.

8. Answering paragraphs 12, 13, 14, 15 and 17 of the Bill, defendants say that the said tabulated cost sheets and the said loose leaf book contain no secret and confidential information relating to the complainant's business, that the complainant neither owned, nor owns, any chemical formulae whatever, that the formulae mentioned were in no sense secret or confidential,

Answer.

and are not records of chemical formulae but a mere set of mixing directions for the Manufacturing Department, all of the ingredients of which are well known to lacquer manufacturers generally, and that the codes mentioned are not secret codes, but merely a set of abbreviations to designate the raw materials used in the manufacture of the company's products, and, except as herein admitted, defendants deny said 12th, 13th, 14th, 15th and 17th paragraphs.

Defendants pray to be hence dismissed with their costs and charges, in this behalf most wrongfully sustained.

McCARTER & ENGLISH,
Solicitors for and of Counsel
with Defendants.

REPLICATION.

Filed December 8, 1925.

IN CHANCERY OF NEW JERSEY.

59-206.

Between

MAAS & WALDSTEIN COMPANY, *Complainant,*

and

HENRY V. WALKER and another, *Defendants.*

On Bill, etc.

Replication.

The complainant joins issue on the answer of defendants.

PITNEY, HARDIN & SKINNER,
Solicitors for Complainant.

AFFIDAVITS.

Filed October 7, 1925.

IN CHANCERY OF NEW JERSEY.

Between

MAAS & WALDSTEIN COMPANY, *Complainant,*

and

HENRY V. WALKER and an other, *Defendants*

On Bill, etc.

Affidavits.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.*

I, M. Edward Kane, residing at No. 9 Shippen street, Weehawken, New Jersey, being duly sworn according to law, on my oath depose and say that:

1. I have been employed as office manager by Maas & Waldstein Company, complainant in the above suit, for six years, acting as secretary of the defendant Dr. Henry V. Walker for nearly all of said period.

2. On or about February 2, 1925, Mr. Magnus informed me that Dr. Walker was no longer president of the complainant company.

3. Ever since the year 1919 the defendant Dr. Henry V. Walker has been in active management of the factory of the complainant company in Newark, New Jersey, and in almost daily attendance at his office in the said factory.

4. Subsequent to February 2, 1925, and until September 28, 1925, the defendant Dr. Henry V. Walker continued to attend at his office in the complainant's factory. For some weeks subsequent to February 2, 1925, he spent the better part of each day in his said office, but during the remainder of the period up to September 28, 1925, it was the practice of the defendant Dr. Henry V. Walker to appear at the said office nearly every morning and to remain only a few minutes.

5. On September 28, 1925, the defendant Dr. Henry V. Walker appeared for the last time at his office in the complainant's factory and on that date he removed and took away his desk and chair.

6. Some time after February 2, 1925, the defendant Dr. Henry V. Walker requested me to have the complainant's factory copies of the invoices of shipments made by the complainant company to be sorted over and separated and to have all of said invoices for the year 1924 removed from the filing cabinet in which they were kept. This was done. Since that time the factory copies of the 1924 invoices have not been at the factory of complainant. These invoices show the names of complainant's customers and the quantity, price per unit and total price for each shipment.

7. At about the time when the said invoices were removed from the complainant's factory, there also disappeared from the factory certain tabulated cost sheets and a certain book containing secret and confidential information relating to the complainant's business. The said

tabulated cost sheets and the said books have not since been at the complainant's factory.

8. On one occasion, I said to Dr. Walker that if he would let me have the said book, I would enter therein the data for the year 1924 in the same manner as the same had been entered therein for previous years. Dr. Walker said that he would bring the book in and let me have it for this purpose. He never did so.

9. The said tabulated cost sheets contain records of the complainant's business for several years prior to and including the year 1924. On these sheets the amounts charged monthly to different expense accounts of the complainant's business appear and also the total of the monthly costs and the total sales for each month. These sheets contain a monthly calculation of the factory profit of the complainant.

10. The said book which was removed from the complainant's factory contained various secret and confidential information belonging to the complainant. It was a loose leaf book in which pages containing such secret and confidential data had been inserted from time to time during a period of several years prior to the year 1924. The data contained in said book was collected and the book was kept at the order of the president of the complainant company and was kept in a safe in the office of the president. The said book contained a secret and confidential code to the chemical formulas owned by the complainant; separate pages covering each raw material used by complainant for each year showing the amounts purchased, the amounts used and the balance on hand at the end of each year; separate pages for each of the intermediate products pre-

pared and used by the complainant showing the costs of preparing such intermediates; tables showing the cost per gallon and the selling price of the principal lacquers and other finished products made and sold by the complainant; annual balance sheets of the business of the complainant; tables showing the proportions of hydrocarbons, high and low boiling esters and other ingredients of certain standard lacquers made and sold by the complainant.

M. E. KANE.

Subscribed and sworn to before me
this 6th day of October, 1925.

KENNETH C. HAND,
A Notary Public of New Jersey.

STATE OF NEW JERSEY,
COUNTY OF ESSEX. } *ss.*

I, James J. Dowd, residing at No. 235 Washington avenue, Newark, New Jersey, being duly sworn according to law, on my oath depose and say that:

1. I am employed by Maas & Waldstein Company in the office of the factory of said company in Newark, New Jersey, and have been so employed since the year 1915.

2. Subsequent to February 2, 1925, I helped others sort out the factory copies of invoices of Maas & Waldstein Company for the year 1924. The said 1924 invoices were taken to Dr. Henry V. Walker in his office.

3. At about noon of the day on which the said 1924 invoices were separated from the 1925

invoices, I packed the same and took them to Dr. Walker; later I saw Dr. Walker take certain packages from his office, place them in an automobile and drive away; since that time the 1924 invoices have been missing from said office of Maas & Waldstein Company.

JAMES J. DOWD.

Subscribed and sworn to before me
this 6th day of October, 1925.

KENNETH C. HAND,
A Notary Public of New Jersey.

STATE OF NEW YORK,
COUNTY OF NEW YORK. } *ss.*

I, Milton A. Maas, residing at 31 W. 58th St., N. Y. C., being duly sworn according to law, on my oath depose and say that:

1. For many years, since prior to 1915, I have been, and still am, a stockholder and director of Maas & Waldstein Company, complainant in the above suit.

2. The complainant is a corporation organized and existing under the laws of the State of New Jersey, incorporated December 30, 1904, ever since which time the complainant has been, and it still is dealing in, and engaged in the manufacture and sale of pyroxolin solutions, lacquers and lacquer enamels, acetates and other chemicals.

3. I am informed and believe that Miner Edgar Company is a corporation organized and existing under the laws of the State of New

Jersey. Being familiar with the trade, I know that the said Miner Edgar Company is engaged in the manufacture and sale of, and deals in pyroxolin solutions, lacquers and lacquer enamels, acetates and other chemicals, and is in competition in this business with the complainant company.

4. Prior to February 2, 1925, and ever since December 7, 1915, the defendant Dr. Henry V. Walker was president of the complainant company and in active management of its factory in Newark, New Jersey.

5. On February 2, 1925, at a special meeting of the Board of Directors of the complainant company, a resolution was adopted removing the defendant Henry V. Walker as president of the complainant company, to take effect immediately.

6. Thereafter, *quo warranto* proceedings were instituted in the New Jersey Supreme Court by the defendant Henry V. Walker, as relator, against me, I having been elected by the Board of Directors of the complainant company to succeed Henry V. Walker as president of the complainant company. The petition of the relator in the said *quo warranto* proceedings was filed March 9, 1925. The proceedings are still pending. The purpose of said proceedings is to determine my title, and also the title of the said Henry V. Walker, to the office of president of the complainant company.

7. On or about February 2, 1925, the employees of the complainant were informed, by my order, that the defendant Henry V. Walker was no longer president of the complainant company.

8. As president of the complainant company, the defendant Henry V. Walker was paid an annual salary. As president and factory manager of the complainant company, the defendant Henry V. Walker was entrusted with certain secret and confidential statements and invoices, codes, formulas and tables relating to the business of complainant company. In consideration of his employment and of the salary paid to him, the defendant Henry V. Walker expressly or impliedly agreed to conserve for the complainant company the said statements, invoices, codes and formulas for the complainant and agreed not to exhibit or divulge the secret and confidential information contained therein to persons not connected with the complainant company, and particularly to persons engaged in competition with the complainant company.

9. On or about October 1, 1925, I saw a copy of a printed notice or circular which I was informed and believe had been sent through the mail by the defendant Miner Edgar Company. This notice or circular was dated September 30, 1925, and contained the announcement that Henry V. Walker had accepted the position and assumed the duties of president and general manager of the said Miner Edgar Company.

MILTON A. MAAS.

Subscribed and sworn to before me
this 6th day of October, 1925.

FREDERICK A. THAYER,
Notary Public, New York County.
Clerk's No. 176, Register's No. 6117.
Commission expires March 30, 1926.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.*

I, Otto P. Seher, residing at No. 110 Montclair avenue, Newark, New Jersey, being duly sworn according to law, on my oath depose and say that:

1. I am foreman of the factory of complainant at Newark, New Jersey, and have been such for upwards of eleven years. For several years prior to February 2, 1925, I worked as such foreman under Henry V. Walker, president of the complainant company.

2. Factory copies of 1924 invoices of complainant, tabulated yearly cost sheets made and kept by the complainant and a certain book containing secret and confidential information relating to the complainant's business, have disappeared from the complainant's factory. The information contained in these papers and documents is secret and confidential. The possession and use of these papers and documents by a competitor of the complainant would be of irreparable injury to the complainant in its business. Use of these papers and documents by a competitior of the complainant would enable such competitor to approach all of the customers of the complainant with exact knowledge of the prices and terms granted to such customers by the complainant and with exact knowledge of the preparations of various raw materials and ingredients used by the complainant in preparing for its trade, certain standard lacquers and other products, and would equip such competitor with exact and detailed information of the factory costs of operating complainant's business and of the profits made by complainant and of all con-

fidential and secret details about complainant's business.

3. The complainant owns and keeps on file in a cabinet in the office formerly occupied by the defendant Henry V. Walker its chemical formulas used in the manufacture of its products, which formulas number more than twelve hundred. The formulas are kept on cards in the said cabinet. The formulas are designated by the complainant in intrafactory and interdepartmental communications by confidential code numbers, which numbers appear on the cards with the formulas in the said cabinet. The defendant Henry V. Walker always had access to these cards. The said formulas and the code numbers thereof are secret and confidential information belonging to the complainant and its employees. Possession of copies of said formulas and the code numbers thereof by a competitor of the complainant would be of irreparable injury to the complainant and would equip such competitor with such detailed knowledge of the products and methods of manufacture of the complainant as could not be secured by such competitor in any other manner.

4. My office at the factory is next to the office formerly occupied by Dr. Henry V. Walker. His office was enclosed by partitions of wood and frosted glass. It was possible to see shadows and motions within Dr. Walker's office from my office outside.

5. Subsequent to February 2, 1925, I often saw the shadow of Dr. Walker at the cabinet in his office in which were kept the more than twelve hundred chemical formulas owned by the complainant. It often seemed to me, from the

position and motion of such shadow, that Dr. Walker was examining the cards containing the formulas and making notes thereof or copies therefrom.

OTTO P. SEHER.

Subscribed and sworn to before me
this 6th day of October, 1925.

KENNETH C. HAND,
A Notary Public of New Jersey.

ANSWERING AFFIDAVITS.

IN CHANCERY OF NEW JERSEY.

Between	
MAAS & WALDSTEIN COMPANY, *Complainant,*	*On Bill.*
and	*Answering Affidavits.*
HENRY V. WALKER and another, *Defendants.*	

STATE OF NEW JERSEY, COUNTY OF ESSEX. } *ss.*

HENRY V. WALKER, being duly sworn, says:

I am one of the defendants named in the above-entitled suit.

I have read the Bill of Complaint and the affidavits of Messrs. Kane, Dowd, Maas and Seher submitted therewith.

For 15 years prior to February, 1925, I had been an officer of the complainant company, having been secretary from 1909 to 1915, and president from that time on. During all that time I also was a director of the company, and since 1915 have been a one-third stockholder of the company.

In February of 1925 the remaining directors, consisting of Messrs. Maas and Magnus, purported to hold a directors' meeting, I at that time being confined to my house by illness, and without notice to me of the object of the meeting, in which they attempted to remove me as president of the company. Upon being notified

thereof I at once denied the legality of the attempted removal and obtained counsel and brought a suit in the New Jersey Supreme Court for a writ of *quo warranto,* designed to restore me to the office of president and to remove therefrom the said Maas, who claims to be president in my place. Said suit is pending and undetermined.

Notwithstanding that the directors had endeavored to remove me as president, I continued to return to my office at the factory plant of the company in Newark, and, because of the fact that I am a director and large stockholder, endeavored in every way to further the interests of the company.

During the late winter and spring of 1925, through arrangements made between counsel representing the Maas & Waldstein Company and myself, I made an examination of the books of the complainant company. It was the practice of the company to maintain a set of financial books at the factory in Newark, which books were based on the original records on file in the factory, and also an auxiliary set of books at the New York office.

As a result of my examination of the books I discovered certain irregularities on the part of my co-directors, Messrs. Maas and Magnus, and on May 19, 1925, filed a Bill of Complaint in this Court praying an accounting and that Magnus and Maas and Seher, who are two of the affiants in the present suit, be decreed to restore to the company certain moneys which I alleged in my bill were due and owing by them to the complainant company.

Following my attempted removal as president I brought an action at law in the Supreme Court

of New Jersey against the complainant company for the payment of my salary for the balance of the year for which I had been elected, which suit is pending and undetermined.

In the complaint in the said action at law I alleged that I had been employed by the complainant company as its president and general manager. The answer of the complainant as defendant in that suit attempted that I had been elected president but denied the remaining allegations. I now observe that in paragraph 8 of the Bill of Complaint in this suit, as well as in paragraph 8 of the affidavit of Maas, it is now stated that I was the president and factory manager of the complainant company, and in paragraph 3 of the affidavit of Kane it is stated that I was in active management of the factory of the complainant company in Newark.

It is not true, as alleged in paragraph 8 of the bill, and in paragraph 8 of the affidavit of Maas, that I was entrusted by the complainant company with certain secret and confidential statements and invoices, codes, formulae and tables relating to the business of the complainant company.

The fact is that none of those things were in existence when I came to the company but were created and installed by me.

I am by training and education, a professional chemist, and, in addition to the business management of the complainant company, I exercised supervision over its manufacturing processes. I did not receive from the complainant company any codes or formulae relating to the preparation of the raw materials and ingredients used in the manufacture of their lacquers and other products. I originally came to the company in a

business capacity to exploit an invention of mine used in fumigating dwelling houses. I found that the company was unable to successfully manufacture the lacquers which it attempted to manufacture as its main product, and I applied my knowledge as a chemist to their problems, with the result that they were able thereafter to manufacture lacquers successfully, both as to quality and price. The formulae which I worked out for the use of the company were in no sense secret or confidential. My policy as a director and officer of the company was to have the manufacturing process of the company not a secret kept in the knowledge of one or two persons, but a corporate matter to the knowledge of the operating force, and to this end I placed these formulae on record so that they were known generally to the operating department in the factory. I provided every time four sets of the same formula, one set of which I kept in my office as president and manager; one set was placed on file in the New York office; one set was forwarded to the foreman of the manufacturing department; and the fourth set was given to the lacquer superintendent.

The codes which are mentioned in the complaint and affidavits were not secret codes in the ordinary sense of the word but merely a set of abbreviations to designate the raw materials used in the manufacture of the company's products, and these abbreviations are easily understandable to any one familiar with this class of raw materials and manufactured products therefrom. Knowledge of this so-called code was widespread throughout the factory as well as in the New York office, and the sales department, and at the very least fifty people know and understand this so-called code.

The statements and invoices referred to in the complaint and affidavits are mere duplicates of what is contained in other books in the factory and in the New York office. In the Bill of Complaint for an accounting, which I filed, I alleged in paragraphs 9 and 10 of said bill as follows:

> "9. It has been the practice of the company to maintain a set of financial books at the factory in Newark, which books are based on the original records on file in the factory and are the original books of entry of the company, and are the complete financial records of the company so far as relate to merchandise and manufacturing, and show the gross manufacturing profit of the company.
>
> "10. There is kept at the New York office an auxiliary set of books in which are set forth entries relating to the sales of the company's product, also the expenses of the New York office, and other expenses not properly classified as manufacturing expenses."

To these allegations the complainant made answer in that suit as follows:

> "8. They deny the allegations of paragraphs 9 and 10, and say that the only authorized original books of entry of the company are kept in its New York office."

In the same Bill of Complaint in the accounting suit I further alleged as follows:

> "13. The books of account of the company at the Newark factory were devised by and kept under the supervision of the complainant. The books of account at the New York office were kept under the supervision of the said Magnus."

To this the complainant made answer as follows:

"11. They deny the allegations of paragraph 13, except that they admit that certain books were devised by and kept under the supervision of the complainant at the Newark factory, but deny that they were authorized by the company. They admit further that the books of account at the New York office were kept under the supervision of said Magnus together with the said Maas."

It is these same books, referred to in paragraphs 9, 10 and 13 of my Bill of Complaint in the accounting suit, which are referred to in paragraph 8 of the bill in the present suit as certain secret and confidential statements and invoices relating to the business of the company, and also referred to in paragraphs 6 and 7 of Kane's affidavit, and paragraph 8 of Maas's affidavit, and paragraph 2 of Seher's affidavit, and which the complainant company in its answer in the accounting suit said were not authorized by the company.

In paragraph 14 of my bill in the accounting suit I alleged:

"14. It was the practice in the company so long as complainant was active as president, for the Newark factory to forward to the New York office a monthly statement of the accounts of the company as shown on the books at the Newark office, in addition to copies of bills for goods sold from the Newark factory, but complainant charges that the New York office, under the direction of the said Magnus, ignored the said monthly statements and other records from the factory at Newark, notwithstanding full instructions had been given the New York office by the Newark office under the direction of the complainant, at the time of the installation of the system installed at the Newark office, which was about June, 1921."

To this the complainant answered:

"12. They deny the allegations of paragraph 14, except that they admit that it was the practice of the complainant for a time to forward to the New York office certain monthly statements and copies of bills for sales of goods sold from the Newark factory; and they allege that such statements were examined and found of no value."

It is these same documents which are referred to in the Bill of Affidavits in the present suit which they stated in their answer in the accounting case were of no value.

Because the company paid no attention to these records they were never in fact used by the company, but were my copy, so kept as my personal record for my own guidance in the business of the company. I kept them in the safe in my office at the factory. There is nothing contained in these records which is not in the other records of the complainant company either at the Newark or the New York office. In addition to that fact duplicates of everything that I kept were sent to the New York office.

These various statements, invoices, codes and tables are of no value or use to the Miner-Edgar Company, and are only of value to me personally in connection with my accounting case, pending in this Court, and because they were personal records of mine I removed them to my house in

Newark in March of 1925 at the time I was examining the books of the complainant company in preparation for the filing of the accounting bill. At that time I had no connection with the Miner-Edgar Company, nor was any such proposition under consideration, my connection with the Miner-Edgar Company not having been made until September 29, 1925, and having only been under discussion for about a month prior to that.

No secret was made of my removal of the statements, invoices, codes and tables last March. I instructed Dowd, who had custody of the invoices, to bundle them up and place them in my automobile, which he did, and I instructed him, if any inquiry was made for them, to say I had taken them to my house in Newark.

Referring to "the certain tabulated cost sheets and a certain book containing secret and confidential information relating to the complainant's business," referred to in paragraph 7 of Kane's affidavit, that book was a transcript of the various books mentioned in the paragraphs above quoted from my Bill of Complaint in the accounting suit, which the complainant in its answer said was not authorized and was of no value, and is of no value to any one except to me as evidence in the accounting case.

I took that book last March also, and stated to Kane, and also to a clerk named England at the factory, that I was taking the book with me and that if any inquiry were made for it to say I had it in my possession.

These tabulated cost sheets and the book contain records of the complainant's business for the period covered by the Bill of Complaint in the accounting case. These records are of no use

whatever to the complainant company. They were part of the system which I devised, with the intention that they should be used in reconciling the books in the New York office and at the factory, but the other officers of the company never made use of them for that purpose. All the facts contained therein are also contained in other records of the company, and I desired them in my possession simply as a check on the other records of the company for use in the accounting suit.

I have not taken, nor have I in my possession, any formulae belonging to the complainant, but the four copies of the formulae are distributed as hereinabove set forth in the various departments of the company. With respect to the codes, there is no code in any proper sense of that word in existence. Copies of whatever code there is are distributed among at least a dozen employees in the factory and the code is of no value to any outsider. A copy of it is included in the book containing the financial records which I took for use in my accounting case.

These formulae, which are referred to in the affidavits as the "more than 1,200 formulas owned by the complainant" are still, so far as I know, in the cabinet in the office which I formerly occupied in the factory at Newark. I never took these formulae or any of them away, nor did I make copies of them. The inference sought to be created from the statements in paragraph 5 of the affidavit of Seher, that he saw my shadow through the frosted glass in the vicinity of the cabinet, is ridiculous, inasmuch as when I was at the company's office I would frequently have occasion to consult the formulae or to use the cabinet, and this was my constant practice

and known to everybody in the factory, including Seher. As a matter of fact, the door of my office was almost always open. If I ever wanted a factory record I would ask to have it brought to me, and it was always brought. There was no secret about any use I made of the factory records while I was in attendance at my office, nor of the fact that I had taken the financial statements or invoices last March.

Ninety-five per cent. of the business of the Miner-Edgar Company is in the manufacture and sale of products which are not of the kind or character manufactured by the complainant company, and to customers with which that company does not deal. The remaining five per cent. of the business of the Miner-Edgar Company is to a different class of trade and to a different set of customers than that of the Maas & Waldstein Company, and during my fifteen years of connection with the Maas & Waldstein Company, during all of which time the Miner-Edgar Company was in existence, the Miner-Edgar Company was never regarded as in any sense a competitor of the Maas & Waldstein Company, and is not in fact such.

There is no irreparable injury to the complainant by reason of my having in my possession the various statements, invoices, codes and tables mentioned in the complaint and affidavits. They all are, and have been ever since I took them last March, lodged at my house in Newark. They have never been disclosed by me to any officer, director or employee of the Miner-Edgar Company, and, in fact, are not and could not be of any use to the Miner-Edgar Company in its business or in any effort to compete with the complainant company. It is not true, as stated in the affi-

davit of Seher, that possession and use of these papers and documents would aid a competitor of the complainant company. The prices and terms on which the complainant company sells to its customers can readily be obtained by any competitor by making inquiry of the customer, and this is done every day in business. The cost of production by the complainant company is of no interest to anybody because the question for the competitor in every case is what is the cost to him, and, that fact being fixed, knowledge of the price at which the complainant company sells its product to any customer is readily ascertainable by inquiry from the customer, and, indeed, the first information which any prospective customer gives to a manufacturing concern desiring to sell him goods is the price which he is paying to that concern's competitor. The disclosure of the contents of these documents and books if I had given them to the Miner-Edgar Company, which I have not, would in no manner affect the competition, if it existed, between that company and the complainant.

The invoices which I removed, and which were handed to me by Dowd, I learned from him were about to be destroyed, in accordance with the custom of the factory to destroy invoices shortly after the expiration of the calendar year to which they applied.

All of the documents which I took, and which consist only of invoices, codes and my copy of a transcript of the factory financial books, are, and ever since I took them in March, 1925, have been, at my house in Newark. As already stated, I took no formulae whatever. As a matter of fact, the complainant company neither has owned, nor now owns, any chemical formulae whatever.

The formulae mentioned in the bill were in no sense secret or confidential, and are not records of chemical formulae but are a mere set of mixing directions for the manufacturing department, all of the ingredients of which are well known to lacquer manufacturers generally.

None of the documents which I took have been taken to the office or offices of the Miner-Edgar Company, or exhibited to any of its officers or employees, and no use whatever of the said documents is made by the Miner-Edgar Company, nor are they of any special value to the Miner-Edgar Company. The sole value of these various documents is personal to me in connection with my accounting suit against the complainant company pending in this Court. The complainant company has the originals of everything which I have, and the documents which I have in my possession are mere copies.

(SEAL) HENRY V. WALKER.

Sworn to and subscribed before me
this 11th day of December, 1925.

MARY A. CONNOLLY,
Notary Public. Kings Co. No. 20.
Certificate filed in N. Y. County No. 342.

HENRY M. MINER, being duly sworn, says:

I am Chairman of the Board of Directors of the defendant, The Miner-Edgar Company.

I have read the Bill of Complaint and affidavits of Messrs. Kane, Dowd, Maas and Seher. None of the books, papers or documents mentioned in the Bill of Complaint and affidavits have ever been in the possession of The Miner-Edgar Company. They have not been brought by the defendant, Henry V. Walker, to any of the offices of that company, and they have never been seen by me or by any other officer or employee of The Miner-Edgar Company except Dr. Walker. The various documents and data referred to in the Bill of Complaint are of no interest to The Miner-Edgar Company, and the acquiring of Dr. Walker by The Miner-Edgar Company had no relation whatever to these various documents mentioned in the bill. As a matter of fact, no one in The Miner-Edgar Company knew that Dr. Walker had any such data in his possession, and never heard of it until the filing of the Bill of Complaint in this case. Over 95 per cent. of the business of The Miner-Edgar Company is a different class of business from that carried on by the complainant company and not in competition with it. The remaining 5 per cent. of the business of The Miner-Edgar Company is to a different class of trade than that of the complainant company. It is conducted as a separate department, and was so conducted for the past five years and long prior to the time when Dr. Walker came into our company.

As a matter of fact, the formulae of the Maas & Waldstein Company would be of no practical benefit to The Miner-Edgar Company, for the reason that the great percentage of the customers of The Miner-Edgar Company furnish their own formulae to our company on which we manufacture for their special needs.

Nor would a knowledge of the prices and terms on which the complainant company sells to its customers be of any particular value to The Miner-Edgar Company if known. Such information is readily ascertainable by making direct in-

quiry of the customer, which is done every day in business.

(SEAL) HENRY M. MINER.

Sworn to and subscribed before me
this 11th day of December, 1925.

MARY A. CONNOLLY,
Notary Public. Kings Co. No. 20, etc.

WILLIAM R. MELVILLE, being duly sworn, says:

I am the Vice President of the defendant, The Miner-Edgar Company, and have been, and am, in direct charge of the manufacturing plant.

I never heard of the fact that the defendant, Henry V. Walker, had in his possession any books, records or data of the complainant company until after the filing of the bill. Such books, records and data have never been brought by Dr. Walker to any of the offices or factories of The Miner-Edgar Company, and I have never seen any such, nor is any use made of them whatever in connection with the business of The Miner-Edgar Company. I have never requested Dr. Walker to disclose to me, nor has he ever disclosed to me, the information contained in these books, records and documents, which I now am informed were taken by Dr. Walker from the office of Maas & Waldstein, as he says in his affidavit.

(SEAL) WILLIAM R. MELVILLE.

Sworn to and subscribed before me
this 14th day of December, 1925.

MARY A. CONNOLLY,
Notary Public. Kings Co. No. 20, etc.

Affidavit of Frederick S. Magnus.

IN CHANCERY OF NEW JERSEY.

Between MAAS & WALDSTEIN COMPANY, *Complainant.* *and* HENRY V. WALKER, *et al., Defendants.*	*On Bill.* *Affidavit of Frederick S. Magnus.*

STATE OF NEW JERSEY, COUNTY OF ESSEX. } *ss.*

FREDERICK S. MAGNUS, being duly sworn on his oath says: I am one of the stockholders, directors and officers of Maas & Waldstein Company, and have been since 1912.

I have read the answering affidavit of Dr. Henry V. Walker made December 11, 1925. The set of formulae referred to therein as being kept in the New York office has been kept in filing cabinets in the private office of Mr. Maas, the president of the company, and myself, and under lock and key. The cost of the various ingredients was noted on them and it was in that way that they were of use to us in determining the prices at which the products should be sold. I know from the books of the company that before Dr. Walker came into its employ it had manufactured lacquers. The sales to five customers in the year 1905 aggregated over $60,000.

The formulae have a special value to Dr. Walker because of his connection with the Miner Edgar Company. The possession of these formulae by Dr. Walker makes it possible for that

company to say to any present customer of Maas & Waldstein that Miner Edgar Company can make the same lacquer as we make. If a competitor of Maas & Waldstein were to say to a customer that it could make as good a lacquer as we do, the customer would perhaps not be persuaded to buy, clinging to the Maas & Waldstein product as one that he has found in his previous experience to be good. But if the competitor can say that its product is made from the Maas & Waldstein formulae, the competitor may succeed in taking the customer away from us.

I note that Dr. Walker's affidavit says that the books, papers and information mentioned in our bill of complaint are in his home in Newark and have never been disclosed by him to anyone connected with the Miner Edgar Company. In this connection, I quote a letter received by us from the Eagle Ottawa Leather Company written from its tannery at Grand Haven, Michigan, and dated November 24, 1925, which says:

> "We are quoted lower prices on the materials that we are buying from you from a concern who guarantees absolutely to duplicate your product. This is interesting to us because in these times of severe competition in the leather business we have to buy our material as cheaply as we can.
>
> We have been very loyal to you and we would like very much indeed to hear from you as to what you can do for us. We cannot afford to turn propositions of this kind down. This house is quite responsible, otherwise we would not bother to take the matter up with you."

It does not give the name of the "responsible house" which "guarantees absolutely to duplicate

your (our) product" but it will be noted that when it was written, Dr. Walker had formed his present connection with the Miner Edgar Company and there is, to the best of my knowledge and belief, no other manufacturer of products similar to ours who has any knowledge of our formulae or is in a position to say, as this letter says, that it can exactly duplicate our product, unless it be the Miner Edgar Company by reason of the imparting to it of the said formulae as they have been obtained by or made known to Dr. Walker when in our employ. Dr. Walker was removed as president of the Maas & Waldstein Company because of acts, which, in the judgment of all of his fellow stockholders, directors and officers in that company, constituted an insubordination and was calculated to be of great embarrassment and probable injury to the company by reflecting upon its good faith and thereby affecting its reputation in the trade, as well as by disturbing important relations with other companies with whom it had associated itself in obtaining a supply of an important raw material, as well as its relations with the company from which it obtained such supply under contract, the continuance and renewal of which was of great importance to the Maas & Waldstein Company. He has manifested his resentment of this act and we have every reason to believe that although he is still a large stockholder in the Maas & Waldstein Company he is disposed, out of resentment and wounded pride, together with his desire to be of service to our competitor, the Miner Edgar Company, his present employer, to help it successfully to compete with the Maas & Waldstein Company.

The reference in paragraph 8 of the bill in this suit to certain secret and confidential statements, invoices, codes, formulae and tables relating to the business of complainant company as having been entrusted to the defendant Walker and the reference in paragraphs 6 and 7 of the affidavit by M. Edward Kane supporting the bill and in paragraph 8 of the affidavit of Mr. Milton A. Maas and paragraph 2 of the affidavit of Otto P. Seher are not to the books referred to in paragraphs 9, 10 and 13 of the bill of complaint filed by the defendant Walker in the accounting suit brought by him in this Court. Some of the secret and confidential information, etc., referred to in the above-cited portions of the bill of complaint and supporting affidavits in this cause was incorporated in the books of account referred to by Dr. Walker in his bill of complaint, but the reference in complainant's papers are to these and other statements and data of a confidential nature.

The statement in paragraph 12 of the answer filed by Maas & Waldstein Company to the accounting suit brought in this Court by Dr. Walker to the effect that certain monthly statements and copies of bills for sales of goods sold from the Newark factory which were from time to time forwarded to the New York office were found to be of no value, referring to the value to the company in making up a record of its business and their finances. This is not the same as saying that they would be of no value to a competitor. On the contrary the fact is that they would be of great value to any such competitor. Dr. Walker in his bill of complaint had charged that the New York office refused to properly regard the monthly statements and data forwarded

to the New York office from the Newark office and the statements that were made by Maas & Waldstein Company as the defendant in that suit that they were of no value was made as an answer to that charge, plainly meaning that they were ignored by the New York office because they were of no value to that office in keeping a record of the business of the company. They were either found to be incorrect or incomplete or as containing information already in the possession of the New York office.

The formulae and secret processes by which the various products of the company have been and are put forth are a valuable asset of the company and the profitable business that the company has been able to do depends in considerable degree upon the fact that the customers not only know the merit of the articles produced but know that they cannot get the identical article elsewhere.

The information contained in the affidavit of Mr. Rolland H. French, now presented to the Court, came first to the Maas & Waldstein Company on Thursday, January 7, 1926. We had before that received some announcement of Mr. French's forming his present connection with the Chemical Solvents Company and then met him in connection with the business of that company. In the course of the conversation I asked how he came to leave the Miner Edgar Company and the information that I then got from him seemed to me to be of sufficient importance to bring it to the notice of our counsel, which was done, and the affidavit followed in due course.

FREDERICK S. MAGNUS.

Subscribed and sworn to before me
this 12th day of January, 1926.

THOMAS POTTER,
An Attorney at Law of New Jersey.

Affidavit of Otto P. Seher.

IN CHANCERY OF NEW JERSEY.

Between	
MAAS & WALDSTEIN COMPANY, *Complainant,*	*On Bill.*
and	*Affidavit of Otto P. Seher.*
HENRY V. WALKER, *et al.*, *Defendants.*	

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } *ss.*

OTTO P. SEHER, being duly sworn, on his oath says: I am foreman of the factory of the Maas & Waldstein Company at Newark, N. J., and have been such for upwards of eleven years and have made affidavit in support of the bill of complaint and rule to show cause in this cause.

I have read the answering affidavit of Dr. Henry V. Walker made December 11, 1925. Throughout all my connection with the Maas & Waldstein Company, the formulae relating to the ingredients used in the manufacture of lacquers and other products and the preparation or treatment given them, have been carefully kept secret. Before 1920 there was no filing cabinet and the

formulae were not in code but were kept in a notebook in the possession of Mr. Reuschle, a practical chemist employed in the laboratory. This notebook was kept by him in a safe in his office. The filing cabinet was installed on the suggestion or under the instruction of Dr. Walker and he was responsible for the formulae being put into code form. Dr. Walker talked with me about having them in code as being a further assurance that they would not become known to anyone but those who ought to know. When the filing cabinet came, Dr. Walker expressed his dissatisfaction with the locks that were on it and instructed me to make or procure special locking devices. I then suggested a further protection against their being stolen and that was that the entire filing cabinet be screwed down to a table and fastened by bands of iron so that it could not be easily picked up and taken away. This suggestion Dr. Walker heartily approved. I remember, too, that the foreman of the Enamel Department R. Frank Weaver expressed a wish to be made acquainted with the formulae of the lacquers that were sent to his department for use. I took this up with Dr. Walker and he gave me positive instructions that the formulae should not be thus disclosed.

Not only was there a filing cabinet in Dr. Walker's office but there was one in the enamel department and one in the mixing department which also were kept under lock and key. All of them were under observation so that any attempt by an unauthorized person to have access to them in the daytime would have been detected. Dr. Walker more than once said to me that the formulae were to be carefully watched and not

disclosed to any except those who had to know about them.

The book referred to by me in paragraph 2 of my affidavit of October 6, 1925, as containing certain secret and confidential information and as having disappeared from the plant's factory, contained, among other things, a complete record, year by year, for about three years back, of so much of the materials entering into the composition of lacquers, lacquer enamels, leather solutions and thinners produced by the Maas & Waldstein Company as were made by them in their own factory as distinguished from those ingredients that were purchased outside. It not only gave a statement of those ingredients but of the cost of manufacture of the total output of each together with a statement of that output in gallons or pounds. It also contained a record of the yield of each of these materials in volume. This is important because of the fact that in the manufacture of these materials the company was often able to produce a volume of the manufactured product that was in excess of the aggregate volume of the various ingredients that had gone into it. Information of this kind is regarded in the trade as of special value to the manufacturer that has it and as something to be carefully kept from competitors. It also contained a statement of the cost of production of each of a number of the products of the company, practically all of the standard products for which there was the largest call, that is, the products that were kept in stock as distinguished from those that were made on special order. It also showed the selling price of a number of these products and thus showed the gross profit obtained by the company on those articles. It

also contained a copy of the code in which all formulae were written.

I have in my possession three leather-bound memorandum books containing the formulae of various orders filled by the company for lacquers, enamels, thinners, leather solutions and other products of the company prior to the incorporation of the card system and filing cabinets in 1920 by Dr. Walker. Dr. Walker also had three like books which he kept under lock and key in his private desk in his office at the factory and those disappeared with the doctor's departure in 1925.

OTTO P. SEHER.

Subscribed and sworn to before me
this 12th day of January, 1926.

THOMAS POTTS,
An Attorney at Law of New Jersey.

Affidavit of William Reuschle.

IN CHANCERY OF NEW JERSEY.

Between	
MAAS & WALDSTEIN COMPANY, *Complainant.*	*On Bill.*
and	*Affidavit of William Reuschle.*
HENRY V. WALKER, *et al.*, *Defendants.*	

STATE OF NEW JERSEY, } *ss.*
COUNTY OF ESSEX. }

WILLIAM REUSCHLE, being duly sworn, on his oath says: I was in the employ of the Maas & Waldstein partnership before its incorporation and since that have been and am now in the employ of the company. My work has been that of a chemist making up formulae for lacquers and other products of the partnership and the corporation and advising in the application of the same through the course of manufacture. My connection with the business in this capacity began in 1889 and has continued to the present time. Dr. Walker first became connected with the Maas & Waldstein Company in 1906. At that time Maas & Walstein had been engaged in the business of making lacquers for over ten years. The general superintendent was August Seher, father of Otto P. Seher, now with the company. He was a graduate chemist. At that time and since then, books were kept in which were entered the formulae for the various lacquers and other products the company made. I have such books in my possession. The number

of formulae was small but sufficient for the manufacture of practically all lacquers that were then in general use. When Dr. Walker first came to the Maas & Waldstein Company he was employed as a chemist in the manufacture of a disinfectant known as Pyroformol. He was engaged in this for about two years. Then he was put upon research work and routine laboratory work, not on lacquers, but principally with the attempt to make a substitute for amilacetate. On the death of Mr. August Seher or shortly thereafter, Dr. Walker was put in charge of the factory, including the manufacture of lacquers, but in the three years between the time he came there and Mr. Seher's death, the original formulae had been modified and quite a few additions had been made thereto.

I have read Dr. Walker's affidavit and note that he says that he did not receive from the complainant company any formulae relating to the manufacture of lacquers and that the company was unable to successfully manufacture them. This is quite contrary to the facts. I cannot say how many there were, but all the formulae that there were were communicated to Dr. Walker, and the company was then and had for several years been able successfully to manufacture. For a number of years prior to the time when Dr. Walker had anything to do with the manufacture of lacquers, Maas & Waldstein had some of the largest consumers of lacquer then known as it customers, and the Maas & Waldstein products were entirely satisfactory to them as shown by their continued purchase. The bulk of the lacquers that we are making today are the same that were then made and are made from the formulae that were in use before Dr. Walker

came except for some slight modifications, such as the substitution of butyl alcohol for fusel oil. When Dr. Walker first took charge, succeeding Mr. Seher in 1909, he had a very scanty knowledge of the manufacture of lacquers. He had the education of a professional chemist but little or no practical knowledge and no experience in that line. As the various problems came up he consulted me and took my judgment. If a complaint was made by a customer that the lacquer did not work satisfactorily or if a customer made a call for a lacquer to meet some special condition or use, Dr. Walker would call me in and ask me what to do. This was, of course, only in the early years of his charge of the work. In time he gained a fairly complete knowledge of all the lacquers and of all the modifications that were necessary to satisfy the customers. There are many more modifications now than before, but most of them have come into existence at the call of a single customer or at the suggestion of a salesman or at the inquiry of a customer without an order therefor being received, or if there was the quantity sold was small.

From the time I first went to the Maas & Waldstein Company until the present time, the formulae for the manufacture of lacquers and other products of the company have been kept secret and so regarded by the employees and officers of the company. There has been one continuous practice in all these years, that the formulae were only to be known to those that were required to know it in the course of the business; and that others were not to know.

Before Dr. Walker took charge, as above mentioned, the practice was to enter the formulae in small memorandum books which were kept by Mr.

August Seher and later by me. I remember that Dr. Walker made up a book of his own in which was copied the formulae as they were in the small memorandum books in my possession. I remember his sending for me and my books and together we selected the ones that were most in use and most important, and I left my books with him. Later I saw a single larger sized book of his own in which many of these formulae were copied.

I know that Dr. Walker regarded these formulae as confidential and as something to be kept secret from all who did not need to know about them. After installation of the card system and the filing cabinets, I was given a set of the cards and have added to them from time to time. Dr. Walker instructed me to keep this locked up and similar instructions were given to others that had sets of the cards or a filing cabinet containing them. The filing cabinet in Dr. Walker's office contained not only formulae for the lacquers but for the leather solutions and enamels and thinners. In all the time that I have been in the employ of the company, before Dr. Walker came and since, the knowledge of the formulae has never been extended beyond those who had the need to know of them in the business of the company.

WILLIAM C. REUSCHLE.

Sworn and subscribed to before me, a Notary Public, this 12th day of January, in the year of our Lord, One Thousand Nine Hundred and Twenty-six.

M. EDWARD KANE,
(SEAL) Notary Public.

Affidavit of Rolland H. French.

IN CHANCERY OF NEW JERSEY.

Between	
MAAS & WALDSTEIN COMPANY, *Complainant.*	*On Bill.*
and	*Affidavit of Rolland H. French.*
HENRY V. WALKER, *et al.*, *Defendants.*	

ROLLAND H. FRENCH, being duly sworn, on his oath says: I live at 174 South Orange avenue, South Orange, N. J. I am now the president of Chemical Solvents, Incorporated, manufacturers, agents and distributors of materials that go into the composition of lacquers, lacquer enamels and paints. Up to November 1, 1925, I was General Sales Manager of the Miner Edgar Company of 110 William street, New York (with its factory on Blanchard street, Newark) and had been in that capacity since 1916.

When I became General Sales Manager in 1916 the business conducted by the Miner Edgar Company consisted largely of the manufacture of alcohols and solvents made therefrom used in the lacquer, paint and allied trades.

In 1924 the Miner Edgar Company took up the manufacture of lacquer enamels. For that purpose they bought out the Thomas Engineering Company and employed Mr. Thomas, the president of that company, in the capacity of superintendent and general manager of a lacquer division then created. For about six months prior to that the regular staff of chemists of the

company had been experimenting in the attempt to produce lacquers and lacquer enamels and the company had employed a chemist by the name of Dr. Schroeder especially for that purpose. He was in their employ about six months. He was unsuccessful and his employment was terminated. Mr. Thomas also was unsuccessful in producing a lacquer enamel that was commercially satisfactory, and up to some time in the month of May, 1925, the attempt to build up this lacquer enamel business was a failure. At that time Mr. R. Frank Weaver, formerly of Maas & Waldstein Company, succeeded Mr. Thomas. Three or four days after he came to Miner Edgar Company he told me that he was going to be able to produce whatever I as Sales Manager might call for in the way of lacquers, lacquer enamels, bronzing liquids, thinners and retarders; that he was in close touch with Dr. Walker and could consult with him at his house any evening. I understood that he referred to Dr. Henry V. Walker who had been president of the Maas & Waldstein Company. Mr. Weaver at the same time told me that Dr. Walker was "out" as president of the Maas & Waldstein Company and was going to sue them. This conversation took place at a plant of the Miner Edgar Company in Jersey City. A week or ten days after he made the same statement to me at his own office in the Newark plant of the Miner Edgar Company. Very shortly after that I heard him make the same statement. While I cannot give the exact date, it was within two or three weeks after the last mentioned conversation. The place was Mr. Miner's private office in the Miner Edgar offices in New York. We had been having a conference of heads of de-

partments to consider the lacquer problem and the remark that I quote was made as the conference broke up. Mr. Henry M. Miner, president of the company, was among those present and I am quite sure that he heard the remark.

Sometime in the early part of July (shortly after the 4th) while Mr. Weaver was talking with me on the phone he asked if Mr. Miner was in and if so whether it would be possible for him to have a talk with Mr. Miner. He did not say on what subject. I told Mr. Miner of Mr. Weaver's desire and the appointment was made. The meeting took place the afternoon of the same day. It was in Mr. Miner's office and I was present. Mr. Weaver told Mr. Miner that he believed that Dr. Walker would like to have a conference with Mr. Miner and Mr. Miner asked Mr. Weaver to arrange a meeting with Dr. Walker at Mr. Miner's home in South Orange. Shortly after this Dr. Walker was at the New York office and in conference with Mr. Miner and Mr. Edgar. I saw him at the office on other occasions in August and in September. In the early part of September I heard that Dr. Walker was likely to come into the Miner Edgar Company as president. I went to Mr. Henry M. Miner and asked if this was so. Mr. Miner said that negotiations were in progress and that Dr. Walker had knowledge that would be of great value to the company besides which he would bring into the company additional business and capital. Shortly after that Mr. Miner told me that the negotiations with Dr. Walker were off. But on October 2nd he called me into his office and introduced me to Dr. Walker as the new president and general manager of the company. That same day, that is, in the afternoon of

October 2nd, Dr. Walker told me that he proposed to put the sales of lacquers in charge of a Mr. Maynard, who, he said, had formerly been in the employ of Maas & Waldstein for the sales of lacquers and lacquer enamels. He also said that he wanted to have me take charge of the selling end of the alcohol and heavy chemical part of the business at an increased salary, while he, Dr. Walker, was going to devote himself to the building up of the lacquer business. I named certain terms as conditions of my continuing in the employ of the company and we were unable to come to agreement on those terms, so on October 9th, I gave notice that I would give up my position, and shortly after left the company.

ROLLAND H. FRENCH.

Subscribed and sworn to before me
this 14th day of January, 1926.

HELEN I. CRANE,
(SEAL) Notary Public of New Jersey.

Affidavit of Henry V. Walker.

IN CHANCERY OF NEW JERSEY.

Between	
MAAS & WALDSTEIN COMPANY, *Complainant.*	*On Bill.*
and	*Affidavit of Henry V. Walker.*
HENRY V. WALKER, *et al.*, *Defendants.*	

STATE OF
COUNTY OF } *ss.*

HENRY V. WALKER, being duly sworn, on his oath says:

I have read the affidavit of Rolland H. French, verified January 14, 1926, and make this affidavit in reply.

I became President and General Manager of The Miner Edgar Company on October 1, 1925. I never, physically, entered The Miner Edgar Company office until the latter part of August, 1925, and Mr. French is mistaken when he says that he saw me at the New York office of The Miner Edgar Company in conference with Mr. Miner and Mr. Edgar in July of 1925.

I, of course, have no knowledge of any conversations which Mr. French alleges took place between him and Mr. Weaver, at which I was not present. I do know, as a matter of fact, that Mr. Weaver never consulted me at my house in the evening, or any other time prior to my becoming President and General Manager of The Miner Edgar Company, with respect to the manufacture of lacquers, lacquer enamels, bronzing

liquids, thinners or retarders, or the manufacture of any other product of The Miner Edgar Company.

During the month of August Mr. Weaver called upon me to say that Mr. Miner would like to call upon me. My reply to Mr. Weaver was that Mr. Miner knew me and knew where I was and how to communicate with me. There was nothing whatever in the conversation between Mr. Weaver and me relating to manufacturing processes of any kind.

I first made the acquaintance of Mr. French some time late in September. It is not true, as he states in his affidavit, that on the afternoon of October 2nd I told him that I proposed to put the sales of lacquers in charge of Mr. Maynard. About the 9th or 10th of October I conferred with Mr. French and told him that he was not qualified, in my judgment, to handle the sales of lacquers, and that I proposed to make other arrangements about that, and that I desired to discuss with him the question of sales management as relating to the company's other products, for the purpose of determining whether there was a place for him in the organization.

As a matter of fact, Mr. French had a poor reputation as a Sales Manager, which I knew of before I went with The Miner Edgar Company, and I was, in a measure, sizing him up to see what he was capable of doing.

I was unable to make much progress with him along that line, for the reason that he immediately brought up to me the question of his financial relations with the company, which involved an indebtedness from him to the company of over $5,000. I told him that I would have to consult Mr. Miner about that, which I sub-

sequently did. At the same conference he told me that he had had an offer from a pharmaceutical house, at a salary of $7,500 a year, which was more than he was receiving from The Miner Edgar Company.

A few days later he saw me again and handed me a paper, which I regarded as an ultimatum, as bearing on his continued employment by The Miner Edgar Company, and he again raised the question of the financial relationship between him and the company. I again said that on the financial questions I would have to speak to Mr. Miner.

The following day I sent for Mr. French and told him that, in view of the paper which he had handed me, he seemed to be at a complete loss as to the purpose of my conversation with him; that he had better accept the offer which he had from the pharmaceutical house, and that he might consider his employment with The Miner Edgar Company as terminated.

Since that time Mr. French has filed a Bill of Complaint against The Miner Edgar Company and others (not including myself) in this Court, in which he alleges fraud in connection with a certain stock transaction between him and the company back in the winter of 1920 and 1921, long prior to my connection with the company, and seeks, among other things, to have a subscription for capital stock, which he made at that time, rescinded, and certain monies which he paid for stock returned to him.

Following that suit The Miner Edgar Company has brought an action at law against Mr. French, in the New Jersey Supreme Court, for the recovery of $5,318.63 owing from him to the company on open account, and also upon a certain promissory note for $900.

HENRY V. WALKER.

Sworn to and subscribed before me
this 18th day of January, 1926.

LOUISE T. GRUHAERT,
(Seal.) Notary Public of New Jersey.

IN CHANCERY OF NEW JERSEY.

Between

MAAS & WALDSTEIN COMPANY,
Complainant,

and

HENRY V. WALKER and another,
Defendants.

Transcript of testimony taken before Nicholas W. Bindseil, one of the Masters in Chancery of New Jersey, at his office, Prudential Building, Newark, New Jersey, on Tuesday, January 19, 1926, at 10 A. M., pursuant to an order of reference made in the above entitled cause, dated January 19, 1926.

Appearances:

Judge Alfred F. Skinner and Mr. Harry N. Selvage (of the New York bar) for complainant.

Mr. Conover English, of McCarter & English, for defendants.

It is stipulated and agreed by and between the attorneys for the respective parties, that the testimony may be taken stenographically by the Master and afterwards reduced to typewriting, the signing of the same being waived.

Mr. English: Judge Skinner, Mr. Melville is here and ready for your cross examination.

Judge Skinner: We will not examine Mr. Melville.

DR. HENRY V. WALKER, being duly sworn according to law, on his oath says:

Cross examination by Judge Skinner.

Q In the affidavit of January 18th, filed by you in this cause, you say that Mr. Weaver never consulted you at your house in the evening or at any other time prior to your becoming president of the Miner Edgar Company. Mr. Weaver had been under you in the Maas & Waldstein Company, had he not? A Yes.

Q What was his capacity there, his position? A He was foreman of the enamel department.

Q And did you at any time hear that he had gone to the Miner Edgar Company? A Yes, I did.

Q When was that? A I think that was about May, 1925.

Q What I was asking you was when you heard of his going to the Miner Edgar Company; were the two coincident? A Substantially so; there was about a week's interval between them. He gave a week's notice, as I recall it.

Q Do you recall that he did give a week's notice? A Yes.

Q I suppose you recall that because you knew about it at the time? A I remember it.

Q And I suppose you remember it because you knew about it at the time; is that right? A I don't quite follow you.

Q (Last question repeated.)

Mr. English: Knew about the notice or the leaving?

Judge Skinner: About what I am asking.

Q You say he gave a week's notice before he left? A I said he gave about a week's notice.

Q I asked if you recall that or remember that because you knew about it at the time; is that right? A It is very obscure to me; I don't quite get the drift of the question.

Q That is all your answer to that question? A Unless you wish to elucidate the question.

Q Did you hear of his going to the Miner Edgar Company from him? A Yes.

Q Did you hear of his giving notice to the Maas & Waldstein Company from him? A That I don't remember.

Q And did you hear of his going to the Miner Edgar Company before he went there? In other words, did you hear that he was going; did he talk with you? A Yes, he did.

Q And did he report to you after he had been engaged there? A He advised me that he had accepted employment—he informed me that he had accepted employment with the Miner Edgar Company.

Q And what was the occasion or the reason for Mr. Weaver's discussing with you his leaving Maas & Waldstein and going with the Miner Edgar Company and his informing you that he had gone? A I was the president of the Maas & Waldstein Company at this time.

Q In May, 1925? A Yes.

Q That is the May after the February of your deposition? A Yes.

Q Is that the reason why he talked with you? A You mean the reason from his standpoint?

Q Did he give any reason for talking with you? A I saw him nearly every day at the factory, and he talked about many matters with me.

Q Among other things that he discussed with you was his leaving Maas & Waldstein? A Yes.

Q Did you encourage him or discourage him in that? A He asked me my advice in a measure and told me the nature of the offer, and asked me what I thought he ought to do about it.

Q Then he had an offer in May, 1925? A Yes.

Q Did you tell him what you thought he ought to do? A I told him that was a matter he would have to decide for himself.

Q At that time all the employees had been instructed, had they not—of Maas & Waldstein, I mean—to take no orders from you and not to report to you? A I had no knowledge of any such notice.

Q You never heard of such a notice? A No, I heard to the contrary; generally, the statement by the employees was, "We haven't been told anything; we don't know anything about the situation."

Q That was a statement made to you? A Yes.

Q Then they came to you or did you go to them discussing the situation? A They came to me.

Q What had been Weaver's employment at Maas & Waldstein's? A Foreman of the enamel department.

Q All the time that he was there? A Yes.

Q Connected with no other department? A No.

Q You say in your affidavit that Mr. Weaver —the one I have referred to—that Mr. Weaver told you that Mr. Miner would like to call upon you?

Witness: May I look at the affidavit?

Mr. English: In the month of August?
Judge Skinner: Yes.

A Yes, that is correct.

Q Did you meet Mr. Miner? A Yes.

Q Where? A At my home.

Q That was the first meeting? A Yes. I had met him many times before.

Q I mean the first meeting in this connection. A Yes. I think I played golf with him up at Baltusrol once.

Q When did Mr. Maynard enter into the employ of the Miner Edgar Company? A About November, 1925.

Q Maynard had been at one time employed by the Maas & Waldstein Company, had he not? A Yes, at one time, several years ago. I don't see anything about Mr. Maynard in this affidavit.

Mr. English: Yes, on the second page it is mentioned.

Q In your original affidavit, of December 11, 1925, you spoke of a set of financial books at the factory—in the second paragraph, on page 2, and also spoke of an auxiliary set of books in the New York office. A Yes.

Q Was the set of books at the factory installed by you? A Yes.

Q Had there been none before you did that? A No, no financial record.

Q And were the books at the New York office installed by you? A No.

Q Had there been such books before you became connected with the company? A Yes.

Q Were the books at the factory books that made any record of factory cost, production? A That was a part of the factory record, yes.

Q Part of the books, the record in the books that you installed? A Yes.

Q And the sales were made from the New York office, were they not? A That, I think, may be a question of law; I don't know.

Q Isn't that where the salesmen reported? A The sales manager had his office in New York, yes.

Q And the salesmen were under that sales manager, weren't they? A Yes.

Q Then the sales were managed by the sales manager, weren't they? A Yes.

Q Not by you? A No.

Q Then they must have been managed by him from his New York office? A You didn't ask me where they were managed; you asked where they were made.

Q I ask now where they were managed? A They were made in various places; they were made when the salesmen called on a customer and effected a sale; they were made over the telephone to the New York office, and over the telephone to the factory.

Q Were they managed from the New York office? A Yes, they were.

Q The books kept in the New York office were the ordinary books in character for the record of the corporate transactions—financial transactions, as well as purchases and so on? A No, I think they were extraordinary in many respects.

Q Did you at any time suggest any change in them? A Yes.

Q When? A In the year 1922, orally and verbally and informally at many other times.

Q Did they contain anything that your books in the factory did not contain? A Yes, they did contain some things.

Q What office did Mr. Magnus hold while you were president? A He was treasurer.

Q And Mr. Maas? A He was vice-president and secretary.

Q When would you say that the books at the factory—at the New York office became auxiliary to the books that you installed at the factory? A When the books at the factory were put upon the basis of financial record, instead of material record, as they had been theretofore.

Q The financial record of the company, the keeping of it, was within the function of the treasurer and secretary? A To some extent.

Q To a large extent, wasn't it? A At a certain stage of the procedure it became matters for the treasurer.

Q Were there any directions by the Board of Directors superseding the function of the treasurer and secretary? A The Board of Directors never directed; they never met.

Q Then there were no such directions, I take it? A No.

Q And the installation by you of those books was done on your own motion and of your own volition? A Yes.

Q And without any action of the Board of Directors approving it? A Yes.

Q Formally or informally? A That is right.

Q And what made the New York books, in your mind, auxiliary to the factory books? A The fact that the records originated at the factory.

Q The records originated at the factory. Did not the orders come from the New York office to the factory? A Some of them.

Q Didn't most of them? A In number, perhaps; in volume of business, I should say they are about equally divided.

Q You had an examination made of the books at the New York office, did you not? A Yes, sir.

Q When was that, about? A That was in March or April, 1925.

Q Was that before or after you had begun your suit for accounting? A That was before.

Q And was it for the purpose of your suit that you needed access to the books in the New York office? A No suit was contemplated at that time. It was as a result of the audit or examination of the books, that a suit was brought.

Q At the time that you had this examination made, did you then have it in mind to bring the suit? A I had in mind that for many years I had been requesting financial statements from Magnus, and they had been refused, so I determined to get them on my own motion.

Q Why couldn't you get them from your books, if they were so complete—your factory books, if the others were just auxiliary, and yours were the principal set, and you were keeping the financial record, why did you need to go outside of them? A It was necessary, as I stated, that some of the items in the New York records did not appear on the factory records.

Q You were given every facility, were you not, for that examination? A Ultimately, I was, after a good deal of opposition, yes.

Q Is that fair, doctor? A Don't you want an answer?

Q Yes, I want an answer, is that fair? Go on and tell me why you justify the statement that you only got it after a good deal of opposition. A Why, it became necessary, you may recall, to again take the matter up with you, for the reason that your clients in the New York

office refused to allow the examination to proceed.

Q I don't recall anything of the kind. Please don't make me your witness, for I am afraid you will be disappointed. At any rate, you got it, didn't you? A Ultimately, yes.

Q And given full and free access to everything, weren't you? A Yes.

Q You would take the statement of your own accountants, would you not, as to whether or not they were freely given access? A Yes.

Q And you got what you wanted by such examination, did you? A Yes, as far as we continued.

Q You didn't need to take the books, did you? A What do you mean "take the books"?

Q I mean what I say. In order to get what you wanted, you didn't need to physically take those books?

Mr. English: The books in the New York office?

Judge Skinner: Yes.

A They were put at our disposal.

Q And got what you wanted without physical possession of them? A I had physical possession of them.

Q While you were there, you mean? A Yes.

Q And you didn't have to take them to your house, did you? A No.

Q You know, do you not, doctor, that while the accountants were there, they had with them, or brought with them, one of the factory books? A Yes, I know that.

Q That was a book that you had taken from the factory when you left, was it not? A No.

Q How did it come into your accountants' possession, do you know? A I delivered it to them.

Q Where did you get it? A In the factory.

Q In other words, you didn't take it from the factory to your house and then give it to your accountants? A No.

Q But you took it from the factory and gave it directly over to the accountants? A Yes.

Q And that was before you physically left the factory? A Yes.

Q But after you had been deposed by the board? A Yes.

Q And that book was retained in the New York office by Mr. Maas or Mr. Magnus, was it not? A No, it was returned to the factory.

Q By whom? A I don't know by whom.

Q You know that your accountants didn't return it, don't you? A Yes, I do.

Q Didn't they report to you that they had to leave it there? A No.

Q What is the name of your accountants? A You are referring to the ultimate disposition of the book?

Q I am referring to what I asked. A The book was ultimately returned to the factory.

Q Didn't they tell you that they had to leave it in the office? You said no; do you stick to that? A Where did I say no?

Q What do you say now? A Why, we are talking, evidently, about two different periods of time. You asked me what became of the book, was it kept in the New York office; I said it was not, it was returned to the factory. Naturally it was kept in the New York office while it was being examined.

Q I asked you whether your accountants didn't report to you that they had to leave it

there, and you said no. A I didn't say no to that question.

Q What do you say now? A What is the question, please?

Q I asked you whether your accountants didn't report to you that they had to leave it there, and you said no. What do you say now? A I will inform you, if you will permit me to. The question is in a form which does not permit me to state the facts.

Q State it in your own way. A My accountants informed me that this book during their absence had been confiscated by someone in the New York office, and that they were informed by Mr. Magnus, I think, that he would not permit the examination to proceed, unless they would stipulate that this factory book, upon the termination of the audit, was to be left in the New York office. That was done, and the book was subsequently sent back to the factory.

Q Is that the difficulty that you encountered in the examination mentioned sometime ago by you? A It is one of them.

Q Was there any other difficulty encountered by your accountants? A I don't say by my accountants.

Q I say so, and ask you. A No, I think not.

Q Then that being your statement of what you wanted to say about the book being left there, why did you say, when I asked you whether your accountants did not report to you, that they had had to leave the book in the office, why did you say no? A We were talking about two different things. My first answer was directed to what ultimately became of the book on the termination of the audit.

Q When I asked you whether they didn't report to you that they had had to leave the book, didn't that convey to your mind substantially the same meaning as what you mean by the word "confiscation"? A I am unable to follow you.

Q You are unable to follow me, because of something which is obscure in the question? A The question is so involved and so lengthy that I don't know what it is directed to.

Q Did your accountants examine any books at the factory? A Yes, they did.

Q On page 3 of your affidavit, of December 11, you say that it is not true that you were entrusted by the complainant company with certain secret and confidential statements and invoices, codes, formulae and tables relating to the business of the complainant company. Then you say "the fact is that none of these things were in existence when I came to the company, but were created and installed by me." Isn't that a little too broad, doctor, that statement? A No, that is in exact accord with the facts.

Q None of those things were in existence? A Referring always to the description which you have incorporated in your papers.

Q Were there no invoices at all before you came to the company? A No, none.

Q What do you mean by that? They sold goods, didn't they, before you came? A Yes.

Q They had been doing it for a good many years? A A great many.

Q They had built up an honorable and successful business? A Yes.

Q And had a number of customers? A Yes.

Q To whom the bills were rendered? A Yes.

Q Do you distinguish between those and invoices? A Yes, I do.

Q What is the difference, or what was the difference? A The bills that went to customers and those that were filed in the factory, I should say there was quite a difference.

Q What were these invoices that were at the factory? A They were copies of the invoices that went to the customers.

Q And the copies were made where? A In the New York office.

Q And sent out to the factory? A Yes, at my request.

Q Oh, well, do you mean to say that before that the New York office had no record of any— A They sent none to the factory; that is what I do say.

Q When you say here that none of those things were in existence when you came to the company, you mean, then, that none were in existence at the factory? A Yes, that is what I mean. Don't you want to refer to these documents I am supposed to have taken?

Q No, I am not referring to the documents. A I thought that would identify these papers; they are the ones described in the moving papers in this cause.

Q When you made this affidavit you were answering, were you not, paragraph 8 of the bill and paragraph 8 of Mr. Maas' affidavit? A If that is where the allegation is contained, yes.

Q That is what you say? A Yes.

Q Now, do I understand that when you say these words, "The fact is that none of those things were in existence when I came to the company, but were created and installed by me," you mean none were in existence at the factory? A Yes, that is what I mean.

Q And when you speak of them as being created, you mean that you inaugurated that system at the factory? A Yes, that is what I mean.

Q If they were in existence somewhere else, they still didn't exist, you created them? A They were not in existence anywhere else.

Q There were no formulae? A No, not as referred to in your papers.

Q What do you mean by that, "Not as referred to in your papers"? A There was no systematic record of formulae; Mr. Reuschle, one of your affiants, had a certain set of personal books, not accessible to anyone but himself, in which certain records were kept.

Q These certain records were formulae, were they not? A Among other things, they comprised formulae.

Q And they comprised the formulae on which lacquers were being manufactured by the Maas & Waldstein Company, did they not? A At that time.

Q And enamels? A No, they didn't make any enamels at that time.

Q How about leather solutions? A Yes, as to one product.

Q And for thinners, too? A Yes.

Q But none for enamels? A No, they didn't make any.

Q Didn't have any formulae for them? A No.

Q You say these were kept by Mr. Reuschle; he was a chemist, was he not? A No.

Q What was he? A I think you had better ask him that; I don't know just exactly what he was.

Q Did you find out while you were there? A No, I was never able to find out just what he was.

Q Didn't you find out that he was the man that had the formulae of the company's products that they were putting out? A As I mentioned, yes.

Q Didn't you find that he had them in personal books, accessible to no one but himself? A Yes.

Q In other words, they were kept secret, and confidential, weren't they? A Yes.

Q And you called on him and he showed you those books, didn't he? A No.

Q Didn't you see them at all? A I have never examined them.

Q Have you seen them? A I have seen the outside of them.

Q They were formulae, weren't they? A Yes.

Q How do you know if you never saw them? A I subsequently, as stated in my affidavit, caused all the products manufactured by the company to be systematically recorded.

Q And in doing so, you saw them? A No.

Q Then how do you know they were formulae? A I called on Mr. Reuschle to record such products as were manufactured at the time, of which he had knowledge.

Q And those that he had, were then put in card index form, in a filing cabinet? A Not originally, no.

Q Ultimately? A They were originally entered in a book; there were very few of them, and subsequently, with the development of business, as they became more numerous, they were recorded on cards.

Q The formulae cards were first made in 1920, weren't they? A There was an attempt at a system a little before that, which, however, never became systematic, and was abandoned.

Q Was it your attempt or someone else's? A It was someone else's attempt. In 1920 the present system was started.

Q Was there a code that was put in effect by you? A You call it a code; it is a set of abbreviations for the various products.

Q Don't you call it a code? A I think it was called a code.

Q Didn't you call it a code? A Yes, I think perhaps I did. I don't call it a secret code, you call it a secret code.

Q When you say there were no formulae in existence when you came to the company, you are mistaken, are you not? A Identifying these various things by your description of them in the papers, I am not mistaken. I am referring always to the documents, formulae, records, etc., which are mentioned in the moving papers.

Q I take your own language; you say "it is not true that I was entrusted by the complainant company with certain formulae." A Yes, that is so.

Mr. English: You don't read the context.

Judge Skinner: I had already read it twice.

Mr. English: It says "not true as alleged in paragraph 8 of the bill and paragraph 8 of the affidavit of Maas that I was entrusted by the complainant."

Judge Skinner: Does that make any difference?

Mr. English: Yes. He said it hooks up to the bill and affidavit. It makes all the difference in the world.

Q Do you see any difference in that? A Yes, very material difference.

Q Will you tell me what the difference is; how, in any way, it makes it a different question to add what Mr. English has just added? A It identifies, at least, to some extent what we are talking about.

Witness: Do you wish me to make clear the matter in a very few words?

Judge Skinner: Yes.

Witness: These formulae to which you have referred, have long since become obsolete; they are no part of the record referred to in your moving papers. I found them of little or no value, most of them, and discarded them.

Q Do you mean that when you deny that you were entrusted with them, you mean that they were of no value? A Anything that was done in this company was done on my motion; I wasn't entrusted with anything. I called on Reuschle; I said, "Let us see what you have got here; we will put them on record so far as they are worth while." I don't call that entrusting.

Q So that when you found that they were— you referred to the formulae that Reuschle had? A Yes.

Q And when you found that Reuschle had formulae in a personal book, accessible to no one but himself, and you called on him for them, as president of the company, you did not feel that you were being— A I wasn't president of the company.

Q As manager? A I wasn't manager.

Q What were you? A Chemist.

Q As a chemist you didn't feel that you were being entrusted with anything? A Pardon me, I will correct that statement; I was secretary of the company at that time.

Q As secretary of the company what business did you have to call on him for that formulae? A I made my headquarters at the factory; I was in charge of the factory at this time.

Q Having charge of the factory, did you not feel that when you called on Reuschle for the codes which you say were kept by him, accessible to no one but himself, and that were formulae for the products of the company at that time, that you were being entrusted with anything? A No, there was nothing novel about them; they were the well-known formulae used by every manufacturer, well-known combination, and well-known constituents.

Q No reason, then, for any attempt being made to keep them secret? A None whatever, except the idiosyncracies of the person who kept them.

Q Did you have any such idiosyncracy, doctor? A No, none whatever.

Q Was there no attempt made to keep them from the knowledge of anybody and everybody? A They were not distributed broadcast, nor they were not placed on the street.

Q Was there any attempt made to keep them from the knowledge of anybody? A Nobody in the employ of the company.

Q Did you not direct yourself the distribution of these to certain selected employees? A Yes.

Q You gave instructions, did you not, that in future all the formulae should be written in formulae code? A Yes.

Q I don't quite understand yet what you meant by your denial that I referred to, on page 3. Our bill of complaint, in paragraph 8, said this, "As president of the complainant company, the defendant, Henry V. Walker, was paid an annual salary as president and factory manager of the complainant company. The said defendant, Henry V. Walker, was entrusted with certain secret and confidential statements, invoices, codes, formulas and tables relating to the business of complainant company," and you in your affidavit say that that is not true as alleged here? A Yes.

Q You are denying that allegation, aren't you? A Yes.

Q Then you add, "The fact is that none of those things were in existence when I came to the company"? A Yes.

Q You have had to change that as to one thing, the formulae? A They were not in possession of the corporation. I have testified that they were in Mr. Reuschle's private possession, and it was to correct that state of affairs that I called upon him to deliver them to me.

Q If they were in his private possession, they were in existence, weren't they? A As to those that were in his possession, of course.

Q Why did you say that none of those things were in existence? A I identified them by the description which you have just read.

Q What is there in the description that I have just read that in any way— A They relate to certain documents which I am alleged to have taken from the factory.

Q So you understood that this statement in the bill of complaint referred to certain— A I understood it relates to now, and not twenty

years ago. Of course, if we are going back twenty years, I will have to refresh my memory on several matters.

Q And if you were to go back twenty years, your statement would change? A No, I think not, not as to any transactions with Mr. Reuschle.

Q Were you never entrusted with any confidential statements? A Not by the corporation. The corporation never had possession of them, until I put them in possession.

Q Were you never entrusted with any formulae? A No.

Q You mean the same thing, not by the corporation? A Yes.

Q Then you make the same distinction between getting a thing from an employee of the company, who has it in his possession, and being entrusted with it? A Yes. The corporation, as such, of course, took no action in any of those matters. Mr. Maas and Mr. Magnus were totally incapable of entrusting me with any of those things.

Q They had to leave it to Reuschle? A They had to leave it to me.

Q Before you, with such perfection, came there, were they able to get along at all? A I don't think I am called upon to answer that question.

Judge Skinner: I think your answers indicate that sort of a question.

Q They had somebody before they had you, didn't they? A Yes.

Q And that somebody, among others, was Reuschle? A No, not in the same capacity.

Q Oh, no, not in the same capacity, but in possession of the formulae by which their goods

were manufactured? A The company didn't have any formulae at that time.

Q That is your explanation of what you said here? A Yes.

Q You said that you were not manager, you were secretary; you were chemist?

Mr. English: Speaking as of what time?

Judge Skinner: As of the time he got these things from Reuschle.

A No, I don't confirm that it is right.

Q When you first went with Maas & Waldstein, what was your employment? A I went to develop and market an invention of mine relating to household fumigation.

Q Before that what had been your employment? A I had been chief of the division of inspections in the Department of Health of the City of New York.

Q As such what did you have to do with lacquer or enamels, anything? A Nothing at all.

Q Before that what had been your employment? A I had been in a chemical laboratory and had a private laboratory in New York.

Q Doing experimental work? A Doing commercial work.

Q As such had you had anything to do with lacquers or enamels? A No.

Q At any time before you went to Maas & Waldstein's employ, had you had anything to do with the production of enamels or lacquers or leather solutions or thinners, or any of the things that you found being made at the Maas & Waldstein factory? A No, nothing.

Q You say that the formulae that Reuschle had are known to every manufacturer; that is

what you said; what did you mean? A I meant that there was no invention involved in the formulae, and they were not novel; they were based on certain general principles, and they were all substantially described in the literature.

Q Are they all making the same thing? A All the same thing.

Q Of the same quality? A Yes.

Q No difference at all between them? A No.

Q The Miner Edgar Company had been making a lacquer, had they? A Yes.

Q Just the same as the Maas & Waldstein Company? A They make a great variety of lacquers.

Q They have been making a great variety just the same as Maas & Waldstein? A Yes, substantially the same.

Q Some difference? A Yes, certain minor differences.

Q Minor differences that make the difference between usability and non-usability? A No, not at all.

Q Don't you have to modify lacquers in a very small degree, in order to make a very substantial change? A No.

Q To suit a customer? A No.

Q Then Miner Edgar Company had been making the same thing as Maas & Waldstein? A Substantially, that being a small part of the Miner Edgar business.

Q By the way, it is a part that you intend to make larger, isn't it? A I hope to make all parts of their business larger.

Q That particular part, you also intend to make larger? A I hope so, yes.

Q And not only larger in volume, but larger in proportion to the rest of their business?

Mr. English: I don't think that is cross examination. It has nothing to do with this bill. It is immaterial and irrelevant to this bill or to the cross examination on the affidavits.

Q Do you base your denial that you were given any secret or confidential statements upon the fact that the formulae were common knowledge known to every one? A Yes, and the further fact that the corporation had no possession of them.

Q Why did you take possession of them? A Because I thought it very necessary that the corporation should have them, rather than Mr. Reuschle.

Q Why? A Because they were manufacturing goods from it.

Q Something they ought to have? A Yes.

Q And then the company got possession of them through you? A Yes.

Q You didn't get possession of them personally? A I was the custodian of them, yes.

Q But you understood you were getting them for the company? A Yes.

Q Then didn't you feel that you were entrusted with something? A No.

Q You thought that because you got them for the company, you were free to dispose of them as you pleased, is that right? A No.

Q The goods that were being manufactured by Maas & Waldstein Company were being so manufactured from these formulae that were in Mr. Reuschle's possession, weren't they? A Up to the time I went there, yes.

Q There isn't any disposition on your part to say that these were not formulae, these things

that you took over from Mr. Reuschle, is there? A You used the term "chemical formulae" in your moving papers. I have denied that the company owned any chemical formulae whatever.

Q Then you base that denial on some distinction between these things that Reuschle had and the words "chemical formulae"? A That and on the fact that they haven't shown any ownership in those things, and cannot show it.

Q No, but we are talking about the definition of "formulae," aren't we? A We are talking about that and ownership. You allege that they own certain chemical formulae. I deny that.

Q One of the things that you base that statement on, besides ownership, is that the things that Reuschle has were not chemical formulae? A I wasn't talking about the things that Reuschle had; I was talking about the things which you identify in the moving papers.

Q And the things that were identified in the moving papers were identified in your mind as what? A A set of manufacturing instructions, as I stated in my affidavit.

Q Was there any set of manufacturing instructions in the possession of Maas & Waldstein Company?

Mr. English: When?

Judge Skinner: At any time, as distinguished from formulae.

A As distinguished from formulae, they never owned any chemical formulae.

Q Then you distinguish between chemical formulae and just formulae, do you? A Yes; in other words, when a man says a thing, I take it he means what he says.

Q These that Reuschle had were formulae, but not chemical formulae, is that right? A It depends on the definition of the word "formulae."

Q What is your definition of the word "formulae"? A Mine is the Standard Dictionary definition.

Q I asked you your definition, not the Standard Dictionary. A I think the best thing is to turn to the Standard Dictionary.

Q Do you have to refer to a dictionary, in order to give your definition? A I do.

Q Having been in the employ of the Maas & Waldstein Company, and as you say, managing it for all these years, do you have to refer to a Standard Dictionary, to determine what you mean by the word "formulae"? A When I am called upon for evidence, I try to produce the best evidence, which I think is the Standard Dictionary.

Q You don't know what that is until you see it? A Yes, I know it very well.

Q Can you give it? A No, not from memory; I prefer to quote it from the book. May we have it?

Q If we are unable to get a dictionary, you will be unable to tell what you mean by the definition? A I will make an attempt at it; I don't think I can do it in the concise language of the dictionary, however.

Mr. English: We can produce Webster's Dictionary. (Webster's Dictionary produced.)

Witness: I don't know whether I will subscribe to that.

Q May I just ask a question? A Surely.

Q You said that there was a difference between "chemical formulae" and "formulae"? A Yes.

Q And at that time you must have had some idea in your head as to what you meant by "formulae"? A Yes.

Q Without any reference to a dictionary? A Oh, no, I looked it up in the dictionary, but I looked up that statement in several dictionaries, and chemical books, and I examined the literature very carefully on the word "formulae" and "chemical formulae."

Q Before you came here? A No, before I made the affidavit.

Q Then perhaps we can remove any need for a dictionary between the words "chemical formulae" and "formulae," by this: there were in the possession of Mr. Reuschle certain things that you took over; what were they? A They were manufacturing instructions for certain nitrocellulose products.

Q Did they give the ingredients to be put in those products? A Yes.

Q And the quantity of them? A Yes.

Q And what else? A That is all.

Q Do you call those manufacturing operations? A Yes.

Q And not formulae? A No.

Q You wouldn't yourself call them formulae? A They are not chemical formulae.

Q Are they formulae in any sense? You are looking at the dictionary? A I think they are probably within the definition of "formulae."

Q You are looking at what, Webster's? A Webster's New International Dictionary.

Q So that your denial that you were entrusted with any formulae was based, was it,

upon the interpretation or assumption that by "formulae" was meant "chemical formulae"? A That is what the papers say.

Q And that was your interpretation? A My denial was directed to the fact that the word "chemical" was tacked onto "formulae," for the purpose of creating the impression that these things were novel and involved an invention.

Q Will you read the definition as you find it there? A Of a chemical formula?

Q Of "formula." A I will read both: "a prescribed or set form—"

Q Which is this? A This is "formula"—"A prescribed or set form, an established rule; a fixed or conventional method, in which anything is to be done, arranged or said." "Chemical formula: A symbolic expression of the composition or constitution of a substance, as the formula for water is H^2O." That is sufficient, I think.

Q The writings that Mr. Reuschle had in his possession, you have said, were a statement of the ingredients that went into various products of the company? A Yes.

Q And of the quantity of each? A Yes.

Q And those ingredients were chemicals, were they not? A Everything in the nature of a chemical.

Q So that these were statements of the chemicals and the quantities going to make up a certain product? A Yes.

Q And when you deny our charge in the bill that you had been entrusted with certain formulae, you meant by that denial that you had not been entrusted with any chemical formulae? You have just read the definition of them from Webster's Dictionary. A I meant that and

more. I meant that the company had never at any time had any formulae to entrust me with.

Q You meant, then, two things, that what you got from Reuschle was not entrusted to you, and second, that it wasn't chemical formulae? A Reuschle wasn't the corporation. Reuschle's possession was not the possession of the corporation. That was a very serious defect in the situation, and one of the very first things which I corrected.

Q It was corrected by you? A Yes.

Q So that it became the possession of the company? A I handed it to the company; not they to me.

Q So that your denial, then, of the charge was based, first, on the feeling that what you got were not entrusted to you, but by you to the company? Right? A Yes. And that they were not chemical formulae.

Q Those two things? A That the company had no ownership in them.

Q And that they were not chemical formulae? A Those three things: the company had no ownership in them.

Q The company got them from you? A Got them from many sources.

Q You said that the company got them through you? A What are we talking about now, formulae of Reuschle twenty years ago.

Q Yes. A Yes, I got possession of them for the company.

Q May we just read into the record, doctor, as a part of what you find in the dictionary, "No. 3: A recipe, especially a prescription or recipe for a preparation of a medicine compound"? A Yes, I have no objection. This affidavit on which I am testifying, of course, Reuschle isn't men-

tioned in the moving papers; he comes in at a very much later date.

Q The fact is, then, that the things which you got from Reuschle and their subsequent modification, or addition, in the course of the business of the company, that were kept in the filing cabinets—first, in the book, and then in the filing cabinets, were statements of the ingredients that went to make up the different products manufactured by the company, and the quantities of each; that is what they were?

Witness: Is this a question?
Judge Skinner: Yes.
(Last question repeated.)

A Yes, as to what they purported to describe. Of course, they didn't include all the products manufactured by the company.

Q As far as they went, then, they were formulae, weren't they? A Not chemical formulae.

Q But formulae? A I don't know whether they can be brought within the dictionary definition of "formulae" or not.

Q Didn't you yourself many times call them formulae? A I think perhaps I did.

Q And you, a chemist, knew what you were talking about? A I was very careful not to call them chemical formulae.

Q Why were you so very careful? Tell me that. A It is a misnomer, and it is very probably, as far as you are concerned, innocently, but for a purpose—for the purpose of creating the impression that this company has created involved novel chemicals, and that I am attempting to take that information away with me; the fact being that there is nothing novel about them;

they are merely mixtures of well known ingredients, similar to those made by, I should say, one hundred and fifty other manufacturers in the United States.

Q You found in the bill of complaint the statement that you had been entrusted with novel formulae, that were inventions or discoveries, did you? A That language does not appear, but it says the company owns them. The company owns nothing of the kind.

Q Does it say that the company owned any novel discoveries? A It says it owned these secret formulae.

Q That interpretation of confidential statements and secret formulae into something novel is not stated in the bill, is it? A I object to the word "own"; I don't care what description you use, it don't own them.

Q A man, then, cannot own something that is a secret process? A Not by writing it into a record, I don't become the owner. If I write the Prudential Building on my books, I don't become the owner of it.

Q You don't recognize any obligation on your part towards the Maas & Waldstein Company not to disclose anything that has been given you in confidence, even, unless it be something that the company can be said to own? A Nothing has been given me in confidence. I don't have to pass on that question.

Q I show you a memorandum, under date of January 27, 1921, on the stationery, apparently, of Maas & Waldstein Company, and signed with certain initials; are they your initials? A They are mine, yes.

Q Is the handwriting your initials? A Yes.

Q The memorandum itself is all typewriting, isn't it? A Yes.

Q The form has printed the word "From," and underneath, the printed word "To," and underneath, the word "Subject." A It speaks for itself.

Q This was a memorandum from you to Mr. Seher, wasn't it? A Yes.

Q And the subject as stated there over your initials is "Modification of formulae"? A Yes.

Q And when you said that, you referred to the directions or statements of the ingredients and quantities that were to go into various products of the company? A I referred to just manufacturing instructions, called formulas.

Q Called by you formulas? A Yes, not chemical formulas.

Q Another one, under date of March 12, 1921? A You will find a hundred of them, probably; I wrote lots of them.

Q You wrote lots of similar directions? A Hundreds.

Q In which you referred to these matters that were on the card index, or that had come from Reuschle as formulas? A They didn't come from Reuschle. You have taken a jump of about fifteen years.

Q Some came from Reuschle? A No.

Q Aren't they making today some of the things they made when you went there? A No, not a single one.

Q You mean every bit different? A Yes.

Q I call your attention to a memorandum dated April 14, 1920, not initialed, except in type, by the initials H. V. W. Have you any doubt that that is a memorandum issued by you, or a copy of it? A It had my authority; I didn't actually dictate the memorandum; that was done by my secretary.

Q You mean that it was dictated by your secretary? A Yes.

Q Who was your secretary? A A man named Kane.

Q Can you tell from looking at this— A The fact that it does not bear my signature. I was in the habit of signing all my own dictation.

Q Kane was your secretary; did he not do this under instructions from you? A He probably did.

Q This says, does it not— A I confirm that, if that is what you want.

Q —"Please note that in the future all formulas reported to the office must be written in the formula code, copy of which has been supplied you." Those were your orders, dictated for you by Kane? A Yes.

Q And these instructions went to certain people whose names are indicated by the initials in the left-hand corner, is that not so? A That was the intention; I presume it was done.

Q It was intended that they should go to O. P. S., meaning Mr. Seher? A Yes.

Q To W. R.? A Meaning Mr. Reuschle, and R. F. W. meaning Mr. Weaver.

Q Is that the Mr. Weaver who is now with the Miner Edgar Company? A Yes.

Q To J. A. R. meaning who? A J. A. Rollieri.

Q E. W. meaning who? A Ernest Weaver.

Q Son of the Weaver that is with the Miner Edgar Company? A Yes.

Q And what was his connection with the company at that time? A He was a foreman in the enamel department. Ernest Weaver, I may say, was a sub-foreman; he had charge of manufacturing; his father had charge of the whole department, including development work.

Q Reuschle had charge of what? A So far as he had a title, he was kind of a lacquer superintendent; he was the cashier of the factory; he was a kind of testing man; he tested these products before they were shipped out.

Q A practical chemist? A No.

Q And J. A. Rollieri, what was he? A He was foreman of the mixing department, where the clear lacquers and solutions were made.

Q Would you be perfectly willing now, that you are with the Miner Edgar Company, to disclose to the Maas & Waldstein Company the formula on which their products are being made? A I don't know any reason why I should.

Q On page 7 of your original affidavit, you say that a certain book referred to in the paragraph 7 of Kane's affidavit, was a transcript of the various books mentioned in the paragraphs above quoted from your bill of complaint in the accounting suit? A Yes.

Q Do you mean that it was a transcript from the books that you had installed at the factory? A Yes.

Q And was also a transcript from the books in the New York office? A No, it was a factory book.

Q In your reply, in the more recent affidavit, of January 18, you say that you told Mr. French, on page 2, that he was not qualified, in your judgment, to handle the sales of lacquers? A Yes.

Q Why did you specify lacquers? A Because that was the branch of his activity upon which I had information.

Q At that time did you have it in mind to bring in Mr. Maynard? A Yes, I did.

Q And had practically engaged him? A Yes, I think he was actually on the payroll, although he didn't report for some weeks.

Q Now, you say that you were "unable to make much progress with him along that line"—with French, that is—"for the reason that he immediately brought up to me the question of his financial relations with the company, which involved an indebtedness from him to the company of over $5,000. I told him that I would have to consult Mr. Miner about that, which I subsequently did." Do you mean that you, president and general manager of the company, had to consult Mr. Miner about an indebtedness from French to the company? A I mean exactly what the affidavit said.

Q That is what you mean? A Yes.

Q You didn't have to consult Mr. Miner about any indebtedness that was claimed by French as due him from the company? A He made no such claim.

Re-direct examination by Mr. English.

Q Dr. Walker, at the time you had this conversation with French, that has been last referred to, how long had you been president of the Miner Edgar Company? A About a week.

Q You hadn't any knowledge of this matter of indebtedness which French brought up? A No.

Q Is that the reason you had to consult Mr. Miner about it? A Yes, that is the reason.

Q You stated that you saw no reason why you should disclose to the Maas & Waldstein Company the formula of the Miner Edgar Company. Have you disclosed to the Miner Edgar Company the formulas of the Maas & Waldstein Company? A No, I have not.

Q What became of those various documents referred to in the bill of complaint, and which in your affidavit of December 11th you admit having taken? A They are at my house, in Newark, with the exception of the book, which is in your office.

Q You brought that to me this morning? A Yes.

Q That is the only time it has ever been out of your house? A Yes.

Q Have you ever disclosed or turned over any of those books and papers to the Miner Edgar Company? A No.

Q Have they or any of them ever been in the Miner Edgar Company's office? A No.

Q Any intention on your part to turn them over to the Miner Edgar Company? A No.

Q Or take them to the office? A No.

Q What was your purpose in taking physical possession of those books and papers? A As a matter of proof in the accounting proceeding, which I have against the Maas & Waldstein Company.

Q A bill of complaint filed by you in this court? A Yes.

Q You have said that up to the time you went with the Maas & Waldstein Company you had had nothing to do in a practical way with the production of lacquers. What had been your training as a chemist up to that time? A I am a graduate of Columbia University in a course in chemistry.

Q Although you had no practical experience, were you qualified by training to take over that kind of work? A Yes, I was.

Q How did it come about that you, as a chemist, became active in the development or manufacture of lacquers by the Maas & Waldstein Company? A I was engaged at the factory in the month of December, 1906, in a chemical investigation connected with my invention for household fumigation, the exploitation of which the Maas & Waldstein Company had undertaken. The then chemist of the Maas & Waldstein Company, Mr. Walter Crocket, resigned on or about December 19, 1906. Mr. Seher at that time was a vice-president of the Maas & Waldstein Company.

Q You refer to the Seher who makes the affidavit here? A No, I refer to his father, Mr. August Seher, who asked me if I would take over the chemical work, as Crocket's leaving put them in a bad position.

Q Did you do that? A I said I would. I went over such matters as Mr. Crocket agreed to show me, which related chiefly to laboratory procedure. Two days afterwards, Mr. Seher asked me if I would take over the work. I said "Yes." He said he would like to let Mr. Crocket go. I said, "All right, let him go, if you wish, I will handle the matter."

Q And from that time what happened with respect to your connection with the lacquer or other manufacturing departments of the company? A Why, that is the way I became the chemist of the company, very informally, as a volunteer; I was never formally appointed chemist.

Q From that time on did you bring your expert knowledge to the aid of the company in its manufacturing processes?

Judge Skinner: I object to the question as leading.

A Yes, I did, and about two years afterwards, in recognition of the value of my services, I was

given a ten per cent. interest in the company and made an officer and director.

Q Mr. Reuschle has been mentioned; what was Mr. Reuschle, and what did you find him doing when you first became connected with the company?

Judge Skinner: I object to this as not being in line with the cross examination, and entirely outside of it, and outside of the affidavit that Dr. Walker has made. I do not understand that this is a proceeding in which fresh depositions may be made.

Mr. English: It is not designed to, but you spent some time, Judge Skinner, in going into the relation of Mr. Reuschle and this witness; I am following up what you brought out.

A Out of consideration for Mr. Reuschle, I would prefer not to answer the question.

Q You were asked with respect to some trouble which your accountant who by arrangement examined the books last year had. What particular book were you referring to? A I was referring to the New York books, the ledger and journal.

Q After the matters between the accountant and the company were straightened out, what trouble did you personally have? A In regard to the audit?

Q Yes? A There was no further trouble that I know of.

Q You said, in answer to one of Judge Skinner's questions, that the books in the factory were put on a financial basis; when was that done? A That was done about June, 1920.

Q At whose suggestion? A At mine.

Q What system was devised as between the books at the company's office in Newark and the books at the New York office? A An effort was made by me to bring them into harmony.

Q Did you devise a system to that end? A Yes.

Q What was it? A The system which is now in use, or was at the time I left. It is all covered by correspondence.

Q You mentioned the sales manager who had his office in the New York office; who was the sales manager? A Mr. H. C. Flanagan.

Q Is he still with the company? A Yes.

Q When did he come with the Maas & Waldstein Company? A In April, 1919.

Q Do you know where he came from? A Yes.

Q Where? A From the Celluloid Zapon Company.

Q You were asked about a conversation with Mr. Weaver, in which you say he consulted you about going with the Miner Edgar Company. You told him he must decide for himself. That was when? A That was about May, 1925.

Q At that time had there been any negotiations as between you and the Miner Edgar Company for your own employment by that company? A No, there had been none.

Q Was there any idea in your mind at that time that you would go with the Miner Edgar Company? A No.

Q When did that matter first come to the front? A In August, 1925.

Q That was the first time the idea came up or was suggested? A Yes.

Q And it was in August, 1925, that you first met Mr. Miner in connection with that matter? A Yes.

Re-cross examination by Judge Skinner.

Q You were asked what Mr. Reuschle was doing or what his part in the company was when you went there, and you said that out of consideration for him you would prefer not to answer. I take it that was an expression on your part of a wish to save Mr. Reuschle's feelings, was it not? A Yes, not to humiliate him unnecessarily.

Q Because in the answer you might be compelled to humiliate him? A Yes.

Q As a matter of fact, you retained him, did you not? A Yes.

Q He has been there all the years since you went there? A If you want to know about that, I shall have to answer the question.

Judge Skinner: You don't have to answer anything except the questions I put to you. You don't have to say anything beyond answering those. If Mr. English chooses to ask others, that is his business.

Q I simply ask you, did you not retain Mr. Reuschle? A Yes, and raised his salary.

Re-direct examination by Mr. English.

Q How did it come about that you retained him and raised his salary? A Mr. Reuschle at the time I went with the company, was an habitual drunkard. He had been drunk for about three years. I mean at the time I became general manager of the company. He did substantially

nothing in the way of service. When I became manager, I sent for Mr. Reuschle and told him that of course things wouldn't go on as they had been, that he would have to stop and change his habits very materially, that I thought perhaps he needed encouragement, he got $18 a week at that time, I advanced his salary substantially. He promised me that he would change his habits, and did, and kept the promise up to the time I left.

HENRY M. MINER, duly sworn according to law, on his oath testified as follows:

Cross examination by Judge Skinner.

Q Mr. Miner, you made an affidavit in this suit, do you recall, dated December 11, 1925? A Yes, sir.

Q The Miner Edgar Company, you say there, as to 95 per cent. of its business, it is different from that of the Maas & Waldstein Company. A It is.

Q That is true and has been for many years, hasn't it? A Yes.

Q You have been making alcohols, haven't you? A Yes.

Q And what else? A Alcohol and lacquers, solvents and similar lines.

Q The alcohol and solvents make up 95 per cent. of your business? A Probably 75 per cent. of it.

Q And then what are the other 20 per cent? A China clays and various other chemicals.

Q You have made various attempts to enter the lacquer and lacquer enamel business, haven't you? A No, not various attempts.

Q You had a man named Schroeder there, experimenting, didn't you? A We retained him in the laboratory for a short time, to make investigation.

Q Investigation into lacquers? A And other lines as well.

Q You had a man named Thomas there, didn't you? A Yes.

Q Bought him out, didn't you? A Yes.

Q Bought his processes and all? A Yes.

Q He had some formulas for lacquers? A No.

Mr. English: What is this cross examination of? These names certainly are not mentioned in the affidavits.

Judge Skinner: I think I can demonstrate the connection to the Court, Mr. English.

Mr. English: I think you are going outside of your province, and I object to it.

Q Didn't Thomas have any formulae for lacquers? A He claimed to have, but it appears that he didn't have.

Q They wouldn't work, would they? A I wouldn't say that.

Q What do you mean when you say that he claimed to have them, but it proved that he didn't have them? A We investigated some processes which he had claimed to have developed, which he had not developed.

Q And you bought him out? A We bought him out on the theory that he did have some valuable processes.

Q And you found out that he didn't? A We found out he didn't.

Q How long did it take you to find out? A We entered into an arrangement for one year with him.

Q Was he there only that time? A That is all.

Q When was that? A The arrangement was entered into in July, 1925.

Q Do you mean 1925? A Yes.

Q The arrangement with Thomas? A No, it was June, 1925; it was for one year.

Q Last year? A Yes.

Q Then he isn't with you now? A No, sir.

Q Then he left before the expiration of the year? A His health failed.

Q When you made that arrangement with him, he came with you, didn't he? A Yes, sir.

Q And actually had charge of the making of lacquers? A Yes.

Q According to his processes or formulae? A I should differentiate the lacquers; he did not take charge of the general manufacture of lacquers; we had a manager of that.

Q Who was that? A Mr. Frobisher.

Q And you had certain processes that you called the Anderson enamels, didn't you; you had certain processes from a man named Anderson, didn't you? A No, sir.

Q Was there a man named Anderson at any time connected with you? A No.

Q Or did you buy out a company that he was connected with? A No.

Q The name does not bring to you anybody that you have had dealings with? A No.

Q Have you got anybody in your employ now by the name of Anderson? A No.

Q Is there anybody by that name in the manufacture of lacquers or enamels or leather solutions?

Henry C. Miner, re-direct.

Mr. English: Where, in our company?
Judge Skinner: No.
Mr. English: Anybody in the world?
Judge Skinner: Yes.

A There is an Anderson Chemical Company.
Q Have you had any relations with it? A None whatever, except we have sold them goods.

Re-direct examination by Mr. English.

Q How long has the Miner Edgar Company been in the lacquer manufacturing business? A Five years.
Q Mr. Miner, has Dr. Walker disclosed to you any of the books or papers or any other documents from the Maas & Waldstein Company?

Judge Skinner: I object to any examination consisting of anything but a re-statement of the affidavit on which the cross examination has been based.

A No.
Q Ever seen any of those papers or books at all? A No.

Judge Skinner: May I have that objection go to the whole line?
Mr. English: Certainly.

Frederick S. Magnus, cross.

FREDERICK S. MAGNUS, being duly sworn according to law, on his oath says:

Cross examination by Mr. English.

Q You say in your affidavit you are an officer of the Maas & Waldstein Company; what officer are you? A Vice-president and treasurer.
Q How long have you been vice-president? A Since February, 1925.
Q How long have you been treasurer? A Since 1912.
Q Was it in 1912 you first came with the company? A Yes.
Q So any first-hand knowledge you have of the company's affairs started with that date, does it not? A Yes.
Q In your affidavit, page 1, you refer to a set of formulae kept in the New York office, which you say is kept under lock and key. How strictly do you mean kept under lock and key?

Judge Skinner: I object to the question, as no doubt unintended, Mr. English, but that is not what he says; he does not speak of a set of formulae kept in the New York office; he says or he speaks of a set of formulae referred to in Dr. Walker's affidavit as being kept in the New York office.

Mr. English: Any doubt in your mind that he and Maas are in the New York office?

Judge Skinner: I want to correct the recital, that is all.

Q Where is that physical office of the company? A 45 John street, New York.
Q Mr. Maas also has his office in New York, has he not? A He has.

Q In your affidavit, where you refer to a set of formulae as being kept in the New York office, under lock and key, you refer to 45 John street, do you not? A I do.

Q How seriously do you mean is kept under lock and key? A The key to the cabinet is kept in my desk, and when there is any need to refer to these formulae, the key is used for unlocking the cabinet, and during the time that these formulae are needed in the New York office, it is left open, and carefully locked again in the evening, and the key put back in my desk before I leave.

Q As a matter of fact it is unlocked during the day and locked up at night? A Yes.

Q The sales manager in the New York office has access to that, has he now? A He has.

Q And others in the office have access to it? A When necessary for very distinct purposes.

Q Salesmen, for example? A If they need to look up the number of a formula, in order that they may use that number in making a sale.

Q So the sales manager and the salesmen have access to it; who else has access to it? A Mr. Maas, himself.

Q Who else? A And the sales manager's assistant, Mr. Stiers, and anybody else that would happen to be in the New York office that would have good reason to refer to it.

Q Anybody who by any connection with the business of the company would have occasion to look at it, can look at it? A Absolutely, in connection with any business of the company.

Q What are your present sales of lacquers in volume, in financial volume?

Judge Skinner: I object as immaterial and irrelevant.

Q I notice that you say in your affidavit that back in 1905, as you learned from the books of the company, they aggregated over $60,000. I want to know what they were now? A In the affidavit I said they aggregated $60,000 to five customers; I did not investigate how many customers they had at that time, or what the total sales of lacquer were.

Q You don't know what the total sales were back in 1905? A No.

Q Do you know what they are now? A I do, approximately.

Q They have increased considerably since those early days? A They certainly have.

Q Referring to the last paragraph of your affidavit, on page 1, you have assumed in what you say that Dr. Walker has possession of the formulae, have you not? A I have.

Q Have you taken the trouble to go to the Newark office—factory office of the company, to see whether those formulae are there? A I know they are also at the Newark factory, because I go there regularly.

Q You know they are there? A They are.

Q Then if they are there at the Newark factory, your assumption that they are in Dr. Walker's possession is wrong, is it not? A No, in his testimony he has referred to having certain formulae, but particularly specifying that they were not chemical formulae that were in his possession.

Q Suppose we let his testimony speak for itself, whatever he said he said. You have read his affidavit. He says that the formulae which are referred to in your bill and affidavits are not in

his possession, and have never been taken by him. Do you remember that? A I would have to refer to his affidavit.

Judge Skinner: Are you referring to his affidavit where he says that?

Q On page 8, middle paragraph, of Dr. Walker's affidavit, of December 11, 1925, he says: "I have not taken, nor have I in my possession, any formulae belonging to the complainant, but the four copies of the formulae are distributed as hereinabove set forth in the various departments of the company." In view of that, Mr. Magnus, I ask you again, if the assumption that you made in your affidavit, that Dr. Walker had these formulae in his possession is not wrong?

Judge Skinner: I object to the question as misleading, in that the statement by Dr. Walker is not that he has not any such formulae in his possession, but he is careful to say that he has no formulae in his possession belonging to the complainant, and he has explained this morning at length in his testimony what he meant by that.

Mr. English: What is your answer?

A As to the original formulae, of which four copies were distributed in various departments of the company, the specific reference to formulae in my affidavit does not refer to any of those four copies. It refers in very general terms to any and all formulae of which he may have copies in his possession, amongst the papers which he admits having taken from the Maas & Waldstein Company factory, and which I have not seen.

Q You, I suppose, have read the affidavit of Mr. Maas, annexed to the bill of complaint? A I have.

Q He refers in his affidavit to the statements, copies, codes and formulae. Which of those four classes of papers have you in mind when you speak of formulae, other than the four sets of formulae which have been referred to? A The formulae therein referred to.

Q Will you describe what they are? A They have particular reference, as I understand it, to formulae that gave the various ingredients to be used in the manufacture of amyl acetate, butyl acetate, ethyl acetate and other manufacturing data, that went into the factory records, to show yearly manufacturing costs.

Q Are you a manufacturing man yourself, Mr. Magnus? A I think you will have to qualify that.

Q You don't have any particular oversight of the manufacturing process of the company, you are the financial man, aren't you? A I have taken over the general supervision of the factory, to the extent of keeping in close touch with matters in connection with its manufacturing operations.

Q Do you give any chemical professional skill to the manufacturing processes? A No, I have not.

Q Do you know the numbers of these various things you just referred to in your previous answer? A They haven't any particular numbers, the ones that I have just referred to, but the formulae that are in the cabinets have special numbers.

Q Those things that you mentioned were never included in this formula list, were they? A Not on the formula cards, no.

Q And the formula cards are supposed to set up what you have in your bill and affidavits called the formulae of the company? A Only in a very general way.

Q You mean to say there are other manufacturing formulae outside of what is on these cards? A Yes, there are.

Q Can you tell us what they are? A The formulae under which the factory operations conducted the manufacture of the items previously referred to by me as amyl acetate, butyl acetate and ethyl acetate, also in connection with the manufacturing of its soluble cotton.

Q Is there anything peculiar and novel about those things? A Only to the extent that I believe each manufacturer believes that under its process of manufacture it turns out a better product than some of its competitors. I know I have heard Dr. Walker claim at times that our—

Q I am asking you of your own knowledge? A Of my own knowledge, I cannot say.

Judge Skinner: I ask that the witness be allowed to finish his answer.

Q Those things are basic ingredients, are they not? A The same as all the various ingredients that go to make up the manufacture of lacquers are.

Q But they are manufactured generally by manufacturers of lacquers? A Not by all manufacturers of lacquers.

Q How do you make ethyl acetate?

Judge Skinner: I object as outside the line of the affidavit, and outside of the line

of proper cross examination altogether. He has said he was not a chemist.

Mr. English: If he doesn't know, he can say so.

A It is a distillation process.

Q You don't know how to make it? A I don't know, except I can read what the manufacturing process in our factory is.

Q Can you describe it at all, what the manufacturing process in the factory is? A Not in sufficient technical detail to have any meaning.

Q Can you describe it in ordinary language, if not in technical language? A No, not particularly so.

Q So you haven't any knowledge of any peculiarities of your particular ethyl acetate manufactured by the Maas & Waldstein Company, from that manufactured generally? A Only insofar as I have been told, on various occasions, as to how our ethyl acetate compared with the ethyl acetate manufactured by our competitors, and that information came to me from Dr. Walker, and would now come to me from our general manager in the plant, Mr. O. P. Seher.

Q Is O. P. Seher your general manager? A He is.

Q How long has he been such? A Since February, 1925, general manager or superintendent, as he may elect to call himself, and previous to that time, superintendent, under the direction of Dr. Walker.

Q Mr. Magnus, at the top of page 2 of your affidavit, you indulge in some speculation as to what a customer might or might not do, depending on whether he was informed by your com-

petitor that its product was made from the Maas & Waldstein formulae. I suppose that is purely speculation on your part, isn't it? A I think it is very ordinary speculation.

Q But you have no particular instance in mind, have you? A No, no particular instance.

Q I suppose the Maas & Waldstein Company doesn't do that sort of thing, does it? A Do what sort of thing?

Q The thing that you are speculating about at the top of the second page of your affidavit, that is, alleging to a customer of a competitor that you can make the product on the formula of the competitor? A No, we would claim that we could make as good a lacquer as the competitor, in order to bring about the same results as the competitor's lacquer.

Q Did Maas & Waldstein Company ever secure the formulae of competitors, used in its business?

Judge Skinner: I object as immaterial and irrelevant.

A Did you say formulas?

Q Yes. A Not to my knowledge.

Q Or any data of competitors, which it could use in connection with its sales to customers or prospective customers.

Judge Skinner: Same objection, and as outside of the line of cross examination.

A Any such information as might have come to the Maas & Waldstein Company would during the time of Dr. Walker's connection with the company have come to him, as he would be the

one that could make practical use of them, and he would be better able to answer.

Q You don't know about that one way or the other; what is your answer? A I don't particularly recall to mind any one particular copy of a competitor's formula that was ever submitted to me.

Q You do know, though, that copies of competitors' formulas have been submitted to you, don't you? A I know that there have at times been submitted to us what were supposed to be copies of other manufacturers' formulas.

Q You have taken pains to set those up on paper so that they would be available? A No, I never have.

Q Sure about that? A Quite sure.

Q Where did Mr. Flanagan come from to your company? A The Celluloid Zapon Company.

Q Did he bring any formulae of that company with him? A He brought records of formulae under which the Celluloid Zapon Company were supposed to have manufactured some of their lacquers, which were submitted to Dr. Walker.

Q And submitted to you? A I saw them, those that he brought.

Q Did you take any pains to get them down on paper in a comparative way as between your formulae and theirs? A To the extent of figuring out the cost and being able to judge whether the cost of a similar formula that we had was about in proportion, the same cost as theirs.

Q Flanagan operated from the New York office, did he? A Yes.

Q Under your direction? A Yes, and also made frequent visits to the factory, to see Dr. Walker.

Q Flanagan made use of that information in dealing with customers, did he not? A To the extent of offering to customers products of the Maas & Waldstein Company, which he could tell them he expected would do satisfactory work for them.

Q Made it according to the formula of some competitor company of Maas & Waldstein? A Not to my knowledge, and I cannot believe that he ever would make such a statement.

Q See if you can identify a sheet of tabulations, headed "May, 1919"; did you ever see that before? A Either this or a similar tabulation.

Q That was made up by you, was it not, Mr. Magnus? A I cannot swear as to the identity of this particular one, but similar ones were made up by me.

Q And the first half of the sheet—the tabulation on the first half of the sheet are Maas & Waldstein formulae and symbols, and prices, are they not? A They are.

Q And that on the second half of the sheet are Celluloid Zapon formulae and symbols? A They represent some of the formulae and symbols used by the Celluloid Zapon Company, and in parentheses, at either side, the particular lacquers made by the Maas & Waldstein Company that Dr. Walker told me could be offered in place of the Celluloid Zapon lacquers, to give the same result.

Q And the information and data which are set up on the second half of the sheet came to you through Mr. Flanagan, from the Celluloid Zapon Company, did it not? A As I recall it, it came to me from Dr. Walker, because I could never have designated that BB lacquer was a good substitute and would do the same work as 100K,

or that HB lacquer would do the same work as K1203.

Q The BB and HB are in parentheses, are they not? A Yes.

Q Which correspond to the Maas & Waldstein formulae? A Yes.

Q The other, on the last half of that page, is Celluloid Zapon? A Yes, that designation under which the Celluloid Zapon Company sell lacquers.

Q And the original source of that information was Mr. Flanagan? A As I understand it, yes.

Q Now, I show you another little book, and the page headed "Zapon K," can you identify that as Maas & Waldstein BB? A No, I cannot; to my knowledge, I have never seen this book before.

Q Although on the sheet which I show you, the BB in parenthesis is opposite the K, is it not, of the Celluloid Zapon Company? A Yes.

Q You cannot undertake to identify the two? A No, I cannot.

Judge Skinner: The book that is produced by Mr. English comes, I understand, from the possession of Dr. Walker?

Mr. English: Quite right.

Q I suppose you are aware of the fact that any manufacturer can chemically analyze his competitor's product? A Only to a limited extent can he do so.

Q Why do you say "to a limited extent"? A From the information that has come to me through technical men. I would not claim that the Maas & Waldstein Company could analyze any other manufacturer's product to the extent of absolutely guaranteeing to give an article

manufactured by the Maas & Waldstein made up of exactly the same ingredients.

Q You went beyond my question. What I asked you was, whether it is not possible for any manufacturer of lacquers, for example, to secure a sample of its competitor's product and chemically analyze it? A Yes.

Q And having progressed that far, then it is a question of its ability to reproduce the same thing? A Either the same thing or a similar product.

Q In the Celluloid Zapon case, for example, it wasn't necessary to do that, because you had the formula already, didn't you? A No, we did not have the formula.

Q Through Mr. Flanagan? A No, not that I know of.

Q Don't you know as a matter of practice, that lacquer manufacturers constantly analyze the product of their various competitors? A Yes.

Q Maas & Waldstein does? A Yes.

Q They all do? A Yes, they do.

Q In the middle of the second page of your affidavit, you quote from the Eagle Ottowa Leather Company; was that letter addressed to your company? A It was.

Q You are speculating, are you not, in your affidavit, when you say that the Miner Edgar Company is the responsible house which is mentioned in the letter? A I don't say that they are the responsible house mentioned in the letter.

Q That is the inference you seek to create from your affidavit, is it not? Read your affidavit and see. A I say in my affidavit that no other manufacturer of products similar to ours, who has any knowledge of our formula, or is in

a position to say, as this letter says, that it can exactly duplicate our product, unless it be the Miner Edgar Company.

Q So the inference which you are seeking to create in the mind of the Court, to which this affidavit is addressed, is that the Miner Edgar Company is the responsible house mentioned in that letter, isn't that true? A I am not taking it upon myself to be the judge. You may call it in an inference, if you wish.

Q That is the inference you are seeking to have the Court draw, is it not? A I am not attempting to create an inference on which the Court is to come to any decision.

Q Can you tell me what materiality that letter has in this case, unless it be based on the inference that the Miner Edgar Company is the responsible house mentioned in that letter? A It is simply to bring out the fact that some manufacturer claims to be able to absolutely duplicate our product, and knowing that none of our competitors are in a position to absolutely duplicate our product, and being reasonably sure that Dr. Walker would be in a position to duplicate many of our products, it necessarily was our inference that the letter and offer probably came from the Miner Edgar Company.

Q Then that is the inference that you seek to create from your affidavit, isn't it? A It is simply a statement of what I believe to be the fact.

Q Is that the inference that you desired the Court to draw, when you submitted this affidavit to it? A I wouldn't attempt to influence the Court.

Q Then it is merely an abstract statement? A Yes.

Q And it has no bearing on the Miner Edgar Company at all? A It is not proof that the Miner Edgar Company have written that letter.

Q You have no knowledge of any such thing? A I have no absolute proof of that fact, and didn't attempt to say that I had proof.

Q You were just dealing with an abstract case? A Yes.

Q Without any connection with the Miner Edgar Company at all? A Without being able to prove that the letter was written by the Miner Edgar Company.

Q Or even desiring the Court to draw any such inference? A Or even desiring to in any way influence the Court to draw any such inference.

RECESS.

Q Mr. Magnus, at the top of the third page of your affidavit, you refer to the removal of Dr. Walker as president of the Maas & Waldstein Company, because of acts which in the judgment of all his fellow stockholders and directors and officers of that company were calculated to be of embarrassment and injury to the company. I suppose that might be taken to be a matter of opinion, mightn't it? Minds might differ on that? A Necessarily so.

Q Reflecting upon its good faith, &c., and reputation in the trade. Was the Atlas Powder Company one of the companies whose opinion you feared might be affected by what you considered Dr. Walker had done?

Judge Skinner: I object to that as immaterial and irrelevant, and outside the line of the present examination.

A I referred to the associated companies in the Carbinol Products Company.

Q And the Atlas Powder Company was one of those? A Yes, the Atlas Powder Company was one of them.

Q And this Celluloid Zapon Company, that we talked about this morning, is an auxiliary of the Atlas Powder Company?

Judge Skinner: Same objection.

A Yes.

Q Now, do you know Mr. Maynard? A Yes.

Q How long is it that he worked for the Maas & Waldstein Company?

Judge Skinner: I object to that as outside the line of the present examination.

A I should say about two years.

Q He hasn't worked for it for two years last past—about three years? A I should say about two years.

Q Do you know for whom he worked after leaving your company?

Judge Skinner: Same objection.

A The Anderson Chemical Company.

Q At the bottom of page 3 of your affidavit you say that the books, papers, &c., which are referred to in the bill of complaint and complainant's affidavits, and paragraphs 6 and 7 of the affidavit of Mr. Kane, and paragraph 8 of

the affidavit of Mr. Maas, and paragraph 2 of the affidavit of Mr. Seher, are not the books referred to in paragraphs 9, 10 and 13 of the bill of complaint filed by Dr. Walker in the accounting suit. What other and different books are referred to in paragraphs 9, 10 and 13 in that accounting bill, as opposed to the books which are mentioned in the paragraphs named of those three affidavits?

Judge Skinner: I object to the question because, as I see it, it misstated what is said by Mr. Magnus in his affidavit.

Mr. English: Where is there any misstatement? I read from the paper.

Judge Skinner: You don't find in his affidavit a reference to books. He says the reference to certain secret and confidential statements, invoices, codes, formulae, tables, &c., and then he uses this language "are not to the books referred to."

Mr. English: The reference to those things are not the books referred to?

Judge Skinner: Yes, that the reference to the confidential statements is not a reference to the books.

Mr. English: All right, I accept the amendment; I thought I made it plain.

Q Mr. Magnus, what books are referred to in paragraphs 9, 10 and 13 of the bill of complaint in the accounting suit? A The financial accounts of the company.

Q Anything else? A And such factory records that were not in any way authorized by the Board of Directors of the Maas & Waldstein

Company, that Dr. Walker referred to in the bill of complaint.

Q That would include invoices; the books mentioned in 9 and 13, would include invoices? A I don't think so. It refers to financial accounts as kept by the books of the company.

Q Would it include tables relating to the business of the company? A Not that I know of.

Q Can you tell me any specific books of the company, or invoices or anything else that were authorized specifically by the Board of Directors? A The financial accounts of the company as kept in the books of account at the New York office had been in existence when I came there, and continued in existence after I was connected with it.

Q Can you point me to any direct action of the Board of Directors creating those books?

Judge Skinner: Which books?

Mr. English: The ones he talks about.

A Only in that the Board of Directors never objected to their being kept in the form in which they were kept.

Q By clerks? A Yes.

Q By acquiescence? A Yes.

Q And by acquiescence they consented to the creation of those books which you say Dr. Walker created and were not authorized? A No, at the time when Dr. Walker first suggested having such accounts kept at the factory, I suggested to him that if it was agreeable, why, I would go over to the factory to discuss with him the manner in which those books should be kept, and he then stated that he couldn't see what use that would be.

Q You are not the Board of Directors? A No.

Q Get my question; it is whether the Board of Directors ever made any objection to these books or records which were created and kept by Dr. Walker at the factory? A No official objection by the Board of Directors at any meeting.

Q No more than they ever made any personal objection to the other record which you spoke of? A Right.

Q Mr. Magnus, just what do you mean when you say this, beginning in the last sentence on the bottom of page 3 of your affidavit: "Some of the secret and confidential information, etc., referred to in the above-cited portions of the bill of complaint and supporting affidavits in this cause, was incorporated in the books of account referred to by Dr. Walker in his bill of complaint." What specific things do you refer to which is common to both sets of books or records? A There is nothing that I know of that is common to both sets of books; it simply has reference to the books of account as kept by Dr. Walker in the factory.

Q I don't believe you understand. You say "Some of the secret and confidential information referred to in the above-cited portions of the bill of complaint and supporting affidavits in this case was incorporated in the books of account referred to by Dr. Walker in his bill of complaint." What is the data which is common to both sets? A The various manufacturing or factory figures and costs that helped to make up the manufacturing cost of some of the materials that were manufactured by us.

Q You have the record of all that in your New York office? A Yes.

Q You say further in that same sentence: "but the references in complainant's papers are to these and other statements and data of a confidential nature." What do you mean by "these and other statements and data," as referring to those two sets of documents? A The other statements and data of a confidential nature are the setting up of the manufacturing costs of some of the principal articles of manufacture by the company, such as I previously enumerated, as butyl acetate, amyl acetate, methyl acetate and soluble cotton.

Q Did you ever see this book that you undertook to testify to in your affidavit?

Judge Skinner: I object, the reference is not to this book.

Q These records that you undertook to testify to? A According to my understanding of the statements and data, some of them—many of which I received copies from the factory, which are now in possession of the New York office.

Q I am asking you whether you have ever seen these records which you testified to in your affidavit? A Copies of them.

Q How do you know they were copies? They hadn't been compiled by you? A No.

Q They were reported to you to be copies? A Yes.

Q That is the nearest you can come to it? A Yes, that is the nearest I can come come to it.

Q Who had charge of the factory after Dr. Walker either ceased to become active or was removed by you by the efforts of the Board of Directors?

Judge Skinner: I object as immaterial, irrevelant and outside of the line of this examination.

A Mr. Otto P. Seher, under the direction of the Board of Directors of the company.

Q And the Board of Directors in 1925, consisted of yourself, Mr. Maas and Dr. Walker? A Yes.

Q And Dr. Walker having been removed, didn't exercise any direction, did he? A He did not; it was under the direction, I might say, of the officers of the company.

Q And that by elimination was you and Mr. Maas? A Yes.

Q How much did you personally oversee at the factory? A By going there regularly.

Q How often? A At least once a week.

Q How much did Mr. Maas? A Less frequently.

Q Very much less frequently? A Very much less frequently.

Q How much time would you put in once a week at the factory?

Judge Skinner: I object as absolutely immaterial and irrelevant to this inquiry.

Mr. English: It is material on the statements he makes on page 4 of his affidavit. He denies about these records, and all of which is conceded were made up at the factory.

Judge Skinner: I don't see how much time he spent there after Dr. Walker left can be related to that or can be within this examination.

A About half a day either once or twice a week.

Q How much time did you spend there during the time that Dr. Walker was actively president and manager?

Judge Skinner: Same objection.

A No time at all, excepting in my very early connection with the company.

Q You practically paid no attention to the Newark end at all? A No.

Q Or to the records in the Newark factory? A Or to the records in the Newark factory, except as they were submitted to the New York office by Dr. Walker when they were considered of value.

Q Considered by whom of value? A By myself in the connection that I had at the New York office, in promoting the sales of the products of the company.

Q The fact is that duplicates of these papers were sent in to the New York office, but you didn't consider that of value? A Some of the papers were of value.

Q The first part of the question is, the duplicates of what was at Newark were sent in to New York? A I don't know that all of them were; I don't know what all the records in the Newark factory consisted of at that time.

Q Whatever was sent in to New York, you understood to be duplicates of what was in Newark, didn't you? A Yes.

Q And after they got to New York you considered some of them of value and some of them of no value? A Some of the attempted setting up of financial statements of the month's business of the company, were not considered of value, either by myself or by Mr. Maas.

Q Did you ever find any of them incorrect by checking, or anything like that? A Yes, the very first one that came over was incorrect, because it was made up to the end of the month and included invoices that had been forwarded to the New York office for payment, which had not yet been paid.

Q So that they were not incorporated in the same month's financial statement of the books of the New York office? A And therefore couldn't agree. Secondly, there were many, many items making up the expenses of the company in accordance with the books at the New York office, that never reached the factory. The cost of salesmen's salaries and traveling expenses, the rent that was paid on property that was leased to the Maas & Waldstein Company for its manufacturing business; insurance costs and many other items.

Q There wasn't any effort to include those last mentioned items in the statements from the factory, was there? A No.

Q And the error which you speak of with the first invoice that went over, whatever it was, was at the very inauguration of this new system, you said. Necessarily, there were mistakes? A Yes, with inauguration of the new system.

Q After that it was all right? A On that account, after that it was not considered, the monthly statement that came over to the New York office reflecting, or supposed to reflect the financial cost in accordance with the books kept at the factory.

Q Do you value the good will of your company?

Judge Skinner: I object to the question as immaterial and irrelevant.

A I value the good will of the company insofar as it reflects the acts of its officers and directors.

Q What do you include in the good will that you have thus valued?

Judge Skinner: Same objection.

A Simply the statement that I have just made.

Q Then these formulae would not be included in the good will, would they? A So far as they were reflected in any value on the books of the company? A No.

Q And then not to be regarded as a valuable asset of the company, are they? A They certainly are a valuable asset of the company—enable it to manufacture its products and to assure its customers that they will receive uniform products from time to time as they may order the goods.

Q Do you capitalize them on your books? A They are not capitalized on their books.

Q Have they value on a sale? A That would be a question of opinion on the part of both the purchaser and the seller.

Q Are they reflected in any respect in the value of the stock of the company?

Judge Skinner: I object to the question as outside of the line of this examination, immaterial and irrelevant, and calling for expert opinion that this witnes has not been qualified or shown to possess.

A The stock isn't traded in; there is no particular way of estimating the value of that stock,

excepting as the individual stockholders may consider it to have a specific value.

Q Do you as a stockholder consider that the presence of these formulae constitute a valuable asset which goes into the value of your stock? A I have never attempted to estimate what value they might have, because my stock isn't for sale.

Q Then you cannot name any financial value of these things to the company, can you? A Not expressed in dollars and cents.

Q And you, in the purchase of the stock of the company, for example, wouldn't consider them as having any value whatever, in adding to the value of the stock? A That would, again, be a question of opinion. I have never attempted to offer an opinion in connection with that, because as I say, my stock hasn't been for sale.

Q Have you ever negotiated for the purchase of any stock of this company? A At one time I understood Dr. Walker was interested in the sale of his stock.

Q What did you put in the statement in making up your estimate of the value of the stock, as the value of these formulae and secret processes by which the various products of the company are put out?

Judge Skinner: I object as immaterial, irrelvant, and outside the scope of this examination. It is agreed that this same objection may be regarded as taken to the continued line of examination, if it be continued, without re-statement?

Mr. English: That is satisfactory.

A There was no attempt to put a cash value on them.

Q What did you include in your company's statement on its books of the value of the good will?

Judge Skinner: Same objection.

A Let me see the statement, please.

Q No, I am not talking about any particular statement, except the statement on your company's books, with which you are familiar; you are treasurer. A The account that is carried as good will, etc., was an account which was set up long before my connection with the company, to the extent of several hundred thousand dollars, and it still remains an account on the books of the company.

Q You as treasurer have continued it on the books, haven't you? A Yes.

Q $300,000? A Yes.

Q What do you include in that $300,000? A The original amount that was placed to that account was $400,000, and was necessary, as I understood it, in order to substantiate the capital stock of the company when it was first issued, which was in the amount of $500,000, and what was actually intended to be represented by that particular $400,000 set up at that time, I don't know.

Q Did you cut it down to $300,000? A It was cut down to $300,000 subsequent.

Q Have the other physical assets increased? A They have.

Q I ask you once more; are the formulae and secret process by which the various products of the company have been and are put out, included in the $300,000 of good will? A I cannot say that they are. I didn't originally set up that

amount and don't know what was included in that.

Q You don't consider them as included in that? A I don't know whether they were or were not.

Q I ask you what you considered? A I consider that the entire amount as set up, to the extent of $300,000, as a very problematical value.

Q You personally would consider these formulae and secret process as included in the $300,000? A They may or may have been at the time.

Q I asked you what you considered? A It doesn't do me any good as to what I consider.

Q You are treasurer of this company? A I am.

Q You prepared these statements? A Which statements?

Q The statements on the books of the capital assets of the company? A I did not. The statements on the books themselves, set up many, many years ago, reflect such changes in the assets and liabilities of the company as take place from year to year.

Q You as treasurer are the responsible officer of the company and set up the capital assets on the books? A Under the direction of the Board of Directors.

Q You never demurred to the board of the set-up which is made up on the books? A No, it has been known to the Board of Directors just as well as it has to me.

Q And the Board of Directors never demurred to you of that set-up? A No.

Q As treasurer of the company and as a member of the Board of Directors, what do you consider as included in that $300,000 valuation

of good will which is set up on the books with reference to the formulae and secret process?

Judge Skinner: I object on the ground heretofore stated, and on the further ground that it is a repetition of a question which has been put several times.

A I have never attempted to analyze what may or may not be included as the actual financial value in the account so set up on the books of the company.

Q What caused you to cut it down from $400,000 to $300,000? A As I remember, at the time it was necessary to write off $100,000 that reflected in part certain amounts of money that were set up on the books of the company that were not properly being carried on the books of the company.

Q Are the formulae and secret process by which the various products of the company are put out, include in that $300,000 of good will? A I don't think they were.

Q Are they set up anywhere on the books of the company? A I don't believe they are.

Q Then if they are, as you say in your affidavit, at the bottom of page 4, "a valuable asset of the company," they haven't been regarded sufficiently valuable to be reflected in the books of the company, have they? A No, they have not, any more than the good will that the company may have, by virtue of the friendliness of many of its customers with its officers, is reflected on the books of the company.

Q When it came to a matter of negotiation as between you and Dr. Walker, for your purchase of his stock, you threw out that item of good will entirely?

Judge Skinner: Same objection.

A That statement was a statement to reflect—

Q Answer the question. (Last question repeated.) A —the actual cash value of the assets and liabilities of the company, and didn't attempt to reflect anything else.

Q And it did not include the formulae and secret process, did it? A It did not, for the same reason stated, that it was simply an attempt to reflect the actual cash value of the company's assets and liabilities.

Q You spoke of a conversation you had with Roland H. French, which you say was preliminary to something; did he tell you he had been discharged from the Miner Edgar Company? A No, he did not.

Q He didn't tell you that? A No, he told me he was no longer connected with the Miner Edgar Company.

Q Do you keep up with literature of the manufacture of lacquers? A I do not.

Q Do you know a book called "Pyroxyline, Enamels and Lacquers," by Samuel P. Wilson? A I do not.

Q Then you do not know whether he stated in the preface of his book, that the future of the pyroxyline lacquer industries lies not so much in the so-called secret formulae, which in their essentials are known or obtainable to most manufacturers, but in a systematic co-operative research toward the standardization and improvement of the products.

Judge Skinner: I object to the question as immaterial, irrelevant, and outside of the line of this examination.

A I do not.

Re-direct examination by Judge Skinner.

Q Mr. Magnus, in your examination this morning, you were being questioned about the formulae, as to whether or not there was anything that was special or peculiar or of value to the company, or anything that gave to the Maas & Waldstein products any superiority over similar products of other companies, and you started to answer these words: "I have heard Dr. Walker claim," and then you were interrupted. What was that you were going to say that you heard Dr. Walker claim about the formulae? A That, comparing, for one example, our ethyl acetate with that produced and manufactured by the DuPont Company or by the Anderson Chemical Company, our material was found to be a much better article, insofar that it tested a higher percentage than that of the DuPont material or Anderson Chemical Company.

Q That you give as an incident in reducing your answer to a single instance. I asked you more generally what you had heard Dr. Walker say about the formulae. Has he at any time ever stated to you that the formulae of other manufacturers were just as good as the Maas & Waldstein? A No, that statement was never made.

Q Has he at any time claimed superiority for the Maas & Waldstein enamels?

Mr. English: Objected to as leading.

A He has often stated that our enamel was superior to that that was being offered for a similar purpose by competitors of ours, and

stated that if we did not sell larger quantities of it, it was a settling proposition, and had more particularly reference to our automobile enamels.

Q He says now that the lacquers made by your competitors and by the Maas & Waldstein Company are made from the same formulae, and that the formulae are common to all of the manufacturers.

Mr. English: Who said that?

Judge Skinner: Dr. Walker.

Mr. English: That isn't in his direct. You are not re-directing on my cross examination. I object to that.

Q You were asked about those formulae, and said, "I have heard Dr. Walker claim," and then were interrupted; I want to know whether you had in mind at that time, and were about to tell of anything that Dr. Walker had said with reference to the formulae, as to whether the formulae of other competitors were the same, or whether there was a difference. Can't you tell us what he said about that? A In any discussion that we had at any time in connection with the formulas of any of our competitors and our own formulas, we always understood, and he would always uphold, that there was a vast difference in formulas, and always upheld that the Maas & Waldstein product was superior to that of any of our competitors.

Q Did he ever attempt any analyses of the lacquers or other products made by competitors? A I believe so.

Q Did he ever report to you as to whether or not he was able by the analyses to reproduce their product or not? A I don't know of any

time that he would state that he would absolutely reproduce the exact article that a competitor of ours might be offering for sale, but that we would make up our own formula of a similar product that would practically do the same work as the competitor's material.

Q The letter that you referred to as received from the Eagle Ottowa Leather Company, in your reading of that letter, what company or whom did you think was referred to as the responsible house?

Mr. English: I object to that as immaterial and incompetent, what he thought.

A The Miner Edgar Company.

Q Was it with that idea that you produced that letter and showed it to counsel? A It was.

Q Did the facts surrounding the Maas & Waldstein Company at the time of the receipt of that letter, the fact of Dr. Walker's former connection and his recent severance of those relations, in any way indicate to you that the Miner Edgar Company was that house? A Yes.

Q When you said that, you didn't mean that the reference to the letter should influence the Court?

Mr. English: What did you mean?

Q What did you mean? A That I simply wished to put in my affidavit what I believed to be the facts, and left it for the Court to come to whatever decision it might. I might add that we have never at any time during my connection with the company had a letter from any other

customer, or prospective customer, that would read or even intimate that an offer had been made from another concern guaranteeing absolutely to duplicate our product.

Q You spoke of duplicates of the factory records being sent to the New York office; did you understand that what was sent there was a complete transcript of what was in the factory, or an abstract, or a copy of a portion of it, or what? A I understood that they were the monthly abstract of the books as kept in the factory.

Q Do you know whether or not the factory records contained any copy of the invoices for goods sold by the company? A Copies of all invoices that were made out at the New York office were sent to the factory, in accordance with a request from Dr. Walker.

Q Do you know whether or not they were preserved there and incorporated in the factory records that were kept? A I understood they were supposed to be.

Q What do you mean you understood to be? A Insofar as the monthly abstract, previously referred to, reflected an item that was supposed to show the monthly sales as represented by such copies of the invoices.

Q And did those invoices constitute then a list of the customers of the company? A Of all those customers that happened to get goods at the particular time that those invoices were sent over to the factory.

Q If you had all the invoices— A You would have a complete list of all the customers of the company of that particular month, or year, as the case might be.

Q Do those invoices contain the prices at which the goods were sold? A Yes.

Q So that if any one had the invoices for the entire year, they would have that information as to the company's business, the prices charged to its customers? A Yes.

Q Would you think the stock of the company was worth as much without these formulae with it? A No, I would not. In other words, without the formulae, the company would have a hard time to do business; they would have to commence setting up a new set of formulae.

Q You spoke of some statement that was, I take it, in your possession or referred to in the course of negotiations with Dr. Walker for, I don't know whether the purchase of his stock or the sale of yours, as being a statement only of things that had actual cash value. On that statement did you include all the capital assets of the company? A No.

Q Or did you attempt to include assets that had not been valued therefore on the books of the company? A No.

Q In the Board of Directors and in your relations with Dr. Walker, were the formulae of the company ever referred to with reference to their value? A No.

Q Never spoke of it? A Never discussed.

Q You spoke of having a conversation with Mr. French. How did you come to have that conversation? A We received notice some few weeks ago that Mr. French had associated himself in business under the trade name of Chemical Solvents Company, and subsequently he telephoned, offering us some materials that he hoped we would be in a position to buy from him. That negotiation didn't come to anything, and I told him that at any time he had any goods to offer to the Maas & Waldstein Company, that we

would be glad to have him do so, and in connection with that he called at the office to discuss business with us.

Q And was anything said then about his former connection? A It was simply upon my request asking him how he happened to leave the Miner Edgar Company, because when I first received the notice that he had gone into business for himself, I did not then know that he had even severed his connection with the Miner Edgar Company.

Q When you asked him how he came to leave, what did he say? Were you told by him anything at all about it? A In a very general way he told me that he had left the Miner Edgar Company, because he did not think that he could get along with the present management, and that his position as general sales manager was to have been taken away from him, and that he was to be put in charge of only certain chemicals in connection with their business, and he didn't see any future in that line.

Q You spoke of copies that came from the factory, I think referring to copies of the factory records; from whom did they come; who sent them over? A They were tabulated, I took it for granted, under Dr. Walker's direction.

Q And sent to the New York office by his direction? A I don't know who actually tabulated them or who actually sent them over; they came in the regular course of business, which necessitated a portfolio coming from the factory each morning.

Re-cross examination by Mr. English.

Q You have just said that in this statement which was prepared in connection with the purchase or sale of stock, you did not include anything not on the books; that is true? A Right.

Q As a matter of fact, you didn't include everything that was on the books, did you? A It depends on what you mean by that question. Everything that was on the books, that was set up, on the direct cash value, was included in that statement. In other words, the statement that was requested of me by Dr. Walker was a financial statement of the assets and liabilities of the company.

Q There was set up on the books good will, &c., at a cash value of $300,000? A Yes.

Q That was not included in that statement? A I don't know; I would have to see the statement, to see what the facts were. I think I saw the statement a moment ago; you had it.

Q Do you want to look at it? A If you want me to see it; not otherwise. It was a statement, I might add, that Dr. Walker said he would return to me when he was through with it.

Q He isn't through with it yet? A He is perfectly welcome to keep it, having kept it so long.

Q I call your attention here to the item good will, &c., where it says at the top, "Books of account" $300,000, you have written, "Fair value," opposite that, "Nothing"? A That is correct.

Q If these formulae and secret processes are not included on the books under the item good will, where are they included? A They would be included in any negotiations with anybody who wanted to buy the stock.

Q You misunderstand my question. I am talking about books—if they are not included on

the books? A They are not reflected on the books of account of the company.

Q What is the significance of the "etc.," in connection with the "Good Will"? A I cannot tell you; that was the memorandum put there by the bookkeeper. I am not quite sure what the heading on the account is. I believe it reads, "Trade marks, good will, etc."—"Good will, trade marks, patents, etc.," in fact, I believe it reads.

Q That would include secret process and process of manufacture, ordinarily? A No, it does not state so, and I don't know what they may have had at the time the account was set up, which was some twenty years ago.

Q When you continued it, as treasurer, using that language of "process and patents, trade marks, etc.," did you include in your mind secret process and process of manufacture?

Judge Skinner: Same objection as before.

A No, I did not.

Q Did you make a sharp distinction in your mind? A I didn't give it any consideration.

Q With respect to the prices charged to the competitors' customers, couldn't any competitor of yours go to your customer and ask him what you charged him for a given article? A He might go and ask him; he might not always be able to find out, though.

Q You know, as a business man, that it is pretty common practice in the trade, isn't it? A I also know that while it is a practice in the trade, that we have been frequently refused by many of our prospective customers, and have not been told what prices they were paying for a competitor's article.

Q That is not true in every case, is it? A It is true in many cases, I said.

Q Is it true in every case? A No, it is not.

Q In some cases you can find out what the customer pays your competitor for his article? A If a prospective customer is particularly anxious to do business with us, he is likely to tell the price at which he is buying from competitors.

Q Referring once more to the Eagle Ottowa Leather Company letter, all that you said is your thought on the matter, you haven't any facts at all? I suppose you have been in the manufacturing business long enough to know that every manufacturer claims that his product is the best, don't you? A Very frequently so.

Q And Dr. Walker, when he told you that the Maas & Waldstein products were the best— A When he told that to me, he was telling it to an associate of his, and would frequently give me his reason why ours was better.

Q In other words, he believed it? A In other words, he distinctly believed it.

Q You said that he said that your company's products tested at a higher percentage; higher percentage of what? A In the case of ethyl acetate, I understood it was a question of ester, and if I am right, ours was supposed to test several per cent. higher than that of some of our competitors.

Q Per cent. of what? A Of ester.

Re-direct examination by Judge Skinner.

Q Mr. Magnus, do you know when that asset of good will was first set up on the books of the company? A At the time of its organization, I believe, in 1905.

Q And prior to that time had the business been run as a partnership? A Yes.

Q And had Dr. Waldstein been one of the partners? A Yes.

Q Dr. Waldstein was a distinguished chemist, was he not? A Yes.

Q And his ability as a chemist had been enlisted on behalf of the partnership before that, had it not, in the manufacture of their products? A Yes.

Q And at the time of the corporation, a continuance of his connection with the business was assured, was it not? A Yes.

Mr. English: He wasn't there at the time of the incorporation.

The Witness: Oh, yes.

Q Were you in the incorporation? A No, I thought you meant Dr. Waldstein. My uncle was connected with the company at the time of its incorporation, and I was a frequent visitor at the office.

Mr. English: You think you knew everything that your uncle did?

The Witness: That would have been quite impossible.

OTTO P. SEHER, being duly sworn according to law, on his oath testified as follows:

Cross examination by Mr. English.

Q Mr. Seher, you swore in your affidavit, verified October 6, 1925, and again in your affidavit, verified January 12, 1926, that you are foreman of the factory of the Maas & Waldstein Company? A I am superintendent of the factory.

Q You swear in two separate affidavits that you are foreman; are you foreman? A I can be called a foreman, I think.

Q Are you foreman? A I don't know what the title would be.

Q Are you aware that you have also sworn in another legal proceeding that you are superintendent of the factory? A I am superintendent of the factory.

Q If you are superintendent of the factory, then why did you swear in these affidavits that you are foreman? A I think I called attention to that and it didn't seem to make any difference whether I was foreman or superintendent; a foreman can be head of the factory.

Q You called attention on both affidavits? A Yes.

Q And notwithstanding you called attention to that, you were willing to swear to it that you were foreman, although you are not? A Why am I not?

Q I am asking you, are you the foreman? A Yes.

Q Are you the superintendent? A Yes.

Q You think a foreman and superintendent are one and the same? A Practically.

Q How many foremen are there besides yourself?

Judge Skinner: Of the factory?

Mr. English: This is my examination.

Q How many foremen are there besides yourself? A The foremen in charge of departments, five or six.

Q When you swore you were the foreman, did you have in mind you were one of those five or six? A No, I considered myself their head.

Q But you didn't say you are head foreman; you said, "I am foreman of the factory"; what do you mean by that? A When do you mean by it; am I not the foreman; isn't the superintendent the foreman, the head?

Q All I know is in the affidavits before me, which I am interrogating you upon; you swore twice, "I am foreman of the factory"; having sworn to that, I ask you what you mean? A The foreman is the head, isn't he?

Q Can each foreman there consider himself the head? A No, but if he was called the foreman of the factory he might consider himself the head.

Q Each one was entitled to call himself the foreman of the factory? A No.

Q When you were testifying in the quo warranto proceedings in the suit of Walker against Maas, why did you swear that you were superintendent of the factory and said nothing about being foreman? A It is just a matter of title, isn't it; it would be one and the same thing.

Q Don't ask me questions; please answer my questions. Why in the one case did you swear that you were superintendent and why did you swear twice you were foreman? A I am called superintendent.

Q If you are called the superintendent, why did you swear you are foreman, and do it twice? A The superintendent could be a foreman.

Q You don't explain that in your affidavit. A I wasn't asked that.

Q You swore to whatever was put before you, in other words? A Not necessarily.

Q You did in that case, didn't you? A I did consider myself the foreman.

Q Do you consider yourself the superintendent, too? A Yes.

Q But you make no explanation of that in your affidavit? A No.

Q How does your name appear on the payroll? A Superintendent.

Judge Skinner: I object to that as entirely immaterial and irrelevant.

Mr. English: I think it is material when a man swears two different ways.

Judge Skinner: I give notice now that I shall move to strike it out.

Q How do you reconcile that you were carried on the payroll as superintendent and paid as such, and testified last fall that you were such, and now swear that you are foreman? A I think it is one and the same thing.

Q Although you say you called attention to that when the affidavit was drawn up? A It is simply a question of title.

Q It didn't seem the same thing, in one case, in your mind, when it was called to your attention? A I think I called attention to it in a jocular way.

Q Did you make this affidavit in a jocular way? A No; I don't know to whose attention I called it, but I did remark about it at the time.

Q You say on page 1 of your affidavit verified on January 12, 1926, speaking of your con-

nection with the Maas & Waldstein Company, "The formulae relating to the ingredients used in the manufacture of lacquers and other products, and the preparation or treatment given them, have been carefully kept secret." Do you know how many sets of those there were? A Five.

Q Where were those five kept? A Four at the factory in Newark, and one in New York.

Q Who had possession of the four at the factory at Newark? A One was in Dr. Walker's office; there were not four complete sets; there were three complete sets at the factory in Newark.

Q One was in Dr. Walker's office; where was another one? A Another complete set was in Mr. Reuschle's office. The formulae for lacquers were in the lacquer department; the formulae for enamels were in the enamel department.

Q And they were accessible to anybody in the factory who wanted to look at them? A They were there; they were not accessible to anybody that wanted to look at them, no.

Q They were not kept away from anybody in those various departments, who were working on those products, enamels or lacquers, or whatever they were? A They were in charge of the foreman of the department.

Q And he didn't keep them under his coat so nobody else could see them? A He kept them in his office; they were accessible to his office, to anybody who had occasion to look at them. He was told to not allow everybody to look at them.

Q The people in that department, connected with the manufacture, were allowed to look at them? A No, not all.

Q But some? A No, the foreman had charge of the formulae; his men didn't have to look at them.

Q Do you want to swear that nobody but the foreman in charge of the formulae was the only person who ever looked at them; you don't want to swear to that? A No, I wouldn't swear to that.

Q And the operators in the various departments used to look at these formulae, didn't they? A In the enamel department it was probable that an operator would look at a formula, not in the lacquer department.

Q You want to swear that nobody but the foreman of the lacquer department ever saw them? A Not to read; he could see them; they were in the room, but not to read them.

Q There wasn't anything to stop him from reading them? A The foreman was there to stop him.

Q Did you ever see him stop anybody from reading them? A I never saw anybody there to read them.

Q You spoke of these being put in code form; what do you mean by that? A Instead of writing out the name, the ingredient was given a symbol.

Q A little abbreviation? A Yes.

Q And that abbreviation was perfectly understood, wasn't it? A By those in charge of the formulae?

Q Yes. A Yes.

Q And would be understood by anybody familiar with that sort of formulae or sort of business? A No.

Q You don't think a skilled chemist could figure out what that was from the code symbols or code letters? A Some of them he could.

Q Who was in charge of the lacquer department? A Anthony J. Rollieri.

Q He had a copy? A Yes.

Q Of the formula? A Yes.

Q Who was in charge of the enamel department? A R. Frank Weaver.

Q He had a copy? A Yes.

Q Who else in the factory had copies besides the one in Dr. Walker's office? A Reuschle.

Q Did you have a copy? A I had a few copies, not a complete copy, not a complete set.

Q You say that there was one in the enameling department, one in the mixing department; who was in charge of the mixing department? A That is the lacquer department, Rollieri.

Q And you say these were kept under lock and key; what do you mean by that, locked up at night? A Locked up at night. Rollieri's were in his office; his office was locked when he went out.

Q It was Dr. Walker's policy that the persons engaged in the manufacture of the company's products should have the benefit of these formulae? A The foreman in charge of the men themselves.

Q And the persons who were working under him? A They had no access to the formulae, necessarily, did they?

Q I am asking you; what do you say? A No, they didn't have to have access to the formulae.

Q Didn't have to have? A No.

Q In paragraph 2 of your affidavit, verified October 6, 1925, you—

Judge Skinner: Have you a copy of your affidavit?

Witness: No, I have not.

Q You speak of a certain book containing secret and confidential information (paragraph 2 of your first affidavit); how much personal contact did you have with that book? A I looked at it occasionally.

Q What occasions required you to look at it? A Occasionally in conjunction with Dr. Walker, when he was referring to it, or wanted to refer to it, I would look at it.

Q In connection with what matters would he want to refer to it? A In reference to lacquers.

Q And is it your testimony that everything in there related to lacquers? A No.

Q That is one thing you have not personal knowledge about? A No.

Q What else is in there that you know of? A The formula code was in there.

Q How do you know? A I saw it.

Q What do you mean by the formula code? A The symbols of which we spoke, the code in which the formulae were written and the abbreviations.

Q The abbreviations—would they be of any use without the formulae themselves? A No.

Q At the close of your affidavit of January 12, 1926, you spoke of three leather-bound memorandum books containing formulae; they go back to 1920, do they not? A 1920 or 1921; 1920, I think.

Q And they only lasted, that leather-bound set only lasted a few months? A Yes.

Q You have those in your possession, you say so in your affidavit; that is true, is it? A I had them in my possession then.

Q On January 12 you had them in your possession? A Yes.

Q Have you lost them since? A No, I gave them to Judge Skinner.

Judge Skinner: I have them in my safe.

Q You say that Dr. Walker had three like books; you mean duplicates of those books that you spoke of? A Yes.

Q Alike, in the sense that they were leather-bound? A No, my books were copies of Dr. Walker's books.

Q Those same old books that lasted a few weeks back in 1920? A Yes.

Q When did you last count the number of formulae that were at the office? A I have never counted them, Mr. English.

Q How are you able to swear, then, that they number more than 1,200, as you did in your affidavit of October 6, 1925? A They are arranged in cabinets, with drawers in them.

Q So you made a rough estimate, did you, when you said that? A It wasn't very rough.

Q Is it accurate? A That there were more than 1,200—yes.

Q Is 1,200 correct or not; were there more or less?

Judge Skinner: He doesn't say 1,200. He says "more than."

Mr. English: "which formulae number more than 1,200"; what is the fair inference as to that? It is in the vicinity of 1,200?

Judge Skinner: Around 1,200, and not an exact amount.

Q Is 1,200 an approximate number or not? A There are many more than 1,200.

Q A good many thousand, aren't there? A I wouldn't say a good many thousand.

Q Are you a chemist? A I have chemical knowledge.

Q You know that these that you call chemical formulas are mixing compounds, don't you? A Those are formulas.

Q That is what these things are, mixing compounds?

Judge Skinner: I object to the question as being unintelligible.

Mr. English: You should not object to this witness, he has chemical knowledge.

A I don't know what you mean by that, Mr. English, I really don't.

Q In your affidavit verified October 6, 1925, you use this language: "Complainant owns and keeps on file in the cabinet in the office formerly occupied by the defendant Henry V. Walker, its chemical formulas used in the manufacture of its products, which formulas number more than 1200." Now, I ask you whether the formulas which you have referred to in that sentence are not in fact mixing compounds—formulas of mixing compounds? A Formulas of compounds?

Q Yes, mixing instructions for compounds? A Yes.

Q That is what they are, aren't they? A They are instructions, yes.

Q For the production of the various products of the company? A Yes.

Q Whatever that may be? A Yes.

Q The formulas described in the various ingredients to be mixed together produce that product, isn't that right? A Yes.

Q That is what you refer to as chemical formulas? A Yes.

Q You know as a matter of fact those things are still there, don't you? A Yes, the cards are there.

Q In other words, Dr. Walker didn't take those away; you don't say that he did, in your affidavit, and he didn't as a matter of fact, did he? A He didn't take those cards away.

Q And the more than 1,200 or several thousand, whatever they may be, are set up on these various cards, aren't they? A Yes.

Q They are there in the cabinet yet? A Yes.

Q Dr. Walker occupied that office right along while he was connected with the company, did he not? A Yes.

Q And he had frequent occasion to refer to that cabinet, or its contents? A Yes.

Q In the fifth paragraph of your affidavit of October 6, 1925, you say that you have often seen the shadow of Dr. Walker at the cabinet in which were kept more than 1,200 chemical formulas; there was nothing unusual about his being at that cabinet examining those formulas? A I think it was unusual at that time.

Q At what time was it? A That was after this trouble had started in February.

Q Did you seek to give or create the inference from this, that he was purloining those cards? A Not the cards, no.

Re-direct examination by Judge Skinner.

Q You said that Rollieri had a copy himself; you were speaking of the formulas? A Yes.

Q Did he have a copy of a complete set? A No, just the lacquers.

Q Did anybody else—you mentioned Frank Weaver, did he have a copy of all the formulae? A No.

Q Just what did he have? A Just the enamelling.

Q Did Reuschle have a copy of all of them? A He had a complete set.

Q Where was Rollieri's copy kept? A In his office.

Q In what? A They were specially made files for these cards, and that was locked up at night. The frames were locked up at night.

Q Was that any different from the specially made file for the cards, that was in Dr. Walker's office? A It was a different type of file.

Q Both under lock and key, though? A Yes, they could be locked; they were locked at night.

Q And the file that Weaver had, was that kept in the filing cabinet? A No, that was the same type as Rollieri's; those are frames that hang on the wall. He locked those in the safe.

Q And the one that Rueschle had, was that a filing cabinet? A No, that was also the type that hangs on the wall.

Q How long have you been connected with the company? A 1909.

WILLIAM REUSCHLE, being duly sworn according to law, on his oath says:

Cross examination by Mr. English.

Q Mr. Reuschle, I have your affidavit here in which you say that you were in the employ of

the Maas & Waldstein partnership; that is right? A Yes.

Q How far back does that go? A The 1st of March, it will be thirty-seven years next March.

Q They called you Willie back in those days? A Yes.

Q Do they call you Willie yet? A Yes, the old crowd.

Q You are not a graduate chemist, are you? A No, sir.

Q You say that your work has been that of a chemist; what did you mean by that? A Is that the wording of that affidavit?

Q That is what it says here; you say here, "My work has been that of a chemist, making up formulae for lacquers." A That is true.

Q What do you mean by saying that you were a chemist making up formulae? A I consider the person that compounds chemicals—

Q You were a sort of mixer of ingredients? A Yes, and writing formulae.

Q What you call "formulae" were mixing instructions for that compound? A Yes.

Q That is what you mean by "formulae"? A Yes, that is the term we always used.

Q You used the term "formulae" for what you now say were mixing instructions, is that right? A Yes, I would call them that, not alone mixing compounds, but ingredients that go into the compound, writing the recipe of a formula, as we call it, always did since I have been there, of the ingredients that go into these compounds.

Q The proportions of this, that and the other thing that go into the compound? A Yes.

Q You have also stated in your affidavit that your work included advising in the application

of the same—that is, the formulae—through the course of manufacture; what do you mean by that? A Advising the use. How does that read?

Q "My work has been that of a chemist, making up formulae for lacquers and other products of the partnership and the corporation, and advising in the application of the same through the course of manufacture." What did you mean by that? A Through the course of manufacture?

Q Yes. A Advising the application of some that I did.

Q Whom did you advise? A When we sent out a formula, we always, most of the time, gave instructions how it was to be used.

Q That is what you mean by that? A Yes.

Q A sort of direction as to how they were to carry out those mixing instructions? A Yes, that has been the custom from time to time. Of course, lacquer got so much in use, that the people used their own judgment.

Q Do you remember when Dr. Walker first came with the company? A Yes.

Q Do you remember when he was made chemist? A Yes.

Q Do you remember that about that time he had a lot of trouble with soluble cotton? A No.

Q Trouble with nitration? A No, sir.

Q You don't remember? A Not at that time.

Q When was that, that that trouble came up? A That was sometime after that; that was during the war.

Q Do you know what system of nitration is used now? A What do you mean, whether done by hand or machine?

Q You just tell me what you mean by that, because you are an experienced chemical man? A I have nothing to do with the nitration of cotton.

Q You have nothing to do with that at all? A No.

Q Do you know what system is used? A It is being done by machine.

Q Do you know whose machine that was? A Yes.

Q Whose? A Dr. Walker's.

Q He patented the thing? A I don't know whether he had the patent on it.

Q He created the machine? A I believe he did.

Q That solved all the troubles, didn't it? A Yes; that didn't solve all the troubles.

Q It solved these troubles in nitration? A In nitration of cotton you run into some of those things today, machines or no machines.

Q It helped a little? A It increased production; that is one thing it did. As far as the troubles with the nitration of cotton, the machine did not overcome that.

Q You say you worked under Mr. August Seher, father of the present Seher? A Yes.

Q You say that he was a graduate chemist; are you sure about that? A I always understood he was.

Q That was your understanding? A He was supposed to be a graduate of Heidelberg.

Q You don't know whether he was or not? A That is what I learned from them.

Q From them? A From him; that was always my impression as long as I have been there. I think he was, because he stated that he could have taken a degree of doctor if he

wished, but he didn't take it. That is what I got from his own lips; he could have been a doctor.

Q After Mr. August Seher died, or shortly after that, Dr. Walker was put in charge of the factory, wasn't he? A Yes.

Q You say that in the three years between the time that Dr. Walker came to the company, and this old Mr. Seher's death, the original formulae had been modified and quite a few additions had been made? A Yes, sir.

Q You mean by that, these mixing instructions had been increased? A Not the mixing instructions, the writing out of formulae with the proper amount of the various ingredients that go into the manufacture of lacquer.

Q The directions for the compounding of the various ingredients that went into them? A And the varying amounts of the various ingredients, which was the most important. The mixing does not amount to much.

Q At the time that Dr. Walker became chemist, you had some of those what you call formulae? A Yes, sir.

Q These series of directions for mixing these compounds? A Yes.

Q They have all gone out of use now? A No, sir.

Q Some still doing business, are they? A We sold all the New England trade that we are selling to today; that is, we are selling to the largest manufacturers in New England today that we sold long prior to Dr. Walker's entering into the company.

Q The same customers? A Yes, and the same lacquers, with some modifications, which every lacquer manufacturer made.

Q Those originals have been improved upon, is that what you mean? A They have been improved upon, but substitutions of ingredients which went out of the market or went very high in price, and every lacquer manufacturer in the country went to them, and naturally we went to them, too.

Q So you sort of rewrote the thing? A Yes, and just substituted some ingredients. We were not the only ones that did that.

Q You used to modify this thing, just you yourself, didn't you? A I did in the early part of Maas & Waldstein's business.

Q And you turned those over to Dr. Walker? A Yes, he received them.

Q And then he had them more elaborated and set up on cards? A He didn't have them more elaborated; he systematized them and we worked together in making modifications. If there were any modifications to be made, it was done for a long time in consultation with me.

Q You kept them all in one book, didn't you? A No, I had various books.

Q You kept those books yourself? A No, when Dr. Walker came with us—

Q I mean before? A Yes, I kept mine, but the formulae were all entered in the day books from the manufacturing department.

Q After Dr. Walker came? A Yes. No—prior to that, we had to have records; we had manufacturing records.

Q The instructions for mixing were put on some book? A Yes, they were entered in books, certainly.

Q What was done with the books? A They are filed in the storehouse now.

Q Dr. Walker instituted these cards, didn't he? A He instituted the card system.

Q Having a number of duplicates made for the different foremen? A Yes, a few, and they were not distributed—not the entire system were distributed to every man.

Q You mean, for example, the lacquer superintendent had his set? A Yes.

Q And the men in his department— A They had no cards, they worked under his instructions.

Q Do you know what an ethyl acetate solution is? A Yes, sir.

Q Is it used in manufacture now? A Yes, sir.

Q Was it used before Dr. Walker came with the company? A No, nor any other lacquer manufacturer used it.

Q Ethyl acetate is used generally now by manufacturers? A Yes.

Q These mixing instructions or combinations which you have are such as are commonly used by manufacturers of lacquers, for example? A What do you mean?

Q The same general ingredients and compounds? A Yes, the ingredients are similar in all lacquer manufacture.

Q The same is true of enamels? A The same is true of enamels, the ingredients; the various amounts are not.

Q You mean each manufacturer has his own preparation of the amount of the use of those ingredients? A Yes.

Q But the same general scheme of manufacture is the same? A Yes.

Q You say that there are many more ingredients now than before, but most of them have come into existence at the call of a single customer, or at the suggestion of a salesman, or at the inquiry of a customer, without an order

therefor being received; what do you mean by that? A A salesman would come in and he would require a lacquer either to meet a price where there was competition, or have certain properties, dry quicker or dry slower on the surface, or one that would flow much more; all kinds of different properties in lacquers.

Q Then the problem was to manufacture that stuff? A Manufacture something to meet the requirements.

Q And that always came up to Dr. Walker as the head chemist? A Oh, a lot of it came to me; it went eventually to Dr. Walker, when the formula was written.

Q Dr. Walker produced the formula? A No.

Q Would you? A Yes.

Q Always? A Not always, but I did until within the last year or so. The last year or so I wrote all the new formulas; that is, lacquer formulas; I am not speaking of enamels.

Q You were a lacquer man primarily? A Yes.

Q These other things, like enamel— A Lacquer and leather solution, they were submitted to Dr. Walker; I didn't write them alone at times; if I devised a formula, I took it to Dr. Walker and we talked it over.

Q You two worked together? A Yes, most of the formulas, I think the doctor will agree that I wrote most of them, and we consulted about them.

Q And always when you would use the word "formula," you mean mixing instructions? A They were formula cards.

Q You know they strictly were not chemical formulas? A No.

Q They were really mixing instructions? A They were formulae for compounds.

Q Compounding ingredients? A Yes. They were not formulae for the compounding of the elements of chemicals; for instance, the making of sulphuric acid, you get down to the elements of chemistry, hydrogen oxide, etc. This was a formula for the compounding of chemical ingredients. Ethyl acetate is a chemical and so is amyl acetate, or any of the ingredients that go into the manufacture of a lacquer are chemicals; they are not chemical elements.

Q So that this was the trick, if I might use that word, of mixing together the ingredients? A To meet the requirements of the customer, or the work that it was to be used on.

Q After the card system was devised you were given a set of the cards, weren't you? A Yes.

Q Did you have a complete set? A Yes.

Q The whole business? A Yes.

Q Who else had a complete set? A Dr. Walker.

Q Who else? A Nobody that I know of.

Q Except the New York office? A Yes.

Q And then the lacquer foreman had a set of lacquer instructions? A Yes. He had the lacquers, thinners, leather solutions.

Q That was all in the lacquer department? A Yes.

Q He had those? A Yes.

Q What did the enamel department have? A The compounding of the enamels; he received his solutions and thinners from the lacquer department, and he ground his colors in the enamel department and mixed the lacquers and thinners which were received from the lacquer department; that is ground pigment.

Q He had the necessary formulae for that? A Yes.

Q Who else had a set of enamels? A For anything?

Q For anything. A Dr. Walker and I had those.

Q Do you know whether the salesmen had access to those various formulae, as you call them? A Not that I know of; they did not in my department.

Q You don't know what they did in New York? A No.

Re-direct examination by Judge Skinner.

Q You spoke, in answer to Mr. English, of sending out the formulae; you remember he was asking you about whether the sentence in which you said that you advised in the application of the formulae through the course of manufacture. A That was usually done from the office by letter form.

Q You said that that advising in the application of the formulae referred to instructions that were sent out to the customers? A Yes.

Q Is that right? A That was the only advise that you could give a customer, in the early days, as to the use—of the quantities of lacquer and quantities of thinner for various purposes.

Q This was advice that went in connection with something that was sent to the customer? A Yes.

Q What was it that was sent to the customer, the product for the formula for making it? A Just the product.

Q When you said that you sent out the formula, did you mean that? A No, we sent out no formula; I didn't say that.

Q Yes, you did; that is the word you used. A I sent out the formula?

Q Did you mean to say that? A Certainly not.

Q What was the fact as to whether these formulae were sent out to anybody? A The formulae were sent out to nobody.

Q But advice as to how to apply the product that was being sent out, was sent to the manufacturer? A From time to time, depending on who the customer was.

Q The storehouse in which these books were put, is that a house or a room? A It is a locked concrete building.

Q You mean the old books, the old record books? A Yes.

Q A locked concrete building? A Yes.

Q The ethyl acetate solution, was that one of the things you spoke of as coming into use to replace some element that was hard to get? A No, that came into use when denatured alcohol was allowed in this country; denatured alcohol, because at the high cost of ethyl alcohol—which is the regular grain alcohol—of course, it couldn't be made at a profit; and when denatured alcohol came into use in this country, the manufacture of ethyl acetate could be made cheaper and put to use at a profit.

Q I suppose you mean that the manufacture of ethyl acetate was facilitated or stimulated by the ability to use denatured alcohol? A The cost was prohibitive before that.

Q That ethyl acetate, was that used as a solvent? A Yes.

Q What were the modifications that you spoke of as being made in the various formulae; modifications in what respect? A In the manufac-

ture of lacquers you have to juggle your formulae or change them from time to time, but the principal modifications were when butyl acetate came on the market, and butyl alcohol, fusil oil or amyl alcohol and amyl acetate became prohibitive in price, and also was practically off the market for a long time, and butyl acetate and butyl alcohol came into universal use, and generally used in the manufacture of lacquers.

Q This butyl alcohol and amyl acetate were solvents? A Yes.

Q And they took the place of other solvents, did they not? A Yes.

Q These books in which you ordinarily kept the formulae— A Butyl alcohol is not a solvent.

Q That took the place of something that was used before? A Yes, it took the place of amyl alcohol or fusil oil.

Q The books in which you ordinarily kept the formulae, were those books that belonged to the company or to you? A They belonged to the company, naturally.

Re-cross examination by Mr. English.

Q You kept them in your possession all the time? A Yes, the little note books, before they were put on record, and were later entered in the larger books, through the manufacturing accounts. For instance, if I wrote a formula and had it in a little note book, it was given to the foreman, and the foreman, when he made a batch of lacquer, entered it in that small book, the quantities and the different ingredients, and that book was turned into the office, and then entered into a larger day book, to keep the records of

quantities used and also to keep the correct formula in the book.

Q Was that before or since Dr. Walker's connection with the company? A That was before. That was used for a while while Dr. Walker was there. Reports of sales went to New York on sheets every day, and the reports of the formula of every manufacture went into a larger day book—I should call it a day book or ledger; that was continued after Dr. Walker was with us for some time.

Q Where was that book kept? A Locked up.

Q Mr. Reuschle, you say in your affidavit that you couldn't say how many there were, but all the formulae that there were, were communicated to Dr. Walker. Are you referring to those things that were set up on the books of account, or to something else? A I am referring to the formulae which we were manufacturing at the time, which were being sold and in use at the time.

Q Were those things that you say were put on the books of account, or some other formulae? A They were all on the books of account; some had been discarded and some we were still using. Some of those that were still in use—as I say, in making lacquers, you change the formula quite frequently, and particularly those that were in use, I am speaking of, and being sold; those are the ones that I have reference to.

Q Those are the ones that you have reference to as having been communicated to Dr. Walker? A Yes.

Q Those are the ones that you had in the books? A Yes.

Q You turned those books over to Dr. Walker? A He had them from time to time.

Q He got them from you? A Yes.

Q And then he devised this more elaborate card system? A Yes. After Dr. Walker came, when I wrote a formula, I stopped using note books; the formula was written on a piece of paper, and taken over to the doctor, and from that the formulas that I wrote were put on the cards and given numbers; we had numbers but we used all kinds of terms.

Q Do you know how many there are of those so-called formulae? A I don't know exactly; there are a lot of them that we don't use, or never did use, only samples.

Q And they are all there in that cabinet, that card system? A Some have been cancelled.

Q You mean they are physically there? A Most of them, yes.

Re-direct examination by Judge Skinner.

Q When you say the formulae were set up in books of account, what book or books do you refer to? A Books in the office.

Q What book? A We had to keep a manufacturing account to keep track of the materials used.

Q Was that a book or set of books? A That was entered in one book.

Q The batches of lacquers, thinners, &c., that were made, would it be that book in which the formula was set up? A No, naturally the formula would be in that book, because when a man got a batch of lacquer, he entered the different ingredients and the quantities, which naturally gives you the formula of the lacquer.

Q Was that all there was, a formula from which he made up a batch? A Yes.

Q And there was a report by him of what materials and quantities that had been put into the batch? A Yes.

Q And from that report you could determine the formula, could you? A Yes.

Q And was that kept under lock and key? A That was under lock and key, certainly.

Q And when you said it was set up on the books of account, you mean it was set up in the book we are just speaking of, this factory book? A Later on the book was devised where the quantities of the various ingredients were classified, and the amounts received and the amounts used in the course of a year or six months or a month; that is, every day they were entered; the quantities used every day were entered against the quantities received, just to keep account of our stock. We are doing the same thing today, only in a more elaborate form.

Q When you speak of books of account, do you mean books that keep an account of stock, or do you mean the ordinary books of a company, showing its sales and its receipts, and expenses, and all that? A No. It really was an account of our stock, to keep track of our stock; the materials used and materials received. The rest of it was done in New York; we had nothing to do with that.

Re-cross examination by Mr. English.

Q This so-called account book was a record of the amount of materials that went into a given product, is that it? A Yes.

Q And so as to check with the amount of stuff that had been received? A Yes.

Q That wasn't a formula book? A No.

Q What you mean is that you might dig through that and work out a formula, is that it? A No, in the old days, if a man made a batch of H. B. lacquer, he would enter so much of one ingredient and so much of another, and so much of another, which would be a complete formula of that H. B. lacquer, and that went in a book just as he compounded it.

Q By setting up the amount of the different ingredients used, you could work out the formula, if you wanted to? A No. It was a complete fomula, but it was in quantities; it wouldn't be written out as one hundred per cent. formula.

Q You didn't regard that as your record of formula? A Oh, no.

Q It was a record of the quantity used? A Yes.

Q In addition to that you had this little book which you kept? A These little books.

Q Which had the percentages? A No, it wasn't in percentage.

Q What was it in? A In quantities.

Q That is what you turned over to Dr. Walker? A Yes, and which was changed into percentages on the card system.

Re-direct examination by Judge Skinner.

Q And this other book, which enabled you to keep an account of the materials that were used, was that continued after Dr. Walker came there? A Yes, for some time; I should say for three or four years.

Continuation of testimony in the above-entitled cause, before Nicholas W. Bindseil, Master in Chancery, Saturday, January 23, 1926, at 9:45 A. M., at his office, Prudential Building, Newark, New Jersey.

Present, counsel as before stated.

ROLAND H. FRENCH, being duly sworn according to law, on his oath testified as follows:

Cross examination by Mr. English.

Q Mr. French, you were formerly with the Miner Edgar Company? A I was.

Q And when did you leave them? A October, 1925.

Q That was after Dr. Walker became president of the Miner Edgar Company? A Yes.

Q How long had you been with the Miner Edgar Company before that? A Since 1916.

Q You were rather encouraged by Dr. Walker to leave the Miner Edgar Company, were you not? A I was not.

Q Did you resign voluntarily? A It amounted to that.

Q There is some distinction in your mind between a voluntary resignation and one that amounts to that; what is the difference? A Practically none.

Q Prior to your leaving that company what had been your duties there, during the last year or two? A Sales manager.

Q And after Dr. Walker came, he suggested to you that he would somewhat limit your duties in that respect, didn't he? A Yes.

Q He was going to put the sale of lacquers in charge of somebody else? A Yes.

Q Which formerly had been under your charge? A Yes.

Q You didn't like that, I suppose, did you? A I didn't say so.

Q I didn't ask you what you said. I asked you what the fact was; did you like it or not? A I refuse to answer.

Q I don't know whether you do or not. Do you want to take the chance of refusing to answer?

Judge Skinner: I advise you to answer, even though you may think some of these questions are irrelevant. Unless I object to them as irrelevant, I think it would be better for you to answer.

A It didn't affect me materially one way or the other.

Q It didn't increase the cordial attitude of you toward Dr. Walker, did it? A Yes and no.

Q You didn't love him any more for that, did you? A No, nor less.

Q And that made no difference with your relationship up to that time? A No.

Q Do you remember how many conferences you had with Dr. Walker with respect to your position? A Two.

Q Do you remember that in connection with this conference you brought up the question of your financial relations with the Miner Edgar Company?

Judge Skinner: I object as immaterial and irrelevant.

A Yes.

Q And that came up both times, in both conferences, did it not? A Yes.

Q Do you remember that you told Dr. Walker that you had an offer from some pharmaceutical house at a higher salary, and he told you you had better take it? A Yes.

Q And you might consider your employment with the Miner Edgar Company as terminated? A He didn't say that, to my memory.

Q You don't remember that? A No.

Q Do you remember that you came back the next day, or shortly after, and said, in effect, you didn't expect to be taken up so quickly with that? A Yes.

Q You remember that? A Yes.

Q What effect did that have on your attitude toward Dr. Walker? A None.

Q You love him just as much? A Yes.

Q Just the same? A Yes.

Q And the Miner Edgar Company, too?

Judge Skinner: I object as immaterial and irrelevant, and having nothing to do with this case.

A It had no bearing on that.

Q Shortly following your discharge you retained counsel and filed a bill in the Court of Chancery against the Miner Edgar Company, did you not, and some of its officers?

Judge Skinner: I object to the question as embodying the assumption that Mr. French was discharged, which is not supported by the testimony.

Q Following the termination of your employment with the Miner Edgar Company, you re-

tained counsel and filed a bill against the Miner Edgar Company and some of its officers, did you not? A I will not answer that question, on advice of counsel.

Q Are you the Roland H. French who is named as complainant in the bill of complaint filed in the Court of Chancery between Roland H. French and Miner Edgar Company and others? A Yes.

Q And that suit is now pending; it hasn't been decided? A Yes.

Q When you say "Yes," you mean it has not been decided? A Yes.

Q Are you the Roland H. French who is named as a defendant in a suit in the New Jersey Supreme Court brought by the Miner Edgar Company against Roland H. French? A Yes.

Q And that suit is pending and not determined? That is right? A I answered "Yes."

Judge Skinner: You are referring to his affidavit, are you, Mr. English, or to Dr. Walker's affidavit?

Mr. English: At the particular moment, the last question, I had my eye on Dr. Walker's affidavit.

Q Did the Miner Edgar Company in your day do an extensive business in lacquers? A No.

Q And such as it did went largely to the textile trade, did it not? A No.

Q Coated fabrics—the Miner Edgar Company coated fabrics? A You are getting into a field now where we will have to define "lacquers."

Q It didn't do very much in the lacquer business, did it? You have already said so. A In

view of your second question, you will have to define "lacquers" again.

Q All right, we will leave that for experts. Will you define "lacquers" for us? You have been in this game for ten years.

Judge Skinner: I object to the question as outside of the line of proper cross examination.

Witness: Do I have to answer that question?

Judge Skinner: Yes.

A Lacquer, as it is usually understood in the trade, is a solution having a pyroxyline base and made with a combination of solvents and gums, and plastic sizes, so that the resultant product, when applied to a surface of metal, wood or other material, will produce a hard and durable film.

Q How extensive a business did the Miner Edgar Company do with lacquers, as you have defined them, during the time that you were with them? A Very little.

Q In your affidavit you say that Mr. Weaver said to you that he was in close touch with Dr. Walker and could consult with him at his house any evening. When did Mr. Weaver say that? A On a number of occasions. Those that I recited in my affidavit particularly stand out.

Mr. English: I didn't notice that you recited any particular time in your affidavit.

Judge Skinner: He says "three or four days after he came to the Miner Edgar Company," in his affidavit.

Q Yes. When did Mr. Weaver come to the Miner Edgar Company? A In May, I believe it was.

Q You have no knowledge as to whether he did consult with Dr. Walker, have you? A Only his word.

Q Were you present at the meeting between Mr. Miner and Mr. Weaver, which you say was made pursuant to appointment, and sometime after the 4th of July? A I was.

Q Will you undertake to say when it was that Dr. Walker was first at the New York office of the Miner Edgar Company consulting with Mr. Miner? A No date.

Q You say you saw him at the office in August and September? A I said so.

Q That was the earliest you saw him there, was it not? A So far as I recall, yes.

Q When did you first meet Dr. Walker, Mr. French; on the 2nd of October, as you state here in your affidavit? A No, I first met Dr. Walker in 1918 or 1919.

Q In a business way or just a social way? A In a business way.

Q The first time you met him as president of the Miner Edgar Company was on October 2, 1925, as stated in your affidavit? A I think that was the date.

Q Did you personally see or have anything to do with the formulae of the Miner Edgar Company which they used in their manufacture? A No, sir.

Q You didn't come in contact with them at all? A No.

Q Your job was to sell goods? A That is all.

Re-direct examination by Judge Skinner.

Q Mr. French, you said that you had been with the Miner Edgar Company since 1916. How long were you sales manager? A The entire time.

Q And was that management inclusive of all or only part of the sales of the company? A Except for a time while I was partly incapacitated on account of illness, it was all the sales of the company, and except a short time, after I turned the clay business over to other men, I handled the entire business for the greater part of the time.

Q This clay business, what portion of the whole business was it, small or large? A In the early days, it was large, 75 per cent., then it got down so it was a relatively smaller end of the business; the clay end of the business grew, but the other end of the business grew faster.

Q When you went there as sales manager, what was the volume of business of the Miner Edgar Company? A Oh, it was small.

Q About what? A $50,000 or $60,000 a month.

Q When they terminated your connection with the company, what was its volume of business? A It ran from $300,000 to $500,000 a month.

Q You said that you had nothing to do with the formulae of the company; who did? A The production department.

Q Who was in charge of the lacquer department? When I say "lacquer department," I mean to include lacquers, and lacquers enamels, leather solutions and thinners. A R. W. Melville was in charge of production generally, and at the time I left, Mr. Weaver was in direct charge of lacquers and lacquer enamels.

Q Would he be the one to have the formulae? A Mr. Weaver would.

Q Before Mr. Weaver, who was the expert or the man charged with the possession of the formulae? A Mr. Thomas.

Q How long was he there in that capacity? It was only a short time, wasn't it? A Less than a year.

Q And he left on account of illness, did he not? A That was the immediate cause of his leaving the place.

Q And before Thomas, who was in charge of the formulae? A There wasn't anybody outside of Melville and the chemist in charge then, except that there was a chemist by the name of Schroeder, who was there working on this thing for a while.

Q What do you mean by "this thing"? A I mean enamel lacquer business.

Q Before him, who was doing the same thing, if anyone, when you first went there? A There was no one.

Q Then was Schroeder the first one that you saw there actually engaged as an expert? A Yes.

Q And during all this time was the production of lacquer successful? A No.

Re-cross examination by Mr. English.

Q You claim the credit for this increase of business, from comparatively small to a comparatively large figure? A No, not all of it.

Q Did that include lacquers? A Very little, practically none.

Q Did the Miner Edgar Company have a Jersey City plant? A Yes.

Q Who was in charge of that? A Mr. Melville.

Q And is that engaged in the lacquer business? A Part of it was engaged in especially lacquer business.

Q You say that Melville had charge; that was in the sense that it was under his general charge, in connection with other plants of the company, wasn't it? A Yes.

Q Who was the man immediately responsible for the Jersey City plant? A Frobose, I believe.

Q Did that plant manufacture lacquers? A To some extent.

Q That was the only lacquer business of the Miner Edgar Company? A Yes.

Q It had been in that game about five years? A A little less than that.

Re-direct examination by Judge Skinner.

Q What did you mean by "especially in the lacquer business"? A I mean that they didn't make a general line of lacquers; they didn't make automobile lacquers, or any of the lacquers that grew in big volume, to any extent.

Q This was a specialty for what end or purpose? A The goods were used by small trade, not big concerns.

Q How did you come to make this affidavit that you made in this case? A I was asked to do so.

Q By whom? A Mr. Magnus.

Q And when did you first meet him? A I first met him a good many years ago.

Q When did you first bring to his attention the fact that you had severed your connection

with the Miner Edgar Company? A Oh, sometime in November.

Q By announcements that you sent out to the trade? A By announcements that I sent out to the trade and talking with him on the phone about some business that I was doing with him.

Q When did you and he first discuss this suit of the Maas & Waldstein Company, in which you have now made an affidavit? A Thursday—I don't remember the date.

Q January 7th, he says in the affidavit. A I called on him in connection with other business, and he asked me some questions that I answered.

Q Were you willing or unwilling to make the affidavit, Mr. French? A I was unwilling until I was pressed very hard.

Re-cross examination by Mr. English.

Q It was voluntary on your part, wasn't it? A I didn't wait for a subpoena, but I was urged very hard to support Maas & Waldstein.

Q You know that no witness can be compelled to sign his name to a written affidavit such as this, don't you, by process of subpoena or otherwise? A I do.

Q So in the last analysis, it was voluntary on your part? A So classified.

Q You didn't regret it very much, did you? A I haven't.

Q (By Judge Skinner.) Are you feeling well this morning? A Not quite up to par this morning; I was sick all night.

MILTON A. MAAS, being duly sworn according to law, on his oath says:

Cross examination by Mr. English.

Q Mr. Maas, I believe you now claim to be the president of the Maas & Waldstein Company? A I am president of the Maas & Waldstein Company.

Q Just specifically answering my question, you also claim to be, don't you? A Yes.

Q You have been connected with the Maas & Waldstein Company a good many years in various capacities? A Since 1908.

Q You say, in paragraph 3 of your affidavit, that you are familiar with the trade; is that right? A Yes.

Q And being familiar with the trade, you know that the Miner Edgar Company is engaged in the manufacture and sale and deals in pyroxylin solutions; what do you mean by that? A Just what it says.

Q I am a layman in this business. Won't you elaborate to me a little bit pyroxylin solutions? A The cotton solutions, nitrate of cotton solutions.

Q That is what you refer to by pyroxylin solutions? A Yes.

Q You also say that they deal in lacquers; what do you mean by that? According to our last witness, lacquer is a wide term. A I didn't get that question.

Q What do you mean by lacquers? You say that you know the Miner Edgar Company deals in lacquers? A It means what it says; it deals in lacquers.

Q You also say it deals in lacquer enamels; what is the difference between lacquer and

lacquer enamels? A Lacquers are clear, and enamel lacquers have pigments added to them.

Q You say that they deal in acetates; what do you mean by that? A Such as amyl acetate, butyl acetate, ethyl acetate.

Q Now, you say further that all this was in competition with the business of the Mass & Waldstein Company. Of what time are you speaking when you say that? A At the present time.

Q You mean the date of your affidavit? A Yes.

Q That is a very slight competition, is it not? A No.

Q Do the Miner Edgar Company deal in the same class of goods in competition with the Maas & Waldstein Company? A They do.

Q You are sure of that? A Yes.

Q When you say they deal in the same class of goods, just tell the class of goods that is common to both companies? A Lacquer, lacquer enamels, leather solutions, acetates.

Q To the same degree and extent as the Maas & Waldstein Company? A The extent I am not familiar with.

Q That is the main business of the Maas & Waldstein Company? A That is the only business.

Q And it is only an incidental business of the Miner Edgar Company, is it not? A That I do not know.

Q You say you are familiar with the trade. I wonder whether you know that? A No.

Q You don't know that? A No.

Q The only plant they had, of the many plants which they have, was the little one over in Jersey City? A The size of the plant I don't know; I have never seen the plant.

Q So your familiarity with the trade is not very great in that respect? A That isn't familiarity with the trade. I am not familiar with the plant.

Q Familiarity with the trade of the Miner Edgar Company with the lacquer business, you haven't very much knowledge on that? A The extent of their business, no.

Q What is the source of your opinions, as you stated in your affidavit? A Circulars that I have seen.

Q Does the Maas & Waldstein Company sell to the textile trade to any extent? A Not to any great extent.

Q It does not amount to anything, as a matter of fact? A It amounts to something.

Q How much? A I cannot give the figures.

Q Will you name any customer in the textile trade that Maas & Waldstein sells to? A No, I cannot recall any.

Q As a matter of fact Maas & Waldstein don't sell to the textile trade, do they, Mr. Maas, you know that? A We have sold them.

Q How recent? A I cannot say how recently; we call on them and try to sell them occasionally.

Q That is like the difference between catching fish and going fishing; you would like to? A It is a matter of luck.

Q When you use the term "acetates" what do you refer to? A Ethyl acetate, butyl acetate and amyl acetate.

Q Those three? A Yes.

Q Does Maas & Waldstein manufacture those three acetates which you claim they sell? A Yes.

Q Sell them outright? A Yes.

Q Or use them in their manufacturing business? A Both.

Q I will ask you, as I did before: will you give the name of any customer of Maas & Waldstein to whom you sell ethyl acetate? A No.

Q You cannot give the name of one? A I could.

Q Will you? A No.

Judge Skinner: I cannot see any reason why you should not tell.

Witness: I don't see why I should give a competitor the name of my customer.

Judge Skinner: I advise you not to answer.

Q Please give me the name of any customer of Maas & Waldstein to whom you sell ethyl acetate.

Judge Skinner: That alone?

Mr. English: That alone.

A Landgraf.

Q How much do you sell to Landgraf?

Judge Skinner: I object to that question as utterly incompetent, irrelevant and immaterial, and improper; it does not seem to me—

Mr. English: It is cross examination on his own affidavit.

Judge Skinner: This is a suit in which we charge that the defendant, Dr. Walker, has left this company, gone to a competitor and taken with him confidential information, and we charge that the names of the customers,

and the amounts that they sell and prices and all that is part of that confidential information, and I will take the responsibility for advising this witness not to answer any question of that character directed to him now.

Mr. English: On the contrary, our answer denies any competition.

(Last question repeated.)

Will you answer the question?

Witness: No, I refuse, on the advice of counsel.

Mr. English: I press the question. Will you answer it?

Witness: No.

Q Can you give me the name of any other customer to whom you sell any of those acetates that you have mentioned? A I can.

Q Will you do so, please?

Judge Skinner: Is there any objection to Mr. Maas conferring with counsel?

Mr. English: No.

(Witness and counsel confer.)

Q What is the volume of ethyl acetate business that the Maas & Waldstein Company does? A Very small as a whole.

Q That stuff is sold in tank cars, isn't it? A Yes.

Q You don't sell any in any such quantities as that? A No.

Q So it is a fact, isn't it, Mr. Maas, that so far as ethyl acetate goes, your company does practically no business by way of manufacture and sale of that? A By sale, no.

Q What you do manufacture, you use in your own process, don't you? A Yes.

Q The same is true of amyl acetate? A Not to the same extent.

Q Substantially the same? A Substantially the same.

Q Butyl acetate, the same is true of that? A Yes.

Judge Skinner: I want it to appear upon the record that I would not think of taking the responsibility for advising Mr. Maas not to answer the question, except from this point of view, that the question calls upon him to disclose the names of the customers, which is one of the things that we have regarded as confidential, and is part of the confidential information we charge Dr. Walker with having taken with him, and as having disclosed, or intending to disclose. It seems to me manifestly unfair that he should be asked to submit to examination along the line that practically destroys one of our grounds of complaint, and I doubt if Mr. English has meant to compel him to do that.

Mr. English: I disclaim any such intention of doing that. I had in mind to test his knowledge as to what he states in his affidavit, of being familiar with the trade and of the sale of this company's products, and competition with that of the Miner Edgar Company.

Judge Skinner: Then the answers that he has given are sufficient for your purpose, or do you press the other questions, which he has refused to answer?

Mr. English: I do not.

Q Going back once more to the business of the Maas & Waldstein Company, in general terms it is lacquers and lacquer enamels? A Yes, and leather solutions.

Q And as a matter of fact there is a very slight competition between the two companies, is there not? A No, there is.

Q Will you tell me once more what the Miner Edgar Company makes or sells in competition with the Maas & Waldstein Company? A Lacquers and lacquer enamels and leather solutions.

Q In any such volume as the Maas & Waldstein Company does? A I am unfamiliar with their volume.

Q Do you know the names of the Miner Edgar Company's customers? A I do not.

Q Do you know where they are located? A Their customers?

Q Yes. A No.

Q Do you know anything about the volume of their business in these particular goods? A I do not.

Q So your knowledge about the extent of the competition is very slight, indeed, isn't it? A No, I know they try to sell our customers.

Q I want to know if you have any real knowledge of the extent of the competition that you are talking about. You haven't, have you? A Of course, I have; if they are trying to sell our customers, that is competition.

Q They are not the only concern in the world that is trying to sell your customers? A I should say not.

Q As a matter of fact, business competition is pretty good in your line of trade? A It is pretty good.

Q So in that respect the Miner Edgar Company is no different from a number of other concerns in the same line of business in that respect? A No.

Q In paragraph 8 of your affidavit you say that Dr. Walker was entrusted with certain secret and confidential statements, invoices, codes, &c.; by whom was he so entrusted? A By the Board of Directors of the Maas & Waldstein Company.

Q Was that the product of any formal action of the Board of Directors of the Maas & Waldstein Company? A No.

Q Don't you know that the Board of Directors has to act together as a board, you know that? A When you ask who entrusted him, the people in charge of the business entrusted him.

Q All right; who in charge of the business entrusted him with any secret and confidential statements? A At the time he came with us?

Q Yes; that is the time you refer to in your affidavit. A I think at that time Dr. Waldstein.

Q What did he entrust to him, do you know? A The manufacturing formulae which we had at that time.

Q Were you there at the time it was done? A Yes.

Q Was it turned over in any formal manner, or what was done? A No.

Q What were the manufacturing formulae which were turned over to him at that time? A The different articles we manufactured.

Q In whose custody had they been? A Mr. Seher's.

Q You mean the elder Seher? A Yes, Mr. August Seher.

Q Do you know how extensive they were or what they consisted of? A All we manufactured at the time.

Q That is very vague. Can you tell me any particular formula that was turned over by the elder Seher to Dr. Walker?

Judge Skinner: You don't mean to have him tell the formula, do you?

Mr. English: I don't mean the manufacturing secret of the thing.

Q How many for the manufacture of lacquers? A I cannot tell you how many.

Q You haven't any personal knowledge of this at all? A Of course I have.

Q That wasn't in your end of the business? A It was.

Q Were you the manufacturing man? A No.

Q What did you do back in 1906 when Dr. Walker came with the Maas & Waldstein Company? A I can remember the firm of Maas & Waldstein since 1896.

Q That may be, but I want to know what you did in 1906 in the Maas & Waldstein Company which brought you in personal contact with the manufacturing end of the enterprise? A I saw the trade and sold lacquers.

Q That had nothing to do with the production and manufacture, did it? A I never had anything to do with the production and manufacture.

Q In view of that statement, I want to know what knowledge you have of any formulae that were turned over to Dr. Walker? A The general knowledge of the business, which I always

had. I went to the factory once a day in those days.

Q So your general understanding is without any detailed knowledge that Dr. Walker had access to the various formulae of the company, is that it? A Yes.

Q And when did that begin, do you know? A I think about 1909; I think Mr. Seher died in 1909.

Q There is mentioned in the complainant's affidavit more than 1,200 formulae; are those that you are speaking of back in 1909 included in the 1,200 or more than 1,200? A There were not 1,200 at that time, but there were a number of them.

Q I want to know whether those which were in existence in 1909 are included in the present list of more than 1,200? A Yes.

Q How do you know that? A Because I know it.

Q Have you any familiarity with these formulae? A I have.

Q Have you sufficient knowledge to take one of them and superintend the manufacture of the product? A I have not.

Q Have you sufficient chemical knowledge to intelligently interpret or translate them? A Just what do you mean?

Q So as to make practical use of them? A For my purpose?

Q Yes. A Yes, for my purpose.

Q Can you go in the production room— A No, I cannot manufacture; I said that before.

Q You don't know as a matter of fact whether any of the existing 1,200 include those earlier ones back in 1909 on, do you? You wouldn't want to swear to that? A Yes, they do include them.

Q Tell me on what basis you make that statement. A Some of the formulae used at that time are today in use.

Q You say that; how do you know? A From the records that come from the factory.

Q Have you examined them personally? A Yes, sir.

Q Have you sufficient chemical knowledge to know whether the existing formula which you might pull out of these more than 1,200 appearing on the list is identical with one that was in existence back in 1909? A With the same formula, surely; anybody could do that.

Q I don't want to go into the manufacturing secret. How can you give me the name of any formula to manufacture any given product which is now in existence, which is identical with one back in 1909? A I will have to look up the records.

Q Or what were the statements that were turned over to Dr. Walker in consideration of his employment, as you testified in your affidavit? A Would you mind reading the affidavit?

Q You say in your affidavit: "In consideration of his employment and of the salary paid to him, the defendant, Henry V. Walker, expressly or impliedly agreed to conserve for the complainant the said statements," and the said statements which you recite are those which you say in the preceding sentence, were entrusted to him as president and factory manager. A Those were the factory records, the statements.

Q What kind of record do you refer to by the word "statement?" A The different statements that the factory kept, the records.

Q That does not help me very much; do you mean the financial statement? A Oh, no, not financial.

Milton A. Maas, cross.

Q Then what kind of a statement do you mean by the term "statements" as you use it? A Statement of the records, that are over at the factory.

Q Records of what? A Records of manufacture.

Q By the term "statements" you mean the records that are used in the manufacture of the company's product, is that right? A Yes.

Q I notice in your affidavit you couple the word "invoices" with "statements"; you say "confidential statements and invoices"; what do you mean by "invoices"? A Copies of all the invoices, of outgoing and incoming invoices.

Q Were they financial statements? A No. I don't know whether you call them financial.

Q We ordinarily understand an invoice as a bill for goods? A Yes.

Q Is that what you mean? A Yes.

Q You think back in 1909 there were entrusted to him certain invoices of bills for goods? A They were the factory records. Dr. Walker had full charge of the records at the factory.

Q Don't you know that up until 1921 there weren't any copies of invoices kept in the Maas & Waldstein Company? A Copies of outgoing, but incoming ones were always kept there.

Q There were no copies of outgoing invoices kept? A No.

Q When you used the term "invoices" in your affidavit, what kind did you refer to? A Both.

Q There weren't any back in 1909, you said. A There were incoming ones in 1909.

Q Are those the ones you are referring to? A Yes.

Q What were the incoming invoices? A Merchandise we bought.

Milton A. Maas, cross.

Q Is that of any particular value or secrecy to the Maas & Waldstein Company as to what you bought? A By competition, it would be.

Q I suppose you bought a great quantity of this, that and the other thing? A Yes.

Q How is that of any value to a competitor?

Judge Skinner: The charge you are reading from is not that Dr. Walker was entrusted in 1909.

Mr. English: He said so.

Judge Skinner: He has not. He has said "certain" things, not of everything, in paragraph 8.

Q You say as president and factory manager, Dr. Walker was entrusted with certain secret and confidential statements and invoices. Was that at the time he became president and factory manager you are talking of? A No. I will alter that. Some of it was when he became president, and some of it afterwards; as things went on, methods changed.

Q Tell me what statements he was entrusted with at the time he became president? A All the factory records.

Q What invoices was he entrusted with at the time he became president? A Of all incoming invoices.

Q The stuff you bought in process of manufacture? A Yes.

Q Is it your charge that he has taken away those things which were entrusted to him back in 1909? A No.

Q What in the way of statements and invoices do you say he has taken away? A Copies of outgoing invoices.

Q As of what time? A For 1924, I believe.

Q You say they were entrusted to him; you mean they were just a part of the office files at the factory? A Sent at his request.

Q What do you mean by "sent at his request"? A At his request we sent to him copies of all outgoing invoices.

Q That was a part of the ordinary business routine of the company, wasn't it? A At his request, yes.

Q But that was a part of the business routine? A It became a part of the business routine.

Q Was he the only man that these things were given to? A Yes.

Q Invoices were sent to others in the factory? A No, there was one copy sent.

Q Were copies of these invoices sent to the salesmen? A Not of all, no; the salesman only received copies of his, naturally.

Q What do you mean, of his own trade? A Of the stuff he sold. If a direct order came, he got the order.

Q If you got all the salesmen together with all the copies that they had received, you would have a complete set of all of the invoices in the office? A No, you would not.

Q What would be left out of it? A A great deal would be left out of what we call the company's business.

Q You mean by that, stuff not credited to any particular salesman? A No.

Q Like mail orders? A No, they are credited to salesmen.

Q And those invoices, they are simply lists of the goods that have been sold to customers, is that it? A Lists of the goods, the prices; it

is a duplicate copy taken right from the original copy that goes to the customer, an absolute duplicate.

Q It is a copy of his bill? A It is a duplicate of the record.

Q But you have other copies of it in your office in New York? A One copy. It is carried in a book; it is posted from there over to the journal and then to the ledger.

Q You have the journal and ledger in your office, haven't you? A Yes.

Q So that you have everything that you mentioned here in the way of invoices? A Yes.

Q The copy which you say was sent to the factory at Newark was practically a copy of the bill which went to the customer? A It is a complete record, yes.

Q And that showed the stuff he bought and the price he paid for it and the terms of the credit? A Yes.

Q Now, you mentioned codes that were turned over and entrusted to Dr. Walker. Of what time are you speaking when you say that? A For the last five or six years.

Q You are not going back to 1909 in the manner of codes? A No.

Q These codes grew up with the business? A Yes.

Q What did you mean by codes? A Those formulas were written in codes.

Q The term "codes" and the term "formulae" are synonymous in your mind? A Yes.

Q You seem to distinguish in your affidavit, because you say "invoices, codes, formulas and tables." A They are all practically the same thing.

Milton A. Maas, cross.

Q Codes and formulae are the same thing, to your mind? A Yes.

Q And they were codes for what purpose? A Codes for the formulae, that came over in codes, so any codes that would be lost or get into other hands, they would be of no value.

Q Those codes, as you call them, were mixing directions, were they not? A No, I think not.

Q You were not here when Mr. Reuschle testified, were you? A No.

Q Or Mr. Seher? A No.

Q So you didn't hear them say that they were in fact mixing directions?

Judge Skinner: Mr. Reuschle didn't say that of the codes.

Mr. English: He did of the formulae.

Judge Skinner: Yes, but not of the codes.

Mr. English: I understood him to say that.

Q You don't remember much about the thing anyway, do you, Mr. Maas, the manufacturing end? A No.

Q How many times have you been in the factory in recent years? A Not very frequently.

Q Do you remember you had a fire back in 1919? A Yes.

Q Did you go out then? A I went out that day.

Q Been there since? A Yes.

Q How often? A Not very frequently; I cannot say just how often.

Q You didn't go for two years after that, after the fire? A I wouldn't say I wasn't there for two years.

Milton A. Maas, cross.

Q You remember you went there in May, 1921, in connection with some salesman, at the request of Dr. Walker? A I may have been there between the time of the fire, in 1919, and the time of that discussion in May, 1921.

Q You hadn't been there in the interim? A I wouldn't say I wasn't.

Q You wouldn't say you had been? A No.

Q Did you go there again until the April or May following the attempted removal of Dr. Walker as president? A I cannot say; not often, anyhow.

Q You don't pretend to go out there very much, do you? A No; once in two or three years, something like that. That was the practice then.

Q And since you have been president you haven't been out there much either, have you? A No.

Q Mr. Magnus says he goes out once in a while? A Yes.

Q You left that to him? A Yes.

Q And Mr. Seher is down there in charge, you think? A I don't think; I know he is in charge.

Q And so you left the factory end to him? A Yes.

Q You say that codes and formulae, to your mind, are the same thing; what do you say about "tables"; you speak of "tables," in paragraph 8 of your affidavit? A These are the same things for our records in New York. They may classify them different in the factory.

Q Your records of what in the factory? A The formulae—codes.

Q Looked at from the standpoint of the New York office, codes, formulae and tables are all the same? A Yes.

Q And all relate to the manufacturing process? A Yes.

Q Whether they are chemical formulae or mixing directions, you don't know? A No.

Q You say in your affidavit that in consideration of his employment and his salary, Dr. Walker expressly or impliedly agreed not to divulge this various information. Is there any express promise on his part that you are aware of? A No.

Q When you used the word "impliedly," you used the legal term phrased for you by the counsel who drew your affidavit? A I don't know that "impliedly" is a legal term; I think laymen use that word frequently.

Q Is this your original thought on the subject? A I wouldn't say it was, but it may have been very easily; I frequently use the word "impliedly."

Q Do you know how many men in the factory had knowledge of these manufacturing processes which you have referred to as "codes, formulae and tables"? A I do not.

Q Now, since you have no personal knowledge about their use in the manufacturing process, you have no personal knowledge of what their value would be to some other manufacturer, have you? A I certainly have.

Q How can you have a personal knowledge, outside of an expert knowledge on that? A I have a knowledge. What do you mean, in the trade if someone claimed he could prove that they had our formula?

Q Now, do you know a concern called the Celluloid Zapon Company? A Very well.

Q Do you know Mr. Flanagan, your salesman? A Yes.

Q He came to your company from the Celluloid Zapon Company, did he not? A He did.

Q He brought with him some codes or formulae or tables of that Celluloid Zapon Company, did he not? A Not to my knowledge.

Q You don't know that? A No.

Q You never heard of that until this suit? A Just since this suit. He was not supposed to bring anything; he was engaged as a sales manager.

Q You never saw in any of your company's offices any of the formulae and what not that he brought? A No.

Q And you have no knowledge what use your company made of it? A I never knew they made any use. They certainly made no use of them in the sales end.

Q You haven't any reference in your affidavit to the codes, formulas and tables which you say were entrusted to Dr. Walker, to this formula of the Celluloid Zapon Company which your company has, have you? A We don't know any formulas of the Celluloid Zapon Company.

Q You haven't any reference to them in your affidavit? A No.

Q Are you enough familiar with the sales end of your business to know your company's price list when you see one? A Yes.

Q I show you paper headed May, 1919; just look at that and see if that contains any price list of your company for the benefit of your salesmen? A Yes.

Q You are familiar enough with the business to know that in the lower half of that page there are set up figures for the same products made by the Celluloid Zapon Company? A Yes.

Q Do you want to correct your previous statement to the effect that the Maas & Waldstein Company made no use of data which it had from the Celluloid Zapon Company? A Absolutely not.

Q Then how do you explain that this sheet which I show you, which is for the use of salesmen, that there is set up the parallel of your company's prices and the Celluloid Zapon Company's prices and products? A We have a lacquer to match everyone, not only Celluloid Zapon. We don't claim it is the same thing, but we have a lacquer which we claim will do the same work, and we furnish the salesmen with a list of what will do the work of the other man's lacquer.

Q You give your salesmen a list of what you would produce? A Yes.

Q And give him a list of what your competitor produces? A That is right. We tell them when they write us a man is using such and such a lacquer, which lacquer by number, that we make, could answer that purpose, but we never claim it is the same lacquer.

Q You claim it is a little better? A Yes, sir.

Q And a little cheaper? A Not necessarily, but might be a little higher in price.

Q But in order to claim that it is better you make use of your knowledge of the other fellow's formula? A We haven't any knowledge of the other fellow's formula, to my knowledge.

Q You have knowledge of the formula of the Zapon Company, because it is set up on the sheet sent to salesmen? A No, we set up which one of our own lacquers will answer that purpose.

Judge Skinner: I object to the statement, "Referring to this paper," unless the paper

is in evidence. If it is not put in evidence by Mr. English I will put it in evidence.

Q Did you notice this sheet carefully enough to observe that where it deals with the Celluloid Zapon Company's products, in some instances you have in some places indicated the equivalent, and some no equivalent—did you notice that? A Yes, in a good many instances, why the same trade—the same people buy lacquer from two sources and buy from us and buy from Celluloid Zapon, and we generally know which one of our lacquers answers theirs. I suppose that is what that is.

Q I suppose you got the information which is on this sheet from what Mr. Flanagan brought with him from the Celluloid Zapon Company? A I beg pardon, I knew that long before I knew Flanagan.

Q Which of your products is the same as the Zapon Company's K-1215, as stated on this list? A I cannot say that.

Q Look at it and see; I show you the paper. A I would say it was the same.

Q The fact is that you made that same thing, K-1215? A No, we never made exactly the same as any other manufacturer. No two lacquers are the same.

Q Is this on this sheet set up exactly the same? A No, it is tentatively the idea that this lacquer will answer that lacquer—doesn't claim it.

Q Show me on this sheet where there is any distinction. A I cannot see where it is the same. My claim is that simply shows which lacquer we manufacture will answer that purpose.

Milton A. Maas, cross.

Q How did you get the knowledge of a product that would match it exactly? A Through the trade. We know a lot of people, as I said before, use half from us, or a third from others, to do the same work.

Q That kind of knowledge is common in the trade? A The only people who would have it would be the Celluloid Zapon, where they were in direct competition with us, and people were using both lacquers to do the same work. We know which lacquer of ours does the work that their lacquer does.

Q How would they know that? A A man using it. There are a dozen customers that buy lacquers from both people. That has been true long before Mr. Flanagan came with us. We knew, I believe, the old number which was K X 210, which has always been so, long before Mr. Flanagan came with us.

Q Knowing that you could make a product that would match it? A We never claimed that.

Q You claimed you could make it as good and better? A Better.

Q You could get a sample of the other fellow's product and analyze it? A That is a very difficult matter, I believe. They say it is. I am not a chemist.

Q To make an analysis? A To make a correct analysis of the lacquer.

Q You know that is done right along in the trade? A Yes, sir.

Q And having gotten the other man's product and having analyzed that with your chemists— A It is not so easy to get the other man's product, either.

Q Can't anybody go to any concern and buy some of their stuff from them? A Not very easily—we don't sell to a stranger.

Milton A. Maas, cross.

Q You don't think that one of your competitors could go to one of your customers and get from him a sample of the product that you sell him? You wouldn't want to say that? A It would all depend on the customer.

Q He wouldn't give up anything? Nor a lacquer manufacturer? A We wouldn't give one man another man's material.

Q I am not talking about what you do—I am talking about the customer. A It could be done, but it isn't so.

Q Don't you know that the Maas & Waldstein Company has many, many times gone to customers of other concerns and gotten a sample of the product and brought it home and analyzed it? A And many times been refused too.

Q And many times have succeeded? A Yes.

Q And analyzed it at the factory? A Yes.

Q And then sent the salesman out to the same customer and said, "Why we can produce for you the same or a better product than you are getting from ABC." It is done right along? A Yes, sir.

Q If that is true from the standpoint of the Maas & Waldstein Company, isn't it true from the standpoint of any other manufacturer, that you can go to any customer of any of their competitors, and get a sample of the goods? A No. It is very difficult. It is very infrequently that we get a sample of someone else's goods from a customer.

Q You are sure about that? A Yes.

Q What experience have you had to base the statement on? A I have tried to get them and not succeeded.

Q So from the fact that you lost out in one or two instances, makes you think that it is

common to lose out on that? A Very few people will give you a sample of someone else's material.

Mr. English: I will ask to have this sheet which I have shown the witness marked for identification, it being the same paper I showed Mr. Magnus on his examination.

(Marked Exhibit A for identification, January 23, 1926.)

Q Referring to this Exhibit A for identification, there is at the very top, as one of the products of your company, Peerless No. 1. Do you know how that came to be made as a product of your company? A To do a certain work, I believe. It originally was made to do a certain work at Yale & Towne—I believe that is it.

Q Your company made it to meet some requirement of Yale & Towne? A If I am not mistaken, it was made originally to meet a requirement of Yale & Towne.

Q Do you know Sargent & Company? A Very well.

Q Don't you know that that is an exact duplicate of their product? A Sargent & Company are not lacquer manufacturers.

Q They supply the trade, do they not? A They do not.

Q Do you know the American Lacquer Company? A Out of business, years ago.

Q It used to be in the game? A Yes.

Q And they supplied Sargent & Company with their goods, when they were active? A They never supplied Sargent with that lacquer or anything similar to that, to the best of my knowledge and belief.

Q I asked you whether they ever supplied them? A They never did supply any lacquer similar to that to my best knowledge and belief.

Q Your knowledge may be defective? A I don't think so, on that subject.

Q You think they never supplied Sargent & Company with anything? A I didn't say that. I know better than that; you asked me what I think.

Q You know, as a matter of fact that they do supply Sargent with goods? A Yes.

Q Don't you know, as a matter of fact, that the first one on your list, Peerless No. 1, is a product which was supplied to Sargent by the American Lacquer Company, and a sample obtained, analyzed by your company and reproduced? A I know positively that is not so.

Q What is your source of knowledge? A I am very familiar with that lacquer and know the history of it, and how it was made. If I may add, I don't believe Sargent & Company ever bought that lacquer from us.

Q You haven't any basis in fact for that? A I can prove that very easily.

Q Are you prepared to prove it this morning? A No.

Q Coming back, now, to the formulae used by your company, can you tell me in what sense they are novel or different from any other formula? A In the sense that every formula for lacquer is different.

Q They all have the same basis back of them? A Yes.

Q It is just a matter of a little variation in the ingredients? A I should say so.

Q So in the last analysis the difference is in the way the ingredients are mixed, or in the quantities that are put in? A I believe so.

Milton A. Maas, cross.

Q Were these things patented, or patentable—this formula of yours?

Judge Skinner: I object as calling for a conclusion of law, so far as the question involves the word "patentable."

Q What do you say to that? A I am not familiar enough with the law to know whether they are patentable or not.

Q Did the company ever apply for a patent on these? A Not to my knowledge.

Q You know as a matter of fact they did? A I don't believe they did.

Q Do these formulae of yours, or did they, contain any ingredient that is different from these enumerated in the literature on this general subject? A I am not familiar with that literature.

Q So that if they are different, you don't know in what respect they are different? A I do know that there is years of experience back of them.

Q Whose experience are you speaking of? A The experience of the customer and the factory.

Q There has got to be some responsible man whose experience counts—who is the man you are referring to in your company? A We have half a dozen, I should say.

Q At the present time? A At the present time; in the office and the factory there are half a dozen.

Q Any of them is qualified to go into the factory and manufacture? A No.

Q Who is the man you refer to as having the qualified knowledge and experience to superintend the manufacture?

Milton A. Maas, cross.

Judge Skinner: He didn't refer to anyone.

A When?

Q I am asking you.

Judge Skinner: Who did you refer to?

Witness: Seher and Mr. Reuschle.

Q Referring to the elder Seher, the present Seher? A The present Seher.

Q Is he qualified to superintend the manufacture as an expert chemist? A Not as an expert chemist, but he is qualified to superintend the manufacture.

Q Did you know Mr. Stevens of the Celluloid Company? A No.

Q Are the discoveries which he made, the basis of the present product manufactured by concerns like yours? A No.

Q You don't know anything about that? A No.

Q Isn't his the real experience that you talk about, although you don't know it? A I can't say.

Q I show you a book that I referred to on the examination of a previous witness, which is entitled "Pyroxylin Enamels and Lacquers," by Samuel P. Wilson, and I show you list of contents of book, opposite which we put some check marks. Look at this and tell me whether or not they are used in your product and manufacture. A These formulas, I cannot tell you.

Q You are not a practical manufacturing man, are you? A No.

Q That isn't your line? A No.

Re-direct examination by Judge Skinner.

Q Mr. Maas, I show you Exhibit A of today for identification; this is the paper that Mr. English referred to? A Yes.

Q As containing the statement of formula—do you see anything on there that is the statement of a formula?

Mr. English: You misunderstood my characterization of it.

A I do not.

Q What do you say, taking the first item. I read it "Peerless No. 1, $4.45." A That is price list, price per gallon.

Q Of what? A Of that lacquer.

Q And the lacquer is known as what? A Peerless No. 1 lacquer.

Q Is that the designation of the lacquer by any secret code or formula, or is it a trade designation? A That is our own formula.

Q Is it a trade designation or a private designation? A A private designation of the Maas & Waldstein Company.

Q Do your salesmen know it? A The designation? Yes.

Q So that is a designation known to your salesmen by which to identify a certain lacquer? A Yes.

Q Then the next, or the third one, "H. B." I think it is, with a question mark after it—take the column that runs down under "Peerless." What do you say of those, down to and including figures 1028? Are they similar designations in your own trade? A They are our own private designations, which we sell the lacquer under.

Q Take the next page of figures and let us hear the lower half of the sheet, beginning with two B's. What is that? A This is the lacquer that we should offer in place—where we find this lacquer being used.

Q BB is the designation for your lacquer? A Yes.

Q And 100 K—what is that a designation for? A I believe it is Celluloid Zapon Company.

Q Is there anything in that 100 K which tells you anything at all about the composition of that lacquer? A No.

Q It is a mere designation for a certain lacquer? A It is their designation for a certain lacquer.

Q They use that? A Yes.

Q Is it known to the trade? A Yes.

Q What do you say about the other designations that follow below that? A They are the designations of the Celluloid Zapon Company and where we know which lacquer of ours will answer, we have put our lacquer down for the salesmen to offer.

Q Those that follow, then, below 100 K are other Celluloid Zapon designations, are they? A Yes.

Q Is that true of all of them? A Yes.

Q To the bottom? A Yes.

Q And when you say other Celluloid Zapon designations, do you apply that to all that appear below that 100 K? A Yes.

Q And are they any different—I mean are they trade designations used by the Celluloid Zapon Company in the trade, or are they not? A Yes, they were used at that time.

Judge Skinner: I offer in evidence the paper heretofore marked Exhibit A for identification, of January 23, 1926, by Mr. English.

(Marked Exhibit A of January 23, 1926.)

Q Mr. Maas, do you recall whether or not it was the practice under Dr. Walker's management to have tabulated statements come from the factory to the New York office, made up from the books that he was keeping over there? A Yes.

Q Tabulated statement of what? A Of designations and costs and maufacturing expenses. I didn't really pay very much attention. I knew they came over.

Q Mr. English put to you a question asking you whether or not you sent out salesmen to say that you, Maas & Waldstein, had the same or a better product. Did you send out salesmen to say that you had the same product? A We have never sent out, or instructed salesmen to say they had the same product—the identical product.

Re-cross examination by Mr. English.

Q You instructed them to say yours was always better? A It worked better anyhow.

Q Just referring to Exhibit A, this 100 K which you referred to—do you know what the 100 is—what that means? It refers to a number of the formula? A I don't know. They had a way of calling theirs by numbers. I don't know.

Q Don't you know that that figure 100 refers to Maas & Waldstein formula for that lacquer? A No, I don't know that. Let me see it. (After examining exhibit.) No, I don't know that.

Q Don't you know that that list of numbers, 100 and after, right on down, one under the other, referred to Maas & Waldstein products? A It may be.

Q You wouldn't be fully qualified to testify to that? A That is the oldest lacquer we have.

Q What is the oldest lacquer you made, BB? A Yes.

Q What is the number of the oldest lacquer? A I didn't know whether that was the number.

Q Do you know the number of the oldest lacquer you made? A We didn't have them by numbers.

Q You have them by numbers now? A We don't sell them by numbers.

Q I don't care what you sell them by; do you know what they are by number? A I don't know that.

Q Do you know what the significance of the K is, on this sheet, 100 K? A K, as I understand it—let me see that again (after examining Exhibit A). K is the Celluloid Zapon's designation for their lacquer.

Q What is the BB? A That is the name of the lacquer.

Q That is yours? A Yes.

Q That is your oldest lacquer, BB, isn't it? A We made that long before Dr. Walker came with us.

Q And the K is a product of the Celluloid Zapon Company? A Yes.

Q Do you know that you have a formula 100 in your establishment? A Number 100?

Q Yes. A Yes, I suppose there is.

Judge Skinner: You are asked if you know.

Witness: I suppose there is.

Milton A. Maas, re-direct.

Q And the significance of that sheet is that the number 100 of yours is the same as the K of the Celluloid Zapon Company, isn't it? A BB, to my mind is the same.

Q Get your mind back of BB for a moment. A I don't know whether the 100 is or not. I thought it was the BB.

Q You think the BB is the same as their K—that is your interpretation of it? A Yes, it may be the 100, I don't know.

Q Would you undertake to say that BB and 100 are the same in your factory ? A I would not.

Q And don't you know, as a matter of fact, that BB is 139 in your factory? A I don't know that either.

Re-direct examination by Judge Skinner.

Q You do know, Mr. Maas, that whatever there be in your factory, by way of formula, whether it be known by number or not, is known to Dr. Walker? A Yes.

(Examination closed.)

Colloquy.

Continuation of testimony and proceedings in the above-entitled cause, before Hon. Maja Leon Berry, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, on Wednesday, May 26, 1926.

Appearances:

Judge Alfred F. Skinner, of Pitney, Hardin & Skinner, for complainant.

Mr. Conover English, of McCarter & English, for defendant.

Mr. English: Before any witness is sworn I would like to make this statement to your Honor.

The case, as your Honor knows, has been gone into rather fully on the examination and cross examination of affiants prior to the making of the preliminary injunction, and in that it appeared from the testimony that the object of the defendant, Dr. Walker, in taking these particular books and papers, which are the subject matter of the suit, was to put himself in possession of evidence which he deemed to be valuable in connection with another suit pending in this Court, brought by himself against the complainant here, the Maas & Waldstein Company, on an accounting, and he disclaimed any ulterior motive, and the testimony was that he had not disclosed to any person in the Miner Edgar Company the contents of the records, nor had he physically taken them away from his own house; and following that, your Honor made an order that they be physically deposited with Mr. Bindseil, as Master, so they could be used in the accounting case.

Since all that was done, the accounting has proceeded before a master appointed by this Court, and the testimony has been closed and the papers were used, and those that were produced and used have been marked in evidence, and the object which the defendant, Dr. Walker, had in mind in taking these papers at the beginning has been accomplished, so far as he is concerned, and therefore I am now ready to say to your Honor, and do say, that the papers are here produced by Mr. Bindseil, and we tender them back to the complainant, subject, of course, to their being preserved—those that have been marked in evidence in the other case, being preserved for use before the Master or Court on the further argument of that suit, and the object of this bill being two-fold: one, praying a mandatory injunction that we be required to hand them up, which we now voluntarily offer to do; or secondly, that we be enjoined from making use of them, or disclosing them; which, of course, falls of its own weight when the papers are handed back.

It seems to me that we come within the rule of law, that an injunction will not be granted where the complainant suffers no substantial injury from the alleged unlawful act. We are all through with them, they have served their object. He was a director in the company; he had rights in the papers that were about to be destroyed, or afraid they would be; he needed them in the accounting case, and he took them with the idea of preserving them. They have served their purpose and we are all through with them, and

the complainants are welcome to have them back, and in view of that, the complaint should be dismissed.

The Court: The complainant will not refuse to take back its books, but as I understand this, the prayer for relief goes further. The bill is filed not only for the return of these books, but for an injunction to restrain the defendant from the misuse of information which they claim he either fraudulently obtained or was not his information, and that he had no right to use; in other words, the knowledge of secret processes of the Maas & Waldstein Company. Am I right?

Judge Skinner: Yes.

The Court: So that on that phase of the question, I assume he will have to proceed.

Mr. English: That is true to a certain extent.

The Court: But the knowledge which they seek to enjoin all hinges on these records. Are you willing that the Court should now make an order directing that an injunction issue restraining Dr. Walker from the use of these same processes?

Mr. English: We don't want any injunction at all.

The Court: What is the purpose of the bill?

Mr. English: The purpose is to recover back these books and records, which we tender back, and to seek to enjoin the doctor in the meanwhile from making use of them or disclosing their contents.

The Court: Judge Skinner, the books and records are tendered back to you. Do you accept them?

Judge Skinner: So far as anything is tendered back, I would cheerfully accept it, but I am not willing to admit that they are what they are described to be as they are tendered.

The Court: You will accept what is tendered?

Judge Skinner: And with the further comment that this is not a replevin suit. We want something more than the physical return of the paper taken from our office, or whatever it was.

The Court: Possession or return of the books and restraint against their use, or use of knowledge obtained therefrom. The only object of your bill, as I understand it, is to obtain an injunction against the use of the secret processes by Dr. Walker. Is that correct?

Judge Skinner: Not quite, sir; only to this extent: that we seek to have that and any other—that they may be enjoined from using that and any other secret confidential information that was imparted to him or obtained by him in the relationship; included in that, I have in mind the list of customers, and under the law, to which I intend to refer your Honor, and particularly a recent decision by Vice-Chancellor Lewis, that the law has been stated as something particularly and more comprehensive than just the taking of secret processes. It is that out of the confidential relationship goes a trust, and that trust will be applied to the production

of the party who imparts the information, whether it be secret processes or other information of the kind that the use of which will injure the other party; the trust is not to use the information that has been imparted in confidence, if it will hurt the party who imparted it; that use of it is a breach of trust. And Vice-Chancellor Lewis, in a recent case, held that there is no distinction between the list of customers, which was before him at the time, and the secret processes that are the usual subject matter of other cases; and I think there are authorities on the same subject; and I think the ruling and the principle has been and is a good deal broader than just secret processes, although that is the thing that it is usually applied to.

The Court: I wanted an understanding as to what the issue now is.

Judge Skinner: Secret processes are the largest factor.

The Court: There is no motion before me.

Mr. English: His bill prays a mandatory injunction that the defendant return the books and what-not, which he lists, and enjoining the defendants and each of them from using or divulging to any other person or to each other, any, or any part of the secret confidential code abbreviations and code numbers and formulae relating to the complainant's business, referring only to the particular physical things which it is alleged were taken.

The Court: What is all this testimony about? I thought there was a whole lot of

testimony about secret processes. Am I mistaken on that?

Mr. English: To this extent: the bill said there were some twelve hundred or more formulae, which it was alleged had been taken. The witnesses for the complainant admitted that they had not been taken; they are now physically there in the office, and were at the time the testimony was given; and furthermore, that these so-called formulae were not chemical formulae in any sense of the word; they were a set of mixing directions of how the ingredients which go into the product—a lacquer or whatever it may be—what proportions were put in; and further testimony was, that it was common knowledge with all lacquer manufacturers; they all make the same thing, and about in the same way; one may put a little more of this or less of that, but that was the testimony of their own witnesses—Mr. Seher and Mr. Reuschle.

The Court: It seems to me that we are right where we began; there is no motion before me.

Mr. English: My motion is, your Honor, that upon the tender of these physical things which it is alleged we have taken, and which the bill seeks to have returned, that the bill of complaint be dismissed.

The Court: I will hear what you have to say in reply to that motion. If you desire to amend the prayer of your bill, you are entitled to relief, whatever equitable relief the evidence shows, and you are entitled to it whether you pray for it specifically or not.

Judge Skinner: If your Honor were to find that we were entitled to the relief, under the ruling of your Honor as to the scope of the relief, any amendment would be unnecessary.

The Court: That is the rule, as I understand it. I may be in error, but it is not necessary to include the general prayer for relief any more in bills of complaint, on the theory that whatever relief the evidence shows the complainant to be entitled to, will be awarded.

Judge Skinner: Your Honor's ruling is that I may have the amendment if I think it is necessary?

EDMUND M. FLAHERTY, sworn for complainant.

Direct examination by Judge Skinner.

Q Mr. Flaherty, where do you live? A Parlin, New Jersey.

Q What is your present occupation? A Assistant division manager of the DuPont Company.

Q What business is that company engaged in? A In the manufacture and sale of nitrocotton solutions, nitrocotton lacquers, enamels and bronze paper.

Q What is your work with them, the character of it? A I have charge of both the manufacture and sale of these products.

Q How long have you had that charge? A I have had that charge a year and a half.

Q Were you in some other capacity before that? A I was director of sales before that

and factory superintendent before that, and research chemist, first of all.

Q How long have you been with them altogether? A Just fifteen years, starting as research chemist.

Q And coming up to your present position? A Yes.

Q Are you a graduate chemist? A Yes.

Q What college? A Worcester Polytechnic Institute.

Q Have you any other collegiate technical education? A No, sir.

Q What was the degree that you got there? A Bachelor of Science and Chemistry.

Q How long ago was that? A 1911.

Q After that did you engage at all in the—and how soon, if so, in the practice of your profession? A Immediately thereafter.

Q With whom? A The DuPont Company.

Q That takes up the whole fifteen years? A Yes.

Q In the course of your several connections with the business of that company, have you become familiar with the method of making lacquers and solvents, not only for the DuPont Company, but generally in the trade? A Of course, my knowledge has been quite limited to the DuPont Company processes.

Q Why? A Because I have never worked for anyone else.

Q Are you familiar with the products made by other companies, the competitors of the DuPont? A Yes, reasonably familiar.

Q Do your competitors make the same lacquers as you do? A No, I would say not.

Q Or the same enamels? A No, sir.

Q Do the manufacturers of lacquers and enamels generally make lacquers and enamels by the same formulae—same processes? Do they make the same lacquers and the same enamels? A The lacquers and enamels naturally differ somewhat, and I would presume they were made by different processes. I have no first-hand knowledge of other companies' methods.

Q If you have a lacquer or enamel made by one of your competitors, can you just look at it, or by any process of examination, tell how to reproduce it? A Sometimes after a careful analysis you can reproduce it, and if it is relatively simple in composition; and if it is complex, you usually cannot; that is, you cannot duplicate its qualities.

Q Why not? A Presumably the manufacturer had some method of compounding the ingredients, or once in a great while it has some special ingredient that it is difficult to identify, which you may be mistaken on, but usually I think it goes back to the difference in his processes, reflecting in the different qualities of his product.

Q Have you made attempts to analyze the lacquers or enamels, or any of them, made by your competitors? A Personally?

Q Yes. A Yes, sir, years ago, when I was doing research work.

Q Could you give any illustrations of that? A Yes, the best illustration I can give is one that happened a great number of times: the Arlington Company, at that time a manufacturer—

Mr. English: I don't see the point of this as bearing on some other concern. If he had attempted to analyze Maas & Waldstein's,

there might be some point to it. What he is testifying to now is irrelevant.

The Court: I will admit it.

A (Continuing.) The Arlington Company was a manufacturer of these pyroxylin enamels and lacquers, and they had one particular pyroxylin enamel, known as pyralin enamel.

Q Was that pyralin widely sold and known? A Yes, I think perhaps the best known of the pyralin enamels, and the one bringing the highest price, in quite wide use, a grade by itself, and I personally had the job of analyzing it, and as far as I could tell, I did analyze it correctly, but I couldn't duplicate the qualities. I put these same ingredients together, and I would get a product far different from the Arlington product. Later, we purchased the Arlington Company, and then we learned the processes of manufacture, and from then on we have made the pyralin enamels.

Q You mean you duplicated it? A Yes, after we learned the process of manufacture.

Q And continued the manufacture, producing a product that was the same as before? A Yes, identical with theirs.

Q You said it commanded a higher price than other pyroxylin lacquers; there were other pyroxylin lacquers on the market? A This was an enamel.

Q What would you say of these other pyroxylin enamels; was there any similarity between them and pyralin, in the ingredients that went into it? A The ingredients were quite similar.

Q The result of putting them together, was that similar? A No, entirely different.

Q What was the difference? A The pyralin enamel was distinguished, and still is, by a

peculiar toughness and reasonably high degree of lustre and the durability, which made it somewhat out of the class of the ordinary pyroxylin enamels.

Q You spoke of that as an illustration; is that an exceptional, or is it a fair illustration of what you were saying, that you can analyze these lacquers and enamels without necessarily being able to duplicate them? A That is not the only case I know of. I would say that was an illustration of what is the general condition in the trade.

Q I mean was there anything peculiar about this pyralin enamel that presented the difficulty of duplicating, or was that a difficulty that you find in trying to duplicate other enamels and lacquers? A You find that difficulty, perhaps not to the same degree; this was such an unusual product.

Q Then it is hardly a fair illustration of the extent of the difficulty of reproduction, but it does illustrate the difficulty? A Yes.

Q Getting away from it, if it be in any way extreme, what would you say generally as to the ability to reproduce by an analysis and test, and any other method, without the knowledge of the process by which it is made—ability to reproduce generally lacquers and enamels? A I should say that—I think I said this in the first place—if the lacquer is at all complex in composition, your chances of duplicating it, even after analysis, are rather poor. If it is a relatively simple mixture, your chances are fairly good.

Q Do you know anything about the Maas & Waldstein lacquers and enamels, as to whether they are simple or complex? A All lacquers—you are using the term here "are complex," as compared with the simple pyroxylin solutions,

and therefore I would say that the Maas & Waldstein lacquer, from what I know of it, is relatively complex.

Q What do you mean, the mere word "lacquers" as I am using it here? A I take it that you are using "lacquer" in its rather narrow sense, of a specific solution for hardware or wood, rather than in the definition some people accept, as a solution of nitrocotton; some people call that a lacquer.

Q Which kind does the Maas & Waldstein products belong to? A They sell both types, both the simple nitrocotton solutions and the complex metal and wood lacquers.

Q Your experience you say with the DuPont Company has been for fifteen years. Do they do anything to safeguard the processes that they use from common or general knowledge?

Mr. English: I object.

The Court: The only theory that I can see on which it would be admissible, would be this: it has been suggested that the formulae for these various lacquers are common knowledge among the trade. I don't know whether that appears in the testimony now or not, because my recollection is a little hazy on what the testimony is, but I know it has been said, by either counsel or the witnesses, that such was the case, and that nobody could find out the ingredients in another manufacturer's lacquers by simply analyzing them, and thus obtain the secret processes which before that were secret. His testimony may support that theory or may oppose it, and I think on that basis I will receive it.

Mr. English: I say that the so-called processes or formulae of Maas & Waldstein, are not secret, and when you come to read the evidence, you will find that is true.

The Court: That is one of the bones of contention here.

Mr. English: The other point I make is, that so far as the Maas & Waldstein Company is concerned, it is possible to analyze their product. What the DuPont Company do to preserve their secrets may be pertinent to them, but they are not a party to the suit, and I don't think what they do has anything to do with this issue.

The Court: The argument has been advanced that generally among the trade these processes were not secret; they were open to everybody who wanted them, and common knowledge among the trade. On that theory I will receive this testimony. This is only one instance, but it may help.

Judge Skinner: May I clear the situation on the record? I understand that we are going to final hearing now on the original affidavits, ours and the answering affidavits, and then the cross examination of each others affiants, which were taken before Mr. Bindseil, as evidence before your Honor on the final hearing, with such additional evidence as either side may wish to introduce, and I think that is Mr. English's understanding.

The Court: That is my understanding.

Mr. English: It is my understanding; we are all in accord on that.

Q (Question repeated.) A The records of our formulas and processes are in a limited number of typewritten books, copies given only to those whose positions require that they have that information, and they must account for these books at any time, and all our solvents, gums, non-solvents have code numbers; they are referred to only by code numbers in all our accounting and in these formula books. The keys to the codes are only in a limited number of places. I think we have only three copies: one for the laboratory, one for the factory superintendent, and one in my possession.

Q You are speaking of the copies of the code or key? A The key to the code.

Q The code itself, are there more than that number of copies? A There are probably six.

Q And of the processes themselves? A The same as the formula books, the same number—six.

Q This just by way of leading; if I am incorrect, I will withdraw it. Are the constitutent elements of lacquers and solvents generally, in those three classes—nitrated cotton, gums and solvents? A Yes, in lacquers, except that it is customary to use a fourth class now, called plaster sizers or softeners.

Q Roughly speaking, are enamels, lacquers with pigments added? A Yes.

Q As you analyze enamels, do you find gums in them? A Yes.

Q Is that true of lacquers, too? A Yes, in almost every case. There are lacquers which do not have gums.

Q Can you by your analysis tell what kind of gums was used? A Not in every case, no, sir.

Q To what extent can you tell? Give some idea. A It is quite common to use mixtures of gums, and while you can determine the total amount of gum present, it is very difficult to determine the actual amount of each of the gum ingredients.

Q That is by analysis? A By analysis.

Q And without the information as to the process? A Yes.

Q Do slight variations in the process, that is, the formula, whether as to ingredients or the methods of putting them together, have only slight effects upon the product; or is it otherwise? A I should say it would have a great effect rather than a slight effect on the product.

Q Those differences in the products, do they have a definite bearing upon the quality and salability of the lacquer or the enamel? A Yes.

Q Does it make any difference in the making up of lacquers or enamels, how the various ingredients are brought together, under what conditions they are brought together? A Yes, it makes a great deal of difference. The order in which they are added, the rate of adding them, the temperature, and all those points are of great importance in making a finished lacquer.

Q When you analyze the product, have you any way of telling how they were put together; in what order, or what temperature, or all these other elements? A No, sir.

Q Is there any way of determining that, except by getting the actual information from the people who made it? A That is practically the only way. Presumably, you might with an infinite number of trials of every possible way, hit upon it by accident.

Q Have you any interest at all in this suit? A No, sir; I never heard of it until yesterday.

Q And yesterday you were asked by a representative of Maas & Waldstein if you would be willing to come and give information as to the secrecy or non-secrecy of these processes, were you not? A I wasn't asked directly; Mr. Moosmann, our division manager, was asked, and he asked me to go.

Q You come as a friendly act to the Maas & Waldstein Company? A I think it could be described as such.

Q They are competitors of yours, are they not? A Yes.

Cross examination by Mr. English.

Q Your company and Maas & Waldstein are pretty close, aren't they? A No closer than we are with a number of prominent manufacturers.

Q Do you know the Carbonol Products Company? A Yes.

Q Both your concerns are joint stockholders in that? A Yes.

Q Is your superior officer Mr. William P. Allen? A Yes.

Q A great friend of Mr. Maas? A I don't know that.

Q Did he ask you to come here? A No, sir.

Q About these gum ingredients that you spoke of, are there many varieties of gums that are used in this business? A There are eight or ten that I know of; perhaps others know more.

Q Eight or ten available ones? A Yes.

Q They are all used by the various manufacturers? A By the group of manufacturers

as a whole. I don't think they are all used by any one.

Q Do you know how many concerns there are engaged in the manufacture of lacquers? A I know we have made a tabulation of forty-three; there may be more.

Q The manufacture of lacquer isn't regarded as a scientific mystery at all, is it? A We naturally feel that DuPont lacquer is.

Q Always leaving out of this question of the DuPont product, the manufacture of lacquers generally is not a great scientific mystery, is it? A No, the fact that so many are making it shows that lacquer is a product—

Q The DuPont didn't invent lacquers at the beginning? A No.

Q How long has the process been known to the manufacturer? A Making lacquers?

Q Yes. A Nitrocotton lacquers I know have been made since about 1888, perhaps earlier than that.

Q There are a great many young chemists coming into the DuPont factories? A Yes.

Q They don't always stay there the rest of their business lives? A No.

Q How many come in and go out a year? A From the lacquer end of the business?

Q Yes. A I should think that perhaps there are eight to fifteen, depending on the demands, each year come in, and not more than three or four go out, but there are always some.

Q Coming and going? A Yes.

Q Of course these young fellows that go out carry away in their brains the knowledge that they acquired in the DuPont Company of how to manufacture lacquer? A Not many of them are in such positions at the time they leave that they

have the full knowledge. There would be a fellow, of course, over a period of time that did, but very few.

Q Some of them do, I suppose? A I think so.

Q Does your company bring suit every time against a man who leaves it, to enjoin him? A All our chemists as they enter our employment sign a contract which we think covers the Du-Pont Company.

Q It does not stop them acquiring knowledge, does it? A No.

Q You say there are six copies of your formula books? A I think that is the number.

Q I suppose one goes to the foreman of each department? A Not the foreman; the supervisor, we call him; he is usually a technical man.

Q And they are available during the day and locked up at night? A Yes.

Q You spoke of codes; they are abbreviations of the ingredients used? A Symbols.

Q So instead of receiving the full book word, you use this code? A This code number.

Q A sort of matter of convenience? A It was put in originally as a matter of security.

Q It is now used more as a matter of convenience than as a security? A I should say about equal.

Q Are these numbers or letters? A Numbers.

Q Have you ever known when they have used code letters—I don't mean your company, but other companies, have used code letters as opposed to code numbers? A I know of competitors calling their lacquers by code numbers AX10 and HB.

Q That was for sale purposes? A I don't know whether it is for sale or manufacturing, but it is through sales journals that I learned it.

Q Can you from that spell out what their ingredients are? A No, sir.

Q I take it from what you say that you have never yourself analyzed any of the product of the Maas & Waldstein Company? A I haven't done any analytical work for a great number of years, but when I was in the laboratory I analyzed everything that came in, and may or may not have done it.

Q You wouldn't testify specifically now to any analysis of Maas & Waldstein product? A No.

Q Certainly you haven't done that recently, have you? A No.

Q So, when you say that you assume the Maas & Waldstein lacquers are complex, you are speaking not of any accurate knowledge, just generally, is that it? A From the fact that all of the lacquers offered for sale now differ for these specific purposes I mention; hardware and wood are complex.

Q And it is only on the basis of that general knowledge that you make that statement with reference to Maas & Waldstein? A Yes.

Q It is quite common for one manufacturer to analyze the product of his competitive manufacturer, is it not? A Yes.

Q That is done every day? A Yes.

Q That is what they have this flock of chemists in these various companies for? A Partly.

Q They keep them busy analyzing the product of competitive concerns? A Some of them are busy on the control of our own products.

Q Some of them are busy analyzing other concerns' product? A Yes.

Q Each concern claims that it can turn out a product as good, if not better, than the other fellow? A Yes.

Q And they base that on the fact that they claim to analyze the other concern's product, don't they? A Not so often as upon the fact that they were able to duplicate the other concern's product in quality.

Q They do claim to duplicate the other concern's product? A Other concern's product's qualities.

Q In other words, just to be concrete, the DuPont Company will claim that it can duplicate the quality of its competitive concern? A Yes.

The Court: Not necessarily the ingredients?

Witness: Not necessarily the ingredients.

Q And that is all the customer is interested in, to get as good a product from one as the other? A That is all, price being equal.

Q I don't suppose the customer concerns himself with the scientific process or ingredients? A A few customers who have laboratories or the business is so large that they must test all products, do concern themselves with the ingredients; the majority of them do not.

Q That is the exception? A That is still the exception.

Q And those concerns turn in the specific specification? A Yes.

Q You told us about this pyralin enamel of the Arlington Company that was quite an exception to the ordinary rule. A That is the most striking exception; I said I had other instances.

Q You don't hold that up as a typical case at all, do you? A That is the best example. As I say, I know of other cases.

Q I ask you if you hold up that pyralin product as a typical case of the difficult analysis? A I think that is typical of the difficulty.

Q You think that is, in your opinion? A It is typical of the difficulty of analysis.

Q It is typical of the difficulty of an analysis of the one? A Yes.

Q But as not an average case of analysis? A No, I should not admit that I would fail so often in duplicating a product as I failed in that one.

Q You could come pretty near duplicating it in most cases? A Not always.

Q In most cases? A In most cases, yes.

The Court: Why is that?

Witness: Because some of them are so simple compared with the few hard ones.

Q Then it resolves itself—you think that you can duplicate the simple ones, but you cannot the complex; is that right? A Yes.

Q You have in your experience duplicated some complex ones, haven't you? A Yes, we have.

Re-direct examination by Judge Skinner.

Q When you say duplicate them, do you mean duplicate the product as to quality or do you mean duplicate the process by which the article is made? A The product as to quality, of course.

Q Have you ever succeeded in duplicating the process? A I naturally wouldn't know that.

Q All you then know is that you have got something that you think can be fairly claimed to be as good? A Yes.

Q How about the customers, the buyers of lacquers? You said that some small difference in the process might make a large difference in the product. Are customers of lacquers particular about the lacquer or the enamel that they use, or willing to shift from one to another? A We usually find them unwilling to shift, except after long and careful testing of the new product which is offered them.

Q Is that notwithstanding you tell them that you have got something that is just as good? A That is notwithstanding that we assure them that it is identical in quality or better.

Q Why is that that they are so particular? A The reason for that is probably that perhaps $100 worth of lacquer will go on $10,000 worth of hardware, and that $100 worth of lacquer, if wrong, might spoil all that hardware, so naturally the hardware manufacturer is very loath to make a change in the lacquer for the sake of saving a few dollars when the risk to his product is so great.

Q You mentioned among your illustrations of the code symbols, HB; is that one of the DuPont products? A I think that is a Maas & Waldstein that I hit upon; I have heard the name.

Q You said that there were chemists busy on analysis, trying to analyze; does that in any way qualify your statement as to the difficulty of analysis? A No, sir; once in a great while we learn something that is of value to your own business by analyzing your competitor's samples, whether you are successful in duplicating them or not, and you usually get full information as

to the quality of the competitive process, and even without duplicating it, you may have something which has the same qualities, which you can offer, which is in itself justification for keeping the chemists busy analyzing and testing all competitive products you can get your hands on.

Q Are they analyzing to test the qualities? A That is part of their analysis also.

Re-cross examination by Mr. English.

Q The DuPont Company makes all kinds of lacquers? A Yes.

Q It undertakes to cover the whole field? A Yes.

Q And you don't have to analyze the product of every competitor in order to compete with them, do you? A No, sir; you often know what the qualities that the customer needs are, who may want a good solution to finish with, and you have such a solution and you can offer it.

Q DuPont claims to be the leader in this line of business? A We are the largest.

Q Does your modesty forbid you to say that you also claim to be the leaders? A They are apt to be competitors here listening to me.

Re-direct examination by Judge Skinner.

Q You say the DuPont Company makes all kinds of lacquers. Does this system that you have described, of having formulae and codes and keeping them secret and confidential, apply to only part of the DuPont lacquers and other products, or to all of them? A To all the DuPont lacquers.

Q You said DuPont products; you don't mean dynamite or things like that? A It applies to enamel, everything made from nitrocotton.

Alexander W. Keller, direct.

Q Does it apply to fillers? A Yes.

Q Solvents? A Solvents all have code numbers.

ALEXANDER W. KELLER, sworn for complainant.

Direct examination by Judge Skinner.

Q What is your profession? A Chemical engineer.

Q Are you a graduate chemist? A Yes, Cornell University.

Q How long ago? A 1914.

Q Since graduation, have you been in the practice of your profession? A Yes.

Q With whom and in what lines? A At first with the Eastman Kodak Company; then with the Zapon Company and then the Edward Smith Company and now with Maas & Waldstein.

Q How long have you been with Maas & Waldstein? A About two months.

Q And what lines have you been engaged in while with these other companies? A With the Eastman Company, generally manufacturing in connection with nitrocotton and solvents, which of course are the basic materials in that industry. Then with the Zapon Company, in the manufacture of lacquers, and the same since that time, with the other companies.

Q Is the Zapon Company called the Celluloid Zapon? A It was; it is called the Zapon Company now.

Q That is the same company? A Yes, the same thing.

Alexander W. Keller, direct.

Q In the course of your experience, have you had anything to do with the manufacture of lacquers and enamels and thinners and solvents? A Yes, that has been largely my work since being connected with the Zapon Company.

Q How long ago? A That was about nine years ago.

Q Have you gotten any familiarity with the products of competitors of the Zapon Company in the way of lacquers and enamels somewhat? A Yes, in a general way.

Q Are there many engaged in that business? A There are quite a number of them.

Q Did you know Maas & Waldstein before you went with them? A Yes.

Q And the DuPont Company? A Yes.

Q What would you say of the products put out by those different concerns as to whether they are the same lacquers and the same enamels? A I think that each concern makes a distinctive product; each one has its strong points and weak points; there are a great many that cannot be duplicated by other concerns.

Q And do you refer to the qualities of the products? A Yes.

Q You think that those strong points and weak points are obtained by—those variations, I mean, in qualities, are obtained by making the goods by the same process as other competitors? A Each concern have their particular raw materials or treatment of those raw materials to produce certain results.

Q Then what would you say as to whether or not they are all made by the same formula; are they or are they not? A They are not.

Q What would you say as to whether the formulae and processes by which these different manufacturers make their lacquers and enamels

are known to their competitors? A There are, of course, a great many processes that are similar; there may be only one way of accomplishing a certain thing, but there are also other methods of treatment that are not known to other concerns.

Q By methods of treatment, you mean in the production of the same article? A For instance, in cutting gums or grinding the pigments for enamels, any process of that kind.

Q How about the ingredients that are used; are they the same in all those lacquers? A No, there are certain gums that are used in large quantities by certain concerns and used practically not at all by others.

Q Does only one gum go into the composition of an enamel? A In some cases it is generally a mixture of gum.

Q Can you by analysis, or have you attempted to analyze the enamels made by other people than the Celluloid Zapon Company when you were with them? A I haven't personally worked in connection with analyses being made.

Q Have they been made under your observation? A Yes.

Q What can you say as to whether by analysis one can duplicate the product of a competitor? A In the simpler cases that can be done; in a great many cases, it cannot.

Q What can you say as to the Maas & Waldstein products that you are familiar with? A There is one that I have in mind in particular that I knew of during the time I was with Zapon, and also while I was with the Smith Company, which had certain characteristics that we tried to duplicate but could not.

Q You are answering with reference to that one; what would you say generally of the Maas

& Waldstein products, as to whether they are so simple that they can be duplicated by analysis? A Some of them you can reproduce, but the large majority of them would be rather difficult, I should say.

The Court: Can they be reproduced with difficulty?

Witness: By spending enough time, by cut and trial methods.

The Court: What do you mean by that?

Witness: Testing compound built up in a synthetic manner.

The Court: You cannot duplicate them very well simply from the analysis, but by experimenting for a sufficiently long period of time?

Witness: You might approximate it.

The Court: That is not the question. The question which Judge Skinner asked you was, can you by analysis duplicate with facility the majority of the Maas & Waldstein products; at least, that was the substance of the question.

Witness: No, because of the complexion of the gums; the gums are very complex chemically and cannot be readily identified.

The Court: What would you say of the Maas & Waldstein products as compared with other lacquers and enamels on this question of the case of duplication by analysis. Are they any more easy or more difficult, or about the same?

Witness: About the same.

Q And what has been your experience and your observation in the trade, as to whether

manufacturers of lacquers and enamels make knowu to their competitors the ingredients and other features of the process of making it? A The processes are generally very closely guarded; they are guarded very jealously. The materials and ingredients are identified by code letters or numbers.

Q When you say identified by code letters or numbers, have you indicated to anybody who should learn what those code letters stood for, enough to duplicate the product? A No.

Q There remains something besides the materials in the make-up of the process? A Yes.

Q And that is what? A The method of cutting the gums and compounding.

Q Give some instances of the kind of variation in method that you have in mind. A For instance, in cutting gums, certain gums are dissolved only in certain solvents or mixtures of solvents; gums may have waxes present, which are objectionable in the finished product, and it requires certain solvents to cut the gum, but not the wax, so that the two can be separated.

Q What else beside the gums is there; what is there in the process besides materials and ingredients, the method of putting them together? A The order in which they are added would in some cases make a difference.

Q Does it make any difference whether anything—are they put right in, in the state that you buy them, or is something sometimes done by way of pre-treatment? A That is very often the case.

Q Can you tell from analysis as to what that pre-treatment is? A Nothing at all.

Q Can you tell anything by analysis as to the temperature at which they are put together? A No.

Q Or the order in which they were put together? A No.

Q Do all of those things make any difference in the product? A They have a very important bearing on the product.

The Court: Are the Maas & Waldstein formulas generally simple or complex?

Witness: As a general thing they are more or less complex.

Q Can you make that any more definite?

The Court: It is not very definite as it is now.

Q Are there some lacquers that are merely cotton solutions without any gums whatever? A They are generally in the minority. The large proportion of lacquers would consist of cotton gums, perhaps plaster sizer.

Q The Vice-Chancellor wants to get this. I think the term has been used "simple and complex"; I ask you now if these are terms that you have heard applied to lacquers or enamels, or is it the first time you heard of it? A Yes, I have heard of them both before.

Q Would you be able to say all products, that is, those made by competitors, whether they were simple or complex? A Yes, as a general thing they are complex.

Q What do you mean by that? A That they consist of cotton and gum mixtures, where the gums cannot be identified.

Q What is the difference between the simple and the complex; does it lie in that the—

Mr. English: I object.

Q What is the difference between simple and complex? A The simple one would consist of straight cotton solution without any gum, and the complex would contain a mixture of gums, or perhaps also some special ingredients that one manufacturer may be familiar with and others not.

Examination by the Court.

Q Are simple compounds also made of few ingredients, whereas complex compounds are made up of more numerous ingredients? A Yes.

Q I haven't yet found out whether the Maas & Waldstein products are mostly simple or complex. Can you tell me? A The majority of them would be complex.

Further examination by Judge Skinner.

Q When you say "would be," what do you mean? A They are complex.

Q In this definition that you are giving of simple and complex, and your use of the words, take the simple lacquer or enamel, what would you say as to whether or not such an enamel can be duplicated by mere analysis without any knowledge of the processes by which the ingredients are put together? A In the case of a simple lacquer, that might be fairly readily duplicated.

Q As to the quality or as to actual reproduction of the article itself, the very same article? A Reproduction of the lacquer containing those ingredients, but of course there would be a difference in the solvents, the refining of the solvents, which would have a distinct bearing.

Q On what? A On the final product.

Q Would there be any difference in the quality? A Yes.

Q Then when you say of a simple lacquer that it can be duplicated, do you mean that it can be duplicated as to quality or only as to the ingredients? A As to ingredients.

Cross examination by Mr. English.

Q There is quite a lot of literature on lacquers? A There isn't a great deal. There was recently a book written by Wilson, which is the most comprehensive book ever written, and I think that is the only comprehensive one.

Q That is the only one you ever read or heard of? A I have searched for literature, other than patents.

Q Do you know a book by Warden? A Yes.

Q How many volumes are there in that? A There are about six, I believe.

Q That is quite a comprehensive work? A There are only one or two of them confined to lacquers.

Q One or two volumes you mean? A Yes; it covers very general information on the subject.

Q There is a good deal of journal literature on the subject, patent literature? A There is considerable in patent literature.

Q What is your position with the Maas & Waldstein Company, Mr. Keller? A I am in the sales department.

Q You are a salesman? A I am in the sales department.

Q You are not acting there as a chemist? A Not exactly, no; development work.

Q In these other concerns, were you in the sales department also? A Partly in sales and partly in manufacturing.

Q You have never been employed strictly as a chemist in those various companies, have you? A No.

Q Have you got a scientific degree? A Mechanical engineer, specialize in chemistry.

Q Of what college? A Cornell University.

Q And since you have been out, you have been concerned more with the sales end than any other, in these various concerns? A Development work; I would like to make a correction there; with the Edward Smith Company I was employed to develop lacquers, and with them I acted in the capacity of chemist to develop.

Q Were you both chemist and sales with the Edward Smith Company? A Yes.

Q What was your first job after graduation? A Eastman Kodak Company.

Q What did you do there? A I was assistant to one of the department superintendents.

Q What department? A The manufacture of film. It had no connection with lacquer.

Q So you got no lacquer experience with the Eastman Kodak Company? A No.

Q What was the next concern you were with? A The Zapon.

Q Which used to be called the Celluloid Zapon Company? A Yes.

Q What did you do with that concern? A In the manufacturing end of artificial leather during part of the time, and also in connection with the manufacture in the development of lacquers and in a supervisory capacity.

Q You didn't make any analysis there? A Not personally.

Q Didn't have very much to do with lacquers with the Zapon Company? A I had quite a little, yes, in the line of development, and introducing making new products.

Q Did you do any analysis work? A Not of lacquers, no.

Q Do you know the Zapon formulae or their code numbers or anything like that? A I did when I was with them.

Q Did you have access to their formulae? A Yes, I did.

Q And their code numbers? A Yes.

Q What year were you with that concern? A I was with the Zapon from 1916 until 1923, with the exception of a year and a quarter in service.

Q I show you a paper that is marked in this case Exhibit A, 1/23/26; just look at that and say whether you can tell me whether there are any Celluloid Zapon numbers or symbols or formulae on there. I call your attention that it is dated May, 1919, which is the time when you were with the Zapon Company. A That looks like one there.

Q You point to the symbol reading as follows: "109 AX 10-12220"; is that right? A Yes.

Q You say that looks like the Zapon symbol? A It looks like one of their symbols.

Q Any others you can recognize? A That might be one there (indicating).

Q You point to one reading as follows: "1044 108 AX 10"? A Yes.

Q Any others you can recognize? A I cannot say. Of course, there are a great many numbers and letters that are used interchangeably.

Q You have been pointing to some numbers on the lower half of the page? A Yes.

Q I call your attention to some numbers and abbreviations at the upper part of the page; can you recognize them? A There aren't any here that I can recognize as being—

Judge Skinner: I ask that the witness be allowed to finish the answer.

Mr. English: He said that he could not identify any of the symbols on the upper half of the page; is that correct?

(Last question and answer read to the witness.)

Mr. English: As being what?

Witness: There are none being Zapon's.

Q Can you recognize them as belonging to any other company? A They are Maas & Waldstein, I should say, judging from the numbers.

Q So the upper half of the page contains Maas & Waldstein numbers and abbreviations, and on the lower half you have identified at least two Zapon? A Yes.

Q Can you identify the rest? A No, I cannot.

Q After you left the Zapon Company what concern did you go with? A With the Edward Smith Company.

Q And there you were in what department? A It was my position to develop the lacquer business.

Q That was from the sales end of it, I take it? A Both the manufacturing and sales.

Q Did you spend time in the laboratory of the Edward Smith Company making analysis and things of that sort? A Developing products.

Q You haven't answered my question. A A certain amount of analysis, yes.

Q Well, how much? Very little? A Comparatively little.

Q Your job was the sales end and building up the business? A Yes.

Q Did you ever study organic chemistry? A Yes.

Q How much? A One full term at Cornell University, three periods a week.

Q Did you ever study organic analysis? A No.

Q This analysis of these various products of competitors is an application of organic analysis, is it not? A If you went into it exhaustively, yes.

Q You didn't go into it exhaustively enough for that? A No, there are a great many of them; you can get a line on a sample by physical characteristics.

Q If you want to make a chemical job of it, you have to apply organic analysis? A If you want to go into it to that extent.

Q To be concrete, did you ever determine the saponification number of an organic compound? A Not personally, no.

Q Do you know how? A Yes.

Q How do you know you know, if you have never done it? A In a general way.

Q That is a very important thing in this analysis, isn't it? A I know what it consists of in determining it.

Q You have a theoretical knowledge from your study at Cornell? A Yes.

Q But you never applied it? A No.

Q Do you know what the saponification number is? Can you define it? A It is the amount

of caustic alkali required to completely neutralize the acid portion of a chemical organic compound.

Q Do you know how that is applied in organic analysis? A That is used to determine the amount of—the completeness of chemical reaction.

Q Whose definition have you been giving us of this saponification number? A That is my own.

Q Do you want to set that off against some other definitions? A In a general way that would cover it.

Q You were developing the sales business primarily of the Smith Company, weren't you? A The manufacturing and sales.

Q Did you have access to their formulas? A They had no formulas; it was my position to develop that.

Q What did they have; some mixing directions, or didn't they even have that? A They were not in the business.

Q They were not in that business at all? A No.

Q How did you happen to go there? A I had quite a number of ideas that I felt could be carried out and developed in the new product.

Q Were they going to develop and manufacture after? A Yes.

Q You thought you might help them on that? A Yes.

Q You got those ideas, some of them, from the Zapon Company, didn't you? A The ideas themselves occurred to me while I was with the Zapon, yes.

Q Of course, you got some knowledge and experience there that you applied to the Smith Company? A Yes, experience and knowledge.

Q How long were you with the Smith Company? A Three years.

Q Then you went from there to Maas & Waldstein two months ago? A Yes.

Q Where is your office in the Maas & Waldstein Company, in Newark or New York? A I spend a little time in each place.

Q Do you spend more in one place than the other? A That is a hard question to answer.

Q Do you spend very much time in either place? You said "a little." A I spend perhaps more time right now at the factory.

Q The past two months, where did you spend more time, the factory or New York? A At the factory.

Q What do you do there? A I am developing, trying to develop new products.

Q From the sales standpoint? A Yes.

Q Have you anything to do with the present standard products that they turn out? A In a general way, yes.

Q To what extent; selling them, you mean? A Yes.

Q You are concerned with the sales end of the sales product? A Yes.

Q You are advertising possible new products or trying to build up a trade in new products? A Yes.

Q You don't create the new products as a chemist? A Yes.

Q You go into the laboratory and work out formulas? A Yes, that is right.

Q How many new ones have you developed? A Perhaps three or four.

Q Have they gone on the market? A Yes.

Q How about the old ones, the ones that the concern has been manufacturing for some years;

have anything to do with them? A Not with the Zapon Company, no.

Q I am asking about the Maas & Waldstein Company. A That would have some connection, yes.

Q I want to know what you have to do with the standard Maas & Waldstein Company products, if anything, which they have been turning out for a number of years. You don't have anything to do except to sell them? A Yes.

Q That is all, isn't it? A I naturally have access to their formulas, and I haven't been there long enough to really answer your question intelligently.

Q Who else has access to those formulae besides you?

Judge Skinner: I object as not cross examination.

The Court: I will admit it.

A The New York office has access to them.

Q The salesmen over there? A That I cannot say.

Q The people in the New York office? A The heads of the New York office.

Q Who else? A The superintendent at the plant.

Q That is Mr. Seher? A Yes.

Q Who else? A And the chief chemist.

Q Who is that? A Mr. Klinkenstein.

Q How long has he been with the company? A I cannot say.

Q Who else has access? A To my knowledge, that is all that have access to it.

Q You haven't any very great knowledge on that subject, have you?

The Court: He has said he hadn't, didn't he; he has only been there two months.

Q Have you ever tried to analyze the product of any competitor of the Maas & Waldstein Company yourself? A Yes, in a general way, determine physical properties.

Q But others in the Maas & Waldstein Company analyze the products of other manufacturers? A Yes; very common practice.

Q All the concerns that you are acquainted with do that? A Yes.

Q Did you ever try to analyze the product of the Maas & Waldstein Company before you went with them? A Yes.

Q And struck one that you said was hard to duplicate? A Yes.

Q Where were you when you did that, what concern? A With the Edward Smith Company.

Q What was that product that you found hard to duplicate? A The HB lacquer.

Q Do you know whether the difficulty you experienced was due to the composition or due to your inexperience? A It was due to the composition.

Q Did you have anybody else in the factory who tried to analyze it? A Yes.

Q Have any better luck than you did? A That dates back incidentally to the Zapon Company, too. I was familiar with it at that time.

Q Had you tried to reproduce the majority of the lacquers manufactured by the Maas & Waldstein Company before you went with them? A No.

Q Then what is your basis for saying that the majority can only be reproduced with difficulty? You haven't any experience in fact to

base that statement on. A That applies in general to all lacquers.

Q You directed your answer to a question about Maas & Waldstein; did you have any experience in fact to base that answer on? A We have tried to duplicate several of the Maas & Waldstein products.

Q Who do you mean by "we"? A The Edward Smith Company.

Q Do you know how many formulae or mixing directions or compounds the Maas & Waldstein Company has? A I do now.

Q It runs into the thousands, doesn't it? A I should not say it runs quite that high.

Q Do you know the current numbers? A I am familiar in a general way with them.

Q You have never taken time to go over these so-called formulas, have you? A Yes, I have gone over them.

Q And to count them? A I haven't counted them, no.

Q You do know they run into the thousands, don't you? A I should say they run into the hundreds.

Q How many hundreds? A A great many of them would consist of—

Q You are not answering my question; how many hundreds? A Three or four hundred.

Q And you say that while you were with the Edward Smith Company you analyzed several of them? A Yes.

Q And that is your basis for saying that the majority are hard to reproduce; is that right? A The majority of all lacquers, yes.

Q Will you tell me what you did when you undertook to analyze this HB lacquer, when you were with the Edward Smith Company? A I examined them for physical characteristics.

Q You looked at them? A Examined them for adhesion to metal and hardness of film and flexity of the film, physical property.

Q You call that an analysis? A Not a chemical analysis.

Q What did you do in the way of chemical analysis; how did you go about it? A Evaporate some of the lacquer to determine the solid content; I don't remember the exact procedure.

Q I would like to know the exact procedure if you can tell me. A We would precipitate out the cotton.

Q What did you do; you say you tried to analyze HB lacquer and you had difficulty; what did you do when you made that experiment? A As near as I can recall, we determined the amount of solid present.

Q How did you do that? A Weighing a specified amount of the lacquer, allowing the lacquer to evaporate and then weighing the amount of solid residue.

Q What did you do next? A We poured some on brass, to determine the adhesion to it.

Q To see whether it would stick to the brass or not? A Yes.

Q What did you do to analyze it and see how it was put together? A I don't recall that we did any complete analytical work on it.

Q Do you think as an M. C. at Cornell and a year in chemistry, three hours a week, would enable you to get at the constituency of this product and how it was made? A Yes, in a general way you can determine the properties—sufficient properties, by that method.

Judge Skinner: Is that what you mean by analysis, determining the properties?

Witness: I perhaps used it in that sense, yes.

Q Do you know what the constituencies of that HB lacquer are, the elements in it?

Judge Skinner: I object, if it calls for any disclosure of a secret.

The Court: The question is, does he know; he may answer yes or no.

A Yes.

Q How many different elements or compounds are there in the thing?

Judge Skinner: I object to that.

The Court: This is an attack, as I understand it, on this witness' knowledge as to chemist expertness, in other words. I think that will have to be admitted. I will not permit a disclosure of the actual ingredients. This is a question as to the number of the ingredients.

Q Do you know the number? A No, I don't recall the number.

Q If you don't know the number, you don't know what they are, do you?

The Court: Isn't that obvious?

A I, of course, secured that knowledge since I have been with the Maas & Waldstein Company.

Q At the time you were working with the Smith Company? A At that time, no.

Q You don't know now the number that go in it, do you, with all the knowledge you have got by your association with the Maas & Waldstein Company? A No, I don't recall that particular formula.

Q You don't know what the ingredients are even now? A In a general way I do.

Q But not in a particular way? A No.

Q You cannot go into the laboratory now, with the knowledge you have, and make this stuff up? A No.

Q Do you know—can you name any of the usual constituents in lacquer as used generally in the company there without any mystery or secret? A Yes.

Q Can you name one? A Yes.

Q What? A Butyl acetate is one most commonly used.

Q Name any other? A Butyl alcohol.

Q Name any other? A Benzol.

Q Any other? A Toluol.

Q Did you analyze this HB lacquer after you were with the Smith Company to ascertain the relative proportions of those various things? A No.

Q Do you know how to make that analysis? A Yes, roughly.

Q But not in a proper chemical way, do you? A Yes, I could do it.

Q Tell us how you arrived at that, even roughly? A You would—

Q No, not what you did; you didn't do it? A I didn't in that case.

Q If you were going to do it, how do you think you would do it? A Each portion would, of course, have to be taken up by itself; the solvents would have to be distilled off and determined by fractionation—by solubility in water, exactly what the characteristics were. You identify them merely by their physical characteristics.

Q Do you know how to do these things you have described? A Yes.

Q Have you ever done them? A Yes.

Q Since you left college? A Yes; I don't recall distinctly, but I have done it.

Q It is hard now to fix in your mind when you ever did that since you left college? A I did some work before I went to college.

Q You haven't done that as a practical chemist in any of these companies you have been concerned with? A Yes.

Q With whom? A Eastman Kodak Company.

Q That had nothing to do with lacquers? A With solvents and solvent mixtures.

Q That applies to a multitude of things? A Solvents are identical practically with lacquer solvents.

Q This HB was the only one which you found difficulty to duplicate? A There was one other.

Q What was that? A 1044.

Q When did you try to duplicate that? A With the Smith Company.

Q And did you go about it about the same way as you did the other? A Yes.

Q And as a result of that sort of analysis you come here and say they are hard to duplicate? A Partly on my own experience and partly on the experience of other people in the Zapon.

Q Do you know now since you have been with the Maas & Waldstein Company how to make 1044? A I have seen the formula.

Q But you couldn't go in the factory and make it from your own knowledge, could you? A Not without looking at the formula.

Q You told me that you recognized a couple of these Zapon formulae on this Exhibit A,

which I showed you. Can you tell what the formulae are for?

The Court: He did not say that he recognized the formulae. He said that he thought two of the symbols there were symbols of the Zapon Company; he didn't say positively that they were.

Q Can you tell me what the two symbols on the Exhibit A which I showed you, and which you said you thought belonged to the Zapon Company—what product they make? A If these are Zapon, they are metal lacquers.

Q Did you ever analyze them? A No.

Q Or know how they are made or anything about them? A Naturally, I had knowledge of how they were made, being with the Zapon Company.

Q You recognize that from this Exhibit A, as information which goes to the salesmen, don't you? A Yes.

Q You haven't got knowledge on how to apply this ingredient of gum, have you, in a practical way? A You mean in compounding the gum?

Q Yes. A Yes, I have some knowledge.

Q You think you can go into the factory and produce a product that requires the ingredient of gum, among other things? A It would depend on the gum; some gum I am more familiar with than others.

Q There are some eight or ten varieties that are used? A Yes.

Q Don't you know that the gum is sometimes introduced in these lacquers to make them a little difficult for the other fellow to analyze, rather than bearing on the quality of the product? A

I should say that that wouldn't be the case generally.

Q Do you know whether you are right in saying that? A I would say it was the first time I have ever heard that point mentioned.

Q The customer is concerned with the quality of the product he buys and not the chemical analysis of it? A Yes.

Q And most any concern will claim at least that it can duplicate in quality, if not chemically, the same product as its competitor puts out? A That is very commonly done.

Q You know that from your experience in these various concerns. Then it comes down to a race between the competitors in trying to persuade the customer to undersell the other? A Yes.

Q And the customer is concerned with the quality of the product, and not the chemical analysis? A Yes.

Re-direct examination by Judge Skinner.

Q You have been asked here about your attempt to duplicate the products of the Maas & Waldstein Company, while you were with some other concern, and you told of your success or degree of success in doing so. I want to know whether in thus speaking of duplicating the product, you were speaking of duplicating it as to quality or whether you were speaking of duplicating it by producing exactly the same product? A We generally try to duplicate the characteristics required and at the same time to make it a little more desirable and better for the particular purpose to which it was to be applied.

Q I ask you whether in the experiments that you made, that have been described specific experiments, you tried to duplicate the product as to quality, to get a product that would be as good, in your opinion, or whether you tried to get the same product? A We tried to get one as good, if we couldn't get one that we felt was the same.

Q That is the way you used the word "duplicating" throughout? A Yes.

Re-cross examination by Mr. English.

Q You know the lacquer customers throughout the United States pretty generally? A I know a limited number of them.

Q There is a certain field for lacquers in the country, a certain amount of concerns that make use of them? A Yes.

Q And those are known generally to the trade? A Yes; there are a great many that are not generally known.

Q There are a great many that are known generally? A Yes, there are a great many that are, and there are a great many that are not known generally.

Examination by the Court.

Q I asked you some time ago if the products —lacquers of Maas & Waldstein Company were made up of simple or complex formulae, and you replied that in the main they were complex. I assumed that when I asked that question, that you had gained the knowledge of the ingredients that went into these different lacquers from your experience with the Maas & Waldstein Company or from an examination of their formulae.

Alexander W. Keller, re-cross.

A moment or so ago you indicated that that answer might have been based on your idea of lacquers generally. Was it based on your idea of lacquers generally, or was it based on your knowledge obtained from access to the formulae of the Maas & Waldstein Company since you went in their employ? A Based on the access to the formulae since I have been in their employ.

Further re-cross examination by Mr. English.

Q Will you just name to me one of these formulae that makes this complex compound you spoke of?

Judge Skinner: You don't ask that the formula be given?

Mr. English: No, I mean the product, the stuff that he advertised for sale.

Q Tell me one of your products that is the result of this complex formula that you have in mind, in answering the Vice-Chancellor? A The HB.

Q You knew that was complex before you ever went with the Maas & Waldstein Company? A Yes.

Q Tell me another one? A 1044.

Q You had worked on both of these with the Smith Company? A Yes.

Q Tell me another one? A Those are the only ones I can recall.

Q So you cannot add, in answering the Vice-Chancellor's question, anything by way of knowledge that you didn't have before you went with the Maas & Waldstein Company? A No.

Alexander W. Keller, re-direct.

Re-direct examination by Judge Skinner.

Q Why not? A As to the formulae themselves, they were complex; we were not able to duplicate them and get the same properties.

Q Why can't you add anything to your statement as to which of the formulae are complex, after having been with Maas & Waldstein for two months? A There are a great many of them that are complex.

The Court: That does not answer the Judge's question; he asked you whether you were able to tell which are complex and which are not, other than what you learned before you went with Maas & Waldstein Company. That question may be somewhat involved. I think perhaps it is.

Judge Skinner: May I restate it?

Q It has been brought out by Mr. English, asking you to designate, if you can, any of the formulae of the Maas & Waldstein Company that are complex, that you are unable to designate any more after having been there two months in Maas & Waldstein's employ, than you were before you had been there. Is there any reason for that? If so, will you tell us why it is that you cannot give any further designation? A The period of time has been so short that I haven't become very familiar with it.

Q And in that period of time, have you had anything to do with the making up of the products? A No.

Q Have you had anything to do in observation of processes of making the products according to the formulae? A No.

Q To what extent have you looked at the formula, and for what purpose, if any? A I have gone through the formula list and examined them in a general way.

Q For what purpose? A For the purpose of identifying—tabulating the various classes of lacquer.

Q So, that the work that you did in going through the formulae, was that done from the standpoint of the salesmanship that you had in charge, or the selling that you had to do, or from the standpoint of a chemist? A From the selling.

Re-cross examination by Mr. English.

Q In view of the answer that you have just given Judge Skinner, why did you answer the Vice-Chancellor the way you did? You wanted to create the impression that you knew something about these formulae, this formula list? A I perhaps misunderstood the question.

DR. HENRY V. WALKER, called and sworn on behalf of the complainant.

Direct examination by Judge Skinner.

Q I show you memorandum dated April 14, 1920; is that a memorandum, or a copy of a memorandum that was put out by you in the Maas & Waldstein factory while you were there? A It is from an original or a copy; apparently a copy.

Q I call your attention that you direct that certain symbols be used in the code. A I don't use the word "symbols."

Q Aren't they symbols, as a matter of fact? A No.

Q What are they? A Shall I read it? It speaks for itself. To what do you refer?

Q If they are not symbols, what are they? A They are not symbols.

Q I call your attention to this statement. "Please note that in the future all formulae reported to the office must be written in formulae code, copy of which has been supplied you. Also please note that ingredients of all formulae are to appear in the order named in the code, i. e., if, for instance, methyl acetone, damar and ethyl acetate should be used, the formulae should be written Es.E., MA, RO. Please put these instructions into effect at once." Are these not code formulae? A They are code abbreviations.

Q And you refuse to use the word "symbols"? A Yes.

Q "Symbol" has a definite meaning in chemical parlance; what does it mean? A It is the recognized designation for a chemical element. Hg means mercury; Ag means silver; H means hydrogen.

Q And as so used these letters are chemical symbols? A Yes.

Q There is a meaning to the word "symbol" besides the technical use; there are symbols and chemical symbols? A Yes, many variety of symbols.

Q What is the designations that you have here intended by you to be designations of; so certain formulae might be identified? A Yes, abbreviations.

Q And to that extent they are symbols, though not chemical symbols? A They are abbreviations according to my view, and not symbols.

The Court: In other words, you don't call anything a symbol which doesn't have a chemical application?

Witness: In chemical matters I do not.

Q This was for the purpose of identification? A Yes.

Q For the purpose of identifying the products would you use the word "symbol"? A No, the Vice-Chancellor has defined the sense in which I used it.

Q At any rate, are these abbreviations characteristic or typical of the abbreviations that were put into effect by you? A Yes, they are samples of them.

Q Typical? A Yes.

Judge Skinner: I offer this in evidence. (Marked Exhibit C. 1.)

Q Will you tell me—calling your attention to the last one of these three, RD, what does that indicate? A That means damar gum — rosin damar, rosin being the proper term.

Q MA, another one of these abbreviations, means what? A MA means methyl acetone.

Q Then the following Es. E? A That means ethyl acetone.

Q And the letters RD might apply to other things than those you named, might they not? A Obviously.

Q And you have to know what they apply to, in order to be able to understand the abbreviation? A Yes, you have to know.

Q You have brought into court through your counsel, certain books, papers and documents; have you been over them?

Judge Skinner: I withdraw that.

Q Referring to the books, papers and documents that have been brought into court, when did you see them last? A Last week sometime, when they were used in the accounting proceeding.

Q Where did you see them? A In the room, in Mr. English's suite of offices, in which the hearing was held.

Q Before that you had had possession of them, had you not, at sometime? A Yes, but Mr. Bindseil has had possession of them.

Mr. Bindseil: I will state for the record, that the three large packages have been in my possession since the order of the court delivering them into my possession. The three large packages have not been opened since they came into my possession, and are delivered here this morning from my office, in the same condition in which they were received by me, with the exception of the red pencil writing on the outside. The package containing the account book and other papers has been delivered, from time to time, to counsel for complainant and defendant, for use at the hearings in the accounting case, remaining in counsel's possession until the adjournment of court, and then returned to my possession.

Q Are these three packages and the flat package all that you took from the office of Maas & Waldstein? A Yes, that is all.

Q There has been a book called "an eight dollar book," you have heard that term? A Yes.

Q Is that among those? A I don't know; the term "eight dollars" doesn't define any book to me.

Q You have heard it used? A Yes, I heard Mr. Feick use it.

Q You never heard it before Mr. Feick used it? A No.

Q You got a book some time after you took charge of the formulae, did you not; you purchased one at the factory of Maas & Waldstein? A No.

Q I have opened one of these packages, and show you a book (being the package used by counsel during the accounting), and ask you what that is? A What does it contain?

Q Yes. A That book, we have referred to it as the "loose leaf book," in the accounting proceeding.

Q Is this the book that was put into effect by you in Maas & Waldstein factory? A Yes.

Q What did you direct should be included in it and what has it included from time to time as a loose leaf book? A It contains the general statement for the various years and a transcript of the distribution books in the factory.

Q General statement of what? A It speaks for itself; it contains quite a lot. Shall I go over it and identify each page?

Q In order that the Court shall not have to do that, you might do so. A It contains a general statement for the year; for instance, it contains a trial balance of the various factory accounts. It contains a distribution of the labor account, a distribution of repair account, distribution of working expense account, distribution of capital account, and list of raw materials.

The Court: Of financial statement?

Witness: Of financial statement.

A (Continuing.) A cost balance sheet, showing the labor cost for the year, distributed to various classes of products.

Q Are these statements the data from which you ascertain the cost of production of the Maas & Waldstein products? A They show the total expenditures for the factory, properly distributed.

Q Will you answer my question? Do they show the cost of factory production? A Those that I have mentioned do not.

Q Does the book? A Yes, the book does, that is, in this sense. Such as raw material are not included, but the items which are more or less fixed, as labor, power, etc., they are included and distributed to the various materials; it is not a cost system in the sense that the raw materials enter into it.

Q But you are looking at the cost balance sheet on one of these pages? A Yes.

Q On the very next page is a statement of the raw material as to quantity? A Yes, not included in the cost balance sheet.

Q But the quantity is given? A Yes.

Q Is that a statement of the quantities that were used in the year 1921 of the various materials that go into the Maas & Waldstein products? A There are four columns: Stock, January 1, 1921; Received, 1921; Used and Sold, 1921; Stock, 1922, as to this particular sheet.

Q You heard my question; don't those four columns show the amount of stock that was used in the year 1921? A The third column is so headed, yes—no, not "Used"; "Sold" is also included.

Q This tells you the amount that they had on hand January 1, 1921? A Yes.

Q And it tells the amount of raw material that was received during the year? A Yes.

Q And the amount that was used and sold during the year? A Yes.

Q And the amount that was left? A Yes.

Q And that is followed by a page devoted to toluol; that is an itemized statement as to that particular material, is it not? A Yes, and the price of the articles enumerated under raw materials are set forth in more detail in which sales are used in manufacturing—are separated.

Q You took those papers and books for use in your suit against the Maas & Waldstein Company for an accounting as to profits? A Yes.

Q Because of the variation that you thought you had found in the manufacturing profits as shown by your books that you kept at the factory, and the profits as shown by the New York office? A Yes, that is correct.

Q And this is one of the books you took; you admit that? A Yes.

Q Then you expected to get from this some information that would tell you what the cost was of the articles that had gone into the manufacture, didn't you? A No, I did not.

Q Didn't you expect to get from this some information as to the cost of the labor that had gone into it? A No.

Q What did you expect to get from this that would help you to give any information to the Court on the question of the profits, whether the manufacturing profits at the factory or the profits shown in the New York books? A I used the book in the accounting proceeding to

support the allegations in the complaint as to the expenditures.

Q I didn't ask you what you used it for; I asked you what you took it for? A That is what I expected to do; I expected to do and did do. I used it to support the figure I used for the total expenditures.

Q You are pointing now to a general statement from April 1 to December 31, 1920, of the amount expended for labor and raw materials? A For all factory purposes.

Q And this book gave you that information as to the cost of production, didn't it? A No.

Q Isn't the amount expended on labor and raw materials at the factory information tending to show, or some information as to the cost of production? A No.

The Court: None at all?

Witness: It is a factor of cost, but it would have to be distributed against the product. If you are trying to ascertain whether this book was taken for the purpose of informing me as to Maas & Waldstein Company manufacturing cost, I answer no; I wasn't interested in their manufacturing cost.

Q I asked you whether you couldn't from that book find out something about the manufacturing cost? A No, you cannot.

Q How did this particular statement that you have referred to as being one of the things you intended to use, how did that enter into your proof on the accounting suit? A It showed the amount authorized to be expended by authorization of payment originating at the factory.

Q That is, it showed what according to the factory books was the amount that should have been spent? A Yes.

Q In the way of paying for raw materials and labor and some other things? A Yes.

Q And that you say gives no information as to cost? A Not by itself, no. You mean cost per gallon or cost of a particular product?

Q I am getting at as generally as it can be, and not specific, and I think you are answering from a specific point of view, and not generally, and I ask you, does it give any information for such and such a lacquer, how much per gallon did it cost?

The Court: I think Judge Skinner's question is plain, and there ought to be no quibbling in the answer. The question is, did that book give you any information as to the cost of production by the Maas & Waldstein Company?

Witness: It gives the total cost, the total expenditure for manufacturing expense and for raw material.

The Court: You mean that it does not give the total with respect to each particular article manufactured?

Witness: Yes. It does as to certain things give the labor cost; the cost balance sheet, to which I referred, that gives the labor cost distributed according to an arbitrary system, to various classes of products.

The Court: What you mean is that you cannot from that book make up a complete statement of the cost of manufacture?

Witness: No.

The Court: But you can get certain information which enters into the cost?

Witness: Yes. If you attempted to arrive at cost, you do it starting with this as a part of the basis.

Q Then if you didn't get all you wanted from this, you would go on and get the rest from some of the other books and papers and documents that you had? A No, that would be impossible.

The Court: You mean you didn't have all the papers from which you could have gotten that information?

Witness: No.

Q Didn't you have your accountant go into the books of the Maas & Waldstein Company for weeks, to supplement what you learned from these books? A Not from the standpoint of cost. I really don't know what you mean when you talk about cost. Do you mean expenditures, total expenditures? Do you mean the cost of a particular product or particular unit?

Q Take first the total expenditures. A They are set forth in these general statements for each year.

Q And the total expenditures for raw material are set forth? A Yes.

Q And the quantities of each kind of raw material that were bought and used? A Yes.

Q Is there anything here in the papers that you took that show the output, the products? A No total sales; no, there was nothing.

Q You took a copy of the invoices? A I have never opened them; I don't know whether

they are invoices or not. These packages were put up by some clerks in the office and placed in my car and by myself taken into the house, but I never opened them.

Q How did they happen to be packed by some clerk and placed in your car? A At my direction.

Q You directed that the invoices be packed? A Yes.

Q Then you never knew there were invoices there? A There should be.

Q Knowing that there were invoices there, I ask you can you from these invoices tell what the output was in the various products? A I didn't have to do that; no, you cannot tell the various products; the total output is set forth on these sheets, the distribution of cost sheet and total sales.

Q And the items are set forth in the invoices? A Yes.

Q You would have both items and total there? A It would be a colossal undertaking; in fact, it couldn't be done.

Q What did you take them for? A If the sales figure for the year 1924 were divided, to be able to verify them by the original record.

Q You wanted totals? A Yes.

Q Then why did you take the items? A Because that would support the total.

Q That is you had the total? A Yes.

Q And that was what you wanted? A Yes. If necessary, I wanted to support that total.

Q This tells the quantity of different materials used in total, does it not? Take ethyl acetate. A What is the question?

Q (Last question repeated.) A As to ethyl acetate, which you indicate, it tells all the material used in the manufacture of ethyl acetate.

Q Then ethyl acetate was manufactured at the Maas & Waldstein plant? A Yes.

Q It wasn't a material that they went out and bought? A No.

Q It tells the quantity of each of the materials that went into the making of ethyl acetate? A Yes.

Q And it also tells the number of pounds of each of those materials that were in a gallon of the product? A Yes.

Q So, it gives the kind of material and quantity of material to make up ethyl acetate? A Yes.

Q According to the formula that was in use at the Maas & Waldstein plant? A That is simply stoichiometrical. And those, of course, are for the purpose of checking the yield, to see how closely it produces a theoretical yield. Maas & Waldstein didn't make any particular formula; they made ethyl acetate as everybody else makes it. It does show, however, the materials which they used for the manufacture of ethyl acetate.

Q Not what the material is, but the quantity of each, per gallon of product? A Yes.

Q That is what everybody does, in those proportions? A Substantially.

Q Not exactly? A No.

Q Why did you have put down here "per gallon of product"? A For the purpose of checking the yield.

Q Although that was the purpose, it would enable you, if you didn't know, to tell how much of each of these ingredients of ethyl acetate were to be used to the gallon of product? A Yes; we don't have to go there for that information. We get that when we study chemistry, we learn that.

Q Everybody makes ethyl acetate exactly the same way? A There are two general methods; most of it is made by this method; there is another method.

Q The only two? A Yes.

Q And those two are exactly alike as to the quantity of each material used? A Substantially alike.

Q But some difference? A There may be.

Q And there you know it, too, don't you? A I am not entirely familiar with what proportions others use.

Q To the extent of your familiarity, don't you know that there are— A They are based on well known chemical relations.

Q Everybody doesn't use exactly the same materials to make up ethyl acetate, do they? A I have said there are two methods; one uses these materials, and the other, instead of using acetate of lime, uses acetic acid.

Q Take amyl acetate, on the next page. There is a statement of the raw materials that went into the manufacture of amyl acetate at Maas & Waldstein? A Yes.

Q And a statement of the quantity of each per gallon of the product of amyl acetate? A Yes.

Q Is amyl acetate made by everybody in exactly the same way? A Exactly the same way.

Q And of the same materials? A Yes.

Q And the same proportions? A Yes.

Q No variation even? A No, they are fixed by laws of nature.

Q Is that true of soluble cotton?

The Court: Just what is soluble cotton?

Witness: It is a variety of gun cotton. Soluble cotton is a variety of gun cotton,

characterized by its solubility in certain organic solvents, and largely used for technical purposes.

Q It is one of the basic ingredients that go into the lacquers and enamels made by Maas & Waldstein? A Yes.

Q Is it made by everybody the same way? A There is a good deal of variation in the mechanical arrangements for its manufacture. The chemical principles are the same.

Q Is it made by everybody the same way? A Mechanically not; chemically, yes.

Q As to materials? A Yes.

Q No variation in material? A No.

Q No variation in proportion? A No.

Q The invoices give you a list of the customers of the Maas & Waldstein Company, don't they? A If I looked at them, they would, but I haven't looked at them.

Q You don't want that for any purpose, do you? A Not now, no.

Q And have no desire to use that information for any purpose? A None whatever. I don't have to go there to their invoices to find lacquer users that are well known to every lacquer salesman, for instance, in the United States.

Q You might, though, want to find out, if you didn't already know it, who were the users of Maas & Waldstein lacquers? A I know those that are considerable users.

Q You count that knowledge as valuable to you, don't you? A The fact that they use Maas & Waldstein lacquers? No.

Q Don't you put that together at all with the fact that you know the formula for the Maas & Waldstein lacquers? A Not at all.

Q As enabling you to say to any customer of of the Miner Edgar Company that you can make the same lacquer as the Maas & Waldstein lacquer? A I don't have to say that.

Q You don't count it as of any value? A No, in fact, I don't say it.

Q Don't mean to say it? A Don't find it necessary.

Q You don't intend to say it? A No, totally unnecessary. My reputation is such that I don't have to convince any prospective customer that I know how to make lacquers.

Q Then you are going to beat the world, aren't you? A No.

Q You are going to sell all the customers of Maas & Waldstein Company? A Maas & Waldstein don't interest us at all. Just the fact that a man is a lacquer consumer is the only thing that interests us.

Q And all he has to know is your reputation? A No, I don't say that; I haven't found it necessary to mention the Maas & Waldstein Company.

Q You added that your reputation was sufficient? A That they know that I know how to make lacquer.

Q They also know that you know how to make lacquers, the same lacquers that Maas & Waldstein make? A Yes, I made them for the Maas & Waldstein Company.

Q They know that? A Yes.

Q Do you think that will be of any value? A I have no thought on that subject.

Q Do you intend to make lacquers the same as Maas & Waldstein? A No, we are going to avoid making them. That is rather difficult to do, however. On paper the Maas & Waldstein Company have covered substantially the whole

field. Our difficulty is going to be to avoid conflict at some point; not that we desire it. If there were sufficient numbers and letters, we would avoid any conflict, but Maas & Waldstein have some 5,000 formulae on record; they have covered the whole field just with paper and pencil, and it would be impossible for us to avoid an overlapping in many cases.

Q Aren't the great bulk of those 5,000 formulae nothing more than the particular make-up of a lacquer for one particular customer, even though it might be a small customer who wanted something specially? A No distinction as to whether he wanted much or little; they are formulae which are on record.

Q I ask you if you know if they are not of that character? A What character?

Q That you just described. A Yes, many of them are; they were not sold to any extent, just paper records.

Q Aren't many of them formulae that were made up because the salesman came in and asked —one of your salesmen came in and asked if you couldn't give him a lacquer that he could say was as good as someone else's lacquer? A They are all made for that purpose, to meet the requirements of the salesman.

Q You would give it to him, put it in your books, and he would go out and not succed in selling it? A Very often.

Q And that lacquer formula would still be there? A Yes.

Q Many then of these 5,000 you mentioned are of that character? A Yes.

Q But as a matter of fact, there are about twenty odd formulae that embrace the bulk of the goods made by Maas & Waldstein Company? A No, a great many more than twenty.

Q How many? A The sales list, for instance, sets forth some two or three hundred.

Q I ask you if there were not twenty or more that were the formulae by which the great bulk of the products of the Maas & Waldstein Company were made? A That is all a matter of record; I haven't the records before me. For example, I suppose 300 formulae would include ninety-five per cent. of the business.

The Court: Would twenty formulae include more than fifty per cent. of it?

Witness: No, it would not.

Q Give us some idea. A I don't know; it is a matter of record. A statement of that kind was prepared every year, and if you will produce it, I will testify to it.

Judge Skinner: I will be content with ninety-five per cent.

Q You don't intend to make any lacquers in the Miner Edgar Company, or enamels or any other products by any of those 395 formulae? A Not intentionally; they are all made of the same constituents, and substantially the same proportions, based largely on price.

Q But you know yourself, do you not, that into the making of the products of the Maas & Waldstein Company went something else than just the knowledge of the constituents? A What was that something else?

Q I asked you. A I don't know of anything else that went in.

Q There isn't anything, then, in the make-up of those Maas & Waldstein products that was special or peculiar? A Nothing whatever.

Q Nothing that was not known to everybody? A Nothing whatever. The only thing that did go into that, that was of value, was a system of control by which the products were always uniform. The company has a reputation for that.

Q As a matter of fact, you had the formulae put on cards, didn't you? A Yes.

Q And kept in a cabinet? A Yes.

Q Under lock and key? A At night, yes.

Q And the number of those cards or sets of cards were limited, were they not? A Necessarily.

Q Why necessarily? A You wouldn't expect us to have an unlimited number, would you, an indefinite number?

Q I wouldn't expect you to have a lock and key, if they were what everybody knew; what do you say about that? A What is the point? How many sets were there? Anything finite is limited.

The Court: Were they limited for any particular purpose?

Witness: They were distributed to everybody that needed them and access to them was permitted to a great many people.

Q You think that is an answer to the Vice-Chancellor's question? He asked you whether they were limited for any particular purpose. A I have answered.

Q That is the only answer you have to give? A The answer was addressed to the Vice-Chancellor.

Q At any rate, you do not intend to make any conscious use of the formulae with which you have become familiar while with the Maas &

Waldstein Company? A None whatever; I wish I could forget them.

Q Your only fear is that you may not be able to? A That is it.

Q You have no desire to know or to have any list of the customers? A None whatever.

Q You wish you could have them? A No, we have our own sales organization, and do know myself who are customers, actual or prospective.

Q You don't need any list of customers if you have a sales manager that used to be with the Maas & Waldstein Company—Mr. Maynard? A Surely we need a list of customers.

Q You can get the information as to the Maas & Waldstein Company from Maynard? A No.

Q Plus your own? A No, we are not interested. Mr. Maynard did not produce any list of Maas & Waldstein customers; he had been out of their employ about five years before we took him on. However, when he came to the Maas & Waldstein Company he did bring them a list of Celluloid Zapon Company.

Q Who is in charge under you of the manufacture of enamels and lacquers, and so forth, for Miner Edgar? A Mr. Weaver.

Q He was under your employ before, wasn't he? A Yes.

Q And in the Maas & Waldstein Company? A Yes.

Q And then he was foreman of the enamel room? A Yes.

Q And he had nothing to do with the making of lacquers? A No.

Q Now, he is in charge of the making of lacquers for Miner Edgar? A Yes.

Q Without having had anything to do with them in the Maas & Waldstein? A Yes.

Q And you expect him to be successful in doing that? A Yes, he is quite successful.

Q You help him, don't you? A Yes.

Q And he draws on your information, doesn't he? A Yes, he does largely.

Q And your information consists very largely of what Maas & Waldstein made? A No.

Q You didn't know anything about lacquers before you went there, did you? A Neither did they; no.

Q You say "neither did they"? A There has been a development since I have been with them.

Q You don't mean to say that they didn't make any until you went there? A They did in a small way; they don't make those any more; they are obsolete.

Q HB is one they made for years? A Not according to the present formula; they have designated various lacquers HB a good many years.

Q And as war came on, they substituted some material for one that had been in there before, because of the scarcity of it? A It is not the same as it was.

Q (Last question repeated.) A No.

Q Is that the only book that you installed when you went with Maas & Waldstein or any time thereafter? A No, I installed a great many books.

Q Do you know of any other book in the Maas & Waldstein plant that gives the information as to cost? A Any other book?

Q Yes. A Cost of production—so far as that book gives any information, the figures are derived from books of original entry at the factory; however, it is not set up in exactly that form in those books.

Q This book does give cost per unit, of various products? A For the year 1920 it does.

Q I got the impression from what you said before, that this didn't give any information as to cost. A That is an erroneous impression.

Q It gives the exact cost, does it not, per unit, of a long list of articles made by the Maas & Waldstein Company? A For the year 1920.

Q Only 1920? A That is all.

Q Why only for that year? A That is a copy of a sheet that was furnished the sales department; it was the intention that the sales department should thereafter keep that record.

Q It also gives the prices at which their products were sold in that year? A In 1920.

Q Are there any formulae among these papers that you have turned back? A None.

Q I am using the word "formulae," doctor, in no technical sense. Is there anything here of the kind that you testified you yourself called formulae? A No, nothing of that kind.

Q Or mixing direction? A No.

Q You have that in your head, haven't you? A I have the principles upon which all these various articles were elaborated or compounded; yes, I know the properties of the various ingredients.

Q You are referring to what you knew as a part of your education as a chemist when you went to Maas & Waldstein Company? A Yes.

Q You knew all that then? A Yes.

Q I am not asking you about that. You have in your mind a mass of information as to processes used in the Maas & Waldstein factory and the manufacture of them? A I was superintendent of the factory for years and president of the company for years and know all about them.

Q I see, picking up papers in one of these packages, that there are statements of raw materials and quantities, in the same manner that we had them in the book, but for this time, in 1924? A They belong in the book, but they are typewritten on sheets that are not perforated so that they can be bound in the book.

Q Included in this mass are statements for the cost of production for other years than 1921? A Only insofar as I said, that one of the elements of cost, the total expenditure is set forth.

Q The distribution sheets that you spoke of show the way that the various items of factory cost were distributed to the different accounts? A Yes.

Q And that is of value to—was of value to you, wasn't it, in the making of the goods there for the Maas & Waldstein Company? A No.

Q Didn't it help you to determine whether what you were making was being sold, and the profit? A No.

Q What did you have it for? A This sheet is a duplicate of what is contained in the book on a monthly basis; not on a yearly basis, as is the book.

Q What did you have it for? A It was furnished to the New York office for the purpose of allowing them to check our total authorizations.

Q Those were authorizations for payment for raw material? A Yes.

Q Do you know what is in these other three packages?

The Court: He has already said he didn't except as he instructed some of the men in the office to make them up; he assumes that they contain invoices.

Witness: That is correct; I have never opened them.

Q You know that in the bill of complaint and in the affidavits, the expression "cost tables" is used?

Mr. English: In this suit?

Judge Skinner: Yes.

Q These papers that you bring back, do they include any cost tables? A You misuse the term; you used the term "tabulated cost sheets."

Q Take it that way. A Yes, you just put one in front of me just now; those are the tabulated cost tables.

Q You had no others? A No.

Q I show you an advertisement on what purports to be a page from the trade magazine called "Brass World and Platers' Guide"; that is an advertisement of the Miner Edgar Company? A Yes.

Q It was inserted with your knowledge and authority? A Yes.

Q You notice the commencement here, H. E. Maynard's name mentioned, and stated as being associated with this company now in the capacity of salesmanager, and Dr. Henry V. Walker, the well-known lacquer expert is the president and general manager of this company? A Yes.

Q And all lacquers will be made directly under his supervision? A Yes.

Q That is true, is it; that is the plan of the Miner Edgar Company as you are connected with it? A It is probably the plan, but it fails of realization, on account of my numerous other

duties. I paid little or no attention to the lacquer business. I hope to do that.

Q And to make these words true? A Yes.

Q And it adds, "Dr. Walker and Mr. Maynard and staff are at your service" and that you mean to make good? A Surely.

Mr. English: What is the date of this?

Judge Skinner: This is January, 1926. I offer that in evidence.

(Marked Exhibit C. 2, May 26, 1926.)

Mr. English: It is since the filing of the bill.

Q In your affidavit, do you remember saying this: "Referring to certain tabulated cost sheets" —the answering affidavit first filed of the two, I think, December 11, 1925, you say, page 7—I show it to you—"Referring to the certain tabulated cost sheets and a certain book containing secret and confidential information relating to the complainant's business and referred to in paragraph 7 of Kane's affidavit, that book was a transcript of the various books mentioned in the paragraph above quoted from my bill of complaint in the accounting suit, which the complainant in its answer said was not authorized and was of no value, and is of no value to anyone except to me as evidence in the accounting case. I took that book last March also and stated to Kane and to a clerk named Englane, at the factory, that I was taking the book with me, and that if any inquiry were made for it, to say I had it in my possession." I ask you if this book you now produce is that book? A That is the book.

Q Did you have memorandum books beside any that you have produced here, while you were

in the Maas & Waldstein Company—small memorandum books containing formulae? A We did have them at the Maas & Waldstein Company from time to time.

Q Did you have them? A What period?

Q At any period. A Yes.

Q They were copies of what Mr. Reuschle had in his books? A No.

Q They were copies of part of what was in his books? A No.

Q What were they? A They were the first system that was started, instead of this card system.

Q They were collection of the formulae in books rather than on cards? A No.

Q What were they? A They were new formulae that were recorded in these books before the card system was introduced.

Q They were formulae recorded in books; you said they were a record of existing formulae? A They were not; they were record of current new formulae.

Q And what became of those books? A They were in the office the last time I saw them.

Q You didn't take them? A No; they were obsolete; filed in the safe in my office.

Q Is that why you didn't take them? A No.

AFTERNOON SESSION.

HENRY V. WALKER, duly recalled.

Examination by Mr. English.

Q Doctor, referring to the memorandum dated April 14th, 1920, marked this morning Exhibit

C. 1, that has a series of code letters referring to the various chemicals which are mentioned there, what was the practice of the company with reference to the letter? A The constituents of these cards was designated by these code letters.

Q And was there anything in the code letters which would indicate to a person skilled in chemistry the name of the constituent element? A Yes, they can be read from them very easily.

Q Was that designed for the purpose of secrecy or for the purpose of convenience? A For the purpose of convenience.

Q How did it work out, practically, as far as being for convenience was concerned? A It was convenient, instead of writing the full designation which might be lengthy, it was designated by a few letters.

Q And were those code letters pretty well known throughout the factory? A Yes, necessarily so, because the books of record were kept in plain language.

Q And did they refer to these code letters, was there any cross reference? A Not directly, no.

Q Now, doctor, here on the table before us are three packages which are supposed to contain invoices, and another package which contains the loose leaf book, so called, together with some loose sheets, which are not physically attached to, but which were bundled up with that book. Those things which are here before us now, constitute all the books, papers and documents which you took from the Maas & Waldstein Company? A Yes, they do.

Q Referring to the bundle of invoices that are marked on the outside in red pencil as follows, "Invoices 1924, A to E," another package "In-

voices 1924, F to M," and the third package, "1924 O to Z," those I understand contain, at least you instructed that they should contain the invoices for the year 1924? A Copies of the invoices of 1924.

Q What was the ordinary practice of the company as to these invoices after the expiration of a period of time? A Destroy them.

Q And were these on the way to be destroyed at the time you had them bundled up? A Yes.

Q If you had not had them physically bundled up, what would have happened to them in the ordinary course of business? A They would have been destroyed.

Q Are there any other permanent records kept by the company? A Yes, sir.

Q In the New York office? A Yes, sir.

Q Now, as I understand, you never untied or opened these bundles? A No, sir.

Q You instructed that they should contain the invoices? A Yes, sir.

Q Did you ever take them to the officers of the Miner Edgar Company—have they ever been looked at by any officers of the Miner Edgar Company? A No, sir.

Q Where have they been kept by you? A At my home in Newark.

Q When was it that those invoices were physically taken by you and placed in your automobile? A In March, 1925.

Q When was it that you, by arrangement with and through counsel examined the books of the Maas & Waldstein Company? A That was in March or April, 1925.

Q And was it following that examination that these invoices were taken? A Yes, at about the same time, or the examination was in progress, or just upon its completion.

Q Now, the fourth package which was produced in court this morning consists of this loose-leaf book and the accompanying sheets, not physically bound in. Were these taken by you from the Maas & Waldstein Company? A They were taken at the same time, March, 1925, late March.

Q Was that book which is bound up, in the nature of a company book or a private record, kept by you as president of the company? A It was in the nature of a private record, it was kept in my office. Nobody else used it to my knowledge or had access to it.

Q And that record book as appeared from the mark, was put in evidence in the accounting suit as Exhibit P. 7? A Yes.

Q You also referred to some typewritten sheets which you say belong in, but were not physically attached in this loose-leaf book, and they were marked in the accounting suit, Exhibit P. 7A? A Yes, they belong in the book.

Q And they relate to the same general subject matter? A Yes.

Q And then besides those two exhibits, P. 7 and P. 7A, there were marked in the accounting suit four separate large sheets which were marked respectively C. 17, 18, 19 and C. 20, and which are a part of these papers which you took from the Maas & Waldstein Company, and generally what did they show? A They showed the same information as the bill, but they ran by month instead of by year.

Q Now, did these exhibits which I have last mentioned, P. 7, P. 7A, and C. 17, 18, 19 and 20, inclusive, all bear on your accounting suit? A Yes, sir.

Q And they were put in evidence in that suit? A Yes, sir.

Q And they were taken back in March, 1925? A Yes, sir.

Q Now, at that time, doctor, did you have any connection with the Miner Edgar Company? A No, I did not.

Q Did you contemplate any connection with it? A No.

Q When did it first come about that you became connected with the Miner Edgar Company? A In October, 1925, October 1.

Q Had there been any preliminary negotiations before October 1, between you and the Miner Edgar people? A Yes.

Q When had that been? A That started in late August.

Q And was late August the first you had any contemplation or any idea whatever, of going with the Miner Edgar Company? A Yes, sir.

Q So that back in March, when these books were taken, you had no connection with the Miner Edgar people? A No.

Q After you got in the Miner Edgar Company, did you disclose anything that is included in these Exhibits C. 7, C. 7A, and 17 to 20? A I did not.

Q Where did you keep these exhibits physically, before they were turned over to Mr. Bindseil, the Master? A At my home in Newark.

Q Were they examined by anybody in the Miner Edgar Company? A No.

Q Or discussed with them? A No.

Q Have you got any copies of this data which is taken from the Maas & Waldstein Company now produced here? A I did not.

Q The bill mentioned what it called more than 1,300 formulae—are they chemical formulae in

any sense of that word? A No, they are not chemical formulae.

Q What are they? A I have characterized them as mixing directions. They set forth the manner in which these various products are to be compounded or put through.

The Court: My recollection is that the doctor went into that very thoroughly on direct examination.

Q Did you take with you any of those so-called formulae? A No, I did not.

Q Did you make any copies of them? A No.

Q And so far as you know they are still with the Maas & Waldstein Company? A They were there when I left.

Q Now, this book, this loose-leaf book, so-called, which is produced here you said contained records of the cost of the raw material, was a gross amount? A Yes.

Q Did they have any bearing on the particular mixing directions or formulae which went into the finished product? A No, they had no bearing whatever.

Q Do you recognize the difference of classification, the distinction of complex and simple lacquers? A No, I never heard of lacquers classified as simple or complex until this morning.

Q Some of the witnesses used that expression. When you were with the Maas & Waldstein Company—

The Court: Irrespective of what classification you may have heard of previously, is or is not that a practical classification?

Witness: Some products, your Honor, contain few ingredients, and in that sense are simple, and some contain many and in that sense might be called complex.

The Court: That is the sense in which I understood the witnesses this morning.

Q I just wondered if that was a chemical or scientific distinction—have you had any experience in analyzing lacquer products? A Yes, I have had great experience.

Q Directly or indirectly? A I have both.

Q While you were with the Maas & Waldstein Company was it their practice to analyze their own products? A Yes.

Q Why was that done? A It was done for the purpose of check. For example, a sample would be sent into the laboratory without any mark upon it, or with a personal mark upon it. The chemist would be directed to analyze it and report. As a matter of fact it would be our own product and we would know what it contained. We would then compare our report with the record. That was a means of checking upon the chemist.

Q Would the chemist at the time know he was analyzing his own product? A Oh, no.

Q And did experience show that you could analyze your products? A Yes.

Q Did you ever have such an analysis made by outside chemists? A No, we never did.

Q And what, ordinarily, would you say as to the possibility of duplicating the product of Maas & Waldstein? A For one that has the necessary skill, it is very easy to substantially duplicate it.

Q Is that true with other companies? A Yes, sir.

Q Take the Maas & Waldstein HB lacquer, is that hard to analyze? A No, that is easy.

Q What was the other number? A 1044.

Q What about that? A That is also easy.

Q Doctor, is there any novelty or secrecy about the manufacture of lacquers, speaking generally? A No.

Q Is the making of lacquers a patented idea or invention? A Not at the present time. In 1898 Dr. Stevens of the Celluloid Company discovered the solvent properties of amyl acetate and took out a series of patents. Those patents, I think, were litigated and not sustained, or at any rate, they long ago lapsed.

Q There are no patents now? A No.

Q Is the idea back of lacquers a patentable one? A No, under the United States Patent Office.

Q In plan? A With the ordinary type, it is conceivable there might be a novel lacquer which might be patented.

Judge Skinner: I object to this witness testifying to what is and what is not patentable unless he is qualified as a patent expert.

Q Have you ever had a patent, doctor? A Yes, I have been called as a patent expert in litigation on legal patents. The Bakelite Company against Nicholas.

Q What Court was that in? A Federal Court in Brooklyn.

The Court: Well, do you consider yourself an expert on the requirements of the Patent Office?

Witness: I do, your Honor.

The Court: What experience have you had?

Witness: I have taken out some patents myself.

The Court: How many?

Witness: Four, I think.

The Court: What did you do in taking them out?

Witness: I made the invention and of course, was represented by an attorney in taking them out.

The Court: The attorney did the work, I suppose, in taking out the patent?

Witness: Yes.

The Court: Then what you know is what the attorney told you?

Witness: And what I have learned.

Q And you say you have testified in patent litigation? A Yes, sir.

The Court: As to procedure?

Witness: No, as to novelty.

Mr. English: I did not intend to call him as an expert on procedure. I am dealing entirely with the question of novelty.

Judge Skinner: The question is addressed as to what is patentable.

Q I will change the question. Is the manufacture, or the processes in back of the manufacture of lacquers at the present time a patentable process? From the standpoint of novelty? A No, sir, it is not.

Q Why not? A For the reason that it is a mere variation in proportion, and that has been held not to constitute patentable novelty.

Q Now it appears that the Maas & Waldstein Company had a great many theoretical formulae, although about 300 would cover 90 per cent. of the business, which they did. How does it come about that a manufacturing concern has so many of these formulae?

The Court: Didn't he explain that this morning? He explained that this morning.

Mr. English: I did not understand him to.

The Court: What he said was that they had as many as 5,000 different formulae, that they had accumulated this amount by endeavoring to comply with the requirements of different individual customers. Isn't that correct, doctor?

Witness: Yes, that is substantially correct.

Q What is there—I don't want you to go into any details or secrets of the Maas & Waldstein Company, but what is there in the making up of a lacquer that would create so many different formulae? A Well, many thousands of these formulae are not lacquers. They are enamels and the variation is solely one of shade. For instance, there may be 100 different blue shades, or green. That accounts for a large number.

Q Is there any monopoly or secret about that? A No, that is a mere case of changing the different lacquer pigment, to produce a particular shade which the customer may desire.

Q What other products? A As to the clear lacquer, there is variation in the solid content

range, from 2 or 3 ounces per gallon up to 32 ounces or more. There is variation in the nature of the solvent. The problem of making a lacquer is primarily one of price. A man using a particular lacquer and offering a competitor an opportunity to sell a similar lacquer makes it a prime requirement that the price be the same or less than what he is paying for it, and in order to meet those prices, all kinds of combinations are put together.

Q And generally what would you say that the manufacturing of lacquer consists of, from a general manufacturing standpoint? A You mean of manufacturing successfully, doing a successful lacquer business?

Q Yes. A The great requirement is uniformity of product, so that the customer may rely on what he is getting, always getting the same stuff.

Q What is the object of all this organization and records, and all that, what bearing does one have on the other? A In order to have a product uniform, first of all there should be a correct record of what it is. The system ought to be such that the correct record goes in the hands of the man who actually manufactures.

Q Does that explain the existence of all these formulae? A Yes, sir.

Q You say, "Goes into the hands of the fellow who makes them"—who makes them? A A laborer.

Q What does he get? A He gets a slip which constitutes his instructions, to make a particular batch.

Q And that instructs him to put in a certain amount of different ingredients? A Yes, sir.

Q Are there any different kinds of ingredients that go into the manufacture of a lacquer? A Not a great many?

Q About how many are there? A I should think about 20 would include 90 per cent. of all lacquers.

Q And in most how many are used? A Five or six.

Q Is there literature on this subject? A Yes.

Q And what is the standard work? A Warden is the first comprehensive work on the subject, "The Nitro-Cellulose Industry." There has recently been a book by Wilson, there have been two other books recently. There is also very voluminous journal literature.

Q I suppose that is accessible to anybody in the trade? A Yes.

Mr. English: I think that is all—oh, just a few more questions.

Q Doctor Walker, in the affidavit of Mr. Magnus which was filed in this case and which was verified on January 12, 1926, there is a quotation from a letter alleged to have been written the Maas & Waldstein Company by the Eagle-Ottowa Leather Company, at Grand Haven, Michigan. Do you know that Eagle-Ottowa Company? A Yes, I do.

Q I show you a copy of Mr. Magnus' affidavit, so that you will have before you the text of the letter which was there set forth. Did you have any knowledge of the writing of that letter before it was written? A No, I did not.

Q It refers there to a concern who guarantees absolutely to duplicate "yours," referring

to Maas & Waldstein's product. Do you know what concern is referred to by that statement? A Why, Mr. Magnus testified he meant the Miner Edgar Company. It does not appear in the letter, but from his testimony, I know he referred to the Miner Edgar Company.

Q Did your company have anything to do with the Eagle-Ottowa Company in the sense of offering to duplicate for it products of the Maas & Waldstein Company?

Judge Skinner: I object, only as to the generality of it.

Q Did your company have anything to do with it? That calls for all kinds of information, hearsay or anything else.

The Court: He can speak only to the extent of his knowledge anyway.

Judge Skinner: The question as originally framed was, "Did you or your company."

Mr. English: I said, "Did your company," referring to the Miner Edgar Company.

A Miner Edgar Company did not offer to duplicate the Maas & Waldstein Products.

Q So, that so far as that reference goes, it has no relation whatever to Miner Edgar Company? A It was intended to have relation to the Miner Edgar Company.

Q I didn't mean the Miner Edgar Company, I meant the Maas & Waldstein Company.

Q That is a letter from the Eagle-Ottowa Company to the Maas & Waldstein Company, and seeking to create the inference that the Miner

Edgar Company had offered to duplicate the Maas & Waldstein products. What I want to know is whether the Miner Edgar Company, or you, ever made any such offer to this company? A No, I did not.

Q Do you know how it came about that the Eagle-Ottowa Company wrote that letter, whether they had been interviewed by anybody? A Yes, they had been.

Q By one of your salesmen? A Richard R. Good.

Q Did he have any instructions from you to represent to them that the Miner Edgar Company could duplicate the products of the Maas & Waldstein Company? A No, I was in Europe at the time.

Q Did he receive any such instruction? A He had received contrary instructions, not to mention Maas & Waldstein.

Q In your testimony which was given on your cross examination, as an aside, previous to the final hearing, you referred to the fact, going back to the earlier history of the Maas & Waldstein Company, that when somebody who was in charge of the manufacturing end, or chemical end, had left, you had volunteered to take over the manufacturing, and do you remember that? A Yes.

Q You said that shortly after the company, as a matter of gratitude to you, had presented you with 10 per cent. of the stock of the company. Was that represented by a contract in any way? A Yes, sir, it was.

Q I show you a paper which was marked Exhibit P. 22 in the accounting case, and which is a contract between Louise P. Seher, on the one part and Nathan G. Waldstein, and others, dated November 17, 1909—is that the paper that you

had reference to in your earlier testimony in this suit? A Yes, that is the paper.

Mr. English: I would like to offer that in evidence in this case.

Judge Skinner: I object to it as immaterial.

Mr. English: It is a contract between the stockholders of the Maas & Waldstein Company with respect to the payment of a specified dividend to one of the stockholders mentioned, and recites that the services of Doctor Walker should be substantially recognized, and that in appreciation of what he has done the stockholders are giving him 10 per cent. of the stock.

Judge Skinner: That is the only purpose of the offer, to show that?

Mr. English: It fits right in with his previous testimony.

Judge Skinner: No objection for that purpose.

(Paper marked Exhibit C. 2.)

Cross examination by Judge Skinner.

Q Doctor you referred to some literature on the subject of lacquers? A Yes.

Q You wouldn't think of undertaking the manufacture of lacquers for the Miner Edgar Company simply because of your familiarity with that literature, would you? A Not simply because of that.

Q If that was all he knew about lacquers? A No, he must start with a proper foundation, or he would read it in vain.

Q And you wouldn't say that from that literature he would be able to make the same lacquer or enamel as the Maas & Waldstein Company made, would you? With nothing else but the literature to guide him? A No.

Q Now you said that the processes which were used in the manufacture of lacquer, and I think you referred to the general manufacture, not simply to Maas & Waldstein, were not patentable? A Yes.

Q In other words, the people that are in the business of making lacquers and enamels depend upon something other than a patent for having a product that they can offer as made by them, that nobody else makes, in other words, having an attempted complete or partial monopoly of that product? A They don't attempt, so far as my information goes, to claim that nobody else makes it. The contrary is a general rule in seeking business. They represent that they do make substantially what the other man makes.

Q They represent that they do make substantially what the other man makes? A Yes.

Q Then do you tell the Court that the selling methods of lacquer manufacturers are to address the customer with the representation, as an inducement, "we make what somebody else makes"? A That is one of the methods—the method adopted for the particular case is up to the salesman.

Q The usual method is to represent that, "we make something that nobody else can duplicate," isn't that so? A No.

Q You don't represent that for the Miner Edgar Company? A No.

Q And you don't represent for the Miner Edgar Company that they can make the same

thing that the Maas & Waldstein Company makes? A No.

Q Why don't you, if everybody can make the same thing? A If it becomes necessary to say that we can equal the qualities of a particular competitor's goods, we do say so.

Q But you have no wish to represent to any customer of the Miner Edgar Company that you make the same enamel or lacquer or other product that the Maas & Waldstein Company makes? A No, everyone is looking for competition. He is very glad to have someone offer him a lacquer.

Q And you have no wish to have the salesmen of the Miner Edgar Company make any such representations? A No, they are distinctly instructed not to do any such thing.

Q So that you would suffer no harm if you were told by the Court not to do that? A Yes, we would suffer harm if the implication that some restriction were placed upon our liberty of action, or in that we were seeking to do something that was not ethical.

Q No other? A I don't care to speculate what harm might follow.

The Court: Do you know of any other?

Witness: The mere fact that we were enjoined—

The Court: You stated that that would be merely a psychological effect on customers?

Witness: You mean, would it affect our activities in any way?

The Court: Yes.

Witness: Except the necessity of trying to avoid any apparent conflict.

The Court: You said this morning that it was your intention to avoid conflict anyway?

Witness: It is our desire, but the field is so covered and criss-crossed that that might be an impossibility. If we are not at liberty to use the same ingredients and same proportions, that precludes us on price. We can't meet the prices of the other man. That is the object of most of this compounding, to meet a particular price, otherwise lacquers consist of expensive ingredients, and so much of a diluent as they will carry. In order to meet commercial conditions it is necessary that a manufacturer be free to use these diluents. If we must avoid substantially the combinations of the Maas & Waldstein Company, or anybody else, from a commercial standpoint, it excludes us from the field.

Q You want then, to be free to use the materials that are used by other manufacturers, is that right, for one thing? A Yes.

Q And you want to be free to use the processes of manufacturing lacquers that are common to the other manufacturers, is that right? A Yes.

Q Do you want anything else? A We don't want any restrictions on us whatever. We want to be just as free as the Maas & Waldstein Company.

Q You want to be free to use any processes that are the secret and confidential processes of the Miner Edgar Company, apart from the Maas & Waldstein Company processes, don't you? A We don't claim to have any secret or confidential

processes. One of our men left us and took on another position, and took all of his formulae with him. We didn't feel called upon to enjoin him. Let him go to it.

Q Perhaps that is because he did not have anything worth while? A Yes, he took copies of everything we had.

Q What did you have? A We had a lacquer business that we had for years.

Q And is that what you referred to now, that lacquer business being a small part of your other business? A It is not as big as our other business, but it is a substantial business nevertheless.

Q Don't you recognize yourself, doctor, that in the manufacture of lacquers, manufacturers have processes that they regard as secrets, whether you do or not? A Who speaks for the Maas & Waldstein Company? I haven't heard any expert for the Maas & Waldstein Company in this case.

Q (Question repeated.) A I don't recognize any such thing.

Q Don't you know that, while you were with Maas & Waldstein yourself, you tried to keep the processes secret? A There is no use in trying to keep a secret of pouring four or five things together.

Q Didn't you try to keep those processes secret? A There were not any special processes.

The Court: Doctor, why don't you answer the question?

Witness: I am trying to, your Honor.

The Court: Judge Skinner propounds very few questions that you don't argue with him about.

Q (Last question read.) A My answer is no.

Q But you already admitted in this case that you did? A No.

Q Didn't you say in this case before that when you received them they were treated by the Maas & Waldstein Company as secret and confidential? A There was no discretion of processes.

Q Well, now, you have in the past, perhaps I am fair in saying, quibbled on the word formulae. Don't let us have that with reference to the word processes. Didn't you say that the formulae, using those very words, that you had information of when you went to Maas & Waldstein, or shortly after were, by them, regarded as secret and confidential? A I don't remember saying that. No. I said that they were not properly recorded, and that was one of the first things I undertook to do.

Q I am asking you now, were not they then by them regarded as secret and confidential? A I don't think so.

Q And didn't you then discuss—don't you know that they were in the possession of Mr. , and in his possession alone? A Yes.

Q That he kept them under lock and key? A I don't know how he kept them.

Q Well, don't you know? A No.

Q Don't you know that the old formulae were put in a sealed concrete vault and locked? A No, I don't know that.

Q Don't you know that because you directed that the formulae be recorded according to a method you devised, and that those re-recorded formulae be kept under lock and key? A Yes, sir.

Q And didn't you limit the distribution of them with regard to sets, and stipulate as to whom they should go to? A Yes, I did.

Q And didn't you show by your treatment of them that they were secret and confidential? A No, I don't think so. They were turned over to a large number of people.

Q Then there were more than four sets? A No, but these few sets were accessible to large numbers of people.

Q Were they accessible to anybody except those who had occasion to use the formulae? A They were accessible to salesmen.

Q Didn't salesmen have to have access to them to get an estimate of the cost of the article? A No, it was no part of the salesman's job to look up estimates of cost.

Q Didn't he have to know? A That information was furnished by the New York office.

Q Furnished to the salesman? A Yes.

Q And he may have gotten it from the formulae in the New York office which had the cost endorsed on them? A Yes, the cost was calculated on them.

Q And that is what the salesman went to the formulae for? A No.

Q What did he go there for? A To compare one product with another.

Q Now, don't you think that there is in the lacquer and enamel business anything in the nature of confidence reposed by the employer in the employee, those that have to use the formulae in the manufacture of lacquer, a confidence that they will not disclose that to a competitor? A That was never discussed.

Q I am discussing it now with you. A I mean with the Maas & Waldstein Company. There was no such understanding.

Q I am asking you did you do that for H. B. Waldstein? A I never placed any such obligation on any employee of his.

Q I am not asking you whether you ever placed such an obligation—don't you recognize anything of trust and confidence as to the use of these formulae growing out of the distribution and circulation of them, and the keeping of them, from those other than those that have to do with them—don't you recognize any trust not to go and disclose them to a competitor?

Mr. English: I think that is a question for the Court and not for the witness, your Honor?

The Court: I think it is rather argumentative.

Judge Skinner: I think Doctor Walker is not right on the matter of an injunction against this defendant.

The Court: He says he does not recognize any such thing.

Q You spoke of these lacquers, indicating the general uniformity of the lacquers themselves, and you were asked about certain variations. I want to ask you one question. Aren't there variations in the formulae commonly made to meet competition as to price? A Yes, I have testified to that.

Q And aren't there variations that are made commonly in order to give the customer that which specially fits his needs as to whether the article is a slow drier or a quick drier? A Yes, all that is done.

Q And variations are made to give to the customer something of a lesser or greater dura-

bility? A Well, I wouldn't say a less durability.

Q Why not, if it were to be used on a cheap toy instead of an automobile, wouldn't the requirement of durability be less? A You would hardly offer that as an inducement.

Q Wouldn't you make the product in a different way? A The question of price, you would make it to meet the price.

Q And the cost of the goods to you, the maker, and the profit you would make on it? A Yes.

Q Another very important factor is whether or not the article would be good in damp weather? A Yes, sir.

Q That means very much? A Yes, sir.

Q And so as to the odor, one man will object as to the product having an odor? A Yes, sir.

Q You will try to get rid of that? A Try to get rid of his objection, but we can't get rid of the odor.

Q Do you have some way of getting rid of his objection without getting rid of the odor? A Most salesmen will do that.

Q Do you know of any changes being made in the formulae to get rid of odors? A Yes, unsuccessfully.

Q And so with other formulae, designed for special uses, changes are made? A Yes, all in accordance with well-known principles.

Q You make the changes? A I have said we cover substantially the whole field, all kinds of requirements.

Q You said your concern had nothing to do with the sending of that letter, the one Mr. English showed you? A The letter in the moving papers?

The Court: I want to suggest now, gentlemen, that we have already consumed about four times as much time today in the examination of witnesses as I was given to understand we were going to consume and I will leave here in exactly 35 minutes.

Judge Skinner: I will be very brief.

Q When you said that your company had nothing to do with that letter Mr. English referred to, you meant so far as you know? A The letter is written by the Eagle-Ottowa Leather Company. How could we have anything to do with it?

The Court: I think he explained that thoroughly. He does not know anything about the letter. He was in Europe at the time it was written. If any instructions were given by anybody in the Miner Edgar Company, he could not have given them.

Q Who is H. G. Maynard?

The Court: He was employed as sales manager?

Mr. English: No.

Q Who was he? A He is now in charge of lacquer sales with the Miner Edgar Company.

Q When did he come with the Miner Edgar Company? A In October, 1925.

Q What had been his employment for the years before this?

The Court: He had been with this Celluloid Company. Hadn't he?

Witness: He was with the Anderson Chemical Company when he came with the Miner Edgar Company.

Q And that had been for how long? A About three years.

Q And before that? A Previously for about two years with the Maas & Waldstein Company.

Q And previous to that with whom? A Celluloid-Zapon Company.

The Court: Does it make any difference? He was once in the employ of the Maas & Waldstein Company.

Mr. English: It was three years.

Q How long was it? A It was something over three years, I don't think it was five.

Q In the testimony your counsel, Mr. English, said, "Now I show you another little book page headed Zapon K.N., do you identify that as Maas & Waldstein B.B.", then the questioning proceeded and I said, "The books produced I understand are from the possession of Doctor Walker." Then Mr. English said, "Quite right." What is that book and is it among the books you have turned over? A The book referred to is a book of the Celluloid-Zapon Companies' formulae.

Q Never mind what was in it, whose book was it? A It was mine.

Q Where is it now? A It is at my home.

Q Are you willing to produce that? A No, it is not referred to in these proceedings.

Q You are not willing to produce it for the inspection of the Court? A Yes, of course, for that purpose.

Q Will you do that? A Yes.

Q May I ask that it be put in the hands of counsel and handed to the Vice-Chancellor for further examination by us if we find it necessary?

The Court: You deliver it to Mr. English and then he may submit it. Of course it has not any bearing on this case. That is all there is to it.

Q Well, did you receive a book containing the formulae of the Zapon Company? A Yes, I did.

Q What for?

Mr. English: I object.

A It was delivered to me by Mr. Flanigan, salesman of the Maas & Waldstein Company.

Q And it did not tell you anything you did not know before? A It was for the purpose of enabling the Maas & Waldstein Company—

Q (Question repeated.) A Not in general, no.

Further examination by Mr. English.

Q How long have you had that book? A Since 1919.

Q Any connection between that and the Miner Edgar Company? A None whatever.

Robert R. Good, direct.

ROBERT R. GOOD, duly sworn for defendants.

Direct examination by Mr. English.

Q Mr. Good, are you the Richard H. Good referred to by Doctor Walker in his testimony as the salesman of the Miner Edgar Company who visited the Ottowa Company? A I am.

Q Were you ever employed by the Maas & Waldstein Company? A Never.

Q When did you go out and interview the Eagle-Ottowa Company? At the instance of the Miner Edgar Company? A About the first or second week of November.

Q Of what year? A 1925.

Q Did you make any representation at that time that the Miner Edgar Company could duplicate the products of the Maas & Waldstein Company? A I did not.

Q Did you make any representation to them of the ability of the Miner Edgar Company to duplicate anybody's product? A Well, I had previously to coming with the Miner Edgar Company been employed by the Anderson Chemical Company and I understood that they were the main suppliers of the Eagle-Ottowa Leather Company and I did intimate to them that in view of the fact that they were using the same dope solution that I had been using for 18 years with the Lancaster Leather Company and the formulae had been furnished to me by the Anderson Chemical Company, that we were in a position to match their sample fairly accurately if furnished with a can of the solution they were using.

Q When you said we, who did you refer to? A Miner Edgar Company.

Robert R. Good, direct.

Q When you said match their solution, who did you refer to? A Anderson Chemical Company.

Q Was the Maas & Waldstein Company present in your mind? A No, I did not know Maas & Waldstein were supplying the Eagle-Ottowa Leather Company.

Q You have learned since that they did? A Not yet, no.

Q Did you ever afterwards learn of the writing of a letter by the Eagle-Ottowa Company to the Maas & Waldstein Company which is referred to in the affidavit of Mr. Magnus? A I did, and upon my second visit to Grand Haven I mentioned the fact to their purchasing agent.

Judge Skinner: I object to anything that was said.

Q Was this purchasing agent the fellow you had dealt with the first time? A Yes, sir, that was the same gentleman, Bruno Peters.

Q Did you mention to him the fact of the writing of this letter?

Judge Skinner: I object.

The Court: Sustained.

Q Did you learn whether he sent a similar letter to the Anderson Company?

Judge Skinner: Same objection, as calling for hearsay.

The Court: Unless it is shown that he actually does know?

Q If you know it by reason of somebody having told you that you can't tell us.

Witness: He told me so.

The Court: Strike it out.

Cross examination by Judge Skinner.

Q Well, Mr. Good, you have given some attention to this letter, haven't you? A Well, only so far as it was shown to me here today and once previously.

Q And you understood that it was suggested at least that that letter when it says, "That they quoted lower prices on the materials they were buying from the Maas & Waldstein Company, from a concern which guarantees absolutely to duplicate the Maas & Waldstein products," you understood they were referring to the Miner Edgar Company? A I never mentioned Maas & Waldstein's name.

Q But you understood that that letter had the Miner Edgar Company in mind when it made that reference? A Will you repeat that?

Q You understood, did you not, that the suggestion was made in this suit that that letter referred to the Miner Edgar Company as the one that had guaranteed to duplicate the products of the Maas & Waldstein Company, didn't you? A Well, it might.

Q I don't mean you understood it did so refer, but you understood it was the subject matter in this case? A Well, having been there within a short time previously and having quoted them, I might have assumed it meant me, yes.

Q It would seem to you a reasonable assumption, would it not? A Well, I suppose it would.

Q In view of the fact that you had been there and quoted them prices for the Miner Edgar Company? A Yes.

Q Now, as a matter of fact, you say if there was any such impression. I mean this, if that was the impression that the Eagle-Ottowa Company got, it was a mistaken impression, you had only mentioned the Anderson Company? A In my sales policy I rarely ever mention any names.

Q We are not speaking of your salesmanship policy, just answer this one question? A There were not any names mentioned in the conversation.

Q You told us here that you said— A I said I had that in mind.

The Court: He did not say that he mentioned the Anderson Company. He assumed they were buying from the Anderson Company, and he told them if they would give him a sample of what they were buying, he would duplicate it.

Q The name of the Anderson Company was not mentioned? A There weren't any names mentioned in that first conversation.

Q Either by them or by you? A That is correct.

Q So that there was nothing said to tell you that they were buying from the Anderson Chemical Company? A Having been with the Anderson for one year previously I naturally knew who they were selling.

Q Then you went to them and simply said this, "I can give you the same product you are buying," without mentioning the Anderson Company, but having the Anderson Chemical Company in mind? A If they had furnished us with a can of the solution, which is the general practice.

Q You mean you said this? A I said we could probably duplicate the solution if they furnished us with a can of what they were using, assuming, in my own mind, that it was the Anderson's product.

Q But nothing was said to indicate that it was in their mind or yours? A That is correct.

Q Didn't you at that same time represent the Miner Edgar Company? A I did.

Q And hadn't at that very time Doctor Walker become the president and general manager of it? A One month before.

Q And had that been pretty widely proclaimed throughout the trade? A Not to my knowledge. We had done it.

Q When was it you were there? A I came with the Miner Edgar Company in October 19, 1925.

Q When were you out at the Eagle-Ottowa Leather Company? A First or second week in November. In other words, I was started on the road almost immediately I came with the Miner Edgar Company.

Q Do you think that the statement that the Eagle-Ottowa Company made was a correct inference from what you had said, except they did not mean the Maas & Waldstein Company?

Mr. English: I object, that is too complicated a question for the witness to answer. It contains what he thinks and everything else. I think it is a terrible question.

A I would like to answer that by saying that I consider that a typical purchasing agent's trick, and he admitted it afterwards.

Q Now you got in something that the Court told you not to tell; did you deliberately try to get that in? A No, I am too inexperienced in this line to try to do that.

Q Do you know of any attempts made by you or by the Miner Edgar Company to get the deposition of that purchasing agent?

The Court: I don't think this witness is competent to testify to that.

Q You went to the Miner Edgar Company from the Anderson Chemical Company with Mr. Mr. Maynard, didn't you? A No.

Q Well, what interval lapsed between your going and his going? A Well, I would say I don't know when Mr. Maynard went to them. If you will tell me when Mr. Maynard went with the Miner Edgar Company I could tell you. I think he went with them in the spring.

Q Did you get a can of anybody's solution. I want to know if they did give you a can to analyze? A Yes, they furnished us with a sample.

Q A can of whose stuff? A We didn't bother to submit samples against that can.

Q Did you get a can of Anderson's stuff?

Judge Skinner: I would like to offer the minute book as showing that the directors had a meeting. May I suggest that we have a time limit fixed for briefs or oral argument if Mr. English wants it?

(Minute book marked Exhibit D. 1.)

The Court: I rather suspect this is the real point in the case as I see it. How far can Doctor Walker be restrained in the use

of knowledge which he himself has gained from his own experience, while in the employ of the Maas & Waldstein Company. I presume that is one of the real questions in the case.

Judge Skinner: Yes, sir.

The Court: There is a borderline somewhere. In other words, there is a dividing line between what belongs to Doctor Walker and what belongs to the company. Where is it according to your idea?

Judge Skinner: I think the dividing line is in this, that so much as he gets of professional growth from mere experience there and reading there, and general improvement of his knowledge is one thing, and the dividing line runs between that and so much of information that implies a confidential relationship. The test turns upon the knowledge being imparted to him, and the circumstances surrounding it, as to whether that carries an implied obligation not to use it. I think the cases hold it makes no difference that he got it while he was there. He may be enjoined from disclosing it, or from using it, and to use it or disclose it to his employers and such a disclosure would be a breach of that trust or confidence, and I hope to be able to show to your Honor cases in this abundantly supporting my contention.

The Court: I want to find out where the dividing line is. What is your contention Mr. English?

Mr. English: I won't say just now. If you adopt his idea, every young man who leaves his position will be foreclosed from entering another position.

The Court: I am just wondering, and I think this is one of the really important features of this case. I am just wondering how far a man of Doctor Walker's profession may use, or may be restrained from using, knowledge which he must necessarily acquire in the course of years of practice. Suppose he is president or general manager of some company. Suppose he is the mainspring of the works, and suppose it is through his research, his foundation or education and his practical knowledge that he works up a business. There may be nobody else in the whole concern who knows anything about it except he himself. Now, after he has gained all this knowledge and practical experience he suddenly sells out his interest in the company for which he has been employed and organizes a new business. Must he forget, legally, I mean, everything he has learned in the other company, and if not, how much of that knowledge can he use.

Judge Skinner: I recognize, from something your Honor said at some other hearing, that that was a question that came up in your mind as presenting difficulties, or suggesting doubt, and I recognized that it was up to me to convince your Honor on that point.

The Court: I want to say I consider it a real difficulty. I wouldn't say how far I could go either way on it. It is your proposition that information or knowledge obtained in confidential relationship, which becomes in effect a trust, cannot be disclosed. That is one thing. But there is another,

there is something on the other side of the line.

Judge Skinner: Perhaps this illustration Mr. English referred to may also sustain the view I have as to the case. Necessarily they could not all be enjoined until they do use something. Does your Honor recall the testimony of Mr. Flaherty, that young chemists were not allowed to see anything. The point I make is this. Those young men were not given the relation of trust and confidence, and that difference is the difference that makes the dividing line. They learned a lot while they were there, and they could not be deprived of the right to use that learning, but it did not include anything that had been imparted to them in the same way under secrecy or pledge of confidence, and it makes not any difference whether that is an express confidence or implied.

The Court: I agree with you that the implied contract may be just as strong as an express contract but it is just a question of how far a man employed in a concern of that kind can divorce himself from that knowledge when he goes into some other work.

Exhibit A.

MAY 1919

			Lacquer		Thinner
Peerless	#1		$4.45		$3.50
"	#2		4.20		3.15
H. B.			2.95		2.50
B. B.			2.95		2.50
O. B.			2.95		2.50
S. 62			2.20		1.75
B. S.			2.15		1.65
Brassine			2.50		1.75
L. B.			3.15		2.50
B. E. C.	#95		3.05		2.55
Fire	#1047		2.00	1048	1.25
1044			2.20	1045	1.85
1101			2.50	1102	1.55
1104			3.60	1105	2.40
1096			2.30	1090	2.00
1089			2.40	1090	2.00
1091			2.30	1093	1.90
1028			3.25	1035	2.30
(BB)	100	K	2.95		
(HB)	101	K1203	2.95		
(IB)	102	K1210	2.95		
	103	K1215	2.80		
	104	K1220	2.80		
(1104)	105	BX 10	3.60		
	106	BX 11	3.60		
	107	Brassoline	3.15		2.10
862					
1044	108	AX 10	2.95		
1096					
	109	AX 10—1220	2.75		
	110	No. 5			2.15
	111	No. 8			1.60
	112	No. 20			1.90
	113	No. 1			2.15

Exhibit C. 2.

S62	114	.....	.....	1.75
	115	Glossy Black	3.25	2.50
	116	Flat "	3.25	2.50
	117	Dull "	3.25	2.50
	118	Rubber Finish....	3.25	2.50

Exhibit C. 2.

WHEREAS, August Seher, late of the City of Newark, Essex County, New Jersey, was, in his lifetime, the owner of twelve hundred and fifty (1250) shares of the capital stock of the Maas & Waldstein Company of New Jersey, and one hundred and seventy-five (175) shares of the Maas & Waldstein Extract Company of New Jersey; and

WHEREAS, the services of Dr. Henry V. Walker rendered and to be rendered to the said Company first mentioned are considered by the stockholders thereof so valuable that the same should be substantially recognized, and with that object in view, it has been decided to assign and transfer to the said Henry V. Walker ten per cent (10%) of the capital stock of the said Maas & Waldstein Company, the same to be transferred to him as follows: by Martin E. Waldstein, four per cent (4%), by Adolph Magnus, three per cent (3%), and by Louise P. Seher, executrix of August Seher, deceased, three per cent (3%); and

WHEREAS, the said Louise P. Seher, executrix of the last will and testament of August Seher, deceased, and sole beneficiary under his will, desires to be assured of a certain and permanent income from the holdings of the Estate in the said Companies,

Exhibit C. 2.

NOW, this Agreement, made this Seventeenth day of November, in the year nineteen hundred and nine, BETWEEN the said Louise P. Seher, personally and as executrix of the Estate of said August Seher, deceased, party of the first part, AND the said Martin E. Waldstein, Adolph Magnus and Henry V. Walker, and Milton Maas, parties of the second part, WITNESSETH,

FIRST: The said party of the first part, in consideration of one dollar to her in hand paid and of this agreement, hereby agrees to sell, assign and transfer to Henry V. Walker one hundred and fifty (150) of her shares of stock in the said Maas & Waldstein Company of New Jersey, whenever the said Martin E. Waldstein and Adolph Magnus shall make like assignments to him of the said several percentages of the stock in said Company as aforesaid.

SECONDLY: The party of the first part hereby further agrees that if at any time hereafter two-thirds in interest of the stockholders in the Maas & Waldstein Company of New Jersey, including a majority in interest of the parties of the second part, shall desire to sell out the whole plant and assets of the said Company or to dispose of all the stock of the said Company, she will join with them in such sale or disposition, at such price and upon such terms as in the best judgment of the said holders of the said stock shall appear to be a fair price for the same.

THIRDLY: In consideration of the premises, said parties of the second part hereby jointly and severally guarantee that in each and every year during which the party of the first part remains the holder of all the stock which she now holds in the said Companies, less the shares transferred

Exhibit C. 2.

to Dr. Walker as above mentioned, the income and dividends from her said stock shall amount to at least the sum of forty-eight hundred dollars, and they jointly and severally agree that if in any such year the income and dividends aforesaid shall not amount to that sum they shall make up the deficit and pay the same to the party of the first part.

LASTLY: This agreement shall bind and be for the benefit and advantage of the said parties and their and each of their heirs, executors and administrators.

WITNESS the hands of the said parties the day and year above written.

MARTIN E. WALDSTEIN
A MAGNUS
HENRY V. WALKER
MILTON A. MAAS
LOUISE P. SEHER.

AGREEMENT
Between
LOUISE P. SHERER
and
MARTIN E. WALDSTEIN and others.
DATED November 17, 1909.

BRASS WORLD
And PLATERS' GUIDE

Vol. XXII. No. 1 JANUARY, 1926 $1.00 Per Year in U. S.

Announcement

H. E. MAYNARD

who has been connected with the plating and lacquering industries for the past twenty years is now associated with this company in the capacity of sales manager.

* * *

Mr. Maynard is in a position to give the same high grade service that he has rendered to the trade in the past.

* * *

Dr. Henry V. Walker, the well known lacquer expert, is the president and general manager of this company. All lacquers will be made directly under his supervision.

* * *

DR. WALKER
and
MR. MAYNARD
and staff are
at your service

LACQUERS AND LACQUER ENAMELS

BEST OBTAINABLE

For Any Article Requiring a Durable Finish

Metal, Wood or Composition Automotive and Other Trades

WE SOLICIT YOUR INQUIRIES

Write Now!

The Miner Edgar Co.

110 WILLIAM STREET

NEW YORK, N. Y.

Exhibit C. 1.

Exhibit C. 1, May 25, 1926.

MAAS & WALDSTEIN CO.
Newark, N. J.

MEMORANDUM

April 14, 1920.

From: Dr. Walker
To: All Concerned

Subject: Formulae

Please note that in the future all formulae reported to the office must be written in the formula code, copy of which has been supplied you. Also please note that ingredients of all formulae are to appear in the order named in the code, i. e., if, for instance, Methyl Acetone, Damar and Ethyl Acetate should be used, the formula should be written as follows:

Es E
MA
RD

Please put these instructions into effect at once.

H. V. W.

OPS
WR
RFW
JAR
EW

Stipulation re Exhibits.

STIPULATION.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between	
MAAS & WALDSTEIN COMPANY, *Complainant-Respondent,*	*On Bill, etc.*
and	*On Appeal.*
HENRY V. WALKER and MINER EDGAR COMPANY, *Defendants-Appellants.*	*Stipulation.*

It is hereby stipulated and agreed between McCarter & English, the solicitors for the appellants, and Pitney, Hardin & Skinner, the solicitors for the respondent, that in the printing of the record for the appeal the "loose-leaf book" or "the eight dollar book" kept at the factory of Maas & Waldstein Company, referred to in the testimony in the court below, and the minute book of the respondent marked Exhibit "D. 1," need not be printed in the record, but that counsel for both sides have leave to refer to any part of these exhibits at the argument of the appeal to the same effect as though they had been printed in full in the record.

Dated July 7, 1927.

McCARTER & ENGLISH,
Solicitors for Appellants.

PITNEY, HARDIN & SKINNER,
Solicitors for Respondent.

Opinion of Vice-Chancellor.

OPINION OF VICE-CHANCELLOR.

Filed November 29, 1926.

IN CHANCERY OF NEW JERSEY.

Between	*On Bill, &c.*
MAAS & WALDSTEIN COMPANY, *Complainant,*	*On Final Hearing.*
and	*Conclusions.*
HENRY V. WALKER, *et als., Defendants.*	59.206

Pitney, Hardin & Skinner (Alfred F. Skinner), with whom was associated Harry N. Selvage, (of the New York Bar) for complainant.

McCarter & English (Conover English) for defendants.

BERRY, *V.-C.*

This bill seeks an injunction against the defendants to restrain them from the use of secret formulae or processes of the complainant alleged to have been taken by the defendant Walker and also the use by the defendants of those formulae or processes and certain books or papers alleged to have been taken from the complainant's office by the defendant Walker, and from using any information obtained therefrom in connection with defendant corporation's business. The complainant is engaged in the manufacture of lacquers and enamels at its factory in Newark, New Jersey, and has been engaged in this business for many years and has built up a large and profitable trade. It was engaged in this business in 1906, at which time the defendant Walker first

entered its employ as manager. He later became a director and secretary of the company and finally president, and continued in that office until his removal by the Board of Directors in February, 1925. The bill alleges that subsequent to his removal as president the defendant Walker took from the office of the complainant, without permission or authority, a number of books, papers, invoices, records and documents containing valuable, secret and confidential information, and thereafter entered the employ of the defendant Miner Edgar Company and imparted this information to that company for use in its business in competition with the complainant, and that included in this information were copies of or information concerning certain secret formulae or processes of the complainant company which had been used by that company in connection with its manufacture of lacquers, enamels, etc. A preliminary injunction was granted at the inception of this suit and the affidavits and answering affidavits which were used on the application for that injunction were, by consent, submitted as evidence and the affiants were cross examined either in open court or before the master to whom this matter was referred. In addition to that considerable testimony was taken in open court. I think it has been clearly established by the evidence that the formulae or processes of the complainant company used in connection with its manufacture of lacquers, enamels, etc., were secret formulae or processes. At the time the defendant Walker entered the employ of the complainant company the formulae used by that company were in the possession of an employee by the name of Reuschle, who guarded them and kept them secret and imparted them

only to those employees of the company whose business it was to have them, and as necessary for their use in the manufacture of the company's products. When not in use, these secret formulae were kept under lock and key. Some time after the defendant Walker entered the employ of the complainant these formulae were delivered to him by Reuschle and under Walker's direction were transferred from a book in which they were kept by Reuschle to cards which were kept in a filing cabinet under lock and key. Several sets of these cards or books containing the same information were made up under the direction of Dr. Walker and placed in the hands of department heads who of necessity must have the information in connection with the manufacture of lacquers and enamels by the complainant. They were all, however, kept under lock and key when not in use. These secret formulae were referred to in the bill of complaint as "chemical formulae" and they had increased in number from a few hundred which existed at the time Dr. Walker entered complainant's employ to several thousand at the time of the termination of that employment. They had been modified and new formulae brought out from time to time during the course of years as exigencies required and because of changing conditions in the market and with reference to the availability of certain ingredients used in the manufacture, especially during the war period.

It is alleged that the defendant Miner Edgar Company is a competitor of the complainant and is about to enlarge its manufacturing activities to include a more extensive manufacture of lacquers and enamels, which business, up to the time of the employment of Dr. Walker by that com-

pany, had been inconsiderable and that it is the intention of Dr. Walker and the Miner Edgar Company to use the secret formulae and processes of the complainant in an active campaign of competition against the complainant company. Partially in support of this allegation the complainant has produced a letter from Ottowa Leather Company, in which that company claimed that a competing company had offered to furnish the Ottowa Company with lacquers and enamels made in accordance with the complainant's formulae and processes, but at a lower price. While the defendant Miner Edgar Company was not named in the letter it conclusively appears that the letter was inspired by that company and the competitive offer was obtained from it. The defense to this bill is (1) the complainant has no secret formulae or processes, such formulae or processes as it has consisting of well-known combinations or mixing directions known to the trade generally and which are easily obtainable from trade publications; (2) that if there were any such secret processes or chemical formulae in the possession of the complainant they were the product of Dr. Walker's own brain; that they had been imparted by him to the complainant and not by the complainant to him and that as between the two they were the property of Dr. Walker and not of the complainant; (3) that no books, papers, documents, invoices or records of the complainant had been taken away by the defendant Walker; (4) that if any such books, papers, records or documents were taken away by the defendant Walker they contained no secret or confidential information and were taken only for the purpose of use by him in connection with his accounting suit

then pending before this Court; and (5) that no information, confidential or otherwise, contained in these books, papers, documents, etc. had been imparted by the defendant Walker to the defendant Miner Edgar Company and that it was not the intention of that company to make use of any such information.

The proofs show, however, that the defendant Walker did remove from the complainant's office a number of books, papers, invoices and records containing confidential information and this was finally admitted by him and pursuant to the order of this Court certain books, papers and documents admitted to have been taken were impounded with the master pending their use in the accounting suit and after the accounting suit had been disposed of these books and papers were brought into open court by this defendant and tendered to the complainant. This tender was not accepted as a complete compliance with the demands of the complainant, but only *pro tanto*. He denied having taken any copies of the secret processes or chemical formulae. In view of the admission of Dr. Walker, however, all doubts on this point should be resolved against him, but only for the purpose of this suit and to afford adequate protection to the complainant. And this thought is emphasized by the Ottowa Leather Company letter incident. In the October succeeding the termination of Dr. Walker's employment by the complainant, he was employed by the defendant company as President and General Manager. There are also now in the employ of the defendant company two other former employees of the complainant who were closely associated with Dr. Walker when he was in the same employ. It is admitted that it is

the purpose of the defendant company to enlarge its field of activities in connection with the manufacture of lacquers and enamels with the intention of becoming a real competitor of the complainant company. Dr. Walker claims that it is not his intention to use those secret formulae or processes; that it is his intention to forget them entirely but that that will be one of his difficulties. He claims, however, to be entitled to the free and unrestrained use of whatever knowledge of the manufacture of lacquers and enamels he has, whether gained while in the employ of the complainant company or otherwise. In this connection it is pertinent that prior to Dr. Walker's employment by the complainant he was in the employ of the City of New York in its Health Department and that aside from the information which he had gained in the study of his profession he had no knowledge or experience in the manufacture of lacquers or enamels and almost all of his practical knowledge and experience in this line was gained while in the employ of the complainant. While he emphatically denies that he took any copies of the secret formulae or processes of the complainant or that he intends to use them in any way in connection with the business of defendant company, his attitude while on the witness stand in this Court, which was one of extreme contempt for the common herd in general, his evasive testimony and inclination to quibble over words and their meaning and use were not such as to inspire this Court with any very great confidence in his testimony or its truthfulness. An instance of his quibbling is evidenced in his distinction between "formulae" and "chemical formulae." The bill of complaint and supporting affidavits refer to the secret proc-

esses of the complainant company as "chemical formulae." In Dr. Walker's answering affidavit and also in his testimony before the Court he denied that the complainant company had any "chemical formulae" and in explanation of this denial, on cross examination, made a distinction between a strict chemical formula, such as expressed by the symbols H2SO4 and a formula indicating the proportionate quantities of the respective ingredients used in making up lacquers. These he designated as "mixing directions" and refused to consider them as formulae. It was on this fine distinction that his denial of the existence of chemical formulae or their abstraction from the files of the company by him was based. It is also important to note, in connection with this matter, that of the several thousand secret formulas or processes of the complainant company, about 90% of the complainant's product is produced from approximately three hundred formulae. It also appears that there is a practice amongst manufacturers of lacquers and enamels of analyzing their competitor's products for the purpose of determining the formulae used in such manufacture and that simple lacquers and enamels are easily analyzed but complex lacquers and enamels are either difficult or practically impossible of analysis to the extent of determining with accuracy the formulae used. It also appears that the majority of the complainant's formulae or secret processes are included in the complex class.

The evidence also showed conclusively that the defendant corporation had previously attempted in various ways to acquire secret lacquer formulae of other concerns engaged in the manufacture of lacquers, but unsuccessfully. In one

instance, one Thomas, an employee of the Thomas Engineering Company, was employed by the defendant company in the belief that he was possessed of certain secret formulae or processes for lacquer manufacture, only to find, after buying him out, that he had none. The admitted intention of competition with complainant, the Ottowa letter and other evidence, are all compelling and convincing. Considering all the circumstances of this case, I am forced to the conclusion that the complainant is now and has been since long before Dr. Walker's services to the complainant began, in possession of valuable secret formulae and processes, call them what you will, used in the manufacture of its lacquers, enamels, etc., and that Dr. Walker and his two fellow employees were employed by the defendant company with the deliberate intention and design of acquiring the complainant's trade secrets for use in competition with the complainant.

If, therefore, under our decisions, the acts and intentions of the defendants are proper subjects of equitable intervention and restraint, the prayer of the complainant's bill should be granted.

Salomon v. *Hertz,* 40 N. J. Eq. 400;

Stone v. *Grasselli Can Co.,* 65 N. J. Eq. 756;

Vulcan Detinning Co. v. *American Can Co.,* 72 N. J. Eq. 387 at 395;

Taylor Iron and Steel Co. v. *Nichols,* 73 N. J. Eq. 684;

Pomeroy Ink Company v. *Pomeroy,* 77 N. J. Eq. 293;

Globe Ticket Company v. *International Ticket Company,* 90 N. J. Eq. 605;

Cameron Machine Co. v. *Langston,* 115 Atl. Rep. 212;

Golden Cruller Co. v. *Manasher,* 95 N. J. Eq. 537.

In Stone *v.* Grasselli Company, *supra,* Justice Swayze, speaking for the Court of Errors and Appeals, said:

> "The right of a manufacturer, whose goods are made by an unpatented secret process, to protection by injunction against the divulging of his secret in a proper case, is now established by a well-considered line of cases in England and in several states. (citing cases) * * * These cases establish the principle that employees of one having a trade secret, who are under an express contract, or a contract implied from their confidential relation to their employer, not to disclose that secret, will be enjoined from divulging the same to the injury of their employer, whether before or after they have left his employ; and that other persons, who induce the employee to disclose the secret, knowing of his contract not to disclose the same, or knowing that his disclosure is in violation of the confidence reposed in him by his employer, will be enjoined from making any use of the information so obtained, although they might have reached the same result independently by their own experiments or efforts. We approve the principle thus established."

In that case there was an express contract. The ingredients used in the manufacture of complainant's product were well known to the trade generally and had been used for that purpose for years until complainant hit upon the particular processes involved. It was urged that the only advantage possessed by the complainant arose out of skill in handling and not out of a secret

process and that there was no secret either in the ingredients or in the method of compounding them. The Court found that the complainant combined the ingredients by a different method from any other in use and the result was a product of a different character and that the secret consisted in the knowledge of the proper method of mixing the ingredients and treating them in order to produce a product of proper consistency. The same argument advanced there, in effect, has been advanced here.

In Vulcan Detinning Company *v.* American Can Company, *supra,* Justice Garrison, speaking for the same Court and referring to a former officer and director of the complainant company and his use, in a new company, organized by him, of the secret processes of the complainant, said, at page 395, *et seq*:

> "Too much emphasis has perhaps been placed upon the element of absolute secrecy in the process and not enough stress has been laid upon the inequitable character of the defendant's conduct in making a use of such process that was inimical to the complainant's interests * * * the main ground for relief disclosed by the complainant's case is the existence of inequitable competition arising from a breach of trust, and hence referable to general principles of equity and not to those special doctrines by which unpatented secrets are protected. In the application of these general principles the secrecy with which a Court of Equity deals is not necessarily that absolute secrecy that inheres in discovery, but that qualified secrecy that arises from mutual understanding and that is required alike by good faith and by good morals * * * entirely aside from the technical secrecy of the process or the abstract question of property therein, the complainant is entitled to have its trustee, his associates and their servants restrained from using against the interests of the complainant the very process with which its trustee was entrusted for its benefit * * * the secrecy of a process may be viewed in two aspects, first, as having for its object the keeping of the public in ignorance of the nature, source or composition of a commercial product that is put upon the market; and second, as having for its object the prevention of competition by rivals in production * * * as regards the second, namely, prospective competition, such trust is equally violated if the trustee himself uses the secret to engage in such competition, even though, as would clearly in that case be to his interest, he sedulously kept the secret to himself excepting so far as his selfish use of it required the co-operation of associates and servants. To this the trustees might indeed answer, 'It is true that I agreed to keep your secret from others, but I did not agree that I would not myself make use of it in competition with you.' But it is not likely that a Court of Equity would regard such answer as in anywise ingenious or exculpatory."

Aside from the question of the secrecy of the processes, therefore, the "second aspect" referred to by Justice Garrison in the Vulcan Detinning Company case applies peculiarly to the instant case, as intended competition is admitted and it is also admitted that a competitior in the

business of manufacturing lacquers must know a manufacturer's processes in order to meet prices, etc.

The case of Taylor Iron and Steel Company *v.* Nichols, *supra,* is cited by counsel for the defendants, but in my judgment does not support the argument against the complainant's right to an injunction. There the terms of an express contract only were involved, and these terms could not be enlarged on the one hand or restricted on the other except as public policy required. The Court held that the written contract was so broad as to be in restraint of trade and hence unenforceable. But the rule in Stone *v.* Grasselli, *supra,* that a contract of secrecy may be implied from a confidential relation between employer and employee and the divulging of a secret enjoined was recognized. The Court said as to certain secret processes the written contract governed and that there was no proof as to the existence of others. One of the issues in that case was the existence of a secret process and the decree of the Court of Chancery was reversed apparently because there was no proof of the existence of such process as the evidence concerning such existence had been excluded in the court below.

In Pomeroy Ink Company *v.* Pomeroy, *supra,* the Court said that while there was no written or express transfer by Pomeroy to the company of his secret processes, discoveries or inventions "there is no reason why the transfer of such rights may not be based on an implied as well as an express contract." If Dr. Walker contends that the complainant's formulae and processes were the product of his own brain, which contention I do not think has any basis in fact,

then an implied contract might arise by virtue of which these formulae and processes became the property of the complainant and the absence of a written contract to that effect would be explained by the fact that Dr. Walker was president and general manager of the complainant company and the language of the Court in the Pomeroy Ink Company case would be applicable.

In Globe Ticket Company *v.* International Ticket Company, *supra,* Vice-Chancellor Lane held a complainant barred from injunctive relief because of laches and acquiescence, and this finding was affirmed by the Court of Errors and Appeals, but both courts recognized the rule of Stone *v.* Grasselli and other cases above cited.

Cameron Machine Company *v.* Langston Company, *supra,* and Wiggins Sons Company *v.* Cott-A-Lap Company, 169 Fed. Rep. 150, both recognized the rule referred to but no injunction was issued because the facts did not bring these cases within the rule.

In Golden Cruller Co. *v.* Manasher, *supra,* Vice-Chancellor Bentley held that the rule of Stone *v.* Grasselli extended to any information obtained by an employee in a confidential manner and that there was no distinction between trade secrets respecting secret formulae or designs and other confidential trade information.

While I recognize that "the remedy asked is an extraordinary one and should not be lightly indulged in" as was said in Wiggins Sons Company *v.* Cott-A-Lap Company, *supra,* the facts of this case, and the plainly apparent intention of the defendants, although denied by them, in my judgment warrant the issuance of an injunction, and the decree in this cause should be so framed as to protect the complainant, but at the

same time, preserve to the defendants their own property rights and privilege of earning a livelihood. The defendants should be restrained from using the secret formulae, processes and other trade secrets of the complainant and from representing to the trade that they can manufacture according to those formulae. They should not be restrained from representing that they can furnish lacquers and enamels equal in quality to those of the complainant, nor can they be restrained from soliciting business from the trade generally irrespective of whether or not that trade includes former or present customers of the complainant. In order to determine in the future whether or not the terms of the restraint to be imposed have been violated, I would suggest that the three hundred or more formulae of importance to the complainant be sealed and filed in this Court subject to inspection by the Court for the purpose enforcing the decree if necessity should require. I will advise a decree in accordance with these conclusions.

Heard, submitted, decided November 27, 1926.

FINAL DECREE.

Filed May 28, 1927.

IN CHANCERY OF NEW JERSEY.

Between	
MAAS & WALDSTEIN COMPANY, *Complainant,*	*On Bill, etc.*
and	*Final Decree.*
HENRY V. WALKER, *et als., Defendants.*	

This matter coming on to be heard in the presence of Mr. Alfred F. Skinner and Mr. Harry N. Selvage (of the New York bar) representing the complainant, and of Mr. Conover English, representing the defendant, and the Court having read the pleadings and affidavits used on application for preliminary injunction and the depositions taken before Nicholas W. Bindseil, Esquire, the Master to whom the matter was referred, and having heard testimony taken in open court and having duly considered the arguments of counsel made orally and by brief submitted, and being of the opinion that the formulae or processes of the complainant company used in connection with its manufacture of lacquers, enamels, thinners and nitro-cellulose solutions, were and are secret formulae or processes, and that the information as to the same obtained by defendant, Henry V. Walker, was obtained in confidence and upon the trust that no part of it should be disclosed or imparted to others without the consent of complainant, and that the defendant, the Miner Edgar Company, is a com-

petitor of the complainant, and intends to enlarge its field of activities in connection with the manufacture of lacquers, enamels, etc., and employed the defendant, Henry V. Walker and others, who were also employees of the complainant company, with the intention and design of acquiring the complainant's trade secrets for use in competition with the complainant, and that the defendants should be restrained from using or disclosing to any person the secret formulae, processes and other trade secrets of the complainant, and from representing to the trade that they can manufacture or sell, or are manufacturing or selling according to these formulae, and especially from using or disclosing to any person, any of the secret formulae, processes or other trade secrets of the complainant, copies of which appear in the paper marked "Schedule A," hereinafter referred to;

And It Further Appearing that the defendant, Henry V. Walker, upon leaving the employ of the complainant company, removed from its office a number of books, papers, invoices and records containing confidential information, and that the defendants should be ordered to return all such books, papers, documents, and that the said Henry V. Walker, his employees, agents or assigns, and the said Miner Edgar Company, its officers, agents, employees and assigns, should be enjoined from using or disclosing to any person, any confidential information contained therein,

It is now on this Twenty-sixth day of May, 1927, Ordered, Adjudged and Decreed that the information obtained by the defendant, Henry V. Walker, as to the formulae or processes used by Maas & Waldstein Company in connection

with the manufacture by it of lacquers, enamels, thinners and nitro-cellulose solutions, was obtained in confidence and upon the trust that it should not be disclosed or imparted to others without the consent of complainant.

It is Further Ordered, Adjudged and Decreed that the said Henry V. Walker, his employees, agents or assigns and any and all persons acting in concert with him, and the said Miner Edgar Company, its officers, agents, employees and assigns, and anyone acting in concert with it, be enjoined and restrained from using or disclosing to any person any confidential information received or obtained by said Henry V. Walker while in the employ of the Maas & Waldstein Company as to the formulae or processes of said company for the manufacture by it of lacquers, enamels, thinners and nitro-cellulose solutions, the cost of production of said lacquers, enamels, thinners and nitro-cellulose solutions, the prices at which the same were sold or other trade secrets of the complainant, and from representing to anyone that the defendants or either of them, or the employees, agents or assigns of either of them can manufacture or sell or are manufacturing or selling lacquers, enamels, thinners, or nitro-cellulose solutions by the same formulae or processes as those used by the Maas & Waldstein Company, but this injunction and restraint shall not be construed to restrain the said defendants from representing that they can furnish lacquers and enamels equal in quality to those of complainant, nor from soliciting business from the trade generally, irrespective of whether or not that trade includes former or present customers of the complainant.

Final Decree.

And It Is Further Ordered that the copies of secret formulae and processes and other trade secrets, enclosed in an envelope properly sealed and marked on the outside thereof with the title of this cause and the designation "Schedule A," and the further direction—"Not to be opened except by order of the Court of Chancery of New Jersey" be filed with this decree in the office of the Clerk of this Court; that it be kept by him in such place and manner as not to be open to access by any person other than the said clerk and/or his duly appointed deputies, and that no one shall be allowed inspection of said Schedule A except by order of this Court, nor shall it be opened by anyone except by such order.

And It Is Further Ordered, Adjudged and Decreed that the defendants return to complainant company all books, papers, invoices, records and documents taken by them or either of them, or by the employees or agents of either of them, and that the said Henry V. Walker, his employees, agents or assigns, as well as any person or persons acting in concert with him, and that the said Miner Edgar Company, its officers, agents, employees and assigns or any person acting in concert with it, be enjoined from using or disclosing to any person or persons any confidential information contained therein.

And It Is Further Ordered, Adjudged and Decreed at the foot of this decree that the complainant may have leave to apply at any time and from time to time for such further and other relief as the Court may deem proper.

And It Is Further Ordered, Adjudged and Decreed that the defendants pay to the complainant its costs in this suit to be taxed, together

Final Decree.

with a counsel fee of $2,500—to be included in said costs.

E. R. WALKER,
C.

Respectfully advised,

Maja Leon Berry,
V.-C.

A true copy.

Thomas Barber,
Clerk.

59 OCT.T.1927

The Evening Post Job Printing Office, Inc., 154 Fulton St., New York, N. Y.

New Jersey Court of Errors and Appeals.

Between

MAAS & WALDSTEIN COMPANY,
Complainant-Respondent,

and

HENRY V. WALKER and MINER EDGAR COMPANY,
Defendants-Appellants.

On Bill, &c.

On Appeal from Decree in Chancery.

BRIEF FOR DEFENDANTS-APPELLANTS.

This case comes up on appeal from a final decree advised by Vice Chancellor Berry. The case was heard on final hearing on the *ex parte* affidavits which had been submitted by both sides on the application for preliminary injunction, also upon the cross-examination of those affiants, and upon further testimony taken in open court before the Vice Chancellor (p. 326, line 30; p. 223, lines 25 to 40). Defendant, Dr. Henry V. Walker, had been connected with the complainant company from 1906 to February 1st, 1925. For a large part of that period he had been a stockholder and director of the Company, secretary of the Company, and for some ten years, prior to February 1st, 1925, President. The Company was owned by the defendant, Dr. Walker, and Messrs. Maas and Magnus, each of them owning a third of the stock, and those three constituted the Board of Directors and the officers of the Company.

On February 1st, 1925, while Dr. Walker was confined to his home by illness, a meeting of the two other directors, consisting of Messrs. Maas and Magnus, was held without notice of the object of the meeting being given to Dr. Walker, as a result of which a resolution was passed removing Dr. Walker from his office of President. This and other litigation, between some of the parties hereto, arises from that fact.

While the removal of Dr. Walker was upheld by the Supreme Court on a *quo warranto* application as technically within the provision of the By-Laws, he was entirely exonerated of the charges upon which the removal purported to be based.

See *Walker* v. *Maas & Waldstein,* 132 Atl. 322; 4 N. J. Misc. R. 230, where the Court said (132 Atl. at p. 323):

> "If we were to look at the alleged causes we should be obliged to hold that they were wholly inadequate. Dr. Walker, so far as the evidence indicates, actuated by high motives, engaged in a move which had for its object the protection of the interest of the company of which he was the executive head."

Following his removal as President in February, 1925, Dr. Walker, as a result of an arrangement made through counsel representing both parties, caused an examination to be made of the books of the complainant Company. As a result he brought a suit for an accounting in the Court of Chancery against the Maas & Waldstein Company, Maas and Magnus, Directors of that company, and Otto P. Seher, an employee of the Maas & Waldstein Company. This action was pending and undecided at the time of the hearing in the present action (p. 69, lines 12 to 15; p. 28, lines 20 to 38).

The bill in the accounting suit was filed May 19th, 1925.

The examination of the books was made in March or April, 1925 (p. 69, line 8). Dr. Walker did not recognize the right of the Board of Directors to remove him as President and, pending the determination of his *quo warranto* suit in the Supreme Court, he continued to return to his office at the factory, and because of his large interest as a stockholder as well as the fact that he was a director, endeavored in every way to further the interests of the Company (p. 28, lines 1 to 19).

In March, 1925, in connection with his examination of the books and for use on his proposed accounting suit, Dr. Walker took to his house in Newark three (3) bundles of duplicates of invoices which had been sent to customers and a loose-leaf book which he had been accustomed to compile as President containing data as to costs, prices, etc. The book and the duplicate invoices he conceived were material evidence in his accounting suit, and he desired them in his possession as a check on the records of the Company (p. 35, line 10). The invoices which were taken were for the purpose of supporting by original record the annual sales of the complainant Maas & Waldstein Company should the amount of sales as set up by Henry V. Walker in the accounting proceeding be disputed by the defendants in that cause. This figure of amount of sales was not disputed and it was therefore unnecessary to use the invoices or to offer them in evidence. They were never opened or used by the defendant Henry V. Walker. Following the filing of the bill of complaint in the suit at bar, and before final hearing in this suit, the accounting case came on for hearing before a Master to whom it had been referred. The loose-leaf book was used in connection with the trial of that case and put in evidence. After the filing of the bill of complaint in this case the invoices and the book were impounded by the Court in the custody of Mr. Bindseil as Special Master,

but the book continued to be used by counsel on both sides in the accounting suit (p. 263, lines 17 to 35).

The bill of complaint alleged (p. 9, lines 30 to 40) that the invoices were all for the year 1924 and showed the claims of complainant's customers and the quantity, price per unit, and total price for each shipment. The bill referred to the loose-leaf book as consisting of certain tabulated cost sheets and as containing secret and confidential information relating to the complainant's business (p. 10, line 5), and also that it contained a secret and confidential code to the chemical formulæ owned by the complainant (p. 10, line 35). The bill also alleged that the complainant owned more than 1,200 chemical formulæ, that these formulæ were on cards, that there were confidential numbers used by the complainant for reference to the formulæ which appeared on the cards, and that complainant always had access to these cards. Bill also alleged that the defendant, Miner Edgar Company, is engaged in the manufacture and sale of lacquers, etc., in competition with the complainant, and that on October 1st, 1925, the defendant, Henry V. Walker, became President and General Manager of the Miner Edgar Company.

The prayer of the bill was that the defendant return the invoices, tabulated bill cost sheets and the loose-leaf book containing the secret code to complainant's chemical formulæ and other confidential and secret data, and also all other documents, etc., which might be in the possession or custody of the defendants and that the defendants be ordered to deliver all these books and papers in their custody to the complainant, and also that the defendants be enjoined "from using or divulging to any other person or to each other any or any part of the secret and confidential code abbreviations and code numbers and formulæ relating to the complainant's business" (p. 12).

The defendants deny that any secret codes or confidential formulæ had been committed to Dr. Walker or that there were any such secret formulæ, and they denied that there had been any breach of trust or fraud on their part, and during the pendency of the trial the books and papers having served their purpose in the accounting suit, the defendant Walker tendered back to complainant all the books and papers which he had taken, which were accepted by them.

The final decree which was entered (pp. 339 to 343) decreed that the information obtained by Dr. Walker as to the formulæ or processes used by the complainant company was obtained in confidence and upon trust that it should not be disclosed. Further decreed that the defendants be enjoined from using or disclosing any information as to the formulæ or processes of the company or the prices at which the products were sold, or the trade secrets of the complainant, or from representing that they could manufacture lacquers, etc., by the same formulæ. The decree further ordered that copies of the secret formulæ and processes enclosed in an envelope and sealed be deposited with the Clerk, although no provision was made for the giving to Dr. Walker of a copy of the formulæ or processes thus sold and filed; and finally ordered that the defendants return to the complainant all books and papers taken by Dr. Walker although that had been done during the hearing and a full year before the making of the decree.

A fact of very great importance in this case and which must never be lost sight of is, that the books and papers mentioned in the Bill of Complaint were all taken by Dr. Walker months before he was connected with, or had any idea of being connected with, the defendant Miner Edgar Company; that the books and papers were taken solely for use on Dr. Walker's bill for an accounting and that

there was no connection whatever between their taking and the defendant Miner Edgar Company, and the Miner Edgar Company's subsequent employment of Dr. Walker was entirely without reference to these books and papers (Walker, p. 33, line 35 to p. 34, line 15; p. 99, line 35 to p. 100, line 5; Miner, p. 38, line 35, to p. 39, line 17; Melville, p. 40, lines 15-35). Neither Mr. Miner nor Mr. Melville even knew Dr. Walker had the books and papers in his possession until they learned it from the filing of the Bill (Miner, p. 39, line 15; Melville, p. 40, line 20), and Dr. Walker never, at any time, disclosed their contents to any one in the Miner Edgar Company (Walker, p. 38, lines 10-20; Miner, p. 39, line 1 and p. 104, line 20; Melville, p. 40, line 25).

The decree should be reversed for either one of two main reasons:

1. There were no secret formulæ or confidential statements entrusted to Dr. Walker, or taken by him.

2. There was no breach of trust on fraud committed by the defendants, or either of them.

I.

No secret formulæ or confidential statements were entrusted to defendant Henry V. Walker.

Complainant sought to bring its case within the well settled doctrine that equity will enjoin where there had been a breach of trust through the improper disclosure of trade secrets, confidentially entrusted to an employee, so it alleged in its bill (p. 8, line 35) that certain confidential information was imparted to Henry V. Walker by the complainant corporation, and that "in consideration of his employment and of the salary paid to him by the complainant company, the defendant Henry V. Walker agreed to conserve for the complainant said statements, invoices, codes, etc.

The defendant Henry V. Walker was for over fifteen years Director and for ten years President of the complainant Maas & Waldstein Company and necessarily and as a part of his duty was entirely and completely familiar with all of the company's affairs. He was during all of this time also a one-third stockholder in the complainant corporation. Neither Maas nor Mangus in their testimony make any claim that they entrusted anything to the defendant Henry V. Walker, and in fact they did not. He formed his business association with the complainant Maas & Waldstein Company in October, 1906, in the form of a contract by which the complainant corporation undertook to manufacture and market an invention of the defendant Henry V. Walker relating to household fumigation. In December, 1906, at the solicitation of the then President of the complainant Maas & Waldstein Company, and in order to help the complainant

out of a difficult situation arising from the resignation of their chemist, the defendant Henry V. Walker assumed the chemical work of the complainant Maas & Waldstein Company. He was under no obligation to do so under his contract. He continued as chemist until December, 1909, at which time, in recognition of the value of his services, he was given a ten per cent. interest in the corporation and made a director and officer, all of which is set forth in Exhibit C 2, printed at page 320 STATE OF CASE. The only present officer of the company who was an officer at that time is Milton A. Maas, and his testimony is void of any reference to the nature of Walker's employment or that anything was entrusted to him at that time. There was in the employ of the company at that time a man by the name of William Reuschle. An attempt is made by the complainant Maas & Waldstein Company to show that Reuschle entrusted certain things to the defendant Henry V. Walker. Reuschle, at the time mentioned, was a minor employee working under the late August Seher (p. 156, line 29). He received a salary, $18.00 a week. The likelihood of his having entrusted anything to the defendant is clearly negatived both by the nature of his employment and by his personal habits at the time, which are set forth at pages 100 and 101 STATE OF CASE.

At the time of the alleged disclosure by Reuschle, the chemist of the complainant was Mr. Walter Crockett. The defendant, Dr. Walker, succeeded him as chemist (p. 97, lines 1 to 35).

Mr. Crockett, if anyone, would know what the formulæ of the complainant, if any, were at that time, and what, if anything, was entrusted to Dr. Walker and whether any secrets were, in fact, entrusted to him, but he is not called to testify.

At the present time the chief chemist is Mr. Klinkenstein (p. 248, line 35), but he is not called either. Instead, Keller, of the sales department (p.

241, line 35), who had one term of chemistry when in college (p. 245, line 13), is called to say he could not duplicate on analysis the H. B. lacquer of the complainant, and *a fortiori,* the formulæ is secret. A reading of Keller's cross-examination shows that he has no qualification whatever to analyze anything. It is true that Reuschle had in his possession certain books containing manufacturing directions for some of the products of the company. These he treated as his personal property and they were not available to any employe of the company. At the direction of the defendant Henry V. Walker these various manufacturing directions were put on record so as to make them available to the employes of the complainant. Although there is nothing in the Bill of Complaint to identify these personal records of Reuschle as being among the things alleged to have been taken by the defendant Henry V. Walker, or to have been disclosed to him, an attempt is made to include them as a subject matter of the Bill. The fact is that none of the formulæ or manufacturing directions, which in 1909 were in the personal possession of Reuschle, is now used in its original form by the complainant corporation, nor are they included in their original form in the "more than 1200 formulæ, etc." referred to in the Bill of Complaint.

Reuschle at first denied that all of the original mixing directions had gone out of use (p. 157, lines 25 to 30); but he had to admit that they had entirely changed in the intervening twenty years or had been modified by subsequent discoveries and developments in manufacture. He said (p. 157, line 33):

> "Q. Some still doing business, are they? A. We sold all the New England trade that we are selling to today; that is, we are selling to the largest manufacturers in New England today that we sold long prior to Dr. Walker's entering into the company.

Q. The same customers? A. Yes, and the same lacquers, with some modifications, which every lacquer manufacturer made.

Q. Those originals have been improved upon, is that what you mean? A. They have been improved upon, but substitutions of ingredients which went out of the market or went very high in price, and every lacquer manufacturer in the country went to them, and naturally we went to them too.

Q. So you sort of rewrote the things? A. Yes, and just substituted some ingredients. We were not the only ones that did that."

And again, in response to his own counsel's questions, he testified (p. 163, line 37):

"Q. What were the modifications that you spoke of as being made in the various formulæ; modifications in what respect? A. In the manufacture of lacquers you have to juggle your formulæ or change them from time to time, but the principal modifications were when butyl acetate came on the market, and butyl alcohol, fusil oil or amyl alcohol and amyl acetate became prohibitive in price, and also was practically off the market for a long time, and butyl acetate and butyl alcohol came into universal use, and generally used in the manufacture of lacquers.

Q. This butyl alcohol and amyl acetate were solvents? A. Yes.

Q. And they took the place of other solvents, did they not? A. Yes."

It was these, now obsolete mixing directions, or formulæ, that Reuschle referred to as having been given by him to Dr. Walker. Reuschle said (p. 165, line 21):

"I am referring to the formulæ which we were manufacturing at the time, which were being sold and in use at the time.

Q. Were those things that you say were put on the books of account, or some other formulæ. A. They were all on the books of account; some had been discarded and some we were still using. Some of those that were still in use—as I say, in making lacquers, you change the formula quite frequently, and particularly those that were in use, I am speaking of, and being sold; those are the ones that I have reference to.

Q. Those are the ones that you have reference to as having been communicated to Dr. Walker? A. Yes."

It is clear from the testimony of Walker and the admissions of Reuschle that none of the formulæ as they existed when Walker took over the management of the factory of the complainant Maas & Waldstein Company are now in use. An attempt is made to show that they are secret. The evidence of secrecy rests solely on the fact that they were kept under lock and key and were not distributed broadcast. Keeping a thing under lock and key does not make secret what was not formerly secret. They were kept under lock and key like the other records of the company for the reason that the record had been produced at the expenditure of a good deal of labor and they were necessary in the daily business of the complainant company. In *Solomon* v. *Hertz*, 40 N. J. Eq. 400, the Chancellor says that the relief which is given in cases of this kind is given where one has invented or discovered, and keeps secret a process of manufacture. In the case at bar there is no evidence of any invention or discovery of any process to keep secret. Neither Maas nor Magnus had any working knowledge whatever of the character of these so-called "chemical formulæ" or their relation to the formulæ of other manufacturers. Magnus is the Treasurer and financial man. In his testimony, admits that he has no chemical professional skill (p. 109, line 30). Maas admits that he was not a practical manufacturing man (p. 205, line 37). If the Maas & Waldstein Company had any secrets to impart to the defendant Walker,

the time to have claimed secrecy was when he took over the chemical work of the complainant corporation. This is frequently done by companies who have, or think they have secrets, an employe being apprised of the claim to secrecy and being required to sign an agreement relative thereto (testimony of Flaherty, p. 228, line 12).

II.

The so-called secret formulæ were in no sense chemical formulæ. They were in reality merely directions for mixing well-known ingredients.

In one aspect of this case it really makes no difference what the formulæ or mixing directions are or whether they are secret or not. Dr. Walker did not take, or take copies of, any of the formulæ, and he handed back to the complainants, which they accepted, the "certain book" containing the abbreviations or codes. These abbreviations or codes are of no use whatever without the formulæ, as Seher admitted (p. 149, line 25).

The Vice-Chancellor found that the formulæ or processes of the complainant company were secret formulæ or processes (p. 326, line 35). He rather criticized Dr. Walker for making a distinction between formulæ and chemical formulæ (p. 331, lines 1 to 18). In making this distinction, however, Dr. Walker was undoubtedly correct. He is a scientifically trained gentleman, and speaks a scientific language.

In testifying that the complainant's so-called formulæ were not chemical formulæ, but were mixing directions, he was entirely substantiated by the

complainant's factory superintendent, Seher, and by Reuschle.

Seher testified (p. 151, line 16):

> "Q. In your affidavit verified October 6, 1925, you use this language: 'Complainant owns and keeps on file in the cabinet in the office formerly occupied by the defendant Henry V. Walker, its chemical formulas used in the manufacture of its products, which formulas number more than 1200.' Now, I ask you whether the formulas which you have referred to in that sentence are not in fact mixing compounds—formulas of mixing compounds?
> A. Formulas of compounds?
> Q. Yes, mixing instructions for compounds?
> A. Yes.
> Q. That is what they are, aren't they?
> A. They are instructions, yes.
> Q. For the production of the various products of the company?
> A. Yes.
> Q. Whatever that may be?
> A. Yes.
> Q. The formulas described in the various ingredients to be mixed together produce that product, isn't that right?
> A. Yes.
> Q. That is what you refer to as chemical formulas?
> A. Yes."

Reuschle testified (p. 154, line 25):

> "Q. What you call 'formulæ' were mixing instructions for that compound?
> A. Yes.
> Q. That is what you mean by 'formulæ'?
> A. Yes, that is the term we always used.
> Q. You used the term 'formulæ' for what you now say were mixing instructions, is that right?
> A. Yes, I would call them that, not alone mixing compounds, but ingredients that go into the compound, writing the recipe of a formula, as we call it, always did since I have been there,

of the ingredients that go into these compounds.

Q. The proportions of this, that and the other thing that go into the compound?

A. Yes."

It appeared quite clearly in the case that there is no novelty or secrecy about the manufacture of lacquers and enamels. That there is no novelty in the manufacture of lacquers appears from the testimony of Maas, the President, who testified (p. 203, line 30):

"Q. Coming back, now, to the formulæ used by your company, can you tell me in what sense they are novel or different from any other formula? A. In the sense that every formula for lacquer is different.

Q. They all have the same basis back of them? A. Yes.

Q. It is just a matter of a little variation in the ingredients? A. I should say so.

Q. So in the last analysis the difference is in the way the ingredients are mixed, or in the quantities that are put in? A. I believe so."

Each manufacturer claims that it can produce a product better than its competitor. It is quite customary for a given manufacturer to obtain a sample of his competitor's product from a prospective customer, or otherwise, and analyze that product. The complainant is accustomed to do that in common with other manufacturers.

Magnus, one of the officers and directors of the complainant, testified (p. 116, line 21):

"Q. Don't you know as a matter of practice, that lacquer manufacturers constantly analyze the product of their various competitors?

A. Yes.

Q. Maas & Waldstein does?

A. Yes.

Q. They all do?

A. Yes, they do."

Maas, the President of the company, testified to the same effect (p. 201, lines 15 to 25) and (p. 200, line 33).

Flaherty, who is connected with the Du Pont Company (p. 217, line 27) testified that it is quite common for one manufacturer to analyze the product of a competitive manufacturer, and that it is done every day, and that the companies employ chemists for that purpose, among other things (p. 229, lines 30 to 40). He says the Du Pont Company claims, for example, that it can duplicate the quality of any competitor (p. 230, line 15), and that all the customer is interested in is to get a good product at an equal or better price (p. 230, line 25). In most cases, he said, "you could come pretty near duplicating" the competitor's product (p. 231, line 18).

Furthermore, there is considerable literature on the subject of the manufacture of enamels and lacquers, including a large amount of journalistic literature.

The Vice Chancellor erroneously got the impression that the case was one involving secret processes. He said, addressing complainant's counsel (p. 213, line 10):

"The bill is filed not only for the return of these books, but for an injunction to restrain the defendant from the misuse of information which they claim he either fraudulently obtained or was not his information, and that he had no right to use; in other words, the knowledge of secret processes of the Maas & Waldstein Company. Am I right?

Judge Skinner: Yes."

The fact is, however, that the words "process" or "secret processes" are not used in the bill of complaint.

Nor does the evidence indicate that the so-called formulæ of the complainant were in any respect secret processes.

Dr. Walker, on cross-examination, testified as follows (p. 87, line 23):

> "* * * there were in the possession of Mr. Reuschle certain things that you took over; what were they? A. They were manufacturing instructions for certain nitro-cellulose products.
>
> Q. Did they give the ingredients to be put in those products? A. Yes.
>
> Q. And the quantity of them? A. Yes.
>
> Q. And what else? A. That is all."

And Reuschle testified that the so-called formulæ were directions giving the varying amounts of ingredients which went into the product and that the mixing did not amount to much. He said (p. 157):

> "Q. You mean by that, these mixing instructions had been increased? A. Not the mixing instructions, the writing out of formulæ with the proper amount of the various ingredients that go into the manufacture of lacquer.
>
> Q. The directions for the compounding of the various ingredients that went into them? A. And the varying amounts of the various ingredients, which was the most important. The mixing does not amount to much."

Most of the so-called "formulæ" which the complainant company has were created as a result of the requests of customers for some little variation over the stock product, as for example, lacquer that will dry quickly or not so quickly, or in the variation in color of the enamels, and needs of that kind. All of this is in accordance with well known principles (p. 306, line 33). Most of the so-called "formulæ" are made for the purpose of meeting the requirements of the salesmen (see Walker, p. 275, lines 12 to 30).

Mr. Miner testified that as a matter of fact, the formulæ of the complainant company would be of no practical benefit to the Miner Edgar Company

for the reason that the great percentage of the customers of the Miner Edgar Company furnish their own formulæ on which the Company manufactures for their own special needs (p. 39, line 29).

Dr. Walker reiterated many times that the Maas Waldstein formulæ were of no value to him or to the Miner Edgar Company, and that they did not intend to, were not, and would not make use of them.

All of these so-called formulæ consisted merely of a statement of the ingredients which are to be mixed together to produce a certain lacquer. The ingredients are all well known. The proportions vary according to the various purposes for which the product is to be used or the price at which it is to be sold. Substantially every possible combination is included in the formula list. Among them were formulæ as the result of an analysis of competitors' products. They include lacquers and other products for substantially every purpose as manufactured by about 150 other manufacturers in the United States. Owing to the limited number of ingredients which enter into the composition of these materials and the very large number of combinations used by the complainant corporation, in common with other manufacturers, it is substantially impossible to avoid a substantial duplication of their products, or the products of other manufacturers.

III.

We respectfully contend that the Vice Chancellor erred in finding that secret formulæ or confidential statements had been taken by Dr. Walker.

The Bill alleged that Dr. Walker took (1) invoices (p. 9, lines 27-37) and (2) certain tabulated cost sheets and a book containing a secret code to the chemical formulæ (p. 10, lines 14-40).

(1) The invoices, apart from the fact that they were never opened or used, contained no secret information whatever. They were duplicates of bills sent out to customers.

Maas testified (p. 192, line 37):

> "Q. And those invoices, they are simply lists of the goods that have been sold to customers, is that it? A. Lists of the goods, the prices; it is a duplicate copy taken right from the original copy that goes to the customer, an absolute duplicate.
>
> Q. It is a copy of his bill? A. It is a duplicate of the record.
>
> Q. But you have other copies of it in your office in New York? A. One copy. It is carried in a book; it is posted from there over to the journal and then to the ledger.
>
> Q. You have the journal and ledger in your office, haven't you? A. Yes.
>
> Q. So that you have everything that you mentioned here in the way of invoices? A. Yes.
>
> Q. The copy which you say was sent to the factory at Newark was practically a copy of the bill which went to the customer? A. It is a complete record, yes.
>
> Q. And that showed the stuff he bought and the price he paid for it and the terms of the credit? A. Yes."

Since these invoices mentioned in the Bill were merely duplicates of bills sent the customer, there was no great secret about them. Every customer the country over had one.

(2) The evidence was rather nebulous as to the contents of the "certain book". It is certain it did not contain the formulæ under which the complainant manufactured. Seher admitted they were all at the factory and had not been taken (Seher, p. 151, line 36, to p. 152, line 16).

Maas could shed very little light on what they were. He left the manufacturing end of the business to Seher. Maas testified (p. 195, line 30):

> "Q. You say that codes and formulæ, to your mind, are the same thing; what do you say about 'tables'; you speak of 'tables', in paragraph 8 of your affidavit? A. These are the same things for our records in New York. They may classify them differently in the factory.
>
> Q. Your records of what in the factory? A. The formulæ—codes.
>
> Q. Looked at from the standpoint of the New York office, codes, formulæ and tables are all the same? A. Yes.
>
> Q. And all relate to the manufacturing process? A. Yes.
>
> Q. Whether they are chemical formulæ or mixing directions, you don't know? A. No."

Seher said in his *ex parte* affidavit (p. 25, line 12):

> "The formulas are kept on cards in the said cabinet. The formulas are designated by the complainant in intrafactory and interdepartmental communications by confidential code numbers, which numbers appear on the cards with the formulas in the said cabinet."

Dr. Walker, however, did not take any cards, or copies of formulæ.

The codes, however, were mere abbreviations so

that certain formulæ could be identified (Walker, pp. 261-262).

Seher said that the abbreviations would be of no use without the formulæ themselves (Seher, p. 149, line 26). Now the "certain book" contained only abbreviations. It is not pretended that it contained the formulæ. Nor is it claimed that the formulæ were taken. And without the formulæ the abbreviations were of no use.

The Vice Chancellor found against the defendants on the facts, and found that the formulæ and processes used by the complainant were secret formulæ or processes (p. 326, line 35).

In so finding, he seems to have been influenced somewhat in reaching this conclusion by matters entirely immaterial, as for example, that Dr. Walker's attitude on the stand

> "was one of extreme contempt for the common herd" (p. 330, line 32).

Some of the Vice Chancellor's findings of fact can hardly be supported by the record.

(*a*) He says the proofs show that Dr. Walker removed books, records, etc., containing confidential information and

> "this was *finally* admitted by him" (p. 329, line 15).

If by this is meant that Dr. Walker finally admitted the removal of the books and papers, the conclusion is erroneous. He never made any secret of their removal and admitted it both in his answer (p. 14, line 24) and in his answering affidavit filed shortly after the filing of the bill (p. 33, line 35—p. 34, line 20).

(*b*) The Vice Chancellor says (p. 331, line 36):

> "The evidence also showed conclusively that the defendant corporation had previously attempted in various ways to acquire secret lacquer formulæ of other concerns engaged in the manufacture of lacquers, but unsuccessfully. In one instance, one Thomas, an employee of the Thomas Engineering Company, was employed by the defendant company in the belief that he was possessed of certain secret formulæ or processes for lacquer manufacture, only to find, after buying him out, that he had none."

The only evidence on that subject comes from Mr. Miner. He said, on cross-examination (p. 101, line 37):

> "Q. You have made various attempts to enter the lacquer and lacquer enamel business, haven't you? A. No, not various attempts.
>
> Q. You had a man named Schroeder there, experimenting, didn't you? A. We retained him in the laboratory for a short time, to make investigation.
>
> Q. Investigation into lacquers? A. And other lines as well.
>
> Q. You had a man named Thomas there, didn't you? A. Yes.
>
> Q. Bought him out, didn't you? A. Yes.
>
> Q. Bought his processes and all? A. Yes.
>
> Q. He had some formulas for lacquers? A. No."

And again (p. 102, line 25):

> "Q. Didn't Thomas have any formulæ for laquers? A. He claimed to have, but it appears that he didn't have.
>
> Q. They wouldn't work, would they? A. I wouldn't say that.
>
> Q. What do you mean when you say that he claimed to have them, but it proved that he didn't have them? A. We investigated some processes which he had claimed to have develeoped, which he had not developed.
>
> Q. And you bought him out? A. We bought him out on the theory that he did have some valuable processes.
>
> Q. And you found out that he didn't? A. We found out he didn't."

What, we ask, was improper about that!

The defendant company had a perfect right to expand its business in any legitimate way including the buying out of the interest of anyone owning or claiming to own a workable process.

The DuPont Company, after vainly trying to analyze an enamel made by the Arlington Company, bought that Company out and so got control of its enamel (Flaherty, p. 220, lines 7 to 33).

What difference was there between that and the defendant company buying out Thomas! None whatever. Each had a perfect right to do as it did, without adverse inferences being drawn from that fact.

(*c*) The Vice Chancellor also draws an adverse inference from the fact that (p. 329, line 36):

> "There are also now in the employ of the defendant company two other former employees of the complainant who were closely associated with Dr. Walker when he was in the same employ."

The two employees referred to are Maynard and Weaver.

Maynard had originally come to the complainant from Celluloid Zapon Co. He had left the complainant and had been out of their employ about five years before he was employed by the defendant company (p. 278, lines 20-26; p. 66, line 20).

Certainly no unfair inference ought to be drawn against the defendants from their employment of Maynard.

Weaver had formerly been foreman of the enamel room of the complainant (p. 278, line 34). He left the complainant and went with the defendant company in May, 1925 (p. 63, line 25). That was several months before Walker even considered or had any idea of going with the defendant company. That did not come up until August, 1925

(p. 99, line 36). Weaver changed his position to better himself (p. 65, lines 1-10). There was no connection whatever between Weaver's employment by the defendant company and Dr. Walker's removal of the books and papers for use in his accounting suit.

(*d*) The Vice Chancellor seems to have been much influenced by the Ottowa Company letter incident, and to have reached conclusions with respect to it not warranted by the evidence. He said, with respect to the allegations that the defendants intended to use the secret formulæ and processes of the complainant (p. 328, line 9):

> "Partially in support of this allegation the complainant has produced a letter from Ottowa Leather Company, in which that company claimed that a competing company had offered to furnish the Ottowa Company with lacquers and enamels made in accordance with the complainant's formulæ and processes, but at a lower price. While the defendant Miner Edgar Company was not named in the letter it conclusively appears that the letter was inspired by that company and the competitive offer was obtained from it."

And again, he said (p. 332, line 9):

> "The admitted intention of competition with complainant, the Ottowa letter and other evidence, are all compelling and convincing."

With all respect to the Vice Chancellor, he is in error when he says that "it conclusively appears" the letter was inspired by the defendant Miner Edgar Company", if by that is meant, it was inspired in a sense hostile to the complainant.

The letter appears in the Magnus *ex parte* affidavit as follows (p. 42, line 21):

> "I quote a letter received by us from the Eagle Ottawa Leather Company written from

its tannery at Grand Haven, Michigan, and dated November 24, 1925, which says:

> 'We are quoted lower prices on the materials that we are buying from you from a concern who guarantees absolutely to duplicate your product. This is interesting to us because in these times of severe competition in the leather business we have to buy our material as cheaply as we can.
>
> We have been very loyal to you and we would like very much indeed to hear from you as to what you can do for us. We cannot afford to turn propositions of this kind down. This house is quite responsible, otherwise we would not bother to take the matter up with you.' "

This letter, standing by itself, is incompetent evidence, and could only have been made competent by proof that it had been sent out by the defendants with a full knowledge of complainant's formulæ and the intention to steal away its customer. This was not the fact, and Magnus himself repudiated any such inference.

Magnus testified (p. 116, line 27):

> "Q. In the middle of the second page of your affidavit, you quote from the Eagle Ottowa Leather Company; was that letter addressed to your company? A. It was.
>
> Q. You are speculating, are you not, in your affidavit, when you say that the Miner Edgar Company is the responsible house which is mentioned in the letter? A. I don't say that they are the responsible house mentioned in the letter.
>
> Q. That is the inference you seek to create from your affidavit, is it not? Read your affidavit and see. A. I say in my affidavit that no other manufacturer of products similar to ours, who has any knowledge of our formula, or is in a position to say, as this letter says, that it can exactly duplicate our product, unless it be the Miner Edgar Company.

> Q. So the inference which you are seeking to create in the mind of the Court, to which this affidavit is addressed, is that the Miner Edgar Company is the responsible house mentioned in that letter, isn't that true? A. I am not taking it upon myself to be the judge. Yau may call it an inference, if you wish.
>
> Q. That is the inference you are seeking to have the Court draw, is it not? A. I am not attempting to create an inference on which the Court is to come to any decision.
>
> Q. Can you tell me what materiality that letter has in this case, unless it be based on the inference that the Miner Edgar Company is the responsible house mentioned in that letter? A. It is simply to bring out the fact that some manufacturer claims to be able to absolutely duplicate our product, and knowing that none of our competitors are in a position to absolutely duplicate our product, and being reasonably sure that Dr. Walker would be in a position to duplicate many of our products, it necessarily was our inference that the letter and offer probably came from the Miner Edgar Company.
>
> Q. Then that is the inference that you seek to create from your affidavit, isn't it? A. It is simply a statement of what I believe to be the fact.
>
> Q. Is that the inference that you desired the Court to draw, when you submitted this affidavit to it? A. I wouldn't attempt to influence the Court.
>
> Q. Then it is merely an abstract statement? A. Yes."

The letter was written by the Ottowa Company, and not by the Miner Edgar Company. Dr. Walker knew nothing about it, he was in Europe at the time. Dr. Walker said (p. 297, line 9):

> "Q. Do you know how it came about that the Eagle Ottowa Company wrote that letter, whether they had been interviewed by anybody? A. Yes, they had been.

Q. By one of your salesmen? A. Richard R. Good.

Q. Did he have any instructions from you to represent to them that the Miner Edgar Company could duplicate the products of the Maas & Waldstein Company? A. No, I was in Europe at the time.

Q. Did he receive any such instruction? A. He had received contrary instructions, not to mention Maas & Waldstein."

Good explained the whole thing fully, and it appeared he understood that the Ottowa Company bought from Anderson Chemical Company and he had tried to make Ottowa a customer of Miner Edgar Company rather than of Anderson. Good did not know Ottowa did business with complainant at all.

Good testified (p. 310, line 14):

"Q. Were you ever employed by the Maas & Waldstein Company? A. Never.

Q. When did you go out and interview the Eagle-Ottowa Company? At the instance of the Miner Edgar Company? A. About the first or second week of November.

Q. Of what year? A. 1925.

Q. Did you make any representation at that time that the Miner Edgar Company could duplicate the products of the Maas & Waldstein Company? A. I did not.

Q. Did you make any representation to them of the ability of the Miner Edgar Company to duplicate anybody's product? A. Well, I had previously to coming with the Miner Edgar Company been employed by the Anderson Chemical Company and I understood that they were the main suppliers of the Eagle-Ottowa Leather Company and I did intimate to them that in view of the fact that they were using the same dope solution that I had been using for 18 years with the Lancaster Leather Company and the formulæ had been furnished to me by the Anderson Chemical Company, that we were in a position to match their sample

fairly accurately if furnished with a can of the solution they were using.

Q. When you said we, who did you refer to? A. Miner Edgar Company.

Q. When you said match their solution, who did you refer to? A. Anderson Chemical Company.

Q. Was the Maas & Waldstein Company present in your mind? A. No, I did not know Maas & Waldstein were supplying the Eagle-Ottowa Leather Company.

Q. You have learned since that they did? A. Not yet, no."

Where in this incident is there anything from which a conclusion properly can be reached that the defendants were using the complainant's trade secrets in competition with it!

We submit that the evidence does not justify the decree of the court, that the formulæ used by the complainant were obtained in confidence and upon a trust, or that the defendants should be enjoined from using or disclosing them (p. 340, line 35; p. 341, line 30).

IV.

All of the books, papers and documents which were taken by Dr. Walker were returned to the complainant before the making of the decree.

The proofs showed that Dr. Walker took two classes of documents from the office of the complainant. One class consisted of three bundles of invoices. These were duplicates of bills which had been sent to customers during the year 1924. The other class consisted of what the bill called "certain tabulated cost sheets and a certain book containing

secret and confidential information relating to the complainant's business" (p. 10, line 5).

This book was in the nature of a private record, kept by the President in his office and also included with it some typewritten sheets which had not been physically attached in the loose-leaf book (p. 287, lines 10 to 25).

It developed in the accounting proceeding that it was not necessary to use the vouchers, so those bundles were never opened. The loose-leaf book was used in the accounting proceeding and was marked in evidence in that proceeding, and so were the separate sheets which went with it.

When the case at bar came on for hearing before the Vice-Chancellor, counsel for Dr. Walker tendered to the complainant, in open court, all of the invoices and the loose-leaf book, and other papers which had originally been taken by him (see the colloquy between Court and counsel, pp. 211, 217). The papers thus tendered were accepted by the complainant (p. 214, lines 10 to 25).

The proof was positive that the papers thus tendered back were all of the papers that had ever been taken by Dr. Walker from the office of the complainant company.

Dr. Walker testified without contradiction as follows:

> "Q. Now, doctor, here on the table before us are three packages which are supposed to contain invoices, and another package which contains the loose leaf book, so called, together with some loose sheets, which are not physically attached to, but which were bundled up with that book. Those things which are here before us now, constitute all the books, papers and documents which you took from the Maas & Waldstein Company?
>
> A. Yes, they do.
>
> Q. Referring to the bundle of invoices that are marked on the outside in red pencil as follows 'Invoices 1924, A to E,' and another package, 'Invoices 1924, F to M,' and the third package, '1924 O to Z,' those I understand contain, at least you instructed that they should contain the invoices for the year 1924?
>
> A. Copies of the invoices of 1924."

And again at page 286, line 25, as follows:

> "Q. Did you ever take them to the officers of the Miner Edgar Company—have they ever been looked at by any officers of the Miner Edgar Company?
>
> A. No, sir.
>
> Q. Where have they been kept by you?
>
> A. At my home in Newark.
>
> Q. When was it that those invoices were physically taken by you and placed in your automobile?
>
> A. In March, 1925.
>
> Q. When was it that you, by arrangement with and through counsel examined the books of the Maas & Waldstein Company?
>
> A. That was in March or April, 1925.
>
> Q. And was it following that examination that these invoices were taken?
>
> A. Yes, at about the same time, or the examination was in progress, or just upon its completion."

He also testified, without contradiction, with respect to the loose-leaf book:

> "Now, the fourth package which was produced in court this morning consists of this loose-leaf book and in the accompanying sheets, not physically bound in. Were these taken by you from the Maas & Waldstein Company?
>
> A. They were taken at the same time, March, 1925, late March.
>
> Q. Was that book which is bound up, in the nature of a company book or a private record, kept by you as president of the company?
>
> A. It was in the nature of a private record, it was kept in my office. Nobody else used it to my knowledge or had access to it.
>
> Q. And that record book as appeared from

the mark, was put in evidence in the accounting suit as Exhibit P. 7?

A. Yes.

Q. You also referred to some typewritten sheets which you say belong in, but were not physically attached in this loose-leaf book, and they were marked in the accounting suit, Exhibit P. 7A?

A. Yes, they belong in the book.

Q. And they relate to the same general subject matter?

A. Yes.

Q. And then besides those two exhibits, P. 7 and P. 7A, there were marked in the accounting suit four separate large sheets which were marked respectively C. 17, 18, 19 and C. 20, and which are a part of these papers which you took from the Maas & Waldstein Company, and generally what did they show?

A. They showed the same information as the bill book, but they ran by month instead of by year.

Q. Now, did these exhibits which I have last mentioned, P. 7, P. 7A, and C. 17, 18, 19 and 20, inclusive, all bear on your accounting suit?

A. Yes, sir.

Q. And they were put in evidence in that suit?

A. Yes, sir."

The bill inferred, rather than charged, that Dr. Walker had taken, or made, copies of some or all of the chemical formulæ belonging to the complainant company (p. 11, line 15). It appeared by the testimony quite clearly that there was no foundation for that inference, and that he had not, in fact, taken any such formulæ, nor had he made copies. Mr. Seher, the superintendent of the complainant's factory plant, referring to the cards upon which the formulæ were written, testified:

"Q. You know as a matter of fact those things are still there, don't you?

A. Yes, the cards are there.

Q. In other words, Dr. Walker didn't take

those away; you don't say that he did, in your affidavit, and he didn't as a matter of fact, did he?

A. He didn't take those cards away.

Q. And the more than 1,200 or several thousand, whatever they may be, are set up on these various cards, aren't they?

A. Yes.

Q. They are there in the cabinet yet?

A. Yes."

Dr. Walker testified:

"Q. Did you take with you any of those so-called formulæ?

A. No, I did not.

Q. Did you make any copies of them?

A. No.

Q. And so far as you know they are still with the Maas & Waldstein Company?

A. They were there when I left."

Now the prayer of the bill was that the defendant be ordered to return to the complainant company the books and papers taken.

This prayer of the bill was complied with without the necessity of a decree. They were physically turned over to the complainant in open court and accepted by it, and the proof was that the papers thus turned over and accepted constituted all of the documents taken by Dr. Walker.

Notwithstanding this, the decree recites that the defendant should be ordered to return all of such books, papers and documents (p. 340, line 30), and further decrees that the defendants return to the complainant company all books, papers, invoices, records and documents taken by them, or either of them (p. 342, line 20).

Inasmuch as the proof was that all had been given back and accepted, there was not only no occasion, but no foundation in the evidence, to decree that the documents, etc., be returned.

V.

There has been no fraud or breach of trust on the part of the defendants.

The case at bar is readily distinguishable from the cases cited in the Vice Chancellor's opinion (pp. 332 to 337) upon the facts.

In the case at bar there has been no fraud whatever or evil intention on the part of either defendant.

The books and papers were originally taken by Dr. Walker in March of 1925 in anticipation of his suit for accounting. He was engaged at the time in investigating the complainant company's books. It was customary for the complainant company to destroy, in the course of business, these duplicate copies of invoices. Dr. Walker thought he would need these invoices for 1924 in his accounting suit and so he instructed Dowd, an employee in the office, to sort out the invoices for 1924 and bundle them up (Dowd, p. 20, line 35; Walker, p. 34, line 15).

The loose-leaf book, containing the cost sheets, codes, etc., was also taken by Dr. Walker for the same purpose. All of the facts contained in that book were also contained in other records of the Company and Dr. Walker desired the book in his possession simply as a check on the other records of the Company for use in the accounting suit (p. 35, lines 1 to 15). No secret whatever was made of his taking all these books and papers. Not only did he instruct Dowd to bundle them up but he also instructed him, if any inquiry was made for them, to say that he had taken them to his house at Newark (p. 34, line 20). Dowd does not deny this.

Dr. Walker also stated to Kane and England, both employed by the complainant, that he was taking the loose-leaf book with him and that if any inquiry was made for it to say he had it in his possession (p. 34, line 35). Kane testified that Dr. Walker requested him to have the factory copies of the invoices of shipments sorted over and separated for the year 1924 and that this was done (p. 18, line 25). He does not deny that Dr. Walker stated to him that he was taking them or the book, and England was not even called to testify. Dowd, Kane and England were all employees of the complainant.

The formulæ by which the Company conducts its manufacturing operations were not taken by Dr. Walker nor were any copies thereof ever made or taken by him. They were of no use whatever in the accounting suit and his only object in taking the papers which he did take was for use in that suit (p. 35, line 15; p. 284, lines 20 to 30; p. 289, lines 15 to 20).

There was nothing sinister in the motive of Dr. Walker in taking books and papers which he did. The invoices would have been destroyed under the usual course of business had he not taken them and the loose-leaf book was officially no part of the Company's records but was a private record kept by him as President for his guidance in conducting the manufacturing policy of the Company. Its usefulness in the accounting suit was demonstrated by the fact that it was marked in evidence together with the detached cost tables which accompanied it and was the subject of much testimony and examination in that case as counsel for Mass & Waldstein Company, who appeared for the Company in the accounting suit, will not deny. The book was used in that suit to check the variation which Dr. Walker had discovered in the New York books in the manufacturing profits (p. 266, lines 17 to 25),

and it was used to support the figure which Dr. Walker used for the total expenditures (p. 265, lines 5 to 10).

The taking of the "certain book", even with the most evil intent, could have done the complainant no harm. If Dr. Walker had really wanted to pirate the complainant's formulæ and secrets he could readily have done so by taking the formulæ on the cards, which were in his office.

He did no such thing, and the "certain book" which he did take, he returned after it had served its purpose in the accounting suit.

He testified on cross-examination of the use he made of the book (p. 266, line 17):

> "Q. You took those papers and books for use in your suit against the Maas & Waldstein Company for an accounting as to profits. A. Yes.
>
> Q. Because of the variation that you thought you had found in the manufacturing profits as shown by your books that you kept at the factory, and the profits as shown by the New York office? A. Yes, that is correct.
>
> Q. And this is one of the books you took; you admit that? A. Yes.
>
> Q. Then you expected to get from this some information that would tell you what the cost was of the articles that had gone into the manufacture, didn't you? A. No, I did not.
>
> Q. Didn't you expect to get from this some information as to the cost of the labor that had gone into it? A. No.
>
> Q. What did you expect to get from this that would help you to give any information to the Court on the question of the profits, whether the manufacturing profits at the factory or the profits shown in the New York books? I used the book in the accounting proceeding to support the allegations in the complaint as to the expenditures.
>
> Q. I didn't ask you what you used it for; I asked you what you took it for? A. That is what I expected to do; I expected to do and did so. I used it to support the figure I used for the total expenditures."

The invoices were not used in the accounting suit and were, in fact, never opened, but were returned in the original wrapping in which they had been taken from the factory (p. 269, line 39, to p. 270, line 10; and see statement of Mr. Bindseil, Master, p. 263, lines 17 to 35).

The bill seeks to create the inference that there was a vital connection between the taking of these various books and papers by Dr. Walker and his employment and connection with the defendant Miner Edgar Company, and the Vice Chancellor seems to have been much influenced by this inference.

The fact is that there never was, and never has been, any connection whatever between the taking of those books and papers by Dr. Walker and the Miner Edgar Company. The books and papers were taken in March of 1925. Dr. Walker did not become connected with the Miner Edgar Company until September 29, 1925 (p. 34, line 10), six months later.

Not only so, but there was not even any discussion or negotiation between Dr. Walker and the Miner Edgar Company for him to become connected with it, nor did he even have the matter in mind or under advisement until August of 1925, some five months after he took the papers and about a month before he actually went into the employ of Miner Edgar Company (p. 34, line 12; p. 99, line 35, to p. 100, line 5).

Furthermore, Dr. Walker never disclosed to the Miner Edgar Company or anyone connected with it, any of the books or papers which he took or their contents. In fact, the other officers of the Miner Edgar Company did not know that he had them in his possession at all until the bill of com-

plaint was filed (see Walker, p. 36, line 35; Miner, p. 38, line 35, to p. 39, line 18; Melville, p. 40, lines 19 to 35). Mr. Melville was in charge of the production of the Miner Edgar Company and would have known, if anybody did, that the formulæ or other secrets of complainant company had been communicated to the Miner Edgar Company (p. 145, lines 35 to 40).

Complainant made some effort, through the affidavit of French, to imply that Dr. Walker was in communication with Mr. Miner earlier than August of 1925 (p. 56, lines 10 to 30). He does not fix any time prior to August. He says he saw him at the office of Miner Edgar Company in New York but does not definitely fix any time prior to August. Dr. Walker says that he never physically entered the Miner Edgar Company's office until the latter part of August, 1925 (p. 58, line 28).

French had been discharged from the Miner Edgar Company by Dr. Walker after he became President of that Company (p. 60, line 23; p. 171, lines 10 to 20) and furthermore, French, at the time he testified, had a suit pending against Miner Edgar Company in the Court of Chancery and was himself a defendant in the suit by Miner Edgar Company against him in the Supreme Court (p. 172, lines 10 to 25). There is no foundation in the evidence for the conclusion of the Vice Chancellor that there was a deliberate intention and design on the part of the defendant Company of acquiring the complainant's trade secrets for use in competition with the complainant.

The fact, therefore, that Dr. Walker took the company's books and papers for the express purpose of use in his accounting suit; that none of the papers so taken contained the formulæ under which the Company manufactured; that he took them long prior to any intention or thought of connection with the Miner Edgar Company; that he never disclosed

their contents to anyone in the Miner Edgar Company, and that he returned them to the complainant after they had served their purpose in the accounting suit, creates a very different situation from that where the defendant company seeks to acquire the secrets of a competitive concern or where the individual defendant commits some breach of trust in order to acquaint the defendant Company with complainant's secret.

This is illustrated by an analysis of the cases cited in the Vice Chancellor's opinion (p. 332).

Salomon v. *Hertz*, 40 N. J. Eq. 400, was an application for preliminary restraint which was granted. The defendants had left the complainant and made arrangements with complainant's competitor to enter into business with him. The preliminary restraint was continued because the Chancellor said (p. 402):

> "The sole object of the suit is protection by means of injunction. To dissolve the injunction now would practically decide the cause in favor of the defendants, without giving the complainant an opportunity to establish the truth of the case made by his bill. It is the duty of the court in such a case as this, in the exercise of a sound judicial discretion and discrimination, to retain the injunction until the final hearing."

The case at bar is on final hearing and the reasons which impel the court to grant a preliminary injunction are not now present.

In *Stone* v. *Grasselli Chem. Co.*, 65 N. J. Eq. 756, there was not only an express contract by the defendant Goss not to reveal the secrets of manufacture (pp. 758 and 760), but there was positive proof of fraud on the part of both the defendant Chemical Company and the defendant Goss. This court said (p. 761):

> "(2) The evidence satisfies us that the Grasseli Chemical Company knew that Stone

> was manufacturing a superior article to its own; that it had been for some time trying to discover Stone's method of manufacture; that it had entered into correspondence with Goss and employed him while he was still in Stone's service; and that, immediately upon his coming into the employ of the defendant company, it sought, through Frazier, to learn Stone's secret and, having learned it, was about to make use of it to manufacture a similar substance by Stone's process, to be sold in competition with his.
>
> These facts leave no doubt that the Grasselli Chemical Company acted in fraud of Stone's rights in the effort to learn his secret by inducing his employe to divulge the same."

There is no such proof in the record of the case at bar. On the contrary, the evidence shows that Dr. Walker was actuated by an entirely proper motive in taking the books and papers, that he had no connection whatever with Miner-Edgar Company at the time and that he carefully guarded them and their contents.

Vulcan Detinning Co. v. *American Can Co.,* 72 N. J. Eq. 387, relied on by the complainant, is so totally unlike the present case, on its facts, as to be of little value in determining the controversy. In the *Vulcan* case (1) the process of manufacture was a real secret and was carefully guarded as such; and (2) the defendants committed a most flagrant breach of trust against the complainant.

Justice Garrison, speaking for the Court of Appeals, said (p. 393):

> "That the complainant carefully guarded such secret as it had acquired is amply proved in the case; that Assmann as one of the original promoters and one of the first directors of the complainant was especially impressed with the importance of so guarding the process is shown in the testimony in many ways, one only of which need now be mentioned, namely, that he

> himself became, individually, the depository of a copy of the formula of the process for the express purpose of guarding it for the mutual benefit of himself and his associates. The enterprise conducted upon these lines was from the very first a success, both practically and commercially, and so continued until the year 1901, in which year Assmann transferred his personal business as a manufacturer of tin cans to a corporation created in that year, namely, the American Can Company, the defendant corporation in the present suit. Upon the organization of this company, Assmann became its president, sold out all of his holdings of stock in the two detinning companies, resigned his directorship in each, and became the leading spirit in the installation for the American Can Company of two plants using a process of detinning similar to the complainant's, having called to his assistance for this purpose three former employes of the complainant, who, together with Assmann and the American Can Company are the defendants to the present bill.
>
> The testimony admits of no other rational conclusion than that the detinning plants that thus came into existence in competition with the complainant's are employing the process originally purchased by the complainant, which Assmann had undertaken to safeguard in its interests. That this result was brought about by a breach of confidence upon Assmann's part toward his original associates both as regards the use of the process itself and the enticement of the former employes of the complainant into his scheme is also the only legitimate inference that can be drawn from the proofs; that in both of these respects he was acting directly on behalf of the defendant corporation, of which he was both president and agent, follows as a necessary deduction."

No such situation obtains in the case at bar, either with respect to the existence and guarding of any secret processes, or the breach of any trust in connection therewith by the defendants.

There is not only no proof here that the defendants have made use of any confidential information Dr. Walker may have about complainant's processes, but the proof is exactly the other way. No use whatever was made of the data taken (which has now been returned); but Dr. Walker testifies that he has no desire or intention of making lacquers or enamels or any products by any of the complainant's formulæ.

Dr. Walker testified that not only was it not his intention to make lacquers the same as Maas & Waldstein but he was going to avoid making them if possible (p. 274, line 35). And again he testified (p. 277, line 37):

> "Q. At any rate, you do not intend to make any conscious use of the formulæ with which you have become familiar while with the Maas & Waldstein Company?
>
> A. None whatever; I wish I could forget them.
>
> Q. Your only fear is that you may not be able to?
>
> A. That is it.
>
> Q. You have no desire to know or to have any list of the customers? A. None whatever."

In *Taylor Iron & Steel Company* v. *Nichols,* 73 N. J. Eq. 684, there was a written agreement between the Steel Company and Nichols by which Nichols agreed that he would not, at any time, indirectly or directly, during the term of the agreement or afterwards, divulge any information known or thereafter acquired by him regarding the processes of the complainant. This court refused to enforce such an agreement (p. 687). This court criticized the manner in which the case had been tried (p. 688) because the Vice Chancellor refused to admit evidence as to the details of the alleged secret processes and reversed the decree without prejudice to further proceedings in the Court of Chancery (p. 692). The Vice Chancellor, in the case at bar,

thought the *Nichols* case was helpful (p. 336, lines 5 to 30) because it upholds the rule that a contract for secrecy may be implied from a confidential relation between employee and employer and that the divulging of a secret may be enjoined (73 N. J. Eq. p. 688). That principal of law is not disputed and the application of it, of course, depends on the facts of any given case.

It may be observed, in passing, that the case at bar was tried in the same erroneous manner as the *Nichols* case, in that no evidence whatever was admitted as to what the secret formulæ are although that issue was directly created by the allegations of the bill (pp. 7 to 12) and the denials of the answer (pp. 13 to 15).

Pomeroy Ink Co. v. *Pomeroy,* 77 N. J. Eq. 293, is clearly distinguishable on the facts. The inventor, Pomeroy, had transferred his invention to Pomeroy Brothers Co., and it passed by subsequent sale into the hands of complainant.

Pomercy, the defendant (p. 295), "had copies of these formulas and formula notes, and after leaving the employ of the complainant company, offered for sale to dealers complete sets of the formulas, stating in his circulars or letters offering them for sale, that he was the main owner of Pomeroy Brothers Company, and had sole charge of its chemical research, and that under his supervision, its formulas had been completely revised and wonderfully improved. The offer to sell included full directions, exact names of colors and raw materials and where to buy them. He also states that the Pomeroy Brothers Company, being now out of existence, he is not under any obligation as to his knowledge."

There is nothing like that in the case at bar. In addition, the question of law was different. Emery, *V. C.,* said (p. 297):

> "The present case is not one where complainant's right to the use of the formulas and

formula notes as against the defendant, depends upon the principle of confidential communication, for as to this feature of the case, the defendant, while an officer and manager of the company, was himself the inventor or discoverer of the process and communicated it to the company. But the vital question in the case is whether the defendant, the discoverer or inventor of the processes disclosed by the formulas, transferred to the Pomeroy Brothers Company the exclusive right to the formulas and formula notes, as their property. If so, such transfer is binding on him and passed with the assets of the company to the complainant."

In *Globe Ticket Co.* v. *International Ticket Co.*, 90 N. J. Eq. 605, the decree of the Court of Chancery dismissing the bill because of the acquiesence of the complainant in the continued use of the alleged secret device (p. 611) was affirmed by this court. The case has no bearing on the suit at bar.

Golden Cruller &c. Co. v. *Manasher*, 95 N. J. Eq. 537, is helpful by way of contrast. In that case Manasher had made a written agreement (p. 538):

> "Not sell or turn over the list of customers on my route to any other party without first obtaining the written consent of said Golden Cruller and Doughnut Company."

The bill alleged (p. 538):

> "that, in anticipation of opening up a competing business with that of the complainants, Manasher has taken advantage of his knowledge of the customers that he supplied, gone to the latter and tried to prevail upon them to discontinue patronizing the complainant's business and to purchase from the defendants instead, while both of the defendants have attempted to entice other employes of the complainant away from its service and into their own."

Cameron Machine Co. v. *Langston*, 115 Atl. 212 (Foster, *V. C.*), is cited by the Vice Chancellor (p. 337, line 20) as recognizing the ruling that an unpatented secret process is entitled to protection by injunction against the divulging of the secret in a proper case (p. 214). This rule of law is not disputed. The case, however, is a strong case for the defendants.

In that case the complainant sought to restrain the defendant Sieg from divulging certain secret features of a machine designed and manufactured by it, and also sought to restrain the defendant Langston from using any information obtained from Sieg.

The Vice Chancellor discussed two questions as essential to his determination:

(1) Did the complainant possess and embody in its machine any secret features or elements for the manufacture of such a machine?

(2) Did the defendants Langston and Langston Company obtain knowledge of the secret features from Sieg under such circumstances that they should be enjoined?

The Vice Chancellor reviewed the evidence, from which he concluded that the existence of any such secret feature or element was not clearly established, and dismissed the Bill. He said (p. 214):

> "The existence of any such secret feature or element is not only not clearly and satisfactorily established by complainant's proof, but the existence of any such feature or element is denied by Sieg and Langston and by other witnesses. If any such secret feature exists there is no proof to show that Sieg knew of it or divulged it to the Langston Company or to Langston; while defendant's evidence affirmatively shows that Sieg never knew of such secrets, and never made disclosure of any such secret to any one. There is no proof to sup-

port complainant's contention that Langston knew when he employed Sieg that Cameron was designing a new machine; nor that beyond the fact that Sieg knew he was engaged in designing a new type of machine for Cameron is there anything to show that Sieg obtained knowledge of Cameron's secrets, if he had any."

The Vice Chancellor dismissed the bill, but in doing so gave the complainant in the case the benefit of every doubt. He said (p. 214):

"For the purposes of the case I have assumed that the relations between Sieg and the complainant were so confidential as to raise an implied contract which prevented him from divulging any information he obtained of complainant's trade secrets as a result of this relation."

After stating the rule and citing the cases to the effect that the misuse of trade secrets will be enjoined he concluded on the facts as follows:

"Complainant's proofs fall far short of bringing the case within the application of this principle, as they fail to establish in complainant the trade secrets it claims; and, if such secrets were held to be established, the proofs further fail to show that Sieg had knowledge of them; that he divulged this knowledge to Langston, or to any one connected with the Langston Company; and that Langston, or his company, had made, or were making, any use of the information so obtained. I will advise that the bill be dismissed."

Vice Chancellor Foster dismissed the bill in that case because, among other things, the proofs failed to show that the defendant Sieg had divulged the secret or that the Langston Company had made or was making any use of it.

Similar situation applies to the case at bar. Dr. Walker has not divulged any of the secrets of the Maas & Waldstein Company and neither he nor the Miner Edgar Company are making any use of any such secrets.

The decree should be reversed as being unwarranted by both the law and the evidence.

The decree goes on the theory that the complainant had secret formulæ or processes which the defendants improperly obtained possession of and still have in their possession, and decrees that the defendants be enjoined from using these formulæ or processes (p. 341); decrees that a copy of them be deposited with the Clerk of the Court (p. 342, lines 1 to 18) and decrees that the defendants return to the complainant all books, papers, etc., taken by them (p. 342, lines 18 to 32).

The decree entirely overlooks the fact that everything in the way of books and papers which were taken by Dr. Walker have been returned.

It equally ignores the fact that no copies of any formulæ or processes of the complainant were taken or retained by defendants or either of them.

It requires the deposit of the formulæ with the Clerk of the Court without any provision for any copy thereof being given to the defendants, and the defendants, without such knowledge, are forbidden to use or disclose the formulæ or processes of the complainant whatever they may be.

In *Taylor Iron & Steel Co.* v. *Nichols,* 73 N. J. Eq. 684, this court said on page 690:

"We think orderly procedure requires that before the defendant is enjoined, he should be definitely informed what it is he is forbidden to do. In no other way could the judge in the

court of first instance, or this court on appeal, determine hereafter whether there had been a violation of the injunction, in case of proceedings for contempt."

The decree assumes the existence of secret formulæ or processes not only in the face of the evidence set up in the record that there were no such secret formulæ and processes, but in the absence of proof as to what the alleged formulæ or secret processes were.

In that respect the case is almost identical with the *Nichols* case, *supra,* where this court said (p. 688):

> "The learned vice-chancellor perceived the difficulty we have mentioned, but held that the agreement was limited to processes in use by the complainant which were not known to Nichols until they were disclosed to him by the complainant. If we were able to adopt this restricted meaning, we should still think the covenant an unreasonable restraint."

And again, in commenting on the terms of the injunction, this court said in the *Nichols* case in language which is equally applicable here (p. 689):

> "The terms of the injunction are very broad. It restrains the defendant from divulging secret methods and processes, as if there was more than one, as, indeed, there may be, and it contains nothing by which it can be hereafter determined what are the methods and what are the processes, or whether the two are to be distinguished. The difficulty was thus expressed by Lord Eldon in an early case: 'The only way by which a specific performance could be effected would be by perpetual injunction, but this would be of no avail, unless a disclosure were made to enable the court to ascertain whether it was or was not infringed; for, if a party comes here to complain of a breach of injunction, it is incumbent on him first to show that the injunction has been violated.' *Newbery* v. *James,* 2 Meriv. 446, 451."

The result was that this court in the *Nichols* case reversed the decree, saying (p. 690):

> "The decree must be reversed to the extent that it enjoins Nichols from divulging or disclosing, directly or indirectly, to any person, firm or corporation, the secret methods and processes used by the complainant, and enjoins the American Brake Shoe and Foundry Company from disclosing or making use of any information relating to the secret methods and processes communicated to it by Nichols."

Counsel for the complainant argued in the court below that the defendant would suffer no harm by having an injunction go against them.

There are two answers to such an argument:

(1) The defendants would suffer harm, and

(2) Such a reason is no good ground for the issuing of an injunction.

(1) Dr. Walker testified that the Miner Edgar Company does not represent that it could duplicate another company's product (p. 299, line 35), and that it does not wish to represent to a customer that it can make the same enamel or lacquer that the complainant company makes (p. 300, line 15), and that the salesmen are distinctly instructed not to do any such thing (p. 300, line 18). He was then questioned by counsel and the Court as follows:

> "Q. So that you would suffer no harm if you were told by the Court not to do that?
> A. Yes, we would suffer harm if the implication that some restriction were placed upon our liberty of action, or in that we were seeking to do something that was not ethical.
> Q. No other?
> A. I don't care to speculate what harm might follow.
>
> The Court: Do you know of any other?
> Witness: The mere fact that we were enjoined——

The Court: You stated that that would be merely a psychological effect on customers?

The Witness: You mean, would it affect our activities in any way?

The Court: Yes.

The Witness: Except the necessity of trying to avoid any apparent conflict.

The Court: You said this morning that it was your intention to avoid conflict anyway?

Witness: It is our desire, but the field is so covered and criss-crossed that that might be an impossibility. If we are not at liberty to use the same ingredients and same proportions, that precludes us on price. We can't meet the prices of the other man. That is the object of most of this compounding, to meet a particular price, otherwise lacquers consist of expensive ingredients, and so much of a diluent as they will carry. In order to meet commercial conditions it is necessary that a manufacturer be free to use these diluents. If we must avoid substantially the combinations of the Mass & Waldstein Company, or anybody else, from a commercial standpoint, it excludes us from the field.

Q. You want, then, to be free to use the materials that are used by other manufacturers, is that right, for one thing?

A. Yes.

Q. And you want to be free to use the processes of manufacturing lacquers that are common to the other manufacturers, is that right?

A. Yes.

Q. Do you want anything else?

A. We don't want any restrictions on us whatever. We want to be just as free as the Maas & Waldstein Company."

(2) The fact that an injunction would do no harm (if it be a fact, which is a large assumption) is no ground for issuing an injunction.

In *Lutheran Church* v. *Masehop,* 10 N. J. Equity, 57, Chancellor Williamson said:

> "The court cannot grant an injunction to allay the fears and apprehensions of individuals; they must show the court that the acts against which they ask protection are not only threatened, but will, in probability, be committed to their injury."

In *Meyer* v. *Somerville Water Company,* 82 N. J. Equity, 572, Vice-Chancellor Backes, refusing an injunction in the face of a positive disclaimer of the defendant that it had no intention of doing the thing, the doing of which the complainant sought to enjoin, said:

> "Where a defendant asserts positively that it is not his intention to do a certain act or to infringe a certain right, and there is no evidence to show any intention on his part to do the act or infringe the right, the court will not interfere. *Kerr Inj. 13; Whalen* v. *Dalashmutt,* 59 Md. 250. The court is not obliged to accept the denial of the defendant. *Fleckenstein* v. *Fleckenstein,* 53 Atl. Rep. 1043. But it ought to, when the evidence satisfies, as it does in this case, that the denials speak the truth. Of course, if a defendant has once offended, the rule does not obtain. *Beach* v. *Sterling Iron and Zinc Co.,* 54 N. J. Eq. (9 Dick.) 65. To justify the court in granting the relief, it must be reasonably satisfied that there is an actual intention on the part of defendant to do the act which it is sought to enjoin, or that there is probable ground for believing that, unless the relief is granted, the act will be done. And it is not a sufficient ground for interfering that, if there be no such intention on the part of defendant, the injunction can do no harm. Nor will the court interfere when the evidence shows that there is no probability of defendant doing the act which it is sought to restrain. So the relief will not be granted unless the injury to the plaintiff is threatened or imminent or is in all probability about to be inflicted, and the writ will not issue merely to allay the fears or apprehension of the plaintiff where there is no showing or reasonable ground for believing that the defendant is about to commit the

> wrongs complained of or where it appears that he is without the opportunity of intention of so doing. *High Inj.* (4th ed.) Sect. 22."

Similar rules have been laid down by this Court as bearing on applications for preliminary injunctions which, *a fortiori,* apply with greater force to the making of a permanent injunction by final decree.

In the same case, *Meyer* v. *Somerville Water Company,* 79 N. J. Eq. 613, on appeal from the denial of a preliminary injunction, this Court said:

> "It will not be granted merely to allay the fears and apprehensions of individuals. They must show the court that the acts against which they ask protection are not only threatened, but will, in probability, be committed to their injury. *Lutheran Church* v. *Maschop,* 10 N. J. Eq. (2 Stock.) 57."

The same rule was reiterated by this Court in *Brunetto* v. *Town of Montclair,* 87 N. J. Eq. 338 at 341, citing *Meyer* v. *Somerville Water Company, supra,* and *Lutheran Church* v. *Masehop, supra.*

The case of *H. B. Wiggins Sons' Co.* v. *Cott-A-Lap Co.,* 169 Federal 150, is quite in point. Judge Platt, in the District of Connecticut, said (p. 151):

> "The evidence shows that Cornelison is a consulting chemist, and as such was employed by the complainant in its business at Bloomfield, N. J., for a number of years."
>
> "In the case under discussion there is no doubt about the confidential employment and possession of trade secrets by Cornelison. He has now left the employment, and carries the secrets with him. He has accepted employment with a rival manufacturer of wall coverings."

The question of law before the Court in that case was stated by Judge Platt as follows:

> "The exact question before me is whether such a hiring of him by the rival warrants a

> court of equity in resorting to so drastic a measure as the use of the injunctive power to prevent that rival from acquiring that secret knowledge. I cannot think that it does, unless the circumstances surrounding the hiring are such as to persuade one that the ulterior purpose in such hiring is evil."

He concluded as follows:

> "The defendant as now organized and Dr. Cornelison state explicitly that there is no intention to derive any benefit from the doctor's secret knowledge gained while in complainant's employ.
>
> "If the injunction issues, it means that hereafter no man can work for one and learn his business secrets, and after leaving that employment engage himself to a rival in business, without carrying on his back into that business the injunctive mandate of a court of equity. There is nothing whatever in the facts of this case, except opportunity to do wrong and a suspicion in the mind of the rival that wrong will be done. The remedy asked for is an extraordinary one, and should not be lightly indulged in. The chancellor ought never to come into such a frame of mind that he assumes human nature to be essentially and inherently evil. Furthermore, the danger of irreparable injury is not manifest. Whether the secrets are given away or not can never be positively known, except by inspection of defendant's goods hereafter to be made. Whenever the outcome shall warrant it, the road to injunctive relief is plainly marked and easily followed."

According to all the testimony in the case, whatever of processes, treatments and methods the complainant has are embodied in its several thousand so-called "formulæ", or mixing directions.

Dr. Walker did not take these "formulæ". They never left the factory where they are filed.

If he had taken and retained them complainant's case might be different.

He received no "formulæ" from the complainant, except as he handled them and had to do with them in the course of business, during his employment by the complainant. He has taken no "formulæ" with him. He has now no papers of the complainant of any character.

He has committed no fraud of any kind upon the complainant, nor has Dr. Walker committed any breach of trust, and both he and the defendant Miner Edgar Company disclaim any intention of making any use whatever of such knowledge as Dr. Walker may now have in his brain, of the complainant's processes.

The decree as made is a decree of the kind reversed by this Court in *Taylor Iron & Steel Co.* v. *Nichols,* 73 N. J. Eq. 684, where Justice Swayze said (p. 687) that "Such a restraint savors of servitude, unrelieved by an obligation of support on the part of the master."

It is respectfully submitted that the decree is unjustly oppressive, that it is unwarranted by the law and the evidence and that it should be reversed.

McCarter & English,
Solicitors of Defendants.

Conover English,
Of Counsel.

59 OCT.1.1927

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

Maas & Waldstein Company,
Complainant-Respondent,

and

Henry V. Walker and Miner Edgar Company,
Defendants-Appellants.

On Bill, Etc.

On Appeal from Decree in Chancery.

BRIEF FOR COMPLAINANT-RESPONDENT.

The final decree appealed from, advised by Vice-Chancellor Berry after final hearing on affidavits submitted in connection with the application for preliminary injunction and on testimony taken in open court, enjoins the appellants from using or disclosing any confidential information received or obtained by the appellant, Walker, while in the employ of the respondent as to the formulae or processes of the respondents for the manufacture of lacquer, enamels, thinners, or nitro cellulose solutions, the cost of production of said lacquers, enamels, thinners and nitro cellulose solutions, the prices at which the same were sold, or other trade secrets of the respondent and from representing that the appellant could manufacture or sell, or are manufacturing or selling lacquers, enamels, thinners or nitro cellulose solutions by the same formulae or processes as those used by the respondent. The decree also requires the appellants to return to the respondent all books, papers, invoices, records and documents taken by them, or either of them, or by their agents, from the respondent (Case, pp. 339 to 343).

The Facts.

The appellant, Walker, a chemist by profession, was connected with the respondent since 1906, first as an employee, later as secretary of the company, stockholder and director, and finally, until his removal in February, 1925, as president. During his connection with the company for this period of years he obtained a very comprehensive knowledge of the respondent's business, its customers, prices, production, cost of manufacture, margin of profit and of the various processes and formulae by which the lacquers, enamels, thinners and nitro cellulose solutions manufactured by the respondent were produced (Case, pp. 17 to 20; p. 19, l. 29 to p. 30, l. 10; p. 50, l. 19 to p. 53; p. 24, p. 25). Prior to his coming with the respondent, he had had no practical experience in the manufacture of lacquers or enamels and his experience in this was gained after he came to the respondent (Case, p. 82, l. 30; p. 52, ll. 3 to 20).

The respondent had been engaged for many years in the manufacture of lacquers and enamels and had built up an extensive and profitable business.

The formulae or processes relating to the manufacture by the respondent of its lacquers, enamels, thinners and nitro cellulose solutions at the time that the appellant, Walker, entered the employ of the respondent were in the possession of an employee by the name of Reuschle, who guarded them, keeping them in secret and imparting them only to those employees of the company whose business it was to have them and as necessary for their use in the manufacture of the company's lacquers, etc. These secret formulae when not in use were kept under lock and key.

Some time after the appellant, Walker, entered the respondent's employ, Reuschle delivered these formulae to him and under Walker's direction they were transferred from a book in which they were kept by Reuschle to cards which were kept in a file cabinet under lock and key. These formulae were kept in code. Separate sets of these cards or books, containing these formulae, were made up under the direction of Walker and given to department heads who necessarily required the information in connection with the manufacture of lacquers and enamels by the respondent. They were always, however, kept under lock and key when not in use (Case, pp. 23, 25, 41, 46-49, 50-53, 76-77, 79; p. 89, l. 33; p. 158, l. 18; p. 165; p. 84, ll. 10 to 38; pp. 146-150; p. 167, l. 9, Exhibit C. 1, p. 323).

At the time of the termination of Walker's employment, these formulae had increased to several thousand, all kept in the same way. The formulae had been modified and new formulae brought out from time to time as circumstances required and made necessary because of changing conditions in the market and in the availability of ingredients, especially during the war period (Case, p. 51, l. 10 to p. 52, l. 28; p. 76, l. 34; p. 150, ll. 10 to 40; p. 157, l. 10 to p. 160; p. 155, ll. 30-40; p. 305, l. 27 to p. 306, l. 36).

On February 2, 1925, the appellant, Walker, was discharged by the directors of the respondent. He shortly thereafter instituted quo warranto proceedings in the New Jersey Supreme Court seeking his reinstatement, but the Court decided the proceedings against him, denying his right to reinstatement (Case, pp. 22, 27, 28; *Walker* v. *Maas,* 132 Atl. 322).

After his discharge, Walker continued to spend a considerable part of each day at his office in

the respondent's factory presumably on his own affairs, without objection from respondent. During this time he caused the invoices of the respondent for the year 1924, to be sorted over and separated. These invoices showed the names of respondent's customers and the quantity and price of the merchandise shipped. These invoices disappeared from the factory. Walker also removed from the respondent's office other papers and records containing confidential information (Case, pp. 18, 19, 20, 21, 24, 33, 34, 48, 49).

During the period that he continued to spend a considerable time at respondent's factory after his discharge, he was frequently seen at the cabinet in his office devoted exclusively to the keeping of these formulae as instructed by him and to which cabinet he had access, apparently making notes or copies thereof (Case, pp. 25, 26).

In May, 1925, one Weaver, who had been under the appellant, Walker, with the Maas & Waldstein Company as foreman of the enamel department, entered the employ of the appellant, Miner Edgar Company (Case, p. 55).

In October, 1925, the appellant, Walker, became president and general manager of the Miner Edgar Company, a competitor of the respondent. Before entering the employ of the Miner Edgar Company, Weaver had talked the matter over with Walker. It was through Weaver that Walker came in contact with the Miner Edgar Company some time in July, 1925. Some time in May, 1925, a few days after coming to the Miner Edgar Company, Weaver made the statement to Rolland H. French, general sales manager of the Miner Edgar Company at that time, that he could produce anything that was required in the

way of lacquers, lacquer enamels, bronzing liquids, thinners and retarders as he was in close touch with Dr. Walker who had left the respondent. The Miner Edgar Company up to that time had had a very small lacquer department but had not been very successful in that line. It had been experimenting in the production of lacquers and lacquer enamels but without success. In November, 1925, one Maynard, formerly in the employ of Maas & Waldstein, also entered the employ of the Miner Edgar Company and took charge of the sale of lacquers and enamels. It was the avowed intention of Walker to increase this business (Case, pp. 55, 56, 57, 58, 59, 63, 64 to 66; p. 83, ll. 30-40; p. 172; p. 173, l. 28; pp. 174, 175, Exhibit C. 2, p. 323).

It also appears that while simple lacquers and enamels are easily analyzed, complex enamels and lacquers are either difficult or practically impossible of analysis to the extent of determining with accuracy the formulae used. The majority of the respondent's formulae or secret processes are included in the complex class (Case, p. 219, l. 12, to p. 222, l. 22; pp. 224 to 226; p. 235, l. 17, to p. 237, l. 9; p. 239, l. 10 to p. 240, l. 23).

It also appears that the Miner Edgar Company had previously attempted in various ways to acquire secret lacquer formulae of other concerns, but unsuccessfully (Case, pp. 54, 102, 103).

As illustrative of the intention of the appellant to compete with the respondent and to make use of the information gained by Walker, we refer to the letter from the Eagle Ottawa Leather Company, a customer of the respondent, to the respondent, dated November 24, 1925, referring to lower prices on materials manufactured by the respondent from one "who guarantees absolutely

to duplicate your product.'' While the appellant, Miner Edgar Company, is not named in this letter as the concern quoting lower prices, it conclusively appears that the letter was inspired by that company and the competitive offer obtained from it. (Case, pp. 42, 43; p. 116, l. 27 to p. 118, l. 20; pp. 135, 312 to 315.)

It is respectfully submitted that the findings of the learned Vice-Chancellor are fully and amply supported by the evidence and a contrary finding would do violence to the facts. The learned Vice-Chancellor also had the benefit and advantage of seeing the witnesses in person and determining their credibility and his findings of fact should not be disturbed.

I.

The formulae or processes of the respondent were secret formulae or processes entrusted to the appellant, Walker.

That the formulae or processes for the manufacture of the lacquers or enamels of the respondent were secret, can leave no room for argument. They related to complex enamels and lacquers which are either difficult or practically impossible of analysis to the extent of determining with accuracy the formulae used. They have been developed and refined over a period of many years. (Case, pp. 51 to 52; p. 76, l. 34; p. 150, l. 10 to l. 40; p. 157, l. 10 to p. 160; p. 155, ll. 30-40; p 219; pp. 239-240.) Attempts by the appellant, Miner Edgar Company, to acquire secret lacquer formulae had been unsuccessful. (Case, pp. 54, 102, 103.)

The importance of these formulae to the respondent and of keeping them secret must be

obvious and they had been so dealt with from the beginning.

That these formulae were considered secret is amply shown by the acts of Walker. He directed the formulae transferred from a book in which they had been kept to cards kept in the filing cabinet in his office under lock and key and clamped to the floor. They were kept in code. Under the direction of Walker separate sets of these cards or books were made up and given to department heads who of necessity had to make use of them, but when not in use they were always under lock and key. In one instance he refused to permit them to be disclosed to one of the employees. (Case, pp. 23, 25, 41, 46-49, 50-53, 76-77, 79, 89; 158, l. 18; 165; 84, ll. 10-38; 146-150.)

II.

These formulae or processes came to the appellant, Walker, in confidence and under express or implied trust that they should not be imparted to a competitor.

Walker was in a confidential relationship. Prior to his coming with the respondent he had had no experience in the manufacture of enamels or lacquers. When he entered the employ of the respondent as chemist, Reuschle delivered to him the formulae used in the manufacture of respondent's enamels, lacquers, etc. Up to that time Reuschle had had the duty of guarding these formulae or processes. From that time on Walker made it his duty to guard them and keep them secret. (Case, pp. 23, 25, 46-49, 76-77; 79, ll. 29-40.) He knew that they were regarded by the respondent as secret and confidential. (Case, p. 76, ll. 1 to 12.)

It should require no argument to satisfy the Court that it was implied as part of Walker's confidential relationship that he should not disclose the process of manufacture disclosed to him because of and in the source of that relationship.

It is submitted by the appellants under their Point I, at p. 7 of their brief that neither Maas nor Magnus in their testimony made any claim that they entrusted anything to Walker and that in fact they did not. While, in view of the mass of evidence to the contrary it may be unimportant, the Court is respectfully referred to the affidavit of Maas (Case, p. 23, ll. 3 to 11.) The evidence is conclusive that Reuschle, who had been entrusted with keeping secret the formulae or processes of the respondent, turned them over to Walker when he entered the employ of the respondent as chemist and from thence on that he was entrusted with their safekeeping.

It is further argued by the appellants under Point II of their brief, at p. 12, that the so-called secret formulae were in no sense chemical formulae and were merely directions for mixing well known ingredients. Whether they be called chemical formulae or processes or directions for mixing well known ingredients, makes no difference so long as they were secret. It is quibbling with the English language and the Court is respectfully referred in this respect to the testimony of Walker (Case, pp. 85 to 91) and to the opinion of the Vice-Chancellor with respect to this. (Case, p. 330, l. 37 to p. 331, l. 19.)

Under Point III of appellants' brief, it is argued that the Vice-Chancellor erred in his findings that secret formulae or confidential statements had been taken by Walker. The conclusions of the Vice-Chancellor on this point are found in his opinion. (Case, p. 330, l. 26, to p. 331, l. 24.) These conclusions are fully supported by the evidence and the Vice-Chancellor had the benefit of having the witnesses in person before him. It is not denied that Walker had access to the formulae or processes kept in the filing cabinet in his office. Mr. Seher testifies that subsequent to Walker's discharge, he had frequently seen the shadow of Walker at the cabinet in Walker's office adjoining Seher's office and that it seemed from the position and motion of Walker that he was examining the cards containing the formulae and making notes thereof or copies therefrom. (Case, p. 25, l. 36 to p. 40, l. 5.) One of the respondent's books taken by Walker contained among other secret and confidential information a complete record year by year for about three years back of so much of the materials entering into the complex composition of lacquers, lacquer enamels, leather solutions and thinners manufactured by the respondent as were made by them in their own factory as distinguished from those ingredients that were purchased outside. It also gave the cost of manufacture of the total output and a statement of that output in gallons or pounds with a record of the yield in each year of these materials in volume. It also contained a copy of the code in which all the formulae were written. (Case, p. 48, l. 3 to p. 49, l. 2.) Walker admits that he took this book. (Case, p. 34, ll. 20 to 40.) Walker also had three leather bound memorandum books containing the formulae of various orders filled by the company prior to the installation of the card system and filing cabinets by Walker in 1920 which Walker kept under lock and key in his private desk at the factory. These disappeared with Walker's departure in 1925. (Case, p. 49,

l. 3 to l. 15.) In addition other records, containing confidential information relating to respondent's business, were take away by Walker. (Case, p. 18, l. 20, to p. 20, l. 9; p. 33, l. 35 to p. 35, l. 26; p. 308, l. 20 to p. 309, l. 33.)

Naturally Walker, with the knowledge that these formulae or processes were confidential and to be kept safely guarded as shown by his action in requiring them to be transferred to cards and installed in a filing cabinet under lock and key, the locks on the filing cabinet changed to make it more secure, the cabinet screwed or clamped to to the floor, his instructions to the employees to keep these formulae secret, would not openly take copies of the formulae when he was leaving and would attempt to make a secret of this. As against all of the corroborating facts, we have merely Walker's denial that he took any of the formulae or processes and in weighing the evidence and determining the credibility of the witnesses, the Vice-Chancellor, as pointed out, had the benefit of personal observation of Walker. The Court is referred to Walker's testimony and quibbling as to the phrase "chemical formulae." His denial of the existence of chemical formulae or their abstraction from the files of the company is based on an attempted distinction between "chemical formulae" and "formulae." See the comments of the Vice-Chancellor as to this. (Case, pp. 84 to 91; opinion p. 330, l. 26 to p. 331, l. 19.)

There are other numerous instances of evasiveness and quibbling on the part of Walker as will appear from a reading of his testimony. As further instances, see his denial that he was entrusted by the complainant with certain secret and confidential statements and invoices, testifying that there were no invoices before he came

to the company and basing his distinction between bills rendered to customers and invoices and later saying that he meant there were no invoices at the factory. (Case, p. 29, l. 29; p. 37, l. 37; p. 73, l. 15 to p. 75, l. 2); his testimony that there was no attempt to keep the formulae from the knowledge of anybody in the employ of the company, followed by his admission that he himself directed that they should be communicated only to certain selected employees; that he directed they should be written in code and then his admission that the formulae that he found in the possession of Maas & Waldstein when he came into their employ were kept secret and confidential; his justification of his statement that he had not been entrusted by the respondent with formulae by the explanation that he called on Reuschle to give them to him and so obtained them; that when he got them he did not feel that he was being entrusted with anything because the respondent never had possession of them until he put them in possession and his later admission that when he got them from Reuschle he understood he got them for the respondent and the respondent got possession of them and he was the custodian. (Case, p. 76, l. 8; p. 77, ll. 4 to 26; p. 78 to 91; p. 302, l. 17 to p. 304.)

It is submitted that this evasion and equivocation of Walker thoroughly discredits him as a witness and the views of the learned Vice-Chancellor in this respect are amply justified. A man who can receive the formulae of the character described and under the circumstances admitted by Walker, who can take the steps that he did to have them safely guarded from the knowledge of all but those who had to know them, putting them in code form and under lock and key, and can still say that he was not en-

trusted with them or with anything about them, cannot be trusted in the future not to disclose them and use them for his own benefit and to the injury of the respondent.

Appellants argue in Point IV of their brief at p. 27, that all of the books, papers and documents taken by Walker were returned before the making of the decree and that the proof was positive that the papers tendered were all of the papers that had ever been taken by Walker from the respondent. The offer to return the books and documents taken by the appellant, Walker, was not made until after the suit was started to compel their return and after the preliminary injunction was issued. Among other things, it required the documents taken by Walker to be impounded with the Court. (Case, pp. 212, 263.) But it is still open to question whether all of the documents and books have been returned and it is not true, as stated by the appellants in their brief, that the proof was positive that the papers thus tendered were all of the papers that had been taken by Walker. This proof exists only in the statement of Walker. Just what records Walker took is unknown to the respondent. There is proof that certain of the books and records of the company disappeared after Walker's discharge and these have not been returned. (Case, pp. 18-21, 49; p. 308, l. 20 to p. 309.) It is submitted that the final decree properly required Walker to return all of the records and documents belonging to the respondent which he may have taken.

Under the facts of the case as found by the Vice-Chancellor and as fully supported by the evidence, no difficult problems of law are presented. The principles of law which apply are well settled by the decisions of the courts of this State.

III.

It is settled that where secret processes, treatments or methods are imparted by an employer to an employee in confidence and under express or implied trust that it should not be imparted to anyone to the injury of the employer, its divulgence or use to the injury of the employer will be enjoined.

Taylor Iron & Steel Co. v. *Nichols,* 73 N. J. E. 684 (Court of Errors);

Vulcan Detinning Co. v. *American Can Co.,* 70 N. J. E. 588;

Pomeroy, Inc. v. *Pomeroy,* 77 N. J. E. 293;

Globe Ticket Co. v. *International Ticket Co.,* 90 N. J. E. 605 (Court of Errors);

Golden Cruller Co. v. *Manasher,* 95 N. J. E. 537;

Stone v. *Grasselli Chem. Co.,* 65 N. J. E. 756, (Court of Errors);

Cameron Machine Co. v. *Langston,* 115 Atl. 212;

Empire Steam Laundry Co. v. *Lozier,* 165 Cal. 95;

Citing *Rodd* v. *Green,* (L. R.) 1925, 2 Q. B. D. 1, 10;

Wilcop Holmes v. *Boyce,* 61 Misc. (N. Y.) 126, 131, App. Div. N. Y. 922;

Wiggins Sons Co. v. *Cott-A-Lap Co.,* 169 Fed. 150;

Hamilton Manufacturing Co. v. *Tubbs Manufacturing Co.,* 216 Fed. 401.

In *Stone* v. *Grasselli Chem. Co., supra,* this Court said:

> "The right of a manufacturer, whose goods are made by an unpatented secret process, to protection by injunction against the divulging of his secret in a proper case, is now established by a well-considered line of cases in England and in several states. (Citing cases) * * * These cases establish the principle that employees of one having a trade secret, who are under an express contract, or a contract implied from their confidential relation to their employer, not to disclose that secret, will be enjoined from divulging the same to the injury of their employer, whether before or after they have left his employ; and that other persons, who induce the employee to disclose the secret, knowing of his contract not to disclose the same, or knowing that his disclosure is in violation of the confidence reposed in him by his employer, will be enjoined from making any use of the information so obtained, although they might have reached the same result independently by their own experiments or efforts. We approve the principle thus established."
>
> "The injunction should not be refused because the process was such that it would probably have been discovered by independent experiments in the manipulation of the ingredients of which the products of both parties were alike composed. The Grasselli Chemical Company by its own conduct has put itself in such a position that it may even lose the advantage in future independent experiments. It would be quite impossible, hereafter, to decide how much an improvement in the product of the Grasselli Chemical Company would be attributable to its own independent efforts and how much to the knowledge of Stone's process fraudulently acquired by it. However, doubt must be resolved against the parties to a fraudulent act."

In *Vulcan Detinning Co.* v. *American Can Co., supra,* this Court said (at p. 395):

> "Too much emphasis has perhaps been placed upon the element of absolute secrecy in the process and not enough stress has been laid upon the inequitable character of the defendant's conduct in making a use of such process that was inimical to the complainant's interests * * * the main ground for relief disclosed by the complainant's case is the existence of inequitable competition arising from a breach of trust, and hence referable to general principles of equity and not to those special doctrines by which unpatented secrets are protected. *In the application of these general principles the secrecy with which a court of equity deals is not necessarily that absolute secrecy that inheres in discovery, but that qualified secrecy that arises from mutual understanding and that is required alike by good faith and by good morals* * * * Entirely aside from the technical secrecy of the process or the abstract question of property therein, the complainant is entitled to have its trustee, his associates and their servants restrained from using against the interests of the complainant the very process with which its trustee was entrusted for its benefit * * * the secrecy of a process may be viewed in two aspects, first, as having for its object the keeping of the public in ignorance of the nature, source or composition of a commercial product that is put upon the market; and second, as having for its object the prevention of competition by rivals in production * * * as regards the second, namely prospective competition, such trust is equally violated if the trustee himself uses the secret to engage in such competition, even though, as would clearly in that case be to his interest, he sedulously kept the secret to himself excepting so far as his selfish use of it required the co-operation of associates and servants. To this the trustees might indeed answer, 'It is true that I agreed to keep

> your secret from others, but I did not agree that I would not myself make use of it in competition with you.' But it is not likely that a court of equity would regard such answer as in anywise ingenious or exculpatory."

The appellants cite the case of *Taylor Iron & Steel So.* v. *Nichols, supra,* against respondent's right to an injunction. In that case there was an express contract only and the Court held that its terms could not be enlarged or restricted. It, however, expressly recognizes the rule laid down in *Stone* v. *Grasselli, supra,* that a contract of secrecy may be implied from a confidential relation between employer and employee. There was, furthermore, in that case no proof of the existence of secret process, the Court below having excluded such proof. This distinction was recognized by the learned Vice-Chancellor in his opinion (Case, p. 336, ll. 4 to 30). It is submitted that this case is authority for the propositions contended for by the respondent.

The appellant's attempt to distinguish the case of *Vulcan Detinning Co.* v. *American Can Co., supra,* at page 38 of their brief, on the ground that in the *Vulcan* case the process of manufacture was a real secret and carefully guarded as such and that the defendants committed a very flagrant breach of trust against the complainant. It is submitted that in this case, as in the *Vulcan* case, these facts are present.

The instant case comes squarely within the rule laid down by the Court in the *Vulcan* case where Justice Garrison said at page 393:

> "That the complainant carefully guarded such secret as it had acquired is amply proved in the case; that Assmann as one of the original promoters and one of the first directors of the complainant was especially

> impressed with the importance of so guarding the trust is shown in the testimony in many ways, one only of which need now be mentioned, namely, that he himself became, individually, the depository of a copy of the formulae of the process for the express purpose of guarding it for the mutual benefit of himself and his associates."

Appellants argue that the final decree requires the deposit of the formulae with the clerk without any provision for any copy thereof being given to the appellants and that the appellants are not apprised as to what they are forbidden to do, citing *Taylor Iron & Steel Company* v. *Nichols* to the effect that before a defendant is enjoined he should be definitely informed what he is forbidden to do. In a case of this kind, the decree, of course, cannot set forth the formulae or processes to which it applies as to do this would in effect publish them to the world and any one who wanted to secure them would merely have to go to the files of the court and examine the decree. The decree expressly refers to the formulae of the defendant used for the manufacture of its enamels, lacquers, etc., and, of course, Walker must know to what this refers. But it even goes further and any possible objection on this point is removed by the requirement of the decree that

> "copies of the secret formulae and processes and other trade secrets enclosed in an envelope properly sealed and marked on the outside thereof with the title of this cause and the designation 'Schedule A' and the further direction—'not to be opened except by order of the Court of Chancery of New Jersey' be filed with this decree in the office of the clerk of this court; that it be kept by him in such place and manner as not to be open to access by any person other than the said clerk and/or his duly appointed deputies and that no one shall be allowed inspection of said Schedule A-except by order of this

court, nor shall it be opened by any one except by such order'' (Case, p. 342, ll. 1 to 18).

This renders the restraint as definite as it is possible under the circumstances without expressly setting forth in the decree the specific formulae included. The latter, of course, is out of the question because of the very nature of the case and the protection sought. A contrary rule would in every case of this kind deprive the complainant of his established rights. If the appellants require the information contained in the schedule attached to the decree for a proper purpose, either of them may have access in a proper cause by order of the Court.

The Decree should be affirmed.

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